

ADMINISTRATIVE PANEL DECISION

Calvin Klein Trademark Trust, Calvin Klein, inc. v. Alison Alliano
Case No. D2024-0442

1. The Parties

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

The Respondent is Alison Alliano, Brazil.

2. The Domain Name and Registrar

The disputed domain name <promocalvinklein.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 27, 2024.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on March 11, 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 Complainant is an American corporation that is engaged in the production, sale, and licensing of men's and women's apparel, fragrances, accessories, and footwear, among other products.

Since its formation, the Complainant has used and registered several trademarks in the United States and throughout the world.

Specifically, in the United States, the Complainant has used its CALVIN KLEIN trademark since as early as 1968.

The Complainant is the owner in the United States of trademark registrations for its CALVIN KLEIN marks in connection with apparel and other merchandise.

Among other trademark registrations, the Complainant presented evidence of the following registrations at the United States Patent and Trademark Office:

CALVIN KLEIN (stylized) registration number 1,633,261 Registered January 29, 1991.

CALVIN KLEIN Reg. No. 1,086,041 Registered February 21, 1978.

The Complainant also owns a number of domain name registrations which wholly incorporate the Complainant's CALVIN KLEIN marks, including: (1) <calvinklein.com>, (2) <calvinkleinbags.com>, (3) <calvinkleinunderwear.com>, and (4) <calvinkleinfashion.com>.

The Complainant has used and continues to use its domain names in connection with its various websites, which provide information about the Complainant, its products, and services as well as offers of its products for sale.

The Complainant's use of the CALVIN KLEIN trademarks has resulted in millions of customers worldwide and billions of dollars in sales.

Additionally, the Complainant has invested a lot of resources in advertising and promoting its products under its CALVIN KLEIN trademark in a variety of media throughout the world, including print, television, and radio advertisements since the year 1968.

The Complainant has also advertised its CALVIN KLEIN marks through direct mail and on the Internet, including on the websites associated with its domain names referenced above.

The disputed domain name was registered on January 14, 2024. Although it does not currently resolve to an active website, the filed evidence shows it has been linked to a website (the "Respondent's Website") which is in substance a copy of the Complainant's website, and which allegedly offers for sale what appears to be the Complainant's products, using the same promotions as the Complainant.

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 name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark due to the fact that it incorporates the complete trademark CALVIN KLEIN with the addition of the common term "promo"; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint 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”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7

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

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

In the present case the disputed domain name includes the Complainant's trademark CALVIN KLEIN together with the term “promo”. Although the addition of other terms, here “promo”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Additionally, it is well established that the generic Top-Level Domain “gTLD” (in this case “.com”) is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights. Section 1.11.1 of the [WIPO Overview 3.0](#) states that “the applicable Top Level Domain (‘TLD’) in a domain name (e.g., “.com”, “club.”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test”.

The Panel finds that 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 any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent

has acquired no trademark or service mark rights; or page 4 (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has prior rights in the CALVIN KLEIN trademark which precede the Respondent's acquisition of the disputed domain name.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the CALVIN KLEIN trademark. Also, the Respondent is using the disputed domain name in order to sell without authorization of the Complainant products that appear to be from the Complainant, products that according to the Complainant are counterfeit goods. Moreover, there is no evidence that the Respondent is commonly known by the disputed domain name.

In the present case, the Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name. The disputed domain name has been used to resolve to a website featuring the Complainant's CALVIN KLEIN trademark in an alleged offering of the Complainant's branded-goods, which clearly does not constitute a bona fide offering given that the website fails to disclose its lack of relationship to the Complainant. [WIPO Overview 3.0](#), section 2.8. While the Complainant alleges that the offered goods are counterfeit, the Panel cannot determinate whether they are genuine or not. Nevertheless, given that the disputed domain name and website clearly seek to impersonate the Complainant, such illicit use cannot confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13, establishes that panels have held that the use of a domain name for illegal activity such as impersonation or other types of fraud can never confer rights or legitimate interests on a respondent.

The Panel finds on the record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

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 name such as those enumerated in the Policy or otherwise. There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

For all the foregoing reasons the Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name and that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds that 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.

The Panel finds that the Complainant's earliest CALVIN KLEIN trademark registration predates the creation date of the disputed domain names by at least 50 years. In addition, the Complainant has accrued substantial goodwill and recognition since the Complainant's establishment and so is fair to say that "Calvin Klein" is a very distinctive and personal name directly linked to the history of the trademark. Moreover, it has been accepted in past decisions that the selection of a domain name that is so obviously connected to a complainant's trademark strongly suggests "opportunistic bad faith" in the registration of the disputed domain

name, particularly where it is held by someone with no affiliation with the complainant, see *Singapore Airlines Ltd v. European Travel Network*, WIPO Case No. [D2000-0641](#).

Also, the Panel concludes that the Respondent chose to register the disputed domain name comprising of the Complainant's trademark combined with the word "promo" in order to facilitate a scheme where the Respondent's website impersonated that of the Complainant and allegedly offered for sale products which purported to be those of the Complainant.

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 held that the use of a domain name for illegal activity such as impersonation or other types of fraud constitutes 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 name constitutes bad faith under the Policy.

In the present case the Panel finds that the paragraph 4(b)(iv) of the Policy applies as the Respondent was seeking to achieve commercial gain by impersonating the Complainant. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The fact that the disputed domain name does not currently resolve to an active website, does not prevent a finding of bad faith.

The Panel also notes that the Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 name <promocalvinklein.com> be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: March 25, 2024