



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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Version	
Decision ID	DE-0800187
Case ID	HK-0800201
Disputed Domain Name	www.tvbnow.com www.bttvb.com
Case Administrator	Dennis CAI
Submitted By	Sebastian Hughes
Participated Panelist	

Date of Decision 31-12-2008

Language Version : English

The Parties Information

Claimant	Television Broadcasts Limited
Respondent	TVBNOW

Procedural History

On 19 September 2008, the Complainant submitted the Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”). On 29 September 2008, the Centre confirmed receipt of the Complaint.

On 29 September 2008, the ADNDRC sent a request to the Registrar for registrar verification in connection with the disputed domain names. The Registrar replied on 30 September 2008 by email confirming that the Respondent is listed as the registrant for the disputed domain names.

On 3 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action, and requested the Respondent to submit a Response within 20 calendar days.

On 20 October 2008, the ADNDRC informed the Respondent that it agreed to extend the time for filing a Response to 10 November 2008, after receiving a request for an extension of time from the Respondent, and reviewing the submissions of both parties in this regard.

The Respondent submitted the Response on 10 November 2008 by email to the ADNDRC.

The Complainant and the Respondent have elected to have the Complaint decided by a single member Panel.

On 12 December 2008, the ADNDRC informed the parties of the appointment of a single member Panel to decide the dispute.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Factual Background

For Claimant

The following facts are alleged by the Complainant in the Complaint and have not been disputed by the Respondent.

The Complainant, Television Broadcasts Limited, commonly known as TVB, was the first wireless commercial television station to be set up in Hong Kong. It was first established in 1967 with only about 200 staff. The Complainant has now grown to a size of about 4,500. Shares of the Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988.

The principal activities of the Complainant are television broadcasting, programme production and other broadcasting related activities such as programme licensing, audio and video product rental, selling and distribution, etc. It is the largest producer of Chinese language programming in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 30 countries, accessible to more than 30 million people every day.

The Complainant's subsidiary, TVBI Company Limited (TVBI), is the world's largest distributor of Chinese-language programmes. TVBI and its sub-licensees supply Complainant's programmes to free-to-air broadcasters, cable and satellite television broadcasting service operators and video distributors worldwide.

In 1999, the Complainant launched its principal website "tvb.com" (<http://www.tvb.com>) on the Internet to provide worldwide viewers the latest information on its programmes and artistes. "tvb.com" contains video clips of the Complainant's programmes for public viewing online.

Since 2001, the Complainant has been licensing its copyrighted works to "www.now.com.hk" for its video-on-demand ("VOD") service to its subscribers in Hong Kong.

In 2005, TVBI began to exploit VOD and Internet interactive media markets worldwide.

As at the date of this submission, the Complainant or its subsidiary has registered 28 domain names bearing the mark "tvb", namely, "tvb.com", "tvb.com.hk", "tvb.com.cn", "tvb.asia", "tvbs.net", "tvbusa.com", "tvbusa.us", "tvb.co.uk", "tvbwkly.com", "tvbartisteblog.com", "tvbartistsblog.com", "tvbartistesblog.com", "tvbartistblog.com", "tvbartistesblog.cn", "tvbartisteblog.cn", "tvbartistsblog.cn", "tvbartistblog.cn", "tvbartistesblog.com.cn", "tvbartisteblog.com.cn", "tvbartistsblog.com.cn", "tvbartistblog.com.cn", "tvbmusic.com.hk", "tvbnews.com.hk", "tvbn.com.hk", "tvbn.hk", "tvbgroup.com.cn", "tvbgroup.cn" and "tvbchina.com.cn".

For Respondent

The following facts are alleged by the Respondent in the Response.

"www.tvbnow.com" was set up in April 2006 and is used to run an online forum. The Chinese name of the forum is "公仔箱". "tvbnow" stands for "Television Box Now".

"www.tvbnow.com" had more than 790,000 members as of the date of the Response. The traffic ranking of "www.tvbnow.com" was 105 in Hong Kong, compared with that of tvb.com which was ranked 18.

"www.bttvb.com" was set up in June 2006. It was set up to test the business viability of the online forum before the formal website was officially launched. "bttvb" is the acronym for "built to test virtual board". It is now used to divert the original 10,000 or 80 members in the testing period (June 2006 to August 2006) to the official forum "tvbnow.com".

