



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Version  
 Decision ID DE-0800157  
 Case ID HK-0800159  
 Disputed Domain Name www.chinaiveco.com  
 Case Administrator Dennis CAI  
 Submitted By Arthur Chang  
 Participated Panelist

Date of Decision 26-09-2008

Language Version : English

#### The Parties Information

**Claimant** Iveco S.p.A.  
**Respondent** Nanjing Guoyuan Tech Ltd.

#### Procedural History

The Complainant of this case is Iveco S.p.A. Its address is at Via Puglia 3 5, 10 156 Torino, Italy. Its authorized representative is CLYDE & CO..

The Respondent of this case is Nanjing Guoyuan Tech Ltd. with addresses at 南京东宇大厦9楼A3

The domain name in dispute is chinaiveco.com. The Registrar of the dispute domain name is XIN NET TECHNOLOGY CORPORATION.

On February 12, 2008, the Complainant has submitted Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre” ), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy” ) adopted by the Internet Corporation for Assigned Names and Numbers ( “ICANN” ) on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules” ), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules” )

The Complainant has sought a one-person Panel.

On February 13, 2008, the Centre has forwarded a request to XIN NET TECHNOLOGY CORPORATION to verify the registration information of disputed domain name and on February 14, 2008, XIN NET TECHNOLOGY CORPORATION confirmed with registrant details as shown above.

On March 6, 2008, the Centre forwarded a copy to the Respondent by on-line notification. The 20 day deadline for the Respondent to respond calculated from March 6, 2008 expired and the Respondent did not file a Response with the Centre, as confirmed by the Centre.

On June 28, 2008, Arthur Chang has been appointed as the sole Panelist for this case and all parties have been informed by email.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

#### Factual Background

##### For Claimant

The Complainant engages in the design, manufacture and marketing of light, medium, heavy, other off-road range of vehicles, commercial

and industrial vehicles (van and trucks), buses, firefighting vehicles, diesel engines and relevant spare parts worldwide. The Complainant employs over 24,500 people and runs 28 production units in 16 countries in the world. Besides Europe, the Complainant operates in China, Russia, Australia, Argentina, Brazil and South Africa. More than 4,600 service outlets in over 100 countries guarantee technical support wherever in the world an Iveco is at work.

The Complainant has acquired a worldwide recognition in respect of the vehicles it manufactures under its trade mark and brand name "Iveco". The trade mark "Iveco" also forms part of the Complainant's company name which it has been using in the market since 1975. The Complainant enjoys exclusive proprietary rights in the name "Iveco" and it has registered the trade mark "Iveco" in different classes worldwide. The Complainant has registered its trade mark "Iveco" in different classes worldwide, including Austria, France, Germany, Italy, UK, Finland, Ireland, Russia, Bulgaria, Viehala, Sudan, China etc. In particular, China is the country where the Disputed Domain Name has been registered.

### For Respondent

The Centre confirmed that documents have been sent to the Respondent's address as registered with the registrar XIN NET TECHNOLOGY CORPORATION. Nothing has been received by the Centre regarding response of the Respondent related to this case. The disputed domain name was registered on Aug 9, 2006.

### Parties' Contentions

#### Claimant

The Disputed Domain Name is identical and/or confusingly similar to trade marks or service marks in which the Complainant has rights. The Disputed Domain Name "chinaiveco.com" is identical to the Complainant's trade mark and company name "Iveco", save for the first five letters China. China is only a country name and it does not distinguish the Disputed Domain Name from the Complainant's trade mark. To the contrary, the Disputed Domain Name suggests that it is the official domain name of the Complainant in China.

Due to the extensive goodwill and reputation of the Complainant in its trade mark / trade name "Iveco", if the Respondent or any other companies use the Disputed Domain Name, which incorporates the Complainant's trade mark / trade name "Iveco", members of the public and Internet users will be confused and believe that the Complainant has used the Disputed Domain name for its business in China and/or the owner of the Disputed Domain Name is associated with the Complainant.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is confusingly similar to both registered and unregistered trade marks in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has never authorised the Respondent or Nanjing Goodmart to use the trade mark/ trade name "Iveco" for any purposes nor do they have any relationship with them. The Complainant has been using the name Iveco since 1975. The name was invented by the Complainant and it is the Complainant's submission that the Respondent has no legitimate grounds or reason to justify its registration of the Disputed Domain Name.

Accordingly, the Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the ICANN UDRP.

The Disputed Domain Name has been registered by the Respondent in Bad Faith

The Disputed Website has been used by the Respondent to promote vehicle parts and accessories. In particular, as reviewed by the submission of the Complainant

- At the top left hand corner of each page of the printouts downloaded from the Disputed Website, it shows the words "CHINA IVECO PARTS SUPPLIER", but neither the Respondent nor Respondent's Company is an authorized dealer, licensee or supplier of the Complainant.

- The web site also states that "we can supply all the Iveco Daily parts and these parts are pass test by Naveco". However, the Complainant has not authorized the Respondent or Nanjing Goodmart to sell any vehicle parts or accessories of the Complainant.

- The web site also shows that a number of the so called "Iveco Daily Parts" are being offered for sale.

From the above web site description, the Respondent clearly alleged / suggested in the Disputed Website that it has been licensed by the Complainant to supply all the Iveco Daily parts to customers in Europe, South Africa, Middle East and South America, which is wrong and untrue. The disputed domain name was registered and is being used in bad faith

The mere fact that the disputed domain name totally comprises the trade mark belonging to the Complainant constitutes in itself bad faith registration and demonstrates that the Respondent has tried to benefit unfairly from the reputation of the Complainant's mark "Iveco".

