



Asian Domain Name Dispute Resolution Centre

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(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-1400665
<b>Complainant:</b>	Television Broadcasts Limited
<b>First Respondent:</b>	Shen, Ying-Wei / The Vacation Bacchic Studio
<b>Second Respondent:</b>	Perfect Privacy, LLC

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### 1. The Parties and Contested Domain Name

The Complainant in this administrative proceeding is Television Broadcasts Limited, whose address is 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong. The Complainant's authorized representative is Arthur S. Hsieh, Attorney-at-Law, a Partner with the law firm of Hsieh, Chi & Hsieh, with offices located at 8F., No. 153, Section 3, Xinyi Road, Taipei, Taiwan.

The Disputed Domain Name is registered to The Vacation Bacchic Studio, the address of which is 2F., No. 47-1, Syujhou Street, Zhongli City, Taoyuan County, Taiwan. The Complainant submits that Shen, Ying-Wei registered the Disputed Domain Name in the name of The Vacation Bacchic Studio and that the stated registration details, showing the Second Respondent as the Registrant, are false.

The Second Respondent in this administrative proceeding is Perfect Privacy, LLC, whose address is 12808 Gran Bay Parkway West, Jacksonville, Florida 32258, USA. A WHOIS search conducted by the Complainant on 5 November 2014, reflects that Perfect Privacy, LLC, is the Registrant of the Disputed Domain Name. The Complainant asserts that the First Respondent is the actual registrant and that the Second Respondent is merely an agent operating a commercial privacy service to conceal the true Disputed Domain Name owner's name and contact details from WHOIS searches.

The Disputed Domain Name at issue is <tvbs.com>, registered by the Respondents with Network Solutions, LLC, whose e-mail address is [abuse@web.com](mailto:abuse@web.com) and telephone number is +1-800-333-7680.

### 2. Procedural History

On 6 November 2014, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On 6

November 2014, the ADNDRC confirmed receipt of the Complaint. The Complainant elected that this case to be dealt with by a one-person panel.

On 6 November 2014, the ADNDRC transmitted by email to the Registrar, Network Solutions, LLC, a request for registrar verification in connection with the disputed domain name. On 14 November 2014, the Registrar transmitted by email to the ADNDRC its verification response, confirming that The Vacation Bacchic Studio is listed as the Registrant and that Ying-Wei, Shen, at the same address, is the domain's Administrator and Technical contact. The First Respondent's contact email appears as [erickuo58@hotmail.com](mailto:erickuo58@hotmail.com), and the Administrator's email is [service@100hub.com](mailto:service@100hub.com).

On 17 November 2014, the Complainant notified the ADNDRC that the Complainant had transmitted the Complaint and evidence to the Respondent, by email addressed to [erickuo58@hotmail.com](mailto:erickuo58@hotmail.com) and to the administrative email address [service@100hub.com](mailto:service@100hub.com). Also on 17 November 2014, the ADNDRC notified the Respondent of the commencement of the action, requesting that the Respondent submit a Response within 20 calendar days, and further specifying the due date as being on or before 7 December 2014.

On 20 November 2014, "Gary" Shen, whose email address is [erickuo58@hotmail.com](mailto:erickuo58@hotmail.com), sent a reply email to the ADNDRC, continuing the same email string as the ADNDRC's Written Notice of Complaint to the Respondents, in the following terms (recited below verbatim, but with minor corrections by the Panelist, as noted in brackets, to improve readability):

*"We provide the best email service and free for educators, not commercial activity. Our domain registered in 20-apr-1998 before the rules Policy Adopted: August 26, 1999. We are [the] legitimate use[rs of] this domain [for] 16 years for our clients, and not only in Hong Kong. What is our rights and interests? We are not us[ing] any trademark [of theirs]"*.

On 8 December 2014, the ADNDRC confirmed in an email to the parties that it did not receive a Response Form from the Respondent within the required period of time.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 9 December 2014, the Panel received the file from the ADNDRC and should render the Decision on or before 23 December 2014, if there are no exceptional circumstances.

