



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-2401879
<b>Complainant:</b>	Television Broadcasts Limited
<b>Respondent:</b>	ouletvb / dayoutv2023
<b>Disputed Domain Name(s):</b>	<ouletvb.com> and <xiaobaotvb.com>

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### 1. The Parties and Contested Domain Names

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.

The Respondent is ouletvb of 13700 Penang, Malaysia, Malaysia, MY / dayoutv2023 of Malaysia, Malaysia, Malaysia, MY.

The Domain Names at issue are <ouletvb.com> and <xiaobaotvb.com>, registered by the Respondent with Alibaba.com Singapore E-Commerce Private Limited, of 8 Shenton Wy, #45-01 AXA Tower, Singapore 068811.

### 2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on 5 March 2024 in English language. The Complainant chose to have this case dealt with by a single-member panel. On 5 March 2024, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On 13 March 2024, the Registrar transmitted by email to the Centre its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Redacted) and contact information in the Complaint. The Centre sent an email communication to the Complainant on 13 March 2024 providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on 20 March 2024.

The Centre verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the ADNDRC Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 21 March 2024. In accordance with the Rules, paragraph 5, the due date for Response was 10 April 2024. The Respondent did not submit any response. Accordingly, the Centre notified the Respondent's default on 11 April 2024.

The Centre appointed Peter Müller as the sole panellist in this matter on 12 April 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rules, paragraph 7.

### **3. Factual background**

The Complainant is the first wireless commercial television station in Hong Kong first established in 1967. Today, the Complainant has over 3,800 staff and artists worldwide and is one of the largest producers of Chinese-language programs in the world. Its Chinese-programs are distributed to more than two hundred countries and regions. The Complainant's shares have been publicly listed on the Hong Kong Stock Exchange since 1988.

The Complainant is registered owner of numerous trademarks for TVB, including Hong Kong trademark registration no. 199608823AA TVB, which was registered on 8 June 1992 and enjoys protection for services in classes 35, 38, and 41 (the "TVB Mark"). The Complainant also owns numerous domain names containing its TVB Mark, *inter alia* "tvb.com," which has been used by the Complainant since 1999 in connection with its business activities.

The Domain Names were registered on 16 May 2023 and 10 September 2023, respectively.

The disputed domain name <ouletvb.com> has been used in connection with an online social community to make the Complainant's television programs publicly available free of charge. Large quantities of the Complainant's works are distributed without the Complainant's authorisation.

On 27 November 2023, the Complainant sent cease and desist letters to the Respondent and other intermediaries requesting them to remove or disable access to the Complainant's copyrighted works and to terminate their services to the Respondent. No response was received. However, the Complainant noticed that the Respondent had redirected the disputed domain name <ouletvb.com> to the website at <https://www.ouletvs.net/>, and recommended its visitors to visit the website available at the disputed domain name <xiaobaotvb.com>, which contained content similar to that available at <ouletvb.com>.

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

#### **A. Complainant**

With regard to the three elements specified in the Policy, paragraph 4(a), the Complainant contends that each of the three conditions is given in the present case.

- i. The Domain Names are both confusingly similar to the well-known TVB Mark as they both include such mark.

- ii. The Complainant alleges that the Respondent has no rights or legitimate interests in the Domain Names. It states that the Respondent is not connected, associated, or affiliated with the Complainant in any way and that the Complainant has not authorized, endorsed, or otherwise permitted the Respondent to register the Domain Names or to use the TVB Mark or any variation thereof. The Complainant further submits that there is no evidence that the Respondent has been commonly referred to as the Domain Names, and that there is no reason why the Respondent could reasonably be said to have any rights or legitimate interests in registering or using the Domain Names. Finally, the Complainant alleges that the Respondent has infringed the Complainant's copyright and other intellectual property rights by offering users to view the Complainant's programs without authorization.
- iii. The Complainant claims that the Domain Names were registered and are being used in bad faith. The Complainant states that the Respondent uses “電視廣播有限公司 遊戲節目,” meaning “game show produced by Television Broadcasts Limited,” on its website, which is clear evidence that the Respondent deliberately chose the Domain Names for its websites with full knowledge of the Complainant's business and trademarks. With regard to bad faith use, the Complainant argues that the Respondent is using the Domain Names in direct competition with the Complainant's business and that the Respondent's use of the Domain Names has seriously damaged the Complainant's commercial interests, as the Respondent offers the Complainant's customers content for free that they would otherwise have to purchase from the Complainant. As a result, the Respondent has misled the public into believing that the source, sponsorship, affiliation, or endorsement of the Respondent's websites or locations or of a product or service on the Respondent's websites or locations are associated with or authorized by the Complainant.

