

Singapore Mediation Centre
Singapore International Arbitration Centre
The Secretariat, Singapore Domain Name Dispute Resolution Service

Administrative Panel Decision

Case No. SDRP-2002/0001(F)

Viacom International Inc. v Elitist Technologies Co Ltd

1. The Parties

- 1.1 The Complainant is Viacom International Inc., a US Delaware company, whose registered address is 1515 Broadway, New York, USA. The Complainant is represented by Mr Dedar Singh Gill of Drew & Napier LLC.
- 1.2 The Respondent is Elitist Technologies Co Ltd, a company incorporated under the laws of Taiwan. Its address is listed as No 16 Lane 137, Pa The Road Sec 2, Taipei, Taiwan. The Respondent has not secured legal representation for filing its response, although it appears that it had earlier retained US counsel Shen & Associates of 805 West Duarte Road, Suite 106, Arcadia, California 91007, USA in its correspondence with Drew & Napier LLC. In addition, the Respondent has responded through one Mr Gary Ongkowidjaja (“Gary”), its authorized representative for this purpose.
- 1.3 The Complainant and Respondent are known collectively as the Parties in this Decision.

2. The Domain Name and Registrar

- 2.1 The domain name in dispute is “mtv.com.sg” (the “Disputed Domain Name” or “Domain Name”).
- 2.2 The Registrar for the domain name is Singapore Network Information Centre (“SGNIC”) of 8 Temasek Boulevard, #14-00, Suntec Tower Three, Singapore 038988.

3. Procedural History

- 3.1 The Complainant filed this complaint (the “Complaint”) pursuant to the Singapore Domain Name Dispute Resolution Policy (“SDRP”), the Rules for the Singapore Domain Name Dispute Resolution Policy (the “Rules”) and the Supplemental Rules for the Singapore Domain Name Dispute Resolution Policy (the “Supplemental Rules”).
- 3.2 The Rules and the Supplemental Rules have been issued jointly by the Singapore Mediation Centre (“SMC”) and the Singapore International Arbitration Centre (“SIAC”) as joint operators of the secretariat (the “Secretariat”) appointed by SGNIC to administer the domain name dispute resolution service under the SDRP.

- 3.3 The Secretariat received the Complaint via email and courier on 29 January 2002 and forwarded the same to the Respondent on 31 January 2002 together with a Covering Minute and the prescribed Compliant Notification Instruction. All Parties and SGNIC were informed of the commencement of the administrative proceedings on the same date.
- 3.4 Upon receipt of the Respondent's Response on 25 February 2002, the Secretariat notified the Parties of the appointment of the Administrative Panel on 1 March 2002, formally appointing as the sole panelist, Mr Seng Kiat Boon, Daniel, Visiting Associate Professor, Faculty of Law, National University of Singapore and Director of Research, Singapore Academy of Law (the "Administrative Panel"). The Secretariat transmitted the file comprising the instant Complaint, the Response and the Parties' supporting documents to the Administrative Panel on the same date.
- 3.5 Parties had been informed by the Secretariat that the projected decision date was 15 March 2002. However, upon close perusal of the file and the documents therein, the Administrative Panel exercised its discretion pursuant to paragraph 12 of the Rules and requested further statements and documents from the Parties (the "Request") on 14 March 2002.
- 3.6 Pursuant to the Request, the Complainant filed a Supplementary Complaint and the Respondent filed a Supplementary Response. The Parties also resubmitted some documents and additional information.
- 3.7 The Administrative Panel was also in communication with SGNIC concerning the history of the Respondent's domain name application and the status of the Respondent's other domain name applications.
- 3.8 Having perused the file, the Complaint, the Response, the Supplementary Complaint and the Supplementary Response, the resubmitted documents and information, as well as the information supplied by SGNIC, the Administrative Panel arrived at its decision as follows.

4. The Factual Background

4.1 The Complainant

- 4.1.1 The Complainant, a global entertainment company, operates an advertiser-supported television programming service known as MTV: Music Television, through MTV Networks, a division of the Complainant. The MTV programming service features entertainment oriented television programmes ranging from music videos to music and general lifestyle information, news, animations and documentaries.
- 4.1.2 Since 1995, through MTV Asia, a joint venture between MTV Networks and Polygram Music Asia LDC, the MTV programming service has been broadcast to various jurisdictions in Asia, including Hong Kong, Macau, Taiwan, Malaysia, South Korea, India, Philippines, and Singapore. In Singapore, the MTV programming service can be received via the subscription cable service offered by Singapore Cable Vision.
- 4.1.3 The Complainant explained that it has also entered into numerous licence agreements with various affiliates and has set up various partnerships in Asia. With their licensees and affiliates, the Complainant operates websites for the various target groups in these Asian countries such as www.mtvasia.com (Asia), www.mtv-china.com (China),

www.mtvchinese.com (China), www.mtvjapan.com (Japan) and www.mtv.co.kr (Korea).

4.1.4 The Complainant has brought the instant proceedings to recover the “mtv.com.sg” Domain Name. This is presumably pursuant to the Complainant’s domain name management strategy for Asian countries.

4.1.5 The Administrative Panel sees no reason to doubt the good faith of the Complainant in doing so.

4.2 The Respondent

4.2.1 According to SGNIC, ROTA Corporation Pte Ltd (“ROTA”), applied to register the Disputed Domain Name “mtv.com.sg” with SGNIC on 23 February 2000. On 23 March 2000, the registration was approved and the DNS entry for the Disputed Domain Name was created.

4.2.2 SGNIC confirmed that on 22 June 2000, the Domain Name was transferred from ROTA to another Singapore company, Presslink Automation Pte Ltd (“Presslink”). On 11 July 2000, the Domain Name was further transferred to the Respondent.

4.2.3 Since May 2000, the Complainant’s solicitors and the Respondent have exchanged correspondence concerning the Disputed Domain Name and the website set up by the Respondent and its predecessor transferors addressed under the Disputed Domain Name (the “Website”).

4.2.4 When the Administrative Panel visited the Website pursuant to the instant dispute on or around February and March 2002, he found a developed Website. In addition to providing a free email service with the suffix “@mtv.com.sg”, the Website, whose language of choice is Chinese, serves principally as an Internet portal, described as an “MTV Entertainment Web” (in Chinese), for supplying Chinese entertainment products and services.

