



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1801094
Complainant:	Television Broadcasts Limited
Respondent:	Hua Phan
Disputed Domain Name(s):	<tvb8vn.com>

1. The Parties and Contested Domain Name

1. The Complainant is Television Broadcasts Limited, of 10/F., Main Building, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.
2. The Respondent is Hua Phan of Go Cong Tien Gang, Vietnam.
3. The domain name at issue is <tvbyb.com>, registered by the Respondent with Namecheap Inc. of California USA.

2. Procedural History

4. The Complainant filed this complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 28 March 2018.
5. The ADNDRC sent a copy of the Complaint to the Respondent on 13 April 2018.
6. The Respondent failed to respond within 20 calendar days as required under paragraph 5 of the UDRP Rules. On 04 May 2018, the Respondent was in default of filing its response.
7. On 16 May 2018, after confirming that he was able to act independently and impartially between the parties, the ADNDRC appointed David Allison as the sole Panelist in this matter.

3. Factual background

8. The Complainant, Television Broadcasts Limited, commonly known as TVB, was the first wireless commercial television station established in Hong Kong. It was established in 1967 with 200 staff and has now grown to a size of over 4,600 staff worldwide.

9. TVB is a world leader in the production and distribution of original Chinese language television programs and movies. Its principal business activities 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 one of the largest producers 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.
10. In addition to its traditional television broadcasting business, since at least 1999, the Complainant has had an active presence on the internet. In 1999 the Complainant launched its principal website TVB.COM (http://www.tvb.com).
11. The Complainant also operates "TVB8", a 24 hour Mandarin language infotainment channel. The Complainant owns the domain name tvb8.com.hk. TVB8 has a worldwide audience for Mandarin language television programs.
12. The Complainant has provided evidence demonstrating ownership of an extensive portfolio of trademarks for the mark "TVB". These marks are registered in Hong Kong, mainland China, Europe, the US and elsewhere with one of the earliest marks being "TVB" (Reg. No. 199608823AA) registered in Hong Kong in 20 September 1996.
13. The Complainant has also provided evidence demonstrating ownership of a number of "TVB8" trademarks in several jurisdictions, the earliest of which is "TVB8" (Reg. No. 02104134) registered in Malaysia on 13 November 2002.
14. The evidence submitted by the Complainant demonstrates that the Complainant has extensive and long standing trademark rights to both "TVB" and "TVB8". The evidence also suggests that it has become very well known to consumers throughout the world, particularly in relation to the fields of Chinese language television programming and broadcasting.
15. As the Respondent did not file any response to the Complaint, little is known about the background of the Respondent. It appears however, that the Respondent is based in Vietnam.

4. Parties' Contentions

Complainant

16. The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to the trade marks of the Complainant and contains the Complainant's "TVB" and "TVB8" trademarks in their entirety.
- ii. The Respondent was well aware of the Complainant's trade marks and reputation prior to registering the disputed domain name.
- iii. The Respondent is using the disputed domain name to prejudice the Complainant's business, is riding on the reputation of the Complainant and is intentionally attempting to attract consumers to its website by creating consumer confusion.

Respondent

17. The Respondent has not filed a response to the Complainant's complaint.

5. Preliminary Note – Redirected website

18. The Panel notes that at the time of preparing this Decision, the disputed domain name now automatically redirects to <http://phim8u.com/>.

19. In considering the effect and weight of the evidence contained in the current redirect to <http://phim8u.com/>, the Panel has taken the view that it should give primary weight to the evidence as submitted by the Complainant in its Complaint and only then give secondary consideration to the website as it currently stands. If the Respondent had filed a Response, the Panel would have been obliged to first consider the evidence of each party as submitted ó rather than making its own enquiries. Only after this step would the Panel possibly consider evidence collected by itself or the current state of the disputed domain name so as to ensure that relevant evidence was not ignored.

20. In this case, the Respondent has filed no evidence. Thus the Panel has relied and attached significant weight to the evidence submitted by the Complainant.

21. Nevertheless, the Panel has not ignored the redirected webpage. Rather, the Panel has noted that while it no longer actively displaying the disputed domain name to consumers in the website address bar, the contents of the current site are largely similar to that described in the evidence submitted by the Complainant. In short, a large number of the Complainant's original television programs over which the Complainant owns copyright, are still being offered to the public by the Respondent without authorization of the Complainant. This evidence is relevant to the question of bad faith.

22. Further, as the disputed domain name is no longer being displayed to Consumers, the Panel considers that this weakens any argument that the Respondent has any rights or legitimate interests in the disputed domain name. This fact has also been considered below.