#### B. Respondent

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

### 5. Findings

The Policy, paragraph 4(a), provides 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 the 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) Preliminary Issue: Consolidation of the Respondents

Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 4.11.1, the Rules, paragraph 10(e), grants a panel the power to consolidate multiple domain name disputes. At the same time, the Rules, paragraph 3(c), provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. When considering a complaint filed against multiple respondents, section 4.11.2 of the WIPO Overview 3.0 states that “panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and

equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

The Complainant has not explicitly requested to consolidate the multiple Respondents. However, given that the Complainant included the Domain Names in the present proceeding, the Panel assumes that the Complainant in fact wishes a joint decision regarding both domain names.

The Panel concludes that the Domain Names are indeed under common control for the following reasons:

- The Domain Names have been registered with the same registrar and are used in connection with the same name servers.
- Upon receipt of the Complainant’s cease and desist letter, the disputed domain name <ouletvb.com> was used to direct Internet users to a website at <https://www.ouletvs.net/>, which recommended its visitors to visit the website available at the disputed domain name <xiaobaotvb.com>, which contained content similar to that available at <ouletvb.com>.
- The whois information of the registered owners of the Domain Names match in relation to the following whois records:
  - Postal Code 13700
  - Country Code 60
  - Tel No 01124346698 / 1124346698

The foregoing suggests that the Domain Names are under common control.

Furthermore, the Respondent has not provided any information that would contradict this assumption. Therefore, the Panel finds that consolidation would be fair and equitable, and henceforth refers to the four registrants collectively as the "Respondent" throughout this decision.

## **B) Identical / Confusingly Similar**

The Domain Names are confusingly similar to the TVB Mark as they contain such trademark in its entirety. The TVB Mark is recognizable within the Domain Names.

The Panel finds that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(i).

## **C) Rights and Legitimate Interests**

Even though the Policy requires the complainant to prove that the respondent has no rights or legitimate interests in the disputed domain name, it is the consensus view among UDRP panels that a complainant must make only a *prima facie* case to fulfil the requirements of the Policy, paragraph 4(a)(ii). As a result, once a *prima facie* case is made, the burden of coming forward with evidence of the respondent’s rights or legitimate interests in the disputed domain name will then shift to the respondent.

The Complainant has substantiated that the Respondent has no rights or legitimate interests in the Domain Names. The Panel finds that the Complainant has made a *prima facie* case

that the Respondent has no rights or legitimate interests in the Domain Names and that the burden of production has been shifted to the Respondent.

The Respondent did not deny these assertions in any way and therefore failed to come forward with any allegations or evidence demonstrating any rights or legitimate interests in the Domain Names.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Respondent's use of the Domain Names to offer the Complainant's paid content for free and the use of the Complainant's copyrighted content in connection with its websites does not result in any rights or legitimate interests in favour of the Respondent.

Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the Domain Names under the Policy, paragraphs 4(a)(ii) and 4(c).

### **C) Bad Faith**

The Panel is satisfied that the Respondent registered and used the Domain Names in bad faith.

As to bad faith registration, it is hardly conceivable that the Respondent registered the Domain Names without knowledge of the TVB Mark, as such trademark is very well-established for many years. In addition, the fact that the Respondent offers the Complainant's content on its websites is clear proof that the Respondent registered the Domain Names with full knowledge of the TVB Mark and thus in bad faith under the Policy, paragraph 4(a)(iii).

As to bad faith use, by using the Domain Names in connection with the websites mentioned above, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant's website to its own for commercial gain as set out under the Policy, paragraph 4(b)(iv).

Consequently, the Panel finds that the Respondent registered and is using the Domain Names in bad faith and that the Complainant satisfied the requirements of the Policy, paragraph 4(a)(iii).

## **6. Decision**

For the foregoing reasons, in accordance with the Policy, paragraph 4(i), and the Rules, paragraph 15, the Panel orders that the Domain Names <ouletvb.com> and <xiaobaotvb.com> be transferred to the Complainant.



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Peter Müller  
Panellist

Dated: 25 April 2024