4.2.5 The Website has sections entitled “MTV Choice Selections”, “MTV Entertainment Centre”, “MTV Email”, “MTV Entertainment News” and “MTV Entertainment Links”. Hyperlinks under the first two sections link the surfer to various Macromedia Flash files, hosted on third party websites, where the surfer can display imagery and other primarily vector-based animation on his Internet browser, accompanied by the song and the lyrics of the song. These songs appear to be mostly Chinese songs. The Respondent in its Response termed these productions “Flash MTV”, a term which is also used on well-established websites operated by reputable institutions such as tom.com¹ and sohu.com.²

4.2.6 The “MTV Email” section takes the surfer to the Website’s free email service with the suffix “@mtv.com.sg”. Hyperlinks to the last two sections take the surfer to various items of entertainment news about the experiences and stories surrounding the production and recording of music videos by various Chinese artistes.

¹ See <http://arts.cn.tom.com/Archive/2001/9/9-18151.html>. The tom.com website is operated by the company Tom.com Ltd which is listed on the Hong Kong stock exchange. Tom.com is in turn owned by numerous Hong Kong companies such as Hutchison Whampoa Ltd. and Cheung Kong (Holdings) Ltd.

² See eg <http://dir.sohu.com/computer/multimedia/animation/>. Sohu.com is a Chinese portal website listed on NASDAQ. It is a very popular website for the Chinese community. Sohu.com claims to have 43 million registered users at the end of December 2001 for its website. See <http://www.sohu.com/about/English/>.

4.2.7 The words “This site, mtv.com.sg, is NOT endorsed by, affiliated to or somehow associated with MTV Networks” (the “Disclaimer”) are included and prominently displayed at the foot of the home page of the Website and some of its second level pages. According to the Complainant, the predecessor transferor(s) put up the Disclaimer in May 2000 in response to the cease and desist letter sent by the solicitors of the Complainant.

5. The Parties’ Contentions

5.1 Background to the SDRP

5.1.1 Since this is the first dispute to be brought under the SDRP and its attendant Rules and Supplemental Rules, it is perhaps apposite to provide some background to the SDRP. A little history of the circumstances in which domain name disputes arose follows.³

5.1.2 With the commercialisation of the Internet, domain names which were initially used as easy-to-remember mnemonic representations of Internet protocol (IP) addresses of websites became important and valuable commodities. This is particularly since domain names were initially issued on a “first-come, first-served” basis by the domain name registrars. Furthermore, as the registrars did not, and today, most still do not, require the domain name applicant to prove his rights to the domain name before it is registered as a domain name, the domain name registries of the world became a hotbed for cybersquatters, opportunists who register famous trade marks or company names before the trade mark owners or companies themselves. When these trade mark owners or companies discover this, they are often forced to buy out the cybersquatter and his domain name for a fee.

5.1.3 The numerous court actions that ensued led the Internet Corporation for Assigned Names and Numbers (“ICANN”), a non-profit private sector organization with international oversight over the domain name registrars in the world, to propose the implementation of a more efficient, out-of-court mechanism for settlement of disputes over domain names, known as the Uniform Domain Name Dispute Resolution Policy (“UDRP”). The UDRP, which has been adopted by all ICANN accredited domain name registrars, requires the registrars to incorporate administrative procedures for resolving domain name disputes into their domain name registration agreements with the registrant. These proceedings, like the instant proceeding, are known as administrative proceedings.

5.1.4 The SDRP, which is the administrative policy for domain name dispute resolution concerning domain names administered by SGNIC, is the Singapore equivalent of the UDRP. It is modelled on the UDRP and was adopted by SGNIC after public consultations with all interested parties. It came into force on 15 November 2001 by way of amendments made to the domain name registration agreement between SGNIC and the registrants of “.sg” domain names. The instant dispute is brought pursuant to the SDRP.

³ Please see, Phang, “Resolving Domain Name Disputes - A Singapore Perspective”, to be published in the 2002 issue of the Singapore Academy of Law Journal.

5.2 The Complainant's Contentions

5.2.1 In accordance with paragraph 4(a) of the SDRP, the Respondent as the Registrant of the Disputed Domain Name "mtv.com.sg" is required to submit to Mandatory Administrative Proceedings conducted before the Administrative Panel, since the Complainant has contended that:

- (i) the Domain Name is identical or confusingly similar to the "MTV" mark in which the Complainant has rights;
- (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 or is being used in bad faith.

5.2.2 The Complainant has to establish all three requirements to the satisfaction of the Administrative Panel before the Administrative Panel has the jurisdiction to exercise its powers to order the relief sought by the Complainant, that is, the transfer of the Domain Name to the Complainant.

5.2.3 First, in relation to the requirements of paragraph 4(a)(i) of the SDRP, the Complainant supports its contention that it has rights to the "MTV" name through its submissions, in its original Complaint, that it is the registered proprietor of eight "MTV"-related trade marks in Singapore. This number is increased to eleven after the Complainant disclosed in the Supplementary Complaint the registration of three additional MTV-related trade marks in Singapore. (Please refer to paragraph 6.2.12 for the table of the "MTV" marks.)

5.2.4 Of these eleven trade marks which have been registered, eight are for the stylised graphical representation of the MTV Music Television logo (T91/2306B, T91/2399B, T94/148E, T94/149C, T94/150G, T97/15800H, T97/15804J, T97/15809A) and the others are word marks comprising the word "MTV" with some other expression such as "Select" (T97/15802D), "Asia Hit List" (T97/15806G) and "In Control" (T97/15799J). Most of these registered trade marks are for television programming and broadcasting and entertainment services (Classes 38 and 41), and other entertainment and broadcasting related goods and services (Class 9). The efficacy of these trade mark registrations and their support for the Complainant's rights to the Disputed Domain Name will be discussed later.

5.2.5 The Complaint also disclosed in its Supplementary Complaint that it has applied to register fourteen other MTV-related trade marks. Most importantly, as first noted by the Respondent, the Complainant disclosed in its Supplementary Complaint that it has applied to register as a trade mark the word mark "MTV" on 29 February 2000 (T00/3154G) but this application is still pending. Despite a direct query on this matter from the Administrative Panel as set out in the Request, the Complainant has not indicated whether it is basing its Complaint on this word mark "MTV", or supplied to the Administrative Panel any further information about this word mark. The Administrative Panel shall therefore assume that the Complainant does not intend to rely on this pending word mark in support of its Complaint and shall draw the necessary inferences pursuant to paragraph 14(b) of the Rules.

