



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301741
Complainant:	Television Broadcasts Limited
Respondent:	Chen Xiaolian
Disputed Domain Name(s):	<TVBGOGO.COM>

1. The Parties and Contested Domain Name

1. The Complainant is Television Broadcasts Limited of 10/F, Main Block, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.
2. The Respondent is Chen Xiaolian of chaotianmen, yuzhongqu, Peoples Republic of China.
3. The domain name at issue is <TVBGOGO.COM> (“Disputed Domain Name”), registered by the Respondent with GoDaddy.com, LLC of 2150 E Warner Rd, Tempe, Arizona, USA.

2. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) (“Centre”) on 18 April 2023, 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.
5. On 18 April 2023, the Centre emailed to the Registrar requesting confirmation of the WHOIS record and other related information of the Disputed Domain Name. On the same date, the Centre received a reply from the Registrar, which contained the registration details, confirmed that the language of the registration agreement is English, and provided other relevant information.
6. A copy of the Complaint was sent to the Respondent and the Registrar on 21 April 2023 (which was the date of commencement of the proceeding). The due date for the Respondent to submit a Response to the Complaint was 11 May 2023. The Respondent failed to file a response within the time limit and on 12 May 2023 the Centre issued a notification that the Respondent was in default.

7. On 15 May 2023, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed Mr David Allison as the Panellist in this matter.

3. Factual background

8. The Complainant, Television Broadcasts Limited, commonly known as TVB, was the first wireless commercial television station established in Hong Kong in 1967. The Complainant's principal commercial activities are television broadcasting, programme production and other broadcasting related activities such as programme and Video-On-Demand licensing, digital media business, audio and video products selling and distribution, etc. The Complainant 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.
9. The Complainant has also registered a large number of trademarks in numerous jurisdictions, including in Hong Kong, the Peoples Republic of China and worldwide. The Complainant's earliest "TVB" trademark was registered in Hong Kong in 1996 under Classes 35, 38 and 41 (Reg. No. 199608823AA) and in the People's Republic of China in Class 9 (Reg. No. 754098). The Complainant has subsequently registered many "TVB" and "TVB" related marks in multiple countries worldwide.
10. The Complainant also has an extensive domain name portfolio all of which prominently feature the "TVB" element. Its earliest domain name was www.tvb.com, launched in 1999 which was used to provide information to its viewers and customers on its programs and artistes.
11. The evidence provided by the Complainant demonstrates that it is very well known for high quality television programming, especially of Chinese language programming and works, in particular through the Chinese speaking world.
12. The Respondent is an individual residing in the People's Republic of China. As the Respondent has not responded to the Complaint, little is known about the Respondent. However, the Disputed Domain Name was registered on 16 August 2014 and until recently, was used predominantly to offer access to unauthorized copies of the Complainant's well-known television programs to the public. The Disputed Domain Name now resolves to a new domain name, www.xssfrees.com, which likewise offers unauthorized copies of well-known film and television programs, including the Complainant's programs to the public.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the trademarks owned by the Complainant;
- ii. The Respondent has no rights or interests in the disputed domain name since the Respondent is in no way associated or affiliated with the Complainant and disputed domain name has no relation to the Respondent's business; and

- iii. The disputed domain name has been registered and is being used in bad faith in particular by offering copies of the Complainant's well-known television programs without the Complainant's license or authorization.

B. Respondent

The Respondent has not filed any response to the Complaint.

5. Findings

13. 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

14. The Complainant has adduced a large quantity of relevant evidence to show that it has clear rights in the "TVB" trademarks, particularly in relation to television programming and related goods and services.

15. The Complainant's marks and the disputed domain name are confusingly similar in respect of their key elements – ie "TVB". The disputed domain name also has an additional element (ie GOGO) but this does nothing to reduce the confusing similarity between the Complainant's marks and the disputed domain name. The addition of the element "GOGO" merely suggests to consumers that this may be a subdomain or related domain of the main "TVB" domain and will largely be ignored when comparing the Complainant's trademarks and the disputed domain name.

16. When comparing the dominant and distinctive element of the Disputed Domain Name and the Complainant's trademarks, it is clear that they are confusingly similar. As such, the Complainant has made out the first element.

B) Rights and Legitimate Interests

17. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. Evidence provided by the Complainant suggests that the disputed domain name has been used to offer unauthorised access to the Complainant's programs and television works to the public. This is despite the Complainant never authorising or allowing the Respondent to use its marks or to distribute its programs.

18. In addition, the Respondent's website does not indicate or suggest any legitimate relationship between the Respondent's name or business and the mark "TVB". This is a further indicia that the Respondent has no rights or legitimate interest in the Disputed Domain Name.

19. Accordingly, it is held that the Respondent has no legitimate rights or interests in the Disputed Domain Name and therefore, the second element is made out.

C) Bad Faith

20. To establish the third element, the Complainant must establish that the Respondent both registered and is using the disputed domain name in bad faith. In this case, the Complainant has registered and actively used its distinctive and well-known trademarks for many years, particularly in Chinese speaking jurisdictions, and as such, it is highly unlikely that the Respondent would have been unaware of the Complainants' marks and websites prior to registering the disputed domain name.

21. Bad faith may be established if UDRP paragraph 4(b)(iv) is satisfied, namely that *"...by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website...by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site ...or a product or service on your website"*

22. As discussed above, the evidence presented by the Complainant makes it clear that the Disputed Domain Name was established and used purely to misuse the Complainant's trademarks and to attract users to the Respondent's website for commercial gain. The Respondent has also used the Disputed Domain Name and its associated website to offer a large selection of unauthorised versions of the Complainant's works to the public. Such use, particularly in the face of prior knowledge of the Complainant, its marks and its business, is a clear attempt to try and suggest some form of connection to the Complainant where there is in fact none and in order to attract consumers to the Disputed Domain Name for commercial gain.

23. Accordingly, the Respondent's use of the Disputed Domain Name and the website meet the definition under UDRP paragraph 4(b)(iv). As such, the Panel concludes that the third element is made out.

6. Decision

24. The Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a). Accordingly, the Panel orders that the disputed domain name <TVBGOGO.COM > be transferred to the Complainant.

David Allison

David Allison
Panellist

Dated: 29 May 2023