



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101480
Complainant:	Television Broadcasts Limited
Respondent:	1337 Services LLC
Disputed Domain Name(s):	<XINGHE.TV>

1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited, of 10/F, Main Block, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

The Respondent is 1337 Services LLC, of PO Box 590, Charlestown, Nevis, KN0802, United States.

The domain name at issue is <XINGHE.TV>, registered by Respondent with Sarek Oy, of Urho Kekkosen katu 4-6 E, 00100 Helsinki, Finland.

2. Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) on June 24, 2021, regarding the domain name <XINGHE.TV>. On July 12, 2021, the ADNDRC issued a Notification of Deficiency to the Complainant regarding the information of the Respondent in the Complaint which differed from the Whois information provided by the Registrar. The Complainant submitted an amended Complaint on July 13, 2021. On July 13, 2021, the ADNDRC verified that the Complainant satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”). On July 13, 2021, the Respondent was notified of the Complaint. The due date of the Response was August 2, 2021. The Respondent did not file a formal Response. On August 3, 2021, the ADNDRC informed the Respondent of its default. The ADNDRC appointed Francine Tan as the sole panelist in this matter on August 3, 2021.

The Complaint is to be decided in accordance with the Policy, the Rules and the ADNDRC Supplemental Rules to the Internet Corporation for Assigned Names And Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (“the Supplemental Rules”).

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 dubbed into other languages and are distributed to more than 200 countries and regions.

In 1999, the Complainant launched its principal website at <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 as of 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.

In 1998, the Complainant, through its subsidiary, TVB Satellite Broadcasting Limited, launched “TVB Xing He”,¹ a Chinese-language television channel catering to overseas Mandarin-speaking audiences. TVB Xing He is the world’s first and only drama channel

¹ The channel name in Chinese is “TVB 星河頻道”.

that offers round-the-clock classic TVB dramas in both Mandarin and Cantonese. Channel descriptions of TVB Xing He are available at the websites of:

- TVB Anywhere Limited - <https://www.tvbanywhere.com/service-plan.html>;
- TVB <https://programme.tvb.com/xinghe/aboutus>; and
- Astro, the Complainant's licensee - <https://content.astro.com.my/channels/TVB-Xing-He-6>.

TVB Xing He's programme schedules are available at the websites of:

- TVB - <https://programme.tvb.com/xinghe>; and
- Singtel, the Complainant's licensee - <https://www.singtel.com/personal/products-services/tv/tv-programme-guide>.

The Complainant and its subsidiaries have registered and own over 170 domain names, including <tvbxinghe.com.hk>, which was registered on February 5, 2016.

The Complainant is the owner of “TVB 星河” (word) and “TVB 星河” / “TVB XINGHE”-formative trade marks (collectively, “the TVB XING HE marks”) in at least 10 jurisdictions, including the following:

- Australia Trademark Registration No. 936801 for **TVB星河頻道**, registered on December 5, 2002;
- Australia Trademark Registration No. 1910002 for , registered on February 28, 2018;
- European Community Trademark Registration No. 017865199 for , registered on September 25, 2018;
- Hong Kong Trademark Registration No. 1999B15745AA for **TVB星河頻道**, registered on November 6, 1998;
- Malaysia Trademark Registration Nos. 2014126, 2014127 and 2014128, for **TVB星河頻道**, registered on November 13, 2002;
- Mauritius Trademark Registration No. 15139/1998 (A44/241) for **TVB星河頻道**, registered on December 1, 1998;
- New Zealand Trademark Registration No. 1087554 for , registered on February 26, 2018;
- People's Republic of China Trademark Registration Nos.1365426, 1385818 and 1388911 for **TVB星河頻道**, registered on April 21, 2000;
- Singapore Trademark Registration Nos. T9811191I and T9811192G for **TVB星河頻道**, registered on November 7, 1998; and
- Taiwan Trademark Registration Nos. 00131092 and 0016153 for **TVB星河頻道**, registered on October 16, 2000 and October 1, 1999, respectively.

