



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1500729</b>
<b>Complainant:</b>	<b>Wynn Resorts Holdings, LLC</b>
<b>Respondent:</b>	<b>Shu Ping Shen</b>
<b>Disputed Domain Name:</b>	<b>&lt;wynn222.com&gt;</b>

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

The Complainant is Wynn Resorts Holdings, LLC, of Las Vegas, Nevada, United States of America.

The Respondent is Shu Ping Shen, of Kowloon, Hong Kong.

The domain name at issue is <wynn222.com> (“the Domain Name”), registered by Respondent with GoDaddy.com, LLC, of Scottsdale, Arizona, United States of America (“the Registrar”).

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the ADNDRC on March 24, 2015. On March 27, 2015, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 28, 2015, the Registrar transmitted by email to the ADNDRC its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Complainant filed an amendment to the Complaint on April 2, 2015.

The ADNDRC verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the ADNDRC formally notified the Respondent of the Complaint, and the proceedings commenced on April 9, 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was April 29, 2015. The Respondent did not submit any response. Accordingly, the ADNDRC notified the Respondent’s default on April 30, 2015.

The ADNDRC appointed Alan L. Limbury as the sole panelist in this matter on April 30, 2015. The Panel finds that it was properly constituted and the panelist 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.

### **3. Factual background**

The Complainant is part of an American-based international gaming entertainment group of companies, developing hotel gaming resorts, including casinos in Las Vegas (called “Wynn Las Vegas”) and Macau (called “Wynn Macau”). The Group has several representative offices in Asia, including in Hong Kong. The group was founded by Mr. Steve Wynn, who is now chairman and chief executive officer of the Complainant’s holding company.

The Complainant is the registered proprietor in the United States, Hong Kong and elsewhere of numerous trademarks consisting of or containing the word WYNN in both word and stylized forms, and WYNN LAS VEGAS, WYNN PALACE, WYNN MACAU and WYNN RESORTS.

The “WYNN” trade mark was first registered by the Complainant in the United States on 26 July 2005 in Class 41 (Reg. No. 2977861) and in Class 43 (Reg. No. 2977862).

The Domain Name was registered by the Respondent on October 22, 2014. It resolves to a casino gaming website displaying the Complainant’s WYNN PALACE mark.

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant seeks the transfer to it of the Domain Name. Its contentions may be summarized as follows:

- i. the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name for the following reasons:
  - (a) the Complainant and its Group companies have not authorized the Respondent to use the Complainant’s trade marks;
  - (b) WYNN is not a common term in usage, but a well-known registered mark; and
  - (c) there is no evidence that the Respondent has been commonly known by the Domain Name;
- iii. the Domain Name has been registered and is being used in bad faith for the following reasons:

- (a) given the substantial fame of the Complainant's Group throughout the world, and given that the Respondent runs a casino website, the Respondent must have been aware of the Complainant's rights in its trade marks;
- (b) the web page to which the Domain Name resolves prominently displays the WYNN PALACE trade mark;
- (c) the Respondent has deliberately registered the Domain Name with the intention to cause confusion to the public that the Respondent and/or the Respondent's web pages are related to or are authorized by the Complainant;
- (d) the Respondent has devised deceptive marketing tactics to promote the Domain Name. Promotional greeters wearing uniforms bearing the WYNN PALACE mark together with the domain name <723723.com> were seen at the border gate area for free shuttle bus transportation. The web page under the domain name <723723.com> provides a direct link to the Domain Name, as does another domain name registered by the Respondent, <486486.com>. It is thus clear that the Respondent intends to attract and increase the traffic volume to the Domain Name website;
- (e) the Domain Name operates an online platform for betting and casino-related games in such a way as to make it apparent that the Respondent intends to ride on the reputation of the Complainant to entice the public to sign up and pay for an online betting account; and
- (f) the Respondent attempted to hide its acts through the services of a private or proxy registrant, so that the Respondent's true identity is veiled from any WHOIS databases.

#### B. Respondent

As mentioned, the Respondent did not submit any response. A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. D2000-0441. See also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. D2003-0109; *SSL INTERNATIONAL PLC V. MARK FREEMAN*, WIPO Case No. D2000-1080 and *ALTAVISTA COMPANY V. GRANDTOTAL FINANCES LIMITED et. al.*, WIPO Case No. D2000-0848.

### 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.

Under paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

### **A) Identical / Confusingly Similar**

It is well established that "essential" or "virtual" identity is sufficient for the purposes of the Policy: *The Stanley Works and Stanley Logistics Inc. v. Camp Creek Co., Inc.*, WIPO Case No. D2000-0113; that the test of confusing similarity is confined to a comparison of the disputed domain name and the trademark alone: *BWT Brands, Inc. and British American Tobacco (Brands), Inc v. NABR*, WIPO Case No.D2001-1480; and that the specific top level of the domain name, in this case “.org”, does not generally affect the domain name for the purpose of determining whether it is identical or confusingly similar: *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525.

The Domain Name consists of the Complainant’s WYNN trademark and the numbers 222, which gamers will readily associate with a hand of poker. Accordingly, those numbers do nothing to detract from the distinctiveness of the Complainant’s mark. The Panel finds the Domain Name to be confusingly similar to the Complainant’s WYNN trademark.

The Complainant has established this element.

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

The Panel finds that the WYNN mark is distinctive and well known. The Complainant’s assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interest in the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

The Complainant has established this element.

### **C) Bad Faith**

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the Domain Name in bad faith for purposes of paragraph 4(a)(iii) of the Policy. They include:

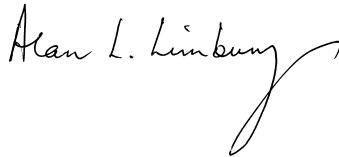
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service on its website or location.

The Respondent registered the Domain Name long after the Complainant established a significant reputation in its WYNN and other registered trademarks in relation to casinos, particularly in Asia, including in Hong Kong, where the Respondent is located. The Respondent's use of the Domain Name for a casino gaming website featuring the Complainant's WYNN PALACE trademark is compelling evidence that the Respondent had the Complainant and its marks in mind when registering the Domain Name and did so for the purpose of targeting the Complainant and trading off the Complainant's goodwill. The Respondent's conduct falls squarely within paragraph 4(b)(iv) of the Policy. Accordingly the Panel finds the Domain Name was registered and is being used in bad faith.

The Complainant has established this element.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <wynn222.com>, be transferred to the Complainant.



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Alan L Limbury  
Panelist

Dated: May 6, 2015