



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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| <b>Case No.</b>                 | HK-1500796                    |
| <b>Complainant:</b>             | Television Broadcasts Limited |
| <b>Respondent:</b>              | Sean Delado                   |
| <b>Disputed Domain Name(s):</b> | <tvb2014.com>                 |

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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, Tsueng Kwan O Industrial Estate Kowloon, Hong Kong.

The Respondent is Sean Delado, of 2273 Westchester Ave, Bronx, New York 10708, U.S.A.

The domain name at issue is tvb2014.com, registered by Respondent with PDR LTD. d/b/a Public DomainRegistry.com.

**2. Procedural History**

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for Policy, was received by ADNDRC Hong Kong Office on October 6, 2015. At the same day, the ADNDRC Hong Kong Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and the registration information was confirmed by the Registrar on October 6, 2015.

Having verified that the Complaint satisfied the formal requirements of Policy, the ADNDRC Hong Kong Office issued to the Respondent on October 9, 2015, a Notification of the Commencement of the Proceedings to email address of the Respondent, advising the Respondent to submit a Response to the Complaint within 20 days scheduled time (on or before October 28, 2015).

On October 30, 2015, the ADNDRC Hong Kong Office notified the Complainant that it had not received the Response from the Respondent within the required period of time and would shortly appoint Panelist for this matter.

On November 2, 2015, the ADNDRC Hong Kong Office informed the parties by email that Dr. Lulin Gao would be the sole Panelist of this case and the Panel should render the Decision on or before November 16, 2015.

### **3. Factual background**

#### *For the Complainant*

The Complainant is Television Broadcasts Limited. Its address is Legal and Regulatory Department, 10/F., Main Building, TVB City, 77 Chun Choi Street, Tsueng Kwan O Industrial Estate Kowloon, Hong Kong. The authorized representative of the Complainant is Ms. Jane Ting.

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 4,600 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, 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 the largest producer 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.

Complainant’s subsidiary, TVBI Company Limited (TVBI), is the world’s largest distributor of 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 services providers. A list of the names and the printed pages of the websites of TVBI’s VOD licensees are listed in Annex III of this Complaint.

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. Printouts of TVBC (<http://www.tvbc.com.cn/>) website are attached to this Complainant as Annex IV.

In 2014, TVBI launched "TVB Anywhere" (<http://eu.tvbanywhere>) television box with OTT ("over the top") services for viewers to watch Complainant's programmes and channels on television via open Internet worldwide.

Complainant's subsidiary, TVB Europe offers 24-hour Chinese television programme services on daily basis and now covers 48 countries in Europe.

As at the date of this submission, Complainant and its subsidiaries have registered 72 domain names, bearing the mark "tvb", namely, "tvb.com.au", "tvbihk.com.hk", "tvbs.com.tw", "tvbs.net", tvbsn.com.tw", "tvbsg.com.tw", "tvbusa.com", "tvbusa.us", "tvbwkly.com", "tvb.asia", "tvbartistesblog.com", "tvbartisteblog.com", "tvbartistsblog.com", "tvbartistblog.com", "tvbartistesblog.com.hk", "tvbartisteblog.com.hk", "tvbartistsblog.com.hk", "tvbartistblog.com.hk", "tvbartistesblog.com.cn", "tvbartisteblog.com.cn", "tvbartistsblog.com.cn", "tvbartistblog.com.cn", "tvbartistesblog.cn", "tvbartisteblog.cn", "tvbartistsblog.cn", "tvbartistblog.cn", "tvbmusic.com.hk", "tvbnews.com.hk", "tvbn.com.hk", "tvbgroup.com.cn", "tvbgroup.cn", "tvbchina.com.cn", "tvb.com.cn", "tvb.hk", "tvb.com.hk", "tvb.com", "tvbnewsroom.com.hk", "tvbn.hk", "tvbof.com.mo", "tvbop.com.mo", "tvbf.com.hk", "tvb.co.in", "tvb.com.vn", "tvb.com.sg", "tvb.sg", "tvb.ae", tvbihk.com", "tvbchina.cn", "tvbvietnam.com.au", "tvbc.com.cn", "tvbfinance.com", "tvbcharity.hk", "tvbcharity.com.hk", "tvbcharity.org", "tvbcharity.org.hk", "tvbc.中國", "tvbappstore.hk", "tvbappstore.com.hk", "tvbappstore.com", "tvbappstore.net", "tvb.tm", "tvbanywhere.com", "tvbanywhere.net", "tvbanywhere.com.hk", "tvbanywhere.hk", tvbcorporate.hk", "tvbcoporate.com", "tvbcoporate.com.hk", "tvb.website", tvb8.com.hk, tvblove.com and tvb.love. Details of most of these domain registrations are listed in Annex V of this Complaint.

In July 2015, it came to Complainant's attention that Respondent has registered the disputed domain name TVB2014.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. Copy of some screen captures of Complainant's works shown on the Website is attached to this Complaint as Annex VI.

