



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700946
Complainant:	Wynn Resorts Holdings, LLC
Respondent:	Van tuan To
Disputed Domain Name:	< wynnbetcasino.com >

1. The Parties and Contested 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 Van tuan To, of 688 HCM, Ho Chi Minh, hcm, 084, VN.

The domain name at issue is wynnbetcasino.com, registered by Respondent with GoDaddy.com, LLC, of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260 USA.

2. Procedural History

On 7 February 2017, the Complainant filed a Complaint in the English language with the Hong Kong Office (“HK Office”) of Asian Domain Name Dispute Resolution Centre (“ADNDRC”) and elected a single member panel for the dispute in this matter, pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by ADNDRC.

On 7 February 2017, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint. All correspondence to and from the ADNDRC described herein was in the English language. On the same day, the HK Office transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information. On 8 February 2017, the Registrar confirmed by email that it is the registrar of the Disputed Domain Name, which is registered by the Respondent and the WHOIS information of the Disputed Domain Name; and that the Policy is applicable to the dispute relating to the Disputed Domain Name; and that language of the registration agreement for the Disputed Domain Name is English.

On 10 February 2017, in accordance with paragraphs 2(a) and 4(a) of the Rules, the HK Office issued in English the notice of commencement of proceeding and formally notified the Respondent of the Complaint. In accordance with paragraph 5(a) of the Rules, the due date for the Respondent to submit the Response was 2 March 2017. The Respondent did not submit any response to the HK Office. On 3 March 2017, the HK Office issued a Notice of the Respondent in Default in English. On 6 March 2017, the HK Office sent a Notice of Panelist Appointment to Dr. Lulin GAO as Panel candidate for the current case. The Panel candidate submitted on 7 March 2017 a Statement of Acceptance and Declaration of Impartiality and Independence to the HK Office in compliance with paragraph 7 of the Rules.

On the same day, the HK Office notified both parties and Dr. Lulin GAO by email that Dr. Lulin GAO be the sole panelist in this matter (the “Panel”), and then formally transmitted the file in this matter to the Panel. The Panel finds that it was properly constituted and should render the Decision within 14 days, i.e., on or before 21 March 2017.

The Panel noted that the Respondent did not respond to the Complaint that was written in English that was transmitted by email to the Respondent under cover of a notice in English language issued by the HK Office. If the Respondent objected to the use of English by the Complainant in this proceeding, the Respondent should have raised his/her objections. Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

3. Factual background

The Complainant in this case is Wynn Resorts Holdings, LLC. The registered address is 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, U.S.A. The authorized representative in this case is Mayer Brown JSM.

The Respondent in this case is Van tuan To. The registered address is 688 HCM, Ho Chi Minh, hcm, 084, VN. The Respondent is the current registrant of the Disputed Domain Name < wynnbetcasino.com >, which was registered on 21 October 2016 according to the WHOIS information. The registrar of the Disputed Domain Name is GoDaddy.com, LLC.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The Complainant has trade mark registrations for marks comprising of or incorporating “WYNN,” including registrations in Vietnam, Cambodia, Thailand, Hong Kong, China and Singapore. These trade mark applications / registrations shall collectively be referred to in this Complaint as the “WYNN Trade Marks.” A list of the Complainant’s trade mark registrations in aforementioned jurisdictions and selected copies of the registration certificates for the WYNN Trade Marks have been submitted as evidence.

This Complaint is based on the Complainant's registrations for the WYNN Trade Marks and the Complainant's common law rights generated as a result of use of the WYNN Trade Marks by the Complainant.

The Complainant's Group, Wynn Resorts, is an American-based and the world's leading designer, developer, and operator of integrated resorts. Pioneered by veteran Las Vegas gaming mogul Mr Stephen A. Wynn, the Complainant's Group's integrated resort business model integrates luxury hotel rooms, high-end retail, an array of dining and entertainment options, meeting space, and gaming, supported by superior levels of customer service. 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. Mr Wynn is now the Chairman and Chief Executive Officer of Wynn Resorts, Ltd., the parent company of the Complainant.

