



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2101481
<b>Complainant:</b>	Television Broadcasts Limited
<b>Respondent:</b>	Eric Man
<b>Disputed Domain Name(s):</b>	<5ITVB.COM>

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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 Block, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong.

The Respondent is Eric Man, of Tsuen Wan, HK.

The domain name at issue is <5ITVB.COM>, registered by Respondent with GoDaddy.com, LLC.

**2. Procedural History**

On 24 June 2021, the Complainant filed a complaint with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“the Centre”) and chose to have the dispute considered and decided by a single-member panel 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 ICANN Board of Directors on 28 September 2013 (“the Rules”) and the ADNDRC Supplemental Rules to the Internet Corporation for Assigned Names And Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (“the Supplemental Rules”).

On 25 June 2021, the Centre, by way of email, issued a New Case Notification to Registrar to GoDaddy.com, LLC (“the Registrar”) to request for necessary information in relation to the disputed domain name. On 26 June 2021, the Registrar provided the WHOIS information regarding the disputed domain name and confirmed, by way of email, that:

1. The domain name <5ITVB.COM > is registered with GoDaddy.com, LLC.

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2. The ICANN Uniform Domain Name Dispute Resolution Policy applies to the current dispute.
3. The language of the disputed domain name's registration agreement for the domain name is English.
4. The disputed domain name's registration date is 14 June 2017 and expiration date is 14 June 2022.
5. The disputed domain name has been locked and will not be transferred to another holder or registrar during the current administrative proceeding or for a period of 15 business days after the proceeding is concluded in accordance with paragraph 8 of the Policy.

On 30 June 2021, the Centre, by way of email, issued a Written Notice of Complaint to the Respondent informing the Respondent that the proceedings officially commenced and requested the Respondent to submit a Response (in Form R and its Annexures, if any) within 20 days from 30 June 2021 (that is, on or before 20 July 2021) and forwarded the Complaint and its Attachments to the Respondent.

On 21 July 2021, the Centre, by way of email, notified the Parties of the Respondent's default.

On 23 July 2021, the Centre, by way of email, appointed Dr. Lewis Luk, MH, JP as the sole panelist for this case. The Panel considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence. The panelist shall render its decision within 14 days from the date of 23 July 2021, i.e. 6 August 2021.

### 3. Factual background

#### The Complainant

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 3,600 staff and artistes worldwide. Shares of Complainant have been publicly listed on the Hong Kong Stock Exchange since 1988.

The principal activities of Complainant are 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 selling and distribution, etc. It is one of the largest producers of Chinese language programmes in the world. Its Chinese programmes are internationally acclaimed and are dubbed into other languages and are distributed to more than 200 countries and regions.

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 artistes. "TVB.COM" also contains video clips of Complainant's programmes for users' viewing online.

In November 2008, 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 VOD in Hong Kong.





In 2010, “myTV” had 3,000,000 visitors monthly.

In 2011, 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.

In 2013, Complainant launched “GOTV” mobile application for users to watch its drama on VOD basis via Internet on computer and mobile devices in Hong Kong.

In 2016, Complainant launched “myTV SUPER” OTT (“over the top”) services for viewers to watch its dramas and variety programmes on livecast and VOD basis via Internet and/or set top box and/or applications on television, computer and mobile devices and through website <https://www.mytvsuper.com> in Hong Kong. myTV SUPER is now a leading OTT platform in Hong Kong and had over 9.1 million users (set-top boxes, mobile apps and website users combined) as at December 2020.

Complainant’s wholly owned subsidiary, TVBI Company Limited (TVBI), is responsible for distribution of Complainant’s Chinese language programmes across the world. 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 VOD service providers worldwide.

Since 2005, TVBI begins to exploit the VOD and interactive media market in PRC. TVBI has licensed Complainant’s programmes to numerous VOD service providers.

In August 2012, Complainant, China Media Capital and Shanghai Media Group set up a joint venture company 上海翡翠東方傳播有限公司 (“TVBC”) replacing TVBI to handle Complainant’s programmes sub-licensing in PRC.

In 2014, Complainant’s wholly owned subsidiary, TVB Anywhere Limited, launched “TVB Anywhere” for viewers to watch Complainant’s Programmes and channels on television via set top box in overseas regions.

In 2019, TVB Anywhere Limited launched “TVB Anywhere+” mobile application for viewers to watch Complainant’s Programmes and channels on mobile devices and/or television via open Internet in overseas regions. Tutorial and various packages and pricing of “TVB Anywhere” and “TVB Anywhere+” are introduced at website of TVB Anywhere Limited (<https://www.tvbanywhere.com>).

Complainant’s wholly owned subsidiary, TVB (USA) Inc. (“TVBUSA”), provides satellite and cable TV services in the USA. Complainant’s TV programmes, services, and activities available in the USA are introduced at TVBUSA’s website, <http://www.tvbusa.com>.

Complainant is also a member of the Canadian Fairchild Media Group (“Fairchild”). Complainant’s TV programmes available in Canada are introduced at Fairchild television channel’s webpage, <https://www.fairchildtv.com/>.