On July 17, 2015, Complainant sent cease and desist letters to the website's Internet Services Provider, Cloudflare, Inc. ("Cloudflare") and the Registrar, PDR LTD. d/b/a Public DomainRegistry.com ("Public Domain Registry") respectively, demanding them to remove or disabling access to Complainant's copyrighted works and terminating their services with Respondent. Copy of Complainant's letters to Cloudflare and Public Domain Registry are attached to this Complainant as Annexes VII and VIII respectively.

In addition, Complainant also sent cease and desist letter to Respondent on September 21, 2015, demanding Respondent to delete all Complainant's copyright infringed materials on the Website and transfer the domain name "TVB2014.COM" to Complainant. Copy of the letter to Respondent is attached to this Complainant as Annex IX.

However, neither Respondent, Cloudflare nor Public Domain Registry has taken any action to stop infringement activities on the Website as at to date.

*For the Respondent*

The Respondent is Sean Delado who registered the Disputed Domain Name on August 22, 2014 through the Registrar PDR LTD. d/b/a Public DomainRegistry.com.

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

*The Complainant*

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

The domain name in dispute is "TVB2014.COM". By comparing the disputed domain name with Complainant's trademark "TVB", it clearly illustrates that the disputed domain name "TVB2014.com" is similar to Complainant's registered trademark "TVB" has been used by Complainant continuously for more than 46 years. Complainant first registered "TVB" as its trademark in Hong Kong in 1992 and "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 "TVBS", "TVB8", "TVBA Value Club", "TVBJ", "TVBA", "TVBVideo", "TVBS-E", "TVBUDDY", "TVBC", "TVBEurope", "TVB NETWORK VISION" and "TVB Anywhere" in various jurisdictions and for various services. Details of these registrations and applications are listed in Annex X of this Complaint.

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) TVB-E - Chinese language television channel has been distributed in UK and Europe since 1997;
- (c) TVB8 - Chinese language television channel has been distributed in PRC, Asia and Pacific region since 1998;
- (d) TVBS service consisting of five channels: TVBS, TVBS 歡樂台, TVBS-News and TVBS-Asia and TVB8 - Chinese language television channel has been distributed in Taiwan since early 90's.

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 user's viewing.

In such circumstances, Complainant's name and trademark have been 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 90s’.

Respondent registered the domain name in dispute on August 22, 2014. By setting up various archives and classifying Complainant’s programmes by different categories and broadcast months; and with the slogan of “Watch TVB Movie Online” on the front page, the Website is deliberately created by the Respondent with the intention to offer the public viewing of Complainant’s programmes, which are unauthorized. Printouts of the Website with the archives and slogan, are attached to this Complaint as Annex XI.

The domain name in dispute comprises Complainant’s registered mark “TVB”. The disputed domain contains Complainant’s trademark “TVB” and confusingly similar with other Complainant’s trademarks deriving from “TVB”, such as “TVBVideo”, “TVBS-E”, “TVB8”, “TVBC”, “TVBEurope”, “TVBJ” and “TVB Anywhere”.

To conclude, Respondent’s domain name could cause confusion to the public and mislead them to think 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 identical and 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 or affiliated with Complainant and Complainant has not authorized, endorsed or otherwise permitted Respondent to register the domain names in dispute or use Complainant’s trade mark or any variation thereof.

There is no evidence that the Respondent has been commonly referred to as the disputed domains, 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.

Further, by aiding and abetting users to infringe Complainant’s copyright, Respondent receives revenue or other benefits from advertisers’ posting advertisements on the Website, Complainant contends that Respondent is not making any legitimate, non-commercial or fair use of the domain name in dispute.

Besides, by copying and using Complainant’s registered trademark and offer of viewing of Complainant’s programmes without authorization, Respondent has infringed the copyright, trademark and other intellectual property rights of Complainant.

**(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 2014 while Complainant has been widely publicizing “TVB” as its name since 1967. Respondent uses the domain name in dispute for the Website where it provides Complainant’s programmes for its users’ viewing. Respondent should have intentionally chosen the 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 names Respondent was not aware of Complainant's business and its trade mark.

Complainant engages in programme content licensing and distribution business. In particular, Complainant distributes its programme content via "MyTV" and "GOTV" service in Hong Kong. Besides, Complainant has licensed VOD rights of its programmes to (a) PCCW Limited in Hong Kong through TVB.COM; (b) 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; and (c) TVBI via TVB Anywhere services. 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 services or visiting Complainant's authorized Website, choose to visit Respondent 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 trade mark, 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.

### ***The Respondent***

The Respondent did not make any response by the scheduled time.

## **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.

### ***Identical / Confusingly Similar***

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights to. In order to meet this requirement, the Complainant provided copies of trademark registration certificates certifying its entitlement to the registered trademark "TVB" before the Respondent registered the disputed domain name (August 22, 2014). For instance, the Complainant registered the "TVB" trademarks in China (Reg. Nos.777652,

777743; Reg. Date: February 14, 1995) (Reg. No. 754098; Reg. Date: May 21, 1995) (Reg. No. 754095; Reg. Date: July 7, 1995), Hong Kong (Reg. No. 199608823AA; Reg. Date: June 8, 1992) (Reg. No. 1998B11494; Reg. Date: May 30, 1997) (Reg. Nos. 1999B05700, 1999B05699; Reg. Date: August 6, 1998), and other jurisdictions such as European Community, Indonesia, Japan, and etc. Thus, the Panelist is of the view that the Complainant enjoys the prior trademark right to “TVB.” As such, what the Panelist needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “TVB” and the disputed domain name “tvb2014.com.”

