



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2001413
Complainant:	Television Broadcasts Limited
Respondent:	Domain Administrator
Disputed Domain Name(s):	<TVBWM.COM>

1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited (“**Complainant**”), of 10/F, Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

The Respondent is Domain Administrator (“**Respondent**”), of 1928 E. Highland Ave. Ste F104 PMB# 255, Phoenix, AZ, US, Postal Code 85016.

The domain name at issue is <TVBWM.COM> (“**disputed domain name**”), registered by Respondent with NameSilo, LLC (“**Registrar**”), of 1300 E. Missouri Avenue, Suite A-110, Phoenix, AZ 85014, USA.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) on December 23, 2020, regarding the disputed domain name <TVBWM.COM>.

On January 4, 2021, the Complainant submitted the amended version of the Complaint and its annexes and ADNDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “**Policy**” or “**UDRP**”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”).

On the same day, the Respondent was notified of the Complaint. The due date of the Response was January 25, 2021. The Respondent did not file a formal Response and on January 26, 2021, the ADNDRC informed the Respondent of its default.

The ADNDRC appointed Francine Tan as the sole panelist in this matter on January 27, 2021.

3. Factual background

The Complainant, Television Broadcasts Limited, states that it is commonly known as TVB and that it is the first wireless commercial television station in Hong Kong. It was first established in 1967 and has since grown to a size of over 3,600 staff and artistes worldwide. Since 1988, shares of the Complainant have been publicly listed on the Hong Kong Stock Exchange.

The principal activities of the Complainant are television broadcasting, programme production and other broadcasting related activities such as programme and Video-On-Demand (“VOD”) licensing, digital media business, and audio and video products selling and distribution. It is one of the largest producers of Chinese language programmes in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 200 countries and regions.

In 1999, the Complainant launched its principal website <<http://www.tvb.com>> (“the Website”) to provide worldwide viewers the latest information on its programmes and artistes. The Website also provides video clips of the Complainant’s programmes for users’ viewing online. In November 2008, the Complainant set up the “myTV” section on the Website 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, the 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, the Complainant launched the “GOTV” mobile application for users to watch its drama on VOD basis via the Internet on computer and mobile devices in Hong Kong. In 2016, the Complainant launched the “myTV SUPER” OTT (“over the top”) services for viewers to watch its dramas and variety programmes on livecast and VOD basis via Internet and/or set top box and/or applications on television, computer and mobile devices and through the website <<http://www.mytvsuper.com>> in Hong Kong. The myTV SUPER is now a leading OTT platform in Hong Kong, and has had over 8 million users (set-top boxes, mobile apps and website users combined) as at March 2020.

The Complainant’s wholly-owned subsidiary, TVBI Company Limited (TVBI), is responsible for the distribution of the Complainant’s Chinese language programmes across the world. 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 2014, the Complainant’s wholly-owned subsidiary, TVB Anywhere Limited, launched “TVB Anywhere” for overseas viewers to watch the Complainant’s programmes and channels on television via set top boxes. In 2019, TVB Anywhere Limited launched “TVB Anywhere+” mobile application for overseas viewers to watch the Complainant’s programmes and channels on mobile devices and/or television via open Internet.

The Complainant’s wholly-owned subsidiary, TVB (USA) Inc., provides satellite and cable TV services in the USA on its website, <<http://www.tvbusa.com>>.

At present, the Complainant and its subsidiaries have registered and own over 160 domain names which contain the TVB trade mark, including not but limited to the following:

- i. <tvb.me>,

- ii. <tvbihk.com.hk>,
- iii. <tvbmusic.com.hk>,
- iv. <tvbusa.com>,
- v. <tvbusa.us>,
- vi. <tvb.com.cn>
- vii. <tvb.asia>, and
- viii. <tvbwkly.com>.

The Complainant is the owner of numerous TVB trade marks and variations thereof worldwide, including but not limited to the following:

- Reg. No. KH/5662/95 registered in Cambodia on May 9, 1995;
- Reg. No. 006307524 registered in the European Community on January 5, 2009;
- Reg. No. 199608823AA registered in Hong Kong on June 8, 1992;
- Reg. No. 303957139 registered in Hong Kong on November 9, 2016;
- Reg. No. 777652 registered in the People's Republic of China on February 14, 1995;
- Reg. No. 00067340 registered in Taiwan, Republic of China on December 1, 1993;
- Reg. No. IDM000042452 registered in Indonesia on July 6, 2005;
- Reg. No. 4054663 registered in Japan on September 12, 1997;
- Reg. No. N/086993 registered in Macau on November 26, 2014; and
- Reg. No. 5448015 registered in the U.S.A. on April 10, 2018.

The Complainant's registered marks include many variations such as TVBM", "TVBJ", "TVB Window", "TVB Anywhere", "tvbQ", "iTVB", "TVBUDDY", "TVBC", "TVB Network Vision", and "TVBI".

The Complainant discovered in December 2020 that the Respondent had registered the disputed domain name on April 11, 2018 and that it was being used in relation to an online social community for providing the Complainant's television programmes to public viewers. Large volumes of the Complainant's works are being distributed on the Respondent's website without the Complainant's authorization.

