



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400585
<b>Complainant:</b>	Television Broadcasts Limited
<b>Respondent:</b>	Fundacion Private Whois
<b>Disputed Domain Name(s):</b>	<tvbdo.com>

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**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 Fundacion Private Whois, of Tvbdo.com, Apts. 0850-00056, Panama Zona 15.

The domain name at issue is **tvbdo.com**, registered by Respondent with Internet.bs Corp, of Sea Beach Boulevard, Sea Beach estates, N-4892 Nassau, The Bahamas.

**2. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Center (the “Center”) on March 13, 2014. On March 14, 2014, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On March 18, 2014, the Center notified the Complainant of deficiencies in the complaint. The Complainant filed the amended Complaint on March 19, 2014. The Center verified that the amended Complaint 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”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 19, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was April 8, 2014. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 9, 2014.

The Center appointed Adam Samuel as the sole panelist in this matter on April 11, 2014. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

### **3. Factual background**

The Complainant is commonly known as “TVB” and is the first wireless television station in Hong Kong. It was first established in 1967. The Complainant launched its principal website <tvb.com> on the internet in 1999. It has registered over sixty other domain names including the letters “tvb”. The Complainant owns a number of trade mark registrations in Hong Kong and elsewhere for TVB, including 199608823AA, registered in Hong Kong on June 8, 1992 although with a date of actual registration of September 20, 1996.

The Respondent registered the disputed domain name on May 4, 2013. The Respondent is in a fact a transferee from the original registrant in order to preserve the Respondent’s real identity.

### **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 registered trademark “TVB” which the Complainant has used continuously for 46 years. The disputed domain name mainly comprises the mark “TVB”. Although the word “DO” is added after the word TVB”, the dispute domain name should be seen as confusingly similar to the Complainant’s trademark “TVB”.
- ii. 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 domain names in dispute 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 domains 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 name. The Respondent is not making a legitimate non-commercial or fair use of the dispute domain name. It is actually aiding and abetting users to infringe the Complainant’s copyright and receives revenue of other benefits from advertisers posting advertisements on the website to which the disputed domain name resolves.
- iii. By setting up forums on the website to which the disputed domain name resolves for its users to view the Complainant’s programmes, the Respondent shows that it is deliberately using the Complainant’s trademark “TVB” to attract internet users. By copying and using the Complainant’s registered trademark and offer of viewing of the Complainant’s programmes without authorization, the Respondent has infringed the copyright, trademark and other intellectual property right of the Complainant. It is inconceivable that the Respondent when registered the disputed domain name did not know of the Complainant’s business. The Complainant engages in programme content licensing and distribution business. The Respondent by setting up the platform of its user’s free sharing, distribution

and viewing of the Complainant's works online, is in fact using the domain name in dispute in direct competition with the Complainant's business. The Respondent has distracted customers from the Complainant who instead of buying video products, subscribing to VOD or visiting the Complainant's website choose to visit the Respondent's website in order to obtain the Complainant's programme content for free. The Respondent is riding on the Complainant's reputation and uses the dispute domain name deliberately to attract Internet users to the Respondent's website for commercial benefit. By making use of the Complainant's works and by creating a likelihood of confusion with the Complainant's trademark, the Respondent has misled the public to believe that the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location are association with the Complainant or authorized by it.

**B. Respondent**

The Respondent did not reply 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 must be 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 disputed domain name consists of the Complainant's trademark "TVB" and the letters "do". The addition of a generic word such as "do" particularly where it has no effect on the meaning of the trademark part of a domain name does not distinguish the disputed domain name from the Complainant's trademark. Accordingly, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark.

**B) Rights and Legitimate Interests**

There is no evidence that the Respondent is called "TVBDO" or anything similar or that it engages in a legitimate trade under that or any related name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademarks. For these reasons, and in the absence of any response on this point, notably one contradicting the Complainant's claim that the Respondent has never been connected to it in any way, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

**C) Bad Faith**

The evidence shows that the Respondent used to use its domain name to show the Complainant's products. The quality of the screenshots annexed to the Complaint is very poor. However, what one can see and other commentary on the internet shows that at the very least, the Respondent was using its website to show the Complainant's shows. It is reasonable to deduce from this that the Respondent when registering the dispute domain name with elements of the Complainant's trademark in it were contemplating using the dispute domain name to show the Complainant's products. Alternatively, they registered the domain name for another purpose designed to attract Internet users looking for the Complainant's products. The Respondent seems to have been using the website to which the disputed domain name resolves in order to show the Complainant's products without any authorization from the Complainant to do so.

Presumably at some point after the Complaint was made, the Respondent removed the website to which the disputed domain name resolved. The Complainant only has to show that the domain name was being used in bad faith when the Complaint was filed. Any other view would allow the Respondent to remove an offending website while a Complaint is being dealt with and then restore it afterwards. That cannot be the intention of the Policy.

In the circumstances, the Panel concludes that the disputed domain name was registered and was at the time of the Complaint being used in bad faith.

## **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 <tvbdo.com> be transferred to the Complainant.



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Adam Samuel  
Panelist

Dated: April 22, 2014