As at the date of this submission, Complainant and its subsidiaries have registered and owned over 170 domain names, bearing the mark “tvb”, namely, “itvb. 商標”, “watchtvb.com”, “tvbvideo.net”, “tvb.me”, “tvbihk.com.hk”, “tvbusa.com”, “tvbusa.us”, “tvbwkly.com”, “tvb.asia”, “tvbartistesblog.com”, “tvbartisteblog.com”,



"tvbartistsblog.com", "tvbartistblog.com", "tvbartistesblog.com.hk",  
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 "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", "tvb.co.in",  
 "tvb.com.vn", "tvb.com.sg", "tvb.sg", "tvb.ae", "tvb.xxx", "tvbi.xxx", "tvbchina.cn",  
 "tvbc.com.cn", "tvbfinance.com", "tvbcharity.hk", "tvbcharity.com.hk", "tvbcharity.org",  
 "tvbcharity.org.hk", "tvbc. 中国", "tvbappstore.com.hk", "tvbappstore.hk",  
 "tvbappstore.com", "tvbappstore.net", "tvb.tm", "tvbanywhere.com", "tvbanywhere.net",  
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 gold.hk", "tvbzhibo.com", "tvb123.com", "tvbdo.com", "tvbcorporate.com",  
 "tvbcorporate.hk", "tvbcorporate.com.hk", "tvbdo.org", "tvb8.com.hk", "tvbeurope.net",  
 "tvbeurope.hk", "tvbeurope.asia", "tvbeurope.cn", "tvbeurope.com.cn",  
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 "tvbeurope.net.cn", "tvbeurope.tw", "tvbeurope.com.hk", "tvbeurope.biz",  
 "tvbeurope.info", "tvbeurope.org", "tvbdo.info", "tvbstream.com", "tvbdo.eu", "tvb.vn",  
 "tvbeurope.eu", "aztvb.com", "tvb22.com", "tvb.website", "tvb.biz", "tvb-online.com",  
 "tvb.video", "tvblove.com", "tvb.love", "tvbspecial.com", "tvb2014.com",  
 "tvbxinghe.com.hk", "mytvb.hk", "tvbihk.com", "tvbihk.info", "tvbonly.com",  
 "tvbys.com", "tvbow.com", "tvbyy.com", "tvbanywhere.sg", "tvbanywhere.com.sg",  
 "dramatvb.com", "mytvbanywhere.com", "tvbroaming.com", "tvbpbv.com",  
 "tvbeurope.org.cn", "tvbanywhere.com.my", "tvb. 中国", "tvbanywhere.my",  
 "tvbihk.com", "tvbf.com.hk", "hdtvb.me", "hdtvb.site", "tvbcms.com", "tvbpbv.net",  
 "tvbnetworkvision.net", "tvbnv.net", "tvbpayvision.com", "tvbnetworkvision.com",  
 "tvbnv.com", "tvbnetworkvision.tv", "tvbnv.tv", "tvbvideo.co.uk", "hdtvb.biz",  
 "tvbi.online", "tvbi.news", "tvbyb.com", "tvbanywhere.app", "tvb8vn.com",  
 "tvbnewwings.com", "tvbnewwings.asia", "tvbnewwings.hk", "tvbnewwings.com.hk",  
 "tvbnetworkvision.com.hk", "tvbnetworkvision.hk", "tvbnv.hk", "tvbnv.com.hk",  
 "tvbybhk.com", "seeseetvb.net", "tvbweekly.com", "tvbweek.com", "tvbweeklyhk.com",  
 "tvbweekly.com.hk", "tvbweek.com.hk", "tvb01.com", "onlytvb.com" and "onetvb.com".

In April 2021, it came to Complainant's attention that Respondent has registered the disputed domain name 5ITVB.COM. Respondent used the domain to set up an online social community ("Website") for providing Complainant's television programmes to viewer public. Large volumes of Complainant's works are being distributed on the Website by Respondent without Complainant's authorization.

On April 21, 2021, Complainant sent cease and desist letters to Respondent, the Website's Internet Services Provider, Cloudie Limited ("Cloudie") and the domain registrar, GoDaddy.com, LLC ("GoDaddy") respectively, demanding them to remove or disable access to Complainant's copyrighted works and terminate their services with Respondent.

### **The Respondent**

The Respondent registered the Disputed Domain Name on 14 June 2017.



#### 4. Parties' Contentions

##### A. Complainant

The Complainant's contentions may be summarized as follows:

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

The domain name in dispute is "5ITVB.COM". By comparing the disputed domain name with Complainant's registered trademark "TVB", it clearly illustrates that the disputed domain name "5ITVB.COM" contains Complainant's registered trademark "TVB". The mark "TVB" has been used by Complainant continuously for more than 50 years. Complainant first registered "TVB" as its trademark in Hong Kong in 1992. "TVB" is currently registered and/or applied for registration by Complainant in over 30 jurisdictions worldwide.

The disputed domain name "5ITVB.COM" also comprises Complainant's registered trademark "iTVB". In addition to the marks "TVB" and "iTVB", Complainant and its subsidiaries have also applied and registered numerous trademarks incorporating the essential element of the letters "TVB". Examples are "TVB8", "TVBA Value Club", "TVBJ", "TVBI", "TVBVideo", "TVBUDDY", "TVBC", "TVB Europe", "TVB NETWORK VISION", "TVB Anywhere" etc. in various jurisdictions and for various services.

