



**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE**  
**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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**Case No.:** HK-2101539  
**Complainant:** Suzhou Dake Machinery Co., Ltd.  
**Respondent:** Muzammal Hussain  
**Disputed Domain Name:** <ingcotool.com >

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**1. The Parties and Contested Domain Name**

The Complainant is **Suzhou Dake Machinery Co., Ltd** (hereinafter referred to as the “**Complainant**”), of 45 Songbei Road, Suzhou Industrial Park, People’s Republic of China.

The Authorized Representative of the Complainant is **He Fang**, of King & Wood Mallesons, Shanghai Office, 17<sup>th</sup> Floor, One ICC, Shanghai ICC, 999 Middle Huai Hai Road, Xuhui District, Shanghai, People’s Republic of China.

The Respondent is **Muzammal Hussain**, (hereinafter referred to as the “**Respondent**”) of Main Street Gjranwala, Gujranwala, Punjab, Pakistan.

The domain name at issue is <ingcotool.com> (hereinafter referred to as the “**Disputed Domain Name**”), registered with NameCheap, Inc. of 4600, East Washington Street, Suite 305, Phoenix, Arizona, AZ 85034, United States of America (hereinafter referred to as the “**Registrar**”).

## 2. Procedural History

On 13 September 2021, the Complaint (in the Chinese language) was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “**Centre**”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”) approved by ICANN Board of Directors on 28 September 2013, and the Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “**Supplemental Rules**”) effective from 31 July 2015.

On 14 September 2021, the Centre confirmed receipt of the Complaint and requested the Complainant to submit the necessary case filing fees in accordance with Article 15 of the Supplemental Rules.

On the same day, the Centre notified the Registrar of the Complaint and requested the Registrar to verify information associated with the Disputed Domain Name.

The very day, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name, in which the Registrar stated that Muzammal Hussain is the registrant of the Disputed Domain Name; that the ICANN Policy is applicable to the Disputed Domain Name; that the language of the Registration Agreement of the Disputed Domain Name is English as provided by the Whois database; and that the Disputed Domain Name has now been placed under the registrar lock.

On 14 September 2021, the Centre informed the Complainant that the contact information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

*“In accordance with Article 4 of the Rules for the ICANN Uniform Domain Name Dispute Resolution Policy (‘Rules’), we are now reviewing the*

*Complaint for administrative compliance with the Policy and its Rules and have found the following deficiency.*

*The information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:*

*Name: Muzammal Hussain*

*Organisation: Ring Royal*

*Street: main street gjaranwala*

*City: Gujranwala*

*State/Province: Punjab*

*Postal Code: 52250*

*Country: Pakistan*

*Phone: +1.03137580603*

*Email: mh.bsos@gmail.com*

*For the deficiency stated on the above, may we ask the Complainant to update the information of the Respondent in the Complaint Form with reference to the Whois information provided by the Registrar. The Complainant Form of scanned version(signed) and word version should be sent to the Centre.*

*According to Article 4(d) of the Rules, the Complainant is hereby required to rectify the above deficiency within 5 calendar days (**19 September 2021**), failing which the Complaint will be deemed withdrawn without prejudice to submission of a different complaint by the Complainant.”*

Likewise on the same day, the Centre informed the Complainant that the “*language of the Registration Agreement of the disputed domain name <ingcotool.com> is English, therefore the language of the proceedings of this complaint should be English*” and requested the Complainant to respond to “*the language of the proceedings **on or before 19 September 2021**. The Panelist shall make the final determination of the language issue.*”.

On 21 September 2021, the Centre verified that the Complaint satisfied the formal requirements in accordance with the Policy, the Rules and the Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceedings commenced on 21 September 2021.

Under Paragraph 5 of the Rules, the due date for the Respondent to file a Response was on or before 11 October 2021.

On 28 September 2021, the Complainant wrote to the Centre informing the Centre, that it wished to supplement another piece of evidence i.e., *“a screenshot of the WhatsApp chat history between the Complainant and the Respondent”* and that the Complainant had issued *“a Cease and Desist letter to the Respondent”*. The Complainant requested the Centre to provide this supplemental evidence to the Panelist and to circulate such to the Respondent *“as necessary”*.

On 28 September 2021, the Centre forwarded the supplemental submission of the Complainant to the Respondent and reminded the Complainant and Respondent of its obligations to copy information sent to the Centre to the other party.

On 11 October 2021, the Respondent did not file a response and is in default.

On 12 October 2021, the Centre wrote to Dr. Christopher To enquiring as to his availability to act as a Sole Panelist (the **“Panelist”**) in relation to the Disputed Domain Name and whether he is in a position to act independently and impartially between the Parties.

On 12 October 2021, the Respondent wrote to the Centre stating that *“Kindly let me know what you want?”*.

