



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700950
Complainant:	Television Broadcasts Limited
Respondent:	VIOLET S CHAFIN
Disputed Domain Name(s):	<DRAMATVB.COM >

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 Violet S Chafin, of 2357 Lyon Avenue, New Bedford, MA 02740, U.S.

The Domain Name at issue is DRAMATVB.COM, registered by the Respondent with Enom, Inc., of 5808 Lake Washington Blvd, Suite 300, Kirkland, WA 98119, U.S.A.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on 22 February 2017, in accordance with 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 Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules). On the same day, the Hong Kong Office confirmed receipt of the Complaint, and then sent an email to Enom, Inc (the Registrar of the Domain Name) requesting verification in connection with the relevant information of the Domain Name at issue.

On 24 February 2017, the Registrar clarified in an email that the registrant of the Domain Name is VIOLET S CHAFIN rather than “WHOISGUARD, INC.” referred in the Complaint dated on 22 February 2017.

On 28 February 2017, the Hong Kong Office required the Complainant to amend the complaint form with regards to the name and details of the Respondent confirmed by the

Registrar. On 1 March 2017, an acknowledgement of receipt of the complaint form, as rectified by the Complainant, was sent from the Hong Kong Office, to the Complainant.

On 1 March 2017, the Hong Kong Office sent the Respondent a written notice of complaint which involved a notification that a complaint concerning the Domain Name of DRAMATVB.COM was submitted against the Respondent and a requirement to submit a Response within 20 days from 1 March 2017 (on or before 21 March 2017), and forwarded the Complaint (the Form C and the Annexure to the Complaint) to the Respondent pursuant to the Policy, Article 4 of the Rules and Article 6 of the ADNDRC Supplemental Rules. The formal date of the commencement of the administrative proceeding was 1 March 2017.

On 22 March 2017, the Hong Kong Office confirmed that it did not receive a Response from the Respondent in respect of the Complaint concerning the Domain Name of DRAMATVB.COM within the required period of time.

On 24 March 2017, the Hong Kong Office appointed Mr. Matthew Murphy as the sole Panelist for this Domain Name dispute. And the appointment was accepted by Mr. Matthew Murphy on the same day.

On 27 March 2017, the case files were transferred to the Panelist.

3. Factual background

The Complainant is the first wireless commercial television station in Hong Kong, known as TVB, established in 1967 and publicly listed on the Hong Kong Stock Exchange since 1988. Its principal activities involve television broadcasting, video rental, programme production and other broadcasting related activities such as programme and Video-On-Demand licensing, audio and video products rental, selling and distribution. Its principal website is “TVB.COM” launched in 1999, which has a “myTV” section providing its drama and variety programmes and has attracted many visitors since 2008. The Complainant’s subsidiaries include TVB1 which is the world’s largest distributor of Chinese language programmes, TVB Europe which offers 24-hour Chinese television programme services on daily basis and now covers 48 countries in Europe and TVB USA which provides Chinese TV services to US viewers through cable systems, satellite platform and telco TV platforms.

The Complainant first registered “TVB” as its trademark in Hong Kong in 1992. In addition, it and its subsidiaries have also applied and registered many trademarks incorporating “TVB” in various jurisdictions. Meanwhile, the Complainant and its subsidiaries have registered 68 Domain Names containing the letters of “tvb”.

The Respondent, namely VIOLET S CHAFIN who registered the Domain Name of DRAMATVB.COM on 18 February 2016, is located at 2357 Lyon Avenue, New Bedford, MA 02740, US. They did not file any response or other materials with the Hong Kong Office within the required period of time.

4. Parties’ Contentions

A. Complainant

The Complainant's contentions are summarized as follows:

- i. The Complaint considers the Domain Name in dispute is confusingly similar to its trademark "TVB" given that the prior used and registered "TVB" trademark of the Complainant is well known worldwide through extensive use, advertising and promotion, and the Domain Name in dispute is registered by the Respondent in bad faith as the registration date of the Domain Name is in 2016 while the Complainant has been widely publicizing "TVB" as its name since 1967.
- ii. The Complainant contends that the Respondent has no rights or legitimate interests in the registration of the Domain Name in dispute due to reasons such as the Respondent is not associated with the Complainant, the registration of the Domain Name and use of the Complainant's trademark by the Respondent are without authorization, no any evidence or reasonable reason is available to prove or illustrate the existence of such a right or legitimate interest, and the Respondent benefits from its illegal behaviors including copying and using the Complainant's registered trademarks and offering of viewing the Complainant's programmes without permission.
- iii. The Complainant argues that the Respondent has registered and used the Domain Name in bad faith because the Domain Name registered in 2016 is used by the Respondent for the website to provide the programmes of the Complainant, and the use of the Domain Name by the Respondent is in direct competition with the Complainant's business and has seriously prejudiced the Complainant's commercial interests.

