



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101458
Complainant:	Television Broadcasts Limited
Respondent:	tie chui zhang
Disputed Domain Name(s):	<tvbba.com >

1. The Parties and Contested Domain Name

The Complainant in this administrative proceeding is Television Broadcasts Limited, whose address is 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong. The Complainant's authorized representative is Ms. Jane Ting, who heads the Complainant's Legal Department.

The Respondent is tie chui zhang, whose address is liquan xian nanfang zhen, xian yang, 713209, China.

The domain name at issue is <tvbba.com> (the "**Disputed Domain Name**"), registered by the Respondent with GoDaddy.com, LLC, of 14455 N. Hayden Road, Suite 219, Scottsdale, AZ 85260, USA (the "**Registrar**").

2. Procedural History

On 3 May 2021, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("Center"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of directors on 28 September 2013 ("Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules"). The Center confirmed receipt of the Complaint on 3 May 2021. The Complainant elected that a single panelist decide this case.

On 3 May 2021, the ADNDRC transmitted by email to the Registrar, GoDaddy.com, LLC, a request for registrar verification in connection with the disputed domain name. On 7 May 2021, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent, tie chui zhang, is listed as the Registrant. The Respondent's contact email appears as 7833495@qq.com.

On 7 May 2021, by email to the Respondent at 7833495@qq.com, the ADNDRC notified the Respondent of the commencement of the action, requesting that the Respondent

submit a Response within 20 calendar days, and further specifying the due date as being on or before 27 May 2021.

On 28 May 2021, the ADNDRC confirmed in an email to the parties that it had not received a Response from the Respondent within the required period of time.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David L. Kreider, Chartered Arbitrator, acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 28 May 2021, the Panel received the file from the ADNDRC and should render the Decision on or before 11 June 2021, if there are no exceptional circumstances.

3. Factual background

The Complainant, Television Broadcasts Limited, commonly known as TVB, describes itself as 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 3,600 staff and artistes worldwide. Shares of the Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988.

The Complainant's core businesses include, inter alia, television broadcasting, programme production and other broadcasting related activities such as programme and Video-On-Demand ("VOD") licensing, digital media business, audio and video products sales and distribution. It is one of the largest producers of Chinese language programmes in the world. Its Chinese programmes are distributed to more than 200 countries and regions.

The Respondent, tie chui zhang, failed to submit a response timely, or at all, and is in default in these administrative proceedings.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

(i) The Disputed Domain Name is confusingly similar to Complainant's trademark

The Disputed Domain Name <tvbba.com> contains the Complainant's registered "TVB" trademark, and is confusingly similar to the Complainant's registered mark, which the Complainant has used in commerce continuously for more than 50 years. The Complainant's "TVB" trademark was registered in Hong Kong in 1992, and is currently registered, or registrations by the Complainant have been applied for and are now pending, in over 30 jurisdictions worldwide.

(ii) Respondent has no rights or legitimate interests in the Disputed Domain Name

The Respondent is in no way connected, associated or affiliated with the Complainant, moreover, the Complainant has not authorized, endorsed, licensed, or otherwise permitted

the Respondent to register the Disputed Domain Name or use the Complainant's registered trademark, or any variation thereof.

There is no evidence that the Respondent is commonly referred to by the Disputed Domain Name, 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.

In July 2021, it came to the Complainant's attention that the Respondent had registered the Disputed Domain Name, which resolves to a website which allows the general public to view the Complainant's television programmes free of charge. Large volumes of the Complainant's proprietary works are being distributed on the Respondent's website without Complainant's authorization from, or compensation to, the Complainant.

The Respondent's registration and use of the Disputed Domain Name cannot be said to be a legitimate or fair use, but rather, is a fraudulent act which takes advantage of the Complainant's goodwill and reputation. The Respondent is impersonating the Complainant's identity to mislead the general public into believing that the Disputed Domain Name is associated with the Complainant, or is one of the Complainant's official websites, such as www.tvb.com, when it is not, or that the Complainant has authorized the Respondent's use of the Disputed Domain Name, which it has not.

(iii) The Respondent registered and is using the Disputed Domain Name in bad faith

By setting up its website through which it distributes and offers for public viewing online the Complainant's programme contents, the Respondent is in fact using the Disputed Domain Name in direct competition with the Complainant.

The Respondent's use of the Disputed Domain Name and website has seriously prejudiced the Complainant's commercial interests. The Respondent has diverted customers from the Complainant, who, instead of buying video products, subscribing to VOD or Over-The-Top ("OTT") video services, or visiting online platforms authorized by Complainant, may now choose to visit the Respondent's competing website in order to obtain the Complainant's programme contents free of charge. The Respondent's use of the Disputed Domain Name and website have thereby adversely impacted the Complainant's business and income sources.

It is obvious that the Respondent is riding on the Complainant's goodwill and reputation and is using the Disputed Domain Name in bad faith to deliberately attract Internet users to the Respondent's website for its own, unfair commercial benefit. By making use of the Complainant's proprietary works, and by creating a likelihood of confusion with the Complainant's trademarks, the Respondent has misled the public to believe that the source, sponsorship, affiliation, or endorsement of the Respondent's website or location, or a product or service on Respondent's website or location are associated with the Complainant, or operate with its the Complainant's authorization, which is untrue.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent, tie chui zhang, failed to submit a response timely, or at all, and is in default in these administrative proceedings.

5. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 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.

Paragraph 5(e) of the Rules directs that if, as is the case here, a Respondent does not submit a Response, then in the absence of exceptional circumstances, the Panel should decide the dispute based upon the Complaint.

A) Identical / Confusingly Similar

The Complainant argues that Respondent’s Disputed Domain Name is identical to Complainant’s registered “TVB” mark pursuant to Policy ¶ 4(a)(i), as it incorporates the Complainant’s mark in its entirety.

Not only is the Complainant’s registered “TVB” mark incorporated in its entirety within the Disputed Domain Name (which, standing alone, is a sufficient basis to support a finding of identity or confusing similarity under Policy ¶ 4(a)(i)), the Panel finds that the addition of the letters “ba” following the Complainant’s “TVB” mark will be understood by Chinese speakers as connoting the Chinese character 【吧】 (pronounced “ba”), a particle of speech used at the end of Chinese sentences as an imperative – to emphasize: “This is TVB!”

The Panel considers that the use of “TVB” followed by “ba” in the Disputed Domain Name has the effect of reinforcing a likeness of identity with the Complainant, TVB, in the minds of a Chinese-speaking audience, as opposed to distinguishing the Disputed Domain Name from the Complainant’s trademark. (As is further explained at Section C below, the Panel’s views regarding the Respondent’s intended purpose in choosing the letters “ba” within the Disputed Domain Name are confirmed by the Complainant’s evidence in the form of scans of the Respondent’s website reflecting that the Respondent is, in fact, using the Complainant’s “TVB” trademark along with the Chinese character “吧” and the Internet address www.TvbBa.com to promote Respondent’s website).

Finally, the addition of the top-level domain “.com” is a standard administrative requirement for domain name registration and is irrelevant for purposes of distinguishing a disputed domain name from an established mark. *See, Microsoft Corp. v. Mehrotra,*

D2000-0053 (WIPO Apr. 10, 2000) (finding that the domain name <microsoft.org> is identical to the complainant's mark).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

B) Rights and Legitimate Interests

The Panel finds that the Complainant has not authorized the Respondent to use the “TVB” mark, nor is the Respondent commonly known by the Disputed Domain Name. The Complainant alleges, and the Panel agrees, that it is therefore impossible to conceive of a circumstance in which the Respondent would use the Disputed Domain Name, except in a deliberate attempt to take advantage of the “TVB” mark for commercial gain.

The Complainant has established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and the burden of proof thus shifts to the Respondent to produce evidence demonstrating that the Respondent *has* rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent has failed to submit a Response to the Complaint or to show any rights or legitimate interest in the “TVB” mark and has, *ipso facto*, failed to refute or deny the allegations raised by the Complainant.

Further, a review of screenshots taken of the Respondent's website confirms the conclusion that the Respondent targeted Complainant with the intention of registering the Disputed Domain Name to create confusion and impersonate the Complainant, when, in fact, the Respondent is trading on the Complainant's name and goodwill by pirating the Complainant's proprietary works which Respondent then supplies to the public free of charge in competition with the Complainant's paid VOD, OTT and other web-based video entertainment services. The Panel finds that the Respondent's conduct is inconsistent with any lawful or legitimate right or interest in the Disputed Domain Name, or fair use.

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

C) Bad Faith

The Panel finds on the Complainant's evidence that the Respondent, tie chui zhang, has targeted the Complainant's registered “TVB” mark to impersonate the Complainant and is supplying, free of charge, “large quantities” of the Complainant's own proprietary video entertainment works on its website in competition with the Complainant and to the Complainant's detriment.

The Panel further finds on the evidence, that the Respondent registered and used the Disputed Domain Name in bad faith for the primary purpose of disrupting the Complainant's business and attracting Internet users for commercial gain to compete unfairly with the Complainant by creating a likelihood of confusion with the Complainant's mark as to the source or sponsorship of the Respondent's website or of the products on Respondent's website, or both.

The Panel finds compelling evidence of the Respondent's bad faith impersonation of the Complainant, in the form of screen shots taken by the Complainant on 23 February 2021, showing the logo appearing on the Respondent's website:



The logo appearing on the Respondent's website comprises the Complainant's "TVB" mark followed by the Chinese character 【吧】 (pronounced "ba"), which in Chinese is a particle used as an imperative – to emphasize: "This is TVB!" The Panel finds that a Chinese-speaking Internet user would understand the meaning of the letters "Ba" alongside the Complainant's "TVB" mark would imply emphatically -- "This is TVB!"

See, Prada S.A. v. Domains for Life, WIPO Case No. D2004-1019), the panel found bad faith where: "The Respondent capitalizes on the worldwide fame of PRADA to attract users which are then redirected to a number of commercial Websites, most of them not associated with Prada, and some of them competing with Prada or even selling counterfeit Prada products."

The Respondent did not submit a Response to the Complaint and has not sought to refute the Complainant's evidence.

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

It is ORDERED that the <tvbba.com> domain name be **TRANSFERRED** from Respondent to Complainant.

A handwritten signature in blue ink, appearing to read "David L. Kreider", written over a horizontal line.

David L. Kreider, Chartered Arbitrator
Panelist

Dated: 1 June 2021