Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK - 1500697
Complainant:	Television Broadcast Limited
Respondent:	Tran Tan Loc
Disputed Domain Name(s):	**TVB-ONLINE.COM**

1. The Parties and Contested Domain Name

The Complainant is Television Broadcast Limited**,** of 10/F Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong (represented by its Legal and Regulatory Department).

The Respondent is Tran Tan Loc, of 44-4 Phuoc Long, Loc Hoa, Long Ho, Vinh Long, Vietnam 70.

The domain name at issue is TVB-ONLINE.COM, registered by Respondent with PUBLICDOMAINREGISTRY.COM, of Directiplex, Next to Subway, Old Nagardas, Andheri (East) Mumbai, Maharashtra 400069, India**.**

2. Procedural History

The Complainant filed a Complaint dated 28 January 2015, with the Asian Domain Name Dispute Resolution Centre – Hong Kong Office ("**the ADNDRC**") through their Legal and Regulatory Department. On the same date, the ADNDRC transmitted an email to PDR Ltd.d/b/a PublicDomainRegistry.com ("**the Registrar**") in order to obtain registrar verification regarding the Disputed Domain Name. On 29 January 2015, the ADNDRC received the reply from the Registrar in connection with the verification response confirming that the Respondent is listed as the Registrant of the Disputed Domain Name and also provided the Respondent's contact details. The ADNDRC also verified that the Complainant fulfilled the formal requirements of the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy (the "**Policy**") and the Rules for ICANN Uniform Domain Name Dispute Resolution Policy, as supplemented by the ADNDRC Supplemental Rules (the "**Rules**").

On 03 February 2015, the ADNDRC transmitted to the Respondent a copy of the Written Notice of Complaint, advising the Respondent of this action and that it had 20 days to respond. No response was received. On 24 February 2015, the ADNDRC transmitted an email to the Complainant informing that they had not received any response from the Respondent within the required period of time and that they would thus appoint a Panelist immediately. On the same date, the ADNDRC appointed a sole Panelist for the captioned domain name dispute in this matter, Ms. Karen Mills, who had, previously on the same date, confirmed her availability to act independently and impartially if appointed. The file was forwarded by the ADNDRC to the Panelist on 25 February 2015.

The Respondent was required to submit its response within 20 (twenty) days from 3 February 2015, being 23 February 2015. As the Respondent did not respond within such time, nor at all as of the date hereof, the Panelist was able only to consider the information submitted by the Complainant.

3. Factual background

According to the submission of the Complainant:

1. The Complainant is commonly known as TVB (Television Broadcast Limited), a worldwide trademark and service mark owned and registered by the Complainant at Hong Kong in 1992, and in various other jurisdictions thereafter. TVB is currently registered and/or applied for registration by the Complainant in over 30 jurisdictions worldwide.

2. The Complainant was the first wireless commercial television station in Hong Kong, established in 1967. The principal activities of the Complainant are television broadcasting, video rental, program production and other broadcasting related activities such as program and video on demand licensing, audio and video products rental, selling and distribution, etc.

3. In 1999, the Complainant launched its principal website "TVB.COM" on the internet to provide worldwide viewers the latest information on its programs and artistes. This website also provides drama and variety programs to be viewed on the internet in Hong Kong. This website has also been extended to accommodate mobile application for smartphone and tablet users.

4. At the date of the Complaint, the Complainant and its subsidiaries have registered 69 domain names, all bearing its mark "TVB".

5. Based on the WHOIS information, the Disputed Domain Name is registered to the Respondent and valid to 28 July 2015, in the name of TVB-ONLINE.COM. The Disputed Domain Name was used by the Respondent to set up an online social community (website) to allow its users to view the Complainant's programs for free, without making any payment to Complainant, and also to distribute large volumes of the Complainant's content to the website without the Complainant's authorization. The matter came to the Complainant's attention in November 2014, upon which Complainant sent cease and desist letters addressed to the Website's Internet Services

Provider, Google.Inc, and the Registrar, demanding that they remove or disable access to the Complainant's copyrighted works and terminate their services with the Respondent. However, Complainant had no response, nor has any action been taken as of the date of the Complaint.

6. The Complainant claims that the use of the Disputed Domain Name, "TVB-ONLINE.COM", which contains the Complainant's registered trademark "TVB", and is thus confusingly similar to Complainant's registered trademark, is adversely affecting Complainant's business and revenue.

For the Respondent

1. The Respondent has not submitted any response to the Complainant's Complaint within the time period provided by the ADNDRC.

2. Thus the decision of this Panel can only be based upon the information and materials submitted by Complainant.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

1. The Disputed Domain Name contains the Complainant's registered and worldwide well known trade mark "TVB" and is thus, if not exactly the same as, at the very least highly and confusingly similar to the Complainant's trademarks.

2. The Respondent has no rights or legitimate interest in the Disputed Domain Name, which it has registered without any such right. The Respondent has no registered right in the trademark/tradename TVB, is not affiliated with the Complainant, and has obtained neither consent nor authorization of Complainant to use or register the Disputed Domain Name.

