

ADMINISTRATIVE PANEL DECISION

Calik Denim Tekstil Sanayi Ve Ticaret Anonim Sirketi v. harlem Cuppel
Case No. D2022-1422

1. The Parties

The Complainant is Calik Denim Tekstil Sanayi Ve Ticaret Anonim Sirketi, Turkey, represented by EFOR Patent Limited Sirketi, Turkey.

The Respondent is harlem Cuppel, Australia.

2. The Domain Name and Registrar

The disputed domain name <calikdenirn.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 28, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on May 25, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Turkish clothing manufacturer. It owns a number of registered trademarks for the words CALIK DENIM in figurative form – see for example international trademark No. 1370586, in class 24 registered on August 4, 2017. These trademarks are referred to as the CALIK DENIM trademark in this decision. It is the registrant of the domain names <calikdenim.com> and <calikdenim.com.tr> which are linked to websites promoting its business.

The Disputed Domain Name was registered on March 25, 2022. It does not resolve to an active website and there is no evidence before the Panel of it having been used.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to the Complainant's CALIK DENIM trademark.

The Respondent has no rights or legitimate interests in the term "CALIK DENIM" or "CALIK DENIRN".

The Disputed Domain Name was registered and is being used in bad faith. The Complainant says the words CALIK DENIM have no meaning save in relation to the Complainant and its products and the Disputed Domain Name is clearly intended to be visually similar to the Complainant's trademark (the letters "rn" being easily misread as the letter "m") and is likely designed for use in phishing or fraud activities.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds the Disputed Domain Name is confusingly similar to the CALIK DENIM trademark. That trademark comprises a number of marks for the words CALIK DENIM in stylised form but each features prominently the words “CALIK DENIM” and in these circumstances the Panel concludes the Disputed Domain Name is confusingly similar to the trademark. Confusing similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question – see for example *EFG Bank European Financial Group SA v. Jacob Foundation*, WIPO Case No. [D2000-0036](#) and *Sweeps Vacuum & Repair Centre, Inc. v. Nett Corp*, WIPO Case No. [D2001-0031](#).

The Panel agrees with the Complainant that the letters “rn” are easily misread as the letter “m” with the result that the Disputed Domain Name is easily misread as being identical to the Complainant’s name. The Panel infers that is part of a deliberate strategy by the Respondent

It is well established that the Top-Level-Domain (“TLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the CALIK DENIM trademark. The Complainant has prior rights in the CALIK DENIM trademark which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the Panel cannot conceive of any legitimate use the Respondent has for the Disputed Domain name.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

It does not matter that there is no actual evidence of the Respondent having used the Disputed Domain Name. In the circumstances of this case, the Panel adopts the approach set out in the [WIPO Overview 3.0](#) at 3.3 as follows:

"Can the 'passive holding' or non-use of a domain name support a finding of bad faith?"

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

"Passive holding" can itself amount to bad faith registration and use where the holding involves a domain name deliberately chosen because of its association with the Complainant. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#), *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#), and *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#).

In the present case, the Panel adopts this approach. The Panel notes that the Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel infers that none exists. Accordingly, and applying the principles in the above noted UDRP decisions, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <calikdenirn.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: June 8, 2022