### **3. Factual background**

#### **For Claimant**

The following facts are alleged by the Complainant in the Complaint:

#### **1. TVB (e.g. the Complainant)**



The TVB, Television Broadcasts Limited (00511, listed on the main board of The Stock Exchange of Hong Kong Limited), commonly known as TVB, was established on 19 November 1967 and is the first wireless commercial television station in Hong Kong. With its headquarters in Hong Kong, TVB provides round-the-clock entertainment channels and news service to over 7 million Hong Kong viewers and operates an international licensing and distribution business. Many of the programs produced in Cantonese are dubbed into Mandarin and other languages and are distributed worldwide, including Asia (covering Mainland China, Taiwan, Malaysia, and Singapore), Australia, North and South America, and Europe, accessible to over 300 million households.

## **2. Trademarks and Domain Names**

Since 1993, TVB applied to and registered the trademark of 「TVBS」 in Hong Kong and Taiwan. TVB further licensed the trademark of 「TVBS」 to TVBS Inc. (聯意製作股份有限公司) in Taiwan as an exclusive licensee. TVB then applied to and registered the trademark of 「TVBS」 worldwide, including Thailand, Singapore, Malaysia, China and Macau etc. The mark 「TVBS」 is derived from the initials of TVB Super Channel. The three round dots in blue, green and red respectively on the 「TVBS」 device are derived from the colors of the TVB logo.

In addition to the trademarks 「TVB」 and 「TVBS」 registered by TVB, TVB applied and registered the domain name of www.tvb.com years ago and authorized TVBS Inc. to register the domain name www.tvbs.com.tw. as of 1 May 1997. It is persuasive evidence that TVB and TVBS used the trademarks and domain names aforementioned in a continuous and systematic way over many years.

## **3. TVBS' Operation in Taiwan**

On 28 September 1993, TVBS wireless commercial television, which is the first satellite television service provided in Taiwan, broadcasted its first signal. Launched on 12 October 1995, TVBS-News is the first 24-hour professional news channel to be provided in that market. Based in Taiwan, the channel is supported by a professional team of reporters located around the world. Since its debut, TVBS-News channel maintains its leading position in news services in Taiwan and has continuously recorded higher TV ratings than its competitors. Thus, TVBS holds the number one position as the employer of choice for university graduates and has been voted the most trustworthy TV news media operator by the general public in Taiwan.

TVBS now operates three cable channels, including TVBS-News (CH55), TVBS (CH56), TVBS Entertainment channels (CH42), and a MOD channel (TVB8 channel), which targets the global market.

### **For Respondent**

The Respondents have defaulted and have not submitted a Response to the Complaint.

## **4. Parties' Contentions**

A. Complainant

The Complainant's contentions may be summarized as follows:

**I. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights**

TVB invests on its trademarks in a long-term way with every effort. TVB pays high attention to the protection of its trademarks all the time. On May 8, 1993, TVB obtained the trademark registration of 「TVBS」 (Registration No.: 1995B04436, Actual Date of Registration: May 30, 1995 and the expiration date is May 8, 2024). Afterwards, TVB applied and registered the 「TVBS」 trademarks worldwide, including Thailand, Singapore, Malaysia, China and Macau etc. The 「TVBS」 trademarks became a well known logo to the Taiwan public through the round-the-clock entertainment channels and news service TVBS provided by TVBS to over twenty three million Taiwan viewers. The 「TVBS」 has been deeply implanted into the public consciousness.

「TVBS」 is the initial of TVB Super Channel. The three round dots in blue, green and red respectively on the 「TVBS」 device are derived from the colors of the TVB logo. These dot designs clearly show the close connection between TVB and TVBS. In English, TVBS is not an initial with specific meaning. However, through the long term, broad and repeated use of TVB, 「TVBS」 became a well known representation of the professional TV station in Taiwan, Hong Kong and worldwide. TVB is exclusively linked to the 「TVBS」 services, which have a high recognition factor with the public. TV viewers naturally think of TVB when they view 「TVBS」.

Recently TVB happened to become aware that an entity named “Shen, Ying-Wei (The Vacation Bacchic Studio)”, had registered the Disputed Domain Name on April, 20, 1998. By conducting a WHOIS search, it was discovered that the First Respondent was located in Taoyuan County, Taiwan. Apparently, the First Respondent is an organization (for example, a company or a store) or an individual located in Taiwan.

