



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1500760
<b>Complainant:</b>	Wynn Resorts Holdings, LLC
<b>Respondent:</b>	Hiroki Kanoya
<b>Disputed Domain Name(s):</b>	<wynn.tokyo>

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**1. The Parties and Contested Domain Name**

The Complainant is Wynn Resorts Holdings, LLC, of South Las Vegas, U.S.A.

The Respondent is Hiroki Kanoya, of Tokyo, Japan.

The disputed domain name is <**wynn.tokyo**>, registered by Respondent with GMO Internet Inc. of Tokyo, JAPAN.

**2. Procedural History**

Complainant submitted a Complaint to the Asian Domain Name Dispute Resolution Centre (Hong Kong Office) electronically on June 11, 2015; the ADNDRC Hong Kong Office received payment on June 12, 2015.

On June 12, 2015, GMO Internet Inc. confirmed by e-mail to the ADNDRC Hong Kong Office that the <**wynn.tokyo**> domain name is registered with GMO Internet Inc. and that Respondent is the current registrant of the name. GMO INTERNET INC. has verified that Respondent is bound by the GMO Internet Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On June 19, 2015, the ADNDRC Hong Kong Office served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of July 9, 2015 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts. Also on June 19, 2015, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

Having received no response from Respondent, on July 10, 2015 the ADNDRC Hong Kong Office transmitted to the parties a Notification of Respondent Default.

On July 14, 2015, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the ADNDRC Hong Kong Office appointed Ho-Hyun Nahm, Esq. as Panelist. The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the ADNDRC Hong Kong Office has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the ADNDRC's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

### **3. Factual background**

The Complainant's Group is an American-based international gaming entertainment company and hotel gaming resorts developer. Amongst its various projects, the Complainant's Group has developed and operates the world-renowned "Wynn Las Vegas", a \$2.7 billion luxury hotel and destination casino resort located on the Las Vegas Strip.

The Complainant's Group has entered the China markets in recent years and successfully obtained a concession to operate casino gaming properties in Macau in early 2002. 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 Complainant's Group has opened representative offices of Wynn Macau in major cities in China including Beijing, Shanghai and Guangzhou, as well as in Hong Kong.

The disputed domain name was registered on August 14, 2014.

### **4. Parties' Contentions**

#### **A. Complainant**

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights:

The disputed domain name is, from a visual and conceptual aspect, confusingly similar to the mark "WYNN" in which Complainant has rights.

(ii) Respondent has no rights or legitimate interests in respect of the disputed domain name:

Complainant and its Group companies have not authorized, licensed or otherwise permitted the Respondent to use the Wynn Trade Marks or any other name/mark of the Complainant's Group. The disputed domain name does not resolve to any website other than a parking page. There is no evidence of any current use of or demonstrable preparations to use by 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. There is no evidence that the disputed domain name is the name of Respondent or that Respondent has been commonly known by the disputed domain name.

(iii) Respondent has registered and used the disputed domain name in bad faith:

Respondent failed to respond to the cease and desist letter sent by Complainant.

Respondent has deliberately registered the disputed domain name, knowing that any use of it is likely to cause confusion to the public that Respondent and/or Respondent's web pages are related to Complainant or are authorized by Complainant and, as a result, therefore, either Complainant or a third party wishing to take advantage of this likelihood of confusion.

Respondent, being situated in Japan, should be well aware of the Complainant's Group which is very well-known in Asia.

Passive holding of the disputed domain name amounts to registration and use in bad faith.

It is very likely that Respondent has retained the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the registration of the disputed domain name for valuable consideration.

(iv) The disputed domain name should be transferred to Complainant.

## **B. Respondent**

Respondent failed to submit a Response in this proceeding.

### **5. Preliminary Issues: Language of Proceedings**

The Panel notes that the Registration Agreement is written in Japanese, thereby making the language of the proceedings in Japanese. Complainant has requested that the language of proceedings should be English. Respondent has not submitted any objection to Complainant's request. Pursuant to Rule 11(a), the Panel determines that the language requirement has been satisfied through the Japanese and English language Commencement Notification, and, absent a Response, determines that the remainder of the proceedings may be conducted in English. *See Banco Itau S.A. v. Webmedia*, WIPO Case No. D2008-0531(holding "the panel is satisfied that this case can be satisfactorily and fairly dealt with in the English language and without any prejudice being caused to the respondent. The panel notes that the Center's case-related communications have been made to the parties in both Korean and English. The panel also notes that the Respondent has failed to participate in the proceeding, and has been notified of its default.").

### **6. Findings**

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that Respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-

0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

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: Complainant asserts that it owns trademark registrations for the word "WYNN" around

- 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**

Complainant asserts that it owns trademark registrations for the mark "WYNN" and various types of marks containing the word "WYNN" around the world. The Panel notes that Complainant owns trademark registrations for the mark "WYNN", *inter alia*, in Japan for the WYNN word mark (*e.g.*, Reg. No. 5540883, registered December 7, 2012; Reg. No.5504289, registered June 29, 2012). The Panel finds that Complainant’s JPO registration of the "WYNN" mark sufficiently provides rights in the mark under Policy ¶ 4(a)(i). *See Paisley Park Enters. v. Lawson*, FA 384834 (Nat. Arb. Forum Feb. 1, 2005) (concluding that Complainant had established rights in the PAISLEY PARK mark under Policy ¶ 4(a)(i) through registration of the mark with the USPTO).

