



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2001405</b>
<b>Complainant:</b>	<b>PCCW Limited</b>
<b>Respondent:</b>	<b>john smith</b>
<b>Disputed domain name(s):</b>	<b>&lt;nowtv.online&gt;</b>

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

The Complainant is PCCW Limited, of PCCW Tower, TaiKoo Place, 979 King's Road, Quarry Bay, HONG KONG.

The Respondent is john smith, of London, NA, N17 7JT, UK.

The domain name at issue is nowtv.online, registered by Respondent with NameCheap, Inc., of 4600 East Washington Street, Suite 33, Phoenix, AZ 85034, United States.

**2. Procedural History**

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the "Centre") on November 19, 2020 and the Complainant chose a sole panelist to review this case in accordance with the Uniform Domain Name Dispute Resolution Policy ("the Policy") which was adopted by the ICANN and came into effect on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") which came into effect on September 28, 2013 and the Supplemental Rules thereof which came into effect on July 31, 2015.

On November 19, 2020, the Centre confirmed the receipt of the Complaint and Annexures, and transmitted by email to NameCheap, Inc. (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On the same day, the said Registrar verified to the Centre that, the Policy applies to the domain name at issue, the Respondent should be john smith and the language used in the registration agreement was English.

On November 20, 2020, the Centre sent a request to the Complainant, requiring it to update the Respondent information in the Complaint on or prior to November 25, 2020. On November 24, 2020, the Complainant sent the amended Complaint to the Centre. On November 25, 2020, the Centre confirmed receipt of the updated Complaint.

On November 25, 2020, the Centre sent the formal Complaint Notice to the Respondent, along with the Rules and Supplement Rules, and requested the Respondent to reply within 20 days (on or prior to December 15, 2020). The procedures for this case formally commenced on December 15, 2020.

On December 16, 2020, the Centre sent a notice of default to the Respondent, which confirmed that the Respondent had not filed any formal reply with the Centre, within the required time limit.

On December 16, 2020, the Centre sent the Panelist candidate, Mr. Matthew Murphy, a Panelist Appointment Notice. On the same day, the Panelist candidate, Mr. Matthew Murphy, considered that the Panel was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. On December 16, 2020, the Centre notified both parties and the Panelist, Mr. Matthew Murphy, by email that Mr. Matthew Murphy was to be the sole panelist for arbitrating this case. The Centre then formally transferred the case to the Panelist. The Panelist agreed to deliver his decision with respect to the disputed domain name on or prior to December 30, 2020.

### **3. Factual background**

#### *For the Complainant*

The Complainant, PCCW Limited, states that it is a global company headquartered in Hong Kong that holds interests in telecommunications, media, IT solutions, property development and investment, and other businesses; and that it is a premier telecommunications service provider and a leading operator in fixed-line broadband and mobile communication services. The Complainant claims that, through its fully integrated multimedia and entertainment group, PCCW Media, it operates one of the world's largest commercial deployments of IPTV and Hong Kong's largest Pay TV provider, Now TV.

The Complainant claims that, its Now TV product line offers the widest range of local and international content on its platform in Hong Kong and its quality self-produced content includes two news channels and a diverse lineup of entertainment and infotainment programs, which is complemented by leading Asian and international content and brands across news, entertainment, information and sports genres. The Complainant claims that, in 2019, 90% of the top 50 worldwide highest grossing box office receipt movies and numerous award-winning TV shows were available on Now TV and its premium content can be accessed through linear TV channels, on-demand and via OTT companion apps while on the move. The Complainant also claims that its Now TV has been the recipient of numerous industry awards and recognitions, including but not limited to the No. 1 Pay TV Services in Lifestyle and Entertainment category at the Headline No. 1 Awards, the Best Pay TV at the e-Brand Awards and the Best Entertainment TV Platform at the Best of the Best Awards in 2019.

