

ADMINISTRATIVE PANEL DECISION

Calvin Klein Trademark Trust & Calvin Klein, INC. v. Thomas Ostermann, Luca Ebersbacher, Julia Kruger, Vanessa Huber, Juliane Weisz, Stefan Ostermann, Karolin Eisenberg, Dirk Herrmann, Nicole Kirsch, Klaus Schreiber, Marie Osterhagen, Tobias Konig, Yvonne Waechter, Dirk Fenstermacher, Daniel Schwarz, Stephanie Berg, Paul Egger, Petra Lehrer, Jessika Aachen, Janina Theiss, Michelle Luft, Niklas Abendroth, Christin Trommler, Jennifer Fassbinder, Niklas Eberhart, Antje Muench, Peter Gloeckner, Sara Neudorf, Anna Klein, Ines Thalberg, Anke Bosch, Robert Meier, and Juliane Peters
Case No. D2023-4776

1. The Parties

The Complainant is Calvin Klein Trademark Trust & Calvin Klein, INC., (hereinafter jointly referred to as the “Complainant”), United States of America (the “United States”), represented by Lipkus Law LLP, Canada.

The Respondents are Thomas Ostermann, Germany, Luca Ebersbacher, Germany, Julia Kruger, Germany, Vanessa Huber, Germany, Juliane Weisz, Germany, Stefan Ostermann, Germany, Karolin Eisenberg, Germany, Dirk Herrmann, Germany, Nicole Kirsch, Germany, Klaus Schreiber, Germany, Marie Osterhagen, Germany, Tobias Konig, Germany, Yvonne Waechter, Germany, Dirk Fenstermacher, Germany, Daniel Schwarz, Germany, Stephanie Berg, Germany, Paul Egger, Germany, Petra Lehrer, Germany, Jessika Aachen, Germany, Janina Theiss, Germany, Michelle Luft, Germany, Niklas Abendroth, Germany, Christin Trommler, Germany, Jennifer Fassbinder, Germany, Niklas Eberhart, Germany, Antje Muench, Germany, Peter Gloeckner, Germany, Sara Neudorf, Germany, Anna Klein, Germany, Ines Thalberg, Germany, Anke Bosch, Germany, Robert Meier, Germany, and Juliane Peters, Germany.

2. The Domain Names and Registrar

The disputed domain names <calvinkleinargentina.com>, <calvinklein-australia.com>, <calvinkleinbr.com>, <calvinklein-canada.com>, <calvinkleincolombia.com>, <calvinkleincostarica.com>, <calvinklein-cz.com>, <calvinkleindanmark.com>, <calvinkleinde.com>, <calvinklein-espana.com>, <calvinkleinfr.com>, <calvinkleingreece.com>, <calvinklein-hungary.com>, <calvinklein-ireland.com>, <calvinkleinluxembourg.com>, <calvinkleinmalta.com>, <calvinklein-mexico.com>, <calvinkleinnl.com>, <calvinkleinno.com>, <calvinkleinosterreich.com>, <calvinkleinperu.com>, <calvinklein-polska.com>, <calvinkleinpt.com>, <calvinkleinschweiz.com>, <calvinkleinsg.com>, <calvinkleinsitaly.com>,

<calvinkleinsk.com>, <calvinkleinslovenija.com>, <calvin-kleinsrbija.com>, <calvinkleinsturkiye.com>, <calvinkleinsuomi.com>, <calvinklein-sverige.com>, and <calvinkleinza.com> are registered with Domain Best Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2023. On November 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names (Unknown) which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 28, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on December 1, 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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 26, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on January 18, 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

Given that no Response was filed, the following facts are based on the uncontested submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a well-known international fashion label that is engaged in the production, sale and licensing of men’s and women’s apparel, fragrances, accessories, and footwear, among other things, all under the CALVIN KLEIN trade mark.

The Complainant owns several CALVIN KLEIN trade marks including the following:

-United States Trade Mark CALVIN KLEIN, registered on February 21, 1978 under No. 1086041.

The Complainant has registered several domain names reflecting its CALVIN KLEIN trade mark including the domain name <calvinklein.com> registered in 1997.

All 33 disputed domain names were registered on February 8, 2023, and either (i) trigger an error message from the website hosting provider including the following statement “Sorry, you have been blocked – You are unable to access [<the respective disputed domain name>]” or (ii) point to a webpage merely stating “We Are Coming Soon”.

The only information known to the Panel in relation to the respective underlying registrants is limited to the information available in the WhoIs records for the respective disputed domain names.

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 the disputed domain names are all confusingly similar to the CALVIN KLEIN trade mark in which the Complainant has rights as the disputed domain names all incorporate the entire CALVIN KLEIN trade mark. The mere addition of country names or the corresponding country-code Top Level Domain (“ccTLD”) in the respective disputed domain names and the letter “s” in some of the disputed domain names does not prevent the likelihood of confusion between the disputed domain names and the Complainant’s trade mark.

