



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1901218</b>
<b>Complainant:</b>	<b>Television Broadcasts Limited</b>
<b>Respondent:</b>	<b>yeo ceg</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;TVB01.com&gt;</b>

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

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

The Respondent is yeo ceg, of HK.

The domain name at issue is <TVB01.com>, registered by the Respondent with GoDaddy.com, LLC of GoDaddy Copyright Claims Department, 14455 N. Hayden Road, Suite 219, Scottsdale, AZ85260 USA.

### **2. Procedural History**

On 1 February 2019, the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) pursuant to the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the "Rule") and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the "Supplemental Rules"). The Complainant selected to have the case decide by a single member Panel.

On 1 February 2019, the ADNDRC Hong Kong Office acknowledged receipt of the Complaint. On the same day, The Registrar was notified of the Complaint. The Registrar was requested to confirm that the information on the domain name at issue. On 2 February 2019, the Registrar confirmed that the Disputed Domain Name was registered with them by the Respondent, that the Policy is applicable to the current dispute, that the language of the registration is English and provided the Whois information on the Disputed Domain name.

On 8 February 2019, the ADNDRC Hong Kong Office by email sent Notification of Deficiencies of the Complaint to the Complainant. The Complainant was required to rectify the stipulated deficiency within 5 calendar days (on or before 13/02/2019). On the same day, the Complainant sent an amended Application Form and the Annexes required to rectify the deficiencies. On the same day, the ADNDRC Hong Kong Office sent Notice of Administrative Compliance to confirm that the Complaint is in administrative compliance with the Policy and its Rules.

On 13 February 2019, ADNDRC of the Hong Kong Office sent Written Notice of Complaint to the Respondent and provided copy of the Complaint to the Respondent. The Respondent was asked to submit a Response to the Complaint in accordance with Article 5 of the Rules on or before 5 March 2019.

On 6 March 2019, the ADNDRC Hong Kong Office sent email giving notice of Respondent in Default notifying the parties that a Response to the Complaint has not been submitted by the Respondent within the required time, and the Case Administrator will shortly appoint Panelist for the matter.

On 3 April 2019, the ADNDRC Hong Kong Office wrote to panelists for availability to deal with the case. On the same day, Mr Anthony Wu confirmed his availability and that he would be able to act independently and impartially between the parties.

On the same day, the ADNDRC Hong Kong Office sent email Notice of Confirmation of Panelist appointing Mr Anthony Wu to serve as Panelist and notified the parties of the appointment. All documents submitted by the parties were sent to the Panelist by email on the same day. The Panelist was to render the decision on or before 17 April 2019.

On 17 April 2019, at the request of the Panelist, the due date for the Panelist to render a decision for the case is extended to 24 April 2019.

Note: As the Registration Agreement is in English and there did not appear to be exceptional circumstances, the Panelist, pursuant to paragraph 11 of the Rules, decided to use English for the proceeding.

### **3. Factual background**

The Complainant, Television Broadcasts Limited, 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. Complainant has now grown to a size of over 4,400 staff and artistes worldwide. Shares of Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988.

- The principal activities of Complainant are television broadcasting, a video rental, programme production and other broadcasting related activities such as programme and Video-On-Demand (“VOD”) licensing, audio and video products rental, selling and distribution, etc. It is one of the largest producers of Chinese language programming in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 30 countries, accessible to over 300 million households.

In 1999, Complainant launched its principal website “TVB.COM” (<http://www.tvb.com>) on the Internet to provide worldwide viewers the latest information on its programmes and artistes. “TVB.COM” also contains video clips of Complainant’s programmes for users’ viewing online. In November 2008, 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 2010, “myTV” had 3,000,000 visitors monthly. In 2011, Complainant extended its “myTV” to mobile application for smartphone and tablet users to enjoy wireless viewing of its drama and variety programmes in Hong Kong. In 2013, Complainant launched “GOTV” mobile application for users to watch its drama on VOD basis via Internet on computer and mobile devices in Hong Kong. In 2016, Complainant launched “myTV SUPER” OTT (“over the top”) services for viewers to watch its dramas and variety programmes on livecast and VOD basis via Internet and/or set top box and/or applications on television, computer and mobile devices and through website located at <http://www.mytvsuiper.com> in Hong Kong. myTV SUPER is now a leading OTT platform in Hong Kong, and had over 6.6 million users (set-top boxes, mobile apps and website users combined) in August 2018.

