

Asian Domain Name Dispute Resolution Center Hong Kong Office

Administrative Panel Decision

Case No. HK-0700149

Complainant: Wynn Resorts Holdings LLC

Respondent: Sean Miller

Domain Name: www.永利澳门.com

[Punycode: XN--KCR184DOOC3R9C.COM]

Registrar: Spot Domain LLC DBA Domainsite.com

1、 Procedural History

On 7 December 2007, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules). On 31 January 2008, the ADNDRC sent to the complainant 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 ADNDRC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 31 January 2008, the ADNDRC transmitted by email to the Registrar, Spot Domain LLC DBA Domainsite.com, a request for registrar verification in connection with the disputed domain name. On 6 February 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. The ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action. The Respondent filed a Response with the ADNDRC on 18 February 2008. The ADNDRC transmitted the Response to the Complainant on 22 February 2008.

Since the Respondent did not mention the Panel selection in the Response in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Dr ZHAO Yun 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 23 February 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 10 March 2008.

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.

2、 Factual Background

For the Complainant

The Complainant in this case is Wynn Resorts Holdings, LLC, a corporation registered in the United States of America. The Complainant is the owner of several trademarks including “永利”, “永利澳门”.

For the Respondent

The Respondent, Sean Miller, is the current registrant of the disputed domain name <永利澳门.com> according to the Whois information.

3、 Parties' Contentions

Complainant

The Complainant's Rights

This Complaint is based on the Complainant's registrations for the Mark “永利澳门”/“永利澳門” registered in respect of a variety of goods and services in Macau and the Complainant's common law rights generated as a result of uses of the Mark by the Complainant.

The Complainant's Group is a famous American-based international gaming entertainment company and hotel gaming resorts developer. The Complainant's Group was founded by veteran Las Vegas gaming mogul Mr Steve Wynn, who was the Chairman of the Board, President and Chief Executive Officer of Mirage Resorts Incorporated and its predecessor from 1973 to 2000. In that role, Mr Wynn was responsible for the development of a number of very successful hotel gaming resorts including “The Bellagio”, “The Mirage”, and “Treasure Island” at Las Vegas, etc. Mr Wynn is now the

Chairman of the Board and Chief Executive Officer of Wynn Resorts, Ltd, the parent company of the Complainant. 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.

Amongst its various projects, the Complainant's Group has developed and operates the renowned "Wynn Las Vegas", a \$2.7 billion luxury hotel and destination casino resort located on the Las Vegas Strip which features 2,716 luxurious guest rooms and suites; an 111,000 square foot casino; 22 food and beverage outlets; an on-site 18-hole golf course; approximately 223,000 square feet of meeting space; an on-site Ferrari and Maserati dealership; and approximately 76,000 square feet of retail space.

The Complainant's Group has entered the Chinese markets in recent years and successfully obtained a concession to operate one or more casino gaming properties in Macau (which is the only place in China where casinos are legal). As background, the gaming industry in Macau was monopolised by local casino tycoon Stanley Ho's company which obtained an exclusive gaming concession to operate gaming business in the territory for forty years. This monopolisation ended in early 2002 when the Macau government opened the gaming industry market in Macau to new players and granted casino licences to a few players including the Complainant's Group. The new casinos established in Macau attracted big crowd and revenue. Since end of 2006, Macau has replaced Las Vegas to become the world's biggest gaming centre by revenue.

The luxury hotel and destination casino resort developed and operated by the Complainant's Group in Macau is called "Wynn Macau" in English and "永利澳门"/"永利澳門" in Chinese. The resort features 600 deluxe hotel rooms and suites, approximately 220 table games and 380 slot machines in approximately 100,000 square feet of casino gaming space, seven restaurants, approximately 26,000 square feet of retail space, a spa, a salon, entertainment lounges and meeting facilities. As the official language in China and one of the two official languages in Macau is Chinese, the public very often refer to the resort of the Complainant's Group in Macau by its Chinese name "永利澳门"/"永利澳門".

To assist its guests with the planning of their vacations or corporate meetings at Wynn Macau, the Complainant's Group has opened representative offices in major cities in China including Beijing, Shanghai and Guangzhou, as well as in Hong Kong. The Complainant's Group has also launched heavy promotional campaign in promoting Wynn Macau 永利澳门/永利澳門.

The Complainant has registered the Mark "永利澳门"/"永利澳門" and other marks incorporating the Chinese name "永利"/"永利" and/or English name "Wynn" in respect of a wide range of goods and services throughout the world. The Complainant has also used and advertised these marks extensively throughout the world. As such, the public will associate these marks exclusively with the Complainant's Group.

Identical/Confusingly Similar

The Disputed Domain Name is “永利澳门.com”. “永利澳门”, as the identifying part of the Disputed Domain Name, is identical to “永利澳门” of the Complainant’s Mark.