On 13 October 2021, the Centre wrote to the Respondent stating that the response was due on 11 October 2021 and that the Centre is in the process of appointing the Panelist to decide the Complaint. The Centre also reminded the Respondent to copy correspondence addressed to the Centre to the Complainant.

On 15 October 2021, the Centre appointed Dr. Christopher To as the Panelist in this matter.

The Panelist finds that it was properly constituted and has acted independently and impartially in reaching its conclusion.

In accordance with Paragraph 15(a) of the Rules, the Panelist is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Paragraph 15(d) of the Rules, this Panel shall issue a reasoned decision.

### **3. Factual background**

#### **Complainant**

The Complainant is a company whose business is in the development, design and global sales of various tooling products ranging from hand tools, power tools, garden tools, pneumatic tools, energy tools to measuring tools. The Complainant and its affiliated company Suzhou Yinghe Tools Co., Ltd. (*reference Attachment 2 of the Complaint*) operate the “INGCO” (盈合 in the Chinese language) brand through designing and developing relevant products and have filed more than 700 relevant patent applications. The Complainant and its affiliated company have been at the forefront of the tooling industry and have been able to compete in the international market. The “INGCO” brand is recognized internationally for its superior quality that enhances people’s livelihood (*reference Attachment 3 of the Complaint*).

Since 1999, the Complainant and its affiliated company are owners of various domain names, including “ingco.cn”, “ingco.com” and “ingcotools.com”. Such domain names are used as the official websites of the “INGCO” brand to promote and sell “INGCO” branded products. The Complainant has prior rights in the using of such domain names for “ingco.cn”, “ingco.com” and “ingcotools.com”, which are protected by various statutory provisions under the laws of the People’s Republic of China (*reference Attachment 5 of the Complaint*).

Since 2006, the Complainant has registered a series of “INGCO” trademarks in the People’s Republic of China in various classes, including but not limited to Class 6 (hardware), Class 7 (mechanical equipment), Class 8 (hand tools), Class 9 (electronic

products) and Class 35 (Advertising Sales), (*reference Attachment 4 of the Complaint*). Through extensive use by the Complainant, the “INGCO” trademarks have gained worldwide reputation and recognition.

### **Respondent**

The Respondent, Muzammal Hussain, is an individual.

On 12 October 2021, the Centre informed this Panelist that the Centre did not receive a Response from the Respondent in relation to the Complaint on or before 11 October 2021, as such, the Respondent has not contested the allegations of the Complaint and is in default.

### **Disputed Domain Name**

The Disputed Domain Name was registered on 8 February 2021.

## **4. Parties’ Contentions**

### **Complainant**

The Complainant made the following submissions in the Complaint:

#### **i. Identical/Confusingly Similar**

The Complainant contends that the identifiable part of the Disputed Domain Name “ingcotool” is a combination of the words “ingco” and “tool”. The word “tool” in the Chinese language is “工具”, a generic word whereas the word “ingco” is the distinctive part, which is identical to the “INGCO” trademarks registered by the Complainant as well as Complainant’s prior registered domain names “ingco.cn” and “ingco.com”. The Complainant further contends that the Disputed Domain Name “ingcotool” as a whole is almost identical to the identifiable part “ingcotools” of the Complainant’s prior registered domain name “ingcotools.com” created on 5 September 2008. The only difference is the addition of the letter “s”, which is used to distinguish singular and plural words in the

English language. This disparity does not affect the overall identifiable part of the Complainant's prior registered domain name "ingcotools.com".

The Complainant asserts that the ".com" part of the Disputed Domain Name is a generic part of domain names and is generally not considered when determining the similarity of a particular domain name.

According to the Complainant, the identifiable part of the Disputed Domain Name is a combination of the words "INGCO" (identical to the Complainant's registered trademarks) and "tool" (which refers to the type of product that such trademarks are mainly used on). This could easily cause confusion in the public domain, leading to misunderstand that the Disputed Domain Name is registered by the Complainant and/or its affiliates or has a commercial connection with the Complainant and/or its affiliates, thus causing confusion and misunderstanding to its true identity.

## **ii. Rights and Legitimate Interests**

The Complainant contends that the Respondent does not have the legitimate legal rights and interests in relation to the Disputed Domain Name. In support of such stance, the Complainant states that according to China National Intellectual Property Administration's official website, the Respondent does not have any relevant prior trademark registrations or any other civil rights in relation to the "INGCO" or "INGCOTOOL" marks.