Complainant contends that the prominent and distinctive part of the disputed domain name is the word “wynn”, which is identical to the mark “WYNN,” and thus it is visually confusingly similar to the mark “WYNN”. Complainant submits that a distinctive conceptual element in many of the Complainant's Wynn trademarks, domain names and the names of the Complainant's resorts is the part "WYNN" which is placed before the location at which the resorts are located. It also asserts that the disputed domain name <wynn.tokyo> uses the same concept (with the minor difference that "Tokyo" forms the top-level of the disputed domain name, rather than part of the second-level) and therefore is conceptually confusingly similar to the Complainant's mark "WYNN" and trade name.

The Panel observes that Respondent adds the generic top-level domain (“gTLD”) “.tokyo” to the disputed domain name. The Panel determines, as previous panels have consistently done, that Respondent’s addition of a gTLD to a mark is irrelevant to a Policy ¶ 4(a)(i) determination. *See Countrywide Fin. Corp. v. Johnson & Sons Sys.*, FA 1073019 (Nat. Arb. Forum Oct. 24, 2007) (holding that the addition of the generic top-level domain “.com” was irrelevant). Consequently, the Panel holds that Respondent’s disputed domain name is confusingly similar to Complainant’s WYNN mark under Policy ¶ 4(a)(i).

#### **B) Rights and Legitimate Interests**

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. *See Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate

interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to Respondent to show that it does have rights or legitimate interests in a domain name); *see also AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

Complainant submits that Complainant and its Group companies have not authorized, licensed or otherwise permitted the Respondent to the use of the Wynn trademarks or any other name/mark of the Complainant’s Group. It contends that the disputed domain name does not resolve to any website other than a parking page. It continues to contend that there is no evidence of any current use of or demonstrable preparations to use by 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. It asserts that there is no evidence that the disputed domain name is the name of Respondent or that Respondent has been commonly known by the disputed domain name.

The Panel notes that Respondent fails to provide any evidence that it is known by the disputed domain name. Thus, the Panel concludes that Respondent is not commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii). *See Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (Nat. Arb. Forum July 17, 2006) (concluding that Respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that Respondent was commonly known by the disputed domain name).

Under the circumstance that Respondent did not reply, the Panel finds that Complainant has proven a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. *See De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. DTV2002-0005; *see also Accor v. Eren Atesmen*, WIPO Case No. D2009-0701. Given the above circumstances, the Panel concludes that Respondent has no rights or legitimate interests in the disputed domain name, and the second element of the Policy has been established.

### **C) Bad Faith**

Complainant contends that Respondent, being situated in Japan, should be well aware of the Complainant’s Group which is very well-known in Asia. It further contends that it cannot be a mere co-incidence that Respondent has chosen the disputed domain name, which is confusingly similar to the Wynn trademarks, Complainant’s registered and actively used domain names, and trade name.

Although panels have not generally regarded constructive notice to be sufficient for a finding of bad faith, the Panel infers due to the well-known status of the Complainant's mark and trade name in Asia including Japan where Respondent resides that Respondent had actual knowledge of Complainant's mark and rights and therefore determines that Respondent registered the disputed domain name in bad faith under Policy ¶ 4(a)(iii). *See Nat'l Patent Servs. Inc. v. Bean*, FA 1071869 (Nat. Arb. Forum Nov. 1, 2007) (“[C]onstructive notice does not support a finding of bad faith registration.”); *see also Minicards Vennootschap Onder Firma Amsterdam v. Moscow Studios*, FA 1031703 (Nat. Arb. Forum Sept. 5, 2007) (holding that respondent registered a domain name in bad faith under Policy ¶ 4(a)(iii) after concluding that respondent “actual knowledge of Complainant's mark when registering the disputed domain name”); *see also Sasol Limited v. Barend de Beer / BenBen*, FA1506001622658 (Nat. Arb. Forum July 14, 2015).

Complainant asserts that the passive holding of the disputed domain name amounts to registration and use in bad faith by referring to the WIPO decision, *Telstra Corporation Limited v Nuclear Marshmallows* (D2000-0003) (holding that the registration of a domain name bearing the Complainant's name is in bad faith if (i) it is impossible for the Respondent to have not heard of the Complainant's name and (ii) the Respondent cannot prove any legitimate use of the domain name in dispute.).

The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. The particular circumstances of this case that the Panel has considered are; i) Complainant's WYNN trademark has a good reputation and is widely known especially in Asia where Respondent resides, as evidenced by the fact that Complainant had a well established reputation as an international gaming entertainment company and hotel gaming resorts developer at the time of Respondent's registration, and ii) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, the Panel concludes that Respondent's passive holding of the disputed domain name constitutes bad faith under Policy, paragraph 4(a)(iii) and that Respondent is using the disputed domain name in bad faith. Therefore, the Panel determines that Respondent registered and is using the disputed domain name in bad faith. *See Wells Fargo & Company v. VALERIE CARRINGTON*, FA1505001621718 (Nat. Arb. Forum July 2, 2015).

## 6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <wynn.tokyo> domain name be **TRANSFERRED** from Respondent to Complainant.

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Ho Hyun Nahm, Esq.  
Panelist

Dated: July 22, 2015