



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1600926
Complainant:	Television Broadcasts Limited
Respondent:	xi xi
Disputed Domain Name(s):	<tvbow.com>

1. The Parties and Contested Domain Name

1.1 The Complainant is Television Broadcasts Limited, of 10/f. Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

1.2 The Respondent is xi xi, of Dsfe, Bdyie dr, dewo eiu, CN 10000.

1.3 The domain name at issue is <tvbow.com>, registered by Respondent with goDaddy.Com, LLC, of 14455 N. Hayden Rd. Ste. 226, Scottsdale, AZ 85260 USA.

2. Procedural History

2.1 The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the “Centre”) on 18 November 2016 and the Complaint was acknowledged by the Centre on 18 November 2016.

2.2 Upon receipt of a request for verification of the details of the registrant of the Disputed Domain Name from the Centre, the Registrar goDaddy.Com, LLC, confirmed that the Respondent is listed as the registrant and confirmed the registrant’s contact details on 21 November 2016. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

2.3 The Centre formally notified the Respondent of the Complaint on 22 November 2016 and advised the Respondent of the prescribed twenty days deadline within which to file a response by 12 December 2016. The Respondent failed to file a response to the Complaint. The Centre notified the Respondent on his failure to submit a response on 13 December 2016.

2.4 The Centre appointed Mr. Jonathan Agmon as Sole Panelist in this matter on 13 December, 2016 and at the instance of the Panelist extended the time within which to render the decision.

3. Factual background

3.1 The Complainant, Television Broadcasts Limited, commonly known as TVB, is the first wireless commercial television station in Hong Kong. Established in 1967, and now has 4,600 staff and artistes worldwide. The Complainant shares are listed in the Hong Kong Stock Exchange market since 1988. The Complainant is one of the largest producers of Chinese language television programming in the world.

3.2 The Complainant engages in programme content licensing and distribution business and via its subsidiary, offers VOD, television programs and channels services.

3.2 The Complainant and its subsidiaries have 68 registered domain names comprising its trademark TVB. For example: <tvb.com>, <tvb.hk>, <tvbc.中国>, <tvb.com.cn>, <tvbgroup.cn> and many more.

3.3 The disputed domain name was registered on August 18, 2015.

3.4 The disputed domain name is inactive.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant argues that the disputed domain name comprises the Complainant's TVB trademark.
- ii. The Complainant argues that its trademark has been well known worldwide, and that it 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 1990.
- iii. The Complainant further argues that the Respondent has no rights or legitimate interest in the registration of the disputed domain name.
- iv. The Complainant further contends that the Respondent is not in any way connected, associated or affiliated with the Complainant and the Complainant has not authorized, endorsed or otherwise permitted the Respondent to register the disputed domain name or the Complainant's trademark or any variation thereof.
- v. The Complainant further contends that the Respondent is not making any legitimate, non-commercial or fair use of the disputed domain name.
- vi. The complainant further contends that the Respondent has registered and used the disputed domain name in bad faith.
- vii. The Complainant further contends that the disputed domain name was registered in 2015, while the Complainant has been known since 1967, and therefore the Respondent has intentionally chosen the disputed domain name with full

knowledge of the Complainant's business and trademark.

- viii. The Complainant further argues that the use of the website under the disputed domain name seriously prejudiced the Complainant commercial interest. The Respondent has distracted customer from the Complainant who, instead of buying videos products, subscribing VOD services or visiting Complainant authorized website, choose to visit Respondent in order to get Complainant programs contents for free, and this affects Complainant's business.
- ix. The Complainant further argues that the Respondent has riding on the reputation of the Complainant and uses the disputed domain name deliberately to attract internet users to its website for commercial benefits, by creating a likelihood of confusion with the Complainant' trademarks, the Respondent has misled the public to believe that the source, sponsorship, affiliation, or endorsement of Respondent's website or locations are associated with the Complainant.

B. Respondent

The Respondent has not responded to the Complaint.

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

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that a disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark or service mark right and the similarity between the disputed domain name and its trademark or service mark.

The Complainant provided the trademark registration certificates to prove that it had registered the mark TVB in China and a number of other countries and regions.

The disputed domain name is <tvbow.com>. Apart from the generic Top-Level Domain suffix “.com”, the disputed domain name consists of “TVB”, which is identical to the Complainant's registered mark TVB and the addition of the meaningless term "OW". The mere addition of the gTLD suffix “.com” or an additional two characters do not serve to distinguish the disputed domain name from the Complainant's trademark. (See *Alibaba Group Holding Limited v. (Liu Xiao Bo)*, *Lingping* Case No. HK-1500814; *Alibaba Group Holding Limited v. Pan Zhongyi*, Case No. HK-1400677; and *Alibaba Group Holding Limited v. Pan Zhongyi*, Case No. HK-1500718)

The Panel therefore finds that the dominant part of the disputed domain name is the Complainant's trademark and thereof finds the disputed domain name to be identical or confusingly similar to the Complainant's registered marks. Accordingly, the Complainant has proven the element required by the Policy, paragraph 4(a)(i).

B) Rights and Legitimate Interests

Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name. (See *Edgwell Personal Care Brands LLC v. jifeifeil*, Case No. HK-1600855)

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a *prima facie* case in this regard, *inter alia*, due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use the Complainant's trademarks or a variation thereof and the evidence presented indicates that the Respondent is not engaged in a bona fide offering of goods or services.

The Respondent has not submitted any substantive Response to the Complaint and did not provide any explanation or evidence to show any rights or legitimate interests in the disputed domain names sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C) Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. According to the evidence filed by the Complainant, the Complainant has owned a registration for the TVB trademark since at least the year 1994 and has made use of the TVB trademark since the year 1967. It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain names (See *Arena Pharmaceuticals GMBH v. Qi Fei Gao*, Case No. HK -1300094; See also *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735).

The disputed domain name is confusingly similar to the Complainant's trademark. Previous UDRP panels have found that "[a] likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site". (See *Alibaba Group Holding Limited v. Domains by Proxy LLD et. Al.*, Case No. HK-1400627; See also *Edmunds.com, Inc. v. Triple E Holdings*

Limited, WIPO Case No. D2006-1095.) To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

The Complainant sent a cease and desist letter to the Respondent, the Website under the disputed domain name Internet service provider, and to the Registrar. The Respondent failed to respond to the cease and desist letter. Instead, the Respondent has directed the disputed domain name to another website that presents the Complainant's television series, and the same information that the Complainant's licenses as part of its business. Failing to answer the Complainant's cease and desist letter and instead redirecting the disputed domain name to another domain name which provides information which the Complainant's licenses under its TVB trademark (and which according to the evidence has been licensed to the Complainant for distribution, is strong evidence of bad faith registration and use by the Respondent.

Having regard to the evidence, the Panel finds that the disputed domain name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith with the intent to create an impression of an association with the Complainant and profit therefrom. The Respondent's actions therefore constitute bad faith. (See *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. D2005-0765, stating that "the registration of a domain name with the knowledge of the complainant's trademark registration amounts to bad faith".)

Based on the evidence that was presented to the Panel, including the Complainant's registered trademark, the use of the Complainant's trademark in the disputed domain name, the use of the disputed domain name to offer unlicensed information and public streaming, download and viewing without the Complainant's authorization and the Respondent's failure to answer the Complaint and the cease and desist letter, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

6. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <tvbow.com> be transferred to the Complainant.



Jonathan Agmon
Panelists

Dated: December 25, 2016