Parties' Contentions

Claimant

The Complainant's contentions are as follows:

In March 2008, it came to the Complainant's attention that the Respondent had registered the disputed domain names "www.tvbnow.com" ("the 1st disputed domain name") and "www.bttvb.com" ("the 2nd disputed domain name"). The Respondent has used the 1st disputed domain name to set up an online social community for members to discuss and share with other members downloaded television programmes of the Complainant. Large volumes of the Complainant's works are being distributed on the Respondent's website ("the website") by the Respondent's members without the Complainant's authorisation.

There was no valid use of the 2nd disputed domain name in dispute as of the date of the Complaint. It only directed users to the same website of the 1st disputed domain name.

The website is in Chinese traditional language. Although the Respondent's address is in Canada, the IP location of the website is in Hong Kong.

From March 2008 to July 2008, the Complainant has sent various letters of desist to the Respondent via email and fax demanding its deletion of the Complainant's copyrighted works but the Respondent has not taken any action to stop infringing activities on the website.

(1) Identical / Confusingly Similar

The domain names in dispute are “tvbnow.com” and “bttvb.com”. By comparing the disputed domain names with the Complainant’s trade mark “TVB”, it clearly illustrates that the disputed domain names “TVB Now” and “BT TVB” are highly and confusingly similar to the Complainant’s registered trade mark and service mark “TVB”. The mark “TVB” has been used by the Complainant continuously for almost 40 years. The Complainant has first registered “TVB” as its trade mark in Hong Kong in 1992 and “TVB” is currently registered and/or applied for registration by the Complainant in over 30 jurisdictions worldwide.

In addition to the mark “TVB”, the Complainant has also registered numerous trade marks incorporating the essential element of the letters “TVB”. Examples are “TVBS”, “TVB8”, “TVBA Value Club”, “TVBJ”, “TVBA”, “TVBVideo” and “TVBS-E”, “TVBUDDY” in various jurisdictions and for various services.

Further, the Complainant’s group of companies operates and owns the following satellite television channels:

- (a) “TVBJ” - Chinese-language television channel has been distributed in Australia & Singapore since 2000
- (b) “TVBS-E” - Chinese language television channel has been distributed in UK and Europe since 1997
- (c) “TVB8” - Chinese language television channel has been distributed in PRC, Asia and Pacific region since 1998.
- (d) “TVBS” service consisting of three channels: “TVBS”, “TVBS-G”, “TVBS-News” and “TVBS Asia” - Chinese language television channels have been distributed in Taiwan since early 90s’.

In 1997, TVBI began to run a franchised video chain called “TVB Video” in Vancouver, Canada. In U.S., Complainant’s subsidiary TVB (USA) Inc. operates cable and satellite TV services to Chinese speaking audiences nationwide since 1976.

The Complainant has also joined hands with various PRC Internet Protocols to set up special online forums branded as “TVB zone” (“TVB 專區”) whereby the zone solely conveys the Complainant’s programmes productions and information to Internet users.

In such circumstances, the Complainant’s name and trade mark have been well known worldwide. The Complainant enjoys trade mark 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 90s’.

The Respondent registered the 1st disputed domain name in dispute on 5th August 2006 and the 2nd disputed domain name in dispute on 24th June 2006. By setting up forums for sharing the Complainant’s programmes among members, it clearly shows that the Respondent is deliberately using the Complainant’s trade and the Complainant’s trade mark “TVB” to attract Internet users.

The 1st disputed domain name, “TVB Now” and the 2nd disputed domain name “BT TVB” mainly comprise the mark “TVB”. Although the word “Now” is added after the word “TVB” and the word “BT” is added in front of the word “TVB”, the disputed domains should be seen as confusingly similar with the Complainant’s trade mark “TVB” and other trade marks deriving from “TVB”, such as “TVB Video”, “TVBS-E”, “TVB8” & “TVBA Value Club”.

In particular, the first two letters of the 2nd domain name in dispute -- “BT” is an abbreviation now commonly used and referred to by Internet users as one of the data transmission and downloading technologies on the Internet. The combination of “BT” and “TVB” will mislead the public to believe that “www.bttvb.com” is the Complainant’s authorized or official site for BT downloads of TVB programmes.

To conclude, the Respondent’s domain names can cause confusion to the public and mislead them to think that Complainant and/or its official web sites, such as “www.tvb.com” is associated with the domain names in dispute or that the Complainant has authorized the Respondent to use the trade mark and/or service mark of the Complainant. There is reason to believe that the Respondent purposely and intentionally selected domain names confusingly similar to the Complainant’s domains and trade mark.

