



HONG KONG INTERNATIONAL ARBITRATION CENTRE

香 港 國 際 仲 裁 中 心

.hk Domain Name Dispute Resolution

ARBITRATION PANEL DECISION

Case No.	:	DHK-0700026
Complainant	:	Wynn Resorts Holdings, LLC
Respondent	:	JUN XIAN

1. THE PARTIES AND CONTESTED DOMAIN NAME

The Complainant is incorporated in State of Nevada, USA and its address is at 3145 Las Vegas Boulevard South, Las Vegas, Nevada 89109, USA. The authorised representative of the Complainant in this matter is Ms. Rosita Li of Johnson Stokes & Master at 19/F, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is JUN XIAN, with email address of hkdomain@xinnet.com.

The domain names at issue (the "Disputed Domain Name") is <wynn.hk>, registered on 15 June 2007 by the Respondent. The technical contact of the Disputed Domain Name is "JUN XIAN", with "俊" as the last name and "贤" as

the first name in Chinese.

2. PROCEDURAL HISTORY

The complaint in respect of <wynn.hk> was filed with the Hong Kong International Arbitration Centre (“HKIAC”) in terms of the prescribed Form A on 5 December 2007 under the Hong Kong Domain Name Registration Company Limited (“HKDRN”) Domain Name Dispute Resolution Policy (“the HKDNRP”), the HKDRN Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and the HKIAC Supplemental Rules therefor (“the Supplemental Rules”).

On 7 December 2007, the HKIAC received confirmation on the registration details of the Disputed Domain Name.

On 30 January 2008, the Respondent was notified of the commencement of the proceeding, requesting a response to be submitted within the stipulated time, i.e. 15 business days therefrom.

By 25 February 2008, a response to the complaint has not been submitted by the Respondent.

On 31 March 2008, the HKIAC wrote to the candidates for the sole panelist, asking for confirmation of availability, independence and impartiality in dealing with this matter. Upon such confirmation, Mr. Gary Soo was appointed as the Sole Panelist

in this case on 9 April 2008 and the Panel was requested to render a decision on or before 30 April 2008.

3. FACTUAL BACKGROUND

For Complainant

The Complainant is the registered holder of various trademarks including the mark/name of "WYNN" in Hong Kong. These include "WYNN MACAU", "WYNN RESORTS", "WYNN LAS VEGAS", "WYNN & COMPANY JEWELRY", "WYNN & COMPANY WATCHES", "WYNN CLUB", "WYNN CLUB DEVICE", "WYNN DEVICE (in series)", "WYNN DEVICE", "WYNN MACUA (Stylized)" and "WYNN. THE SIGNATURE SHOP", the respective registration numbers of which being 300134126 & 300738045, 200311502 & 203310008, 300134117, 300738072, 300738081, 300738513, 300738360, 300738522, 300738063, 300738054 and 300738090. The Complainant is also the registered holders of similar series of trademarks in Macau, China and USA.

For Respondent

The Respondent registers the Disputed Domain Name on 15 June 2007.

4. PARTIES' CONTENTIONS

For Complainant

On the Complainant's rights, the Complainant points out that the Complaint is based on its famous trade name and trade mark "WYNN" and the Complainant has obtained registrations of the "WYNN" mark in respect of various goods and services in various jurisdictions, as detailed in the annexed trademark registration documents and tables. The dates of registration in Hong Kong are since 12 September 2002, regarding the "WYNN RESORTS" marks.

In relation to its rights, the Complainant further notes that:-

- (a) Its group is a famous America-based international gaming entertainment company and hotel gaming resorts developer, founded by veteran Las Vegas gaming mogul Mr. Steve Wynn, who was the Chairman of the Board, President and Chief Executive Officer of Mirage Resorts Incorporated and its predecessor from 1973 to 2000 and is now the Chairman of the Board and Chief Executive Officer of Wynn Resorts, Ltd., the parent company of the Complainant. The Complainant's group has been listed on the Nasdaq Stock Exchange since 2002 and included as part of NASDAQ-100 Index since 2004.
- (b) The Complainant's group has developed and operates, among other projects, the renowned "Wynn Las Vegas" hotel and destination casino resort, located on the Las Vegas Strip.
- (c) The Complainant's group has entered the China markets in recent years and successfully obtained a concession to operate one or more casino gaming properties in Macau, the only place in China where casinos are legal. Since end 2006, Macau has replaced Las Vegas to become the world's biggest gaming

centre by revenue. The luxury hotel and destination casino resort “Wynn Macau” has been developed and operated by the Complainant’s group and the Complainant’s group has opened representative offices in major cities in China, including Beijing, Shanghai and Guangzhou and Hong Kong to assist its guests.