Complainant’s wholly-owned subsidiary, TVBI Company Limited (TVBI), is the world’s largest distributor of Complainant’s Chinese language programmes. TVBI and its sub-licensees supply Complainant’s programmes to free-to-air broadcasters, cable and satellite television broadcasting service operators, telecommunication services provider, websites, video distributors and video-on-demand service providers worldwide.

Since 2005, TVBI begins to exploit the VOD and interactive media market in PRC. TVBI has licensed Complainant’s programmes to numerous VOD service providers.

In August 2012, Complainant, China Media Capital and Shanghai Media Group set up a joint venture company 翡翠東方傳播有限公司 (“TVBC”) replacing TVBI to handle Complainant’s programmes sub-licensing in PRC.

In 2014, Complainant’s wholly-owned subsidiary, TVB Anywhere Limited launched “TVB Anywhere” (<https://www.tvbanywhere.com>) television box with OTT services and application for viewers to watch Complainant’s Programmes and channels on television and/or mobile device via open Internet worldwide (excluding the Mainland China, United States of America, Taiwan, Vietnam, Malaysia and Singapore).

In 2018, TVB Anywhere SG SEA Limited, a wholly-owned subsidiary of TVB Anywhere Limited, launched “TVB Anywhere SG”, a mobile application for viewers in Singapore to watch Complainant’s classic and current programmes. Tutorial, service plans and pricing are shown in the official webpage of TVB Anywhere SG.

Complainant’s wholly-owned subsidiaries, TVB (USA) Inc.’s and TVB Australia’s webpages, <http://www.tvbusa.com> and <http://www.tvb.com.au> wherein Complainant’s TV programmes, services and activities available in USA and Australia are introduced.

Complainant is also a member of the Canadian Fairchild Media Group (“Fairchild”). Fairchild television channel’s webpage, <http://fairchildtv.com> wherein Complainant’s TV programmes available in Canada are introduced.

As at the date of the Complainant's submission hereof, Complainant and its subsidiaries have registered and owned 144 domain names, bearing the mark "tvb".

In October 2018, it came to Complainant's attention that Respondent has registered the disputed domain name TVB01.COM. Respondent used the domain to set up an online social community ("Website") for its users to view Complainant's television programmes. Large volumes of Complainant's works are being distributed on the Website by Respondent without Complainant's authorization.

On October 25 and 26, 2018, Complainant sent cease and desist letters to the Website's Internet Services Provider, Cloudflare, Inc ("Cloudflare") and Versaweb, LLC ("Versaweb"); and the domain registrar, GoDaddy.com, LLC ("GoDaddy") respectively, demanding them to remove or disabling access to Complainant's copyrighted works and terminating their services with Respondent.

Neither Cloudflare, Versaweb nor GoDaddy has responded to Complainant's demand. Respondent continued distributing Complainant's works on the Website without Complainant's authorization.

On 25 January, 2019, Complainant sent cease and desist letters to Respondent, the Website's Internet Services Provider, Versaweb, and the domain registrar, GoDaddy respectively, demanding them to remove or disabling access to Complainant's copyrighted works and terminating their services with Respondent.

Neither Respondent, Versaweb nor GoDaddy has responded to Complainant's demand.

Complaint is based on the worldwide trademarks and services marks "TVB" owned and registered by Complainant.

The Respondent has not filed a Response. The Disputed Domain Name was registered on 11 November 2017.

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

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

- (i) The domain name in dispute is confusingly similar to Complainant's trademark "TVB":

The domain name in dispute is "TVB01.COM". By comparing the disputed domain name with Complainant's registered trademark "TVB", it clearly illustrates that the disputed domain name "TVB01.COM" is similar to Complainant's registered trademark "TVB". The mark "TVB" has been used by Complainant continuously for more than 50 years. Complainant first registered "TVB" as its trademark in Hong Kong in 1992. "TVB" is currently registered and/or applied for registration by Complainant in over 30 jurisdictions worldwide.

In addition to the mark “TVB” , Complainant and its subsidiaries have also applied and registered numerous trademarks incorporating the essential element of the letters “TVB” . Examples are “TVB8” , “TVBA Value Club” , “TVBJ” , “TVBI” , “TVBVideo” , “TVBUDDY” , “TVBC” , “TVB Europe” , “TVB NETWORK VISION” , “TVB Anywhere” etc in various jurisdictions and for various services.