The Complainant has submitted that, it is the owner of trademark registrations across various jurisdictions, through its wholly-owned subsidiary Starbucks (HK) Limited, which holds the "NOW TV" trademark rights, including but not limited to No. T1212799D registered in Singapore on August 30, 2012, No. 2012057051 registered in Malaysia on July 2, 2015. The Complainant claims that such registrations of the "NOW TV" trademark demonstrate that it has spent a considerable amount of time and money protecting its intellectual property rights. The Complainant further claims that it also owns the domain

name <now.com> which ranks 16,864th globally and 146th in Hong Kong according to Alexa.com.

*For the Respondent*

The Respondent, John Smith, is located in London, NA, N17 7JT, UK. The Respondent's email is jimhanks2020@gmail.com. The Respondent did not file any information with the Centre to reveal his/her identity and/or background information.

#### **4. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant claims that, it is the owner of NOW TV trademark by virtue of its trademark and service mark registrations shown in the Annexures to its Complaint. The Complainant claims that the disputed domain name consists solely of its NOW TV trademark, resulting in a domain name that is identical to its NOW TV trademark and thus meeting the requirements under Paragraph 4(a)(i) of the Policy. The Complainant further claims that it is standard practice to not take a domain name extension into account when comparing a disputed domain name to a Complainant's trademark(s).

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

The Complainant claims that the registrations of its NOW TV trademark are prima facie evidence of the validity of the term "NOW TV" as a trademark, of its ownership of this trademark and its exclusive rights to use the NOW TV trademark in commerce on or in connection with the goods and/or services specified in the registration certificates. The Complainant claims that the Respondent is not sponsored by or affiliated with the Complainant in any way, and it has not given the Respondent permission to use its trademarks in any manner, including as part of domain names, nor licensed, authorized, or permitted the Respondent to register a domain name incorporating the Complainant's trademark. The Complainant also claims that the Respondent is not commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests.

The Complainant claims that, at the time of filing the complaint, the Respondent was using a private WHOIS service, which equates to a lack of legitimate interest. The Complainant claims that the Respondent is making neither a bona fide offering of goods or services nor a legitimate, noncommercial fair use of the disputed domain name, since on the website available at the disputed domain name, the Respondent offers free streaming of material protected by copyright, including films offered through the Complainant's Now TV services, which directly competes with the Complainant's own legitimate offerings.

The Complainant further claims that the Respondent registered the disputed domain name on October 2, 2020, which is many years after the Complainant first filed for registration of its NOW TV trademark, as well as the Complainant's first use in commerce of the trademark (September 2003), and the Complainant's registration of its <now.com> domain name (December 5, 1993).

- iii. The disputed domain name has been registered and is being used in bad faith.

The Complainant claims that, the Complainant and its NOW TV trademark are known internationally and it has marketed and sold its goods and services using this trademark since 2003 which is well before the registration of the disputed domain name on October 2, 2020; thus, the Complainant claims that the Respondent knew or should have known of the existence of the Complainant's trademarks and its registration was in bad faith.

The Complainant claims that, the Respondent creates a likelihood of confusion with the Complainant and its trademarks by registering a domain name consisting solely of its NOW TV trademark, and then attempts to profit from such confusion by offering free, pirated film streaming services that compete with the Complainant's own offerings. The Complainant considers that, the impression given by the disputed domain name and its website would cause consumers to believe the Respondent is somehow associated with the Complainant by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, and the Respondent is in bad faith by using the fame of the Complainant's trademarks to improperly increase traffic to the website listed at the disputed domain name for the Respondent's own commercial gain.

The Complainant claims that the Respondent's use of the disputed domain name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under Paragraph 4(b)(iii) of the Policy because the Respondent's domain name is confusingly similar to Complainant's trademarks and the website located at the disputed domain name features multiple unauthorized links to streamable films and TV shows that compete with Complainant's own offerings.

The Complainant further claims that the Respondent has engaged in bad faith by pointing out that, the Respondent has previously been involved in a series of cases which provides evidence of a pattern of cybersquatting, and he/she is likely to provide false information (e.g. identity, address) in the Whois record for the disputed domain name, and has employed a domain name privacy service to hide their identity which past Panels have held serves as further evidence of bad faith registration and use.

## B. Respondent

The Respondent did not file any reply.

