



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
 Decision ID DE-0800148
 Case ID HK-0800160
 Disputed Domain Name www.wynnmacau.mobi
 Case Administrator Dennis CAI
 Submitted By Peter L. Michaelson
 Participated Panelist

Date of Decision 16-08-2008

Language Version : English

The Parties Information

Claimant Wynn Resorts Holdings, LLC
Respondent Beroca Holdings BVI Limited

Procedural History

On April 2, 2008, the Complainant submitted the Complaint in English on domain name <wynnmacau.mobi> to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and the Asian Domain Name Dispute Resolution Centre Supplemental Rules in effect as of February 28, 2002. By email message dated April 7, 2008, the Center confirmed the receipt of the hardcopy form of the Complaint, together with Annexes A K. The Complainant requested a single person panel. After receiving the original Complaint, the Centre, in accordance with the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on April 7, 2008, the Centre requested the Registrar to confirm: (a) that the disputed domain name was registered with the Registrar, (b) whether the Respondent is the registrant or holder of the name, and (c) whether the Policy applies to the name; and to specify: (d) the language of the registration agreement, (e) WhoIs information for the name, and (f) the current status of the name.

On April 30, 2008, the Registrar provided its response to the Centre through which it confirmed that: the name was registered with EuroDNS S.A., the Respondent is the registrant or holder of the name, and the Policy applies to the name. The Registrar also stated that the registration agreement is in the English language, provided name and contact information pertinent to the name as reflected in its WhoIs database, and stated that the name is currently locked.

On May 30, 2008, the Centre sent the Complaint to the Respondent. The Respondent was then provided with a 20 calendar day period, expiring on June 20, 2008, to file its Response both with the Centre and the Complainant.

As of June 21, 2008, the Respondent had not filed any Response with the Centre.

Accordingly, on July 5, 2008, the Centre advised the parties by email that the Respondent had not filed any Response to the Complaint with the Centre on or before the June 20th deadline and, as such, the Centre would then proceed to appoint a Panelist for this matter.

Pursuant to the Rules and Supplemental Rules, the Centre, by email dated July 5, 2008, contacted the undersigned, Mr. Peter L. Michaelson, requesting his service as a Sole Panelist for this dispute. Subsequently, on the same day, Mr. Michaelson responded and affirmed his ability to act completely independently and impartially in this matter. Subsequently, the Centre, through an email dated July 12, 2008, notified the Parties of the appointment of Mr. Michaelson as the Sole Panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before July 28, 2008. Owing to unexpected time conflicts experienced by the Panel all of which constituted unforeseen circumstances, the Centre, at the request of the Panel, extended this due date to August 11, 2008.

Factual Background

For Claimant

A. The Complainant's WYNN Marks

The Complainant currently owns numerous trademark registrations and applications worldwide for marks that consist of the term "WYNN", either in block letters and stylized form and either by itself or in conjunction with other terms such as, e.g., "MACAU", "RESORTS", "CLUB" and "LAS VEGAS" and for use on conjunction with a variety of goods and services. In Annex B to the Complaint, the Complainant provided a list of its registrations and applications both in Macau and Hong Kong along with hard copies of the registration certificates for a small sample of its registered marks in each of those two jurisdictions. The Complainant also provided, though in Annex C to the Complaint, a list of its trademark registrations in China and the US which incorporate the word "WYNN". Several of the Complainant's registrations were granted in 2003-2006 timeframe and predated the date on which the Respondent registered the disputed domain name, i.e., September 26, 2006. Pertinent details of an illustrative registration are as follows:

WYNN RESORTS (block letters)

Hong Kong registration: 200320008; registered August 12, 2003

filed: September 12, 2002

goods: clothing, headgear, footwear

B. The Complainant and its activities

The Complainant's group (of which the Complainant is a member organization, and hard copy printouts of various pages of its website appear in Annex E to the Complaint) is a publicly owned American based international gaming entertainment company and hotel gaming resorts developer. The Complainant was founded by 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 developing a number of very successful hotel gaming resorts, including, e.g., "The Mirage" and "Treasure Island" at Las Vegas, Nevada (US). Mr. Wynn is now the Chairman of the Board and Chief Executive Officer of Wynn Resorts, Ltd, the parent company of the Complainant.

Amongst its various projects, the Complainant's Group has developed and operates the "Wynn Las Vegas" which is a \$2.7 billion luxury hotel and destination casino resort located on the Las Vegas Strip and features 2,716 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.

