



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.:</b>	<b>HK-2001394</b>
<b>Complainant:</b>	<b>NagaCorp Ltd.</b>
<b>Respondent:</b>	<b>Royal Empire Holding</b>
<b>Disputed Domain Name:</b>	<b>&lt;nagaworld777.com&gt;</b>

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

The Complainant is NagaCorp Ltd. (hereinafter referred to as the “**Complainant**”), of Hong Kong Special Administrative Region of the People’s Republic of China. The Complainant is represented by Mr. Kenny Cheung of Baker & McKenzie of Hong Kong Special Administrative Region of the People’s Republic of China.

The Respondent is Royal Empire Holding (hereinafter referred to as the “**Respondent**”), of Hong Kong Special Administrative Region of the People’s Republic of China.

The domain name at issue is <nagaworld777.com> (hereinafter referred to as the “**Disputed Domain Name**”), registered by the Respondent with NameSilo, LLC, of Phoenix, Arizona, United States of America (hereinafter referred to as the “**Registrar**”).

**2. Procedural History**

On 25 August 2020, the Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “**Centre**”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules of Procedure under the Policy (the “**Rules**”) approved by ICANN Board of Directors on 28 September 2013, and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “**Supplemental Rules**”) effective from 31 July 2015.

On 27 August 2020, the Centre wrote to the Registrar to request for registrar verification in connection with the Disputed Domain Name.

On 17 September 2020, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name which differed from the named Respondent’s information on the Complaint.

On 19 September 2020, the Centre wrote to the Complainant providing the registrant information disclosed by the Registrar and invited the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint, to the Centre on 22 September 2020.

On 22 September 2020, the Centre verified that the Complaint satisfied the formal requirements in accordance with the Policy, the Rules and the Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceedings commenced on 23 September 2020.

Under Paragraph 5 of the Rules, the due date for the Respondent to file a Response was on or before 13 October 2020.

On 23 September 2020, the Centre wrote to the Complainant enclosing comments received from the Respondent and the Registrar for the Complainant to comment upon. The comments from the Respondent are “*We don’t want to dispute this domain and would like to release it, we are Requesting NameSilo to delete this deactivate and delete this domain right away*”, whereas the comments from the Registrar are “*Hi Arbitration Court, Let us know how and when to proceed. Thank you! NameSilo Support Team*”.

On 15 October 2020, the Complainant wrote to the Centre stating that “*We would like to continue the proceedings and we look forward to receiving the confirmation of the Panelist appointment for this matter under the rules.*”. On the same day, the Centre wrote to the Complainant and the Respondent (collectively referred to as the “**Parties**”) confirming its decision to appoint a Panelist for the Disputed Domain Name in question.

On 16 October 2020, the Centre wrote to Dr. Christopher To enquiring as to availability to act as a Panelist in relation to the Disputed Domain Name and whether one is in a position to act independently and impartially between the Parties. In the same correspondence, the Centre stated that it had “*not received a response form from the Respondent*”.

The Centre appointed Dr. Christopher To as the Panelist in this matter on 17 October 2020. The Panelist finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **Complainant**

The Complainant is a company incorporated within the jurisdiction of the Hong Kong Special Administrative Region of the People’s Republic of China. The Complainant is the owner of nine registered trademarks in various countries and regions throughout the world. These registered trademarks have been used by the Complainant since at least as early as 2003.

#### **Respondent**

The identity and domicile of the Respondent was not stated in the whois search ([www.whois.com](http://www.whois.com)) of 12 August 2020, as provided by the Complainant as per Attachment I of the Complaint. Upon clarification from the Registrar, the Respondent is Royal Empire

Holding of the Hong Kong Special Administrative Region of the People's Republic of China.

### **Disputed Domain Name**

The Disputed Domain Name was registered on 30 October 2017.

## **4. Parties' Contentions**

### **Complainant**

The Complainant made the following submissions in the Complaint:

#### **i. Identical/Confusingly Similar**

The Complainant's group of companies was founded in 1995 and one of its wholly-owned subsidiaries was granted a 70-year casino license in 1995, with an exclusivity right to operate casinos in Cambodia within a 200-kilometer radius of Phnom Penh (except the Cambodia-Vietnam border area, Bokor, Kirirom Mountains and Sihanoukville) until the end of 2045.

The Complainant is currently the largest integrated resort operator in Cambodia and has been listed on the Main Board of the Hong Kong Stock Exchange (SEHK: 3918) since 2006. It has a market capitalization of more than US\$4.4 billion as of August 10, 2020.

