



Asian Domain Name Dispute Resolution Centre  
*- a charitable institution limited by guarantee registered in Hong Kong*

## **Uniform Domain Name Dispute Resolution Policy**

### **Panelist Decision**

Complainant : **Television Broadcasts Limited**

Respondent : **Jianxiong Qiu**

Case Number : **HK-1400568**

Contested Domain Name : **tvb123.com**

Panel Member : **Christopher To**

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#### **1. Parties and Contested Domain Name**

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

The Respondent is **Jianxiong Qiu** of Fujiansheng, Wupingxian, zhongshanzhen, Wuxicun Laowubei 04 hao, Fujian, Longyan, People's Republic of China 364304.

The contested domain name is "**tvb123.com**" ("*Disputed Domain Name*")

## 2. Procedural History

On 20<sup>th</sup> January 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 or before 30<sup>th</sup> January 2014.

On 20<sup>th</sup> January 2014, ADNDRC-HK notified Go Montenegro Domains, LLC (“**Registrar**”) of the Disputed Domain Name of the proceedings by email.

On 21<sup>st</sup> January 2014, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that qiu Jianxiong 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 Registration Agreement 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 23<sup>rd</sup> January 2014, the ADNDRC-HK acknowledged having received the case filing fee from the Complainant.

On 23<sup>rd</sup> January 2014, the ADNDRC-HK notified the Complainant that information from the Registrar indicated that the Disputed Domain Name is registered to “*qiujianxiong*” and requested the Complainant to revise and resubmit its Complaint on or before 28<sup>th</sup> January 2014, failing which the Complaint will be deemed withdrawn.

On 27<sup>th</sup> January 2014, the Complainant submitted its revised Complaint and ADNDRC-HK acknowledged having received such.

On 27<sup>th</sup> January 2014, the ADNDRC-HK sent a Written Notice of Complaint (“*Notification*”), together with the Complaint, to the email addresses 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 16<sup>th</sup> February 2014).

On 28<sup>th</sup> January 2014, the Registrar informed the disputants and ADNDRC-HK that the Disputed Domain Name has been placed on “Registrar-Lock” status.

On 28<sup>th</sup> January 2014, the Respondent informed ADNDRC-HK through an email in the Chinese language (Simplified Chinese Text) that it has closed the contents within the Disputed Domain Name and is a follower of “TVB” programmes who is willing to return the Disputed Domain Name to its rightful owner should one contact the Respondent.

On 29<sup>th</sup> January 2014, the ADNDRC-HK confirmed having received the Respondent's email of 28<sup>th</sup> January 2014 and indicated that it shall forward such to the Panelist for consideration once the Panelist is appointed.

On 29<sup>th</sup> January 2014, the Respondent informed the Complainant through an email in the Chinese language (Simplified Chinese Text) that the Respondent is sorry to have infringed "TVB" intellectual property rights through the use of the Disputed Domain Name. It means no harm, as the Respondent likes "TVB" programmes and is a follower of such programmes, and wants to share such with the wider community. Should the Complainant wish the Disputed Domain Name returned to it, the Respondent is willing to do so for free (without any financial resources changing hands) and hopes that the Complainant will withdraw the Complaint filed with the ADNDRC-HK.

On 29<sup>th</sup> January 2014, the Complainant informed ADNDRC-HK that it would like to proceed with the proceedings in relation to the Disputed Domain Name.

On 29<sup>th</sup> January 2014, the ADNDRC-HK confirmed having received the Claimant's email of 29<sup>th</sup> January 2014 and indicated that it shall forward such to the Panelist for consideration once the Panelist is appointed.

On 17<sup>th</sup> February 2014 ADNDRC-HK sent an email to the Complainant copying the Respondent informing the Complainant that the Respondent did not file a Response to the Disputed Domain Name within the required time period (i.e. on

or before 16<sup>th</sup> February 2014) and that a Panelist for the Disputed Domain Name will be appointed shortly by the ADNDRC-HK.

The Panel comprising of Christopher To as a single panelist was appointed by the ADNDRC-HK on 5<sup>th</sup> March 2014. The papers pertaining to the case were delivered to the Panel by email on 5<sup>th</sup> March 2014, followed by a hard copy on 10th March 2014.

### **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”, “tvbartisteblog.com.hk”, “tvbartistsblog.com.hk”, “tvbartistblog.com.hk”, “tvbartistesblog.com.cn”, “tvbartisteblog.com.cn”, “tvbartistsblog.com.cn”, “tvbartistblog.com.cn”, “tvbartistesblog.cn”, “tvbartisteblog.cn”, “tvbartistsblog.cn”, “tvbartistblog.cn”, “tvbmusic.com.hk”, “tvbnews.com.hk”, “tvbn.com.hk”, “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”.