Clearly, the Respondent has registered and used the Disputed Domain Name to attract, for commercial gain, internet users to the Disputed Website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Disputed Website and the goods and services promoted therein. The registration of the Disputed Domain Name was registered and being used in bad faith.

The Complainant also points out the Disputed Website has been removed or is no longer in service. The Complainant believes that their demand letter has drawn to the attention of the Respondent. It is believed that the Respondent removed the Disputed Website with a view to avoid any possible legal and/or administrative actions which will be commenced by the Complainant. Nonetheless, the Respondent has failed to transfer the Disputed Domain Name to the Complainant up to date.

The Complainant accordingly submits that it has proved that the Respondent has registered the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

### Respondent

Save as outlined above, the Respondent did not respond to any of the claim as submitted by the Complainant.

### Findings

The Policy requires a Complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

### Identical / Confusingly Similar

The panel is satisfied that the Disputed Domain Name is confusingly similar to the Complainant's registered trade marks "Iveco" due to the following reasons:

1. The Disputed Domain Name comprises of the Complainant's registered trade mark "Iveco", to which the country name "China" has been added. The ability of the word "China" to distinguish the Disputed Domain Name from the Complainant's "Iveco" trade mark is not only limited, but actually reflect the intention of use of the dispute domain name in the country of China which is closely related to the Complainant's business activity in China. In light of this, it is very likely to confuse consumers that the Disputed Domain Name is associated with the Iveco related products in China and therefore related to the Complainant.
2. In the disputed domain name "chinaiveco.com", ".com" is the top level domain name. Taking away ".com", the domain name chinaiveco is confusingly similar to the trade mark of the Complainant as explained in point 2.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) and the disputed domain name is confusingly similar to the trademark that the Complainant holds.

### Rights and Legitimate Interests

The Panel is satisfied that the Complainant has met the requirements of Policy 4(a)(ii) regarding Respondent's rights and legitimate interests in the disputed domain name because:

1. The Disputed Domain Name (or in any reasonable variation derived from the name) does not reflect either the Respondent's name) or the name of the Respondent's Company;
2. The Complainant has not authorized the Respondent to use the "Iveco" trademark for any form of use;
3. The Respondent does not have any registered trade mark rights in the PRC. The Complainant's legal representatives has conducted trade mark searches and revealed that neither the Respondent nor the Respondent's Company is the owner of any registered trade marks in the PRC or Hong Kong, incorporating the word "ChinaIveco".;
4. The Complainant has demonstrated and proved the registration of the "Iveco" trademark, adoption of and use in the PRC pre-dates the Respondent's registration and first use of the Disputed Domain Name. In such case, the burden of proof in establishing that Respondent has the legitimate rights and/or interests in the Disputed Domain Name is now the responsibility of Respondent. However, there is no submission from Respondent to sustain this point
5. The fact that the Respondent is using the Disputed Domain Name to operate a website does not of itself confer upon the Respondent any legitimate right or interest in the Disputed Domain Name unless the Respondent submit proof of its legitimate rights in the names or any reasonable explanation of the association of the names with the Respondent's use in the web site

As such, the Panel agrees the Respondent has no right or legitimate interests in respect of the disputed domain name.

### Bad Faith

According to the Policy 4b, the following circumstances, in particular but without limitation, if found by an Arbitration 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.

When Panelist attempted to access the web site of the disputed domain name on July 11, 2008, it was directed to a page that looks like a classified site which is totally unrelated to Iveco.

Judging from the submission of the Complainant about the web site at the point when the document is submitted, the Panel is satisfied that the Respondent selected the Disputed Domain Name in order to attract, for financial gain, Internet users to the "ChinaIveco" Website by creating a likelihood of confusion with the Complainant's "Iveco" trade marks as to the source, sponsorship, affiliation and/or endorsement of the Iveco Website and the products advertised, promoted and/or sold on Iveco Website. These are due to the followings:

(a) The Respondent does not have any legitimate right or interest in the Disputed Domain Name but registered the dispute domain name to offer service or information which is highly related or associated with the Complainant's main business activity;

(b) The Respondent has mentioned in various places of the web site the offer of Iveco parts or products which has been claimed by the Complainant that this is not true and valid;

The Respondent's registration and use of the Disputed Domain Name were very likely to capitalize on the goodwill associated with the Complainant's "Iveco" trade marks by confusing Internet users and diverting Internet traffic to the Iveco Website which it otherwise would not have attracted.

On the other hand, even if the current web site as visited by the Panelist on July 11, 2008 is the web site that has been in operation so far, the Panelist is still in agreement that the registration and use of the disputed domain name is in bad faith as the Respondent does not have any legitimate right or interest in the Disputed Domain Name but registered the dispute domain name to offer service or information which is totally unrelated to the word "Iveco" nor "ChinaIveco". Such behavior has prevented the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a) (ii),(iii)and (iv) of the Policy in showing bad faith registration and use of the Disputed Domain Name.

#### Appropriate Remedy

The Complainant asks for the Panelist's decision to transfer of the disputed domain name. In view of the above reasoning, the Panelist decides that transfer of the disputed domain name to the complainant is an appropriate remedy.

#### Status

www.chinaiveco.com

Domain Name Transfer

#### Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name chinaiveco.com is confusingly similar to the Complainant's name or mark in which the complaint has civil rights or interests; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names or major part of that domain name; (3) the Respondent has registered or is using the domain name in bad faith. Accordingly, the Panelist decides that the disputed domain name chinaiveco.com should be transferred to the Complainant.

Panelist:

Arthur Chang

August 18 2008

Hong Kong