The Complainant owns, manages and operates the NagaWorld complex (comprising Naga 1, Naga 2 and NagaCity Walk), the largest integrated resort in the Kingdom of Cambodia and the Mekong region in Southeast Asia, which is a one-stop leisure destination for visitors and tourists. NagaWorld also offers a diverse range of up-market gaming and complementary entertainment facilities and equally attractive non-gaming offerings including food and beverage, retail, meetings-incentives-conferencing-exhibitions (MICE), spa and entertainment attractions. This includes 4,061 square meters of retail space for 46 retail stores in NagaCity Walk (the first underground shopping center in Phnom Penh), a 2,000-seat theater and grand ballroom with a capacity for up to 1,600 guests. The Complainant's gaming and entertainment facilities are supported by a strong hospitality offering, with 1,658 hotel rooms as of December 31, 2019.

In addition to economic contributions, the Complainant has also contributed to the community of Cambodia for over 20 years and the Complainant is one of the largest private sector employers in Cambodia.

The Complainant has built a strong brand among Cambodians and internationally, as widely recognized by various international and local awards under its NagaWorld brand. The Complainant is owner of nine registered trademarks in Hong Kong, Macau, Mainland China, Australia, Cambodia, European Union, India, Japan, Kazakhstan, Mongolia, Republic of Korea, Russia, Singapore, United States of America, Vietnam, Laos, Philippines amongst other jurisdictions. According to the Complainant, these registered trademarks have been used by the Complainant since at least as early as 2003.

The Complainant registered the <nagaworld.com> domain name on 26 April 2003 and the <nagacorp.com> domain name on 5 November 2004, which are and have been accessible to the public since their registration. In addition, the trademarks of the Complainant are prominently displayed at the homepage and sub-pages of these domain name websites.

The Complainant owns prior registered and common law trademark rights in the “NagaWorld” mark. The Complainant has registered the “NagaWorld” mark for a variety of services, including but not limited to, gaming. All of these trademark registrations were obtained prior to the Respondent's registration of the Disputed Domain Name on 30 October 2017.

The Disputed Domain Name is identical or confusingly similar to the Complainant's “NagaWorld” mark and <nagaworld.com> domain name. The Disputed Domain Name contains two elements: (i) “NAGAWORLD777” and (ii) the top-level domain “.com”.

According to the Complainant, it is well established that the top-level domain “.com” does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the “*confusing similarity*” element. The Complainant cites the case of *PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. D2006-0189<sup>1</sup> to support its reasoning in this aspect.

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<sup>1</sup> <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0189.html>.

The distinctive part of the Disputed Domain Name <nagaworld777.com> is therefore “NAGAWORLD777”, which is confusingly similar to the Complainant’s “NagaWorld” mark, save for the additional numbers of “777” with no inherent meaning by themselves.

The Complainant advocates that by adding the numbers “777” are closely associated with jackpot numbers of most slot gambling machines, which are therefore closely related to the main business of the Complainant. The predominant element in the Disputed Domain Name is “NAGAWORLD”, which is clearly isolable within the combination of “NAGAWORLD777”. It is also well established that where a domain name incorporates a complainant’s well-known and distinctive trademark in its entirety, it is confusingly similar to that mark despite the addition of numbers such as, in this case, “777”. The Complainant cites the case of *F. Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC*, WIPO Case No. D2015-2316<sup>2</sup> to support its stance.

The Complainant further advocates that, Internet users who see the Disputed Domain Name <nagaworld777.com> are bound to mistake it for and confuse it with the Complainant’s trademarks and <nagaworld.com> domain name, and as such the Complainant contends that the Respondent is trying to exploit the goodwill associated with the Complainant's trademarks and business for their own benefit.

On this basis the Complainant alleges that the Disputed Domain Name is confusingly similar to the Complainant’s trademarks.

## **ii. Rights and Legitimate Interests**

The Complainant states that the Respondent is not contracted by or otherwise affiliated with the Complainant, and the Complainant has never licensed or authorised the Respondent to use the trademarks in the Disputed Domain Name. According to the Complainant, this is sufficient to establish a *prima facie* case to shift the burden of proof to the Respondent to prove that the Respondent has rights or legitimate interests in the Disputed Domain Name<sup>3</sup>.

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<sup>2</sup> <http://www.wipo.int/amc/en/domains/decisions/text/2015/d2015-2316.html>.

<sup>3</sup> WIPO Jurisprudential Overview 3.0, § 2.1 and cases cited therein.

The Complainant stated that the Respondent registered the Disputed Domain Name on 30 October 2017, long after the Complainant first started using the name “NagaWorld”, the registration of the Complainant’s trademarks and the registration dates of the Complainant’s domain names <nagaworld.com<sup>4</sup>> and <nagacorp.com<sup>5</sup>> respectively. As such the Complainant’s contends that the Complainant owns the rights in the “NagaWorld” mark well before the Respondent registered the Disputed Domain Name.

