



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801060
Complainant:	Television Broadcasts Limited
Respondent:	Kah Bow
Disputed Domain Name(s):	<HDTV.BIZ>

1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited, of Legal and Regulatory Department, 10/F., Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

The Respondent is Kah Bow, of Wattana, Bangkok 10110, Thailand.

The domain name at issue is <HDTV.BIZ> (“the disputed domain name”), registered by the Respondent with Name.com, Inc. of 414 14th Street, #200 Denver, Colorado 80202, USA.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on January 11, 2018, in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On January 11, 2018, the Hong Kong Office sent an email to Name.com, Inc. (the Registrar of the disputed domain name) requesting verification in connection with the relevant information of the disputed domain name.

On January 11, 2018, the Hong Kong Office confirmed receipt of the Complaint.

On January 12, 2018, the Registrar of the disputed domain name confirmed that the Respondent is Kah Bow and the disputed domain name is registered with Name.com, Inc.

On January 17, 2018, the Hong Kong Office sent the Respondent a written notice of Complaint which involved a notification that a Complaint concerning the disputed domain

name was submitted against the Respondent and a requirement to submit a Response within 20 days from January 17, 2018 (on or before February 6, 2018), and forwarded the Complaint (along with its Annexures) to the Respondent pursuant to the Policy, Article 4 of the Rules and Article 6 of the ADNDRC Supplemental Rules. The formal date of the commencement of the administrative proceeding on was January 17, 2018.

On February 7, 2018, the Hong Kong Office confirmed that it did not receive a Response from the Respondent in respect of the Complaint concerning the disputed domain name within the required period.

On February 13, 2018, the Hong Kong Office appointed Ms Francine Tan as the sole Panelist for this domain name dispute.

3. Factual background

The Complainant, commonly known as TVB, is the first wireless commercial television station in Hong Kong. It was established in 1967 and has since grown to manage 4,600 staff and artistes worldwide. The shares of the Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988.

The principal activities of Complainant are television broadcasting, video rental, programme production and other broadcasting related activities such as programme and Video-On-Demand (“VOD”) licensing, audio and video products rental, selling and distribution, etc. It is one of the largest producers 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 over 300 million households.

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. 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. In 2010, “myTV” had 3,000,000 visitors monthly. In 2011, 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 located at www.mytvsuper.com in Hong Kong.

The Complainant’s wholly-owned subsidiary, TVBI Company Limited (TVBI), is the world’s largest distributor of Chinese language programmes. 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.

Since 2005, TVBI has exploited the VOD and interactive media market in China. TVBI has licensed the Complainant’s programmes to numerous VOD service providers. In August 2012, the Complainant, China Media Capital and Shanghai Media Group set up a joint venture company 翡翠東方傳播有限公司 (“TVBC”) replacing TVBI to handle the Complainant’s programmes sub-licensing in PRC. In 2014, TVBI launched “TVB Anywhere” (<http://eu.tvbanywhere.com>) television box with OTT services and application

for viewers to watch the Complainant's programmes and channels on television and/or mobile device via open Internet worldwide. Additionally, the Complainant's subsidiary, TVB Europe, offers 24-hour Chinese television programme services on daily basis and now covers 48 countries in Europe.

As at the date of the submission of the Complaint, the Complainant and its subsidiaries have registered 139 domain names incorporating the TVB trade mark including, *inter alia*, <tvb.asia>, <tvb.biz>, <tvb.com>, <tvb.com.cn>, <tvb.com.hk>, <tvb.com.sg>, <tvb.hk>, <tvb.video>, <tvb. 商标>, <tvbi. 商标>, <tvbc.com.cn>, <tvbc. 中國>, <tvb. 中國>, <tvbchina.cn>, <tvbchina.com.cn>, <tvbeurope.asia>, <tvbeurope.biz>, "tvbgroup.cn", <tvbgroup.com.cn>, <hdtvb.me>, and <hdtvb.site>.

The Complainant and its subsidiaries have applied for and/or registered many trade marks comprising the main element, "TVB" including TVB8, TVBVideo, TVBC, TVBJ Anywhere, and TVB Europe in more than 30 jurisdictions worldwide. The TVB trade mark was first registered in Hong Kong in 1972.

