



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1500761</b>
<b>Complainant:</b>	<b>Wynn Resorts Holdings, LLC</b>
<b>Respondent:</b>	<b>Ichiro Yamauchi</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;encore.tokyo&gt;</b>

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**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 Ichiro Yamauchi, of Asahigaoka 1-36-11, Nerima-ku, Tokyo, 176-0005, Japan.

The domain name at issue is encore.tokyo, registered by the Respondent with GMO Internet, Inc., of Cerulean Tower 4• 6-12F, 26-1 Sakuragaokacho, Shibuya ku, Tokyo, Japan.

**2. Procedural History and Ruling on the Language of the Procedure**

**2.1 Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on June 15, 2015, seeking for a transfer of the domain name in dispute.

On June 17, 2015, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization, on June 19, 2015, responded with the detailed data checked, including checking over the registrant.

On June 19, 2015, the Center examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules").

On June 19, 2015, the Center sent to the Respondent the "Complaint Transmission Cover" along with the Complaint via email as well as via registered mail. The Center informed the Respondent of a due date, July 9, 2015, for the submission of its Response.

On July 10, 2015, the Center confirmed that the Respondent didn't submit the Response Form.

On July 17, 2015, the Center appointed Mr. Doo-Hyung Do to the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Center, in accordance with Paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

## **2.2 Ruling on the Language of the Procedure**

The current Registration Agreement is in Japanese, but the Complaint is in English. In this regard, the Complainant asked the Panel to conduct this proceeding in English on the grounds that (1) the Complainant cannot understand Japanese and English is widely spoken around the world, and (2) Article 29.3 of the Registration Agreement states that for the purpose of UDRP proceedings English can be used.

However, the Panel note that the Complainant misread Article 29.3 of the Registration Agreement, since this provision states to the effect that the Japanese version of UDRP of paragraph 1 was made for the convenience of the registrant only and at all times the original UDRP written in English shall have effect.

Paragraph 11(a) of the Rules provides that 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.

In this regard, the Panel determines that the language of this proceeding shall be English, taking into account the following factors:

- i. The Complainant makes it clear that it cannot understand the Japanese and thus requiring the Complainant to prepare the Japanese translation of the Complaint and the Annexes will necessarily delay this proceeding;
- ii. Since the Respondent has not responded at all to the Complaint, it does not appear that the use of English in this proceeding would impose unreasonable burden on the Respondent; and
- iii. Paragraph 10(c) of the Rules provides that the Panel shall ensure that the administrative proceeding takes place with due expedition.

## **3. Factual background**

The Complainant is a company established in Nevada, U.S.A. and operates its business through a number of subsidiaries and affiliates (collectively, the "Wynn Resorts Group").

Wynn Resorts Group owns and operates luxury hotels and casino resorts such as Wynn Las Vegas and Wynn Macau featuring luxurious guest rooms and suites; casino; beverage outlets and restaurants; on-site 18-hole golf course; retail spaces; health club, pool and spa; lounges and meeting facilities.

Wynn Resorts, Limited of the Wynn Resorts Group is traded on the Nasdaq Global Market under the ticker symbol WYNN and is part of the S&P 500 and NASDAQ-100 Indexes.

Encore Suites, as the new luxury resort of the Wynn Resort Group, was opened in Las Vegas in December of 2008 and in Macau in April of 2010 featuring spacious luxury suites, signature restaurants, retail outlets, bars and lounges, nightclub and a luxurious spa and salon. Encore Suites are located adjacent to Wynn Resorts facilities and both together provide accommodations catering to the various needs of the customers.

Since 2007, the Complainant has filed for registration the trademarks “ENCORE” and “ENCORE AT WYNN” in many countries including Australia, China, Hong Kong, India, Japan, Korea, New Zealand, Philippines, Singapore, Taiwan and Viet Nam, where these trademarks were registered in or before the year 2010.

The Respondent registered the disputed domain name on August 28, 2014.

The Complainant sent an email on April 28, 2015 to the Respondent at the email address registered for the disputed domain name, pointing out that the Respondent is infringing on the Complainant’s rights for the trademarks “ENCORE” and “ENCORE AT WYNN” by registering the disputed domain name and further demanding that the Respondent cease operating the parking page under the disputed domain name and transfer the disputed domain name to the Complainant. However, at each transmission, there was no response from the Respondent and the Complainant received a message to the effect that “Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server”.