The Complainant further contends that the Disputed Domain Name resolves to a website in the English language providing information and services associated to gaming, using the Complainant's trademarks prominently within the Disputed Domain Name homepage and sub-pages. By doing so the Complainant affirms that the Respondent is holding itself out as the Complainant to internet users with the aim to profit from the Complainant’s good will, demonstrates a lack of legitimate, non-commercial interest in, or fair use of the Disputed Domain Name. The Complainant cites the cases of *GWS Technology (Shenzhen) Co., Ltd v. Jin Fan*, HK-1600884<sup>6</sup> and *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701<sup>7</sup> to support its argument that the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name.

### **iii. Bad Faith**

The Complainant submits that by using the Dispute Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the website of the Disputed Domain Name, by creating a likelihood of confusion with the Complainant's trademarks and business as to the source, sponsorship, affiliation, or endorsement of the website of the Disputed Domain Name. The featuring of photographs and images of the Complainant's NagaWorld casino complex in the website of the Disputed Domain Name has the intention to confuse and mislead visitors to the site that the Respondent is the Complainant or connected with the Complainant.

The Complainant further submits that the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the Complainant’s business. The Respondent's ownership of the Disputed Domain Name and its business activities

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<sup>4</sup> Registered on 26 April 2003.

<sup>5</sup> Registered on 5 November 2004.

<sup>6</sup> [https://www.adndrc.org/diy/module/docUDRP/HK-1600884\\_Decision.pdf](https://www.adndrc.org/diy/module/docUDRP/HK-1600884_Decision.pdf).

<sup>7</sup> <http://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0701.html> .

conducted through the Disputed Domain Name inherently disrupt the Complainant's business, and harm the Complainant's "NagaWorld" brand by creating consumer confusion and preventing potential customers of the Complainant from easily accessing the Complainant's official website to obtain information about the Complainant or the gaming, casino, entertainment services provided by the Complainant.

Given the reputation that NagaWorld enjoys in the area of casino and gaming, the Complainant asserts that the Respondent must be aware of the high risk of confusion and have intentionally attempted to confuse the general public by using the Disputed Domain Name and the Complainant's trademarks and images on the Disputed Domain Name website to create a likelihood of confusion to and/or intentionally mislead internet users, including prospective customers of the Complainant, into believing that it is connected to, endorsed by and/or otherwise associated with the Complainant, and thereby disrupting the Complainant's business and directing legitimate traffic away from the Complainant. By registering and using the Disputed Domain Name in this matter, the Complainant asserts that the Respondent has deliberately attracted internet users to the website in bad faith and has seriously prejudiced the Complainant's commercial interests.

### **Respondent**

The Respondent did not reply to the Complainant's contentions as stated in the Complaint.

## **5. Findings**

Having considered all the documentary evidence before me, and the Respondent's non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 5(f) of the Rules, the Panelist is of the view that it should proceed to decide on the Disputed Domain Name, based upon the Complaint and evidence adduced by the Complainant as contained within the Complaint.

Paragraph 5(f) of the Rules stipulates that:

*"If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint."*

Whereas Paragraph 10(d) of the Rules states that:

*“The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.”*

Similarly, Paragraph 11(a) of the Rules provides that:

*“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.”*

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its correspondence to the Centre of 17 September 2020, then in accordance with Paragraph 11(a) of the Rules, the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint is drafted in the English language which is in line with the Registration Agreement and that the Respondent has failed to communicate on the matter, the Panelist considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

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

- A. Disputed Domain Name is **identical or confusingly similar** to a trademark or service mark in which Complainant has rights; and
- B. The Respondent has no **rights or legitimate interests** in respect of the Disputed Domain Name; and
- C. Disputed Domain Name has been registered and is being used in **bad faith** by the Respondent.

The Panelist would like to state that the Respondent’s non-participation (i.e. default) would not by itself mean that the Complainant claims are deemed to have prevailed. In fact, the Respondent’s default is not necessarily an admission that the Complainant’s claims are true. The burden of proof still rests with the Complainant to establish the three elements



contained within Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence for the Panelist to determine in accordance with Paragraph 10(d) of the Rules.

**A. Identical / Confusingly Similar**

The Complainant contends that the Disputed Domain Name is confusing similar to the Complainant's trademarks.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant marks (i.e., trademark or service mark) belonging to the Complainant and the Disputed Domain Name to ascertain the presence of the trademark in the Disputed Domain Name. In order to satisfy this test, the relevant marks would generally need to be recognizable as such within the Disputed Domain Name, with the addition of merely descriptive, common or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

On a side-by-side comparison of the Disputed Domain Name and the textual components of the Complainant's trademark, the trademark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark with "777" added to the end of the Disputed Domain Name.

