



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1901267</b>
<b>Complainant:</b>	<b>Television Broadcasts Limited</b>
<b>Respondent:</b>	<b>Domain Administrator</b>
<b>Disputed Domain Name:</b>	<b>&lt;playtvb.com&gt;</b>

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

The Complainant is Television Broadcasts Limited, of Hong Kong, China.

The Respondent is Domain Administrator, of Phoenix, Arizona, United States of America (“USA”).

The domain name at issue is <playtvb.com>, registered by Respondent with NameSilo, LLC, of Phoenix, Arizona, USA.

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on July 18, 2019. On July 18, 2019 the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 2019, the Registrar transmitted by email to the Centre its verification response disclosing registrant information for the Disputed Domain Names which differed from the named Respondent information in the Complaint. The Centre sent an email communication to the Complainant on August 9, 2019, providing the registrant information disclosed and by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint by email on August 9, 2019.

The Center has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”) and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint and the proceeding commenced on August 14, 2019. In accordance with the Rules, the due date for the Response was September 3, 2019.

No Response was received by the Center.

The Center appointed Sebastian Hughes as the Panelist in this matter on September 18, 2019. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. Complainant**

The Complainant is a company incorporated in Hong Kong and the owner of numerous registrations worldwide for the trade mark TVB (the “Trade Mark”), the earliest dating from 1992.

#### **B. Respondent**

The identity and domicile of the Respondent is unknown, the disputed domain name having been registered using a privacy service.

#### **C. The Disputed Domain Name**

The disputed domain name was registered on January 17, 2019.

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant made the following submissions in the Complaint.

The Complainant, commonly known as TVB, was established in 1967 as the first wireless commercial television station in Hong Kong. The Complainant’s shares have been listed on the Hong Kong Stock Exchange since 1988.

The principle activities of the Complainant are television broadcasting, video and audio rental, selling and distribution, programme production, and video-on-demand (VOD) and online streaming licensing. The Complainant is the largest producer of Chinese language programming in the world. Its Chinese programmes are dubbed into other languages and distributed to more than 30 countries and over 300 million households worldwide.

The disputed domain name is confusingly similar to the Trade Mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent is not commonly known by the disputed domain name and is not making a *bona fide* commercial use of the disputed domain name.

The disputed domain name has been registered and used in bad faith. It has been used by the Respondent in respect of a website which provides free access to the Complainant’s programmes (the “Website”).

By registering and using the disputed domain name in this manner, the Respondent has deliberately attracted Internet users to the Website in bad faith, and has seriously prejudiced Complainant's commercial interests.

## **B. Respondent**

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

## **5. 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 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 Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark, together with the descriptive and non-distinctive word "play".

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

### **B) Rights and Legitimate 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 trade mark 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 trade mark or service mark at issue.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name 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 name by several decades. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the evidence shows that the disputed domain name is being used in respect of the Website which provides unauthorised free access to the Complainant's programmes, in clear infringement of the Complainant's intellectual property rights.

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

### **C) Bad Faith**

The undisputed evidence of the Complainant demonstrates that the Website is being used to attract Internet users for commercial gain, by providing unauthorised free access to the Complainant's programmes.

Such use of the disputed domain name amounts to clear evidence of bad faith. The Panel therefore finds, in all the circumstances, the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **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 <playtvb.com> be transferred to the Complainant.



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Sebastian Hughes  
Sole Panelist

Dated: October 4, 2019