6. Findings

23. The ICANN Uniform Domain Name Dispute Resolution Policy (UDRP) provides, at paragraph 4(a), that each of three findings must be made out 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.

24. The Panel has reminded itself that it is the Complainant who must establish each of the three elements required by paragraph 4(a) of the UDRP. The mere fact of the Respondent's failure to file a response has not resulted in an automatic finding against

it. The Panel has therefore, considered whether each of the three requirements under paragraph 4(a) have been met and its findings are as follows:

A) Identical / Confusingly Similar

25. The disputed domain name consists of the elements "TVB8VN" and ".com". It is a well-accepted principle that TLD suffixes such as ".com", ".net", etc are ignored for the purposes of comparing the disputed domain name to the Complainant's prior rights.
26. In relation to the main part of the disputed domain name, consumers will likely regard it as being comprised of the elements (a) TVB8, and (b) VN. Alternatively, consumers may consider the mark comprised of "TVB", "8" and "VN".
27. In either case, the element "TVB" or "TVB8" is identical to the Claimant's trademarks. The fact that the disputed domain name reproduces these element at the beginning of the domain name, and in its entirety, is significant and this will be readily apparent to consumers.
28. The additional letters "VN" appear to be an abbreviation for "Vietnam". "VN" is a common abbreviation for Vietnam and is the country code domain name identifier for Vietnam. Whilst the "VN" element may suggest to consumers that the domain is related to Vietnam in some way, in the Panels view, the "VN" element does little to distinguish the disputed domain name from the Complainant's trademarks. Thus the main distinctive portion to be compared is the "TVB" / "TVB8" elements.
29. In comparing the Complainant's trade marks with the distinctive element of the disputed domain name (ie TVB/ TVB8), the Panel finds that trademarks are identical to the distinctive element of the disputed domain name. As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks and thus element 1 of UDRP paragraph 4(a) has been satisfied.

B) Rights and Legitimate Interests

30. The Complainant contends that the Respondent "*is not in any way connected, associated or affiliated with the Complainant*" and has never been authorized by the Complainant to use its trademarks. This is despite the fact that the 'TVB' marks and logos feature prominently on evidence of the landing page and webpages of the disputed domain name as submitted by the Complainant.
31. The Respondent has failed to adduce any evidence to show why it has chosen a domain name where the dominant and distinctive element is identical to that of the Complainant's trademarks. It has not provided any evidence to demonstrate that it has a right or legitimate interest in the disputed domain name.
32. While the Panel notes that the overall burden of proving this element rests with the Complainant, it also recognizes the well-established principle that once the Complainant has established a *prima facie* case that the Respondent lacks sufficient legitimate rights and interests, the burden then shifts to the Respondent.

33. Further, as noted at paragraph 22 above, the fact that the disputed domain name now automatically redirects to <http://phim8u.com/> and no longer displays the disputed domain name at all adds to the argument that the Respondent has no rights or legitimate interests in the disputed domain name.
34. In considering all of the above matters, the Panel finds that the Complainant has adduced a sufficient *prima facie* case whereas the Respondent has failed to adduce any evidence whatsoever. Therefore, the Panel finds that the Complainant has established the second element of UDRP paragraph 4(a).

C) Bad Faith

35. To prove this element, the Complainant must establish that the Respondent both registered and has used the disputed domain name in bad faith. To establish bad faith, reference may be made to the circumstances outlined in paragraph 4(b) of the UDRP.
36. In this case, bad faith on the part of the Respondent is both obvious and overwhelming. The evidence provided by the Complainant shows that Respondent has specifically designed a website to offer members of the public direct access to a very large number of the Complainant's original television and movie programs. This is despite the fact that the Respondent has no authorization from the Complainant to offer and distribute such programs.
37. In addition, even the newly redirected website continues to display and offer to the public a large number of the Complainant's original television programs without the authorization of the Complainant.
38. In the absence of any explanation as to why the Respondent has a legitimate right to use the Complainant's mark and distribute the Complainant's programs, it appears clear to the Panel that the disputed domain name has been registered in bad faith.
39. In particular, the Panel finds that the Respondent has "*registered the domain name primarily for the purpose of disrupting the business of a competitor*" which satisfies the criteria for a finding of bad faith in accordance with paragraph 4(b)(iii) of the UDRP.

7. Decision

40. For the reasons outlined above, the Panel finds that the Complainant has satisfied all three elements of UDRP paragraph 4(a). Accordingly, the Panel orders that the disputed domain name, <**tvb8vn.com**>, be transferred to the Complainant.

David Allison
Sole Panelist

Dated: 28 May 2018