



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1901262
Complainant:	Wynn Resorts Holdings, LLC
Respondent:	wenyuan wang
Disputed Domain Name:	<wynnpalaceylhgpro.com>

1. The Parties and Disputed Domain Name

The Complainant is **Wynn Resorts Holdings, LLC** of 3131 Las Vegas Boulevard South Las Vegas, Nevada 89109, U.S.A..

The Respondent is **wenyuan wang** of shanxisheng baojishi.

The domain name at issue is **<wynnpalaceylhgpro.com>** (“Disputed Domain Name”).

The Registrar is **GoDaddy.com, LLC** Email: abuse@godaddy.com.

2. Procedural History

On 12 July 2019, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules of the Uniform Domain Name Dispute Resolution Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules (“the Supplemental Rules”), the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HKO”) and elected that this case be dealt with by a sole panelist. On the same day, the ADNDRC-HKO sent to the Complainant by email an acknowledgement of the receipt of the Complaint and sent to the Registrar a request for verification.

On 31 July 2019, the Registrar transmitted by email to the ADNDRC-HKO its verification.

On 7 August 2019, the ADNDRC-HKO sent a Notification of Deficiencies of the Complaint to the Complainant.

On 9 August 2019, the Complainant submitted an amended Complaint.

On 14 August 2019, the ADNDRC-HKO sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 20 days to submit a Response (i.e. on or before 3 September 2019).

No formal Response was submitted to the ADNDRC-HKO by the Respondent.

On 13 September 2019, the ADNDRC-HKO advised both parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the ADNDRC-HKO.

On 17 September 2019, the ADNDRC-HKO sent an email to Mr. FONG Ho Yin enquiring from him whether he could act and if so whether he could act independently and impartially in the matter in question.

On 18 September 2019, Mr. FONG Ho Yin confirmed that he was willing to act and if appointed would act independently and impartially. On the same day, the ADNDRC-HKO notified the parties that Mr. FONG Ho Yin had been appointed as a sole panelist by the ADNDRC-HKO.

On 25 September 2019, the Panel issued an Administrative Panel Order No. 1 requiring the Complainant to file the earliest copy of the trademark registration certificate of "WYNN PALACE" on or before 2 October 2019 and the Respondent to file submission in reply on or before 9 October 2019.

The Complainant duly filed the document on 30 September 2019 but the Respondent did not file any submission in reply.

On 10 October 2019, the Panel issued an Administrative Panel Order No. 2 that the Decision be delivered on or before 24 October 2019.

3. Factual Background

For the Complainant

The Complainant is a company incorporated under the laws of the State of Nevada, U.S.A.

For the Respondent

On 2 May 2019, the Respondent through the Registrar registered the Disputed Domain Name.

The Respondent has not filed any Response to these proceedings.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Disputed Domain Name (<wynnpalaceylhgpro.com >) incorporates the Complainant's " WYNN PALACE" trade mark in its entirety. The only difference is

that the Disputed Domain Name added "ylhgpro" after the word "wynnpalace". Nevertheless, the prominent part and the beginning of the Disputed Domain Name remains to be "wynnpalace". The addition of the term "ylhgpro" to the Disputed Domain Name does nothing to reduce its confusing similarity with the Complainant's "WYNN PALACE" trade mark. See *Accenture Global Services Limited v. Whois Privacy Protection Service, Inc./Robert Green* (WIPO Case No. D2013-2100) (finding the domain name ACCENTURE-UK.COM confusingly similar to Complainant's ACCENTURE mark and that the addition of "UK" is purely descriptive and does not distinguish the domain name from the trademark).

Furthermore, "ylhg" is likely to be the abbreviation of the Chinese pinyin of "永利皇宮" (pinyin: yǒng lì huáng gōng) (i.e. the Complainant's registered "WYNN PALACE" trademark in Chinese and the Chinese name of the Complainant's Wynn Palace Cotai resort in Macau). The Disputed Domain Name will confuse users into believing that it was registered by or is affiliated with the Complainant.

The Complainant therefore submits that the Disputed Domain Name is identical and/or confusingly similar to its registered "WYNN PALACE" trade mark in which the Complainant has rights or interests.

2. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because:

1. Unauthorized use

The Complainant has not licensed, consented to or otherwise authorised the Respondent's use of any of its WYNN Trade Marks for the Disputed Domain Name or any reason whatsoever, nor is the Respondent an authorised representative or partner of the Complainant.

2. Passing off by the Respondent

The Disputed Domain Name currently resolves to a webpage stating that "404, the document you requested does not exist".

