



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-18010116
Complainant:	Television Broadcasts Limited
Respondent:	mick ssud
Disputed Domain Name:	<tvbybhk.com>

1. The Parties and Contested Domain Name

The Complainant is **Television Broadcasts Limited** whose address is situate at 10/F., Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan Industrial Estate, Kowloon, Hong Kong.

The Respondent is **mick ssud** whose email address is tvbybcom@gmail.com.

The domain name at issue is < **tvbybhk.com** > (“**the Disputed Domain Name**”), registered by the Respondent with the registrar, **1API GmbH** (“**the Registrar**”) whose address is situate at Talstrasse 27, 66424 Homburg, Germany.

2. Procedural History

On 23 May 2018, the Complainant filed a Complaint with Hong Kong International Arbitration Centre (“**HKIAC**”), the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) pursuant to the Uniform Domain Name Dispute Resolution Policy approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999 (“**Policy**”), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (“**Rules**”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (“**Supplemental Rules**”).

On 28 May 2018, HKIAC transmitted by email to the Registrar a request for confirmation of the WHOIS records of the Disputed Domain Name and other related information.

On 28 May 2018, the Registrar confirmed by email that it is the registrar of the Disputed Domain Name, registered by the Respondent for the period from 2017-10-7 to 2019-10-7; and that the Policy is applicable to the dispute relating to this domain name and that the

language of the Registration Agreement of the Disputed Domain Name is English together with the email address of the Respondent and other relevant WHOIS information.

On 25 June 2018, in accordance with Articles 2(a) and 4(a) of the Rules, HKIAC issued a Written Notice of the Complaint and formally notified the Respondent of the Complaint. In accordance with Article 5(a) of the Rules, the due date for the Respondent to submit the Response to the Complaint was 4 July 2018. However, the Respondent did not submit any Response to the Complainant.

On 13 August 2018, HKIAC appointed Mr. Raymond HO as the sole panelist of the Panel in this matter; and transmitted the file to the Panel on the same date. Prior to the appointment, the said sole panelist had submitted to HKIAC his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Article 7 of the Rules.

3. Factual background

The Complainant, Television Broadcasts Limited, incorporated in 1967 and listed on the Hong Kong Stock Exchange since 1988 is the first wireless commercial television station in Hong Kong, commonly known as “TVB”. The principal businesses of Complainant are television broadcasting, video rental programme production and other broadcasting related activities such as Video-On-Demand (“VOD”) licensing, audio and video products rental, selling and distribution, etc. Its Chinese programmes are dubbed into other languages and are distributed through its subsidiaries, TVBI Company Limited, TVB Anywhere Limited, TVB Europe, TVB (USA) Inc., and through group membership to over 30 countries across the world

The Complainant first registered “TVB” as its trademark in Hong Kong in 1992. This trademark has since been registered by the Complainant in many other jurisdictions in the world. In 1999, Complainant launched its principal website “tvb.com” for Internet users to view its programmes online. In 2008, the Complainant set up “myTV” section at “tvb.com” providing its drama and variety programmes for users' viewing on the Internet by means of live streaming and VOD in Hong Kong. In 2013, the Complainant launched “GOTV” mobile application for its users. In 2016, the Complainant started an over-the-top “OTT” platform for its users through the launch of “mytvsuper.com”.

The Respondent has registered the Disputed Domain Name <tvbybhk.com> for a period of two years from 7 October 2017 to 7 October 2019. As shown on the screen captures exhibited to Annex XV to the Complainant, the Disputed Domain Name resolved to a website with prominent “TVB 云档” (TVB Cloud file) icon and “TVB 电视剧” (TVB television drama) icon on the very top row of the first webpage of this website; and also a “TVB 直播” (TVB Live Broadcast) icon at the centre of this first webpage

4. Parties' Contentions

A. Complainant's Contentions

The Complainant is basing its case against the Respondent on the worldwide trademarks and services marks "TVB" owned and registered by Complainant as shown and exhibited in Annex II to the Complaint.

It is the Complainant's contention that each of the conditions in Paragraph 4(a) of the Policy is present in the Complaint, namely:

- (i) The Disputed Domain Name is confusingly similar to Complainant's trademark "TVB";
- (ii) The Respondent has no rights or legitimate interests in the registration of the Disputed Domain name; and
- (iii) The Respondent has registered and used the Disputed Domain Name in bad faith.

Based on these grounds, the Complainant requests that the Disputed Domain Name be ordered to be transferred to the Complainant.

B. Respondent's Contentions

The Respondent did not submit any Response to the Complaint.

5. Discussion and Findings of the Panel

Substantial issues

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.