On December 2, 2020, the Complainant issued cease and desist letters to the Respondent, the disputed domain name website's Internet service provider, QuadraNet Enterprises, LLC, and the domain registrar, NameSilo, LLC to demand the removal or disabling of access to the Complainant's copyrighted works and that the services provided to the Responded by terminated. The Complainant did not receive any response.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's TVB mark as it incorporates the letters "tvb" in its entirety. The Complainant and its TVB trade marks are well known throughout the world, the TVB trade mark having been used continuously for more than 50 years.

- ii. The disputed domain name is also confusingly similar with the Complainant's other registered marks which derive from the name "TVB", e.g. "TVBM", "TVBC" and "TVBJ".
- iii. The Respondent has no rights or legitimate interests in respect of the disputed domain name as the Complainant has not licensed nor authorized the Respondent's use and registration of any domain name consisting of the TVB mark. The Respondent is not connected, associated or affiliated with the Complainant. The Respondent, by offering to Internet users the ability to view the Complainant's programmes, without the Complainant's authorization, has infringed the copyright and other intellectual property rights of the Complainant. Such use is not legitimate or fair use of the disputed domain name.
- iv. The Respondent registered and is using the disputed domain name in bad faith. The disputed domain name was registered on April 11, 2018, by which time the Complainants had already acquired significant goodwill and common law and registered rights in the TVB marks. The Respondent seeks to mislead the public into believing that the Respondent's website is associated with the Complainant and/or the Complainant's official website. The Respondent chose the disputed domain name with full knowledge of the Complainant's business and TVB trade marks. The Respondent is using the disputed domain name for use in relation to its website in direct competition with the Complainant. The Respondent has sought to lure away the Complainant's customers who, instead of purchasing video products or subscribing or visiting the Complainant's various authorized online platforms, end up visiting the Respondent's website to access the Complainant's programmes for free. The Respondent's use of its website has therefore adversely affected the Complainant's business and income. The Respondent is riding on the reputation of the Complainant and is using the disputed domain name to attract Internet users to its website for commercial benefits.

B. Respondent

The Respondent did not file 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.

A) Identical / Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

In the present case, the Complainant has provided evidence of their numerous trademark registrations for the various TVB marks, including in the USA where the Respondent appears to be based. The Complainant, additionally, has been using the TVB marks extensively and for a long time, and have thereby acquired rights at common law therein.

It is well established by numerous UDRP Panel decisions that the inclusion of a generic or descriptive term does not serve to differentiate a domain name in dispute from a complainant's mark. In the present case, the disputed domain name incorporates the Complainant's TVB mark and is identifiable therein. The addition of the letters "WM" in the disputed domain name does not serve to remove the confusing similarity with the Complainant's TVB mark. In fact, it appears to mimic the Complainant's other TVB-formative marks such as "TVBM", "TVBC" and "TVBJ". The inclusion of the generic Top-Level Domain, ".com", does not serve to distinguish the disputed domain name from the Complainant's TVB mark as it is a technical requirement.

Consequently, the Panel finds that the Complainants has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The first element of paragraph 4(a) the Policy has been satisfied.

B) Rights and Legitimate Interests

Once a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain name. (See *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* ("WIPO Overview 3.0"), section 2.1.)

In the present case, the Complainant has demonstrated a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant has provided evidence that it commenced use of the trade mark TVB and owned numerous trademark registrations before the disputed domain name was registered and that it and its subsidiaries are not affiliated with nor have they licensed or otherwise permitted the Respondent to use the Complainant's trade mark.

The Respondent has not submitted a Response to the Complaint and did not provide any explanation or evidence to show it has rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The second element of paragraph 4(a) the Policy has been satisfied.

C) Bad Faith

A complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides examples of circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant had used and secured registrations of its TVB trade marks. According to the evidence filed by the Complainant, the Complainant has owned registrations for the TVB trade marks since as early as the year 1992.

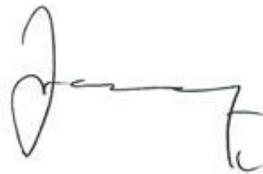
The fact that the Respondent's website features the Complainant's TVB marks and offers competing services shows that the Respondent was well aware of the Complainant and its TVB trade marks, as well as its reputation in the television programmes and broadcasting industry. The Panel is strongly persuaded by the evidence submitted that the Respondent had specifically targeted the Complainant with a view to mislead and confuse unsuspecting Internet users, or to entice them to its website for commercial gain. The Panel therefore finds the circumstances described in paragraph 4(b)(iv) of the Policy to have been established in this case. The Panel also draws a negative inference from the Respondent's failure to respond to the proceedings and the fact that the Respondent has used a privacy shield to hide its identity, which are further indications of the Respondent's bad faith. (See WIPO Overview 3.0, section 3.6.)

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) the Policy has been satisfied.

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 <tvbwm.com> be transferred to the Complainant.



Francine Tan
Panelist

Dated: February 4, 2021