



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700998
Complainant:	Television Broadcasts Limited (Authorized Representative: Jane Ting)
Respondent:	Kah Bow
Disputed Domain Name(s):	<HDTVB.ME> ; <HDTVB.SITE>

1. The Parties and Contested Domain Name

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.

The Respondent is Kah Bow, of Wattana Bangkok 10110, Thailand.

The domain names at issue are HDTVB.ME and HDTVB.SITE, registered by Respondent with Name.com LLC., of 414 14th Street, #200 Denver, Colorado 80202 USA.

2. Procedural History and Ruling on the Language of the Procedure

2.1 Procedural History

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC")[" Centre "] on July 4, 2017, seeking for a transfer of the domain names in dispute.

On July 4, 2017, the Centre sent an email asking for the detailed data of the registrant to the registration organization, and the registration organization, on July 6, 2017, responded with the detailed data checked, including checking over the registrant.

On July 7, 2017, the Centre examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules").

On July 7, 2017, the Centre sent to the Respondent the "Written Notice of Complaint" along with the Complaint via email. The Centre informed the Respondent of a due date, July 27, 2017, for the submission of its Response.

On July 28, 2017, the Centre confirmed that the Respondent didn't submit the Response Form.

On August 4, 2017, the Centre appointed Mr. Doo-Hyung Do as the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Centre, in accordance with Paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On August 25, 2017, the Panel ordered the Complainant to file evidence, if any, to support its arguments about its business activities and the well-known status of its trademarks and trade name within five (5) business days of the order and further ordered the Respondent to file an opinion on said evidence within five (5) business days from the receipt of the above evidence; the Complainant accordingly filed additional evidence on August 30, 2017, but the Respondent failed to file any opinion until the lapse of the above period, namely by September 7, 2017.

2.2 Ruling on the Language of the Procedure

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise.

In this regard, the Panel determines that the language of this proceeding shall be English, taking into account the following factors:

- i. Since the Respondent has not responded at all to the Complaint, it does not appear that the use of English in this proceeding would impose unreasonable burden on the Respondent; and
- ii. Paragraph 10(c) of the Rules provides that the Panel shall ensure that the administrative proceeding takes place with due expedition.

3. Factual background

The Complainant, established in 1967, was the first wireless commercial television station in Hong Kong and is commonly known as "TVB".

The Complainant has, as of the year 2017, over 4,600 staff and artists worldwide and its shares have been listed with and traded on the Hong Kong Stock Exchange since 1988.

The Complainant's business activities include television broadcasting, video rental, program production, program and Video-On-Demand ("VOD") licensing, audio and video products rental, selling and distribution of audio and video products and other related activities, and is one of the largest producers of Chinese language programs in the world.

The Complainant's programs 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 programs and TVBI and its sub-licensees supply the Complainant's programs to free-to-air broadcasters, cable and satellite television broadcasting service operators, telecommunication services providers, websites, video distributors and video-on-demand service providers worldwide.