- (d) The Complainant’s group has also launched heavy promotional campaign in promoting Wynn Macau, attaching various advertising and promotional materials and receipts.
- (e) The Complainant has set up a website under the domain name <wynnmacau.com> for easy access of information of Wynn Macau.
- (f) The Complainant has registered the “WYNN” mark and other marks incorporating the Mark “WYNN” in respect of a wide range of goods and services throughout the world and the Complainant has also used and advertised these marks extensively throughout the world. Thus, the public will associate these marks exclusively with the Complainant’s group.

The Complainant also says that the identifying part of the Disputed Domain Name is identical to “Wynn” of the Complainant’s mark and the “.hk” generally represents Hong Kong and is non distinctive.

As regards the Respondent’s rights or legitimate interests in respect of the Disputed Domain Name, the Complainant asserts that the Respondent does not have any right or legitimate interests in this regard since:-

- (a) The Respondent is not authorized in any way by the Complainant and its group to use the “wynn” mark or name.
- (b) There is no evidence that the Disputed Domain Name is the name of the

Respondent who is called “JUN XIAN”, or that the Respondent has been commonly known by the Disputed Domain Name.

- (c) There is no reason why the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the Disputed Domain Name.

Also, the Complainant is of the view that the Respondent registers the Disputed Domain Name in bad faith for the reasons set out below.

- (a) The Respondent has deliberately registered the Disputed Domain Name which is identical to the Complainant’s famous mark “WYNN”, with an intention of causing confusion to the public that the Respondent and/or the Respondent’s website is related to or authorized by the Complainant and/or the Complainant’s website. It cannot be a mere coincidence that the Respondent has also registered on 15 June 2007 the domain name “wynnhk.hk” incorporating the entirety of the “WYNN” mark, when the date of the correspondent trademark application of the Complainant in Macau is on 8 June 2006. Also, given the fame of the Complainant’s group, it is most unlikely that the Respondent is unaware of the Complainant’s rights in this regard.
- (b) The Respondent’s website operating under the Disputed Domain Name is copied from the Complainant’s website, as shown when comparing the source code of it with that of the Complainant’s website at <wynnmacau.com>, showing even the title as “Official Wynn Macau Resort”, with changes only to the contact information. At an investigation done at the address shown on the Respondent’s website, none of the people met there, the management office nor the security staff have any knowledge of Jun Xian or Wynn and there is no listing of any company using the name “Wynn” as part of the company name. This, as per the decision of *Telstra Corporation Limited v. Nuclear Marshmallows*

(WIPO Case No. D2000-0003), goes to evidence bad faith registration and use of the Disputed Domain Name.

- (c) As shown in a Google search of “wynn”, all results returned relate to the Complainant’s group. The public will likely be confused into believing that the Respondent and/or the Respondent’s website is related to or authorized by the Complainant and/or the Complainant’s website. With the extensive use and advertisement, the public will associate the Complainant’s mark with the Complainant’s group.
- (d) It is very likely that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the registration of the Disputed Domain Name for valuable consideration in excess of his documented out-of-pocket costs directly related to the Disputed Domain Name.
- (e) The Respondent failed to respond to the cease and desist letter sent to the Respondent on 14 September 2007, adopting an uncooperative attitude which goes to show that the Respondent blatantly ignores the Complainant’s rights in respect of the Disputed Domain Name.

In the circumstances, the Complainant asks for the transfer of the Disputed Domain Name to the Complainant.

For Respondent

The Respondent has not submitted any Response.

5. DISCUSSION AND FINDINGS

Elements under HKDNRP

Pursuant to paragraph 4(a) of the HKDNRP, a complainant has the burden of proving that:-

- (i) the respondent's domain name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent's domain name has been registered and is being used in bad faith.

Whether Identical or Confusingly Similar to a Trademark or Service Mark in Hong Kong in which the Complainant has Rights

The Complainant relies on rights over registered trademarks and common law trade mark/name in this regard. From the trademark records provided by the Complainant, the Complainant is the owner of the various registered trademarks in Hong Kong containing the "WYNN" mark/name as the distinctive feature/part of the corresponding trademarks. The Complainant provides documents showing its use and promotion of the "WYNN" mark/name in and outside Hong Kong and that it with renowned reputation. These are also so stated in the cease and desist

letter dated 14 September 2007, sent to the Respondent apparently via the email as appeared in the registration details of the Disputed Domain Name. There was and still is no response nor objection to these from the Respondent. Indeed, no Response has been submitted to suggest the contrary.