In November 2013, it came to the Complainant’s attention that the Respondent registered the Disputed Domain Name www.tvb123.com. The Respondent used the Disputed Domain Name to set up an online social community (“Website”) for its users to view the Complainant’s television channels and programmes. The Complainant’s television channel, namely, TVBS 歡樂台 and large volumes of the Complainant’s works are being distributed on the Website by the Respondent without the Complainant’s authorization.

The Complaint is based on the trademarks and services marks, “TVB”, “” and “” owned and registered by the Complainant.

As far as the Complainant is aware (upon the submission of the Complaint by the Complainant), there are no legal proceedings commenced (or terminated) in connection with or relating to the Disputed Domain Name that is the subject of the Complaint.

#### **For the Respondent**

The Respondent is an individual who resides in the People’s Republic of China (PRC). Other than the 2 emails from the Respondent (dated 28<sup>th</sup> and 29<sup>th</sup> January 2014), the Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 16<sup>th</sup> February 2014) as set out in an email dated 27<sup>th</sup> January 2014 from ADNDRC-HK to the Complainant copying the Respondent. As such the Respondent has not contested the allegations of the Complaint and is in default.

#### **4. Parties’ Contentions**

##### **The Complainant**

The domain name in dispute is “tvb123.com”. The Complainant submits that by comparing the Disputed Domain Name with Complainant’s trademark “TVB”, it

clearly illustrates that the Disputed Domain Name “tvb123” is highly and confusingly similar to Complainant’s registered trademark “TVB”.

The Complainant submits that the Respondent registered the Disputed Domain Name on 25<sup>th</sup> January 2011. By setting up the forum “TVB - 電視劇” for its users to post comments and to view the Complainant’s programmes. From this, the Complainant contends that the Respondent is deliberately using the Complainant’s trade and the Complainant’s trademark “TVB” to attract Internet users to the website of the Disputed Domain Name.

The Complainant submits that in November 2013, the Complainant sent 2 letters to the Website’s Internet Services Provider (“ISP”) via e-mail demanding the removal or disabling access to the Complainant’s television channels and copyrighted works and terminating its services with the Respondent. However, the Website’s ISP has not taken any action to stop infringement activities on the Website.

The Complainant submits that the Disputed Domain Name is identical to the trademark, which the Complainant has rights in. This right is also reflected in the Complainant’s company name (“TVB”). The mark “TVB” has been used by the Complainant continuously for over 46 years.

The Complainant has been widely publicising “TVB” and  as its name and corporate logo since 1967. The Complainant first registered “TVB” as its trademark in Hong Kong in 1992 and “TVB” is currently registered and/or applied for registration by the Complainant in over 30 jurisdictions worldwide.

In addition to the mark “TVB”, the Complainant and its subsidiaries have also applied and registered numerous trademarks incorporating the essential element of the letters “TVB”. Examples are “TVBS”, “TVB8”, “TVBA Value Club”, TVBJ”, TVBA” “TVBVideo”, TVBS-E”, “TVBUDDY”, “TVBC”, “TVB Europe” and “TVB NETWORK VISION” in various jurisdictions and for various services.

The Complainant submits that the domain name in dispute, mainly comprises of the mark “TVB” and “123”. Although the numbers “123” are added after the word “TVB”, the Disputed Domain Name is seen as confusingly similar with the Complainant’s trademark “TVB” and other trademarks deriving from ‘TVB’, such as “TVBVideo”, TVBS-E”, “TVB8”, ‘TVBC”, “TVB Europe” and “TVB.

The Complainant submits that it first registered “” as its trademark in Hong Kong in 1982 and “” is currently registered and/or applied for registration by the Complainant worldwide. It is the Complainants’ corporate logo. The Complainant enjoys trademark right in “” due to the goodwill and reputation accumulated through extensive use, advertising, promotion of the mark since its registration in the early 80s’. The combination of “” and “**TVB123**” will viciously mislead the public to believe that [www.tvb123.com](http://www.tvb123.com) is the

Complainant's authorised or official site for viewing of TVB programmes. Besides, the layout of Respondent's website is similar to the Complainant's website, tvb.com, with the registered trademark "TVB" and device  at the top left hand corner.

