



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801077
Complainant:	Television Broadcasts Limited
Respondent:	Ying Liu
Disputed Domain Name(s):	<watchtvb.com>

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 Ying Liu of 1535 NE 172nd Street, Miami, FL33162, Unites States of America (“USA”).

The domain name at issue is <watchtvb.com> (the “Domain Name”) registered by the Respondent with NameSilo, LLC of 1300 E, Missouri Avenue, Suite A-110, Phoenix AZ 85014, USA.

2. Procedural History

The Complainant filed the Complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 1 March 2018. On 1 March 2018, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On 3 March 2018, the Registrar transmitted by email to the ADNDRC its verification response disclosing registrant and contact information in the Complaint. The Center sent an email communication to the Complainant on 6 March 2018 providing registrant and contact information disclosed by the Registrar, inviting the Complainant to submit an amended Complaint. The Complainant filed an Amended Complaint on 6 March 2018.

The ADNDRC verified that the Complaint satisfied the formal requirements of the Domain Name Dispute Resolution Policy (the “Policy” or UDRP) and the Rules for Domain Name Dispute Resolution Policy (the “Rules”). In accordance with the Rules, the ADNDRC formally notified the Respondent of the Complaint and the proceeding commenced on 7 March 2018.

The ADNDRC did not receive any response from the Respondent on the due date of the Response which was 27 March 2018, in accordance with paragraph 5 of the Rules. Accordingly, on 28 March 2018, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 3 April 2018, the ADNDRC appointed Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant, commonly known as TVB, is the first wireless commercial television station in Hong Kong established in 1967. The Complainant has expanded over the years and is listed on the Hong Kong Stock Exchange as at 1998. The principal activities of the 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. The Complainant 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 and accessible to over 300 million households. The TVB name is the principal brand through which the Complainant provides its products and services.

In 1999, the Complainant launched its principal website at www.tvb.com (the “Complainant’s website”). The Complainant’s website contains video clips of the Complainant’s programmes. In November 2008, the Complainant set up the “myTV” section on the Complainant’s website which provides for live streaming and VOD on the Internet for user viewing in Hong Kong. By 2010, myTV had 3 million visitors monthly. myTV was extended to mobile application for smartphones and tablets for users in Hong Kong in 2011. In 2013, the Complainant launched the “GOTV” mobile application for users in Hong Kong to watch by VOD over the Internet. In 2016, the Complainant launched “myTVSuper” OTT (“over the top”) services for viewers to watch its programmes on livecast, VOD via the Internet and/or set top box and/or applications on television, computer, mobile devices and through the website www.mytvsuper.com in Hong Kong. myTVSUPER is now a leading OTT platform in Hong Kong and had over 5 million users in November 2017.

Through its various subsidiaries and joint ventures, the Complainant expanded its operations so that its programmes, content and other services are available in different territories. In 2005, through its wholly owned subsidiary TVBI Company Limited (TVBI), it moved into the Chinese market. TVBI was replaced by a Chinese joint venture company referred to as TVBC in 2012. In 2014, TVB Anywhere Limited (TVB Anywhere) was launched for the Complainant’s programmes and content to be watched via the Internet worldwide. Another subsidiary TVB Europe offers 24 hour Chinese television programme services which covers 48 countries in Europe. The Complainant’s tv programmes and services available in the USA are provided through the website www.tvbusa.com. All these services available globally are provided through names which incorporate the TVB brand. The Complainant and its subsidiaries own 139 domain names which bear and/or incorporate the TVB brand. These include <tvbc.com.cn>, <tvbanywhere.com>, <tvbusa.com>, <dramatvb.com> and <mytvb.hk>.

The Complainant has trade mark registrations for the TVB trade mark in over 30 countries. The earliest TVB trade mark registered which is valid and subsisting is Hong Kong Trade Mark registration no. 199608823 registered as at 1992. The TVB trade mark registrations will be individually and collectively be referred to as the Trade Mark.

