



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

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Decision ID	DE-0600091
Case ID	CN-0600102
Disputed Domain Name	www..inachina.com
Case Administrator	xiechangqing
Submitted By	Ping Zhang
Participated Panelist	

Date of Decision	16-11-2006
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#### The Parties Information

<b>Claimant</b>	Schaeffler KG INA
<b>Respondent</b>	warren

#### Procedural History

The complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Center”) on August 24, 2006. On September 15, 2006, the Center transmitted by email to NETWORK SOLUTIONS, LLC a request for registrar verification in connection with the domain name at issue. On September 16, 2006, NETWORK SOLUTIONS, LLC transmitted by email to the Center its verification response confirming that the respondent is listed as the registrant. The Center verified that the complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”). In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the respondent of the complaint, and the proceedings commenced on September 28, 2006. In accordance with the Rules, paragraph 5(a), the due date for Response was October 18, 2006. The respondent did not submit any response. Accordingly, the Center notified the respondent of its default on October 23, 2006.

The Center appointed Ms. Zhang Ping, Ms. Xue Hong and Mr. Guo Shoukang respectively as presiding panelist and panelists in this matter on October 31, 2006. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### Factual Background

##### For Claimant

Brothers Wilhelm Schaeffler and Georg Schaeffler founded INA in Germany in 1946. It has become one of the globally well-known bearing manufacturers and the largest family enterprise engaged in bearings after more than 50 years of development. Today, INA Group has 39 plants, about 40 marketing entities and 28,000 employees around the world, with products including bearings, high precision engines and spare parts of transmission systems. Its gross sales in 2001 reached 3 billion USD. The complainant, INA-Schaeffler KG, with INA brand, LUK brand, REGE brand and FAG brand, has 54000 employees and 63 plants globally with its gross sales of 6 billion USD in 2001.

INA Hong Kong Co., Ltd. was set up to take care of distribution, technology and commercial services in the Chinese market on January 3, 1990. With the ever-growing expansion of business in China, offices were established in Beijing, Shanghai, Chengdu, Guangzhou and Shenyang. On September 28, 1995, INA Bearing China Co., Ltd. was founded, marketing the first step of expansion of INA in the Chinese market. It manufactures punching housing washer bearings, clutch release bearings, hydraulic tappets, pins for bearings, all for automobiles, motorcycles, universal machines and

electric tools.

With the acquisition of FAG Kugelfischer AG & Co. KG, the complainant has become a manufacturer of the fullest portfolios of bearings in the world. INA has production and distribution bases in Jiangsu while FAG owns an automobile bearing plant in Wai Gao Qiao in Shanghai and a joint venture of bearings for railways in Yinchuan.

The complainant is the owner of the following trademarks:

- (1) No. 76605 trademark "INA", registered in respect of such goods as value tappet, crankshaft, connecting rod, steering knuckle, coupler and parts thereof, gimbals and parts thereof, all of automobiles.
- (2) No. 1237447 trademark "INA", registered in respect of such goods as roller (for tractors)(parts of textile looms), weight arms (for tractors)(parts of textile looms), lower roller bearings(parts of mechanical loom), spinning ingot(parts of textile looms), tension roller (parts of textile looms), bar-type sleeve (socket head, mechanical component, non-hand-operated tools), spare parts of tappets, parts of follow-up rollers(roller driven lever), parts of bar-type sleeve, parts of universal joints, sliding bearing, cam followers, follow-up rollers(roller driven lever), ball bearings, roller bearings, needle bearings, parts of ball bearings, parts of roller bearings.
- (3) No. 1237488 trademark "INA & Device", registered in respect of such goods as roller(for tractors), weight arms (for tractors)(parts of textile looms), lower roller bearing(parts of textile looms),spinning ingot (parts of textile looms), tension rollers(parts of textile looms), ball bearings, roller bearings, needle bearings, parts of ball bearings, parts of roller bearings, parts of needle bearings, sliding bearings, cam followers, follow-up rollers(roller driven lever), bar-type sleeve (sleeve for socket head, mechanical component, non-hand-operated tools), spare parts of tappets, parts of follow-up roller driven lever), parts of bar-type sleeves, universal joints, parts of universal joints, gaskets(mechanical parts), elastic collar (mechanical parts).

As early as in 1978, the predecessor of the complainant registered "INA" trademark in China.

The complainant has registered many domain names with INA as the identifying part, including ina.de, ina.com, ina.be, ina.at, ina.pl, ina.com.br, ina.sk, ina.cz, ina.co.uk, ina.se, ina-group.de and inagroup.de. The complainant's website in China is cn.ina.com.

## For Respondent

The respondent is warren, whose address is Room 1503 ,Zhongshan Bei Road No.2918, Shanghai

## Parties' Contentions

### Claimant

In the disputed domain name, inachina.com, ".com" is a suffix and "China" is a universal word referring to the People's Republic of China while "ina" plays the role of an identifying part, which is identical with the complainant's registered trademarks and is also the major of the complainant's corporate name. In the opinion of the complainant, such a coincidence is likely to cause confusion among the public so as to bring harm to the prior rights of the complainant and the benefits of consumers.

