

ADMINISTRATIVE PANEL DECISION

Calvin Klein Trademark Trust & Calvin Klein, Inc. v. Privacy Service Provided by Withheld for Privacy ehf / David Jambrovic, Cortex LLC
Case No. D2022-0843

1. The Parties

Complainant is Calvin Klein Trademark Trust & Calvin Klein, Inc., United States of America (“United States”), represented by Kestenberg Siegal Lipkus LLP, Canada.

Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / David Jambrovic, Cortex LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <calvinkleinnfts.com> (hereinafter the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2022. On March 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 11, 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 Complainant on March 16, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 16, 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 Respondent of the Complaint, and the proceedings commenced on March 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 28, 2022.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on May 6, 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

Complainant is a well-known international fashion label that sells women's and men's apparel, handbags, footwear, underwear, fragrances, and home furnishings all under the CALVIN KLEIN mark. Complainant has continuously used the CALVIN KLEIN mark since at least as early as 1968 and owns multiple trademark registrations in the United States and internationally. Of relevance to this proceeding are Complainant's United States trademark registrations for CALVIN KLEIN (Registration Number 1,06,041) (registered February 21, 1978) and Calvin Klein (Registration Number 1,633,261) (Registered January 29, 1991) (collectively the "CALVIN KLEIN Marks").

Complainant sells its CALVIN KLEIN branded products through its own retail stores, outlet stores, authorized retailers, and websites, including "calvinklein.com", a website Complainant has operated since 1997. In addition to calvinklein.com, Complainant owns the following domain names: <calvinkleinbags.com>, <calvinkleinunderwear.com>, <calvinkleinjeans.com>, and <mycalvins.com>.

Respondent registered the Disputed Domain Name on December 31, 2021, long after Complainant registered its CALVIN KLEIN Marks. The webpage associated with the Disputed Domain Name displays hyperlinks to third-party websites that offer similar products to those offered in connection with the CALVIN KLEIN Marks, and therefore, these third parties compete with Complainant.

5. Parties' Contentions

A. Complainant

Complainant asserts that its CALVIN KLEIN Marks are famous as a result of its exclusive and continuous use of the marks since 1968, and its investment of millions of dollars in advertising and promotion of the CALVIN KLEIN Marks. As such, Complainant contends it has established rights in the CALVIN KLEIN Marks and that the Disputed Domain Name is confusingly similar thereto. Complainant claims that the inclusion of the term "NFTS," an acronym for "non-fungible tokens," exacerbates the risk of consumer confusion due to the rising popularity of NFTS and Complainant's online presence in the digital fashion space.

Complainant further asserts that Respondent lacks rights or legitimate interests in the Disputed Domain Name because Respondent has never used the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Specifically, Respondent is not using the Disputed Domain Name for a legitimate noncommercial or fair use and Respondent has never been commonly known by <calvinkleinnfts.com>. Complainant states that because the Disputed Domain Name resolves to a pay-per-click ("PPC") website with links that reference products that Complainant manufactures and distributes for sale, Respondent merely holds the Disputed Domain Name to capitalize on the goodwill of Complainant's CALVIN KLEIN Marks.

Additionally, Complainant contends that Respondent registered and is using the Disputed Domain Name in bad faith because Respondent registered the Disputed Domain Name primarily to sell, rent, or otherwise transfer it to Complainant for valuable consideration in excess of Respondent's out-of-pocket costs directly related to the Disputed Domain Name. Further, Complainant argues that Respondent uses the Disputed Domain Name to divert Complainant's customers and potential customers, which damages the goodwill Complainant has built in the CALVIN KLEIN Marks because it has no control over the use of the Disputed Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that Complainant's trademark registrations establish that it has rights in the CALVIN KLEIN mark. The Panel further finds that, because the Disputed Domain Name incorporates Complainant's mark entirely, it is confusingly similar to Complainant's registered marks. Respondent's addition of the acronym "nfts" in the Disputed Domain Name does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8.

Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has presented a *prima facie* case for Respondent's lack of rights or legitimate interests in the Disputed Domain Name, which Respondent has not rebutted. The Panel finds that Respondent has no rights or legitimate interests in the Disputed Domain Name as (i) Respondent is not licensed to use Complainant's CALVIN KLEIN Marks, (ii) Respondent is not affiliated or associated with Complainant, and (iii) Respondent had not made a *bona fide* use of the Disputed Domain Name. Specifically, the Disputed Domain Name resolves to a PPC advertising webpage featuring links for men's and women's clothing, shoes, and swimwear, as well as home furnishings. As these items are competitive with the products sold by Complainant under its CALVIN KLEIN Marks, Respondent is using the Disputed Domain Name to mislead consumers and derive a commercial benefit through the collection of click-through revenue. Therefore, Respondent is not making a *bona fide* use of the Disputed Domain Name. See [WIPO Overview 3.0](#), section 2.6; see also *Legacy Health System v. Nijat Hassanov*, WIPO Case No. [D2008-1708](#); and *SOCIÉTÉ DES PRODUITS NESTLÉ SA v. Mustafa Yakin/Moniker Privacy Services*, WIPO Case No. [D2008-0016](#).

Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent acquired the Disputed Domain Name fully aware of Complainant's rights. As Respondent has not denied Complainant's allegations that its marks are famous, the Panel infers that Respondent most likely knew of Complainant's world-famous CALVIN KLEIN mark when Respondent registered the Disputed Domain Name. As such, Respondent registered the Disputed Domain Name in bad faith. See *Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#) (bad faith is found where a domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith").

Additionally, Respondent has used the Disputed Domain Name in bad faith, specifically to direct Internet visitors to a PPC parking page featuring links to competitors, intentionally creating a likelihood of confusion with Complainant's trademark for Respondent's financial gain. See *Wayfair LLC v. Xiamen Privacy Protection Service Co., Ltd. / zhang qin*, WIPO Case No. [D2018-2032](#); see also *Wal-Mart Stores Inc. v. Frank Warmath*, WIPO Case No. [DTV2008-0013](#) ("When a domain name incorporating a famous mark is used to attract Internet traffic to fuel click-through revenues which trade on the reputation of that mark, a conclusion of bad faith registration and use under paragraph 4(a)(iii) of the Policy is unavoidable.").

Complainant has satisfied 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 Name, <calvinkleinnfts.com>, be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: May 20, 2022