The Complainant contends that the Respondent is not affiliated with nor authorised by the Complainant in any way. The Complainant highlights the fact that its CALVIN KLEIN trade mark is well-known and famous and as a result it would be very difficult for the Respondent to substantiate rights or legitimate interests in respect of any of the disputed domain names. The Complainant adds that 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. Finally, the Complainant asserts that the Respondent is not commonly known by any of the disputed domain names. The Complainant concludes that the Respondent has no rights or legitimate interests in any of the disputed domain names.

The Complainant contends that the Respondent has registered the disputed domain names with full knowledge of the Complainant’s trade mark and the Complainant refers to prior UDRP panel’s findings that the Complainant’s trade mark CALVIN KLEIN is well known. The Complainant submits that there is no plausible actual or contemplated active use of the disputed domain names that would not be illegitimate and constitute an infringement of the Complainant’s rights. The Complainant further argues that the disputed domain names were registered and used primarily with the intention of attempting to attract, for commercial gain, Internet users to the Respondent’s website or other online locations, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. Finally, the Complainant contends that the Respondent’s registration of the disputed domain names was solely done to prevent the Complainant from registering the disputed domain names for the purpose of selling them for valuable consideration in excess of any out-of-pocket expenses and/or in an attempt to generate financial gain by creating a likelihood of confusion with the Complainant’s trade mark.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary issue – Consolidation of 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 considers the following circumstances as convincing evidence that the disputed domain names or corresponding websites are subject to common control:

- All thirty-three disputed domain names were registered on the same day within an hour;
- All disputed domain names are registered through the same Registrar;
- All disputed domain names consist of a similar pattern namely the CALVIN KLEIN trade mark followed by terms designating a country (either the full name of the country or the corresponding ccTLD, sometimes with the addition of the letter "s" between the CALVIN KLEIN trade mark and the country name;
- All underlying registrants have a postal address in Germany but designate China as the "Registrant Country" (in the respective Whois records) and have the same naming pattern of registrants' emails "[...].@outlook.com".
- All disputed domain names are or have been used in a very similar fashion and resolves to website coming soon page.

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.

6.2. Substantive issue

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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the CALVIN KLEIN trade mark is reproduced within all disputed domain names. Accordingly, the disputed domain names are confusingly similar to the trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, terms designating a country (either the full name of the country or the corresponding ccTLD, sometimes with the addition of the letter “s” between the CALVIN KLEIN trade mark and the country name), may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [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.

Here there is no indication that the Respondent is known by any of the disputed domain names, as confirmed by the registration data disclosed by the Registrar. In addition, the absence of use of the disputed domain names and associated websites cannot qualify as either use of the disputed domain names (or demonstrable plans for such use) with a *bona fide* offering or a legitimate noncommercial fair use.

Furthermore, the nature of the respective disputed domain names, comprising the Complainant’s CALVIN KLEIN trade mark in its entirety in combination with additional terms referring to specific countries in which the Complainant deploys its activities, carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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 finds that the Respondent, at the time of registration of the disputed domain names, must have been well aware of the Complainant’s trade mark CALVIN KLEIN fully reproduced in the respective disputed domain names given (i) the significant renown of the CALVIN KLEIN trade mark as acknowledged by several previous UDRP panels, (ii) the fact that the Respondent has provided incorrect registration data for the respective disputed domain names as all registration addresses refer to locations in

Germany but the “Registrant Country” of all disputed domain names was China in the respective Whois records and the fact that the DHL notifications for all disputed domain names confirmed that the respective addresses were incorrect (“bad address”), (iii) the fact that the disputed domain names were registered relatively recently and many years after the registration of the CALVIN KLEIN trade mark and (iv) the fact that the Respondent’s efforts to target the Complainant are confirmed by the fact that the Respondent proceeded to register 33 domain names.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. Panels 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. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and significant reputation of the Complainant’s trade mark, and the composition of the disputed domain names, the absence of response from the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of 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 <calvinkleinargentina.com>, <calvinklein-australia.com>, <calvinkleinbr.com>, <calvinklein-canada.com>, <calvinkleincolombia.com>, <calvinkleincostarica.com>, <calvinklein-cz.com>, <calvinkleindanmark.com>, <calvinkleinde.com>, <calvinklein-espana.com>, <calvinkleinfr.com>, <calvinkleingreece.com>, <calvinklein-hungary.com>, <calvinklein-ireland.com>, <calvinkleinluxembourg.com>, <calvinkleinmalta.com>, <calvinklein-mexico.com>, <calvinkleinnl.com>, <calvinkleinno.com>, <calvinkleinosterreich.com>, <calvinkleinperu.com>, <calvinklein-polska.com>, <calvinkleinpt.com>, <calvinkleinschweiz.com>, <calvinkleinsg.com>, <calvinkleinsitaly.com>, <calvinkleinsk.com>, <calvinkleinslovenija.com>, <calvin-kleinsrbija.com>, <calvinkleinsturkiye.com>, <calvinkleinsuomi.com>, <calvinklein-sverige.com>, and <calvinkleinza.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: February 1, 2024