

## **ADMINISTRATIVE PANEL DECISION**

Calvin Klein Trademark Trust and Calvin Klein Inc. v. 朱人杰 (Zhu renjie)  
Case No. D2022-2591

### **1. The Parties**

The Complainants are Calvin Klein Trademark Trust (the “First Complainant”) and Calvin Klein Inc. (the “Second Complainant”), both located in the United States of America (“United States”), represented by Kestenberg Siegal Lipkus LLP, Canada.

The Respondent is 朱人杰 (Zhu renjie), China.

### **2. The Domain Name(s) and Registrar**

The disputed domain name <calvinklein.mobi> is registered with Xiamen 35.Com Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 2022, 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 Complainants filed an amended Complaint in Chinese and English on July 21, 2022.

On July 21, 2022, the Center sent an email in Chinese and English to the Parties regarding the language of the proceeding. On the same day, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 July 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 21, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on August 26, 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**

The Complainants produce, sell and license men's and women's apparel, fragrances, accessories, and footwear, among things. Their products are sold through their own retail stores, outlet stores and websites and authorized dealers. The First Complainant is the registered proprietor of trademark registrations in multiple jurisdictions, including the following:

- United States trademark registration number 1,086,041 for CALVIN KLEIN, registered on February 21, 1978, with a claim of first use in commerce in June 1968, specifying goods in class 25; and
- Chinese trademark registration number 1,681,239 for CALVIN KLEIN in a stylized script, registered on December 14, 2001, specifying goods in class 25.

The above trademark registrations remain current. The Second Complainant registered the domain name <calvinklein.com> in 1997 and uses it in connection with a website where it offers its products for sale. The Second Complainant has also registered other domain names that incorporate the element "calvinklein".

The Respondent is an individual resident in China.

The disputed domain name was registered on September 26, 2006. It does not resolve to any active website; rather, it is passively held.

#### **5. Parties' Contentions**

##### **A. Complainants**

The disputed domain name is confusingly similar to the Complainants' CALVIN KLEIN mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way. The Complainant has not authorized the Respondent to use its CALVIN KLEIN trademark or to seek the registration of any domain name incorporating that trademark.

The disputed domain name has been registered and is being used in bad faith. The Respondent is diverting the Complainant's customers or potential customers seeking information about the Complainant to an inactive website. There is no plausible actual or contemplated active use of the disputed domain name that would not be illegitimate and constitute an infringement of the Complainant's rights.

##### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## 6. Discussion and Findings

### 6.1 Procedural Issues

#### A. Consolidation: Multiple Complainants

The Complaint was filed by two Complainants against a single Respondent. The First Complainant, a trust, is the registered proprietor of the CALVIN KLEIN mark while the Second Complainant is the beneficial owner of that mark. The Second Complainant is also the holder of multiple “calvinklein” formative domain names. The Panel finds that the Complainants have a common grievance against the disputed domain name registrant and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below collectively as “the Complainant”, except as otherwise indicated.

#### B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its arguments are that the disputed domain name is in English, and the “.mobi” generic Top-Level Domain (“gTLD”) extension is derived from the English word “mobile”.

Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the amended Complaint was filed in both Chinese and English. Further, despite the Center having sent the notification of the Complaint, the written notice of the Complaint, and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of language nor expressed any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint, as amended, would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### 6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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 name has been registered and is being used in bad faith.

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

Based on the evidence presented, the Panel finds that the Complainant has rights in the CALVIN KLEIN mark.

The disputed domain name incorporates the CALVIN KLEIN mark, omitting only the space for technical reasons. Its only additional element is a gTLD extension (".mobi") but, as a standard requirement of domain name registration, the Panel will disregard that element in the comparison between the disputed domain name and the CALVIN KLEIN mark.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant submits that the Respondent is not affiliated with it in any way and that it has not authorized the Respondent to use its CALVIN KLEIN trademark.

As regards the first and third circumstances set out above, the disputed domain name is passively held. This does not constitute use in connection with a *bona fide* offering of goods or services, nor is it a legitimate noncommercial or fair use of the disputed domain name that would give rise to rights or legitimate interests in the disputed domain name for the purposes of the Policy.

As regards the second circumstance set out above, the Respondent's name is "朱人杰 (Zhu renjie)", not the disputed domain name. There is no evidence on the record that the Respondent is commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that case because he did not reply to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

As regards registration, the disputed domain name was registered in 2006, long after the registration of the Complainant's CALVIN KLEIN mark, including in China, where the Respondent is resident. The disputed domain name is an exact match of the CALVIN KLEIN mark, which is not composed of dictionary words. The mark is a personal name but it is not the Respondent's name. The Complainant has made longstanding and widespread use of the CALVIN KLEIN mark in connection with apparel, accessories, fragrances, and other goods, including online, since long before 2006. The Respondent offers no explanation for his registration of the disputed domain name. In these circumstances, the Panel considers it likely that the Respondent was aware of the Complainant and its mark at the time at which he registered the disputed domain name.

As regards use, the Respondent makes only passive use of the disputed domain name but this does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the CALVIN KLEIN mark is a famous mark. The disputed domain name is identical to the CALVIN KLEIN mark, which carries a high risk of implied affiliation yet the Respondent is not related to the Complainant at all. The Respondent offers no explanation of any actual or proposed good faith use of the disputed domain name. In these circumstances, the Panel finds that, on balance, the disputed domain name is being used in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <calvinklein.mobi> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: September 5, 2022