(2) Rights and Legitimate Interests

The Respondent is not in any way connected, associated or affiliated with the Complainant and the Complainant has not authorised, endorsed or otherwise permitted the Respondent to register the domain names in dispute or use the Complainant’s trade mark or any variation thereof.

There is no evidence that the Respondent has been commonly referred to as the disputed domains, and there is no reason why the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the disputed domains. Further, by aiding and abetting members to infringe the Complainant’s copyright, disregarding the Complainant’s complaint and receiving advertising sponsorship for the website in return, the Complainant contends that the Respondent is not making any legitimate, non-commercial or fair use of the domain names in dispute.

(3) Bad Faith

The Complainant believes that the Respondent has registered and used the domain names in dispute in bad faith. The domain names in dispute were registered in 2006 while the Complainant has been widely publicizing “TVB” as its name since 1976. The Respondent uses the domain names in dispute for the website where it provides a forum named “香港TV劇集專區” (“Hong Kong TV Series Zone”) for its members to upload, download and distribute, inter alia, the Complainant’s programmes. The Complainant’s programmes are often referred to by members and on the forum as “TVB” . The Respondent should have known the Complainant’s business and its trade mark “TVB” . It is inconceivable that at the time of registering the disputed domain names the Respondent was not aware of the Complainant’s business and its trade mark. The Complainant engages in programme content licensing business. In particular, the Complainant has licensed VOD rights of its programmes and the use of the mark “TVB” to “www.now.com.hk” in Hong Kong, and through TVBI to “www.astro.com.my” in Malaysia and “www.vv8.com” in PRC. The Respondent, by setting up the platform for its member’s free sharing, distribution and viewing of the Complainant’s works online, is in fact using the domain names in dispute in direct competition with Complainant’s business.

The Respondent’s use of the Website has seriously prejudiced the Complainant’s commercial interests. The Respondent has distracted customers from the Complainant, who, instead of buying video products or subscribing VOD services authorized by the Complainant, choose to register with the Respondent in order to get the Complainant’s programme contents for free at “www.tvbnow.com” (or “www.bttvb.com”). The Respondent’s use of the website has therefore adversely affected the Complainant’s business and income.

It is obvious that the Respondent is riding on the reputation of the Complainant and uses the domain names in dispute deliberately 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 trade mark, the Respondent has misled the public to believe that the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service on the Respondent’s web site or location are associated with the Complainant, or with its authorization.

Respondent

The Respondent’s contentions are as follows:-
Identical or confusingly similar

Both “tvbnow” and “bttvb” are not trade marks of the Complainant. None of the disputed domain names is identical to any of the Complainant’s registered trade marks. Both “tvbnow” and “bttvb” are not identical to the Complainant’s 28 registered domain names.

“tvbnow” and “bttvb” are not confusingly similar to the Complainant’s trade marks or service marks. The spellings are not similar or confusingly similar. This is not the case, for instance, that “tvbbuddy” would be mistaken for “tvbuddy” or that “tvbwly” would be mistaken for “tvbwly” (sic). No typopiracy is involved.

The Respondent further submits that:-

“tvb” itself is the acronym for Television Broadcasts (Limited). An acronym, when combined with other letters, does not necessarily have the same meaning as the original group of words. Further, the letters “tv” itself are in fact the acronym for television.

“tvbnow” in fact is the acronym for “television box now” . The letter “b” in “tvbnow” means “box” and it is reflected in the Chinese name of the Respondent’s business – “公仔箱” . “公仔箱” itself has the meaning of a television set and by adopting this name, the Respondent is trying show the public that the business or forum in question relate to some extent the television business as a whole.

When one conducts a search in Google or Yahoo for “公仔箱” , the first result would be “tvbnow.com” . When one does a search for “tvb” , the first result would be “tvb.com.hk” . There is therefore no confusion between “tvbnow.com” and “tvb.com” .

The results from the searches in Google and Yahoo also show that “tvbnow” is an established term on the internet.

“bttvb” is the acronym for “built to test virtual board” . “bttvb.com” was first launched in June 2006 to test the business viability of the Respondent. It was only used for 2 months as it was intended to be a temporary site. After the virtual board or forum under the name “bttvb” was tested and proved viable, a formal forum under the name of “tvbnow” was established and “bttvb.com” has been arranged to divert internet users to “tvbnow.com” to enable the original 10,000 or so members in the testing period (June 2006 to August 2006) to be diverted to the official forum (tvbnow.com).