B. Respondent

The Respondent did not submit any Response to the Hong Kong Office in respect of the Complaint concerning the Domain Name of DRAMATVB.COM.

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

The Complainant is the world's single largest producer of Chinese language television programming, and its TVB trademark enjoys a strong reputation worldwide. The Domain Name is made up of DRAMATVB which varies the Complainant's famous registered TVB trademark in an indistinguishable way by

adding a word “DRAMA” at the beginning, which is generic for some types of goods/services provided by the Complainant. The addition of “DRAMA” does not make the Domain Name less identical or confusingly similar to the Complainant’s TVB trademark, as “drama” is generic and related to the services offered by the Complainant under its TVB trademark (please refer to Sun Microsystems, Inc. v. Cyber Business Holdings Ltd., D2007-1439).

Bearing this in mind, the Panel concludes that the Domain Name and the Complainant’s TVB trademark are confusingly similar, and the first requirement at Paragraph 4(a) of the Policy is satisfied.

B) Rights and Legitimate Interests

The Complainant states in the complaint form that it has no relationship with the Respondent and didn’t authorize the Respondent to register/use its TVB trademark.

The Respondent failed to prove that it has a right or legitimate interest in the Domain Name as it didn’t file any submissions with the Hong Kong Office at all.

The Complainant’s TVB trademark registration has been in existence for over 20 years, having first registered in 1992, and its other trademarks incorporating TVB as listed in Annex XI are all registered earlier than the filing date of the Domain Name in 2016.

The Panel has reviewed the use made by the Respondent of the Domain Name. The Panel considers that the Respondent is not using the website for legitimate noncommercial or fair use purposes due to a simple sentence of “Watch online and download free TVB drama, movies, shows” appeared immediately once the mouse cursor is moved to the “DRAMATVB” logo at the left top corner of the website of the Domain Name.

Viewing the evidence as a whole, the Panel concludes that Paragraph 4(a)(ii) of the Policy is satisfied.

C) Bad Faith

Paragraph 4 (b) (iv) of the Policy states that evidence of registration and use in bad faith by the holder include the circumstance where “by using the Domain Name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

The Panel reviewed the website located at the place of the Domain Name which is currently redirected to another website of dramatvb.se controlled by the Respondent. It says clearly at the top of the website that “We are change DramaTVB.Com to [Http://DramaTVB.Se](http://DramaTVB.Se), Like us on Facebook”. Many works of the Complainant are distributed on the website. If one was to click on the dragon logo or the DRAMATVB marks in the black area at the top left corner on the website, a sentence automatically appears saying “Watch online and download free TVB drama, movies, shows”.

Based upon the uncontested evidence submitted by the Complainant and the content of the website located at the Domain Name, the Panel finds that the Domain Name postdates the TVB trademark of the Complainant which may support an inference of registration in bad faith. The Respondent intentionally attempts to attract Internet users who are looking for TVB (the Complainant) produced/hosted dramas for various reasons as the Domain Name incorporates the Complainant's TVB trademark and a descriptive addition that corresponds with the goods/services offered by the Complainant. The Respondent achieves commercial gain at the Complainant's expense given that the Respondent receives revenue from advertisements on the website located at the Domain Name where the Complainant's works can be accessed. Considering the facts such as the strength of the Complainant's TVB trademark and the unauthorised use of the Complainant's TVB mark and works by the Respondent without authorization, the Panel has found that the Respondent has been engaging in bad faith as discussed above, and that therefore the Respondent has registered the Domain Name in bad faith, and has been using the Domain Name in bad faith.

The Panel, therefore, finds that the Respondent registered and is using the Domain Name in bad faith, and Paragraph 4 (a) (iii) of the Policy has been satisfied.

6. Decision

The Panel concludes that: the Domain Name is confusingly similar to the Complainant's TVB mark; the Respondent has no rights or legitimate interests in the Domain Name; and the Respondent registered and is using the Domain Name in bad faith. The Panel, therefore, grants the Complainant's request for transfer to it of the Domain Name <DRAMATVB.COM >.

Matthew Murphy
Panelists

Dated: 7 April 2017