



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.: HK-2101535
Complainant: Television Broadcasts Limited
Respondent: Tieu Quynh of Minh Khai
Disputed Domain Name: <MOTPHIMTVB.NET >

1. The Parties and Contested Domain Name

The Complainant is **Television Broadcasts Limited** (hereinafter referred to as the “**Complainant**”), of 10th Floor, Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong Special Administrative Region of the People’s Republic of China.

The Authorized Representative of the Complainant is **Ms. Jane Ting**, of the Legal and Regulatory Department of the Complainant.

The Respondent is Tieu Quynh of Minh Khai, (hereinafter referred to as the “**Respondent**”) of Ha Noi, Ha Noi, 100000, VN, Vietnam.

The domain name at issue is <**MOTPHIMTVB.NET**> (hereinafter referred to as the “**Disputed Domain Name**”), registered with Porkbun LLC, 21370 SW Langer Farms Parkway, Suite 142-429, Sherwood, OR 97140, United States of America (hereinafter referred to as the “**Registrar**”).

2. Procedural History

On 8 September 2021, the Complaint (in the English language) 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 for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”) approved by ICANN Board of Directors on 28 September 2013, and the Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “**Supplemental Rules**”) effective from 31 July 2015.

On the same day, the Centre notified the Registrar of the Complaint and requested the Registrar to verify information associated with the Disputed Domain Name.

On 9 September 2021, the Centre confirmed receipt of the Complaint and requested the Complainant to submit the necessary case filing fees in accordance with Article 15 of the Supplemental Rules.

On 9 September 2021, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name, in which the Registrar stated that Tieu Quynh of Minh Khai is the registrant of the Disputed Domain Name; that the ICANN Policy is applicable to the Disputed Domain Name; that the language of the Registration Agreement of the Disputed Domain Name is English as provided by the Whois database; and that the Disputed Domain Name has now been placed under the registrar lock.

On the very same day, the Centre informed the Complainant that the contact information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

“In accordance with Article 4 of the Rules for the ICANN Uniform Domain Name Dispute Resolution Policy (‘Rules’), we are now reviewing the

Complaint for administrative compliance with the Policy and its Rules and have found the following deficiency.

The information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

Tieu Quynh

Minh Khai

Ha Noi, Ha Noi, 100000, VN

+84: VN.987654321

vuviphim1@gmail.com

For the deficiency stated above, we ask the Complainant to update the information of the Respondent in the Complaint Form with reference to the Whois information provided by the Registrar. The signed scanned version and word version of the Complaint Form should be sent to the Centre.

*According to Article 4(d) of the Rules, the Complainant is hereby required to rectify the above deficiency within 5 calendar days (i.e., **by 14 September 2021**), failing which the Complaint will be deemed withdrawn without prejudice to submission of a different complaint by the Complainant.”*

On 14 September 2021, the Complainant submitted a revised Complaint Form (dated 13 September 2021) with Annexes for the Centre’s attention.

On 15 September 2021, 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 shall forward the Complaint to the Respondent and the proceedings shall formally commence.

On the same day, the Centre wrote to the Registrar to verify the status of the Disputed Domain Name, as the website in which the Disputed Domain Name resolves to indicated that the Disputed Domain Name “*expired and will likely be deleting soon*”.

On 16 September 2021, the Registrar wrote to the Centre to clarify that the expiration date of the Disputed Domain Name was 2 September 2021 and that “*both parties would need to wait until after the domain is deleted, at which point either the registrant or Asian Domain Name Dispute Resolution Centre can contact us to pay the redemption fee.*”.

On 27 September 2021, the Centre after liaising with the Registrar wrote to the Complainant and Respondent to enquire from the parties as to (i) whether the Complainant wished to withdraw the Complaint; or (ii) whether the parties wish to renew the Disputed Domain Name during the redemption grace period. The Centre set a deadline of 5 October 2021 for the parties to respond.

On 28 September 2021, the Complainant wrote to the Centre informing the Centre that the Complainant will renew the Disputed Domain Name during the redemption grace period.