Amongst its various projects, the Complainant's Group developed and operates the renowned "Wynn Las Vegas" (opened April 2005) and "Encore at Wynn Las Vegas" (opened December 2008) located on the Las Vegas Strip. The integrated Wynn Las Vegas and Encore at Wynn Las Vegas resort features, amongst other things, approximately 186,000 square feet of casino space; two luxury hotel towers with a total of 4,748 guest rooms, suites and villas; 34 food and beverage outlets; approximately 290,000 square feet of meeting and convention space; a specially designed theater presenting "Le Rêve-The Dream," a water-based theatrical production; three nightclubs and a beach club and approximately 99,000 square feet of high-end retail space.

Having entered the China market for over a decade, the Complainant's Group has developed and operates three famous integrated resort projects in Macau, namely "Wynn Macau" (opened September 2006), "Encore at Wynn Macau" (opened April 2010) and "Wynn Palace" (opened August 2016). The integrated Wynn Macau and Encore at Wynn Macau resort is located in downtown Macau's inner harbor and has approximately 284,000 square foot of casino space, two luxury hotel towers with a total of 1,008 guest rooms and suites, eight restaurants, approximately 57,000 square feet of retail space, etc. The newest integrated resort, Wynn Palace, features a 1,700-room luxurious hotel, a performance lake, and a wide range of amenities (including gaming space) in the Cotai area of Macau.

The Complainant has registered and maintains various domain names through which the general public across the world (including Vietnam) may obtain information about the Complainant's business. The domain names include but are not limited to the following:

Domain Name	Date of Creation
<i>wynnresorts.com</i>	<i>2 May 2000</i>
<i>wynnlasvegas.com</i>	<i>23 July 2000</i>
<i>wynn poker.com</i>	<i>14 February 2001</i>
<i>wynn palace.com</i>	<i>6 April 2001</i>
<i>wynnmacau.com</i>	<i>11 July 2002</i>

The WHOIS records and selected screenshots of the Complainant's aforementioned domain names have been submitted. The registration dates of the aforementioned domain names predate the registration of the Disputed Domain Name for over 10 years. Furthermore, all of the Complainant's registered domain names are being used for bona fide business purposes in connection to the Complainant's business.

The Complainant's services have always been carried on, supplied and marketed continuously and substantially under and/or by reference to the WYNN Trade Marks registered in various

jurisdictions around the world. Accordingly, the WYNN Trade Marks have acquired distinctiveness through extensive use by the Complainant in commerce, so that the WYNN Trade Marks are immediately recognizable to consumers as being associated with the Complainant and its business.

Complainant submitted recent press coverage in respect of the opening of Wynn Palace and examples of press coverage in respect of resorts of the Complainant's Group in Asian countries other than Hong Kong, Macau and China, as well as lists of recent awards obtained by the Wynn integrated resort projects.

The Complainant submits that all three elements under Paragraph 4(a) of the Policy are fulfilled:

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

The Disputed Domain Name (<wynnbetcasino.com>) incorporates the Complainant's "WYNN" trade mark in its entirety. The prominent and distinctive part of the Disputed Domain Name is "WYNN." The other parts of the Disputed Domain Name, "bet" and "casino," are generic and descriptive words of Complainant's key business, gaming. As a result, "bet" and "casino" do not negate the confusing similarity between the Disputed Domain Name and the Complainant's "WYNN" trade mark.

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

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

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 its WYNN Trade Marks for any reason whatsoever, nor is the Respondent an authorised representative or partner of the Complainant.

2. The name of the Respondent

There is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Name. The Respondent's name (Van tuan To) does not reflect or correspond with the Disputed Domain Name, and there is no justification or apparent need for the Respondent to use "wynn" in the Disputed Domain Name.

3. Passing off by the Respondent

The Disputed Domain Name currently resolves to an online casino website (the "Respondent's Website") which uses not only the Complainant's "WYNN" word mark but also the

Complainant's unique "  " and "  " marks. The Respondent's Website is

clearly used to mislead consumers into believing that the Respondent's Website is endorsed by or operated by the Complainant's Group. Selected screenshots of the Respondent's Website on 7 February 2017 is submitted. 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 create confusion.

iii. The Disputed Domain Name has been registered and is 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, which is in itself evidence of bad faith.

2. The Complainant's reputation in Asia

The Disputed Domain Name is registered on 21 October 2016, shortly after the Complainant's Wynn Palace resort opened and when the Complainant has already established a strong reputation in the WYNN Trade Marks in Asia, including Vietnam (where the Respondent is based). Furthermore, the Disputed Domain Name does not reflect or correspond to the Respondent's own name, and "WYNN", being the last name of Mr Wynn, has no meaning other than in relation to the Complainant's 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 Respondent's Website.