3. The Respondent has registered, and is using, the Disputed Domain Name in bad faith. Respondent registered the Disputed Domain Name which contains and is similar to the Complainant's registered and well known trademark without consent nor authorization from the Complainant in order to gain profits at the expense of the Complainant, such being a clear manifestation of bad faith. The Disputed Domain Name registered by the Respondent is being used by Respondent to attract users for commercial benefits, wherein the users may obtain the Complainant's program content free, causing material damages to the Complainant, as well as damaging its good name.

B. Respondent

The Respondent did not file any response to the Complainant's Complaint and thus has not provided its own position.

5. Findings

In determining the dispute, the Panelist is to decide a complaint based on the documents provided and in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy, the Rules for ICANN Uniform Domain Name Dispute Resolution Policy and the ADNDRC Supplemental Rules.

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 :

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

Based upon the submissions, the Panel finds as follows :

A. Identical / Confusingly Similar

The Complainant has been operating under the name "TVB" since 1967. Complainant registered the trademark "TVB" in Hong Kong in 1992, and thereafter in a number of other jurisdictions, and it has since become well known both locally and internationally. The Complainant and its subsidiaries have also applied for, and registered, numerous trademarks incorporating the essential element of the letters "TVB" in addition to the mark. The Complainant and its subsidiaries have also registered 69 domain names bearing the mark "TVB" as of the date of the Complaint. Valid and sufficient evidence has been presented by the Complainant to the Panelist regarding the "TVB" trademark and domain name registrations.

The Disputed Domain Name is "TVB-ONLINE.COM" which clearly incorporates the Complainant's trademark-protected mark, "TVB". The Disputed Domain Name mainly consists of the mark "TVB" with the word "ONLINE" added, indicating a website. The use of the Complainant's well known trademark, TVB, in the Disputed Domain Name and Respondent's website is highly likely, and appears to have been intended, to lead the public, in this case the internet users, to have the impression that the Disputed Domain Name is an official and authorized website provided by the Complainant.

The Panelist thus finds that the Disputed Domain Name is in part identical, and certainly confusingly similar to the Complainant's registered trademark, "TVB".

B. Rights and Legitimate Interests

The Disputed Domain Name was registered by the Respondent in 2013, long after the official trademark was registered by the Complainant. The Respondent has no trademark registration nor any other right to use the mark "TVB" whatsoever, whereas the Complainant has registered the TVB trademark in approximately a dozen different jurisdictions.

The Disputed Domain Name was used by the Respondent in order to set up an online social community (website) which allows its users to view the Complainant's television programs for free, evading the payment required by and due to Complainant for such service. Large volumes of the Complainant's work has been distributed through the Respondent's website without the Complainant's consent or authorization. The Complainant has stated that the Respondent is neither connected, associated, or affiliated with the Complainant. The Complainant also stated that no consent or authorization has been provided to the Respondent to register the Disputed Domain Name nor to use the Complainant's trademark or any variation thereof, nor to distribute or post Complainant's content.

Based on the matters above, it can be concluded that :

- There is no evidence to show that Complainants have licensed or otherwise permitted the Respondent to use the "TVB" marks or to apply for or use any domain name incorporating the "TVB" mark ;
- There is no evidence adduced to show that the Respondent has any registered trademark rights, nor any other rights, with respect to the Disputed Domain Name. The Respondent registered the Disputed Domain Name <TVB-ONLINE.COM> on 28 July 2013, long after the "TVB" marks, belonging to Complainant, became internationally known ;
- There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name.

C. Bad Faith

- It would appear from the record that the Respondent had to have been well aware of the rights of the Complainant in the mark "TVB" and its use in offering content to the public through television and on the internet, and registered the Disputed Domain Name in order to appear to be affiliated with the Complainant and/or its subsidiaries, in offering internet users the ability to view the Complainant's programs without cost or other requirements of Complainant. The Respondent has intentionally attempted to confuse the public into believing it is related to Complainant and attract, for commercial gain, the internet users to the Respondent's website's services without authorization. This is clear indication of bad faith. The use of the Disputed Domain Name is in fact a form of an unfair competition with the Complainant's business and can inflict considerable losses upon Complainant. The Respondent would not have used the trademark "TVB" on the website at the Disputed Domain Name if it was unaware of the Complainant's reputation and wished to capitalize on that. According to the

Complainant's statement, the use of the Disputed Domain Name has adversely affected the Complainant's business and income.

This Panelist therefore concludes that the Disputed Domain Name was registered and is being used by the Respondent in bad faith.

6. Decision

Based upon the submissions, and as outlined above, this Panelist has found that the Disputed Domain Name is identical or confusingly similar to the trademarks and other intellectual property in which the Complainant has rights; the Respondent has no legitimate right nor interest therein; and the said Disputed Domain Name was registered and is being used by the Respondent in bad faith.

Therefore this Panelist hereby directs that the Disputed Domain Name be transferred to the Complainant.

Karen Mills
Sole Panelist

Dated: 2 March, 2015