The disputed domain name, when it was accessed by the Complainant on June 16, 2015 and by the Panel on August 6, 2015, resolved to a parking page maintained by the Registrar of the disputed domain name.

#### **4. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

- i. The Complainant has obtained registrations for the trademarks “ENCORE” and “ENCORE AT WYNN” in respect of various goods and services in many countries including Japan since 2007.
- ii. The disputed domain name incorporates the Complainant’s trademark “ENCORE” and is identical or confusingly similar to the above trademark.
- iii. Since the Wynn Resorts Group is well known throughout Asia and the world, it is most unlikely that the Respondent is unaware of the Complainant’s rights in the trademarks “ENCORE” and “ENCORE AT WYNN” when registering the disputed domain name.
- iv. Since the disputed domain name resolves to a parking page, the Respondent has no real intention of active use of the disputed domain name and such passive holding of the disputed domain name amounts to registration and use in bad faith.
- v. There is no evidence that the disputed domain name is the name of the Respondent or that the Respondent has been commonly known by the disputed domain name.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## 5. Findings

The 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 disputed domain name is composed of two parts, namely "encore" and ".tokyo".

The only difference between the Complainant's trademark "ENCORE" and the "encore" of the disputed domain name is whether capital letters or small letters are used. This difference is negligible and thus irrelevant when determining whether a domain name is similar to a registered trademark.

Furthermore, the addition of a generic top-level domain extension such as ".tokyo" is irrelevant when determining whether a domain name is similar to a registered trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "ENCORE" and that the Complainant has satisfied the first element of the Policy.

### B) Rights and Legitimate Interests

The Policy provides, at Paragraph 4(c), for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- i. Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- ii. The respondent has been commonly known by the domain name; or
- iii. The respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

It is not disputed that the Complainant has not licensed, consented to or otherwise authorized the Respondent to use the Complainant's "ENCORE" trademark.

The present record provides no evidence to demonstrate the Respondent's intent to use or to make demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

There is no evidence showing that the Respondent has been commonly known by the disputed domain name or is making a legitimate noncommercial or fair use of the disputed domain name.

In light of the fact that the disputed domain name resolves to a parking page, it is reasonable to infer that when registering the disputed domain name, the Respondent was motivated more by the intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue than by the non-profit intent.

Based on the foregoing facts and discussion, the Panel finds that the above circumstances provided for at Paragraph 4(c) of the Policy are not present in this particular case.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has proven the second element of the Policy.

### **C) Bad Faith**

The Policy states, at Paragraph 4(b), that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- i. Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent 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 the respondent has engaged in a pattern of such conduct; or
- iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The Panel has the view that the following facts and considerations must be taken into account in finding the intent of the Respondent when registering the disputed domain name:

The disputed domain name does not reflect or correspond to the Respondent's own name or activity whereas the Complainant and the Wynn Resorts Group has been using the "ENCORE" as its name and trademark in connection with its businesses at least since 2008;

The "ENCORE" trademark has attained worldwide the status of a famous trademark of the Wynn Resorts Group in the area of resort hotel and gaming entertainment business at least since 2008;

The disputed domain name was registered in 2014, namely 4 to 6 years after Wynn Resorts Group started operating “Encore Suites” resort hotel business in Las Vegas (2008) and in Macau (2010);

Wynn Resorts, Limited of the Wynn Resorts Group, at least since 2008, has been traded on the Nasdaq Global Market under the ticker symbol WYNN and is part of the S&P 500 and NASDAQ-100 Indexes; and

On April 28, 2015, the Complainant sent the cease and desist letter to the Respondent at its email address registered for the disputed domain name, but at each transmission only received a message to the effect that “Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server”. Therefore, it appears that the Respondent tried to hide its true contact information by either providing the incorrect contact information to the Registrar or failing to update its contact information as provided to the Registrar.

In light of the foregoing facts and considerations, it is fairly reasonable to infer that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used in bad faith, satisfying the third element of the Policy.

## **6. Decision**

For the foregoing reasons, in accordance with the Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the disputed domain name <encore.tokyo> be transferred to the Complainant.

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Do, Doo-Hyung  
Sole Panelist

Dated: August 6, 2015