5.2.6 The Complainant has also submitted that it has significant goodwill and reputation in the "MTV" marks by reason of the Complainant's extensive exposure through the wide distribution of its television programming services in Asia and the publicity and

merchandising of the MTV trade marks. The Complainant, for instance, refers to the fact that it has spent in excess of US\$7m in advertising its services under the MTV trade marks in South East Asia, and has sales in excess of US\$3m for MTV trade marked merchandise in Singapore.

- 5.2.7 Secondly, in relation to the requirements of paragraph 4(a)(ii) of the SDRP, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the Domain Name because “[t]he name ‘MTV’ is not a ‘common noun universally used all over society,’” and cited the UDRP decision of *Viacom International Inc. v Bryan Dulsky* (WIPO Case No. D2000-0961) in support.
- 5.2.8 The Complainant also notes that the Domain Name bore no resemblance to the name and/or business of the Respondent. The Complainant also notes that the only conspicuous business activity carried out by the Respondent on the Website is that of a free e-mail service provider, and that the Respondent was not licensed to provide television programming services in Singapore.
- 5.2.9 Thirdly, in relation to the requirements of paragraph 4(a)(iii) of the SDRP, the Complainant contends that the Respondent had registered or used the Domain Name in bad faith, because the principal business activities of ROTA, the first registrant, were the retailing of calculators, typewriters and other office equipment and these were in no way associated with the online business of providing a free e-mail service or an Internet portal service.
- 5.2.10 As further evidence of bad faith, the Complainant urged the Administrative Panel to infer that the various registrants to the Domain Name were seeking to avoid liability, through the device of transferring the Domain Name from the initial registrant, ROTA, a Singapore company, to Presslink, another Singapore company, and then to the Respondent, a Taiwanese company. The Complainant has presented printouts from the Singapore Registry of Companies and Businesses to show that both ROTA and Presslink are related companies since they have common directors and shareholders.
- 5.2.11 The Complainant also contended that the Respondent had used the domain name in bad faith by having website banner advertisements and banner referrals. Since the Website was frequented by, in the Respondent’s own words, “large number of subscribers, visitors, email users and website visitors in Singapore and other countries around the world”, this would result in “substantial commercial gain” for the Respondent.
- 5.2.12 Finally, the Complainant noted that the Respondent was prepared to sell the Disputed Domain Name for US\$200,000 to the Complainant, a sum the Complainant asserted was well in excess of the Respondent’s developmental, operational and maintenance costs for the Website. This, the Complainant contended, was indication that the Respondent had acquired the Domain Name primarily for the purpose of selling to the Complainant, and therefore bad faith on the part of the Respondent.

5.3 The Respondent’s Contentions

- 5.3.1 The Respondent disputes the Complainant’s submissions through Gary, its authorized representative.
- 5.3.2 The Respondent’s principal response to the Complainant’s submissions is that the Complainant has no rights or legitimate interests in the word “MTV”.

- 5.3.3 Gary's explanation is that he had registered the word "MTV" as a domain name because he had, in 1995, recorded a short music clip for purposes of a music competition in California, USA. He learnt from the recording studio that made the recording that the music clip in which he was recorded singing to displayed lyrics and background music was described as an "MTV", which is an abbreviation for "music movie, music television, music video or music clip". In support of this, the Respondent adduced in evidence a VHS tape showing his short music clip together with the use of the words "MTV".
- 5.3.4 The Respondent submitted that the word "MTV" is generic or is used in a generic way in the Chinese language. This is because "[t]here is no direct translation of MTV in Chinese". Since the word "MTV" is generic, the Respondent registered it as a domain name on 23 February 2000, when he was working for ROTA Corporation. In the Response, Gary mentioned that he had also registered the domain name "movie.com.sg" together with the Disputed Domain Name since these were all generic domain names. He did so with a view to broadcasting his own "MTV" through his own website.
- 5.3.5 A search by the Administrative Panel with SGNIC confirms that ROTA had also applied on 23 February 2000 to register numerous other generic domain names with SGNIC.
- 5.3.6 In support of its submission, the Respondent adduced numerous items of evidence to show that the word "MTV" was widely used in a generic fashion by the Chinese community to describe Chinese music videos. Amongst various items adduced are:
- Video CDs and Karaoke VCDs in Chinese, of various popular Chinese artistes, which are published and/or distributed in Singapore, Taiwan and Hong Kong by reputable producers, recording houses and publishers such as Polydor/Polygram Music, What's Music International Incorporated, EMI, Warner Music and Sony, where the CDs are described and marketed as "MTV" VCDs.
 - Articles from several Chinese local newspapers and entertainment magazines and from the Singapore Press Holdings' Zaobao.com website, discussing the various music videos of several Hong Kong and Taiwanese music artistes, and their experiences and adventures thereto, and describing the same as "MTV"s.
 - TV programming guides from SPH Mediaworks and Media Corporation of Singapore, for Chinese programmes, such as "You Weekly" and "I-Weekly", wherein certain music programmes were described as "MTV"s.
 - Printouts from various Chinese website searches which highlight the use of the word "MTV" as a substitute for "music videos" or "music programmes". Most of these websites are Chinese websites, and some of these are reasonably reputable websites with reasonably reputable operators such as tom.com, sohu.com, and even warnermusic.com.tw (operated by Warner Music).
- 5.3.7 On the basis that the word "MTV" was generic, the effect of the Respondent's contention is that the Complainant can maintain no rights or legitimate interests in respect of the Domain Name, or alternatively, that the Respondent has a legitimate interest in the Domain Name, or alternatively, that the Respondent had registered and used the Domain Name in good faith. If the Respondent succeeds in *any* of these contentions, the Complainant will have no grounds for seeking the transfer of the Domain Name under the SDRP.

5.3.8 The Respondent has also contended in its Response that the Complainant is seeking to embark on an exercise of Reverse Domain Name Hijacking through the recovery of the Disputed Domain Name from the Respondent.

6. Discussion and Findings

6.1 Burden of Proof

6.1.1 The discussion of the Complainant's contentions and the Respondent's responses are structured by reference to the elements required by paragraph 4(a) of the SDRP.

6.1.2 In these proceedings, the Complainant has sought a transfer of the Domain Name from the Respondent to the Complainant. To be entitled to the remedy sought, the Complainant must prove, on a balance of probabilities, that *all* three elements [in paragraph 4(a)] are present." (See *Viacom International Inc. v Abraham Godong* (WIPO Case No. D2001-0603)). Where the Complainant fails to prove, on a balance of probabilities, that any one of the three elements is present, the Administrative Panel will find for the Respondent.