The identifying part of the disputed domain name is “tvb2014,” which is normally identified as adding a number “2014” after the trademark of the Complainant by ordinary consumers. Comparing “tvb” with the trademark “TVB” of the Complainant, the Panelist finds they are identical except for the upper or lower case, which shall not distinguish the disputed domain name from the Complainant’s trademark “TVB.” Moreover, the combination of “tvb” and “2014” does not create a new meaning, which can distinguish itself from the Complainant’s “TVB.” On the contrary, only adding a number “2014” after the Complainant’s trademark may easily mislead the general public to believe that the disputed domain name is used or authorized to use by the Complainant or the Respondent has certain relations with the Complainant.

Therefore, the Panelist finds that the disputed domain name is confusingly similar to the Complainant’s trademark “TVB,” and the Complainant has satisfied the first condition under Paragraph 4(a) (i) of the Policy.

### ***Rights and Legitimate Interests of the Respondent***

The Complainant argues that the Respondent is not in any way connected, associated or affiliated with the Complainant and that the Complainant has not authorized, endorsed or otherwise permitted Respondent to registered the disputed domain name or use Complainant’s trademark or any variation thereof. And there is no evidence that the 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.

The Respondent did not make any response within the scheduled time, nor did make any explanation or provide any evidence to prove its trademark rights, legitimate interests, or any other legal rights to the disputed domain name.

Accordingly, the Panelist concludes that the Complainant has provided preliminary evidence required by Paragraph 4(a) (ii) of the Policy and the burden of proof is transferred to the Respondent, who must overcome the burden of proof by showing its rights or legitimate interests of the disputed domain name. However, the Respondent failed to respond to the Panelist and failed to submit any evidence in support of its contention. Hence, the Panelist cannot come to a conclusion that the Respondent has rights or legitimate interests in respect of the disputed domain name based on the evidence in hand.

Accordingly, the Panelist finds the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

### ***Bad Faith***

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

(i) Circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) You have 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 you have engaged in a pattern of such conduct; or

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

(iv) 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."

First, given that the distinctiveness and certain reputation of the Complainant's trademark as well as the fact that the disputed domain name was registered in 2014 while the Complainant has been widely publicizing "TVB" as its name since 1967, the Panelist finds it difficult to accept that the Respondent registered the disputed domain name without knowledge of the Complainant's rights in the trademark. Moreover, all programmes provided by the Respondent on its Website linked by the disputed domain name were owned by the Complainant. And the Panelist notices that the website printout of [www.tvb2014.com](http://www.tvb2014.com) provided by the Complainant reveals the descriptions "Watch TVB Movie Online" and "Watch Free TVB Movie Online." Thus, it is hard for the Panelist to believe that the Respondent did not know the certain meaning and substantial fame of "TVB." And it cannot be a mere co-incidence that the Respondent has chosen and registered the disputed domain name, which is confusingly similar to the Complainant's trademark "TVB."

Second, the printout of the website of the Respondent indicates that the Respondent provides the Complainant's copyrighted works online for its users' free sharing, distribution and view. The Complainant engages in programme content licensing and distribution business and also distributes its programme content online. It can infer that the Respondent's act distracts relevant public who choose to visit Respondent in order to get the Complainant's programme contents for free from the Complainant.

The Panelist takes the view that, given the wide reputation of the Complainant and substantial fame of the claimed trademarks, the Respondent knows or shall have known the Complainant and its trademarks, and there is no other explanation for the Respondent's intention in use of the disputed domain name to trade upon the goodwill which the Complainant has developed in its trademarks. Furthermore, the disputed domain name "tvb2014.com" is likely to cause confusion among the relevant public in respect of the

source, sponsorship, affiliation, or endorsement between the website of the Respondent and the Complainant. Moreover, the printout of the website of the Respondent indicates that the use of the disputed domain name “www.tvb2014.com” is for providing free programmes owned by the Complainant for Internet users. It can be presumed that the Respondent’s disputed domain name disrupts the Complainant’s business or commercial interests and attract Internet users to Respondent’s website for commercial benefits. This is the circumstances as set out in 4 (b)(iv). Thus, the registration of the disputed domain name by the Respondent is in bad faith.

Accordingly, the Panelist finds that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy and the Respondent registered the disputed domain name in bad faith.

## **6. Decision**

According to the analysis of the Panelist, the Complainant has satisfied the three elements of Paragraph 4(a) of the Policy. According to Article 15 of the Rules, the Panelist supports the Complainant’s request that the disputed domain name “tvb2014.com” shall be transferred to the Complainant.

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Panelist:Gao Lulin

Dated: November 9, 2014