



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-2101425</b>
<b>Complainant:</b>	<b>Television Broadcasts Limited</b>
<b>Respondent:</b>	ying yang
<b>Disputed Domain Names:</b>	<metvb.net>, <metvb1.com> and <metvb1.app>

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

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

The Respondent is ying yang (“**Respondent**”), of xi cheng qu bei feng wo 12hao bei jing shi 100000.

The domain names at issue are <metvb.net> (“**Domain Name 1**”), <metvb1.com> (“**Domain Name 2**”) and <metvb1.app> (“**Domain Name 3**”) (collectively the “**Domain Names**”) registered by the Respondent with GoDaddy.com LLC, of GoDaddy Copyright Claims Department, 14455 N. Hayden Road, Suite 219, Scottsdale, AZ85260, United States of America (“**Registrar**”).

**2. Procedural History**

On 4 February 2021, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”) effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 4 February 2021, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On the same day, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 5 February 2021, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 8 February 2021, the Complainant filed a rectified Complaint. The ADNDRC formally

notified the Respondent of the Complaint and the proceedings commenced on 8 February 2021. The ADNDRC did not receive any formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules. Accordingly, on 1 March 2021, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 2 March 2021, the ADNDRC appointed Ms. 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. It was first established in 1967 with only about 200 staff. The Complainant has now grown to a size of over 3,600 staff and artistes worldwide. Shares of the Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988. The principal activities of Complainant are television broadcasting, programme production and other broadcasting related activities such as programme and Video-On-Demand (“VOD”), licensing, digital media business, audio and video products selling and distribution, etc. It is one of the largest producers of Chinese language programmes in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 200 countries and regions. The Complainant provides its services all over the world including China under its TVB brand name.

The Complainant has trade mark registrations for TVB all over the world including Hong Kong and China. The earliest TVB trade mark registration submitted in evidence is Hong Kong Trade Mark Registration Number 1996088232 which has a registration date of 8 June 1992. The Complainant also has trade mark registrations for TVB8, TVBC and TVBI in Hong Kong and China (individually and collectively the “**Trade Mark**”).

The Complainant launched its website at <http://www.tvb.com> in 1999. The website provides worldwide viewers the latest information on the Complainant’s programmes and artistes as well as video clips, live streaming and VOD of its programmes. The Complainant’s programmes and content are also licensed and distributed through the different websites it controls as well as the websites of its partners and licensed distributors. Besides the domain name <tvb.com>, the Complainant and its subsidiaries own and operate over 170 domain names which include the Trade Mark.

The Respondent who is based in China registered the Domain Names as follows:

Domain Names	Registration Date	Activity
Domain Name 1 <metvb.net>	14 February 2019	Domain Name 1 redirects visitors to the website at Domain Name 2 (“the <b>Website</b> ”)
Domain Name 2 <metvb1.com>	7 January 2020	The Website is an online social community which provides visitors access to the Complainant’s television programmes. By clicking the icon “APP 下载” on the Website, visitors are diverted to the

		website connected to Domain Name 3 (“the <b>Associated Website</b> ”) (The Website and Associated Website to be collectively referred to as “the <b>Websites</b> ”)
Domain Name 3 <metvb1.app>	28 March 2020	The Associated Website offers visitors a link to download the application “港剧网” (“App”) onto their mobile phones. The App makes available to visitors the Complainant’s television programmes through their mobile phones.

The Complainant sent cease and desist letters to the Website’s Internet Service Provider, Cloudradium LLC (“Cloudradium”) and the Registrar on 7 January 2021 demanding that they remove or disable access to the Complainant’s copyright works and terminate their services with Respondent. On 14 and 28 January, 2021, the Complainant also sent cease and desist letters to the Associated Website’s Internet Service Provider, adccdata.com (“Adccdata”) and the Registrar demanding that they to terminate their services with Respondent. The Complainant was unable to reach the Respondent directly as no contact details are publicly available. Neither Cloudradium, Adccdata nor the Registrar responded to Complainant’s letters.

#### 4. Parties’ Contentions

##### A. Complainant

The Complainant’s contentions may be summarized as follows:

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

##### 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 rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Domain Names consists of the Trade Mark in its entirety and in the case of Domain Name 1, the prefix “me”, in the case of Domain Names 2 and 3 the prefix “me” followed by the suffix the number “1”. The addition of the generic word and number before and after the Trade Mark do not negate the confusing similarity encouraged by the Respondent’s complete integration of the Trade Mark in the Domain Names. *E.g., N.V. Organon Corp. v. Vitalline Trading Ltd., Dragic Veselin / PrivacyProtect.org*, WIPO Case No. D2011-0260; *Oakley, Inc. v. wu bingjie aka bingjie wu/Whois Privacy Protection Service*, WIPO Case No. D2010-0093; *X-ONE B.V. v. Robert Modic*, WIPO Case No. D2010-0207. 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 generic Top-Level Domain (“gTLD”) which in this case are “.com”, “.net” and “.app”. It is viewed as a standard registration requirement.

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

## **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights 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 trade mark 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, as it is put in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“**WIPO Overview 3.0**”) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once 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 domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Names nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Names or for any other purpose. The unauthorised use of the Complainant's content infringes its copyright and other intellectual property rights and therefore does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use of the Domain Names.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent's has not filed a response. 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.

#### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Names have been registered and are being used in bad faith.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Names given that the Trade Mark is well known and the fact that the Complainant's copyright content is being distributed on the Websites.

In the WIPO Overview 3.0, section 3.2.2 states as follows:

*“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”*

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Names is also a significant factor to consider (as stated in section 3.2.1 of the WIPO Overview 3.0). The Domain Names fall into the category stated above and the Panel finds that registration is in bad faith.

The Domain Names are also being used in bad faith. Domain Name 1 functions to redirect visitors to the Website. The Websites were set up for users to view the Complainant's content online. This was done up for the commercial benefit of the Respondent and in direct competition with the Complainant's business. It is highly likely that Internet users

when typing the Domain Names into their browser, or finding it through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Names are likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the fact that Complainant's content is on the Websites. Such confusion is detrimental to the Complainant's business of content licensing and distribution given that the Respondent was deliberately misleading users that it is associated with the Complainant by using the Trade Mark in the Domain Names.

The Respondent employs the fame of the Trade Mark to mislead users into visiting the Websites instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Websites are authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Names have been registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

## 6. Decision

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names <metvb.net>, <metvb1.com> and <metvb1.app> be transferred to the Complainant.



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Karen Fong  
Panelist

Dated: 22 March 2021