A) Identical / Confusingly Similar

The Complainant has shown that it has rights in the registered "TVB" trademark, first registered in Hong Kong on 8 June 1992 under Trade mark registration No. 199608823AA for classes 35, 38 and 41 which is currently in force up to 8 June 2023. Based on the documentary evidence, the Complainant has also registered "TVB" trademark rights in Cambodia, the EU, Indonesia, Japan, Macau, Malaysia, Myanmar, Panama, The Peoples' Republic of China, Taiwan, USA, Venezuela, and Vietnam, prior to the registration of the Disputed Domain Name by the Respondent.

By comparing the Disputed Domain Name <tvbybhk.com> with Complainant's registered "TVB" trademark, the Panel finds that the Disputed Domain Name is confusingly similar to the "TVB" trademark in that it incorporates the Complainant's "TVB" trademark in its entirety as a distinct component of the domain name with the addition of the letters

“ybhk” after the well-known “TVB” trademark of the Complainant that has been continuously used since its establishment in Hong Kong in 1967 and through the distribution networks in other parts of the world. Furthermore, the Panel finds the last two letters “hk” at the end of the Disputed Domain Name might create a confusion to an average internet user into believing that the Disputed Domain Name is associated with the Complainant which is headquartered in Hong Kong.

The Panel therefore concludes that Paragraph 4(a)(i) of the Policy has been satisfied by the Complainant.

B) Rights or Legitimate Interests

The Panel is of the view that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant did not authorize the Respondent to use its registered “TVB” trademark or to register the Disputed Domain Name; there is no evidence of the Respondent being commonly known by the Disputed Domain Name; and there is no evidence of a bona fide offering of goods or services under the Disputed Domain Name. Rather there is evidence that the Respondent has used the Disputed Domain Name for a website that provides access or distributes the Complainant’s copyrighted works in its television programmes and drama series without authorization from the Complainant..

As stated in paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied Paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy provides that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to the Respondent 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark 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 trademark or service mark at issue.

The Complainant’s assertions and evidence in support of its case have not been rebutted by the Respondent. The Panel finds none of the circumstances as set out in Paragraph 4(c) is present.

The Panel therefore concludes that the Complainant has established Paragraph 4(a)(ii) of the Policy.

C) Registration and Use in Bad Faith

Paragraph 4(b) of the Policy provides that for the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or the Respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

Based on the evidence tendered in the Complaint, the Panel finds that the Disputed Domain Name resolved to a website with prominent "TVB 云档" (TVB Cloud file) icon and "TVB 电视剧" (TVB television drama) icon on the very top row of the first webpage of this website; and also another prominent "TVB 直播" (TVB Live Broadcast) icon at the centre of this first webpage. The Panel agrees that the Complainant's "TVB" trademark is well-known in the television broadcast industry not just in Hong Kong but worldwide. After the discovery of the use of the Disputed Domain Name as a website for providing users access the TVB television programmes and the TVB drama series, the Complainant issued a "Copyright Infringement Notification" to the Respondent on 7 April 2018. In this notification, the Complainant asserted that the Disputed Domain Name website had been violating TVB's copyright by providing TVB's copyrighted works for free public streaming, viewing and download without TVB's authorization. A long list of the related TVB's copyrighted works, all VOD drama series that were 'infringed' by this website was set out in this notification. However, there was no response from the Respondent.

Taking the screen captures of the Disputed Domain Name website exhibited to Annex XV to the Complainant as highlighted above together with the Copyright Infringement Notification, the Panel has no difficulty in concluding that:

- (a) The Respondent has intentionally chosen the Disputed Domain Name with full knowledge of Complainant's businesses and "TVB" trademarks; and
- (b) The Respondent has used the Disputed Domain Name website that infringed the Complainant's copyrighted works in the VOD drama series.

The Panel agrees with the Complainant's submission that by setting up the platform for its user's free sharing, distribution and viewing of Complainant's works online, the Respondent is in fact using the Disputed Domain Name in direct competition with Complainant's business; and such use of the Disputed Domain Name by the Respondent has seriously prejudiced Complainant's commercial interests.

On totality of all evidence presented by the Complainant, the Panel finds that Respondent is riding on the reputation of Complainant and uses the Disputed Domain Name deliberately to attract Internet users to Respondent's website for commercial gain by making use of Complainant's copyrighted works, and by creating a likelihood of confusion with Complainant's "TVB" trademarks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Based on the above findings, the Panel concludes that circumstances (iv) of Paragraph 4(b) of the Policy are present; and accordingly, evidence of bad faith registration and use of the Disputed Domain Name is established in this case. The Panel therefore finds that the Complainant has established Paragraph 4(a)(iii) of the Policy.

6. Decision

For all the foregoing reasons, in accordance with Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panel orders that the Disputed Domain Name <tvbybhk.com> be transferred to the Complainant.

Raymond HO
Sole Panelist of the Panel
14 August 2018