



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No:	HK-1901307
Complainant:	Wynn Resorts Holdings, LLC
Respondent:	yong duan
Disputed Domain Name:	<wynnpress.com>

1. The Parties and Contested Domain Name

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

Respondent is yong duan of dongchengqu, zhongguo, beijing, beijing, 100000, China.

The domain name at issue is <wynnpress.com>, registered by Respondent with Domainsovereigns.com LLC.

2. Procedural History

On 10 December 2019, Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”). On 11 December 2019, the Centre confirmed receipt of the Complaint and requested Complainant to submit the case filing fee. On 11 December 2019, the Centre informed Domainsovereigns.com LLC (“Registrar”) of the Disputed Domain Name of the proceedings by email with ICANN on copy.

On 13 January 2020, the Centre informed ICANN that it has not received a response from Registrar by email. On 26 February 2020, the Centre submitted the UDRP complaint concerning the domain name wynnpress.com to ICANN by email. On 18 June 2020, the ICANN acknowledged the submission of Centre, and forwarded the Centre the information provided by Registrar confirming that the Disputed Domain Name is registered with the Registrar that Yong Duan is the current holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 23 June 2020, the Centre sent Complainant a Notification of Deficiencies of the Complaint, referring to that the information of Respondent in the Complaint is different from the Whois information provided by the Registrar and requiring Complainant to rectify the above deficiency within 5 calendar days (on or before 28 June 2020). On 24 June 2020, Complainant filed the amended complaint with the Centre.

On 30 June 2020, the Centre confirmed the Complaint's compliance with the Policy and its Rules. On the same day, the Centre sent Respondent a Written Notice of Complaint, together with the Complaint, requiring Respondent to file a Response within 20 days (on or before 20 July 2020), in accordance with Article 5 of the Rules and the Supplemental Rules. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on 22 July 2020.

The Panel comprising of Dr. George Tian as a single panelist was appointed by the Centre on 27 July 2020. The papers pertaining to the case were delivered to the Panel by email on 10 August 2020.

3. Factual background

A. Complainant

Complainant, Wynn Resorts Holdings, LLC., is a company incorporated in Las Vegas, Nevada, USA. Complainant operates a number of resorts throughout the world, which offer hotel rooms, retail stores and casino activities and gaming. Complainant is mainly active in the USA (particularly in Las Vegas) and in China (particularly in Macau), where it operates two large resorts, namely Wynn Macau (opened in April 2006) and Wynn Palace (opened in August 2016).

Complainant has exclusive rights in WYNN, and WYNN related marks (hereinafter "WYNN marks"). Complainant is the exclusive owner of several WYNN marks worldwide, such as Chinese trademark registration number 5304536, registered on July 7, 2009 and Vietnamese trademark registration number 193111, registered on October 8, 2012. Complainant also owns a portfolio of related trademarks, such as: WYNN PALACE 永利皇宫 (e.g. Chinese trademark registration number 13285165, registered on April 21, 2015), and 永利 (WYNN in Chinese characters, e.g. Chinese trademark registration number 18375788, registered on March 7, 2017) (Annexes 2-3 to the Complaint). Complainant also owns and operates several domain names which contain the WYNN mark in entirety, such as <wynnresorts.com>, created on May 2, 2000; <wynnlasvegas.com>, created on July 23, 2000; <wynnpoker.com>, created on February 14, 2001; <wynnpalace.com>, created on April 6, 2001 and <wynnmacau.com>, created on July 11, 2002 (Annex 4 to the Complaint).

B. Respondent

Respondent is yong duan, duanyong of dongchengqu, zhongguo, beijing. The disputed domain name <wynnpress.com>, was registered on November 27, 2018, long after the WYNN marks were registered. The disputed domain name is resolved to an active website with a hyperlinked image containing the phrase "51La 51La" which directs visitors to a platform which provides website analytics tools at <<https://web.51.la/report/independent/manage?comId=19824395>> (Annex 10(b) to the Complaint).