The Complainant discovered in May 2021 that the Respondent had, without the Complainant's consent, registered the disputed domain name on January 17, 2021 and that it was being used in relation to an online social community for providing the Complainant's television programmes to the public.

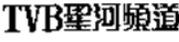
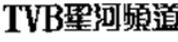
On May 7, 2021, the Complainant issued cease and desist letters to the Respondent, the disputed domain name website's Internet service provider (HiWAAAY) and the domain name registrar (Sarek Oy), to demand the removal or disabling of access to the Complainant's copyrighted works and the termination of services provided to the Respondent.

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 XING HE marks as it incorporates the words "XING HE" which is part of the

Complainant's registered mark . XING HE is the exact transliteration of the Chinese characters "星河" appearing in the Complainant's mark . The Complainant's mark  has been used by the Complainant continuously for more than 20 years in television programming service. XING HE is the official English name of the Complainant's television channel.

- ii. The Complainant and its TVB XING HE trade marks are well known worldwide.
- 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 containing the Complainant's trade marks. The Respondent is not connected to, nor associated or affiliated with the Complainant. The Respondent is not known by the disputed domain name. By offering to Internet users the ability to view the Complainant's programmes without the Complainant's authorization, the Respondent has infringed the Complainant's copyright and other intellectual property rights. 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 January 17, 2021, whereas the Complainant has been widely publicizing the TVB XING HE brand name since 1998. The Respondent chose the disputed domain name with full knowledge of the Complainant's business and TVB XING HE trade marks. The Respondent seeks to mislead the public into believing that the Respondent's website is associated with the Complainant and/or is the Complainant's official website. 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 to 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 revenue stream. 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. The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. The Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. The 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 trade mark or service mark in which the complainant has rights.

In the present case, the Complainant has provided evidence of its registrations for the TVB XING HE marks. The Complainant, additionally, has been using the TVB XING HE 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 where the dominant feature of a complainant's trade mark is recognizable in a domain name, the domain name will be considered confusingly similar to the mark. In the present case, a dominant and distinctive element in the Complainant's TVB XING HE marks is "XING HE", which has been reproduced in the disputed domain name. "XING HE" is also the transliteration of the Chinese characters "星河" which feature prominently in the TVB XING HE marks. The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's TVB XING HE marks. The inclusion of the generic Top-Level Domain ("gTLD"), ".tv", does not serve to remove the confusing similarity to the disputed domain name as it is a technical requirement for domain name registrations. In fact, the gTLD ".tv" adds to the likelihood of consumer confusion as it corresponds to the services for which the Complainant is known for and the TVB XING HE marks are used.

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

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

B) Rights and Legitimate Interests

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 brand consisting of, and owned trademark registrations which incorporate, the element “XING HE” long before the disputed domain name was registered. The Complainant has also established that it has not licensed or otherwise permitted the Respondent to use the Complainant’s TVB XING HE trade marks.

Once a complainant has established 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*, section 2.1.) The Respondent has not submitted a Response to the Complaint, nor has it provided any explanation or evidence to show it has rights or legitimate interests in the disputed domain name. The Respondent has therefore failed 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 demonstrate bad faith under paragraph 4(a)(iii) of the Policy.

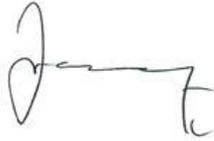
The Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant had used and secured registrations of its TVB XING HE trade marks. According to the evidence filed by the Complainant, the Complainant has owned registrations for the TVB XING HE trade marks since as early as 1998. The fact that the Respondent’s website features the Complainant’s TVB circular logo and offers competing services shows that the Respondent was well aware of the Complainant and its TVB XING HE 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 choice of the gTLD “.tv”, the latter being a “tell-tale” sign of the deliberate targeting of the Complainant and its XING HE trade mark, for pecuniary benefit.

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 <XINGHE.TV> be transferred to the Complainant.



Francine Tan
Panelist

Dated: August 5, 2021