



香港國際仲裁中心

Hong Kong International Arbitration Centre

**ADMINISTRATIVE PANEL DECISION**

**Case No.: DHK-0900045**

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**Complainant :** Wynn Resorts Holdings, LLC  
**Respondent :** M3 International Exhibition & Design Limited  
明峰國際展覽工程有限公司  
**Domain Name :** [www.wynn.com.hk](http://www.wynn.com.hk)  
**Registrar :** Hong Kong Domain Name Registration Company Ltd.

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**1、 Procedural History**

On 2 April 2009, the Complainant submitted a Complaint in the English language to the Hong Kong International Arbitration Center (HKIAC) and elected this case to be dealt with by a one-person panel, in accordance with the Hong Kong Domain Name Registration Company Limited (HKDNR) Domain Name Dispute Resolution Policy (the Policy), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure (the Rules) and the HKIAC Supplemental Rules (the HKIAC Supplemental Rules). On 3 April, the HKIAC confirmed the receipt of the Complaint.

On 3 April 2009, the HKIAC notified the Registrar of the Disputed Domain of the proceedings by email. The Registrar acknowledged this notification by email of 6 April 2009 confirming its registration of the Disputed Domain and including its WHOIS information.

The Complaint was served upon the Respondent by the HKIAC by email on 7 April 2009. In accordance with the Rules, the Respondent shall submit a Response within fifteen business days from 7 April 2009. By 16 May 2009, no Response was received by the HKIAC. On the same date, the HKIAC sent an email to the Complainant notifying the Respondent's default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the HKIAC notified the parties on 25 May 2009 that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel should render the Decision within 15 business days, i.e., on or before 16 June 2009.

The language of the proceeding is English, as being the language of the Domain Name Registration Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

## **2、 Factual Background**

### **For the Complainant**

The Complainant in this case is Wynn Resorts Holdings, LLC, a corporation registered in the United States of America. The registration address is 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109, U.S.A.

### **For the Respondent**

The respondent in this case is M3 International Exhibition & Design Limited 明峰國際展覽工程有限公司. The registration address is Rm 333 World Trade Square, 21 On Lok Mun Street, Fanling, NT, Hong Kong. The Respondent is the current registrant of the disputed domain name <wynn.com.hk> according to the Whois information.

## **3、 Parties' Contentions**

### Complainant

#### (1) The Complainant's Rights

This Complaint is based on the Complainant's registrations for the Mark "WYNN" registered in respect of a variety of goods and services in various jurisdictions and the Complainant's common law rights generated as a result of use of the Mark by the Complainant.

The Complainant's Group is a famous American-based international gaming entertainment company and hotel gaming resorts developer. The Complainant's Group was 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. In that role, Mr. Wynn was responsible for the development of a number of very successful hotel gaming resorts including "The Mirage" and "Treasure Island" at Las Vegas, etc. Mr. Wynn 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 the NASDAQ-100 Index since 2004.

Among its various projects, the Complainant's Group has developed and operates the renowned "Wynn Las Vegas", a \$2.7 billion luxury hotel and destination casino resort located on the Las Vegas Strip which features 2,716 luxurious guest rooms and suites; a 111,000 square foot casino; 22 food and beverage outlets; an on-site 18-hole golf course; approximately 223,000 square feet of meeting space; an on-site Ferrari and Maserati dealership; and approximately 76,000 square feet of retail space.

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 (which is the only place in China where casinos are legal). As background, the gaming industry in Macau was monopolized by local casino tycoon Stanley Ho's company which obtained an exclusive gaming concession to operate gaming business in the territory for forty years. This monopolization ended in early 2002 when the Macau government opened the gaming industry market in Macau to new players and granted casino licences to a few players including the Complainant's Group. The new casinos established in Macau attracted big crowd and revenue. Since end of 2006, Macau has replaced Las Vegas to become the world's biggest gaming center by revenue.

The luxury hotel and destination casino resort developed and operated by the Complainant's Group in Macau is called "Wynn Macau". The resort features 600 deluxe hotel rooms and suites, approximately 220 table games and 380 slot machines in approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities.