The Complainant registered the domain name “TVB.COM” in 1999 and as of July, 2017 the Complainant and its subsidiaries have registered and owned 120 domain names either bearing the mark “tvb” alone (for example, “tvb.ae”, “tvb.asia”, “tvb.biz”, “tvb.co.in”, “tvb.com”, “tvb.com.au”, “tvb.com.cn”, “tvb.com.hk”, “tvb.com.sg”, “tvb.com.vn”, “tvb.hk”, “tvb.love”, “tvb.me”, “tvb.sg”, “tvb.tm”, “tvb.video”, “tvb.vn”, “tvb.website”, tvb.商标) or bearing the mark “tve” with the addition of other words or symbols (for example, “tvbi. 商标”, “tvbbuddy. 商标”, “tvb123.com”, “tvb2014.com”, “tvb22.com”, “tvb8.com.hk”, “tvbanywhere.com”, “tvbanywhere.com.hk”, “tvbanywhere.com.sg”, “tvbanywhere.hk”, “tvbanywhere.net”, “tvbanywhere.sg”, “tvbappstore.com”, “tvbappstore.com.hk”, “tvbappstore.hk”, “tvbappstore.net”, “tvbartistblog.cn”, “tvbartisteblog.cn”, “tvbartistsblog.cn”, “tvbartistesblog.cn”, “tvbartistblog.com.cn”, “tvbartisteblog.cm.cn”, “tvbartistsblog.com.cn”, “tvbartistesblog.com.cn”, “tvbartistblog.com”, “tvbartisteblog.com”, tvbartistsblog.com”, “tvbartistesblog.com”, “tvbartistblog.com.hk”, “tvbartisteblog.com.hk”, “tvbartistsblog.com.hk”, “tvbartistesblog.com.hk”, “tvbc.com.cn”, “tvbc. 中國”, “tvbcharity.com.hk”, “tvbcharity.hk”, “tvbcharity.org”, “tvbcharity.org.hk”, “tvbchina.cn”, “tvbchina.com.cn”, “tvbcorporate.com”, “tvbcorporate.com.hk”, “tvbcorporate.hk”, “tvbdo.com”, “tvbdo.eu”, “tvbdo.info”, “tvbdo.org”, “tvbeurope.asia”, “tvbeurope.biz”, “tvbeurope.cn”, “tvbeurope.cn.com”, “tvbeurope.co.in”, “tvbeurope.com.cn”, “tvbeurope.com.hk”, “tvbeurope.com.tw”, “tvbeurope.eu”, “tvbeurope.hk”, “tvbeurope.in”, “tvbeurope.info”, “tvbeurope.net”, “tvbeurope.net.cn”, “tvbeurope.org”, “tvbeurope.tw”, “tvbeurope.中國”, “tvbf.com.hk”, “tvbfinance.com”, “tvbgo.hk”, “tvb-go.hk”, “tvbgold.hk”, “tvb-gold.hk”, “tvbgroup.cn”, “tvbgroup.com.cn”, “tvbihk.com”, “tvbihk.com.hk”, “tvbihk.ino”, “tvblove.com”, “tvbmusic.com.hk”, “tvbn.com.hk”, “tvbn.hk”, “tvbnews.com.hk”, “tvbnewsroom.com.hk”, “tvbof.com.mo”, “tvbop.com.mo”, “tvb-online.com”, “tvbonly.com”, “tvbow.com”, “tvbroaming.com”, “tvbs.com”, “tvbs.com.tw”, “tvbsg.com.tw”, “tvbsn.com.tw”, “tvbspecial.com”, “tvbstream.com”, “tvbusa.com”, “tvbusa.us”, “tvbvietnam.com.au”, “tvbwkly.com”, “tvbxinghe.com.hk”, “tvbys.com”, “tvbyy.com” and “tvbzhibo.com”).

The Complainant first registered “TVB” as its trademark in Hong Kong in 1992 and since its registration, the mark “TVB” has been used by the Complainant as its trademark and trade name continuously. The mark “TVB” is currently registered and/or applied for registration by the Complainant in more than 30 countries and regions worldwide. In addition to the mark “TVB”, the Complainant and its subsidiaries have also registered numerous trademarks including the letters “TVB” as its essential element, for example, “TVB8”, “TVBA Value Club”, “TVBJ”, “TVBA”, “TVBVideo”, “TVBUDDY”, “TVBC”, “TVB Europe”, “TVB NETWORK VISION”, “TVB Anywhere” and others in many jurisdictions and for various services.

The Respondent registered the disputed domain names HDTV.BE and HDTV.SITE on February 6, 2017 and since then used the disputed domain names to set up an online social community (“Website”) for its users to view the Complainant’s television programs and large volumes of the Complainant’s works are being distributed on the Website by the Respondent

The Complainant has not so far authorized the distribution of the Complainant’s works on the Website.

On March 23 and 24, 2017, the Complainant sent cease and desist letters to the Respondent, the Website’s Internet Services Providers, CloudFlare Inc. (“CloudFlare”) and Quasinetworks.com,

and the domain registrar, Name.com LLC. (“Name.com”) respectively, demanding them to remove, or disable access to, the Complainant’s copyrighted works and terminate their services with the Respondent.

Neither Respondent, CloudFlare, Quasinetworks.com nor Name.com has responded to the Complainant’s demand, but subsequent to the above demand, the Respondent directed the Website to <http://hdtvb.site> (“Directed Website”).

On April 12 and 13, 2017, the Complainant sent cease and desist letters to the Respondent, the Website’s Internet Services Providers, CloudFlare and Quasinetworks.com, and the domain registrar, Name.com respectively, demanding them to remove, or disable access to, the Complainant’s copyrighted works and terminate their services with Respondent.

Neither Respondent, CloudFlare, Quasinetworks.com nor Name.com has responded to the Complainant’s demand, but subsequent to the above demand, the Respondent re-directed the Website to <http://hkfree.co> (“Re-Directed Website”).