The Panelist finds that the Complainant has rights in the trademark acquired through use and registration.

The Panelist agrees with the Complainant contentions that the Disputed Domain Name is the same and is a central and distinguishable part of the Complainant's registered trademark "NAGAWORLD". In saying so, the Panelist is also of the opinion that the addition of "777" does nothing to distinguish it from the Complainant's trademark of "NAGAWORLD" but rather increases the likelihood of confusion. As a result, the Panelist further concurs with the Complainant's stance that the Disputed Domain Name can easily mislead members of the public into believing that the Disputed Domain Name is owed or operated by the Complainant, or that the Respondent has a relationship or association with the Complainant in some way or form.

As stated previously, the Respondent has not contested the allegations of the Complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainant has discharged the burden of proof to establish the elements of identical and confusingly similar trademark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

**B. Rights and Legitimate interests**

The burden of proof shifts to the Respondent once the Complainant provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances, any of which is sufficient to demonstrate that a Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Complainant has authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the trademark. The Complainant has prior rights in the trademark which precede the Respondent's registration of the Disputed Domain Name by fourteen (14) years.

The Panelist finds on the record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden shifts to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the Disputed Domain Name or that the Disputed Domain Name has been used in connection with a bona fide offering of goods or services. To the contrary, the evidence shows that the Disputed Domain Name resolves to a website that apparently provides information and services in relation to gaming with the Complainant's trademarks clearly identifiable within the homepage and sub-pages of the website of the Disputed Domain Name. The Complainant has neither authorized nor consented to the Respondent to use the Complainant's trademarks.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

The Complainant has in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. This ineffectively entitles the Panelist to infer that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent's use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainant to use its trademarks. Nor is there any evidence that the Respondent has been commonly known by the Disputed Domain Name or similar name. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of the Complainant. In fact the use of the Disputed Domain Name in connection with a website that creates a misleading impression of being associated with the Complainant, does not give rise to any rights or legitimate interests in the Disputed Domain Name on the part of the Respondent.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainant has discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to paragraph 4(a) (ii) of the Policy.

### **C. Bad Faith**

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist shall take into consideration in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. Either one (1) of these four (4) factors are evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

The Disputed Domain Name is identical in substance to the Complainant's "NAGAWORLD" mark (leaving aside the figures "777" as explained above) thus demonstrating that the Respondent's sole purpose is to pass off as the Complainant. Through such a behavior the Respondent attempts to confuse/mislead members of the public into believing that the goods/services offered on the Disputed Domain Name website are somewhat associated with and endorsed by the Complainant thus creating a likelihood of confusion with the intention to attract internet users for commercial gain. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iii) and (iv) of the Policy:

*"(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor"*

*"(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 web site or location or of a product or service on your web site or location."*

In the present case, the evidence submitted by the Complainant clearly shows that the Respondent has an intention to mislead and/or to deceive internet users into believing that the Disputed Domain Name is that of the Complainant by registering the Disputed Domain Name on 30 October 2017.

The Panelist also notes that the Complainant rights in the trademarks predate the Respondent's registration of the Disputed Domain Name. The Panelist finds that, given the fact that the Complainant's trademark is widely known, it is overwhelmingly likely that the Respondent, at the time of registration of the Disputed Domain Name and thereafter, was aware that it was infringing the Complainant's trademark. Therefore, the Panelist concludes that the Respondent has registered the Disputed Domain Name and is using the Disputed Domain Name in order to attract internet users to the Respondent's website for commercial gain, thereby creating a likelihood of confusion for the purposes of paragraph 4(b) (iv) of the Policy. The Panelist therefore finds the requisite element of bad faith has been satisfied under paragraph 4(b) (iv) of the Policy.

On the matter of disrupting the business of a competitor, the Panelist find that the Respondent's business activities within the confines of the Disputed Domain Name website do in fact disrupt the Complainant's business by creating consumer confusion as well as preventing potential customers from using the services of the Complainant. The Panelist therefore finds the requisite element of bad faith has also been satisfied under paragraph 4(b) (iii) of the Policy.

For the foregoing reasons, the Panel concludes that the Complainant has discharged the burden of proof to establish that the Respondent registered and used the Disputed Domain Name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

## **6. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if “...*after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding*”. Reverse Domain Name

Hijacking is defined under the Rules as “...using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

In light of the conflicting decisions as to whether it is necessary for a Complainant to establish both bad faith registration and bad faith use, the Panel does not find this to be a case of Reverse Domain Name Hijacking.

## **7. Decision**

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panelist is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The Panel orders that the Disputed Domain Name <nagaworld777.com> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Christopher To', written over a horizontal line.

Dr. Christopher To  
Panelist

Dated: 30 October 2020