To assist its guests with the planning of their vacations or corporate meetings at Wynn Macau, the Complainant's Group has opened representative offices in major cities in China including Beijing, Shanghai and Guangzhou, as well as in Hong Kong. The Complainant's Group has also launched heavy promotional campaign in promoting Wynn Macau.

The Complainant has registered the domain names "wynn.hk" and "wynnhk.hk". The Complainant has registered the Mark and other marks incorporating the Mark "Wynn" in respect of a wide range of goods and services throughout the world, including Macau and Hong Kong. The Complainant has also used and advertised these marks extensively throughout the world. As such, the public will associate these marks exclusively with the Complainant's Group.

## (2) Identical/Confusingly Similar

The Disputed Domain Name is "wynn.com.hk". The identifying part of the Disputed Domain Name is identical to the Complainant's Mark. The "com" part merely indicates that the Disputed Domain Name is used by a commercial entity. "hk" generally represents Hong Kong and is non distinctive.

## (3) Rights or Legitimate Interests of the Respondent

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. (a) The Complainant and its group companies have not authorized, licensed or otherwise permitted the Respondent to the use of the "wynn" Mark or any other name/mark of the Complainant's Group. (b) The website under the Disputed Domain Name shows nothing on display. There is no evidence of any use of or demonstrable preparations to use by the Respondent of the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. (c) There is no evidence that the Disputed Domain Name is the name of the Respondent or the Respondent has been commonly known by the Disputed Domain Name. 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.

#### (4) Bad Faith

The Complainant submits that the Respondent has registered and used the Disputed Domain Name in bad faith. (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 if any is related to or authorized by the Complainant and/or the Complainant's website. Given the substantial fame of the Complainant's Group throughout the world, it is most unlikely that the Respondent is unaware of the Complainant's rights in the Mark. It cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is identical to the Complainant's Mark, as its domain name. The Complainant also points out that the Respondent obtained registration of the Disputed Domain Name on 16 January 2009, which is after the date of the trademark application of the Mark by the Complainant in Macau on 8 June 2006. The Complainant refers to the WIPO decision, *Telstra Corporation Limited v Nuclear Marshmallows (D2000-0003)*, in which it was held that the registration of a domain name bearing the Complainant's name is in bad faith if (i) it is impossible for the Respondent to have not heard of the Complainant's name and (ii) the Respondent cannot prove any legitimate use of the domain name in dispute. As submitted above, the Respondent of this case clearly has no legitimate or bona fide use of the Disputed Domain Name and it must have been aware of the Complainant's rights in the Mark. Registration of the Disputed Domain Name has therefore been made in bad faith.

(b) The public will likely be confused into believing that the Respondent and/or the Respondent's website (if any) is related to or authorized by the Complainant and/or the Complainant's website. As mentioned above, due to extensive use and advertisement of the Complainant's Mark by the Complainant's Group, the public will associate the Mark exclusively with the Complainant's Group. A Google search at [www.google.com](http://www.google.com) by the keyword "wynn" returns results that are almost all related to the Complainant's Group.

(c) The Respondent is not operating any website under the Disputed Domain Name. The Respondent has no real intention of active use of the Disputed Domain Name, and such acts of the Respondent have constituted the passive holding of the Disputed Domain Name, which amounts to the Disputed Domain Name being used in bad faith.

(d) The Complainant further submits that the Respondent has registered the Disputed Domain Name in bad faith and 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. According to the company search records, the sole director of the Respondent is a Mr. TAM Man Kwong ("Mr. TAM). He is also the sole director of "Wynn Exhibition Production Limited (WEPL)", a company incorporated under the laws of Hong Kong. Mr. TAM used the Complainant's mark WYNN and the corresponding Chinese mark 永利 as the name of the WEPL. The Complainant's legal advisor sent a cease and desist letter dated 5 February 2009 to WEPL in respect of the unauthorized use of the Complainant's English and Chinese marks as the

