



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301798
Complainant:	Television Broadcasts Limited
Respondent:	JACKMA YUN
Disputed Domain Name(s):	<nibatvb.com >

1. The Parties and Contested Domain Name

The Complainant is Television Broadcasts Limited, whose Legal and Regulatory Department is at 10/F, Main Block, TVB City, 77 Chun Choi Street, Tseung Kwan O Industrial Estate, Kowloon, Hong Kong. The Complainant's authorized representative is Ms. K Y Leung of the Complainant's Legal and Regulatory Department.

The Respondent is JACKMA YUN, of Singapore, SG 125800.

The domain name at issue is <nibatvb.com > ("**Domain Name**"), is registered by the Respondent with Cloudflare, Inc., of Legal Department, 101 Townsend St, San Francisco, CA 94107, USA ("**Registrar**").

2. Procedural History

On 29 August 2023, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("**Center**") under 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 29 August 2023. The Complainant elected this case be dealt with by a one-person panel.

On 29 August 2023, the Center transmitted by email to the Registrar, Cloudflare, Inc., a request for registrar verification in connection with the disputed domain name. On 29 August 2023, the Registrar transmitted by email to the Center its verification response, confirming that JACKMA YUN is listed as the Registrant. The Respondent's contact email appears as <https://domaincontact.cloudflare.com/nibatvb.com>, and the Administrator's email is cucutube.com@gmail.com.

On 7 September 2024, the Center told the Respondent about the commencement of the action, asking the Respondent to submit a Response within 20 calendar days, and specifying the due date as by 27 September 2023.

On 28 September 2023, the Center confirmed in an email to the parties that it did not receive a Response Form from the Respondent within the required time.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center told the parties the panel had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made under Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 28 September 2023, the Panel received the file from the Center and should decide by 12 October 2023, if there are no exceptional circumstances.

3. Factual background

Established in 1967, the Complainant, Television Broadcasts Limited (“TVB”), is the first wireless commercial television station in Hong Kong. The Complainant has been a listed company on the Hong Kong Stock Exchange since 1988. Its principal activities include television broadcasting, program production and other broadcasting related activities, Video-On-Demand (“VOD”) licensing, digital media, audio and video products sales and distribution. It is one of the largest producers of Chinese language programs in the world, with distribution to over 200 countries and regions.

In 1999, the Complainant launched its principal website “TVB.COM” on the Internet to provide worldwide viewers the latest information on its programs and artists. “TVB.COM” also has video clips of Complainant’s programs which users can view online. In November 2008, the Complainant set up a “myTV” section at TVB.COM providing drama and variety programs for viewing on the Internet via live streaming and VOD in Hong Kong. In 2011, the Complainant extended its “myTV” to mobile application for smartphone and tablet users to enjoy wireless viewing of its drama and variety programs in Hong Kong. In 2013, the Complainant launched its “GOTV” mobile application for users to watch its drama on VOD basis via the Internet on computer and mobile devices in Hong Kong. In 2016, the Complainant launched “myTV SUPER” OTT (“**over the top**” or “**OTT**”) services for viewers to watch its dramas and variety programs on livecast and VOD via the Internet and/or set top box and/or applications on television, computer and mobile devices, and through its website in Hong Kong. myTV SUPER is now a leading OTT platform in Hong Kong, with over 10.4 million users.

The Complainant’s wholly owned subsidiary, TVBI Company Limited (TVBI), is responsible for distribution of the Complainant’s Chinese language programs worldwide. TVBI and its sub-licensees supply the Complainant’s programs to free-to-air broadcasters, cable and satellite television broadcasting service operators, telecommunication services providers, websites, video distributors and VOD service providers worldwide.

In 2005, TVBI entered the VOD and interactive media market in the PRC. TVBI has licensed the Complainant’s programs to many VOD service providers in the mainland of China.

In August 2012, the Complainant, China Media Capital, and Shanghai Media Group created a joint venture company 上海翡翠東方傳播有限公司 (“TVBC”), which replaced TVBI in handling the sub-licensing of the Complainant’s programs in the PRC. In March 2018, TVBC launched its “Mai Dui Dui” application letting users watch the Complainant’s dramas and variety programs in a VOD format via set top box and/or applications on television and mobile devices in the PRC.

In 2014, the Complainant’s wholly owned subsidiary, TVB Anywhere Limited, launched its “TVB Anywhere” service enabling viewers to watch the Complainant’s programs and channels on television via set top box overseas. In 2019, TVB Anywhere Limited launched an “TVB Anywhere+” mobile application enabling overseas viewers to watch the Complainant’s Programs and channels on mobile devices and/or television via the public Internet.

The Complainant and its subsidiaries have registered and own over 200 domain names incorporating the Mark “tvb”.

In June 2023, it came to Complainant’s attention that the Respondent has registered the disputed domain name NIBATVB.COM. The Domain Name resolves to a website (“**Website**”) providing the Complainant’s television programs for public viewing. The Respondent is distributing large volumes of the Complainant’s works on the Website without the Complainant’s permission. The Respondent has not replied to the Complainant’s letters demanding that it stop its misuse of the Complainant’s copyrighted works.

The Respondent has defaulted and has not submitted a Response to the Complaint.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized:

(i) The Domain Name is identical or confusingly similar to the Complainant’s “TVB” mark.