Furthermore, the registration of the Disputed Domain Name [www.tvbs.com](http://www.tvbs.com) has been changed to a company named “PERFECT PRIVACY, LLC”, which provides domain name holders with a privacy service to conceal the registrant's real name from the public. Obviously, the First Respondent tried to use this means to hide its name from being disclosed to the public, which suggests a highly suspect motive. It is not the way a legitimate business would operate.

Under such circumstances, TVB believes the real holder of the domain name in question is the First Respondent, Shen, Ying-Wei (The Vacation Bacchic Studio), rather than the Second Respondent, PERFECT PRIVACY, LLC, which is just an agent providing a commercial privacy service. In order to comply with the search outcome in the database of WHOIS, TVB hereby lists both Shen, Ying-Wei (The Vacation Bacchic Studio) and PERFECT PRIVACY, LLC as the Respondents.

Whether a search is conducted for the letters “TVBS” in small letters or in upper case letters, the search result will be the same domain name <[www.tvbs.com](http://www.tvbs.com)>. It is clear that 「tvbs」 and 「TVBS」 are substantially, if not entirely, identical for all practical purposes.

In addition, TVB has already obtained the registry of www.tvbs.com.tw in Taiwan and has used it in a long-term, broad and repeated way for many years, and continues to do so.

TVB obtained the trademark registrations of 「TVBS」 prior to the date of April 20, 1998 which the Respondent registered the domain name www.tvbs.com in question, and is first in time.

Pursuant to the statements aforementioned, the domain name www.tvbs.com in question is fully identical to the 「TVBS」 trademarks of TVB which will confuse and mislead the related users and the public.

## **II. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name**

There is no evidence that the Respondents, or either of them, have registered or used any trademarks containing the words of 「TVBS」. There is no evidence that the Respondents have claimed or pleaded any civil rights, or indeed, and rights at all in or to the 「TVBS」 trademarks. TVB conducted a thorough search of 「TVBS」 in the database of the Taiwan Intellectual Property Office (TIPO) of the Ministry of Economic Affairs (MOEA) Taiwan, which revealed no individual or entity other than TVB holds or enjoys any rights to the 「TVBS」 trademarks or related logo.

TVB applied and registered the trademarks of 「TVBS」 in Hong Kong and Taiwan on May 30, 1995 and Aug 16, 1994, which are prior to the registration date, April 20, 1998, of the Disputed Domain Name. TVB has no connection or relations to the Respondent, Shen, Ying-Wei (The Vacation Bacchic Studio). TVB does not license the Respondent any rights to use the 「TVBS」 trademarks in any way. On the other hand, the Respondent is located in Taoyuan County, Taiwan. Apparently it is an organization (for example, a company or a store) or an individual located in Taiwan. While the Respondent registered the domain name <www.tvbs.com> on April 20, 1998, the TVBS television station, with the 「TVBS」 trademarks, has already operated and broadcasted programs over five to six years. TVBS television station and the 「TVBS」 trademarks are both well known to the general public on Taiwan. This clearly demonstrates that the Respondents, or either of them, had sufficient knowledge of the use status of the 「TVBS」 trademarks when the Disputed Domain Name was registered.

In considering the information and materials aforementioned, it is clear and affirmative that the Respondent deliberately use the domain name www.tvbs.com in question to attract and draw the public's attention and to sign in to look around the website. The Respondent will then gain the Page View (PV) on one hand and sell its goods or services on the other hand through taking advantage of the famous 「TVBS」 trademarks well known to the public.

## **III. The Disputed Domain Name has been registered and is being used in bad faith**

The specific part "tvbs" of the domain name www.tvbs.com in question is identical to the TVB's 「TVBS」 trademarks. Such a use of the Respondent objectively blocks TVB, who has the legitimate rights and interests to 「TVBS」 trademarks, from obtaining a domain name. The Respondent interferes and blocks TVB to use its 「TVBS」 trademarks as its

domain name in order to do the online business. The Respondent injured TVB's regular business activities.