Rights or Legitimate Interests of the Respondent

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

(a) The Complainant and its Group companies have not authorised, licensed or otherwise permitted the Respondent to use the “永利澳门”/“永利澳門” Mark or any other name/mark of the Complainant’s Group.

(b) The web page at the Disputed Domain Name shows nothing on display. There is no evidence of any use of or demonstrable preparations to use by the Respondent of the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services.

(c) There is no evidence that the Disputed Domain Name is the name of the Respondent or the Respondent has been commonly known by the Disputed Domain Name. According to WHOIS record, the Respondent is called “Sean Miller”. There is no reason why the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the Disputed Domain Name.

Bad Faith

The Complainant submits that the Respondent has registered and used the Disputed Domain Name in bad faith because:-

(a) The Respondent has deliberately registered the Disputed Domain Name which is identical to the Complainant’s famous Mark “永利澳门”, with an intention of causing confusion to the public that the Respondent and/or the Respondent’s website is related to or authorised by the Complainant and/or the Complainant’s website.

The Respondent, who is situated in the USA, should be well aware of the Complainant’s Group which is based and well-known in America. Further, given the substantial fame of the Complainant’s Group throughout the world, it is most unlikely that the Respondent is unaware of the Complainant’s rights in the Mark. It cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is identical to the Complainant’s Mark, as his domain name.

The Complainant also points out that the Respondent applied to register the Disputed Domain Name on 8 September 2006, which is after the date of trademark application of the Mark by the Complainant in Macau on 8 June

2006.

(b) The public will likely be confused into believing that the Respondent and/or the Respondent's website is related to or authorised by the Complainant and/or the Complainant's website. As mentioned above, due to extensive use and advertisement of the Complainant's Mark by the Complainant's Group, the public will associate the Mark exclusively with the Complainant's Group.

A Google search at www.google.com by the keyword “永利澳门” returns results that are all related to the Complainant's Group. A trademark search in Macau by the keyword “永利澳门”/“永利澳門” shows that all applications/registrations of “永利澳门”/“永利澳門” and of mark incorporating are applied/registered by the Complainant but not others.

(c) The web page at the Disputed Domain Name shows nothing on display. The Respondent has no real intention of active use of the Disputed Domain Name, and such acts of the Respondent have constituted the passive holding of the Disputed Domain Name, which amounts to the Disputed Domain Name being used in bad faith.

The Complainant further submits that it is very likely the Respondent has registered the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the registration of the Disputed Domain Name for valuable consideration in excess of his documented out-of-pocket costs directly related to the Disputed Domain Name.

(d) The official language in China and one of the two official languages in Macau is Chinese. The Chinese name “永利澳门”/“永利澳門” is very important for the Complainant's Group in identifying its resort in Macau. Although the Complainant has already registered the English domain name “wynnmacau.com” as the website address for its official website of Wynn Macau, a large portion of Internet Users in China (including Macau) and other Chinese speaking communities, especially those who may not be proficient in English and only know Wynn Macau by its Chinese name, may try to locate Wynn Macau's website at “永利澳门.com” or “永利澳門.com”. The Respondent's acts have prevented the Complainant from reflecting its Chinese name/mark “永利澳门”/“永利澳門” (the Mark) in a corresponding domain name.

In this regard, according to the current rules of registration of generic top-level multilingual domain names, although the Respondent has only registered the domain name in Simplified Chinese language (i.e. 永利澳门.com), the system will automatically block the name in Traditional Chinese language (i.e. 永利澳門.com) and therefore the Complainant cannot register “永利澳門.com” (in Traditional Chinese) as well.

(e) The Respondent adopted an uncooperative attitude in respect of the Disputed Domain Name. The Respondent failed to respond to the cease and desist letter and the reminder sent to the Respondent on 10 October 2006 and 6 March 2007 respectively by the Complainant's authorised representative. The Respondent eventually sent the Complainant's authorised representative

a reply by email on 3 November 2007 arguing that the registration of the Disputed Domain Name was not done in bad faith. The Respondent argued that he only chose a generic and descriptive phrase relating to Macau. The Complainant find this explanation to be unacceptable. Although "澳门" meaning Macau is descriptive, "永利" which is the Chinese name/mark of the Complainant is neither descriptive nor generic. The combination of 永利澳门 is the Chinese name of the Wynn Resort in Macau. The Complainant's legal representative wrote to the Respondent on 5 November 2007 reiterating the Complainant's rights. The Respondent fails to reply to this email or takes step to return the Disputed Domain Name to the Complainant. This is strong evidence showing that the Respondent blatantly ignores the Complainant's rights in the Mark in respect of the Disputed Domain Name.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

(1) Identical or Confusing Similarity

It does appear that the Complainant has registered “永利澳門” in both Hong Kong and Macau. However, the Complainant's own documentation shows that there is no extant mark for “永利澳門”. Further, the date of registration for their trademark for the traditional version of this name, “永利澳門”, postdates the Respondent's original registration of the Disputed Domain Name. The respective date of registration for the mark in Macau was 9 October 2006; in Hong Kong 11 October 2006. Both of these postdate the registration date (9 August 2006) of the Disputed Domain Name.