The Complainant further contends that it has not authorized and/or consented to the Respondent to use the Disputed Domain Name and the "INGCO" trademarks. The Complainant is of the view that the mere registration of the Disputed Domain Name by the Respondent is not sufficient to establish its rights or legitimate interests in it. In fact, by using the Disputed Domain Name, the Respondent has deceived and confused and/or is likely to deceive and confuse members of the trade and public into believing that the Disputed Domain Name is in some way affiliated and/or associated and/or connected with the Complainant.

The Complainant asserts that "INGCO" is a mark originally coined by the Complainant, which corresponds to the transliteration of the pronunciation of its brand "盈合" in the

Chinese language. The Complainant further asserts that the “INGCO” mark itself does not correspond to any common vocabulary or Pinyin in the Chinese language.

### **iii. Bad Faith**

The Complainant advocates that the Disputed Domain Name has been registered and used in bad faith.

On the aspect of registration, the Complainant and/or its affiliate companies has been associated with the “INGCO” trademarks for an established period (*reference Attachment 6 of the Complaint*). The “INGCO” mark was originally created by the Complainant, which corresponds to the transliteration of the pronunciation of its brand “**盈合**” in the Chinese language. The mark does not have a generic meaning, nor is it associated with common English vocabulary or Chinese Pinyin.

The Disputed Domain Name was registered on February 8, 2021, after the “INGCO” trademarks having gained much popularity and goodwill through the Complainant’s efforts as well as the Complainant prior registration of the series of “INGCO” trademarks in the People’s Republic of China.

Whereas on the aspect of the usage of the Dispute Domain Name, the Complainant submits that the Respondent usage of a website that corresponds to the Disputed Domain Name is an attempt to sell various infringing substituted products of the Complainant under the disguise of the Complainant’s “INGCO” brand (*reference Attachments 7 and 8 of the Complaint*) thus creating confusion that such products are in some way affiliated and/or associated and/or connected with the Complainant products and services.

The Complainant further submits that the infringing marks used on the Respondent’s website and the infringing products sold on such website are almost identical to the series of “INGCO” trademarks of the Complainant, including the “**ingco**” or similar marks of the Complainant, which are unique designs associated with the Complainant. To add to this the appearance of the Repondent’s website in terms of colours used on the relevant products as well as the formatting and layout of the website, are also identical or highly similar to the Complainant’s official website and relevant products.



The Complainant contends that the Complainant's "INGCO" brand and the series of "INGCO" trademarks are highly respected in the industry, and given that the Respondent, as a business operator in the same industry, must have been aware of such brand and trademarks. For the Respondent to still use the Dispute Domain Name to undermine the business activities of the Complainant is self evident that Respondent is using the Disputed Domain Name in bad faith with the intention of creating confusion thus misleading the public and not to mention taking advantage of the Complainant's goodwill in the "INGCO" trademarks.

The Complainant asserts that the infringing products sold on the Disputed Domain Name, will give consumers the impression that the products are that of the Complainant and its affiliate companies thus misleading consumers in believing that the products are of merchantable quality and fit for their purpose. In fact, they are not and could create safety issues that may lead to injuries or accidents happening.

The Complainant submits that the intentions of the Respondent are clear, in that actions of the Respondent show that the Disputed Domain Name was not used in good faith but bad faith.

### **Respondent**

The Respondent did not reply to the Complainant's contentions as stated in the Complaint.

## **5. Findings**

Having considered all the documentary evidence before me including newly presented evidence (dated 28 September 2021 – an email together with an attachment from the Complainant) that was reasonably unavailable to the Complainant during the Initial Complaint and the Respondent's non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 5(f) of the Rules, the Panelist is of the view that it should proceed to decide on the Disputed Domain Name, based upon the Complaint and evidence adduced by the Complainant as contained within the Complaint and its email and attachment of 28 September 2021.

Paragraph 5(f) of the Rules stipulates that:

*“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.”*

Whereas Paragraph 10(d) of the Rules states that:

*“The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.”*

Similarly, Paragraph 11(a) of the Rules provides that:

*“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”*

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its correspondence to the Centre of 14 September 2021, then in accordance with Paragraph 11(a) of the Rules, the language of the administrative proceedings shall be in the English language.

In these circumstances given that the Complaint before the Panelist is drafted in the English language (Originally in the Chinese language) which is in line with the Registration Agreement and that the Respondent has failed to communicate on the matter, the Panelist considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language in line with Paragraph 11(a) of the Rules.

The Policy provides, at Paragraph 4(a), that each of three findings must be made for a Complainant to prevail:

- A. Disputed Domain Name is **identical or confusingly similar** to a trademark or service mark in which Complainant has rights; and
- B. The Respondent has no **rights or legitimate interests** in respect of the Disputed Domain Name; and
- C. Disputed Domain Name has been registered and is being used in **bad faith** by the Respondent.