On 18 October 2021, the Centre wrote to the Complainant stating that “*We wish to follow up with respect to the deletion and redemption matters of the disputed domain name. We would appreciate if you could inform us how things stand now.*”.

On 18 October 2021, the Complainant replied to the Centre stating that “*...we have just contacted the Registrar regarding the renewal of the Domain Name. We will update you once the Domain Name is renewed.*”.

On 20 October 2021, the Complainant wrote to the Registrar to confirm that the invoice to renew the Disputed Domain Name was paid.

On 22 October 2021, the Registrar confirmed that the Disputed Domain Name “*was successfully restored and renewed...moved...to an admin account pending the results of the Dispute Resolution case.*”.

On 22 October 2021, the Centre wrote to the Registrar to confirm whether the Disputed Domain Name “*...has been locked and will not be transferred to another holder or registrar...*”.

On 23 October 2021, the Registrar wrote to the Centre to confirm that “...a transfer lock has been placed on the domain, and will remain until after the proceedings have concluded...”.

On 25 October 2021, the Centre wrote to the Respondent informing the Respondent that a Complaint relating to the Disputed Domain Name was filed by the Complainant and that under Paragraph 5 of the Rules, the due date for the Respondent to file a Response was on or before 14 November 2021.

On 14 November 2021, the Respondent did not file a response and is in default.

On 15 November 2021, the Centre wrote to the parties informing them that the Respondent did not file a response within the stipulated time frame and that the Centre would shortly proceed to appoint a Panelist to determine the matter.

On 15 November 2021, the Centre wrote to Dr. Christopher To enquiring as to his availability to act as a Sole Panelist (the “**Panelist**”) in relation to the Disputed Domain Name and whether he is in a position to act between the Parties.

On 17 November 2021, the Centre appointed Dr. Christopher To as the Panelist in this matter.

The Panelist finds that it was properly constituted and in accordance with Paragraph 15(a) of the Rules, the Panelist is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Paragraph 15(d) of the Rules, this Panel shall issue a reasoned decision.

3. Factual background

Complainant

The Complainant is a company whose business is television broadcasting, programme production and other broadcasting related activities such as programme and Video-On-

Demand (“VOD”) licensing, digital media business, audio and video products selling and distribution. It is the first wireless commercial television station in Hong Kong established in 1967. Since 1988, the Complainant has been publicly listed on the Hong Kong Stock Exchange (*reference Annexes III and IV of the Complaint*).

The Complainant has registered various trademarks and services marks associated with “TVB” globally (*reference Annex II of the Complaint*).

The Complainant is one of the largest producers of Chinese language programmes in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 200 countries and regions.

In 1999, the Complainant launched its principal website “TVB.COM” (<http://www.tvb.com>) on the Internet to provide worldwide viewers with the latest information on its programmes and artistes (*reference Annex V of the Complaint*).

In November 2008, the Complainant set up “myTV” section at TVB.COM providing its drama and variety programmes for users’ viewing on the Internet by means of live streaming and VOD in Hong Kong. As of 2010, “myTV” had 3,000,000 monthly visitors.

In 2011, the Complainant extended its “myTV” to mobile application for smartphone and tablet users to enjoy wireless viewing of its drama and variety programmes in Hong Kong.

In 2013, the Complainant launched “GOTV” mobile application for users to watch its drama on VOD basis via Internet on computer and mobile devices in Hong Kong.

In 2016, the Complainant launched “myTV SUPER” OTT (“over the top”) services for viewers to watch its dramas and variety programmes on livecast and VOD basis via Internet and/or set top box and/or applications on television, computer and mobile devices and through website <http://www.mytvsuper.com> in Hong Kong. myTV SUPER is now a leading OTT platform in Hong Kong and has over 9.1 million users (set-top boxes, mobile apps and website users combined) as of December 2020 (*reference Annex VI of the Complaint*).

