



Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-1400593</b>
<b>Complainant:</b>	<b>Television Broadcasts Limited</b>
<b>Respondent:</b>	<b>Fundacion Private Whois</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;tvbdo.org &gt;</b>

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### 1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited, of Legal and Regulatory Department, 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.org, Aptds. 0850-00056, Panama. Zona 15.

The domain name at issue is <tvbdo.org>, registered by Respondent with Internet.bs Corp., of Sea Beach Boulevard, Sea Beach Estates, N-4892 Nassau, Bahamas.

### 2. Procedural History

On 7 April 2014, 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 24 October 1999. The Center confirmed receipt of the Complaint that same day. The Complainant elected that this case be decided by a single panelist.

Also on 7 April 2014, the Center transmitted by email to the Registrar, Internet.bs Corp., a request for registrar verification of the disputed domain name. On 10 April 2014, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the Registrant and providing contact details as: telephone +507.65967959 and email 534670cb497nucbf@udrp.privatewhois.net.

On 25 April 2014, the Center transmitted the Complaint and evidence to the Respondent, by email addressed to 534670cb497nucbf@udrp.privatewhois.net, notifying the Respondent of the commencement of the action on 25 April 2014, and requesting that the Respondent submit

a Response within 20 calendar days, further specifying the due date as being on or before 15 May 2014.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the Center informed the Complainant and Respondent that the Center would appoint a single-member panel to proceed to render the decision.

On 26 May 2014, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules. Also on 26 May 2014, the Panel received the file from the Center.

### **3. Factual background**

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. Complainant has now grown to a size of over 4,600 staff and artistes worldwide. Shares of Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988. The Complainant is represented in these proceedings by Ms. Jane Ting, Senior Legal Counsel, of Claimant's Legal and Regulatory Department.

The mark "TVB" has been used by Complainant continuously for 46 years. Complainant first registered "TVB" as its trademark in Hong Kong in 1992 and "TVB" is currently registered and/or applied for registration by Complainant in over 30 jurisdictions worldwide.

A review of the website of Respondent, Fundacion Private Whois, at URL: <http://www.privatewhois.net>, reflects that Respondent is a not-for-profit Panamanian charity engaged in the business of providing anonymous proxy services to Internet domain name registrants.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

The principal activities of 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, are dubbed into other languages, and are distributed in more than 30 countries where they are accessible to over 300 million households.

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, 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 artists. "tvb.com" also contains video clips of Complainant's programmes for users' viewing online.

Complainant set up its "myTV" section at tvb.com, providing its drama and variety programmes for users' viewing on the Internet by means of live streaming and VOD in Hong Kong. In 2010, "myTV" had 3,000,000 visitors monthly. In 2011, Complainant extended its "myTV" to a mobile application to enable smartphone and tablet users to enjoy wireless viewing of its drama and variety programmes in Hong Kong. In 2013, Complainant launched its "GOTV" mobile application to enable users to watch its drama on a VOD basis in Hong Kong.

Since 2005, TVBI began to develop the VOD and interactive media markets in the PRC. TVBI has licensed Complainant's programmes to numerous VOD service providers.

As at the date of this submission, Complainant and its subsidiaries have registered 66 domain names, bearing the mark "tvb", including: "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 April 2014, it came to Complainant's attention that Respondent had registered the disputed domain name <[www.tvbdo.org](http://www.tvbdo.org)>. Respondent has used the domain to set up an online social community ("Website") for its users to discuss and view Complainant's television programmes. Large volumes of Complainant's works are being distributed on the Website by Respondent without Complainant's authorization.

In April 2014, Complainant sent letters to the Website's Internet Services Provider, CloudFlare, Inc. ("CloudFlare") and Registrar, Internet.bs Corp. ("Internet.bs") via e-mails, demanding them to remove or disabling access to Complainant's copyrighted works and terminating their services with Respondent.

**(I) The domain name in dispute is confusingly similar to Complainant's trademark "TVB":**

The domain name in dispute is "TVBDO.ORG". By comparing the disputed domain name with Complainant's trademark "TVB", it clearly illustrates that the disputed domain name "TVBDO.ORG" is highly and confusingly similar to Complainant's registered trademark "TVB". The mark "TVB" has been used by Complainant continuously for 46 years. Complainant first registered "TVB" as its trademark in Hong Kong in 1992 and "TVB" is currently registered and/or registration has been applied for by Complainant in over 30 jurisdictions worldwide.

In addition to the mark "TVB", 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.

Further, Complainant's group of companies operate and own the following satellite television channels:

(a) TVBJ – Chinese-language television channel has been distributed in Australia and Singapore since 2000;

(b) TVBS-E – Chinese language television channel has been distributed in UK and Europe since 1997;

(c) TVB8 – Chinese language television channel has been distributed in PRC, Asia and Pacific region since 1998;

(d) TVBS service consisting of five channels: TVBS, TVBS歡樂台, TVBS-News and TVBS-Asia and TVB8 – Chinese language television channels have been distributed in Taiwan since early 90's.

Complainant's subsidiary, TVB (USA) Inc., has operated cable and satellite TV services targeting the Chinese-speaking audience in USA since 1976.

In August 2012, Complainant, China Media Capital and Shanghai Media Group set up a joint venture company 翡翠東方傳播有限公司 ("TVBC") handling Complainant's programs sub-licensing in PRC. TVBC has also sub-licensed Complainant's programs to Youku and Tudou for their on-line broadcasts in PRC.

