



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

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**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

**Case No. HK 1100403**

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<b>Complainant:</b>	<b>Wynn Resorts Holdings, LLC</b>
<b>Respondent:</b>	<b>Alan Neoh</b>
<b>Domain Names:</b>	<b>&lt;wynncambodia.com&gt;</b>
<b>Registrar:</b>	<b>IP Mirror Pte, Ltd.</b>

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### **1. Procedural History**

The complainant in this case is Wynn Resorts Holdings, LLC., a limited liability company organized under the laws of the State of Nevada, United States of America, whose principal places of business are in Las Vegas, Nevada, United States of America and in Macau ("Complainant").

The respondent is Alan Neoh, giving an address at 200 Jalan Sultan #09-06, Singapore ("Respondent"). Complaint, Annex A.

The domain name in dispute is <wynncambodia.com>. The Registrar of the domain name is IP Mirror Pte, Ltd. (the "Registrar").

On 28 October 2011, pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy ("the Rules") and Hong Kong International Arbitration Centre Supplemental Rules ("the HKIAC Supplemental Rules"), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the "HKIAC"), an office of the Asian Domain Name Dispute Resolution Centre and elected this case to be dealt with by a one-person panel. On 1 November 2011, Hong Kong International Arbitration Centre sent to the complainants by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language. On the same date the HKIAC sent the Registrar a request for verification. On 2 November 2011, the Registrar confirmed that it was the registrar of the domain names at issue and that Respondent was the registrant of the domain names at issue.

On 2 November 2011 HKIAC notified the Respondent of the commencement of the action.

On 8 November 2011, the Respondent had filed an undated Response.

On 18 November 2011, the HKIAC invited the Respondent to participate in the selection of the sole panelist. On that same date, Respondent replied to the HKIAC by email, stating in pertinent part: "I fully agree with the complaint lodged by the Complainant, and the remedy they are seeking, and I will most willingly do all I can to help that process. However, I believe they have directed this complaint to the **wrong person** because I have never registered or paid for *wynncambodia.com*" or any derivative in either a personal or business capacity."

On 18 November 2011 the HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 18 November 2011, the Panel received the file from HKIAC.

## **2. Factual Background**

### *For the Complainant*

Complainant is a leading international gaming entertainment company and operator of hotel resorts, whose major resorts operate in Las Vegas and Macau.

Complainant has registered trademarks for the marks WYNN, WYNN LAS VEGAS, WYNN MACAU, WYNN SINGAPORE, WYNN RESORTS and other marks incorporating the WYNN mark, issued by numerous trademark authorities in countries around the world, including Cambodia, Singapore, Macau, the People's Republic of China and Hong Kong the earliest of which issued on 16 August 2002 in Singapore. Complaint, Annex B. The Complainant's predecessor was first established in 1973, and Complainant has been listed on the NASDAQ stock exchange since 2002. Complainant has offices in major cities in the People's Republic of China, and advertises its mark heavily in markets throughout Asia and North America. Complaint, Annexes H and I.

On 29 May 2009, the domain names at issue was registered in the name of Respondent, listing as administrative contact InfraInvest Corp (Asia) Pte Ltd. Complaint, Annex A. The domain name at issue does not currently resolve to a web site. However an email correspondent using the name "Dixon Ng" who claimed to work for the Claimant in Macau sent an email to a third party, who then contacted the Complainant concerning the email correspondence. Complaint, Annexes J and K.

Complainant's counsel conducted a company search on InfraInvest Corp. and found that its sole shareholder is listed as "Ng Bock Hoh Dixon." A further search of that name showed that a person having that name had been suspended from the practice of law for two years by the Law Society of Singapore for forging court documents in February 2010.



Complainant has not authorized Respondent to use its mark.

*For the respondent*

In his undated and unsigned response, Respondent denies having registered the domain name at issue: “I am a private individual, and do not have any dealings with “wynncambodia”, either the company or its officers. While the email listed in the WHOIS database is my personal email, I have never purchased or registered “wynncambodia” or any derivation thereof, let alone conduct any business activities using its name with the intent to mislead. I fully agree with the Complainant on this dispute. However, they are looking for the wrong person.”

### **3. Parties’ Contentions**

*The Complainant*

Complainant asserts that the domain name at issue is confusingly similar to Complainant’s WYNN mark. Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name at issue, and that Respondent's domain name has been registered in bad faith and is being used in bad faith since the registrant of the domain name at issue has been representing that he is an employee of Complainant.

*The Respondent*

The respondent claims not to be the registrant of the domain name at issue and agrees with the allegations in the complaint.

### **4. Findings**

Paragraph 15(a) of the Uniform Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy directs that the Complainant must prove **each of** the following:

- 1) that the domain names registered by the Respondent are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) that the Respondent has no rights or legitimate interests in respect of the domain names; and
- 3) that the domain names have been registered and are being used in bad faith.

*Identical or Confusing Similarity*

The domain names at issue consist of the trademark WYNN to which Respondent has added the geographic and geopolitical descriptor “Cambodia.”. A domain name is “confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name.” *Adobe Systems Incorporated v. Jeff Bluff, Online RX Sales LLC*, WIPO Case No. D2006-1475. Accordingly, the Panel finds that the domain name at issue is confusingly similar to service marks in which Complainant has rights.

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

The consensus view of WIPO panelists concerning the burden of establishing no rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview, 2.0”), Section 2.1.

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the panel finds that Respondent has no rights or legitimate interests in respect of the domain names at issue.

#### *Bad Faith*

The domain names at issue does not resolve to a Web site. However, the registrant of the domain name has apparently provided false information to the Registrar, in that the named registrant has filed a response claiming not to have registered the domain name at issue. The apparent registrant has engaged in correspondence with third parties claiming to be an employee of Claimant. Under the well-known and long established rubric set out in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, the Panel finds that the domain name at issue has been registered and is being used in bad faith.

## **5. Decision**

For all of the foregoing reasons, the Panel decides that the domain name at issue, <wynncambodia.com> should be transferred to Complainant.

A handwritten signature in black ink, appearing to read 'M. Scott Donahey', is written over a horizontal line.

M. Scott Donahey  
Sole Panelist

DATED: 2 December 2011