Further, Complainant’s group of companies operate and own the following satellite television channels:

- (a) TVBJ – Chinese-language television channel has been distributed in Australia and Singapore since 2000;
- (b) TVB8 – Chinese language television channel has been distributed in PRC, Asia and Pacific region since 1998.

Complainant’s subsidiary TVB (USA) Inc. operates cable and satellite TV services to Chinese speaking audience in USA since 1976.

TVBC has been handling Complainant’s programmes sub-licensing in PRC since 2012. TVBC launched iTVB mobile application in PRC, providing various Complainant’s programmes for users’ viewing.

In such circumstances, Complainant’s name and trademark are well known worldwide. Complainant enjoys trademark rights in the name “TVB” due to the goodwill and reputation accumulated through extensive use, advertising, promotion of the mark since its registration in the early 1990s.

Respondent registered the domain name in dispute on November 11, 2017. By setting up various archives and classifying Complainant’s programmes by different categories and broadcast years, the Website was deliberately created by Respondent with the intention to offer public viewing of Complainant’s programmes without Complainant’s authorization.

The domain name in dispute comprises Complainant’s registered mark “TVB” and confusingly similar with other Complainant’s trademarks deriving from ‘TVB’, such as “TVBVideo”, “TVB8”, “TVBC”, “TVB Europe”, “TVBJ” and “TVB Anywhere”. To conclude, Respondent’s registration of the domain name is a fraudulent act which takes advantage of Complainant’s goodwill and reputation, counterfeiting Complainant’s identity and mislead the public to believe that Complainant and/or its official website, such as [www.tvb.com](http://www.tvb.com) is associated with the domain name in dispute or that Complainant has authorized Respondent purposely and intentionally selected domain name similar to Complainant’s domains and trademarks.

(ii) Respondent has no rights or legitimate interests in the registration of the domain name in dispute

Respondent is not in any way connected, associated or affiliated with Complainant and Complainant has not authorized, endorsed or otherwise permitted Respondent to register the domain name in dispute or use Complainant’s trademark or any variation thereof.

There is no evidence that Respondent has been commonly referred to as the disputed domain name, and there is no reason why Respondent might reasonably be said to have any rights or legitimate interests in registering or using the disputed domain name.

Besides, by offering users to view Complainant's programmes without authorization, Respondent has infringed the copyright and other intellectual property rights of Complainant. Complainant contends that Respondent is not making any legitimate or fair use of the domain name in dispute.

(iii) Respondent has registered and used the domain name in bad faith

Complainant believes that Respondent has registered and used the domain name in dispute in bad faith.

The domain name in dispute was registered in 2017 while Complainant has been widely publicizing "TVB" as its brand name since 1967. Respondent uses the domain name in dispute for the Website where they provide Complainant's programmes for its users' viewing. Respondent should have intentionally chosen the disputed domain name for its Website with full knowledge of Complainant's business and trademark. It is therefore inconceivable that at the time of registering the disputed domain name Respondent was not aware of Complainant's business and its trademark.

Complainant engages in programme content licensing and distribution business. In particular, Complainant distributes its programme content through its subsidiaries and "myTV Super" service through "MyTV Super Limited" (formerly "TVB.COM LIMITED") in Hong Kong. Besides, Complainant has licensed VOD rights of its programmes to (a) PCCW Limited in Hong Kong through "TVB.COM Ltd." (now known as "MyTV Super Limited"); (b) [www.astro.com.my](http://www.astro.com.my) in Malaysia via TVBI and also grants its VOD and on-line streaming rights of its programmes to TVBC for sub-licensing in PRC; (c) TVBI for its TVB Anywhere services; and (d) TVB Anywhere SG SEA Limited for its TVB Anywhere SG service in Singapore. Respondent, by setting up the platform for its user's free sharing, distribution and viewing of Complainant's works online, is in fact using the domain name in dispute in direct competition with Complainant's business.

Respondent's use of the Website has seriously prejudiced Complainant's commercial interests. Respondent has distracted customers from Complainant, who, instead of buying video products, subscribing VOD/OTT services or visiting online platforms authorized by Complainant, choose to visit the Website in order to get Complainant's programme contents for free at the Website. Respondent's use of the Website has therefore adversely affected Complainant's business and income.