The domain name www.tvbs.com in question is not being used substantively. When an Internet user lands on the www.tvbs.com web page, the user is re-directed to the website https://100hub.com (HUB 威利 100 專業主機). It is a website in traditional Chinese characters which sells virtual server、VPS server、application of domain name and maintenance、software license etc. This business is quite different from TVB's 「TVBS」 the television broadcasting services. The public is likely to be misled by the Respondents into believing that TVB has licensed the Respondent, which is incorrect.

The Respondents intended to mislead the public and network users into believing that TVB and TVBS, or both, have some kind of cooperation or license agreement with the website https://100hub.com. The Respondents are using the Disputed Domain Name to attract public Internet users onto the www.tvbs.com, from which they are re-directed to the website https://100hub.com. The Respondents are, thus, taking advantage of the famous and well-known 「TVBS」 trademarks established by TVB to unfairly promote their own commercial interests. The Respondents' conduct will dilute and damage TVB's valuable trademark rights and brand image.

#### B. Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

### 5. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by the Respondents must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondents have no rights or legitimate interests in respect of the domain name; and
- iii. the domain name has been registered and is being used in bad faith.

Paragraph 5(e) of the Rules directs that if, as is the case here, a Respondent does not submit a Response, then in the absence of exceptional circumstances, the Panel should decide the dispute based upon the Complaint.

#### A) 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 or service mark in which the Complainant has rights.

On 28 September 1993, TVBS wireless commercial television launched satellite television services in Taiwan. The Complainant first obtained trademark registration of “TVBS” in Taiwan on 16 July 1994. That is, TVB’s commercial launch of TVBS services in Taiwan occurred nearly five (5) years before the Second Respondent registered the disputed domain name on 20 April 1998. On this basis, the Panel is satisfied that the Complainant enjoys the rights to the “TVBS” trade and service marks, which are well established and have a high recognition factor in Taiwan.

It is well-settled in UDRP decisions that the applicable top-level suffix in the domain name (e.g., “.com”) would usually be disregarded under the confusing similarity test (as it is a technical requirement of registration), except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark (see [WIPO Overview of WIPO Panel Views on Selected UDRP Questions](#), Second Edition (“WIPO Overview 2.0”) [paragraph 1.2](#)). In this case, the use of the gTLD “.com” does not, in any way, diminish the risk of confusion between the disputed domain name and Complainant’s trademark “TVBS”.

The Complainant’s registered trademark “TVBS”, albeit expressed in upper case letters as the Complainant helpfully notes, is identical to the Disputed Domain Name <tvbs.com>.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

## **B) Rights and Legitimate Interests**

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant’s assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondents to present evidence of its rights or legitimate interests. The Respondents, or either of them, have failed to show that the Respondents have any rights or legitimate interests in respect of the Disputed Domain Name.

The Disputed Domain Name does not appear to be in use for any bona fide offering of goods or services or to have been established in anticipation for such use, and there is no indication that the Respondents were known by the name “TVBS” prior to the registration of the domain name. The Respondents are not, and have never been, a “client” of the Complainant, nor are the Respondents authorized or licensed to use the Claimant’s mark, nor does any evidence suggest a legitimate non-commercial or fair use of the Disputed Domain Name. The Complainant has conducted a search of the records of the Taiwan Intellectual Property Office (“TIPO”), which discloses that no party other than the Complainant holds or enjoys any registered rights to the “TVBS” trademark. These allegations are sufficient to satisfy the Claimant’s obligation to make a *prima facie* showing that the Respondents lack a legitimate interest.

The Respondents have defaulted and failed to rebut the allegations.

The Panel therefore finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

### C) Bad Faith

The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith, rather than for any legitimate purpose.

The Complainant has adduced evidence that web surfers who land on the disputed domain are automatically re-directed to the domain "100hub.com", which resolves to a commercial website offering a variety of Internet web server and hosting services to the general public. The website provides Taoyuan County, Taiwan, telephone service numbers. The Complainant alleges that the First Respondent seeks to take advantage of the famous and well-known "TVBS" trademark to unfairly promote its own commercial interests. This Panelist agrees.