On this basis, the Panel accepts that the Complainant owns the necessary rights under paragraph 4(a)(i) of the HKDNRP in respect of the mark of “WYNN”.

In the Disputed Domain Name, the part “.hk” is the ccTLD for Hong Kong. The Panel also agrees with the Complainant that the main and most prominent feature/part of the Disputed Domain Name is “wynn” and this is, to the Internet users, identical or confusingly similar to the “WYNN” mark/name of the Complainant.

Therefore, the Panel finds that the Complainant has succeeded in discharging the burden on its part to establish the elements under paragraph 4(a)(i) of the HKDNRP.

Whether the Respondent has no Rights or Legitimate Interests in respect of the Domain Name

The burden is on the Complainant to establish this from the evidence. Also, paragraph 4(c) of the HKDNRP provides that the Respondent may demonstrate its rights to and legitimate interests in the Disputed Domain Name by proving any one of the following circumstances:-

- (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 in Hong Kong; or
- (ii) the Respondent (as an individual, business, or other organisation) have been commonly known by the Disputed Domain Name, even if the respondent has acquired no trade mark or service mark rights in Hong Kong; 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 trade mark or service mark at issue.

The Panel accepts that the Complainant has not authorized, licensed or otherwise permitted the Respondent to register or use the Disputed Domain Name or its trademarks or trade names. To the Panel, there is no evidence that the Respondent holds any registered trademark or trade name in Hong Kong in relation to the "wynn" name or mark. Further, even from the name of the Respondent, in English or in Chinese, the Panel notices that there is no direct link between it and the distinctive part of the Disputed Domain Name, that is to say "wynn". These are further reinforced by the findings during the investigation conducted by the Complainant at the address of the Respondent.

The Complainant does suggest that, with the trademark and trade name rights of the Complainant that exist prior to the registration of the Disputed Domain Name, the Respondent must be well aware of its trademark being protected by law. To these, there is actually no denial or rebutting evidence from the Respondent and there is nothing from the Respondent explaining why it chooses to register the Disputed

Domain Name.

Also, the Panel finds no evidence to support a finding of any of the circumstances in paragraph 4(c) of the HKDNRP. As a matter of fact, the Panel is of the view that the evidence relied on by the Complainant indicates quite the opposite.

Therefore, taking into consideration of the overall evidence, the Panel accepts that the Respondent has no right or legitimate interests in respect of the Disputed Domain Name, in relation to paragraph 4(a)(ii) of the HKDNRP.

Whether the Respondent's Domain Name has been Registered and is being Used in Bad Faith.

Pursuant to paragraph 4(b) of the HKDNRP, for the purposes of Paragraph 4(a)(iii) of the HKDNRP, 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 Disputed Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or acquired the Disputed 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 the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) the Respondent has registered the Disputed Domain Name in order to

prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Disputed Domain Name, provided that you have engaged in a pattern of such conduct; or

- (iii) the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The test for bad faith here is conjunctive and there must be evidence that the Disputed Domain Name has been registered in bad faith and is being used in bad faith.

The Complainant's case is that both the registration and use of the Disputed Domain Name by the Respondent are with bad faith. This is not objected to by the Respondent. Furthermore, from the evidence, the Panel notices and is of the view that the contact information provided by the Respondent was not genuine; the Respondent was aware of the Complainant's rights in relation to the "WYNN" mark/name when registering and using the Disputed Domain Name, as shown from the Respondent's website content under the Disputed Domain Name and the rights of the Complainant over the "WYNN" mark/name. The Panel further accepts the reasoning as said in *Telstra Corporation Ltd. v. Nuclear Marchmallows* (WIPO Case No. D2000-0003), as regards the potential factors for identifying bad faith registration


and use.

Moreover, the Panel is of the view that the name or mark of “WYNN” is not one that is in the use of daily communications or languages, apart from as a personal name. In the premises, as the Panel finds that the Respondent was aware of the Complainant’s rights over the “WYNN” mark/name when registered the Disputed Domain Name, the registration and use of it is with bad faith.

Therefore, taking into consideration of the overall evidence and submissions, the Panel finds that the Complainant has established that the registration and use of the Disputed Domain Name by the Respondent is in bad faith, as per paragraph 4(a)(i) or (iv) of the HKDNRP.

6. ARBITRATION DECISION

In view of the findings as set out above, the Panel finds that the Complainant has succeeded in proving that all of the 3 elements of paragraph 4(a) of the HKDNRP are present. Therefore, this Complaint succeeds and the Panel accordingly directs the registration of the Disputed Domain Name <wynn.hk> be transferred to the Complainant.



Gary Soo
Arbitration Panelist

Date: 21 April 2008