

## **ADMINISTRATIVE PANEL DECISION**

Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Fernanda Almeida Barros, TERESA NOGUEIRA DA COSTA, Gustavo Menezes, Rodolpho Lamounier, GPL  
Case No. D2024-1902

### **1. The Parties**

The Complainants are Calvin Klein Trademark Trust and Calvin Klein, Inc., United States of America ("United States"), represented by Lipkus Law LLP, Canada.

The Respondents are Fernanda Almeida Barros, TERESA NOGUEIRA DA COSTA, Gustavo Menezes, and Rodolpho Lamounier, GPL, Brazil.

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

The disputed domain names <calvinkleinbrasilofc.com>, <calvinkleinbrazilofc.com>, <calvinkleinbrofficial.com>, <calvinkleinbrofficial.com>, <calvinkleinofc.com>, <calvinkleinoficialbr.com>, <calvinkleinweb.com>, and <ckbrasil.online> are registered with Hostinger Operations, UAB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2024. On May 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 8, 2024, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2024 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 May 22, 2024.

The Center sent an email communication to the Complainant on May 17, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on May 22, 2024.

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 May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 18, 2024.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on June 25, 2024. 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 Complainants have been engaged in the production, sale and licensing of men’s and women’s apparel, fragrances, accessories, and footwear, among other things. Since its formation, the Complainants have registered and used the trademark CALVIN KLEIN and CK in the United States and throughout the world, including:

- United States Trademark Registration No. 1,086,041 CALVIN KLEIN, registered February 21, 1978, for goods in international class 25;
- United States Trademark Registration No. 1,633,261 CALVIN KLEIN (stylized), registered January 29, 1991, for goods in international class 25; and
- United States Trademark Registration No. 2,080,100 CK (stylized), registered July 15, 1997, for goods in international class 25.

The Complainant Calvin Klein Trademark Trust is the registered owner, and the Complainant Calvin Klein Inc. is the beneficial owner, of the trademarks owned by Calvin Klein Trademark Trust. The Complainants are hereinafter collectively referred to as the “Complainant.” The Complainant also claims that it owns a number of domain name registrations which wholly incorporate the Complainant’s CALVIN KLEIN and CK marks, including:

- <calvinklein.com>
- <calvinkleinbags.com>
- <calvinkleinunderwear.com>
- <calvinkleinfashion.com>
- <ck.com>

The disputed domain names were registered between April 2, 2024, and April 27, 2024, and while the domain names are currently inactive, all eight of the disputed domain names previously resolved to landing pages/websites which prominently displayed the Complainant’s CALVIN KLEIN mark and purportedly offered for sale and/or sold unauthorized goods bearing the Complaint’s CALVIN KLEIN and/or CK marks at discounted prices.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that:

1. the disputed domain names are confusingly similar to the Complainant's marks.
2. the Respondent was aware of the Complainant's domain names and websites associated with the same before it registered the disputed domain names.
3. the Respondent is not affiliated with the Complainant in any way.
4. 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.
5. the Respondent has no proprietary rights or legitimate interest in "Calvin Klein" or "CK"
6. the Respondent is not using the domain names in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use.
7. the Respondent's use of the disputed domain names to sell alleged counterfeit products bearing the Complainant's mark.
8. even if the goods advertised on the Respondent's sites were genuine CALVIN KLEIN products (which they are not), the Respondent cannot show itself to be a reseller that is authorized by the Complainant to use the infringing domain names to sell the Complainant's products.
9. the Respondent has no proprietary rights or legitimate interest in "CALVIN KLEIN", "CK", or the disputed domain names because Respondent is not commonly known by these names.
10. the Respondent was actively using, such websites or other on-line locations to intentionally misdirect and attract for commercial gain Internet users searching for the Complainant's authorized goods and services by creating a likelihood of confusion with the Complainant's marks.
11. The Respondent's registration and use of the disputed domain names is in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Consolidation: Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that all eight of the disputed domain names were registered within a relatively close window of registration i.e. between April 2, 2024, and April 27, 2024. The Registrar for all eight of the domains is the same. All eight of the disputed domain names follow a common naming pattern as they consist of Complainants CALVIN KLEIN or CK mark, a geographical terms (e.g., "br", "brasil", "brazil" etc.), and/or additional terms (e.g., "official", "web", "oficial" and "ofc") and a generic Top-Level Domain ("gTLD").

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition may bear on assessment of the second and third elements, the Panel finds the addition of geographical terms (e.g., “br”, “brasil”, “brazil” etc.), and additional terms (e.g., “official”, “web”, “oficial” and “ofc”) does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. Moreover, the Panel finds that the composition of the Domain Names carries a risk of implied affiliation to the Complainant, which cannot constitute fair use.

Furthermore, the Panel notes that the disputed domain names resolve to websites purportedly offering the Complainant’s products and the Respondent might be considered a reseller/distributor. However, the Respondent does not meet the criteria established in *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), for example, the site does not accurately and prominently disclose the Respondent’s relationship with the Complainant. [WIPO Overview 3.0](#), section 2.8.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of alleged counterfeit goods, impersonating/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered the disputed domain name long after the Complainant registered its CALVIN KLEIN and CK marks, the Respondent's use of the disputed domain names to sell purportedly counterfeit products bearing Complainant's mark at discounted prices was actively using, such websites or other on-line locations to intentionally misdirect and attract for commercial gain Internet users searching for Complainant's authorized goods and services by creating a likelihood of confusion with Complainant's marks.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of alleged counterfeit goods, impersonating/passing off, constitute bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitute bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <calvinkleinbrasilofc.com>, <calvinkleinbrazilofc.com>, <calvinkleinbrofficial.com>, <calvinkleinbroficial.com>, <calvinkleinofc.com>, <calvinkleinoficialbr.com>, <calvinkleinweb.com>, <ckbrasil.online> be transferred to the Complainant.

*/Gonçalo M. C. Da Cunha Ferreira/*

**Gonçalo M. C. Da Cunha Ferreira**

Sole Panelist

Date: July 8, 2024