6.2 Does the Complainant have rights to the mark "MTV", which the Complainant claims is identical or confusingly similar to the Domain Name?

The marks relied upon by the Complainant

6.2.1 The Complainant has to prove that the Domain Name is identical or confusingly similar to the mark "MTV", for which the Complainant has rights. And the Complainant here claims that it has such rights to the mark "MTV" through its trade mark registrations of the various "MTV" marks, as well as through its goodwill and reputation in Singapore in the "MTV" marks.

6.2.2 On the facts, it cannot be disputed that the Domain Name comprises the word "MTV", which is identical to the word "MTV" featured on all the Complainant's "MTV" marks. Various Panel decisions have consistently held that the gTLD suffix ".com" and the ccTLD suffix ".com.xx" (where xx represents the country code) have no distinguishing function. In addition, graphic elements in marks need not be considered when comparing the domain name and the marks for identity or confusing similarity. (See *EFG Bank European Financial Group SA v Jacob Foundation* (WIPO Case No. D2000-0036)). This is because, given current technologies, these graphic elements are not reproducible in a domain name.

6.2.3 However, this does not conclude the analysis. The Complainant must still show that it has exclusive rights to the use of the word "MTV" to displace the Respondent's rights to its registered Domain Name. Even if the domain name is identical to the word elements in the complainant's registered trade mark, if the word elements are generic or descriptive, the registrant will still be able to keep the registered domain name. (See *Sweeps Vacuum & Repair Center, Inc. v Nett Corp.* (WIPO Case No. D2001-0031), *CRS Technology Corporation v Condenet, Inc.*, (NAF Case No. FA93547) and *Steven Saltman d/b/a DearDiary v Dreamissary* (NAF Case No. FA01090000-99701)).

6.2.4 This Administrative Panel is aware of a different opinion expressed by the majority Panel in *J. Crew International, Inc. v crew.com* (WIPO Case No. D2000-0054), that the complainant is entitled to all domain names incorporating their trade mark and those identical to their trade mark. However, this reasoning, which appears to be

heavily influenced by a literal reading of paragraph 4(a)(i) of the UDRP (similar to paragraph 4(a)(i) of the SDRP) must be incorrect, and especially so if the trade mark is weak because it is descriptive or even generic. If the complainant as a trade mark owner is unable to assert any rights to an identical or similar mark because the identical or similar elements of his mark are descriptive or generic, there is no reason why he should be conferred greater rights if the infringing item is a domain name. The Administrative Panel finds the dissenting minority opinion in the same case persuasive and consistent with the principles of trade mark law. As the learned Panelist said:

As discussed below, the fact that CREW is a generic term permeates any analysis for trademark purposes. *The majority's contention that any trade mark registration by Complainant means that Respondent should automatically be imbued with constructive knowledge of the existence of the registration for purposes of the ICANN Policy, while incorrect in and of itself, is particularly inappropriate for a generic term. Additionally, as numerous courts have stated, a trademark owner is not by definition entitled to all domain names incorporating their trade mark or even those identical to their trade mark.* See, Judge Pregerson's excellent discussion of this issue in *Lockheed Martin Corp. v Network Solutions, Inc.*, 985 F.Supp. 949 (C.D. Cal. 1997), *aff'd*, 194 F.3d 980 (9th Cir. 1999). This is especially so where the mark is generic and a common term. See, *Cello Holdings, LLC v Lawrence-Dahl Companies*, 2000 U.S. Dist. LEXIS 3936 (S.D. N.Y. 2000) ...

Furthermore, the majority seems to assume that a trademark owner has some sort of God given right to use the trade mark to the exclusion of others. As Justice Holmes observed, "A trade mark does not confer a right to prohibit the use of the word or words.... A trade mark only gives the right to prohibit the use of it so far as to protect the owner's goodwill against the sale of another's product as his." *Prestonettes, Inc. v Coty*, 264 U.S. 359 (1924). In short, the Complainant does not own all rights to the generic word CREW by virtue of its trademark registration.

- 6.2.5 Hence the Complainant's case would be greatly strengthened if the Complainant could rely in support any trade mark registration for the word mark "MTV".
- 6.2.6 The Complainant did disclose in its Supplementary Complaint that it had made an application to register the word mark "MTV" (T00/3154G). However, the Complainant has elected not to base its Complaint on this mark. For purposes of its analysis under the law of trade marks, the Administrative Panel shall give this much less weight as it is only a trade mark application. (See eg *Viacom International Inc. and MTV Networks Europe v Chamandeep Singh* (WIPO Case No. D2000-1441)).
- 6.2.7 Instead, the Complainant based its Complaint on the other "MTV" marks, whose particulars are set out at paragraph 6.2.12.

Persuasiveness of Foreign Trademark Registrations and other Panel decisions concerning the "MTV" mark

- 6.2.8 In support of its rights to the "MTV" marks, the Complainant cited the fact that it owns trade mark registrations in the "MTV" marks in 35 other jurisdictions ranging from Argentina to Uruguay. However, the Complainant provided no further particulars as to these marks.
- 6.2.9 The Complainant also cited in support of its rights to the "MTV" marks, statements from other Panels (eg *Viacom International Inc. v Bryan Dulsky* (WIPO Case No. D2000-0961), *Viacom International Inc. v Sung Wook Choi and M Production* (WIPO Case No. D2000-1114)) to the effect that "MTV" is not a common term for

media products and services, but instead identify the products and services of the Complainant, and that “MTV” is a “famous” or “well-known” mark.

- 6.2.10 This Administrative Panel does not find evidence of foreign trade mark applications or these blanket statements from other Panels to be conclusive. Firstly, many of these statements are made by Panels in undefended proceedings or in proceedings with unrepresented respondents. Statements from undefended proceedings are less authoritative and much less persuasive than defended proceedings. (See *Nokia Corporation v Nick Holmes t/a EType Media* (WIPO Case No. D2002-0001)).
- 6.2.11 Secondly, the cited Panel decisions concern gTLDs, and centre primarily around the jurisdiction of the United States⁴ and some other country with some nexus to the respondent.⁵ The Disputed Domain Name here is a ccTLD. Therefore, the Administrative Panel is required to make its own examination as to the Complainant’s rights to the mark “MTV” in the context of a consumer in Singapore of broadcasting and entertainment services. None of the Panel decisions cited by the Complainant pertained to the status of the “MTV” mark in Singapore. In this regard, the Administrative Panel is assured that Whitford J in *Disco-Vision Trade Mark* [1977] RPC 594, 603-604, reached the same conclusion when faced with a similar situation.