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. Complainant contends that the disputed domain name is confusingly similar to the WYNN marks.
- ii. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.
- iii. Complainant contends that the disputed domain name was registered and is being used in bad faith.
- iv. Complainant requests that the disputed domain name <wynnpress.com> be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

5. Findings

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 Panel finds that Complainant has rights in the WYNN marks acquired through registration. The disputed domain name <wynnpress.com> comprises the WYNN mark in its entirety. The disputed domain name only differs from Complainant's trademarks by the suffix "press", and the gTLD suffix ".com" to the WYNN marks. This does not compromise the recognizability of Complainant's marks within the disputed domain name, nor eliminate the confusing similarity between Complainant's registered trademarks and the disputed domain name (*Decathlon v. Zheng Jianmeng*, WIPO Case No. D2019-0234).

Previous UDRP panels have consistently held that a domain name may be identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662).

Further, in relation to the gTLD suffix, WIPO .Overview 3.0 further states: “The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” (WIPO Overview 3.0, section 1.11.1.)

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant’s trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant’s contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. D2008-0441; WIPO Overview 3.0, section 2.1 and cases cited therein).

According to the Complaint, Complainant is a leading American company, operating a number of resorts throughout the world, which offer hotel rooms, retail stores and casino activities and gaming. Complainant has rights in the WYNN worldwide, including in China (since 2009), and in Vietnam (since 2012), which precede Respondent’s registration of the disputed domain name (in November 27, 2018).

Moreover, Respondent is not an authorized dealer of WYNN-branded products or services. The Panel finds that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. D2009-0610; *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(i) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “wynn” in its business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the WYNN marks or to apply for or use any domain name incorporating the WYNN marks.

(ii) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name <wynnpress.com> on November 27, 2018, after the WYNN marks became internationally known. The disputed domain name is identical or confusingly similar to Complainant’s WYNN marks.

(iii) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the website, currently resolved by the disputed domain name, is a website with a hyperlinked image containing the phrase “51La 51La” which directs visitors to a platform which provides website analytics tools at <<https://web.51.la/report/independent/manage?comId=19824395>>. It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. D2017-1041; *BASF SE v. Hong Fu Chen*, Chen Hong Fu, WIPO Case No. D2017-2203)

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* showing on Respondent lack of rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

Upon the evidence of the circumstances in this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

Registered in Bad Faith

The Panel finds that Complainant has a widespread reputation in the WYNN marks with regard to its products and services. Complainant is a leading company operating a number of resorts throughout the world, which offer hotel rooms, retail stores and casino activities and gaming. Complainant is mainly active in the USA (particularly in Las Vegas) and in China (particularly in Macau), where it operates two large resorts, namely Wynn Macau (opened in April 2006) and Wynn Palace (opened in August 2016). Complainant has registered its WYNN marks internationally, including trademark registrations in China (since 2009), and in Vietnam (since 2012). It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name (November 27, 2018). The Panel therefore finds that the WYNN mark is not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with Complainant. *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra.*

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787.

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

Used in Bad Faith

Complainant also has adduced evidence to show that by using the disputed domain name, Respondent has "intentionally attempted to attract, for commercial gain, Internet users to Respondent's websites or other online location".

To establish an "intention for commercial gain" for the purpose of this Policy, evidence is required to indicate that it is "more likely than not" that intention existed (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra.*).

Given the widespread reputation of the WYNN marks and the confusing similar domain name, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to fact. And, as mentioned above, the website resolved by the disputed domain name contains a hyperlinked image containing the phrase "51La 51La" which directs visitors to a platform which provides website analytics tools at <<https://web.51.la/report/independent/manage?comId=19824395>>. Therefore, Respondent is likely to have made commercial gain by "freeriding" on the reputation

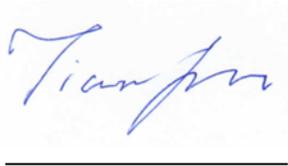
of Complainant and its trademarks, which is indicative of Respondent's bad faith use of the disputed domain name. Moreover, Respondent has not responded to the Complaint. The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith.

In summary, Respondent, by choosing to register and use domain name which is confusingly similar to Complainant's trademark, intended to ride on the goodwill of Complainant's trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

6. Decision

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



Yijun Tian
Panelist

Dated: August 12, 2020