



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400632
Complainant:	Television Broadcasts Limited
Respondent:	Fundacion Private Whois
Disputed Domain Name(s):	<tvbdo.info>

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 Fundacion Private Whois, of tvbdo.info, Aptds. 0850-00056, Panama, Zona 15.

The domain name at issue is <tvbdo.info>, registered by Respondent with Internet.bs Corp., of Sea Beach Boulevard, Sea Beach Estates, N-4892 Nassau, The Bahamas.

2. Procedural History

On 23 July 2014, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“Center”), 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. The Center confirmed receipt of the Complaint that same day. The Complainant elected that this case be decided by a single panelist.

Also on 23 July 2014, the Center transmitted by e-mail to the Registrar, Internet.bs Corp., a request for registrar verification of the disputed domain name. On 29 July 2014, the Registrar transmitted by e-mail to the Center its verification response, confirming that the Respondent is listed as the Registrant and providing contact details as: telephone +507.65967959 and e-mail 53d71840rtnc3iuq@udrp.privatewhois.net.

On 29 July 2014, the Center transmitted the Complaint and evidence to the Respondent, by e-mail addressed to 53d71840rtnc3iuq@udrp.privatewhois.net, notifying the Respondent of the commencement of the action on 29 July 2014, and requesting that the Respondent submit a Response within 20 calendar days, further specifying the due date as being on or before 18 August 2014.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the Center informed the Complainant and Respondent that the Center would appoint a single-member to proceed to render the decision.

On 21 August 2014, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Ms. Christina NG acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules. The Panel received the file from the Center on the same day.

3. Factual background

Complainant, Television Broadcast 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. Complainant is represented in these proceedings by Ms. Jane Ting, Senior Legal Counsel, of Claimant's Legal and Regulatory Department.

The mark "TVB" has been used by Complainant continuously for 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.

A review of the website of Respondent, Fundacion Private Whois, at URL: <http://www.privatewhois.net>, reflects that Respondent is a not-for-profit Panamanian charity engaged in the business of providing anonymous proxy services to Internet domain name registrants.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:-

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.

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.

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. 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.

Since 2005, TVBI begins to exploit the VOD and interactive media market in PRC. TVBI has licensed Complainant’s programmes to numerous VOD service providers.

As at the date of this submission, Complainant and its subsidiaries have registered 68 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” and “tvbcoporate.com.hk”.

In April 2014, it came to Complainant’s attention that Respondent has registered the disputed domain name www.tvbdo.info. 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.

In April 2014, Complainant sent cease and desist letters to the Website’s Internet Services Provider, CloudFlare, Inc (“CloudFlare”) and the Registrar, Internet.bs Corp. (“Internet.bs”). CloudFlare has clarified that KnownSRV is the Hosting Provider of the website. On April 24, 2014, Complainant sent letter to KnownSRV. However, Complainant has only received an auto-generated notification receipt of the Complainant email.

The Website is currently redirected to “<http://www.on99.se>” where Complainant’s copyrighted programmes are still viewable without Complainant’s authorization.

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

The domain name in dispute is "TVBDO.INFO". By comparing the disputed domain name with Complainant's trademark "TVB", it clearly illustrates that the disputed domain name "TVBDO.INFO" is highly and confusingly similar to Complainant's registered trademark "TVB". The mark "TVB" has been used by Complainant continuously for 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", "TVB Europe" and "TVB NETWORK VISION" in various jurisdictions and for various services.

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)TVBS-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 channels have 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.

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") handling Complainant's programs sub-licensing in PRC. TVBC has also sub-licensed Complainant's programs to Youku and Tudou for their on-line broadcast in PRC.

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 January 9, 2014. By setting up the "HK Drama" page for its users to viewing Complainant's programmes, it clearly shows that Respondent is deliberately using Complainant's trade and Complainant's trademark "TVB" to attract Internet users.

The domain name in dispute, mainly comprises of the mark "TVB". Although the word "DO" is added after the word "TVB", the disputed domain should be seen as confusingly similar with Complainant's trademark "TVB" and other trademarks

deriving from ‘TVB’, such as ‘‘TVBVideo’’, ‘‘TVBS-E’’, ‘‘TVB8’’, ‘‘TVBC’’, ‘‘TVB Europe’’ and ‘‘TVBJ’’.

To conclude, Respondent’s domain name could cause confusion to the public and mislead them to think that Complainant and/or its official web sites, such as www.tvb.com is associated with the domain names in dispute or that Complainant has authorized Respondent purposely and intentionally selected domain names confusingly similar to Complainant’s domains and trademark.

(ii) Respondent has no rights or legitimate interests in the registration of the domain names in dispute

Respondent is not in any way connected, associated 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 names in dispute in bad faith.

The domain name in dispute was registered in 2013 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 a page named ‘‘HK Drama’’for its users to view Complainant’s programmes. Respondent should have known Complainant’s business. It is 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. 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 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.

B. Respondent

Respondent has defaulted and has not submitted a Response 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.

The Panel will address these three requirements *seriatim*:

A) Identical / Confusingly Similar

The disputed domain name incorporates Complainant's widely registered and globally reknown "TVB" trademark. Complainant additionally enjoys registered rights in trademarks which derive from "TVB", such as "TVBVideo", "TVBS-E", "TVB8", "TVBC", "TVB Europe" and "TVBJ".

Seeing that the whole of the Complainant's trademark have been incorporated into the disputed domain name, the Panel finds that the disputed domain name is identical in substantial part, and is therefore confusingly similar, to the Complainant's registered trademarks and trade name.

B) Rights and Legitimate Interests

Complainant alleges that, 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 of the domain name in dispute.

The Panel finds on the evidence adduced by the Complainant that the Respondent, who has filed no response and has defaulted in these proceedings, has no rights or legitimate interests in respect of the domain name.

C) Bad Faith

The domain name in dispute was registered in 2013 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 a page named "HK Drama" for its users to view Complainant's programmes. Respondent should have known Complainant's business. It is inconceivable that at the time of registering the disputed domain names Respondent was not aware of Complainant's business and its trade mark.

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 Panel finds that the disputed domain name was registered and is being used by Respondent in bad faith.

6. Decision

Having established all three elements required under Art. 4(a) of the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the domain name <tvbdo.info> be TRANSFERRED from Respondent to Complainant.

Christina NG
Sole Panelist

Dated: 28 August 2014