The Complainant's wholly owned subsidiary, TVBI Company Limited (TVBI), is responsible for distribution of the Complainant's Chinese language programmes across the world. TVBI and its sub-licensees supply the Complainant's programmes to free-to-air broadcasters, cable and satellite television broadcasting service operators, telecommunication services provider, websites, video distributors and video-on-demand service providers worldwide (*reference Annex VII of the Complaint*).

Since 2005, TVBI began to exploit the VOD and interactive media market in the People's Republic of China ("PRC"). TVBI has licensed the Complainant's programmes to numerous VOD service providers (*reference Annex VIII of the Complaint*).

In August 2012, the Complainant together with China Media Capital and Shanghai Media Group set up a joint venture company 上海翡翠東方傳播有限公司 ("TVBC") replacing TVBI to handle the Complainant's programmes sub-licensing in PRC (*reference Annex IX of the Complaint*).

In 2014, the Complainant's wholly owned subsidiary, TVB Anywhere Limited, launched "TVB Anywhere" for viewers to watch the Complainant's Programmes and channels on television via set top box in overseas regions.

In 2019, TVB Anywhere Limited launched "TVB Anywhere+" mobile application for viewers to watch the Complainant's Programmes and channels on mobile devices and/or television via open Internet in overseas regions. Tutorial and various packages and pricing of "TVB Anywhere" and "TVB Anywhere+" are introduced at website of TVB Anywhere Limited (<https://www.tvbanywhere.com>) (*reference Annex X of the Complaint*).

The Complainant's wholly owned subsidiary, TVB (USA) Inc. ("TVBUSA"), provides satellite and cable TV services in the United States of America ("USA"). The Complainant's TV programmes, services and activities available in the USA are introduced at TVBUSA's website, <http://www.tvbusa.com> (*reference Annex XI of the Complaint*).

The Complainant is also a member of the Canadian Fairchild Media Group ("Fairchild"). The Complainant's TV programmes available in Canada are introduced at Fairchild

television channel's website, <http://fairchildtv.com> (reference *Annex XII of the Complaint*).

In terms of a presence in Vietnam, since 2009, TVBI has been collaborating with Saigontourist Cable Television Company Limited (SCTV) and VOD service providers in Vietnam, to provide the Complainant's programme to local audience via SCTV's channels (e.g., SCTV9 Channel, SCTV HD-Asian Movie Channel etc.) and VOD platforms (reference *Annex XIII of the Complaint*).

In 2019, TVB Anywhere Limited launched "TVB Anywhere VN" mobile application for viewers to watch the Complainant's Vietnamese dubbed programmes on mobile devices via open Internet in Vietnam (reference *Annex XIV of the Complaint*).

Apart from "TVB Anywhere VN", the Complainant's Vietnamese dubbed programmes are also available on TVB Anywhere's Vietnamese Youtube channel "Kênh TVB tiếng Việt" (<https://www.youtube.com/channel/UCaQyfI2ViHt86Q2EpA-Op-w>) and Fim+'s website (<https://movies.fimplus.vn/>) (reference *Annexes XV and XVI of the Complaint*).

As at the date of this submission, the Complainant and its subsidiaries have registered and are in ownership of over 190 domain names, bearing the mark "tvb" (reference *Annex XVII of the Complaint*).

In August 2021, it came to the Complainant's attention that the Respondent registered the Disputed Domain Name. According to the Complainant, the Respondent used the Disputed Domain Name to set up an online social community ("Website") to provide the Complainant's television programmes to the public for viewing. Large volumes of the Complainant's works were distributed on the Website by the Respondent without the Complainant's authorization (reference *Annex XVIII of the Complaint*).

On August 26, 2021, the Complainant sent cease and desist letters to the Respondent; the Website's Internet Services Provider, OVH. ("OVH") and the Registrar respectively, demanding them to remove or disable access to the Complainant's copyrighted works and to terminate their services with the Respondent (reference *Annexes XIX, XX and XXI of*

the Complaint). According to the Complainant neither the Respondent, OVH nor Registrar have responded to the Complainant's demand.

Respondent

The Respondent, Tieu Quynh, is an individual.

