



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1701018
<b>Complainant:</b>	Wynn Resorts Holdings, LLC
<b>Respondent:</b>	WeiFeng Xia WeiFeng Xia
<b>Disputed Domain Name(s):</b>	<wynnnacau.com>

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**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 WeiFeng Xia WeiFeng Xia, of Beilun District, Ningbo City, Zhejiang Province China.

The domain name at issue is <wynnnacau.com>, registered by Respondent with PDR LTD. D/B/A PUBLICDOMAINREGISTRY.COM, of 501, IT Building No 3, NESCO IT Park, NESCO Complex, Western Express Highway, Goregaon (East), Mumbai – 400063, Maharashtra, India.

**2. Procedural History**

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on 11 September 2017, in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On 11 September 2017, the Hong Kong Office confirmed receipt of the Complaint, and then sent an email to the Registrar of the Domain Name requesting verification in connection with the relevant information of the Domain Name at issue.

On 12 September 2017, the Registrar of the Domain Name confirmed that the Respondent is WeiFeng Xia WeiFeng Xia and the Domain Name is registered with PDR LTD. D/B/A PUBLICDOMAINREGISTRY.COM.

On 18 September 2017, the Hong Kong Office sent the Respondent a written notice of complaint which involved a notification that a complaint concerning the Domain Name <wynnnacau.com> was submitted against the Respondent and a requirement to submit a Response within 20 days from 18 September 2017, and forwarded the Complaint (along with its Annexures) to the Respondent pursuant to the Policy, Article 4 of the Rules and Article 6 of the ADNDRC Supplemental Rules. The formal date of the commencement of the administrative proceeding on was 18 September 2017.

On 9 October 2017, the Hong Kong Office confirmed that it did not receive a Response from the Respondent in respect of the Complaint concerning the Domain Name within the required period.

On 10 October 2017, the Hong Kong Office appointed Prof George TIAN Yijun as the sole Panelist for this Domain Name dispute, and the case files were transferred to the Panelist, on the same day.

On 26 October 2017, the Hong Kong Office extended the deadline for rendering a decision to 31 October 2017, as requested by the Panelist.

### **3. Factual background**

#### **A. Complainant**

Complainant, Wynn Resorts Holdings, LLC., is a company incorporated in of Las Vegas, Nevada, United States of America (USA). Complainant is a wholly-owned subsidiary of Wynn Resorts, Limited ("Wynn Resorts"). Wynn Resorts, together with Complainant and Wynn Resorts' other subsidiaries (the "Complainant Group") are world-class designers, developers and operators of integrated resorts.

Complainant Group has entered the China market for over a decade, and has developed and operates three famous integrated resort projects in Macau, namely "Wynn Macau" (opened September 2006), "Encore at Wynn Macau" (opened April 2010) and "Wynn Palace" (opened August 2016).

Complainant has exclusive rights in the WYNN and WYNN MACAU trade marks (hereinafter "WYNN marks"). It is the owner of various trademark registrations that comprise WYNN worldwide, including in China since 2009 (registration number 5304536) in Hong Kong Special Administrative Region of China since 2012 (registration number 302494206) (Annexes 2 and 3 to the Complaint).

Complainant also owns and operates several domain names which contain the WYNN mark in entirety, such as <wynnresorts.com> (registered on May 2, 2000), <wynnlasvegas.com> (registered on July, 23 2000), and <wynnmacau.com> (registered on July 11, 2002).

#### **B. Respondent**

Respondent, WeiFeng Xia WeiFeng Xia of Beilun District, Ningbo City, Zhejiang Province China, registered the disputed domain name <wynnnacau.com> with the Registrar on September 9, 2016, which is long after the WYNN marks were registered.

The websites at the disputed domain name <wynnnacau.com> redirects and takes users to a unrelated website <<http://4111016.com/?aff=981088>>, which is an online gambling website.

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

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

Complainant contends that the disputed domain name <wynnnacau.com> is identical or confusingly similar to its trademark WYNN, the registration and use of which by Complainant precedes the registration of the disputed domain names.

Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that the disputed domain name was registered and are being used in bad faith.

Complainant requests that the disputed domain name <wynnnacau.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 WYNN marks have been registered internationally, including in China since 2009.

The disputed domain name <wynnnacau.com> comprises the WYNN mark in its entirety. The disputed domain name only differs from Complainant's trademarks by the suffix "nnacau", and the gTLD suffix ".com" to the WYNN marks. This does not eliminate the identity or at least the confusing similarity between Complainant's registered trademarks and the disputed domain name.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, 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).

Generally a respondent "may not avoid likely confusion by appropriating another's entire mark and adding descriptive or non-distinctive matter to it". (*The Argento Wine Company Limited v.*

*Argento Beijing Trading Company*, WIPO Case No. D2009-0610 citing *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. D2001-0087).

Further, “the applicable top-level suffix in the domain name (e.g., ‘.com’) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration), except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark”. (See *Sanofi v. xingwei, ningbosaidemojiegougongchengyouxiangongsi*, WIPO Case No. D2017-0335).

Thus, the Panel finds that the suffix “nncau”, and the gTLD suffix “.com” are not sufficient to negate the confusing similarity between the disputed domain name and the WYNN marks. By contrast, it may increase the likelihood of confusion. “nnccau” looks very similar to “macau” - the name of Macau Special Administration Region of China. Internet users are likely to be confused and may falsely believe that <wynncau.com> is operated by Complainant for providing products or services in Macau.

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

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

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 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).

According to the Complaint, Complainant is one of world-class designers, developers and operators of integrated resorts. Complainant has rights in the WYNN trade marks worldwide, including China, since 2009, which long precede Respondent’s registration of the disputed domain name (2016).

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:

- (a) 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.
- (b) 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 <wynnnacau.com> in 2016, long after the WYNN marks became internationally known. The disputed domain name is identical or confusingly similar to Complainant's WYNN marks.

- (c) 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 resolved by the disputed domain name is currently offering online gambling service (Annex 8 the Complaint).

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 names in bad faith, namely:

- (i) circumstances indicating that Respondent has registered or acquired the disputed domain names 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 names 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 names primarily for the purpose of disrupting the business of a competitor; or

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

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain names in bad faith.

#### **a) 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 has registered its WYNN marks in China since 2009. Based on the information provided by Complainant, Complainant Group has entered the China market for over a decade, and has developed and operates three famous integrated resort projects in Macau, namely "Wynn Macau" (opened September 2006), "Encore at Wynn Macau" (opened April 2010) and "Wynn Palace" (opened August 2016). 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 (in 2016). 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*).

Thus, the Panel concludes that the disputed domain name was registered in bad faith with the intent to create an impression of an association with Complainant's WYNN branded services.

#### b) Use in Bad Faith

Complainant has adduced evidence to prove that by using the confusingly similar disputed domain names, Respondent has "intentionally attempted to attract, for commercial gain, Internet users to Respondent's websites" by providing links to unrelated websites, including the Complainant's website, as per paragraph 4(b)(iv) of the Policy.

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

Given the widespread reputation of the WYNN marks, the Panel finds that the public is likely to be confused as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name is resolved. In other words, Respondent has through the use of confusingly similar domain name created a likelihood of confusion with the WYNN marks. Moreover, the website resolved by the disputed domain name has been used to redirect users to an unrelated website, which provides online gambling service. The Panel therefore concludes that the disputed domain names are used by Respondent in bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name which is confusingly similar to Complainant's trademark, intended to free 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 sufficient 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 resolve are 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 <wynnacau.com> be transferred to Complainant.

Yijun Tian  
Panelist

Dated: November 9, 2017