In December 2017, the disputed domain name came to the Complainant's attention. The disputed domain name was registered on February 6, 2017 and is used in relation to an online social community (the "Website") for its users to view the Complainant's television programmes. Large volumes of the Complainant's works are being distributed on the Website by the Respondent without the Complainant's authorization. On December 5, 6 and 8, 2017, Complainant sent cease and desist letters to the Respondent, the Website's Internet Services Providers, CloudFlare Inc. ("CloudFlare") and Quasinetworks.com, as well as the domain name Registrar, Name.com, Inc., respectively, demanding them to remove or disable access to the Complainant's copyrighted works and to terminate their services with the Respondent. None of these parties responded to the Complainant's demand.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's trade mark TVB which has been used continuously for more than 50 years and is well known worldwide.
- ii. The disputed domain name takes advantage of the Complainant's goodwill and reputation, and misleads the public into believing that the Complainant is associated with the Website or that the Complainant has authorized the Respondent to use the disputed domain name.
- iii. The Respondent has no rights or legitimate rights in the disputed domain name.
- iv. The Respondent is not in any way connected, associated, or affiliated with the Complainant. The Complainant has not authorized, endorsed or otherwise permitted the Respondent to register the disputed domain name.
- v. There is no evidence that the Respondent has been commonly referred to by the disputed domain name.
- vi. The Respondent has infringed the Complainant's copyright by offering users to view the Complainant's programmes without the Complainant's consent. Such use of the disputed domain name does not constitute legitimate or fair use of the disputed domain name.
- vii. The Respondent has registered and used the disputed domain name in bad faith.

- viii. The Respondent intentionally chose the disputed domain name for the Website with full knowledge of the Complainant's business and trade mark, TVB. The Respondent is using the disputed domain name in direct competition with the Complainant's business of licensing and distribution of its programmes.
- ix. The Respondent's use of the disputed domain name in relation to the Website is harmful to the Complainant's commercial interests. Instead of buying video products of the Complainant or subscribing to the Complainant's VOD/OTT services or visiting the Complainant's website, Internet users are directed to the Respondent's Website to obtain the Complainant's programme contents for free.
- x. The Respondent is riding on the Complainant's reputation and on its TVB trade mark to attract Internet users to the Website for commercial benefit, and to mislead as to the source, sponsorship, affiliation or endorsement of the Respondent's Website or location or of a product or service on the Website.

B. Respondent

The Respondent did not file any Response.

5. Findings

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

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

A) Identical / Confusingly Similar

The Complainant has established that it has registered as well as common law rights in the trade mark TVB through many years of continued use. The letters "TVB" in combination with other elements have also been registered as trade marks by the Complainant.

The disputed domain name reproduces entirely the Complainant's TVB trade mark with the addition of the gTLD suffix ".biz" and the letters "hd". The gTLD ".biz" has no impact or relevance when considering the issue of identity or confusing similarity under Paragraph 4(a)(i) of the Policy since it is a technical requirement of domain name. The TVB trade mark is clearly identifiable in the disputed domain name. The addition of the letters "hd" does not remove the confusing similarity with the Complainant's trade mark and, in the context of this case, adds to the confusion with the Complainant's TVB trade mark since Internet users familiar with the TVB trade mark would understand the letters "hd" to refer to or signify "high definition". There would be an expectancy or understanding that the Website to which the disputed domain name resolves, offers Internet users high definition programmes of the Complainant.

The disputed domain name is confusingly similar to the Complainant's TVB trade mark in which it has rights.

Accordingly, the Complainant has proven the element required by the Policy, Paragraph 4(a)(i).

B) Rights and Legitimate Interests

The Panel finds that the Complainant has demonstrated a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use the Complainant's TVB trade mark or a variation thereof. There is no evidence that the Respondent has been known by the disputed domain name. The evidence presented shows that the Respondent is not engaged in a *bona fide* offering of goods or services but is in fact violating the Complainant's copyright.

The Respondent failed to file any Response and therefore failed to assert any such rights or legitimate interests in the disputed domain name, and to rebut the Complainant's case. Moreover, the Respondent failed to respond to the Complainant's cease and desist letter, from which the Panel draws and adverse inference.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has proven the element required by Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Complainant has shown that its TVB trade mark has been in use for many years and across many jurisdictions. On the other hand, the disputed domain name was registered long after the Complainant registered and used its trade mark, TVB, and the Website is used to offer the Complainant's programmes for its users' viewing. This demonstrates that the Respondent was, without doubt, very well-acquainted with the Complainant's business and its trade mark, TVB; and that it deliberately registered the disputed domain name for the purpose of "attracting, for commercial gain, Internet users, to [its] 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 [its] web site or location or of a product or service on [its] web site or location" (Paragraph 4(b)(iv) of the Policy). The Respondent's registration smacks of opportunistic bad faith, seeking to ride on the reputation of the Complainant's TVB trade mark and to mislead Internet users into thinking that the Website is a legitimate website of, or is associated with the Complainant.

Accordingly, having regard to the circumstances of this case, the Panel finds that the Complainant has established the Respondent's bad faith registration and use of the disputed domain name. The Complainant has therefore satisfied Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <hdtvb.biz> be transferred to the Complainant.

Francine Tan
Panelist

Dated: February 23, 2018