The Disclaimers in the Complainant’s Marks

- 6.2.12 The Complainant relies, in support of these proceedings, the following “MTV” marks. The earliest “MTV” mark was registered as early as 1994. A closer examination of these marks, however, shows that the Complainant had to offer numerous disclaimers for their registration. In particular, the Complainant had repeatedly in these registered marks disclaimed rights to the use of the letters “M”, “TV” and the words “Music Television”. The disclaimers are set out in the table below, which summarises the “MTV” marks by their type (logo or word), registered class and their disclaimers:

	Type of Mark	TM Numbers	Class	Disclaimers
1.	MTV Music Television logo	T91/2306B	Class 41 (entertainment and educational services in connection with over the air and cable television and radio broadcasting; live entertainment in the form of entertainment shows; production of educational and entertainment television programming)	Separately of the letter “M” and the letters “TV” and the words “Music Television”
2.	MTV Music Television logo	T91/2399B	Class 38 (television and radio broadcasting communication services including over the air and cable transmission services)	Letters “M”, “TV” and words “Music Television”
3.	MTV Music Television logo	T94/148E	Class 9 (video tapes, video cassettes, audio-visual recordings, sound recordings, motion pictures, audio and audio-visual apparatus and all other goods in this class associated with music television; computers; interactive computer apparatus; all included in Class 9)	Letters “M”, “TV” and words “Music Television”

⁴ gTLDs are typically associated with the jurisdiction of the United States, although this is not an invariable rule. Very few US companies register their domain names with the ccTLD “.us”.

⁵ For instance, in *Viacom International Inc. v Sung Wook Choi and M Production* (WIPO Case No. D2000-1114), where the marks were “mtvkorea.com” and “mtvkorea.net”, the Panel referred to the reputation of the “MTV” mark in the US and in South Korea.

	Type of Mark	TM Numbers	Class	Disclaimers
4.	MTV Music Television logo	T94/149C	Class 16 (printed matter, periodical publications, books and newspapers; paper articles; cardboard articles; pencils, pens, stationery, writing pads, greeting cards, transfers (decalcomanias), photographs; figurine (statuettes) of papier mache; ordinary playing cards; all included in Class 16)	Nil
5.	MTV Music Television logo	T94/150G	Class 25 (shirts, sweaters, jackets, coats, waistcoats, trousers, shorts, belts, caps, suspenders, socks and ties, all for wear; sleeping garments, hats, scarves, beachwear, gloves, footwear, all being articles of clothing)	Separately of the letter "M" and the letters "TV"
6.	MTV Music Television logo + "Fresh"	T97/15800H	Class 41 (entertainment and educational services in connection with over the air and cable television and radio broadcasting; live entertainment in the form of entertainment shows; production of educational and entertainment television programming)	Separately of the letter "M", the letters "TV" and the words "Music Television"
7.	MTV Music Television logo + "Syok"	T97/15804J	Class 41 (entertainment and educational services in connection with over the air and cable television and radio broadcasting; live entertainment in the form of entertainment shows; production of educational and entertainment television programming)	Separately of the letter "M", the letters "TV", the words "Music Television" and the word "Syok"
8.	MTV Music Television logo + "On Campus"	T97/15807E	Class 41 (entertainment and educational services in connection with over the air and cable television and radio broadcasting; live entertainment in the form of entertainment shows; production of educational and entertainment television programming)	Separately of the letter "M" and the letters "TV" and the words "Music Television" and "On Campus"
9.	"MTV Select" (word mark)	T97/15802D	Class 41 (education, teaching and entertainment services, preparation of radio and television programs; production of films and live entertainment features; production of animated motion pictures and television features; services relating to motion picture entertainment, to television entertainment and to live entertainment performances and shows; services relating to the publication of books, magazines and periodicals; all included in Class 41)	Word "Select" and separately of the letter "M" and the letters "TV"
10.	"MTV Asia Hit List" (word mark)	T97/15806G	Class 41 (entertainment services; production of radio and television programs; production of films and live entertainment features; production of animated motion pictures and television features; publication of books, magazines and periodicals)	The words "Asia Hit List"
11.	"MTV In Control" (word mark)	T97/15799J	Class 41 (education, teaching and entertainment services, preparation of radio and television programs; production of films and live entertainment features; production of animated motion pictures and television features; services relating to motion picture entertainment, to television entertainment and to live entertainment performances and shows; services relating to the publication of books, magazines and periodicals; all included in Class 41)	Nil

6.2.13 The disclaimers were not uniformly given for all the "MTV" marks, but their legal effect is that the Complainant had disclaimed any rights to the exclusive use of these specified elements of the trade mark. (See s 30(1), Trade Marks Act (Cap 323, 1999 Rev ed) ("TMA") with paragraph 3(3), Third Schedule (Transitional Provisions), TMA.) In particular, it is noteworthy that the Complainant had generally disclaimed rights to the words "Music Television" and separately the letters "M" and "TV" and,

for purposes of this dispute, cannot assert exclusive rights to the words “Music Television” and separately the letters “M” and “TV”.

6.2.14 It comes as no surprise to find that the Complainant has to disclaim the words “Music Television”, since these are words of common import. More importantly, these words are descriptive of the business of the Complainant, as well as its products and services to which the “MTV” marks are attached. As the Complainant itself asserted in its Complaint:

MTV Networks ... operates MTV: Music Television (“MTV”), an advertiser-supported programming service, which has been one of the world’s most widely distributed *television programming* services since 1981. MTV features entertainment oriented *television programmes* which include, but are not limited to, the following: *music videos* and events, *music* and general lifestyle information, comedy and dramatic series, animated programs [sic], news, specials, interviews, documentaries.⁶ (my emphasis)

6.2.15 In view of the disclaimers to the words “Music Television”, the Complainant would also not have been able to register, as a trade mark, the word mark “Music Television”. Such a mark would clearly “consist *exclusively* of signs or indications which may serve, in trade, to *designate the kind, quality, quantity, intended purpose ... of goods or of rendering of services, or other characteristics of goods or services*”, and would constitute an absolute ground for refusal of registration of this mark under s 7(1)(c) of the TMA.