The respondent in this case does not enjoy any exclusive trademark rights, corporate title right or any other right in the word "ina" and the registration date of the disputed domain name is later than that of the complainant's trademark. Therefore, the respondent is not entitled to any lawful rights and interests in the disputed domain name.

Moreover, the respondent registered and used the disputed domain name in this case in bad faith. In Notarial Deed No. 77762(2005)(see Annex 7), it can be seen that German national flag, the Chinese national flag and the complainant's reproduction of the trademark "INA" flashing in turn on the front page of the respondent's website, the introduction of the complainant is on the front page of the website, the website is entitled "Commercial Platform for INA Bearing in China", the website is linked to the Chinese embassy in Germany, and the introduction of the complainant's products in such columns as "Chinese and German Friendship", "Product Show" and "Stock Supply". The aforementioned are likely to mislead the public into believing that the respondent's website is the complainant's official website or an authorized website. In 2005, the complainant filed a complaint against the respondent's unauthorized use of trademark "INA" in its commercial activities on the Internet and its unfair competition and fraud through the alleged Commercial Platform for INA Bearingss in China, requesting Zhabei Branch of Shanghai Administration for Industry and Commerce to take a raid action against it(see Annex 8). In the raid action, the respondent shut down the website under the disputed domain name under the supervision of the law enforcement officials. However, in the subsequent review, the complainant found that the respondent still used the website under the disputed domain name by linking it to www.haoook.net/user/inachina/index\_cn.asp. The complainant once addressed a letter to the link provider, Xinyuan Network Technology Corp. Ltd., requesting it to shut down the link mentioned above (see Annex 9). Now, in comparison with what is shown in the notarial deed, minor changes have been made to the website linked to the disputed domain name(see Annex 10), with only the Chinese and German national flags flashing on the front page and the column of "Chinese and German Friendship" deleted. But the substantial contents still remain unchanged, with vigorous promotion of the complainant's corporation and its products.

In the administrative raid action, the law enforcement officials also found that the respondent had conducted numerous commodity transactions through the web site without any business permission. Now, investigation into its illegal operations is underway.

The complainant thinks that the respondent attempts to register the registered trademarks in which others have lawful rights and interests as its own domain name so as to gain profits through the domain name. Such an act in bad faith shall be prohibited by law.

### **Respondent**

The respondent has not filed a response within the time limit prescribed by the ADNDRC.

### **Findings**

#### **Identical / Confusingly Similar**

The disputed domain name, inachina.com contains “inachina” and “com”. “Com” is a suffix, so the identification part is “inachina”. “China” is a universal word referring to the People’s Republic of China, which can’t work as an identifying part, while “ina” plays the role of an identifying part. The identification part “ina” is the complainant’s registered trademark. “INA” (in Class 19) was registered in China by INA-Schaeffler KG in 1978. Moreover, the trademark “INA” was subsequently approved for registration in Classes 7, and the registration date of the disputed domain name is later than that of the complainant’s trademark. So the domain name of the respondent is identical or confusingly similar to the trademark in which the complainant has rights, infringing upon the prior rights and interests of the complainant.

#### **Rights and Legitimate Interests**

Article 4(c) of the Policy stipulates how a respondent can effectively demonstrate rights or legitimate interests in the Disputed Domain Name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Article 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the 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 from the respondent that relates to Article 4(c)(i), (ii) and/or (iii) of the Policy, especially the relationship between the respondent and the current user of the disputed domain name, and the certificated document of current user, because the respondent has chosen not to participate in the current proceedings, and provide nothing to prove its rights and legitimate interests.

In view of the foregoing, the Panel concludes that the respondent has no rights or legitimate interests in the domain name of “inachina.com”.

#### **Bad Faith**

Article 4(c) of the Policy stipulates that for the purposes of Article 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (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; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting

the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(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.

In this case, the registration and use of the domain name “inachina.com” are likely to mislead the public into believing that the respondent’s website is the complainant’s official website or an authorized website. Through visiting the site under the disputed domain name, it can be seen In Notarial Deed No. 77762(2005)(see Annex 7) that the website is entitled “Commercial Platform for INA Bearing in China”, the complainant’s reproduction of the trademark

“INA” and the introduction of the complainant in turn on the front page of the respondent’s web site, and the introduction of the complainant’s products in such columns as “Chinese and German Friendship”, “Product Show” and “Stock Supply”. The distribution of “INA” products on the site under the domain name inachina.com is aimed at marketing its products and obtaining profits through misleading consumers to log in its web site by the reputation of “INA”, and intentionally attempted to attract, for commercial gain, internet users to the web site, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of a web site or location or of a product or service on the web site or location.

So the respondent can be proved in bad faith.

#### Status

[www.inachina.com](http://www.inachina.com)

Domain Name Transfer

#### Decision

In light of all the foregoing findings and in accordance with the Policy and the Rules, the Panel holds:

- a) That the disputed domain name “inachina.com” is identical or confusingly similar to the registered trademark “INA” which has been used by the complainant in its business; and
- b) That the respondent has no rights or legitimate interest in respect of the disputed domain; and
- c) That the domain name registered by the respondent was registered and subsequently used in bad faith.

As such the Panel requires that the disputed domain name “inachina.com” should be transferred to the complainant.

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