On 15 November 2021, the Centre informed this Panelist that the Centre did not receive a Response from the Respondent in relation to the Complaint on or before 14 November 2021, as such, the Respondent has not contested the allegations of the Complaint and is in default.

Disputed Domain Name

The Disputed Domain Name was registered on 2 September 2020.

4. Parties' Contentions

Complainant

The Complainant made the following submissions in the Complaint:

i. Identical/Confusingly Similar

The domain name in dispute is "**MOTPHIMTVB.NET**". The Complainant contends that the Vietnamese words "*mot phim*" means "*a movie*" in English and the domain name "*mot phim TVB*" means "*a TVB movie*".

According to the Complainant, the Disputed Domain Name clearly contains the Complainant's registered trademark "**TVB**". The mark "**TVB**" has been used by the Complainant continuously for more than 50 years. The Complainant first registered "**TVB**" as its trademark in Hong Kong in 1992 and has since registered and/or applied for registration of the trademark in over 30 jurisdictions around the world. In addition, the Complainant and its subsidiaries have also applied and registered numerous trademarks in

various jurisdictions incorporating the essential element of the letters “*TVB*” for various services. Examples include “*iTVB*”, “*TVBI*”, “*TVBS-E*” to name a few (*reference Annex XXII of the Complaint*).

The Complainant states that TVBI has been cooperating with SCTV since 2009, providing the Complainant’s Vietnamese-dubbed programme to audiences in Vietnam via SCTV’s channels (which according to the Complainant are top-rated in Vietnam) and VOD platforms.

The Complainant further states that the Complainant’s subsidiary, TVB (USA) Inc., operates cable and satellite TV services to Chinese speaking audience in USA since 1976. Since 2012, the Complainant through TVBC has been handling Complainant’s programmes sub-licensing in the PRC and in 2018 launched “*Mai Dui*” mobile application for viewers in the PRC to watch Complainant’s programmes and live events.

The Complainant asserts that the Complainant’s name and trademark is globally recognized.

The Complainant further asserts that it enjoys trademark rights in the name “*TVB*” due to the goodwill and reputation accumulated through extensive use, advertising, promotion of the mark since its registration in the early 1990s.

The Complainant contends that the Disputed Domain Name comprises the Complainant’s registered mark “*TVB*” and is confusingly similar with the Complainant’s trademarks.

The Respondent registered the Disputed Domain Name on 2 September 2020. The Complainant further contends that by registering the Disputed Domain Name the Respondent has deliberately intended to offer the public the viewing of the Complainant’s programmes without the Complainant’s authorization (*reference Annex XXIII of the Complaint*).

It is the Complainant’s stance that by registering the Disputed Domain Name, the Respondent has acted fraudulently by taking advantage of the Complainant’s goodwill and reputation, counterfeiting the Complainant’s identity by misleading the public into

believing that the Complainant and/or its official website, www.tvb.com is associated with the Disputed Domain Name or that the Complainant has in some way or form authorized the Respondent to use the Disputed Domain Name.

ii. Rights and Legitimate Interests

The Complainant contends that the Respondent is not in any way connected, associated, or affiliated with Complainant and Complainant has not authorized, endorsed, or otherwise permitted the Respondent to register the Disputed Domain Name or to use the Complainant's trademark or any variation thereof.

The Complainant further contends that there is no evidence that the Respondent has been commonly referred to nor has the Respondent been reasonably said to have any rights or legitimate interests in registering or using the Disputed Domain Name.

The Complainant submits that by offering users to view the Complainant's programmes without authorization, the Respondent has infringed the copyright and other intellectual property rights of the Complainant. The Complainant further submits that the Respondent is not making any legitimate or fair use of the Disputed Domain Name.

iii. Bad Faith

The Complainant advocates that the Disputed Domain Name has been registered and used in bad faith.