In sum, Complainant's name and trademark are well known worldwide. Complainant enjoys trademark rights in the name "TVB" due to the goodwill and reputation accumulated through extensive use, advertising, promotion of the mark since its registration in the early 90s'.

Respondent, on the other hand, registered the domain name in dispute on 9 January 2014.

By setting up the "HK Drama", "HK Variety" and "On Going HK Variety" forums to enable its users to view Complainant's programmes, it clearly shows that Respondent is deliberately using Complainant's trade and Complainant's trademark "TVB" to attract Internet users.

The domain name in dispute mainly comprises the mark "TVB". Although the word "DO" is added after the word "TVB", the disputed domain should be seen to be confusingly similar to Complainant's trademark "TVB" and other trademarks deriving from "TVB", such as "TVBVideo", "TVBS-E", "TVBS", "TVBC", "TVB Europe" and "TVB".

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

**(ii) Respondent has no rights or legitimate interests in the registration of the domain names in dispute**

Respondent is not in any way connected, associated or affiliated with Complainant and Complainant has not authorized, endorsed or otherwise permitted Respondent to register the domain names in dispute or to use 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 Respondent might reasonably be said to have any rights or legitimate interests in registering or using the disputed domain.

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

Further, by copying and using Complainant's registered trademark and offering the free and open viewing of Complainant's programmes by the public, without Complainant's authorization, Respondent has infringed the copyright, trademark and other intellectual property rights of Complainant.

**(iii) Respondent has registered and used the domain name in bad faith**

Complainant believes that Respondent has registered and used the domain names in dispute in bad faith.

The domain name in dispute was registered in 2014, while Complainant has been widely publicizing "TVB" as its name since 1967. Respondent uses the domain name in dispute for the Website where it provides a forum named "HK Drama", "HK Variety" and "On Going HK Variety" for its users to view Complainant's programmes. Respondent should have known Complainant's business. It is inconceivable that at the time of registering the disputed domain names Respondent was not aware of Complainant's business and its trade mark.

Complainant engages in programme content licensing and distribution business. In particular, Complainant distributes its programme content via its "myTV" and "GOTV" services in Hong Kong. Additionally, Complainant has licensed VOD rights to its programmes to (a) PCCW Limited

in Hong Kong through TVB.COM; (b) www.astro.com.my in Malaysia via TVB1, and (c) also grants its VOD and on-line streaming rights of its programmes to TVBC for sub-licensing in PRC. Respondent, by setting up the platform for its user's free sharing, distribution and viewing of Complainant's works online, is in fact using the domain name in dispute in direct competition with Complainant's business.

Respondent's use of the Website has seriously prejudiced Complainant's commercial interests. Respondent has distracted customers from Complainant, who, instead of buying video products, subscribing VOD or visit Complainant's authorized Website, choose to visit Respondent in order to get Complainant's programme content for free at the Website. Respondent's use of the Website has therefore adversely affected Complainant's business and income.

It is obvious that Respondent is riding on the reputation of Complainant and uses the domain name in dispute deliberately to attract Internet users to Respondent's website for commercial benefit. By making use of Complainant's works, and by creating a likelihood of confusion with Complainant's trade mark, Respondent has misled the public to believe that the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location are associated with Complainant, or with its authorization.

#### B. Respondent

The Respondent has defaulted and has not submitted timely a Response 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.

The Panel will address these three requirements *seriatim*:

#### A) Identical / Confusingly Similar

The disputed domain name incorporates Complainant's widely registered and globally reknown "TVB" trademark. Complainant additionally enjoys registered rights in trademarks which derive

from "TVB", such as "TVBVideo", TVBS-E", "TVB8", "TVBC", "TVB Europe" and "TVB. Moreover, several of Complainant's registered domains end with the top-level domain ".ORG", as does the disputed domain name.

The whole of the Complainant's trademark having been incorporated within the disputed domain name, the Panel finds that the disputed domain name is identical in substantial part, and is therefore confusingly similar, to the Complainant's registered trademarks and trade name.

### **B) Rights and Legitimate Interests**

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

The Panel finds on the evidence adduced by the Complainant that the Respondent, who has filed no response and has defaulted in these proceedings, has no rights or legitimate interests in respect of the domain name.

### **C) Bad Faith**

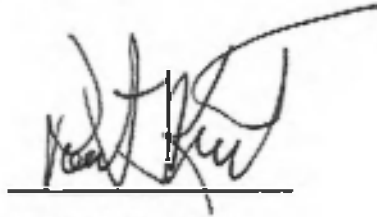
The domain name in dispute was registered in 2014, whereas Complainant has been widely publicizing "TVB" as its name since 1967. Respondent uses the domain name in dispute for the Website where it provides a forum named "HK Drama", "HK Variety" and "On Going HK Variety" for its users to view Complainant's programmes free of charge. It is inconceivable that at the time of registering the disputed domain names Respondent was not aware of Complainant's business and its trademark.

Registrant registered the domain name primarily for the purpose of disrupting the Complainant's business and that, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Registrant'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 location or of a product or service on the Respondent's Website or location. The Panel finds that the disputed domain name was registered and is being used by Respondent in bad faith.

## **6. Decision**

Having established all three elements required under Art. 4(a) of the ICANN Policy, the Panel

concludes that relief should be granted. Accordingly, it is ordered that the <tvbdo.org> domain name must be TRANSFERRED from the Respondent to the Complainant.

A handwritten signature in black ink, appearing to read 'David Kreider', is written over a horizontal line.

David KREIDER  
Sole Panelist

Dated: 27th May 2014