6.2.16 In this regard, it is telling that for mark T94/148E, the Complainant had to disclaim the exclusive use to the words “Music Television”, for a mark which is registered for goods and services that include “goods in this class associated with music television”! This is a self-evident example, from the registration of the mark itself, that the words “music television” are words which describe the very goods and services to which the mark is applied, for which a disclaimer for the very same words have to be sought before the mark can be registered.

6.2.17 For the same reason, the Complainant’s vestigial rights to the word element “MTV” in its “MTV” marks must be weak. The word “MTV” is a clear abbreviation for “Music Television”. Even though the Complainant did not disclaim away, in its trade mark registrations, the right to the word “MTV” as an element in its marks, a trade mark registrant cannot rely upon an abbreviation of a descriptive word to found registrability of the mark. See *Re “Staph Guard” Trade Mark* [1967] RPC 165. In this case, the English High Court held that the use of the abbreviation “Staph” for “Staphylococcus” in the mark “Staph Guard” was not enough to save the mark from being considered descriptive of the use of the apparatus bearing the mark. Substitute “MTV” for “Staph” and “Music Television” for “Staphylococcus”, and the conclusion that can be drawn is irresistible.

6.2.18 This analysis above by no means detracts from the Complainant’s rights to the Complainant’s “MTV” marks as a whole. The distinction is between the Complainant’s exclusive rights to its “MTV” marks as a whole, and its exclusive rights to the word “MTV” in its “MTV” marks. While the Complainant’s “MTV” marks are identified as “MTV”, it does not follow that for this reason, the word “MTV” is necessarily associated with the Complainant’s “MTV” marks.

⁶ Paragraph 19, Complaint dated 29 January 2002.

6.2.19 For these reasons, the Administrative Panel finds that the Complainant has, at best, very weak legal rights over the exclusive use of the word “MTV” in television programming and broadcasting and entertainment products and services. The Complainant’s registered “MTV” marks do not advance its legal rights to the word “MTV” significantly. If at all, the disclaimers in these “MTV” marks and the class of goods for which they have been registered considerably weaken the Complainant’s rights to use the words “Music Television”, and “MTV”. If the Complainant wishes to assert an exclusive right to the word “MTV”, the onus is on the Complainant to maintain and preserve the distinctiveness of the word “MTV”, as applied to the aforesaid products and services.

Customary usage of the word “MTV”

6.2.20 It is here that the Respondent’s Response went to the core of the Complainant’s case. As noted above, the Respondent submitted various items of real and documentary evidence to demonstrate what the Respondent described as the generic nature of the word “MTV”. The real evidence, in the form of various Video CDs and Karaoke VCDs purchased from shops and stores in Singapore and the duly authenticated documentary evidence, lead inexorably to the following conclusions:

- Music videos of Chinese artistes are described as “MTVs”, even by reputable producers, recording houses and publishers. On none of these items did the publishers indicate that the word “MTV” was a trade mark or a reserved word, or was used with the licence of the Complainant. Even discounting the fact that Polygram and the Complainant have entered into a joint venture to operate MTV Asia (and thus drawing the inference that the Complainant may have licensed Polygram to use the word “MTV” – a fact alluded to but neither evidentially or unequivocally supported in the Supplementary Complaint), it would seem quite inconceivable for either the Complainant or the Complainant/Polygram joint venture to licence its competitors such as EMI, Warner Music and Sony the right to use the word “MTV” for their own VCD music productions.
- The local media and even website operators also described Chinese artistes’ music videos as “MTVs” in their various publications, programme guides and literature. Even assuming, *arguendo*, that some of these could be references to the Complainant’s “MTV” programmes or the Complainant’s music videos, the majority of these references made or contained no references to the Complainant and its television broadcast service.

6.2.21 The inexorable inference to be drawn from the evidence is that the Chinese music production industry and the Chinese entertainment industry have used the word “MTV” as an abbreviation for “music videos”. The word “MTV” has also entered the mainstream Chinese language, in Singapore, Taiwan and Hong Kong, as a substitute for the Chinese expression for “music videos”.

6.2.22 The Complainant cites *Viacom International Inc. v Bryan Dulsky* (WIPO Case No. D2000-0961) in support of its contention that the word “MTV” is not generic. In that case, the respondent adduced evidence that the word “MTV” was the name of a Linux software or type of dog.⁷ It is not difficult to see why the Panel in that case cursorily

⁷ The Respondent in this case had likewise adduced other evidence to the same effect eg that it represented the abbreviation for the company name of a German engineering company Main-Taunus-Verkehrs GmbH,

dismissed such a challenge. As the Panel itself notes, the respondent's examples of the generic uses of "MTV" in that case referred to products and services in a different product or service class from broadcasting and entertainment products and services. The examples cited by the Respondent in these proceedings are quite different. They are for television programming, broadcasting and entertainment services, music videos and other information and entertainment products which fall within Classes 9, 38 and 41, the very same classes of goods and services for which the "MTV" marks were registered. The Administrative Panel therefore found the evidence tendered by the Respondent to suggest that the word "MTV" has become customary or generic extremely pertinent and persuasive.

- 6.2.23 As such, applying the test in s 7(1)(d), TMA, the Complainant would be unable to assert exclusive rights to the word "MTV" since this word has become "*customary in the current language or in the bona fide and established practices of the trade.*"
- 6.2.24 One of the best source for affirming that a mark has become customary or generic in the current language is to consult a dictionary. Independent research by the Administrative Panel has confirmed that various English-Chinese dictionaries have dictionary entries for "MTV". For instance, in the English-Chinese Dictionary (Unabridged – Compact Edition), published in August 1993 in Shanghai, an entry at page 1178 of the Dictionary reads as follows:

MTV abbr. Music TV 音乐电视

- 6.2.25 This entry in the dictionary confirms that as far back as 1993 (the particular edition of the Dictionary was in use in Singapore since 1994), "MTV" has become an accepted abbreviation for "Music Television" in the Chinese language, and has entered the Chinese vocabulary. The definition in Chinese is both a transliteration and a translation of the words "Music Television". And the Dictionary puts beyond doubt the Respondent's contention that the word "MTV" has become customary or generic.
- 6.2.26 This will also go towards supporting as an absolute ground for refusal of registration, the "MTV" word mark under s 7(1)(c), TMA. If the local Chinese entertainment industry and the local Chinese entertainment news industry have honestly and in good faith deployed the word "MTV" to refer to the Chinese music videos that are not produced by the Complainant, the law requires that the word "remain available for general use, since competitors have a legitimate interest in employing, without hindrance, in a descriptive manner such indications relating to the vary nature of the claimed goods [or services]."⁸
- 6.2.27 Therefore the Administrative Panel finds that the Complainant would be unable to assert any monopoly rights to the use of the word "MTV", since the word "MTV" no longer distinguishes the entertainment products as the Complainant's products. As the European Court of Justice states in the seminal case of *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117:
- [A]ccording to the settled case-law of the court, the essential function of the trade mark is to guarantee the identity of the origin of the marked product [or service] to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

that "MTV" also stood for "Mountain View Journal", that CNBC had used the abbreviation "MTV" for "Money TV".