The Complainant submits that the Respondent's domain name and layout could cause confusion to the public and mislead them to think that the Complainant and/or its official web sites, such as [www.tvb.com](http://www.tvb.com) is associated with the domain name in dispute or that the Complainant has authorised the Respondent to purposely and intentionally select domain names that are confusingly similar to Complainant's domain names and trademarks.

The Complainant submits that "TVB" is clearly the distinctive and prominent component of the Disputed Domain Name and the addition of the numbers "123" does nothing to distinguish it from the TVB trademarks. In fact, given that the Complainant in August 2012 set up a joint venture company with China Media Capital and Shanghai Media Group namely 翡翠東方傳播有限公司 ("TVBC") with the view of handling the Complainant's programmes sub-licensing in the PRC. TVBC has also sub-licensed the Complainant's programmes to Youku and Tudou for their on-line broadcasts in the PRC only increases the likelihood of confusion between the Disputed Domain Name and the Complainant's "TVB" trademarks.

The Complainant submits that it has not consented to or authorized the Respondent's use of the "TVB" brand in connection with the online social community website for the Respondent to view the Complainant's television channels and programmes. Further, as the Complainant has only recently become aware (November 2013 as stated within the Complaint) of the Respondent's use of the "TVB" brand, the Complainant also cannot be said to have acquiesced to such use.

The Complainant submits that the Respondent who is the holder of the Disputed Domain Name has no rights or legitimate interests in respect of the Disputed Domain Name nor is there any evidence to show that the Respondent has been commonly referred to as the Disputed Domain Name. In addition the Respondent is not in any way connected, associated or affiliated with the Complainant and the Complainant has not authorised, endorsed or otherwise permitted the Respondent to register the domain name in dispute or use the Complainant's trade mark or any variation thereof.

The Complainant submits that by aiding and abetting users to infringe the Complainant's copyright, the Respondent receives revenue or other benefits from advertisers' posting advertisements on the Website, the Complainant contends that the Respondent is not making any legitimate, non-commercial or fair use of the domain name in dispute.

The Complainant submits that by copying and using the Complainant's registered trademark and the offer of viewing of the Complainant's programmes without

authorisation, the Respondent has infringed the copyright, trademark and other intellectual property rights of the Complainant.

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

The Complainant submits that the Respondent is using the Disputed Domain Name to provide a forum named “TVB - 電視劇”(“TVB - dramas”) for its users to view the Complainant’s programmes. The Complainant further contends that the Respondent should have known about the Complainant’s business and its trade mark “TVB” and “”. It is inconceivable that at the time of registering the Disputed Domain Name, the Respondent was not aware of the Complainant’s business and its trade marks.

The Complainant submits that it engages in programme content licensing businesses in which it has licensed VOD rights of its programmes to (a) PCCW Limited in Hong Kong through TVB.COM Limited; (b) www.astro.com.my in Malaysia via TVBI and has also granted its VOD and on-line streaming rights of its programmes to TVBC for sub-licensing in the PRC. With the Respondent, setting up the platform for user’s to freely share, distribute and view the Complainant’s works online, the Respondent is in fact using the Disputed Domain Name in direct competition with the Complainant’s business.

The Complainant believes that the Respondent's use of the Website has seriously prejudiced the Complainant's commercial interests. In fact the Respondent has distracted customers from the Complainant, who, instead of buying video products, subscribing VOD or visiting the Complainant's authorised Website in the PRC choose to visit the Respondent's Website in order to get the Complainant's programme contents for free. As a result the Complainant contends that the Respondent's use of the Website has therefore adversely affected the Complainant's business and income.

The Complainant is of the view that the Respondent is riding on the reputation of the Complainant and by using the Disputed Domain Name is deliberately trying to attract Internet users to the Respondent's website for commercial benefits. By making use of the Complainant's works, and by creating a likelihood of confusion with the Complainant's trade mark, 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 associated with the Complainant, or with the Complainant's authorization for such use.

The Complainant accordingly submits that the Respondent's use of the Disputed Domain Name is identical and/or confusingly similar to the registered trademarks in which the Complainant has rights or interests, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Respondent has registered and used the Disputed Domain Name in bad faith. On

this basis the Complainant requests that the Disputed Domain Name be transferred to the Complainant

### **The 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 27<sup>th</sup> January 2014 and as such has not contested the allegations of the Complaint and is in default.

## **5. Findings**

### **A. The Language of the Proceedings**

The Internet Corporation For Assigned Names and Numbers Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) Paragraph 11 (a) 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, having regard to the circumstances of the administrative proceeding.”*

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its email of 21<sup>st</sup> January 2014 then in accordance with Article 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint is drafted in the English language which is in line with the Registration Agreement and that the Respondent has failed to communicate further on the matter, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

**B. Discussions and 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 ("**tvb123.com**") based upon the Complaint and evidence submitted by the Complainant.