## 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, by submitting its trademark registration information, has proved that it is entitled to ownership of the "NOW TV" trademark. Obviously, the disputed domain name < nowtv.online > completely incorporates the Complainant's "NOW TV" trademark. As to the gTLD ".online" in the disputed domain name, it should be ignored when it comes to consider the issue of confusingly similarity of a domain name and a trademark - see: Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd., WIPO Case No. D2006-0762. Thus, the disputed domain name and the Complainant's "NOW TV" trademark possess similarity that is certainly sufficient to cause confusion.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

#### **B) Rights and Legitimate Interests**

Upon comprehensively considering the circumstances of the case, the Panelist considers that the Respondent does not have legal rights and interests in the disputed domain name on the grounds that:

- (1) Without submitting any evidence to prove that the Respondent has any legal rights and interests in the disputed domain name, the Respondent could not sufficiently prove that it "owns legal right and interest thereof" by the mere registration of the disputed domain name - See: Adobe Systems Incorporated v. Domain OZ, WIPO Case No.: D2000-0057;
- (2) The Complainant has expressed that the Respondent is not sponsored by or affiliated with the Complainant in any way, and it has not given the Respondent the permission to use its trademarks in any manner, including registering the trademark as domain name; and
- (3) The Respondent did not provide evidence and there is no indication available showing that there is any connection or association between the Respondent and the "NOW TV" trademark, nor any circumstances alluding to a conclusion that it has legal rights and interest as set out in Paragraph 4(c) of the Policy.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

#### **C) Bad Faith**

The Panelist has noted the following, based on evidence filed by the Complainant:

- (1) The first use and registration of the Complainant's trademark in 2003 and 2012 respectively were much earlier than those of the disputed domain name;

- (2) The Complainant and its “NOW TV” trademark have accumulated high fame for the local and international content provided on legitimate platforms offered under “NOW TV”;
- (3) There is similarity between the disputed domain name and the Complainant’s trademark;
- (4) There is similarity between the disputed domain name and the Complainant’s domain name “now.com”;
- (5) A website is linked to a disputed domain name that offers free streaming of material which is protected by copyright, including those offered on the Complainant’s Now TV services; and
- (6) The Respondent has a history of cybersquatting others’ brands as domain names.

Accordingly, it is reasonable for the Panelist to infer that the Respondent might well have been aware of the Complainant and its “NOW TV” trademark whilst registering the disputed domain name based on the circumstances (1)-(6) above, and such registration with suspected prior knowledge of the Complainant’s trademark indicates bad faith registration.

With respect to the use of the disputed domain name, the Panel has noticed the circumstance (5) mentioned above, which seems to fit within the following principle - “Using the disputed domain name with intention of creating a likelihood of confusion with that of the Complainant’s mark as to source, sponsorship, affiliation or endorsement of the Respondent’s services by using an identical name or a close approximation for commercial gain from the goodwill and fame associated with the Complainant’s mark indicates that the Respondent is deliberately trying to free ride on the Complainant’s mark.” - see WIPO Case, Info Edge (India) Limited v. Abs, Abs IT Solution, D2014-1688. Obviously, due to the confusingly similarity between the disputed domain name and the Complainant’s trademark as well as the content located on the website linked to the disputed domain name, the Respondent intends to create a false impression that they are associated with the Complainant in some way, in order to attract Internet users who intend to visit the Complainant’s legitimate website. When such users visit the Respondent’s website due to confusion or being misled, whether they have realized that there is any association between the Respondent and the Complainant or not, they all may click the links contained therein which may result in profit being obtained by the Respondent. Thus, the use of the disputed domain name by the Respondent constitutes a free-ride on the Complainant’s trademark and reputation associated with the trademark, which means that the use of the disputed domain name by the Respondent is in bad faith.

In conclusion, the Panelist finds that the Complainant has satisfied Paragraph 4(a)(iii) of the Policy.

## 6. Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panelist orders that the disputed domain name < nowtv.online > be transferred to the Complainant.

*Matthew Murphy*

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Matthew Murphy  
Panelist

Dated: December 22, 2020