⁸ *Global Chiller* [2000] ETMR 234.

Goodwill and reputation in the “MTV” marks

- 6.2.28 For the same reasons, the Administrative Panel doubts if the Complainant could succeed in asserting, to support its rights to the Disputed Domain Name, a claim against the Respondent in passing-off.⁹
- 6.2.29 As the distinctiveness of the word “MTV” is in issue, by registering what would arguably appear to be a generic word or term, it could not be said, as was said in the case of *British Telecommunications Plc & ors v One in a Million Ltd* [1999] FSR 1, 23, that the Respondent had “[made] a representation to persons who consult the register that the registrant is connected or associated with the name registered and thus the owner of the goodwill in the name.” In the *One in a Million* case, the registrant had registered the company names of well-known English companies, and there is no evidence offered to suggest that those company names have become generic or have entered common usage. Aldous LJ held to the contrary, that names such as “British Telecoms”, “Virgin”, “Sainsbury”, “Marks & Spencer” and “Ladbroke” are all “well-known household names [in the UK] denoting in the ordinary usage the respective respondents”.¹⁰
- 6.2.30 Conversely, in *French Connection Limited v Sutton* [2000] ETMR 341, 358, when “there is evidence that certainly to some people FCUK in the context of Internet transactions meant something quite different from the claimant – that is to say, meant an alternative to the obscene expletive”, it cannot be said that the claimant French Connection had proved the sufficient goodwill to support a passing-off action. Here, on the evidence, the Administrative Panel finds that the Complainant would not be able to substantiate the assertion that the word “MTV” denotes in its ordinary usage the Complainant, because the word “MTV” also means “music videos”, which are not necessarily related to the Complainant. Thus it is doubtful if the Complainant can prove a sufficient goodwill arising from the use of the word “MTV” to support a passing-off action.
- 6.2.31 This Panel does not find that the Domain Name is used by the Respondent as an “instrument of fraud” within the meaning given to that term by Aldous LJ in the *One in a Million* case. Unlike that case, there was no credible evidence in this dispute that the Domain Name was registered by the Respondent with a view to passing off as an alternative to extracting money for sale of the name.
- 6.2.32 The Complainant had argued that because the Respondent had asserted that significant Internet traffic flowed through its Website, Internet users were confused through the misrepresentation of the Respondent in registering the Domain Name, and that the Complainant had suffered harm. However, the Administrative Panel was not assisted in this regard as to the extent to which the Internet traffic arriving at the Respondent’s Website represented traffic actually intended for the Complainant (or its affiliates) but erroneously channelled to the Respondent’s Website. The Respondent’s case is that all the Internet traffic was intended for its Website, and was built up through its efforts. On the limited evidence before the Administrative Panel, the Administrative Panel is unable to find that there is clear and unequivocal evidence that there is misrepresentation or that the Complainant has suffered or is likely to

⁹ The action in passing off can be maintained together with an action for trade mark infringement. See s 4(2), TMA.

¹⁰ *Ibid*, at 24.

suffer harm – the second and third elements to support a passing-off action. (See *Reckitt & Coleman Products Limited v Borden Inc* [1990] RPC 341).

- 6.3 There is no clear or unequivocal evidence to show that the Respondent has no rights or legitimate interests in the Domain Name
- 6.3.1 The above finding that the Complainant has failed to prove that it has rights to the mark “MTV” is sufficient to dispose of these proceedings.
- 6.3.2 However, some remarks may be apposite as to the second element of paragraph 4(a) of the SDRP, since the Complainant has made submissions in this regard.
- 6.3.3 Where the registrant offered cogent evidence to suggest the continued development of an established website with an established physical business for the registrant’s business, the registrant would on the face of the record have successfully rebutted the complainant’s assertion that the registrant had no rights or legitimate interests in the domain name. (See *Newstoday Printers and Publishers (P) Ltd. v InetU, Inc.* (WIPO Case No. D2001-0085)). The Respondent afforded some evidence to suggest an established Website.
- 6.3.4 However, on the premise that the Complainant’s exclusive rights in the word “MTV” are weak, or alternatively, that “MTV” has become customary or generic in its use, the Administrative Panel finds that there is no clear or unequivocal evidence to show that the Respondent has no rights or legitimate interests in the Domain Name. The fact that third parties have used the word “MTV” itself or as an abbreviation for “music videos” to describe their broadcast and entertainment products and service, such as music videos, and in particular, Chinese music videos, is so indicative.
- 6.3.5 In this regard, the case of *Denie Hiestand and Health & Integrity Corp. v Rita Lambrose Segur and Body Electric, Inc.* (WIPO Case No. D2001-111) is instructive. In this case, the complainant had sought the transfer of the domain name “electricalnutrition.com” and “electricalnutrition.net” from the respondent, claiming that it was the first to coin the word “electricalnutrition”. However, by permitting the respondent and other third parties to use the word in a purely generic or merely descriptive fashion, and not sufficiently policing the use of this word, the complainant allowed the distinctiveness of the word and its goodwill in the term to be eroded. The Panel allowed the respondent to keep the domain name she registered, because through the complainant’s own conduct, the complainant’s claim of right to the mark “electricalnutrition” was undermined. This was so even though the Panel had doubts about the credibility and good faith of the respondent.