The Domain Name “NIBATVB.COM” incorporates the Complainant’s trademark “TVB” (the “**Mark**”), first registered in Hong Kong in 1992 and used by the Complainant continuously in commerce ever since. The Complainant’s “TVB” Mark is registered or is the subject of trademark registration applications by the Complainant in over 30 jurisdictions worldwide.

The Complainant’s registered Mark is well known worldwide and has reached significant goodwill and reputation through extensive and continuous use, advertising, promotion in commerce since its first registration in the early 1990s.

The Respondent registered the Domain Name on February 15, 2023. The Domain Name is confusingly similar with the Complainant’s Mark. Further, the Respondent’s Website was deliberately created by Respondent with the intention and to enable the public viewing of the Complainant’s programs without the Complainant’s permission.

The Respondent's registration and use of the Domain Name infringes upon and takes unfair and fraudulent advantage of the Complainant's goodwill and reputation, impersonates the Complainant's and misleads the public to believe that the Complainant is associated with or has authorized the Domain Name, when it has not.

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

The Respondent is not connected, associated or affiliated with the Complainant and the Complainant has not allowed, endorsed or otherwise let the Respondent register or use the Domain Name.

There is no evidence that the Respondent has been commonly called the Domain Name, and there is no reason the Respondent might reasonably be said to have any rights or legitimate interests in registering or using the disputed domain name.

By enabling users to view the Complainant's programs without permission and in competition with the Complainant, the Respondent has infringed the copyright and other intellectual property rights of the Complainant. The Respondent is not making any legitimate or fair use of the Domain Name.

(iii) The Respondent has registered and used the Domain Name in bad faith.

The Domain Name was registered in 2023, but the Complainant has been widely publicizing "TVB" as its brand name since 1967. Respondent uses the Domain Name to direct Internet users to the Website where it provides the Complainant's programs for viewing. The Respondent uses "...電視廣播有限公司遊戲節目", meaning "...TVB's game show", to describe one program available on its Website. The Respondent intentionally chose the Domain Name for its Website with full knowledge of the Complainant's business and Mark. It is inconceivable that at the time of registering the disputed domain name Respondent was not aware of Complainant's business and its Mark.

The Respondent's use of the Website in competition with the Complainant has prejudiced the Complainant's commercial interests. The Respondent has distracted customers from Complainant, who, instead of buying video products, subscribing to VOD/OTT services, or visiting online platforms authorized by Complainant, can visit the Website to obtain the Complainant's programming content for free. The Respondent's use of the Website has hurt Complainant's business and income.

The Respondent is riding on the reputation of the Complainant and uses the Domain Name deliberately to attract Internet users to Respondent's website for its own commercial benefits. By making use of the Complainant's 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 of a product or service on Respondent's website, are associated with the Complainant, or with its permission.

B. Respondent

The Respondent has defaulted and has not submitted a Response to the Complaint.

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.”

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made 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 the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

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

A) Identical / Confusingly Similar

The Complainant argues that Respondent’s Domain Name is identical or confusingly similar to the Complainant’s registered “TVB” Mark under 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 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 adding the letters “niba”, and the phonetically identical Chinese “泥巴” before the Complainant’s “TVB” Mark does not distinguish or differentiate the Domain Name. The Chinese characters for “niba” literally refer to “mud”, and may in the minds of some Chinese speakers suggest a shallow pond or mud hole where children might go to play or splash around.

Adding the top-level domain “.com” is a standard administrative requirement for domain name registration and is irrelevant to distinguish a disputed domain name from a mark. See, *Microsoft Corp. v. Mehrotra*, D2000-0053 (WIPO Apr. 10, 2000) (finding that the domain name <microsoft.org> is the same as 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 let the Respondent use the “TVB” Mark, nor is the Respondent commonly known by the Domain Name. The Complainant alleges, and the Panel agrees, that it is impossible to conceive of a circumstance in which the Respondent would use the Domain Name, except to take advantage of the “TVB” Mark for commercial gain.

The Complainant has proved a prima facie case that the Respondent has no rights and legitimate interests in the Domain Name and, under accepted UDRP practice, the burden of proof thus shifts to the Respondent to produce evidence showing the Respondent has rights or legitimate interests regarding the Domain Name.

The Respondent has not submitted a Response to the Complaint or to show any rights or legitimate interest in the Mark or to refute or deny the Complainant's allegations.

Further, a review of screenshots taken of the Respondent's Website confirms the conclusion that the Respondent targeted Complainant to register the Domain Name to create confusion and impersonate the Complainant, when 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 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, JACKMA YUN, has targeted the Complainant's registered "TVB" Mark to impersonate the Complainant and is supplying for free large quantities of the Complainant's 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 is using the Domain Name in bad faith primarily to disrupt the Complainant's business and attract 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.

Any remaining doubt as to the Respondent's bad faith intention to impersonate the Complainant using the Dispute Domain Name and website is dispelled by the Respondent's use of the description "... 電視廣播有限公司遊戲節目", meaning "...TVB's game show", to describe one program available on its Website. See, Prada S.A. v. Domains for Life, WIPO Case No. D2004-1019), where 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

The Complainant having shown all three elements required under the ICANN Policy, the Panel decides that relief shall be **GRANTED**.

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



David L. Kreider, Panelist

Dated: 3 October 2023