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain names “HDTV.BE” and “HDTV.SITE” are confusingly similar to the Complainant’s registered trademark “TVB” and other related trademarks of the Complainant and its subsidiaries which incorporate the letters “TVB” as its essential element such as “TVB8”, “TVBA Value Club”, “TVBJ”, “TVBA”, “TVBVideo”, “TVBUDDY”, “TVBC”, “TVB Europe”, “TVB NETWORK VISION” and “TVB Anywhere”. In addition, “TBV”, as the trade name and trademark of The Complainant has been well known worldwide.
- ii. The Respondent, upon registering the disputed domain names on February 6, 2017, set up various archives and classified Complainant’s programs by different categories and broadcast years, on the Website and Directed Website deliberately created by the Respondent with the intention to offer public viewing of the Complainant’s programs without Complainant’s authorization, which were later made directed to the Re-Directed Website.
- iii. The Respondent is not in any way connected, associated or affiliated with the Complainant and the Complainant has not authorized, endorsed or otherwise permitted the Respondent to register the disputed domain names or use the Complainant’s trade mark or any variation thereof. There is no evidence that the Respondent has been commonly referred to as the disputed domain names, and there is no reason why the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the disputed domain names.
- iv. The Respondent registered and used the domain names in dispute in bad faith in light of the fact that the Complainant has been widely publicizing “TVB” as its name since 1967 and the Respondent used the disputed domain names for the Website and Directed Website where the Respondent provided Complainant’s programs for its users’ viewing. The Respondent should have intentionally chosen the disputed domain names for its Website and Directed Website with full knowledge of the

Complainant's business and trademark. The Respondent, by setting up the platform using the disputed domain names for its user's free sharing, distribution and viewing of the Complainant's works online, is in fact using the disputed domain names in direct competition with Complainant's business. The Respondent is riding on the reputation of the Complainant and uses the disputed domain names to attract Internet users to Respondent's websites for commercial benefits.

B. Respondent

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

5. Findings

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the 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

The main portion of the disputed domain names "HDTV.B.ME" and "HDTV.B.SITE" is "HDTV.B" and this can be reasonably divided into, and recognized as a combination of, two parts, namely "HD" and "TV.B", of which the part "HD" can easily be understood to be an abbreviation of the words "High Definition", especially when used in the field of TV programs and other related goods and services, thus is not worth considering since this part is descriptive and lacks distinction. Therefore, only the part "TV.B" should be viewed as the essential and distinctive part of the disputed domain names, and put to comparison with the Complainant's registered trademarks.

On the other hand, the addition of generic top-level domain extensions such as ".ME" and ".SITE" are irrelevant when determining whether a domain name is confusingly similar to a registered trademark.

Therefore, the Panel finds that the disputed domain names incorporating "TV.B" as its essential element is confusingly similar to the Complainant's registered trademark "TV.B", and that the Complainant has satisfied the first element of the Policy.

B) Rights and Legitimate Interests

The Policy provides, at Paragraph 4(c), for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- i. Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or

- ii. The respondent has been commonly known by the domain name; or
- iii. The respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

The Complainant has not licensed nor authorized the use of its trademark to the Respondent or otherwise permitted the Respondent to register the disputed domain names in its name.

There is no indication that the Respondent is commonly known by the disputed domain names.

There exists no evidence to demonstrate the Respondent's intent to use or to make demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services. Conversely, by offering users to view the Complainant's programs without authorization, the Respondent has infringed the copyright and other intellectual property rights of the Complainant.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that there exists no circumstance demonstrating the Respondent's right or legitimate interest in the disputed domain names.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain names, and the Complainant has proven the second element of the Policy.

C) Bad Faith

The Policy states, at Paragraph 4(b), that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- i. Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent 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 the respondent has engaged in a pattern of such conduct; or
- iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The Panel has the view that the following facts and considerations must be taken into account in finding the intent of the Respondent when registering the disputed domain names:

The disputed domain names do not reflect or correspond to the Respondent's own name;

The Complainant has provided its services using the “TVB” and other related trademarks since 1967, and “TVB” has already gained well established worldwide reputation as the Complainant’s trademark and trade name when the Respondent registered the disputed domain names;

The Respondent registered the disputed domain names HDTV.BE and HDTV.SITE on February 6, 2017 and since then used the disputed domain names to set up the Website for its users to view the Complainant’s television programs and large volumes of the Complainant’s works are being distributed on the Website by the Respondent;

The Complainant has never authorized the Respondent to distribute the Complainant’s works on the Website;

On March 23 and 24, 2017, the Complainant sent cease and desist letters to the Respondent, but the Respondent failed to respond; and

On April 12 and 13, 2017, the Complainant sent cease and desist letters again to Respondent, but the Respondent again failed to respond.

In light of the foregoing facts and considerations, it is fairly reasonable to infer that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant’s “TVB” and other related trademarks as to the source of the “TVB” services on its website.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain names were registered and are being used in bad faith, satisfying the third element of the Policy.

6. Decision

For the foregoing reasons, in accordance with the paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <HDTV.BE> and <HDTV.SITE> be transferred to the Complainant.

Do, Doo-Hyung
Sole Panelist

Date: September 13, 2017