Paragraph 14(a) of the Rules provides that:

***“In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.”***

According to Paragraph 4a Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”), which is applicable hereto, the Complainant has the burden of providing that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name ; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

**(1) Identical/confusing 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 “123” 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 clearly the distinctive and prominent component of the Disputed Domain Name and the addition of the numbers "123" does nothing to 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 "123" in connection with the word "TVB" does nothing to dispel confusion as to an association with the Complainant and, in any case, in the context of the operation of 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 "123" 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 to be understood 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.

Further, it is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded. See, for example the WIPO decision of *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd* (Case No. D2006-0762).

In light of the prominence of the TVB and the TVB marks, it may be inferred that the Respondent elected to incorporate "TVB" in order to misappropriate the Complainant's goodwill and leverage off the Complainant's reputation in "TVB" by creating confusion among consumers as to some affiliation with, or endorsement by, the Complainant.

Apparently, the trademark "TVB" is the same as the distinctive part of the Disputed Domain Name in question. It is the view of this Panel that the Complainant has discharged its burden of proof to establish the element of identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

(2) **Rights or Legitimate Interests of the Respondent**

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 25<sup>th</sup> January 2011, some 44 years after the Complainant had begun using the TVB

brand and 19 years after the Complainant registered “TVB” as a trademark. Furthermore, “TVB” have acquired meanings through their extensive use by the Complainant in television broadcasting, video rental, programme production, programme and VOD licensing, audio and video products rental, selling and distribution, etc, so that “TVB” are immediately recognisable to consumers as being associated with the Complainant and its business.

The fact that the Complainant’s adoption and first use of the TVB name and marks significantly (i.e. 1992) predates the Respondent’s registration and use of the Disputed Domain Name has the practical effect of shifting to the Respondent the burden to proof in 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 (Jianxiong Qiu).

Given the fame and notoriety 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 logo that is similar to that contained within the Complainant's official website "www.tvb.com". From this it is clear evidence 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.

While the Respondent's website appears to host free programmes for viewers to view, nevertheless the programmes are the property of the Complainant. 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*.

Internet users are likely to assume that the Respondent's website is associated with the Complainant. Such use cannot be deemed to be (i) "use in connection with any bona fide offering of goods or services" or (ii) "legitimate non-commercial use" which, in the absence of the trademark rights or lawfully acquired reputation in "TVB", may otherwise have served to confer upon the Respondent a legitimate right or interest in the Disputed Domain Name.

Given that there is no evidence from the Respondent (notably the absence of a Response) 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.

(3) **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, being an individual domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name by virtue of 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 that is confusingly similar to the Complainant's “TVB” logo, evidences the fact 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 was in some way associated with the Complainant's business, and to make undue profits from advertisements and sponsored links.

The Respondent's registration and use of the Disputed Domain Name must involve mala fides in circumstances where the registration and use of the Disputed Domain Name was and continues to be made in the full knowledge of the Complainant's prior rights in the TVB trademarks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trademarks, to such registration and use. See, for example the WIPO decision of *Venve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.* (Case No. D2000-0613) in which the registrant had used and registered the domain name in bad faith, the Panel took into account the fact that the Respondent registered the domain name with knowledge of the Complainant's longstanding prior rights.

The circumstances indicate that the Respondent has used the Complainant's "TVB" mark as part of the Disputed Domain Name in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. While the Respondent's website provides free programmes to download, the Respondent is presumably deriving income from the advertisements and sponsored links posted on the website, which

may be accessed by Internet users who are likely to assume that the website is somehow associated with the Complainant's business.

The Panel is of the view that the Respondent does not have any legitimate right or interest in the Disputed Domain Name. The fact that the Respondent has registered the Disputed Domain Name without having any legitimate right or interest in it, is of itself evidence of bad faith on the part of the Respondent in registering the Disputed Domain Name.

For these reasons, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

## 6. Conclusions

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 shown no rights or legitimate interest in the Disputed Domain Name.

The Complainant has proved that the Respondent registered and used the Disputed Domain Name in bad faith, even though the Respondent through an email indicated wrong doing and was willing to return the Disputed Domain Name to TVB without any financial involvement changing hands.

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 do hereby order that the Disputed Domain Name “tvb123.com” be transferred to the Complainant **Television Broadcasts Limited** .

Dated 8 April 2014

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Christopher To