Here, it is not first clear whether [the respondent] Segur had knowledge of [the complainant] Heistand's use of Electrical Nutrition when she registered the domain name. The registration is suspicious, however, because Segur has provided no credible reason for registering it. Moreover, her statements about the phrase are inconsistent. In one instance, she claims the term is generic, but in another she asserts that it is a trademark by seeking registration on her own behalf. It is especially troubling that she registered the remaining domain names <electricalnutrition.org> and <electricalnutrition.net> shortly after her telephone conversation with Heistand's wife about Heistand's interest in the phrase. These actions are indicative of a bad faith motive in registering the domain name. Nevertheless, Respondent was not prohibited from adopting the name "Electrical Nutrition", if Complainant had not established trademark rights at the time, and registration of a domain name that matches a name in which another has an interest is not a violation of the Policy if the other person lacks rights.

- 6.3.6 The lesson to be extracted from this case is equally pertinent to the instant dispute. The Administrative Panel finds that the Complainant has failed to discharge the burden of establishing the second element in paragraph 4(a) of the SDRP.
- 6.4 There is no clear or unequivocal evidence to show that the Respondent has registered or used the Domain Name in bad faith
- 6.4.1 Again, for completeness, the Administrative Panel will make some observations about the third element of paragraph 4(a). This Administrative Panel notes that the third element of paragraph 4(a) is more relaxed than the equivalent element in the UDRP, which requires the Complainant to show that the registrant has registered *and* used the domain name in bad faith. (See *Telstra Corporation Limited v Nuclear Marshmallows* (WIPO Case No. D2000-0003), where the Panel explained that this requirement is conjunctive under the UDRP).
- 6.4.2 The Complainant urged the Administrative Panel to find that the Respondent had registered or used the Domain Name in bad faith, since, according to paragraph 4(b), SDRP:
- (i) the Respondent has acquired the Domain Name primarily for the purpose of selling it to the Complainant (paragraph 4(b)(i), SDRP); or
 - (ii) the Respondent has, by using the Domain Name, intentionally attempted to attract, for commercial gain, Internet users to the Respondent's Website by creating a likelihood of confusion (paragraph 4(b)(iv), SDRP).
- 6.4.3 The Administrative Panel notes that the unexplained circumstances of the transfer of the Disputed Domain Names from ROTA to PressLink and then to the Respondent did in no way assist the Respondent in its case that it (or its predecessor transferors) had registered the Domain Name in good faith.
- 6.4.4 The Administrative Panel finds that, on its own, the Respondent's offer to sell the Domain Name to the Complainant for US\$200,000 cannot establish that "the Registrant has registered or acquired the domain name *primarily for the purpose of selling ... the domain name registration to the Complainant.*" In any event, the Respondent's written position is that the Domain Name was an integral part of the Respondent's business, that significant time and resources had been expended in developing the Website, and that the Domain Name would not be sold. In any event, the Respondent pointed out that the Complainant had purchased the "mtv.com" domain name from one Adam Curry for US\$100,000, after the Complainant lost in its proceedings against Curry in *MTV Networks, A Division of Viacom International, Inc. v Curry* 867 F.Supp 202 (1994), thereby suggesting that the Respondent's starting offer of US\$200,000 was neither exorbitant nor excessive.
- 6.4.5 The Administrative Panel finds that there is no clear or unequivocal evidence that the Respondent has acquired the Domain Name primarily for the purpose of selling it to the Complainant (paragraph 4(b)(i), SDRP).
- 6.4.6 As to the allegation that the Respondent had sought to create a likelihood of confusion with the Complainant's mark, for commercial gain, by having on its Website, links to websites operated by the Complainant and/or its licensed affiliates, the Respondent has since removed those links.
- 6.4.7 In the Administrative Panel's opinion, evidence of the presence or absence of good faith on the part of the Respondent's conduct is the key to determining whether

registration or use was bona fide under the SDRP. (See *Google, Inc. v Xtraplus Corp.* (WIPO Case No. D2001-0125)).

- 6.4.8 Where the disputed domain name is generic, or weakly distinctive, the administrative panels are more prepared to find that the registrant either has a legitimate interest in respect of the domain name, or that the registrant has acted in good faith in registering and using the domain name. (See *Newstoday Printers and Publishers (P) Ltd. v InetU, Inc.* (WIPO Case No. D2001-0085) and *EAuto, L.L.C. v Net Me Up* (WIPO Case No. D2000-0104)). In this regard, the Panel finds that there is no clear or unequivocal evidence to show that the Respondent has, by using the Domain Name which it claims is generic, intentionally attempted to attract, for commercial gain, Internet users to the Respondent's Website by creating a likelihood of confusion (paragraph 4(b)(iv), SDRP).
- 6.4.9 The Respondent had adduced some evidence to suggest a plausible and certainly not illegitimate interest, in seeking to establish its own Internet portal to supply Chinese entertainment products, news and information. Of course, a Panel is not required to blindly accept the Respondent's assertions, and is required to test the Respondent's assertions for evidentiary support and credibility. (See *Do the Hustle v Tropic Web* (WIPO Case No. D2000-0624)). However, the Administrative Panel did not find the Respondent's evidence in this regard to be inherently incredible.
- 6.4.10 Therefore, the Administrative Panel finds that there is no clear or unequivocal evidence to show that the Respondent had registered or used the Domain Name in bad faith.

6.5 Reverse Domain Name Hijacking

- 6.5.1 Even though the Administrative Panel finds for the Respondent, the Administrative Panel does not find that the Complainant brought the Complaint against the Respondent in bad faith. The Complainant has brought the Complaint in good faith, in reliance on its "MTV" trade marks, but ultimately failed in these proceedings because the Administrative Panel finds that the word "MTV" has become descriptive or generic in the local context.

7. **Conclusion**

- 7.1 Upon careful consideration of the arguments of both Parties, the evidence adduced by the Complainant and Respondent and on the basis of the analysis above, the Administrative Panel finds that the Complainant is unable to prove it could clearly and unequivocally assert exclusive rights to the use of the word "MTV" in broadcasting and entertainment products and services, since there is evidence to suggest that the word "MTV" is descriptive of the broadcasting and entertainment goods and services to which both the Complainant and the Respondent have applied the mark, and that it is generic as it has entered the local Chinese language as an abbreviation for "music videos".
- 7.2 Similarly, the Administrative Panel doubts if the Complainant could succeed in asserting a claim against the Respondent in passing off, to support its rights to the Domain Name.
- 7.3 Therefore, the Administrative Panel finds that Complainant has failed to discharge the burden of proving all the elements in paragraph 4(a) of the SDRP.

7.4 Accordingly, the relief sought in the Complaint by the Complainant for transfer of the Disputed Domain Name is denied.

Daniel Seng
Sole Panelist
15 April 2002