Recently, the Complainant's Group entered the China markets and obtained a concession to operate one or more casino gaming properties in Macau (the only place in China where casinos are legal). As background, the gaming industry in Macau was monopolized by a company, owned by a local casino tycoon Stanley Ho, which had obtained an exclusive gaming concession to operate gaming business in Macau for forty years. This situation ended in early 2002 when the Macau government opened the gaming industry market to new players and granted casino licenses to a few players including the Complainant's Group. The new casinos established in Macau attract large crowds and revenue and so much so that, since end of 2006, Macau has displaced Las Vegas as the world's largest gaming center by revenue.

The luxury hotel and destination casino resort in Macau developed and operated by the Complainant's Group is called "Wynn Macau". The resort features 600 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.

To assist its guests with the planning of their vacations or corporate meetings at the Wynn Macau resort, the Complainant's Group opened representative offices in major cities in China including Beijing, Shanghai and Guangzhou, as well as in Hong Kong. The Complainant's Group also launched heavy promotional campaign in promoting the Wynn Macau resort. Copies of various media accounts regarding the Complainant's group in Macau are provided in Annex 6 to the Complaint and various advertising and promotional materials regarding the Wynn Macau resort appear in Annex G to the Complaint.

C. Interactions between the parties

In an attempt to settle the present dispute, on September 7, 2007, the Complainant's representative sent a cease and desist letter sent to the Respondent. Thereafter, in response to an email reply dated September 26, 2007 through which the Respondent requested evidence of the Complainant's trademark rights, the Complainant, through an email message dated October 2, 2007, supplied such evidence to the Respondent. In addition, through that message, the Complainant also offered to reimburse the Respondent of its out of pocket expenses for transfer of the name. On March 3, 2008, the Respondent replied, by an email message, through which it offered to sell the name to the Complainant for a sum of \$ 2000. A copy of all the correspondence referred to in this paragraph appears in Annex I to the Complaint.

For Respondent

As indicated in the WhoIs registration record provided in Annex A to the Complaint, the Respondent registered the disputed domain name on September 26, 2006.

Parties' Contentions

Claimant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is identical to its mark and resort name WYNN MACAU, thus satisfying the confusing similarity or identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a)(ii) and particular 4(c) of the Policy.

First, the Complainant states that neither it nor any of its group companies has ever authorized, licensed or otherwise permitted the Respondent to use any of the WYNN Marks or any other name or mark of the Complainant's Group.

Second, the Complainant contends that there is no evidence that the disputed domain name is the name of the Respondent or the Respondent has been commonly known by that name. According to the WhoIs record for the name, the Respondent is a BVI company with an address in England. Neither the term "Wynn" nor "Wynn Macau" is part of the Respondent's name.

(iii) Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is now using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

First, as to bad faith registration, the Complainant contends that the Respondent intentionally registered the name to confuse Internet users into thinking that the Respondent and/or the Respondent's website is related to or authorized by the Complainant, when, in fact, no such relationship or authorization exists at all, thus evidencing bad faith registration. In that regard, given the substantial fame which the Complainant's Group and its WYNN Marks have attained throughout the world, it is quite unlikely that the Respondent was unaware of the Complainant's rights in the WYNN Marks when the latter registered the name a name which is identical to one of the Complainant's registered marks, namely WYNN MACAU, thus reflecting bad faith registration.

Second, the Complainant contends that the Respondent likely registered the name primarily for the purpose of selling, renting, or otherwise transferring its registration for valuable consideration in excess of his documented out of pocket costs directly related to the name. This is supported by the Respondent having offered to sell the name to the Complainant for (US) \$ 2000 a sum which far exceeds its out of pocket costs of registering the name, thus also reflecting bad faith use and registration.

Respondent

The Respondent failed to file any Response to the allegations raised in the Complaint.

Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the Complainant to prevail:

- i. the Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the Respondent's domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The Panel finds that the disputed domain name is confusing similar to the Complainant's WYNN Marks and, within those marks, identical to the Complainant's mark WYNN MACAU.

As to the latter, from a simple comparison of the name and the mark, no doubt exists that the disputed domain name is, for all practical purposes, identical to the Complainant's mark WYNN MACAU. The only difference between the name is the appending of the gTLD (generic top level domain) ".mobi" to the mark, with that difference being totally irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus ignored. Given this, there is no need for the Panel to specifically assess confusing similarity of the name with respect to any of the other WYNN Marks.

