



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101417
Complainant:	Television Broadcasts Limited
Respondent:	Domain Admin, Whois Privacy Corp
Disputed Domain Name(s):	<motphimtvb.com>

1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited, of TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

The Respondent is Domain Admin, Whois Privacy Corp, of Ocean Centre, Montagu Foreshore, East Bay Street, Nassau, New Providence, Bahamas.

The domain name at issue is <motphimtvb.com>, registered by the Respondent with Internet Domain Service BS Corp (the Registrar), of Ocean Centre, Montagu Foreshore, East Bay Street, Nassau, Bahamas.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 14 January 2021 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules). On 14 January 2021, the Hong Kong Office acknowledged receipt of the Complaint and sent an email to the Registrar requesting verification of information regarding the domain name at issue. On the same day, the Registrar confirmed by email that the Respondent is listed as the registrant and provided the contact details.

The Hong Kong Office confirmed that the Complaint was in administrative compliance with the Policy and the Rules. On 15 January 2021, the Hong Kong Office sent the Respondent a written notice of the Complaint, informing it that it was required to submit a Response within 20 days from 15 January 2021 (that is, on or before 4 February 2021). The Hong Kong Office did not receive a Response from the Respondent regarding the

Complaint. Accordingly, on 5 February 2021, the Hong Kong Office notified the Respondent's default.

On 9 February 2021, the Hong Kong Office appointed Matthew Kennedy as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the parties in this matter. On the same day, the Hong Kong Office transferred the case file to the Panel.

3. Factual background

The Complainant is a television broadcasting company based in Hong Kong. It began operations in 1967. Its principal activities are television broadcasting, programme production and related activities. It has authorized another television company to offer its programmes to audiences in Vietnam since 2009. Its Vietnamese-dubbed programmes have also been available on a mobile application since 2019. The Complainant owns registrations for trademarks in multiple jurisdictions, including Hong Kong trademark registration number 199608823AA for TVB, registered from 8 June 1992, specifying television entertainment and other services in classes 35, 38 and 41; and Vietnam trademark registration number 252566, registered from 30 May 2014, specifying goods and services in multiple classes including the production and distribution of television programmes. Those trademark registrations remain current. The Complainant registered the domain name <tvb.com> in 1999 which it uses in connection with its principal website to provide information on its programmes and artists. The Complainant has also registered many other domain names that incorporate "tvb".

The Respondent is a domain name registration privacy service.

The disputed domain name was registered on 2 September 2020. It resolves to a website in Vietnamese that offers TVB movies ("Phim TVB") and series for viewing. The website prominently displays the TVB mark.

The Registrar confirmed that the language of the Registration Agreement is English.

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 trademark TVB.
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. 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 name or use the Complainant's trademark or any variation thereof.
- iii. The disputed domain name was registered and is being used in bad faith. The Respondent intentionally chosen the disputed domain name with full knowledge of the Complainant's business and trademark. The Respondent has diverted customers who, instead of buying video products, subscribing services or visiting

online platforms authorized by the Complainant, choose to get them from the Respondent's website instead.

B. Respondent

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

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. the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the TVB trademark.

The disputed domain name wholly incorporates the Complainant's TVB trademark. The disputed domain name also includes (without diacritics) the Vietnamese words "một phim" meaning "a movie". As mere dictionary words, their addition does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. The TVB trademark remains clearly recognizable in the disputed domain name.

The only other element in the disputed domain name is the generic Top-Level Domain suffix ".com" but, as a mere technical requirement of registration, that may be disregarded in the comparison between a domain name and a trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element of Paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

The disputed domain name resolves to a website that prominently displays the Complainant's TVB mark and offers for viewing the Complainant's television programmes. The website gives the impression that it is operated or approved by, or affiliated with, the Complainant. However, the Complainant submits that 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 name or use the Complainant's trademark or any variation thereof. Accordingly, the Panel does not find that this constitutes use of the disputed domain name in connection with a *bona fide* offering of goods or services. This does not constitute a legitimate non-commercial or fair use of the disputed domain name either.

Nothing on the record indicates that the Respondent has been commonly known by the disputed domain name.

Therefore, based on the evidence on the record, the Panel finds that the Complainant has satisfied the second element of Paragraph 4(a) of the Policy.

C) Bad Faith

As regards registration, the disputed domain name was registered in 2020, decades after the Complainant obtained registration of its TVB trademark. The disputed domain name wholly incorporates the Complainant's TVB trademark and combines it with mere dictionary words. The website to which the disputed domain name resolves prominently displays the Complainant's TVB mark and offers for viewing the Complainant's TVB television programmes. This all gives the Panel reason to believe that the Respondent was aware of the Complainant's TVB trademark at the time that it registered the disputed domain name and deliberately registered the disputed domain name in bad faith.

As regards use, the disputed domain name resolves to a website that is falsely presented as if it were operated or approved by, or affiliated with, the Complainant. The website offers for viewing the Complainant's TVB television programmes. In these circumstances, the Panel finds that the disputed domain name is being used intentionally in an attempt to attract, for commercial gain, Internet users to the Respondent's 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 or of the products or services on that website, within the terms of Paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element of Paragraph 4(a) of the Policy.

6. Decision

For the foregoing reasons, the Panel orders that the disputed domain name <motphimtvb.com> be transferred to the Complainant.



Matthew Kennedy
Panelist

Dated: 11 February 2021