3. Intention to cause confusion

As mentioned above, the Disputed Domain Name is confusingly similar to WYNN Trade Marks. The Disputed Domain Name is also confusingly similar to Complainant's trade name.

Furthermore, the Respondent's Website was clearly used with the intention to cause confusion to the public that the Respondent's Website is related to the Complainant's Group or is authorised by the Complainant's Group for commercial gain (e.g. operation of gaming business). The Respondent's intention to cause confusion is evident in that it uses not only the "WYNN" word

mark but also the Complainant's unique "  " and "  " marks.

B. Respondent

The Respondent was duly notified by the ADNDRC HK Office of the Complaint filed by the Complainant and asked to submit a Response in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to give any sort of defense in any form against the Complaint.

5. Findings

Paragraph 15(a) of the 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.”

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Complainant is a limited liability company incorporated in State of Nevada, USA, providing resort business which integrates hotel rooms, an array of dining and entertainment options, and gaming, etc. Given the present evidence, “WYNN” was first registered as trademark in China in 2009. The registration date is much earlier than the registration of the Disputed Domain Name (i.e. 21 October 2016). Since then, “WYNN” has been registered as trademark in several other jurisdictions, including a registration of “WYNN” mark in Viet Nam in 2012. The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademark “WYNN”.

The Disputed Domain Name is <wynnbetcasino.com>. The suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive. The main part of the domain name (“wynnbetcasino”) consists of two sub-parts (“wynn” and “betcasino”). The first sub-part (“wynn”) is the same as the Complainant’s trademark. The second sub-part (“betcasino”) could be further separated into “bet” and “casino”, which are generic and descriptive English words and thus is not distinctive; they are also closely related to the services provided by the Complainant.

The addition of second sub-part “betcasino” to the Complainant’s trademark “WYNN” cannot effectively differentiate the main part of the Disputed Domain Name from the Complainant’s trademark; on the contrary, such a combination strengthens the links between the Disputed Domain Name and the Complainant since “bet” and “casino” are closely related to the Complainant’s services. It is further noted that “WYNN” is not a common word and is specifically designed to represent the Complainant’s services. As such, the Disputed Domain Name will be easily mistaken to be owned by the Complainant or at least have some connections with the Complainant. Therefore, the Disputed Domain Name is confusingly similar to the Complainant’s trademark “WYNN”.

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant has never authorized the Respondent to use the trademark or the Disputed Domain Name. The Complainant’s assertion is sufficient to establish a

prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. No evidence has shown that the Respondent is using or plans to use the domain name for a bona fide offering of goods or services. The Respondent is not commonly known by the domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The act of registering the Disputed Domain Name does not automatically endow any legal rights or interests with the Respondent.

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

C) Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as 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 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 website 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 website or location or of a product or service on your website or location.

The Complainant's Group is a world's leading provider of hotel and gaming services, and registered the trademark "WYNN" in Vietnam, Hong Kong, China, Cambodia, Thailand, and Singapore. It has been using this trademark for its services since as early as 2009. "WYNN" is not a common English word or a name commonly used in business. Through extensive use, promotion and advertisement by the Complainant's Group, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other.

The Disputed Domain Name resolves to an online casino website that uses both the

Complainant's "WYNN" word mark and "" and "" stylized marks. Such facts are obvious to all that the Respondent is not only well aware of the existence of the Complainant and its trademark "WYNN", but also familiar with the key business operated by the Complainant. The action of registering the Disputed Domain Name per se has constituted bad

faith. The above action of resolving the Disputed Domain Name to an online casino website will mislead the consumers to believe that the website of the Disputed Domain Name is endorsed by or operated by the Complainant or its Group or has some other connections with the Complainant its Group. This is exactly the type of bad faith use of the Disputed Domain Name as envisaged in Paragraph 4(b) of the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes 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 Paragraph 4(a)(iii) of the Policy.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the Disputed Domain Name <wynnbetcasino.com> should be transferred from the Respondent to the Complainant.

Dr. Lulin GAO
Panelist

Dated: 21 March, 2017