In conclusion, the Panel finds that the First Respondent registered and used the Disputed Domain Name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

### 6. Jurisdiction

The Panelist has carefully considered the representations contained in Ying-Wei "Gary" Shen's 20 November 2014, reply email to the ADNDRC, and finds them to be misleading and false, particularly when viewed against the robust and highly persuasive documentary evidence adduced by the Complainant. Furthermore, the First Respondent's assertion that it is not bound to comply with the URDP dispute resolution procedure, because the domain was registered on 20 April 1998, which was "*before the [UDRP rules and] policy was adopted: August 26, 1999*", is without merit.

The Registrar's 14 November 2014 email to the ADNDRC expressly states: "*We confirm that the Uniform Domain Name Dispute Resolution Policy applies to the tvbs.com domain name*". That this is true, and that this Panel has jurisdiction over this dispute, is apparent from the terms of the service agreement found on the Registrar's public website, which reads (in relevant part):

**"12. MODIFICATIONS TO AGREEMENT.** Except as otherwise provided in this Agreement, you agree during the term of this Agreement, that we may: (1) revise the terms and conditions of this Agreement; and/or (2) change part of the Services provided under this Agreement at any time. Any such revision or change will be binding and effective after posting of the revised Agreement or change to the service(s) on Network Solutions Websites, or upon notification to you by email or United States mail. You agree to periodically review our Websites, including the current version of this Agreement available on our Websites, to be aware of any such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice. Notice of your termination will be effective on receipt and processing by us. Any fees paid by you if you terminate your Agreement with us are nonrefundable, except as expressly noted otherwise in one or more of the Schedules to this Agreement, but you will not incur any additional fees. By continuing to use Network Solutions Services after any revision to this Agreement or change in service(s), you agree to abide by and be bound by any such revisions or changes. We are not bound by nor should you rely on any representation by (i) any agent, representative or employee of any third party that you may use to apply for our services; or in (ii) information posted on our Website of a general informational nature. No employee, contractor, agent or representative of Network Solutions is authorized to alter or amend the terms and conditions of this Agreement.



**22. AGREEMENT TO BE BOUND.** By applying for a Network Solutions service(s) through our online application process or otherwise, or by using the service(s) provided by Network Solutions under this Agreement, you acknowledge that you have read and agree to be bound by all terms and conditions of this Agreement and documents incorporated by reference”.

That is, upon registering the Disputed Domain Name, the First Respondent became bound by the terms of the (on line) service agreement with the Registrar. Pursuant to that agreement, the First Respondent agreed that the terms of the service agreement would be changed from time to time by the Registrar; that such changes would become binding on the First Respondent upon posting on the Network Solutions Websites; and that the First Respondent’s continuing use of the domain name would evidence the First Respondent’s agreement to be bound by such new or different terms.

Furthermore, the fact that the First Respondent employed the Second Respondent as its agent in relation to the Disputed Domain Name provides no defense. Paragraph 14 of the Registrar’s service agreement provides:

“**14. AGENTS.** You agree that, if your agent, (e.g., your Primary Contact or Account Administrative Contact, Internet Service Provider, employee) purchased our service(s) on your behalf, you are nonetheless bound as a principal by all terms and conditions herein, including the domain name dispute policy. Your continued use of our services ratifies any unauthorized actions of your agent. By using your login name, account number or password, or otherwise purporting to act on your behalf, your agent certifies that he or she is authorized to apply for our services on your behalf, that he or she is authorized to bind you to the terms and conditions of this Agreement, that he or she has apprised you of the terms and conditions of this Agreement, and that he or she is otherwise authorized to act on your behalf. In addition, you are responsible for any errors made by your agent”.

That is, even assuming that the First Respondent’s lack of awareness or understanding of its obligations under its service agreement with the Registrar resulted from some failure or defalcation on the part of its agent, the Second Respondent, this provides no defense to the First Respondent, who remains bound by the service agreement, including the obligation to be bound by the UDRP, as amended by the Registrar from time to time.

## 7. Decision

The Complainant having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <tvbs.com> domain name must be TRANSFERRED from the Respondents to the Complainant.



David KREIDER  
Sole Panelist

Dated: 11 December 2014