Between 17 and 22 May 2019, the Disputed Domain Name automatically redirected users to <ylhg8898.com> ("**Infringing Website**"), an online gambling website in simplified Chinese using marks virtually the same as WYNN Trade Marks including but not limited to "WYNN", "永利", "WYNN PALACE", "永利皇宮" (the Chinese

translation of the Complainant's registered trademark "WYNN PALACE" and the Chinese name of the Complainant's Wynn Palace Cotai resort in Macau) and the "Wynn Palace Device" on the Infringing Website as its layout. Apart from the unauthorized use of WYNN Trade Marks on the Infringing Website, the Infringing Website also includes direct references to, alleged introductions and images of the Complainant's iconic Wynn Palace Cotai Resort which exacerbated the confusing similarity of the Disputed Domain Name to the Complainant's famous "WYNN" trade mark. The Infringing Website also refers or includes links (directly or indirectly) to 29 other domain names including <53567a.com> and <53567b.com> with the same interface as the Infringing Website. The Respondent is therefore clearly aware of the Complainant and its WYNN Trademarks, and the words "WYNN PALACE" in the Disputed Domain Name directly refers to the Complainant. Coupled with the fact that casino is one of the core businesses of the Complainant Group and the Infringing Website is an online gambling website, the Infringing Website is used to mislead internet users, in particular Chinese speaking consumers, into believing that the Infringing Websites are endorsed by or operated by the Complainant's Group.

The Complainant submits that the Disputed Domain Name is clearly the Respondent's illegitimate attempt to pass off its business as the Complainant's business and to create confusion.

2. The name of the Respondent

The Respondent's information is not available at the WHOIS record. There is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Name, and there is no justification or apparent need for the Respondent to use the "WYNN PALACE" trade mark in the Disputed Domain Name.

The Infringing Website also refers or includes links (directly or indirectly) to 27 other domain names resolving or directing users to an online gambling and gaming website with content and layout virtually identical to the Infringing Website, including the use of WYNN Trademarks and reference to the Wynn Palace Cotai Resort ("**Gaming Websites**"), one domain name <000013.com> resolving to a page containing a collection of links and incorporating marks virtually the same as WYNN Trade Marks

(as those adopted in the Infringing Website) ("**Link Website**") and one domain name <8848ylhg.com> resolving to a page asking for customers' feedback for the Infringing Website and also incorporating marks virtually the same as WYNN Trade Marks ("**Feedback Website**"). The Infringing Website and the Gaming Websites all include the same contact details (e.g. 53567com@gmail.com and the phone number 0063-927-9888888). In addition, the Infringing Website and 23 out of the 28 Gaming Websites were registered on the same date, i.e. 7 September 2018. It is highly likely that the Disputed Domain Name, the Infringing Website, Gaming Websites, Link Website and Feedback Website are owned and operated by the same or affiliated persons.

Due to the large number of domain names involved, it is impracticable for the Complainant to provide copies of the WHOIS records for domain names of all the Gaming Websites. The Complainant would, however, be happy to provide copies of WHOIS records apart from those provided, upon request by the Panel. Many of these domain names are registered by an individual named "wenyuan wang" with two of them are respectively registered by an individual named "ChenGuang Cheng" and an individual named "haihai hai". None of the name of "wenyuan wang", "ChenGuang Cheng" and "haihai hai" reflects or corresponds with the Disputed Domain Name, and there is no justification or apparent need for either of them to use the "WYNN" and/or "WYNN PALACE" trade marks in the domain names or contents of the websites. The purpose of having several websites under different domain names is to serve as a back-up and raise costs and efforts for the Complainant to defend its intellectual property rights in the WYNN Trade Marks.

The Disputed Domain Name is currently inactive, and therefore the Respondent cannot assert any rights or legitimate interests in respect of the Disputed Domain Name. Even if the Respondent intends to use the Disputed Domain Name, any such use cannot amount to a bona fide offering of goods or services or a legitimate non-commercial or fair use of the Disputed Domain Name. This is because the Disputed Domain Name is identical to the Complainant's well-known "WYNN PALACE" trade mark, and any use of the Disputed Domain Name will inevitably mislead users into believing that it is associated with the Complainant and may divert users to the Disputed Domain Name, enabling the Respondent to make an unfair commercial gain.

The Respondent is using the Disputed Domain Name to unfairly take advantage of the confusing similarity between the WYNN Trademarks and the Disputed Domain Name, to attract and redirect Internet users to the Website for commercial gain, which cannot provide the Registrant with a right or legitimate interest in the Disputed Domain Name.

The Disputed Domain Name has been registered and being used in bad faith

The Complainant submits that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith because:

1. *Lack of rights or legitimate interests*

The Respondent has no rights or legitimate interests in the Disputed Domain Name (with reasons stated above), which is in itself, evidence of bad faith.

2. *The Complainant's reputation in Asia*

The Disputed Domain Name was registered on 2 May 2019, that was after the Complainant's Wynn Palace resort opened in August 2016, and when the Complainant had already established a strong reputation in the WYNN Trade Marks in Asia, including China. Furthermore, "WYNN", has no meaning other than in relation to the Complainant Group and its business. It is therefore inconceivable that the Respondent was not aware of the Complainant's WYNN Trade Marks at the time he registered the Disputed Domain Name. The Respondent's registration was motivated solely to take advantage of the Complainant's reputation in the WYNN Trade Marks and thereby make undue profits by encouraging users to create accounts and gamble on the Infringing Website.