“bttvb” does not mean “bit torrent TVB” , just like “dltvb” does not necessarily mean “download TVB” . (“www.dltvb.com” is in fact the official website of a company called DaLian Technology Venture Building Management Co. Ltd.).

The Index Page or any pages from “www.tvbnow.com” are not similar to “www.tvb.com” . The public will not be confused.

For the 28 domain names of the Complainant, most of them are not in use or divert internet users back to “www.tvb.com” . For others, the Complainant’ s logo is shown prominently on the front page of the site. The public will not get confused that “tvbnow” is associated with the Complainant.

The business nature of the Complainant and that of the Respondent are different. The Complainant is mainly in television business whilst the Respondent is operating a discussion forum on the internet. There are more than 400 different boards (sic) in “tvbnow.com” out of which only 2 boards (sic) may contain information of, inter alia, the Complainant.

It is oppressive and amounts to a reverse hijacking of the disputed domains by claiming that a domain name which contains the letters “tvb” must be transferred to the Complainant regardless of other letters attached thereto or regardless of the what the acronym stands for.

Rights or legitimate interests in respect of the disputed domain names.

The Complainant fails to show that before any notice of the dispute had been served on the Respondent, the use of the disputed domain names by the Respondent was not in connection with a bona fide offering of goods or services.

On the other hand, the Respondent is able to show that as of the Response, there were more than 790,000 member registered with tvbnow.com and that there were more than 30,000 visitors to “tvbnow.com” everyday. The number of members and daily visitors of “tvbnow.com” before the issue of the proceedings on 19 September 2008 were more or less the same.

Most of the visitors to “tvbnow.com” visit various boards (sic) unrelated to the boards (sic) which contain information of, inter alia, the Complainant.

The Complainant fails to show that the disputes domain names are not commonly known. On the other hand, the Respondent has demonstrated that the keyword search of “公仔箱”, the Respondent’ s Chinese name, has linked to “tvbnow.com” in both Google and Yahoo. It shows that tvbnow.com is an established and widely known website. The numbers of members and daily visitors also show the high popularity of tvbnow.com and/or btv.com.

The use of “btv” and “tvbnow” is fair and the Complainant fails to provide evidence to demonstrate how the business of the Complainant has been mistakenly diverted to the Respondent because of the alleged similar domain names. Even if the viewers would be able to view the Complainant’ s programme contents for free at “tvbnow.com” , it would be the viewers’ conscious decision but not due to the fact that they are misled to do so. The Daily Unique Visitor Trends (sic) for “tvb.com” and “tvbnow.com” show that there are no direct relationship between the visitors of the said 2 sites.

The Respondent does not charge any of its members for using any of the boards of the forum (sic) at “tvbnow.com” .

The Respondent has not been acting in bad faith in acquiring both “btv.com” and “tvbnow.com” . The true name and address of the applicant had been provided for the application. No attempt has been made to sell the disputed domains to the Complainant or its competitor.

The primary purpose of registering the disputed domains was to run an online forum but not to disrupt the Complainant’ s business (if any at all).

The Respondent denied, as alleged by the Complainant, that it is riding on the reputation of the Complainant. Even if this is true, which is strongly denied, it is submitted that it is not motivated by bad faith and the trade marks or service marks of the Complainant have not been tarnished as a result.

Findings

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

- i. Respondent’ s domain name must be identical or confusingly similar to a trade mark 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.

Identical / Confusingly Similar

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) use of, or preparations to use, the domain name in connection with a bona fide offering of goods or services;
- (ii) the fact that the Respondent has commonly been known by the domain name; and
- (iii) legitimate non-commercial or fair use of the domain name.

The Complainant has not authorised, licensed, endorsed or otherwise permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain names by over 40 years. The Complainant has therefore established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain names and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption (*Do The Hustle, LLC v Tropic Web* WIPO Case No. D2000-0624).

The Respondent has failed to show that it has acquired any trade mark rights or that its domain names are used in connection with a bona fide offering of goods or services. The evidence suggests that the Respondent has provided a convenient channel for the unauthorised uploading and downloading of the Complainant's copyrighted works via its website and has made no attempt to stop these activities despite repeated demands from the Complainant. The Panel finds that, insofar as the disputed domain names might have become commonly known, this is largely due to the reputation of the Complainant and the popularity of the Trade Mark and of the Complainant's programmes featured on the Respondent's website. The Respondent's contention that its website has a large number of registered members and visitors does not of itself establish that the Respondent's use of the domain name amounts to a bona fide offering of goods or services. To the contrary, the evidence suggests the Respondent's website is being used for an unlawful purpose.

