



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400660
Complainant:	Television Broadcasts Limited
Respondent:	Li Ning
Disputed Domain Name(s):	<tvb22.com>

1. The Parties and Contested Domain Name

The Complainant is **Television Broadcasts Limited**, of 10th Floor, Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon Hong Kong.

The Respondent is **Li Ning**, of Guandongsheng, Guandongshi, Alabama 54152, United States.

The domain name at issue is **tvb22.com** (“*Disputed Domain Name*”), registered by Respondent with GODADDY.COM LLC, of 14455 N. Hayden Rd., Ste. 226 Scottsdale, AZ 85260 USA.

2. Procedural History

On 28 October 2014, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On the same day, the ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On 28 October 2014, the ADNDRC-HK notified GODADDY.COM LLC (“Registrar”) of the Disputed Domain Name of the proceedings by email.

On 4 November 2014, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that Li Ning is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 6 November 2014, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS database). The Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 26 November 2014).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the ADRDRC-HK on 27 November 2014. The papers pertaining to the case were delivered to the Panel by email on the same day.

3. Factual background

For the Complainant

The Complainant, Television Broadcasts 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. The Complainant has now grown to a size of over 4,600 staff and artistes worldwide. Shares of the Complainant’s company have been publicly listed on the Hong Kong Stock Exchange since 1988.

The principal activities of the 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.

The 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, the 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 the Complainant’s programmes for users’ viewing online. The 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 Video-On-Demand (“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.

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

As at the date of the Complaint, the Complainant and its subsidiaries have registered 66 domain names, bearing the mark “tvb”. They include the following 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”,

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“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”, “tvbasing.com.au”, “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” and “tvbanywhere.hk”.

For the Respondent

The Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 26 November 2014). As such the Respondent has not contested the allegations of the Complaint and is in default.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The domain name in dispute is confusingly similar to the Complainant’s trademark “TVB”.
- ii. Respondent has no rights or legitimate interests in the registration of the domain names in dispute.
- iii. Respondent has registered and used the domain name in bad faith.

B. Respondent

The Respondent did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK in its email of 26 November 2014 and as such has not contested the allegations of the Complaint and is in default.

5. Findings

Having considered all the documentary evidence before me, and the Respondent’s non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) the Panel is of the view that it should proceed to decide on the Disputed Domain Name (“tvb22.com”) based upon the Complaint and evidence submitted by the Complainant.

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 prove that the Disputed Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

The Disputed Domain Name incorporates the Complainant's "TVB" trademark in its entirety. The only difference between the Disputed Domain Name and the Complainant's "TVB" trade mark is the inclusion of the numbers "22" as a suffix. It is well-established that in cases where the distinctive and prominent element of a Disputed Domain Name is the Complainant's mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain Name and the mark. See, for example *LEGO Juris A/S v. Huangderong*, WIPO Case No. D2009-1325; *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com*, WIPO Case No. D2009-0121; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064.

"TVB" is the distinctive and prominent component of the Disputed Domain Name and the addition of the numbers "22" does not substantively distinguish it from the TVB trademarks.

The prominence of the Complainant's TVB trade mark (particularly in the PRC where the Respondent is located) is such that the use of the numbers "22" in connection with the word "TVB" does nothing to dispel confusion as to an association with the Complainant and its services in the PRC through TVBC, a joint venture company that handles the Complainant's programme sub-licensing in the PRC. The connection between "TVB" with the numbers "22" as a suffix to the Complainant's "TVB" trade mark is such that the relevant Disputed Domain Name considered as a whole would be likely regarded by potential customers of the Complainant as a reference to the Complainant's business. See, for example *eBay Inc. v. SGR Enterprises and Joyce Ayers* (Case No. D2001-0259) where, the Panel held that the domain names in question, namely <ebaylive.com> and <ebaystore.com>, were confusingly similar to the Complainant's trademark.

It is the view of this Panel that the Complainant has discharged its burden of proof in establishing the element of an identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant's "TVB" brand has been in use since at least 1967. According to the WHOIS search result, the Disputed Domain Name was registered on the 9th July 2014, some 47 years after the Complainant began using the TVB brand and 22 years

after the Complainant registered “TVB” as a trademark. In addition, “TVB” has acquired meaning through the Complainant’s extensive use in television broadcasting, video rental, programme production, programme and VOD licensing, audio and video products rental, selling and distribution, etc, so that “TVB” is immediately recognisable to consumers as being associated with the Complainant and its business.

Given that the Complainant’s adoption and first use of the TVB name and marks in 1992 predates the Respondent’s registration and use of the Disputed Domain Name shifts to the Respondent the burden of establishing that it has legitimate rights and/or interest in the Disputed Domain Name. See, for example the WIPO decision of *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)* (Case No. D 2003-0696) as a reference to this principle.

The word “TVB”, being the dominant part of the Disputed Domain Name, does not in any way reflect the Respondent’s name. In fact there is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain Name and the Respondent’s name (Li Ning).

Given the general recognition of the Complainant and the TVB trademarks, globally and in particular the PRC where the Respondent resides, the Respondent must have known of the existence of the TVB trademarks when registering the Disputed Domain Name.

The Respondent’s website features the “TVB” name and color scheme that is similar to that contained in the Complainant’s official website “www.tvb.com”. From this it is clear that the Respondent is aware of the TVB brand and is using the Disputed Domain Name to mislead consumers into believing that the Respondent’s website is somehow associated with the Complainant’s business, thereby attracting Internet traffic and profiting from click through links and advertisements.

The website also contains advertisements and links to other websites. It is well established that such use of a domain name to point to a website containing sponsored advertising and click-through links to other sites is neither use for the bona fide offering of goods or services nor a legitimate non-commercial use. See, for example *PRL USA Holdings, Inc. v. LucasCobb*, WIPO Case. No. D2006-0162.

Given the above reasons alongside a lack of response by the Respondent on its right and/or interest in the Disputed Domain Name, this Panel concludes that the Respondent has no rights and/or legitimate interests in respect of the Disputed Domain Name.

C) Bad Faith

Paragraph 4(b) of the Policy sets down four (4) factors in which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domain Name in bad faith. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if

found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.”

The Respondent, domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name given the Complainant's reputation in the mark “TVB” in China and internationally as of the date that the Respondent registered that Disputed Domain Name.

The fact that the website features an “TVB” logo and color scheme that is confusingly similar to the Complainant's “TVB” logo, makes it clear that the Respondent knew of the Complainant's trademark and registered the Disputed Domain Name in an attempt to attract internet traffic to the website on the mistaken belief that it is associated with the Complainant's business, and to make profit from advertisements and sponsored links.

No evidence has been provided showing that the Respondent sought the permission of the Claimant to use its mark, nor any evidence showing that the Claimant gave such permission to the respondent.

Given the above findings, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Decision

The Complainant has proved its case. It has a registered trademark in the name “TVB” to which the contested domain name is confusingly similar.

The Respondent has provided no evidence showing rights or legitimate interest in the Disputed Domain Name.

The Complainant has shown that the Respondent registered and used the Disputed Domain Name in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and orders that the Disputed Domain Name “**tvb22.com**” be transferred to the Complainant **Television Broadcasts Limited**.

Dr. Shahla F. Ali
Panelist

Dated: 9 December 2014