

ADMINISTRATIVE PANEL DECISION

Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Abhishek Kumar
Case No. D2023-1647

1. The Parties

The Complainant is Calvin Klein Trademark Trust, and Calvin Klein, Inc., United States of America (“United States”), represented by Lipkus Law LLP, Canada.

The Respondent is Abhishek Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <calvinkleinstore.info> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 2023, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2023 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 21, 2023.

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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on May 25, 2023. 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 well-known international fashion label founded in the United States that sells women's and men's apparel, handbags, footwear, underwear, fragrances, and home furnishings all under the CALVIN KLEIN mark.

The 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, including United States trademark registrations for CALVIN KLEIN, Registration Number 1,086,041, registered February 21, 1978 and Registration Number 1,633,261, registered January 29, 1991.

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

The disputed domain name was registered on March 13, 2023. It resolves to a website which reproduces the CALVIN KLEIN trademark and includes statements such as

"What is the Calvin Klein Franchise?"

The Calvin Klein franchise is a retail business model where entrepreneurs can own and operate a retail store that sells Calvin Klein products."

And

"# About O u r B r a n d

Calvin Klein is a renowned fashion brand with a global presence. Our mission is to empower people to express their individuality through fashion, and we achieve this by creating innovative designs that push boundaries and challenge norms. As a Calvin Klein franchise provider, we offer entrepreneurs the opportunity to partner with a trusted and established brand to bring our vision to their local communities.

Our franchisees benefit from comprehensive support and resources, including training, marketing, and ongoing guidance to ensure their success. We are committed to delivering the highest quality products and experiences to our customers, and we believe in fostering long-term partnerships with our franchisees. Join the Calvin Klein family today and become a part of our legacy of creativity and innovation."

And

"support @ calvinkleinstore.info

All Rights Reserved | Design by Calvin Klein".

A cease and desist letter was sent on March 23, 2023 by the Complainant to the website operator "[...]"@calvinkleinstore.info", which remained unanswered.

5. Parties' Contentions

A. Complainant

The Complainant asserts that its CALVIN KLEIN Marks are famous as a result of its exclusive and continuous use of the marks since 1968, as well as widespread its advertising and promotion of the CALVIN KLEIN Marks. As such, the Complainant contends it has established rights in the CALVIN KLEIN Marks and that the disputed domain name is confusingly similar thereto. The Complainant claims that the inclusion in the disputed domain name of the term "store", intensifies the risk of consumer confusion because the

Complainant operates stores. The adjunction of a generic Top-Level Domain (“gTLD”) such as “.info” is insufficient to avoid a finding of confusing similarity.

The Complainant further asserts that the Respondent lacks rights or legitimate interests in the disputed domain name because:

- (i) its first use and first registration of its CALVIN KLEIN trademark predates any use the Respondent may have made and its official websites were operational for many years which means that the Respondent was aware of these.
- (ii) The Respondent is not affiliated with the Complainant in any way and has not been authorized to use the CALVIN KLEIN trademark.
- (iii) The well-known character of the CALVIN KLEIN trademark shows that the Respondent has no rights or legitimate interests.
- (iv) The Respondent has never used the disputed domain name in connection with a *bona fide* offering of goods or services. Specifically, the disputed domain name resolves to a website which reproduces the Complainant’s trademarks without authorization and offers false information related to franchise opportunities. A contact form is inserted on the landing page and form users are required to input personal information.
- (v) The Respondent is not commonly known by the disputed domain name.

Additionally, the Complainant contends that the Respondent registered and is using the disputed domain name in bad faith notably because (i) of the phishing scheme operated on the website (ii) and the disputed domain name resolves to a website offering false franchise opportunities. Further, the Complainant argues that the Respondent uses the disputed domain name to divert the Complainant’s customers and potential customers, which damages the goodwill the Complainant has built in the CALVIN KLEIN Marks because it has no control over the use of the disputed domain name. The Complainant also mentions that the Respondent did not respond to its cease and desist letter of March 23, 2023.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the

Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Complainant has shown to have obtained trademark rights CALVIN KLEIN in the United States and in many other jurisdictions.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks CALVIN KLEIN since it contains this marks in entirety. The addition of the term "store" in the disputed domain name does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

Furthermore, the gTLD ".com" is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes:

- (i) the use of the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) being commonly known by the domain name; or
- (iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient statements in order to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

In particular, the Complainant has not licensed or otherwise permitted the Respondent to use its trademarks. There is no evidence showing that the Respondent would be commonly known by the disputed domain name or that a legitimate business would be run by the Respondent under the disputed domain name.

The Panel therefore finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent who has chosen not to reply.

The Respondent has not rebutted the Complainant's *prima facie* case, and there is no evidence of the types

of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings.

As already stated before, nothing is contained in the case file which would show that the disputed domain name has been legitimately noncommercial or fair used, either nocommercially or fairly, by the Respondent or that that the Respondent would have any rights or legitimate interests in the disputed domain name.

To the contrary, the well-known character of the CALVIN KLEIN trademark could not be ignored by the Respondent and his use of the disputed domain name and the Complainant's trademark can obviously not be considered as legitimate since (i) the Respondent reproduces without authorization the CALVIN KLEIN mark on the website to which the disputed domain name resolves (ii) the Respondent falsely alleges on the said website that he would be a franchisee of the Complainant (iii) the website contains a form requiring users to input personal information (potential phishing).

Furthermore, the disputed domain name combines CALVIN KLEIN in its entirety with the term "store" which carries a risk of implied affiliation.

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

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

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name was registered and is being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's well-known trademark CALVIN KLEIN which is widely used by the Complainant worldwide, including on the Internet through websites and social media, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name he chose could attract Internet users in a manner that is likely to create confusion for such users, particularly when associating CALVIN KLEIN with the term "store" in the disputed domain name.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The bad faith use condition is also fulfilled as the disputed domain name resolves to a website containing false allegations as to his connections to the Complainant and operating a phishing scheme.

The silence of the Respondent in these proceedings is an additional evidence of bad faith in these circumstances.

The Panel therefore finds that the conditions in paragraph 4(a)(iii) of the Policy is fulfilled in relation to the disputed domain name.

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 <calvinkleinstore.info> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: June 12, 2023