The Panelist would like to state that the Respondent's non-participation in these proceedings (i.e., default) would not by itself mean that the Complainant claims are deemed to have prevailed. In fact, the Respondent's default is not necessarily an admission that the Complainant's claims are true. The burden of proof still rests with the Complainant to establish the three elements contained within Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence for the Panelist to determine in accordance with Paragraph 10(d) of the Rules.

**A. Identical / Confusingly Similar**

The Complainant contends that the Disputed Domain Name is confusing similar to the Complainant's trademark "INGCO" which the Complainant has prior rights.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant trademarks/marks/logos/wordings belonging to the Complainant and the Disputed Domain Name to ascertain the presence of the trademarks/marks/logos/wordings in the Disputed Domain Name. To satisfy this test, the relevant trademarks/marks/logos/wordings would generally need to be recognizable as such within the Disputed Domain Name, with the addition of merely descriptive, common or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

In essence, this Panel has to consider whether the Disputed Domain Name, namely, <ingcotool.com>, is a central and distinguishable part of the Complainants' trademark/mark.

The Disputed Domain Name contains two elements: (i) “ingcotool” and (ii) top-level generic domain “.com”. It is well established that the top-level generic domain “.com” does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the “*confusing similarity*” element.

On a side-by-side comparison of the Disputed Domain Name and the textual components of the Complainant’s trademark/mark, the trademark/mark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark/mark/wordings of the Complainant with a common generic word “tool” which is insufficient to prevent a finding of confusing similarity.

The distinctive part of the Disputed Domain Name <ingcotool.com> is “ingco”, which is confusingly similar to the Complainant’s trademark/mark “INGCO” thus creating a likelihood of confusion amongst internet users.

The Panelist finds that the Complainant has rights in the trademark/mark/wordings acquired through use.

The Panelist agrees with the Complainant’s contentions that the Disputed Domain Name is the same and is a central and distinguishable part of the Complainant’s “INGCO” trademark/mark. The Panelist further concurs with the Complainant’s stance that the Disputed Domain Name can easily mislead members of the public into believing that the Disputed Domain Name is owned or operated by the Complainant, or that the Respondent has a relationship or association with the Complainant in some way or form.

As stated previously, the Respondent has not contested the allegations of the Complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainant has discharged the burden of proof to establish the elements of identical and confusingly similar trademark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

## **B. Rights and Legitimate interests**

The burden of proof shifts to the Respondent once the Complainant provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances, any of which is sufficient to demonstrate that a Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Complainant has authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the trademark/mark.

The Panelist finds on record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden shifts to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the Disputed Domain Name or that the Disputed Domain Name has been used in connection with a bona fide offering of goods or services. The Complainant has neither authorized nor consented to the Respondent to use the Complainant's trademark/mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

The Complainant has in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. This ineffectively entitles the Panelist to infer that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent's use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainant to use its marks. Nor is there any evidence that the Respondent has been commonly known by the Disputed Domain Name or similar name. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the mark of the Complainant.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainant has discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to paragraph 4(a) (ii) of the Policy.

### **C. Bad Faith**

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist shall take into consideration in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. Either one (1) of these four (4) factors being evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

From the evidence submitted by the Complainant, the Respondent attempted to sell the Disputed Domain Name back to the Complainant. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (i) of the Policy:

*“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name”*

The Panelist finds that, given the fact that the Complainant's trademark/mark is known within the community, it is likely that the Respondent, was aware that it was infringing the Complainant's trademark/mark. Therefore, the Panelist concludes that the Respondent has acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to the Complainant who is the owner of the trademark or service mark, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name, in line with one of the four factors the Panelist needs to take into consideration in determining whether the Respondent has registered/used the Disputed Domain Name in bad faith, namely paragraph 4(b)(i) of the Policy.

From the evidence the Panel also finds that the Respondent is attempting to use the Disputed Domain Name to create confusion with the Complainant's trademark/mark with the view of gaining commercially. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iv) of the Policy:

*“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark*

*as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”*

For the foregoing reasons, the Panel concludes that the Complainant has discharged the burden of proof to establish that the Respondent registered and used the Disputed Domain Name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

## **6. Reverse Domain Name Hijacking**

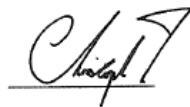
Paragraph 15(e) of the Rules provides that, if “*...after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding*”.

Reverse Domain Name Hijacking is defined under the Rules as “*...using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name*”.

In light of the conflicting decisions as to whether it is necessary for a Complainant to establish both bad faith registration and bad faith use, the Panel does not find this to be a case of Reverse Domain Name Hijacking.

## **7. Decision**

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panelist is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The Panel orders that the Disputed Domain Name <ingcotool.com> be transferred to the Complainant.



Dr. Christopher To  
Panelist

Dated: 28 October 2021