The Complainant's claim to have the right to a generic name which is translated as “Yong Li Aomen” may not withstand legal challenge as both “永利” and “澳門” are terms that are generic and descriptive and fall within the public domain.

(2) Rights or Legitimate Interests

The Respondent registered the Disputed Domain Name with an eye to the enormous business opportunities in Macau. To compete in the online tourism market, one needs a compelling and memorable domain name that is recognizable to Chinese tourists. As such, the Respondent compiled list of potential names in hanzi script that might make a nice compliment to “澳門”. “Babel Fish” operated by Alta Vista assisted the Respondent in finding the phrase “永利”, which was used by many different companies inside China. “永利”, meaning “forever will benefit”, when combining with “澳門”, means “forever will benefit Aomen”. This sounds like a good domain for a destination known principally for the opportunities it affords visitors to, should they get lucky gambling. The Respondent had no idea why the Complainant chose “Yong Li” as their name in Macau. The Claimant's position that 永利澳門 is recognizable

worldwide is dubious.

(3) Bad Faith

The Respondent did not register the Disputed Domain Name in bad faith nor trade on a mark that did not even exist at the time of the registration. There is no website active for the Disputed Domain Name and the Respondent has at no time traded on the Complainant's trademark. The only reason the website is not developed to date is that International Domain Names (IDNs) have not yet achieved maturation from a consumer standpoint. It should be noted that the percentage of internet users who are using IDN capable browsers is changing rapidly. The Respondent plans to develop the domain in 2009 when the majority of native Chinese consumers are using browsers that support the domains.

4、 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."

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical/Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademarks "永利" and "永利澳门". As the suffix ".com" only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <永利澳门.com> is identical with the Complainant's trademark "永利澳门". The fact that the disputed domain name predates the registration of the Complainant's trademark "永利澳门" may only be relevant to the assessment of bad faith pursuant to Paragraph 4 (a)(iii), which is considered below.

As far as the trademark "永利" is concerned, the Panel finds that the addition of the name of a place to a trademark, such as the addition of "澳门" to "永利", is a common method for specifying the location of business provided under the trademark. The addition of a place name generally does not alter the underlying mark to which it is added. Therefore, the main part of the disputed

domain name “永利澳门” is confusingly similar to the Complainant’s trademark “永利”.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

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’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. The act of registering the disputed domain name and the Respondent’s like/dislike do not automatically endow any legal rights or interests with the Respondent. The Respondent contends that “永利” is a generic name which is being used by many companies in different fields so that anybody may register a domain name containing “永利”. The Panel is not convinced by the contention raised by the Respondent. It has been sufficiently proved that “永利” is the trademark that has been extensively registered and used by the Complainant for some time, instead of the generic word referring to “forever will benefit”. The Respondent, with particular expertise in online tourism (Macau tourism) for Chinese tourists, should have been fully aware of the Complainant, who developed and operated the luxury hotel and destination casino resort in Macau named “Wynn Macau” in English and “永利澳门”/ “永利澳門” in Chinese.

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

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 Respondent registered the disputed domain name two months before the registration of the trademark “永利澳门”. But at the same time, the evidence also shows that the Complainant filed the application on 8 June 2006 (3 months earlier than the registration of the disputed domain name). Moreover, the Complainant has started using and promoting the trademark “永利澳门” much earlier.

Evidence shows that the Complainant's trademarks have achieved a strong reputation throughout the world through use and the worldwide significance of the brand name. As such, the public has come to recognize and associate the Complainant's trademarks as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent, with particular expertise in online tourism, should be aware of the existence of the Complainant and its trademarks. The above circumstance has further led to the assumption that the Respondent registered the disputed domain name to hinder the Complainant from registering it. The action of registering the disputed domain name *per se* has constituted bad faith.

The Respondent has made no active use of the disputed domain name so far. The Respondent's argument as to the maturation level of the International Domain Names (IDNs) is not convincing. The Respondent failed to submit any evidence showing the preparatory work having done so far for the use of the disputed domain name; the IDN is only one of the many means to make use of the disputed domain name, the Respondent could have used the disputed domain name through other means for the purpose of online tourism. Prior Panels have already discussed the passive holding of a domain name and found that this can constitute bad faith use (WIPO Case No. D2000-0003).

In conclusion, the Panel finds 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.

5、 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 <永利澳门.com> [Puny code: **XN--KCR184DOOC3R9C.COM**] domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 29 February 2008