The Disputed Domain Name was registered in 2020 whereas the Complainant has been widely publicizing "TVB" as its brand name since 1967 and given the Complainant's strong presence in Vietnam, by using "*mot phim TVB*", meaning "*a TVB movie*" as its domain name, the Complainant contends that the Respondent has intentionally chosen the Disputed Domain Name for its Website with full knowledge of the Complainant's business and trademark. According to the Complainant this is inconceivable as the Respondent must have been aware of the Complainant's business and its trademark prior to registering the Disputed Domain Name.

Being in the content licensing and distribution business, the Complainant has granted its VOD and on-line streaming rights of its programmes to (a) TVBC for sub-licensing in the PRC; (b) TVBI for its TVB Anywhere, TVB Anywhere+ and TVB Anywhere VN services; and (c) SCTV and Fim+ (<https://movies.fimplus.vn/>) in Vietnam via TVBI. The Complainant asserts that the Respondent, by setting up the Website for its distribution and offering the public viewing of Complainant's programme contents online, is in fact using the Disputed Domain Name in direct competition with the Complainant's business. This has seriously prejudiced the Complainant's commercial interests by distracting customers away from the Complainant's business, who, instead of buying video products, subscribing VOD/OTT services, or visiting online platforms authorized by the Complainant, choose to visit the Website to get the Complainant's programmes for free. The Respondent's use of the Website has therefore adversely affected the Complainant's business and income.

The Complainant further asserts that the Respondent is riding on the reputation of the Complainant by using the Disputed Domain Name to attract Internet users to the Respondent's website for commercial benefits. By making use of the Complainant's works, and by creating a likelihood of confusion with the Complainant's trademarks, the Respondent has misled the public into believing that the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location are associated with the Complainant, or with its authorization.

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 this Panel 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 and attachments of 13 September 2021.

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 9 September 2021, 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 before the Panelist 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 in line with Paragraph 11(a) of the Rules.

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 in these proceedings (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 confusingly similar to the Complainant's trademark "TVB" which the Complainant has prior rights.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant trademarks/marks/logos/wordings belonging to the Complainant and the Disputed Domain Name to ascertain the presence of the trademarks/marks/logos/wordings in the Disputed Domain Name. To satisfy this test, the relevant trademarks/marks/logos/wordings 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.

In essence, this Panel has to consider whether the Disputed Domain Name, namely, < MOTPHIMTVB.NET >, is a central and distinguishable part of the Complainants' trademark/mark.

The Disputed Domain Name contains two elements: (i) “MOTPHIMTVB” and (ii) top-level generic domain “.net”. It is well established that the top-level generic domain “.net” 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.

On a side-by-side comparison of the Disputed Domain Name and the textual components of the Complainant’s trademark/mark, the trademark/mark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark/mark/wordings of the Complainant with the word “*MOTPHIM*”, (the Complainant asserts that the Vietnamese word “*mot phim*” means “*a movie*” in English and the domain name “*mot phim TVB*” means “*a TVB movie*”) which is insufficient to prevent a finding of confusing similarity.

The distinctive part of the Disputed Domain Name < MOTPHIMTVB.NET > is “TVB”, which is confusingly similar to the Complainant’s trademark/mark “*TVB*” thus creating a likelihood of confusion amongst Internet users.

The Panelist finds that the Complainant has rights in the trademark/mark/wordings acquired through use.

The Panelist agrees with the Complainant’s contentions that the Disputed Domain Name is the same and is a central and distinguishable part of the Complainant’s “*TVB*” trademark/mark. 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 owned 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/mark.

The Panelist finds on 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. The Complainant has neither authorized nor consented to the Respondent to use the Complainant's trademark/mark.

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 effectively 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 marks. 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 mark of the Complainant.

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 being 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.

From the evidence submitted by the Complainant, the Panel finds that the Respondent is attempting to use the Disputed Domain Name to create confusion with the Complainant's trademark/mark with the view of gaining commercially. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iv) of the Policy:

“(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.”

The Panelist also finds that, given the fact that the Complainant's trademark/mark is known within the community, it is likely that the Respondent, was aware that it was infringing the Complainant's trademark/mark.

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 < MOTPHIMTVB.NET > 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: 22 November 2021