

## **ADMINISTRATIVE PANEL DECISION**

Calvin Klein Trademark Trust, Calvin Klein Inc. v. Client Care, Web  
Commerce Communications Limited  
Case No. D2022-2612

### **1. The Parties**

The Complainants are Calvin Klein Trademark Trust and Calvin Klein Inc., United States of America (“United States” or “US”), represented by Kestenberg Siegal Lipkus LLP, Canada.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

### **2. The Domain Names and Registrar**

The disputed domain names <calvinkleincanada.com>, <calvinkleinpolska.com>, and <calvinkleinuae.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on July 25, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on July 26, 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 July 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 22, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on September 7, 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, Calvin Klein Trademark Trust, organized under the laws of Delaware, United States, is the registered owner of the trade marks CALVIN KLEIN which it holds on trust for the Complainant, Calvin Klein, Inc. For the purposes of this decision, the Complainants are referred to as “the Complainant”, unless otherwise indicated. Calvin Klein, Inc. is the beneficial owner of the marks which are used by it for a variety of merchandise.

Calvin Klein, Inc. has been engaged in the production, sale and licensing of men’s and women’s apparel, fragrances, accessories, and footwear, among other things, all in association with the Complainant’s intellectual property rights.

Evidence of the Complainant’s trade mark rights is set out in a Declaration filed on its behalf. In particular the Complainant relies on the registered trade marks for the mark CALVIN KLEIN in China, the European Union (“EU”), the United Kingdom, and the US. These include:

- China registration No. 1681239 registered December 14, 2001 – CALVIN KLEIN;
- EU registration No. 000617381 registered January 29, 1999 – CALVIN KLEIN;
- United Kingdom registration No. 1,492,382 registered January 21, 1994 – CALVIN KLEIN;
- US registration No. 1,086,041 registered February 21, 1978 – CALVIN KLEIN; and
- US registration No. 1,633,261 registered January 29, 1991 – CALVIN KLEIN (in stylized form).

The Declaration also evidences domain name registrations which incorporate the mark CALVIN KLEIN. These include: <calvinklein.com>, <calvinkleinbags.com>, <calvinkleinunderwear.com>, and <calvinkleinfashion.com>. The Complainant has used and continues to use these domain names in connection with its various websites which provide information about the Complainant and its products and services.

As can be seen from the Declaration, the Complainant has used the trade mark CALVIN KLEIN continuously since at least 1968 in connection with the advertising, offering for sale, and sale of its products throughout the world. It has resulted in millions of customers and billions of USD in sales. The CALVIN KLEIN marks are well-known and famous. The Complainant has expended very large sums in advertising and promoting its products under the mark CALVIN KLEIN throughout the world in a variety of media including print, television and radio advertisements.

The disputed domain names were registered on June 1, 2022. The disputed domain names resolve to website containing pay-per-click (“PPC”) links to third-party advertisements.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant has advertised using the marks CALVIN KLEIN through direct mail and on the Internet using the above domain names. Its products are also sold exclusively through its own retail stores, outlet stores and websites including “www.calvinklein.com” and through authorized dealers including Macy’s, Neiman Marcus, Saks Fifth Avenue, and Berghof Goodman.

The disputed domain names incorporate Complainant's CALVIN KLEIN trademark in its entirety. The only difference between Complainant's trademark and the disputed domain names are the addition of the geographic indicators "Canada", "Polska", and "UAE", respectively.

The Complainant's first use and first registration of its CALVIN KLEIN mark predates any use made by the Respondent of the disputed domain names.

The Respondent may have made use of disputed domain names as a trade name, domain name, mark, or common name. However, the disputed domain names were registered in June 2022, more than 50 years after the Complainant first used its marks.

The Respondent was aware of the Complainant's domain names and websites before it registered the disputed domain names because the Complainant's websites were operational, and thus easily accessible to the Respondent, at the time the Respondent registered the disputed domain names.

The Respondent is not affiliated with the Complainant in any way.

The Complainant has not authorized the Respondent to use and register its trademarks and service marks, or to seek the registration of any domain name incorporating said mark.

The Complainant's CALVIN KLEIN marks are well known and famous and have been for many years.

The Respondent also has no proprietary rights or legitimate interests in "Calvin Klein" because the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. The disputed domain names resolve to pay-per-click websites featuring links to third party advertisements.

The Respondent has no proprietary rights or legitimate interest in "Calvin Klein" or the disputed domain names because the Respondent is not commonly known by these names.

The Respondent registered and is using the disputed domain names in bad faith. The Respondent is diverting the Complainant's customers or potential customers seeking information about the Complainant to pay-per-click websites.

The Complainant submits that the Respondent's use of the disputed domain names to attract Internet users to the Respondent's disputed domain names by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's disputed domain names satisfies Policy 4(b)(iv). The Respondent is driving Internet traffic to their own websites, taking advantage of the goodwill associated with the Complainant

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a Respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the Complainant is deemed to have prevailed; a Respondent's default is not necessarily an admission that the Complainant's claims are true (See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the disputed domain name is identical 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**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademark CALVIN KLEIN on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1).

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a registered trademark. Numerous UDRP panels have recognised that the incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. Such findings were confirmed, for example, within the case *Quixtar Investments Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#).

The Respondent's incorporation of the Complainant's trademark in full in the disputed domain names is evidence that the disputed domain names are confusingly similar to the Complainant's marks. Mere addition of the geographic terms "canada", "polska" and "uae" does not prevent a finding of confusing similarity with the Complainant's marks. As noted in [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element". Similarly, it is well accepted that a generic Top-Level Domain ("gTLD") is typically ignored when assessing the confusing similarity between a trademark and a domain name. (see section 1.11 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

#### **B. Rights or Legitimate Interests**

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain names.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain names. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain names resolve to PPC websites featuring links to third party advertisements.

The Panel also finds that the nature of the disputed domain names carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1).

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain names and that paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainant and its trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the CALVIN KLEIN mark at the time the disputed domain names were registered. Bad faith can be presumed based on the widely evidenced recognition of the Complainant's marks and, moreover, can be imputed from the use made of the disputed domain names to resolve to PPC pages featuring some links that correlated with and thus sought to capitalize upon the reputation and goodwill associated with the Complainant's mark, such that the Respondent was aware or should have been aware of the Complainant's well-known marks and claims of rights thereto.

In the Panel's view, the Complainant's mark is famous and registration by the unrelated Respondent creates a presumption of bad faith in this case on this subject, section 3.1.4 of the [WIPO Overview 3.0](#) says:

"Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The disputed domain names resolve to websites that display various PPC commercial links at the time of the filing of the Complaint. The Panel finds that the Respondent has attempted to mislead the Internet users by using the confusingly similar disputed domain names for PPC websites, whereby the Respondent presumably receives click-through revenue.

The Panel concludes that the disputed domain names were registered and are being used in bad faith and that consequently, the Complainant has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

## **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 names, <calvinkleincanada.com>, <calvinkleinpolska.com>, and <calvinkleinuae.com>, be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: September 21, 2022