The Respondent is an individual living in Miami, USA. He registered the Domain Name on 30 September 2016. The website connected to the Domain Name is an online social community for its users to view the Complainant's television programmes without the Complainant's authorisation (the "Website"). The Complainant sent cease and desist letters to the Respondent, the Domain Name Registrar and the Internet Service Provider of the Website on January 8 and 10, 2018. None of the parties responded.

4. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests with respect to the Domain Names and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

A. General

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 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.

B. Identical / Confusingly Similar

The Panel is satisfied that the Complainant has established that it has registered and unregistered rights to the Trade Mark.

The threshold test for confusing similarity involves the comparison between the trade mark and the domain name itself to determine whether the domain name is identical or confusingly similar to the trade mark. The trade mark would generally be recognizable within the domain name. In this case the Domain Name contains the Trade Mark in its

entirety with the addition of the descriptive prefix “watch”. The addition of this term does nothing to minimise the risk of confusion especially since the Complainant has a portfolio of brands which incorporate the TVB mark and other descriptive terms like “TVB Anywhere”, “TVBuddy” and “TVB Europe” to name a few. Further the very nature of the Complainant’s products, programmes and content, are accessed by consumers through the act of “watching”. Hence the descriptive word, “watch” as a prefix to the Trade Mark enhances the confusing similarity. There is a long line of authorities on the UDRP which make it clear that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the Top Level Domain as it is viewed as a standard registration requirement.

The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D) Rights and Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:

- i. before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- ii. the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- iii. the respondent is making a legitimate non- commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that the overall burden of proof rests with the Complainant. The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. If such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, [WIPO Case No. D2003-0455](#), *Belupo d.d. v. WACHEM d.o.o.*, [WIPO Case No. D2004-0110](#), *Banco Itau S.A. v. Laercio Teixeira*, [WIPO Case No. D2007-0912](#), *Malayan Banking Berhad v. Beauty, Success & Truth International*, [WIPO Case No. D2008-1393](#), and *Accor v. Eren Atesmen*, [WIPO Case No. D2009-0701](#).

The Respondent is not affiliated to the Complainant in any way nor has he been authorised

by the Complainant to register and use the Domain Name or in any other way. He does not appear to be commonly known by the Domain Name and does not have any independent right to the Domain Name. It is implausible that when the Respondent registered the Domain Name, he did not know of the existence of the Complainant's business under the Trade Mark especially since he is offering users a platform, for free sharing, distribution, and viewing of the Complainant's copyright works online thus depriving the Complainant and its licensees the fees they would otherwise generate. The Domain Name in itself is an expression which solicits viewers to "watch" "TVB" programmes. There can be no legitimate purpose or interest in a Domain Name which is used to adversely affecting the commercial interests in an illegitimate manner, which in this case is the infringement of the copyright of the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

E. Bad Faith

To succeed under the Policy, a Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Name. The registration of the Domain Name post-dates the Trade Mark. The very incorporation of the Trade Mark in the Domain Name, the provision of the Complainant's content and programmes to users without authorization confirms the Respondent's awareness of the Trade Mark. Thus, the Panel concludes that the Respondent deliberately registered the Domain Names in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website offers users what the Respondent is not entitled to give. The offer of programmes and content, the copyright of which belong to the Complainant and those within its group of companies without authorisation infringes the Complainant's copyright. These works are the central to the Complainant's business and the use of the Domain Name interferes with the business as it deprives the Complainant from the ability to fully exploit such works, the subscription and other income that is rightfully theirs. The content of the Website is also calculated to give the impression that it has been authorized by the Complainant when this is not the case. The Website was set up to deliberately mislead internet users that it is connected to, authorised by or affiliated to the Complainant. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Website is and the content offered are those of or authorised or endorsed by the Complainant.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) 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 Domain Name, <watchtvb.com> be transferred to the Complainant.



Karen Fong
Panelist

Dated: 13 April 2018