



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1300564</b>
<b>Complainant:</b>	<b>Television Broadcasts Limited</b>
<b>Respondent:</b>	<b>1900CC</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;tvbzhibo.com&gt;</b>

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**1. The Parties and the Disputed Domain Name**

The Complainant is Television Broadcasts Limited of Hong Kong, China.

The Respondent is 1900CC of Zhangjian, Guangdong Province, China.

The domain name at issue is <tvbzhibo.com>, registered by the Respondent with IAPI GmbH (the “Registrar”) of Homburg, Germany.

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on December 23, 2013. On December 24, 2013 the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 2, 2014 the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant of the disputed domain name and providing the Respondent’s contact details. The Center has verified that the Complaint satisfies 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 proceeding commenced on January 3, 2014. In accordance with the Rules, the due date for the Response was January 23, 2014.

No Response was received by the Center.

The Center appointed Sebastian Hughes as the Panelist in this matter on January 28, 2014. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. Complainant**

The Complainant is a company incorporated in Hong Kong and the owner of numerous registrations worldwide for the trade mark TVB (the “Trade Mark”), the earliest dating from 1992, including registrations in China, where the Respondent is based.

#### **B. Respondent**

The Respondent is an individual apparently with an address in China.

#### **C. The Disputed Domain Name**

The disputed domain name was registered on November 5, 2012.

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant made the following submissions in the Complaint.

The Complainant, commonly known as TVB, was established in 1967 as the first wireless commercial television station in Hong Kong. The Complainant’s shares have been listed on the Hong Kong Stock Exchange since 1988.

The principle activities of the Complainant are television broadcasting, video and audio rental, selling and distribution, programme production, and video-on-demand (VOD) and online streaming licensing. The Complainant is the largest producer of Chinese language programming in the world. Its Chinese programmes are dubbed into other languages and distributed to more than 30 countries and over 300 million households worldwide.

The disputed domain name is confusingly similar to the Trade Mark. It incorporates the Trade Mark in its entirety, together with the word “zhibo”, which is the Putonghua pinyin for 直播, meaning “transmission”.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent is not commonly known by the disputed domain name and is not making a *bona fide* commercial use of the disputed domain name.

The disputed domain name has been registered and used in bad faith. It has been used by the Respondent in respect of a website which provides free access to the Complainant’s programmes, has a similar layout to the Complainant’s official <www.tvb.com> website, features the Trade Mark as well as the Complainant’s logo trade mark, and generates revenue for the Respondent via third party advertisements (the “Website”).

By registering and using the disputed domain name in this manner, the Respondent has deliberately attracted Internet users to the Website in bad faith, and has caused serious

harm to the Complainant's business, in particular the Complainant's VOD and content licensing business.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **5. Findings**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Mark acquired through registration and use which predate the date of registration of the disputed domain name by several decades.

UDRP panels have consistently held that domain names are identical or confusingly similar to a trade mark for purposes of the Policy "when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name" (see *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000 0662).

The disputed domain name comprises the Trade Mark in its entirety together with the non-distinctive word "zhibo", which is the direct Putonghua pinyin transliteration for 直播, meaning "transmission". This does not serve to distinguish the disputed domain name from the Trade Mark in any way, particularly given the content of the Website.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark and holds that the Complaint fulfills the first condition of paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or

- (iii) the respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by several decades. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption (see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000 0624; and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003 0455).

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the evidence shows that the disputed domain name is being used in respect of the Website which provides unauthorised free access to the Complainant's programmes, in clear infringement of the Complainant's intellectual property rights.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Pursuant to paragraph 4(b)(iv) of the Policy, the following conduct amounts to registration and use in bad faith on the part of a respondent:

“By using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the respondent's website or location.”

The undisputed evidence of the Complainant demonstrates that the Website is being used to attract Internet users for commercial gain, by providing unauthorised free access to the Complainant's programmes, by copying the layout of the Complainant's website, and by featuring prominently the Trade Mark and logo of the Complainant.

Such use of the disputed domain name amounts to clear evidence of bad faith. The Panel therefore finds, in all the circumstances, the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **6. Decision**

For 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 <tvbzhibo.com> be transferred to the Complainant.

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Sebastian Hughes  
Sole Panelist

Dated: February 11, 2014