3. *Intention to cause confusion*

As mentioned above, the Disputed Domain Name is identical and/or confusingly similar to " WYNN PALACE" trade mark and the Complainant's trade name.

The Infringing Website (to which previously the Disputed Domain Name redirected) was clearly used with the intention to cause confusion to the public that the Infringing Website is related to the Complainant Group, or are otherwise authorised by the Complainant Group to operate an online gambling and gaming business which overlaps with the Complainant Group's business, and may mislead users into believing that it is endorsed or affiliated with the Complainant Group.

Owing to the confusing similarity between the Disputed Domain Name and the WYNN Trademarks, and the fact that the Respondent must have been aware of the Complainant and its WYNN Trademarks (for the reasons stated above), the Disputed Domain Name must have been registered by the Respondent to mislead and confuse Internet users into believing that the Disputed Domain Name is associated with the Complainant and its WYNN Trademarks in order to increase the number of Internet users that access the Website for commercial gain.

The Respondent is unfairly and intentionally taking advantage of, and exploiting without authorization, the reputation and distinctiveness of the Complainant's WYNN Trade Marks to attract internet users who are the Complainant's customers or potential customers, for commercial gain, to the Disputed Domain Name (previously redirected to the Infringing Website), and thereafter direct them to other websites creating a likelihood of confusion with the Complainant's WYNN Trade Marks. Such use cannot amount to a legitimate interest or right on the part of the Respondent, and also demonstrates that the Respondent must be aware of the Complainant and its rights in the "WYNN" trade mark. Therefore, the Respondent must have registered and is using the Disputed Domain Name in bad faith.

4. *Inactive holding of Disputed Domain Name*

The Disputed Domain Name is currently inactive. It is well established that use in bad faith is not limited to positive action, and that inaction can amount to use of the Disputed Domain Name in bad faith (see *Alibaba Group Holding Limited v. Song Bin*, ADNDRC Case No. HK-1300494). It is therefore submitted that the current non-use or passive holding of the Disputed Domain Name, in combination with the other evidence of bad faith discussed in this Complaint, amounts to registration and use in bad faith.

B. Respondent

The Respondent has not submitted any Response within the stipulated timeframe. Therefore, the Respondent is in default.

5. Findings

1. The Language of the Proceedings

The language of the Registration Agreement for the Disputed Domain Name is English. Pursuant to Paragraph 11 of the Rules, in the absence of an agreement between the parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceedings shall be the language of the Registration Agreement i.e. English.

2. Discussions and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove that each of these three elements are present:

- (i) the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which 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.

A) Identical / Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the “WYNN PALACE” registered trademark of the Complainant, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s registered trademark.

As noted, the Disputed Domain Name “wynnpalaceylhgpro.com”, composes of “wynnpalaceylhgpro” and “.com”. The Disputed Domain Name incorporates the Complainant’s “WYNN PALACE” registered trademark in its entirety.

The only difference between the Disputed Domain Name and the Complainant’s registered trademark is the inclusion of the word “ylhgpro” as a suffix at the end of “wynnpalace”. The Panel is of the view that the English word “ylhgpro” does not have any meaning. The Panel agrees that that the addition of the term “ylhgpro” to the Complainant’s registered trademark does nothing to reduce its confusing similarity with the Complainant’s registered trademark.

No doubt, “.com” is a generic top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant’s registered trademark : see **Pomellato S.p.A v. Tonetti**, WIPO Case No. D2000-0493. Hence, the gTLD “.com” is without legal significance as the use of a gTLD is technically required to operate domain names and it does not serve to identify the source of the goods or services provided by the registrant of a domain name.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The fact that the date of registration of the “WYNN PALACE” registered trademark in Hong Kong (i.e. 10 May 2012) predates the Respondent’s Disputed Domain Name (i.e. 2 May 2019) has the practical effect of shifting the burden of proof to the Respondent in establishing that it has legitimate rights and/or interests in the Disputed Domain Name: see **PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor**, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4 (b) of the Policy provides that:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 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.”

On the information before the Panel, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The registration of the “WYNN PALACE” trademark in Hong Kong was long before the Disputed Domain Name was registered.

2. The Complainant’s “WYNN PALACE” trademarks have been registered, advertised and used widely and intensively, and have become well-known in Asia including China. It has been held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: see **The Caravan Club v. Mrgsale**, Case No. NAF/FA95314.

3. The Panel accepts that by using the Dispute Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has proved its case against the Respondent under Paragraph 4(a) of the Policy.

The Panel hereby orders that the Disputed Domain Name be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'FONG Ho Yin', with a horizontal line underneath it.

FONG Ho Yin
Sole Panelist

Dated: 22 October 2019