TVBC has been handling Complainant's programmes sub-licensing in PRC since 2012. TVBC launched "iTVB" mobile application in PRC, providing various Complainant's programmes for users' viewing. In 2018, TVBC launched "Mai Dui Dui" mobile application for viewers in PRC to watch Complainant's programmes and live events.

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

- (a) TVBJ – Chinese-language television channel has been distributed in Singapore since 2000;
- (b) TVB8 – Chinese language television channel has been distributed in PRC, Asia and Pacific region since 1998.

Complainant's subsidiary, TVB (USA) Inc., operates cable and satellite TV services to Chinese speaking audience in USA since 1976.

In such circumstances, 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 1990s.

Respondent registered the domain name in dispute on June 14, 2017. The domain name in dispute comprises Complainant's registered mark "TVB" and is confusingly similar with other Complainant's trademarks deriving from "TVB", such as "iTVB", "TVBVideo", "TVB8", "TVBC", "TVB Europe", "TVBJ" and "TVB Anywhere". By registering "5ITVB.COM", the Website was deliberately created by Respondent with the intention to





offer public viewing of Complainant's programmes without Complainant's authorization.

To conclude, Respondent's registration of the domain name is a fraudulent act which takes advantage of Complainant's goodwill and reputation, counterfeiting Complainant's identity and mislead the public to believe that Complainant and/or its official website, such as www.tvb.com is associated with the domain name in dispute or that Complainant has authorized Respondent purposely and intentionally selected domain name similar to Complainant's domains and trademarks.

***(ii) Respondent has no rights or legitimate interests in the registration of the domain name 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 name in dispute or use Complainant's trademark or any variation thereof.

There is no evidence that Respondent has been commonly referred to as the disputed domain name, 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 name.

Besides, by offering users to view Complainant's programmes without authorization, Respondent has infringed the copyright and other intellectual property rights of Complainant. Complainant contends that Respondent is not making any legitimate or fair use of the domain name in dispute.

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

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

The domain name in dispute was registered in 2017 while Complainant has been widely publicizing "TVB" as its brand name since 1967. Respondent uses the domain name in dispute for the Website where it provides Complainant's programmes for its users' viewing. Respondent should have intentionally chosen the disputed domain name for its Website with full knowledge of Complainant's business and trademarks. It is therefore inconceivable that at the time of registering the disputed domain name Respondent was not aware of Complainant's business and its trademarks.

Complainant engages in programme content licensing and distribution business. In particular, Complainant distributes its programme content through its subsidiaries and "myTV Super" service through "MyTV Super Limited" (formerly "TVB.COM LIMITED") in Hong Kong. Besides, Complainant has licensed VOD rights of its programmes to www.astro.com.my in Malaysia via TVBI; Complainant has also granted its VOD and on-line streaming rights of its programmes to (a) TVBC for sub-licensing in PRC; and (b) TVBI for its TVB Anywhere and TVB Anywhere+ services.

Respondent, by setting up the Website for its distribution and offers public viewing of Complainant's programme contents 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/OTT services or visiting online platforms authorized by Complainant, choose to visit the Website in order to get Complainant's programme contents for free. 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 benefits. By making use of Complainant's works, and by creating a likelihood of confusion with Complainant's trademarks, 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 did not submit a Response.

**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 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.

**A) Identical / Confusingly Similar**

The Panel finds the Complainant owns the trademarks incorporating the words "TVB" and "iTVB", duly registered in various countries including but not limited in the PRC. The registrations are all valid and effective. The Panel finds that the Disputed Domain Name is almost identical to the Complainant's trademark "iTVB", except that it starts with a number "5" in front of the said trademark. Therefore, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademarks and it is very likely to cause confusion to the public. The Complainant has fulfilled the first condition.

**B) Rights and Legitimate Interests**

The Panel accepts the confirmation by the Complainant that it has no connection or association with the Respondent, nor has authorized, endorsed or otherwise permitted the Respondent to register the domain name in dispute or use the Complainant's trademarks. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has fulfilled the second condition.





### C) Bad Faith

The Panel finds that the Respondent has registered the Disputed Domain Name in bad faith. As the Complainant has been widely publicizing “TVB” as its brand name worldwide since 1967, it is quite unlikely that the Respondent does not have any knowledge of the Complainant’s business and trademarks when the Respondent registers the Disputed Domain Name in 2017. The Panel finds that the Respondent is taking unfair advantage of the goodwill and reputation associated with the Complainant and other IP rights, and intentionally attempting to mislead consumers into believing that the Disputed Domain Name, the websites associated with it, and/or its business are licensed by, have an association with or are otherwise endorsed by the Complainant.

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith. The Complainant has fulfilled the third condition.

### 6. Decision

The Panel orders that the Disputed Domain Name <5ITVB.COM> be transferred to the Complainant.

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Dr. Lewis Luk, MH, JP  
Panelist

Dated: 3 August 2021