Therefore, the Panel finds that the disputed domain name <wynnmacau.mobi> is, for all practical purposes, identical to the mark WYNN MACAU, which forms one of the Complainant's WYNN Marks, so as to cause confusion; hence, the Complainant has satisfied its burden

under paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which, under the circumstances here, would legitimize a claim to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant, including any member of its related group organizations, has never authorized the Respondent to utilize any of its WYNN Marks or any mark confusingly similar thereto in conjunction with the goods and services with which the Complainant uses and registered any of those marks or for any similar goods and services, nor does the Complainant or any of its related organizations apparently have any relationship or association whatsoever with the Respondent. As such, any commercial use to which the Respondent were to put any of the WYNN Marks, including WYNN MACAU, or one confusingly similar thereto in connection with the identical or even similar goods or services to those currently provided by the Complainant and as recited in its trademark registrations would violate the exclusive trademark rights now residing with the Complainant. See, e.g., *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008 0505 (May 28, 2008); *MySpace, Blackrock, F. Hoffmann La Roche AG, National Football League, Toilets.com, Inc., and Associated Bank*, all cited supra; *GoDaddy.com, Inc. v. GoDaddysDomain.com, Clark Signs, Graham Clark*, WIPO Case No. D2007 0303 (May 7, 2007); *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006 1576 (March 14, 2007); *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005 0884 (October 14, 2005); *The Cheesecake Factory Inc., Napster and Caesars Entertainment, Inc.*, all cited supra; *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004 0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004 0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003 0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA 173362 (September 16, 2003); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, cited supra; *MPL Communications, Limited et al v. 1WebAddress.com, NAF Case No. FA 97092* (June 4, 2001); *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Case No. FA 95856 (December 18, 2000); and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000 1374 (December 11, 2000). Consequently, the Respondent could not legally acquire any public association between it and the mark WYNN, let alone the mark WYNN MACAU, or one similar thereto, at least for the goods or services rendered by the Complainant or listed in any of its trademark registrations, or, broadly speaking, any good or service likely perceived by its users to be so similar and/or to emanate from or be related, in any fashion, to those then offered by the Complainant.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by the disputed domain name or more generally by any of the WYNN Marks, particularly WYNN MACAU. Nor could the Respondent in this case ever become so known, in light of the Complainant's continuous use of the mark WYNN for several years prior to the date, September 26, 2006, on which the Respondent registered the domain name, and the substantial worldwide reputation and notoriety which the Complainant has gained in its WYNN Marks during the intervening time, without infringing on the exclusive trademark rights of the Complainant. See, e.g., *Dreamworks, MySpace and Treeforms, Inc.*, both cited supra.

Hence, based on the evidence before the Panel, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Furthermore, in the absence of any Response, the Panel infers that the Respondent is not using the name on either a non commercial or fair use basis without intent to misleadingly divert consumers or tarnish any of the Complainant's marks, or, prior to receiving notice of this dispute, in connection with any bona fide offering of goods or services or demonstrable preparations for making such an offering, thus failing to qualify under either of paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) and 4(c) of the Policy

Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use. Given the widespread international notoriety which the Complainant and particularly its mark WYNN had attained well prior to September 26, 2006 when the Respondent registered the disputed name, particularly since that name not only incorporates the Complainant's mark WYNN but is identical to the name of Complainant's resort in MACAU, i.e., WYNN MACAU, it clearly stands to reason that the Respondent was indeed aware of the Complainant and its marks and the name of its resort when the Respondent registered the name. Moreover, the Respondent's actions in registering the name and then offering to sell it to the Complainant for a sum (US \$ 2000) well in excess of its costs of registration manifests not only the Respondent's intent but also its actions as collectively calculated to opportunistically exploit the name to the financial detriment of the Complainant. This plainly constitutes bad faith use and registration.

Consequently, the Panel concludes that the Respondent violated paragraph 4(a)(iii) of the Policy and specifically paragraph 4(b)(i) thereof.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

Status

www.wynnmacau.mobi

Domain Name Transfer

Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant. The disputed domain name, <wynnmacau.mobi >, is ordered transferred to the Complainant.

Peter L. Michaelson
Panelist

Dated: August 6, 2008