It is obvious that Respondent is riding on the reputation of Complainant and uses the domain name in dispute deliberately to attract Internet users to Respondent's website for commercial benefits. By making use of Complainant's works, and by creating a likelihood of confusion with Complainant's trademarks, Respondent has misled the public to believe that the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location are associated with Complainant, or with its authorization.

B. Respondent

The Respondent did not file any Response.

**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**

On the evidence, the Panelist accepts that through the extensive and extended use of the TVB Mark it has been well known worldwide for a long time. Also, the TVB mark and its related marks were registered well before the registration of the Disputed Domain Name. The TVB Mark was registered as early as 1997. The Complainant clearly has rights over the TVB Mark and the TVB related Marks. The Panelist also accepts the contention of the Complainant that the Disputed Domain Name has incorporated the entire TVB Mark in the Disputed Domain Name with the addition of "01". TVB is not an ordinary word and has no dictionary meaning. It is the distinctive part of the Disputed Domain Name. The added part "01" is generic and has no distinctiveness. The Panelist believes that internet visitors will likely confuse the Disputed Domain Name with the TVB Mark.

In the circumstances, the Panelist finds that the Disputed Domain Name to be confusingly similar to the TVB Mark which the Complainant have rights. The Complainant has proved Paragraph 4(a)(i) of the Policy.

**B) Rights and Legitimate Interests**

The Panelist accepts that by virtue of the fact that the Complainant's TVB Marks are well known worldwide, that they have been used and registered well before the registration of the Disputed Domain Name, that, as evident from the contents of the Website that the Disputed Domain Name resolved to, it could reasonably be inferred that the Respondent knew of these marks when the Disputed Domain Name was registered. The Complainant has confirmed that it has not authorized, endorsed or otherwise permitted Respondent to register the domain name in dispute or use Complainant's trademark or any variation thereof by the Respondent. The Panelist finds that the Complainant has proved a prima facie case against the Respondent that the Respondent does not have any right and legitimate interest in the Disputed Domain Name. The onus of proof is shifted to the Respondent to prove that he has such right and legitimate interest. The Respondent did not file any Response and has failed to discharge the onus of proof. Accordingly, the prima facie case is accepted by the Panelist to be the true facts of the case. The Complainant has proved Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

Based on the following facts, the Panelist accepts that the Complainant has proved that “the Respondent’s domain name has been registered and is being used in bad faith ”.

The domain name in dispute was registered in 2017 while Complainant has been widely using “TVB” as its brand name since 1967. The Complainant is the first wireless commercial television station in Hong Kong in 1967. According to the Whois information, the Respondent gave HK as the Registrant City. It is hardly conceivable that a person living in Hong Kong like the Respondent did not know of the TVB Mark. The Panelist accepts the contention of the Complainant that the Respondent had intentionally chosen the Disputed Domain Name with knowledge of the rights of the Complainant over the TVB Mark. The registration was in bad faith.

That the Respondent’s intention in registering the Disputed Domain Name is fortified by the use to which the Respondent has put the Website to which the Disputed Domain Name has resolved to. Respondent uses the Website to set up an online social community for its users to view Complainant’s television programmes. Large volumes of Complainant’s works are being distributed on the Website by Respondent without Complainant’s authorization. As pointed out by Complainant, Respondent’s use of the Website has seriously prejudiced Complainant’s commercial interests. The usurpation was blatant and the use was in bad faith.

The bad faith in the registration and use of the Disputed Domain Name is also supported by the facts that the Respondent did not give any proper address in the Registration of the Disputed Domain Name, did not respond to the Cease and Desist letter from the Complainant and did not respond to the Complaint,

In the circumstances, the Panelist finds that the registration and use of the Disputed Domain Name was in bad faith and the Complainant has proved Paragraph 4(a)(iii) of the Policy.

### **6. Decision**

For the foregoing reasons, the Complainant has proved the three necessary elements under Paragraph (4)(a) of the Policy and has prevailed with its Complaint. The Panelist orders that the Disputed Domain Name < TVB01.com > be transferred to the Complainant as requested by the Complainant.



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Anthony Wu  
Sole Panelist

Dated: 24 April 2019