



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1500768</b>
<b>Complainant:</b>	<b>KKBOX Taiwan Co., Ltd.</b>
<b>Respondent:</b>	<b>Wayne Chang</b>
<b>Disputed Domain Name:</b>	<b>&lt;kkbox.video&gt;</b>

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

The Complainant is KKBOX Taiwan Co. Ltd., (“the Complainant”) of 1F, No. 19-3 SanChong Road, Nangong District, Taipei, Taiwan, represented by Mayer Brown JSM, lawyers of Hong Kong.

The Respondent is Wayne Chang (“the Respondent”) of 2F-1, No. 87 Zhengzhou Road, Taipei, Taiwan, represented by Hsu Tse-Yu.

The disputed domain name is <kkbox.video>, registered with GoDaddy.com LLC of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA (“the Registrar”).

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 3 July, 2015. On 6 July, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the domain name at issue. On 7 July, 2015, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 9 July, 2015. In accordance with the Rules, the due date for Response was 29 July, 2015. A formal Response was received by the Center that day.

The Center appointed Debrett G. Lyons as panelist in this matter on 29 July, 2015. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

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

1. The Complainant has provided music streaming services by reference the trademark KKBOX since 2004.
2. The Complainant is the owner, *inter alia*, of Taiwanese trademark registration number 01128166, registered from 16 November 2004.
3. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
4. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

#### **B. For Respondent**

5. The Respondent registered the disputed domain name on 7 May 2015.
6. The disputed domain name redirects Internet users to a holding page which promotes the Registrar's services and carries miscellaneous advertising of third party services.

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

#### **A. Complainant**

The Complainant asserts rights in the trademark KKBOX and states that the disputed domain name is identical or confusingly similar to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

#### **B. Respondent**

The submissions made on behalf of the Respondent are not obviously related to the elements of the UDRP and so the Panel has been required to interpret those submissions as best it can in terms of the Policy.

The Respondent asserts that in the latter half of 2015 it intends to use the disputed domain name in connection with "a video related web service". It would seem to suggest a right or legitimate interest in the domain name because the Complainant is concerned with music streaming and not with video as such.

The Panel understands that it is then reasoned that there is no confusing similarity in terms of the paragraph 4(a)(i) of the Policy because the parties' interests or services would be distinguishable.

The Respondent therefore denies that it has acted in bad faith.

## 5. Findings

Paragraph 4(a) of the Policy states that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name be identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- 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

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights for the purposes of the Policy. The Panel finds that the Complainant has trade mark rights in KKBOX acquired through registration.

For the purposes of comparing the trademark with the disputed domain name, it has long been held that generic top-level domains, such as “.video” in this case, can be ignored. The terms are then identical.

Panel finds the disputed domain name to be legally identical to the trademark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

For the sake of completeness it is noted here that the Respondent's arguments about the scope of the Complainant's trademark registration(s) in terms of class coverage and the submission that the Respondent only intends to offer video rather than audio services are matters of potential relevance to paragraph 4(a)(ii) of the Policy but are essentially irrelevant for the purposes of paragraph 4(a)(i) which is only concerned with identity or confusing similarity of the compared terms. It should be noted in any event that the Panel has found the compared terms to be legally identical and so the question of confusing similarity does not arise.

### B) Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests.

Paragraph 4(c) of the Policy states 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial 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 publicly available WhoIs database identifies the registrant as “Wayne Chang” and so does not support any conclusion that the Respondent might be commonly known by the disputed domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a *bona fide* offering of goods or services. The Complainant provides evidence that the disputed domain name resolves to a holding page advertising the services of the Registrar and carrying links to financial services providers and numerous other unrelated businesses. Such use is not use of the domain name in respect of a *bona fide* offering of services, nor is it legitimate non-commercial or fair use.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and so the onus shifts to the Respondent to show a right or legitimate interest in the name.

The Response does little more than assert the Respondent’s future intentions. There is no supporting evidence of any kind. There is nothing in terms of paragraph 4(c)(i) of the Policy to show “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” prior to notice of the dispute. Given the Respondent’s assertion that it intended to put its business into motion in the “third quarter” of 2015 it might have been expected that ample proof of preparation to use the domain name would be available.

Nor does the Panel accept that there is any real likelihood of the two businesses co-existing without confusion. The Respondent has given no explanation at all as to why it should need to use the Complainant’s trademark. Even if the Panel were willing to accept that there is a meaningful distinction to be drawn between web based video services and web based music services (a matter about which it would have been most cautious) there is, on the facts, nothing to persuade the Panel that the Respondent has, or might come to acquire, a right or legitimate interest in a domain name which is identical to the Complainant’s trademark.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

### C) Bad Faith

Policy ¶ 4(b) sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (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 website 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 website or location or of a product or service on your website or location.

Panel finds that the Respondent's actions fall squarely under paragraph 4(b)(iv) of the Policy. It can be concluded on the balance of probabilities that the Respondent registered a domain name already found to be legally identical to the Complainant's trademark with the intention of attracting Internet users to online locations for commercial gain in the likely form of pay-per-click referral fees.

The Panel finds that the Respondent registered and used the disputed domain name in bad faith and so finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

### 6. Decision

Having established all three of the elements required under the Policy, the Panel decides that relief shall be **GRANTED**.



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Debrett G. Lyons

Panelist

Dated: 5 August 2015