There has been no evidence adduced to show that the Respondent has any registered trade mark rights with respect to the disputed domain names.

The Respondent contends that "its Chinese name "公仔箱" has got a first return of "tvbnow.com" in both Google and Yahoo search" (sic). The Panel finds that this is not enough to establish that the Respondent has been commonly known by the 1st disputed domain name.

There has been no evidence adduced to show that the Respondent has been commonly known by the 2nd disputed domain name.

The Panel finds that it is more likely the disputed domain names may have become commonly known amongst the relevant public not because of the Respondent's use and promotion of the Respondent's website, but because of the name and activities of the Complainant (*Wal-Mart Stores, Inc. and Wal-Mart China Co. Ltd v Chiu Tien Fu* Case No. HK 0800213).

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain names. The Panel therefore finds that the Complaint fulfills the second condition of paragraph 4(a) of the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) use of, or preparations to use, the domain name in connection with a bona fide offering of goods or services;
- (ii) the fact that the Respondent has commonly been known by the domain name; and
- (iii) legitimate non-commercial or fair use of the domain name.

The Complainant has not authorised, licensed, endorsed or otherwise permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain names by over 40 years. The Complainant has therefore established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain names and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption (*Do The Hustle, LLC v Tropic Web* WIPO Case No. D2000-0624).

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There has been no evidence adduced to show that the Respondent has any registered trade mark rights with respect to the disputed domain names.

The Respondent contends that "its Chinese name "公仔箱" has got a first return of "tvbnow.com" in both Google and Yahoo search" (sic). The Panel finds that this is not enough to establish that the Respondent has been commonly known by the 1st disputed domain name.

There has been no evidence adduced to show that the Respondent has been commonly known by the 2nd disputed domain name.

The Panel finds that it is more likely the disputed domain names may have become commonly known amongst the relevant public not because of the Respondent's use and promotion of the Respondent's website, but because of the name and activities of the Complainant (Wal-Mart Stores, Inc. and Wal-Mart China Co. Ltd v Chiu Tien Fu Case No. HK 0800213).

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain names. The Panel therefore finds that the Complaint fulfills the second condition of paragraph 4(a) of the Policy.

Bad Faith

Pursuant to paragraph 4(b)(iv) of the Policy, the following conduct amounts to registration and use in bad faith on the part of the Respondent:-

“By using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Panel has already found the 1st and 2nd disputed domain names confusingly similar to the Trade Mark. Further, the forum named “Hong Kong TV Series Zone” on the Respondent's website provides its members a channel to upload, download and distribute, inter alia, the most recent and popular programmes of the Complainant. The Panel finds that the public is likely to be confused into thinking that the disputed domain names have a connection with the Complainant, contrary to the fact. There is a strong likelihood of confusion as to source, sponsorship, affiliation or endorsement of the Respondent's website.

To establish an intention for commercial gain, evidence is required to indicate that it is “more likely than not” that intention existed (Wal-Mart Stores, Inc. and Wal-Mart China Co. Ltd v. Liangchenyong ADNDRC Case no. HKcc-0800008).

The Panel notes the hyperlinks in the Respondent's website linking to various websites that provide other kinds of services or products. The Panel concludes it is reasonable to infer that these hyperlinks are for advertising purposes. In all the circumstances, the Panel concludes that the Respondent is making a commercial gain through its use of the disputed domain names. In view of the reputation of the Complainant and the popularity of the Complainant's programmes in the Chinese speaking community worldwide, the Panel finds that the Respondent has registered and used the disputed domain names to benefit from the Complainant's works and reputation with an intention to make a commercial gain.

The Panel concludes that the Respondent's use of the disputed domain names falls under paragraph 4(b)(iv) of the Policy and the disputed domain names have been registered and are being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

Status

www.tvbnow.com	Domain Name Transfer
www.bttvb.com	Domain Name Transfer

Decision

The Panel concludes that the Complainant has established its case and that relief should be granted. Accordingly, it is ordered that the disputed domain names be transferred from the Respondent to the Complainant.

Sebastian Hughes
Panelist

Dated: 19 December 2008