dominant part of the company name of WEPL. Subsequent to the issue of the cease and desist letter, it came to the Complainant's attention that the Respondent has registered the Disputed Domain Name. The Complainant's legal advisor also demanded the Respondent to transfer the Disputed Domain Name to the Complainant in subsequent telephone discussion. The Respondent adopted an uncooperative and unreasonable attitude in respect of the Disputed Domain Name. The Complainant's authorized representative urged Mr. TAM to transfer the Disputed Domain Name to the Complainant when WEPL was still the registrant and the Complainant offered to reimburse the Respondent of its out of pocket expenses for the transfer of the Disputed Domain Name. Mr. TAM refused to return the Disputed Domain Name and eventually sent the Complainant's authorized representative a letter by fax on 28 February 2009 in which he offered to sell the Disputed Domain Name to the Complainant at a price of HK\$150,000.00. The said letter is strong evidence showing that Mr. TAM of the Respondent blatantly ignores the Complainant's rights in the Mark in respect of the Disputed Domain Name and attempts to make a fortune out of the registration. Possibly as an attempt to avoid litigation for trade mark infringement and passing off, Mr. TAM applied to the Companies Registry to deregister WEPL and transferred registration of the Disputed Domain Name to the Respondent. Notwithstanding the transfer, Mr. TAM retains ownership and control of the Disputed Domain Name.

The Complainant requests the Panel to issue a decision that the Disputed Domain Name be transferred to the Complainant.

Respondent

The Respondent failed to submit a Response within the time period specified in the Rules.

#### **4、 Findings**

The Policy, the Rules, the HKIAC Supplemental Rules, not the Chinese Constitutional Law, are addressed to resolving disputes concerning allegations of abusive ".hk" domain name registration. The HKIAC, not the courts in mainland China, is the designated body to have the jurisdiction over the Complaint for this procedure.

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "An Arbitration Panel shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Dispute Resolution Policy, the Rules of Procedure, the Provider's Supplementary Rules and the law which the Arbitration Panel deems applicable."

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) [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
- 2) [The Respondent] has no rights or legitimate interests in respect of the Domain Name; and

- 3) [The Respondent's] domain name has been registered and is being used in bad faith.

Paragraph 4 (b) of the Policy provides the following evidence of registration and use 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.

### **Identical/Confusingly Similar**

The Complainant, a famous international gaming entertainment company and hotel gaming resorts developer, has registered several trademarks incorporating "Wynn" in a number of countries and regions, including Hong Kong, since 2002. The trademarks registered in Hong Kong include "Wynn Macau", "Wynn Resorts", "Wynn Las Vegas", "Wynn & Company Jewelry", "Wynn & Company Watches", "Wynn Club", "Wynn Club Device", "Wynn Device", and "Wynn. The Signature Shop". It is obvious that "Wynn" is the distinctive part of the above trademarks. Furthermore, the registration date of the trademark in Hong Kong (the earliest being in 2002) is more than six year earlier than the date of the registration of the disputed Domain Name. The Panel has no problem in finding that the Complainant enjoys the indisputable prior rights and interests in the mark WYNN in Hong Kong.

The disputed Domain Name is "wynn.com.hk". The panel finds that the main part of the Domain Name "wynn" is confusingly similar to the registered trademarks, given that the ".com.hk" suffix is to be ignored. The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

### **Rights or Legitimate Interests of the Respondent**

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed Domain Name. The Complainant's assertion is sufficient to establish a *prima facie* case under the Policy, thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent fails to put forward any evidence to show any positive interests that it

relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the disputed Domain Name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

### **Bad Faith**

Evidence shows that the Complainant is a leading entertainment company worldwide. The Complainant has been consistently using the mark WYNN to promote its business. The mark WYNN has achieved a strong reputation through use and advertisement. As such, the public has come to recognize and associate the Complainant's trademark WYNN as originating from the Complainant. Furthermore, "WYNN" is not a common English word. No reasonable justification could be offered for the Respondent to register the disputed domain name using "WYNN" as the main part. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainant and its trademark WYNN. The action of registering the disputed Domain Name *per se* has constituted bad faith.

The evidence also shows that the Director of the Respondent offered to sell the disputed domain name to the Complainant at a price of HK\$150,000, an amount much higher than the out-of-pocket costs directly related to the disputed domain name. This is the typical situation of bad faith as envisaged by the Policy, namely, the Respondent has registered 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 that Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the Domain Name.

In conclusion, the panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in 4(a)(iii) of the Policy.

### **5、 Decision**

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <wynn.com.hk> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun  
Sole Panelist

DATED: 1 June 2009