

## ADMINISTRATIVE PANEL DECISION

Calvin Klein Trademark Trust, Calvin Klein, Inc. v. haisong huanghaisong  
Case No. DAI2023-0017

### 1. The Parties

The First Complainant is Calvin Klein Trademark Trust and the Second Complainant is Calvin Klein, Inc. (collectively referred to as the “Complainants”), United States of America (“United States”), represented by Lipkus Law LLP, Canada.

The Respondent is haisong huanghaisong, China.

### 2. The Domain Name and Registrar

The disputed domain name <calvinklein.ai> is registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 (Privacy Service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on August 2, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on August 2, 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 August 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 1, 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 first Complainant is a business trust organized under the laws of Delaware, and is the registered owner of multiple CALVIN KLEIN trademarks. The second Complainant is the beneficial owner of said trademarks and is the servicer for the first Complainant for a variety of merchandise. Since its formation, the second Complainant has been engaged in the production, sale and licensing of men's and women's apparel, fragrances, accessories, and footwear, among other things. It has used the CALVIN KLEIN trademark in the United States since as early as 1968.

The first Complainant is the owner of United States Registered Trademark Number 1086041 for the mark CALVIN KLEIN, registered on February 21, 1978 in Class 25. The first Complainant is also the owner of China Registered Trademark Number 1681239 for the mark CALVIN KLEIN, registered on December 14, 2001 in Class 25. The Complainants' use of these registered marks, and those registered in other jurisdictions, has resulted in millions of customers worldwide and billions of dollars in sales, and the Complainants have spent millions of dollars in advertising and promoting their products under said marks, including direct mail, Internet, print, television, and radio advertisements.

The Complainants also own a number of domain name registrations incorporating the CALVIN KLEIN mark, including, for example, <calvinklein.com>, registered on June 10, 1997. The Complainants use these domain names in connection with various websites providing information about the Complainants and their services, and offering their products for sale. The Complainant's website at "www.calvinklein.com" has received hundreds of millions of visitors seeking information about the Complainants' CALVIN KLEIN products. The Complainants' products are sold exclusively through the Complainants' own retail stores and websites, and via authorized dealers, which include national specialty stores.

The disputed domain name was registered on March 8, 2023. Little is known regarding the Respondent, which has not participated in the administrative proceeding, other than that it appears to be based in China. The website associated with the disputed domain name lists what appears to be the Respondent's email and WeChat addresses, together with a lengthy "Legal and Disclaimer" notice in both the English and Chinese languages. This asserts, in part, that the disputed domain name is generic, multi-meaning, descriptive, independently privately owned, noncommercial, unaffiliated with any company or trademark, and that no goods or services are offered thereby. It states that the disputed domain name "can be: generic domain name, person name, pet, project, item, place, number, fictitious person, fictitious event". It goes on to refer the reader to the contact information "if you wish to contact us". Finally, it asserts, "Contact us and any information on the website does not constitute an offer for a domain name transfer, nor does it represent the domain name holder's intention to transfer the domain name. When you contact us, you are the sole initiator of your contact with the domain name holder".

On July 24, 2023, the Complainants delivered a cease and desist letter to the Respondent via the email address listed on the website associated with the disputed domain name. No response has been received by the Complainants.

## 5. Parties' Contentions

### A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name incorporates the Complainants' CALVIN KLEIN trademark in its entirety and carries a high risk of implied affiliation. The Complainants note that their trademark and use of the related domain name on the Internet long predate the Respondent's registration of the disputed domain name. The Complainants go on to assert that there is no affiliation between the Parties, that the Complainants did not authorize the Respondent to register the disputed domain name, and that the Respondent cannot avail itself of the factors in paragraph 4(c) of the Policy. The Complainants submit that the Respondent had knowledge of the CALVIN KLEIN trademarks due to their fame when it registered the disputed domain name, that it is impersonating the Complainant, and that it is violating paragraphs 4(b)(i) and 4(b)(iv) of the Policy. Finally, the Complainants add that the disclaimer on the Respondent's website demonstrates bad faith, since it asserts that the Respondent is not affiliated with any company, organization, or trademark, yet the Respondent has been placed on notice of the Complainants' trademark via the cease and desist notice, and the disclaimer also attempts to shift responsibility on to the person who makes an inquiry regarding the disputed domain name.

### B. Respondent

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

## 6. Discussion and Findings

### 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.

Based on the available record, the Panel finds the Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

While 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 often impossible 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.

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 record, the Panel finds the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants' *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. For example, there is no evidence (i) that the Respondent is using or has made demonstrable plans to use the disputed domain name in connection with a *bona fide* offering of goods or services, (ii) that the Respondent has been commonly known by the disputed domain name, or (iii) that the Respondent is using the disputed domain name in connection with any legitimate noncommercial or fair use. The assertion on the website associated with the disputed domain name that the disputed domain name is generic, multi-meaning, and descriptive (or indeed that it "can be" a person name, pet, project, item, place, number, fictitious person or fictitious event) is rejected for the reasons outlined in the discussion on registration and use in bad faith below.

Based on the available record, 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.

Given the fame of the Complainants' CALVIN KLEIN mark, the disputed domain name would be significantly valuable to the Complainant due to its CALVIN KLEIN mark, which is an exact match thereof in its Second-Level Domain. Even if the Panel was to consider that the disputed domain name is also a combination of a name and surname, the Respondent could not have ignored that it is identical to the CALVIN KLEIN mark. The Panel is in no doubt that the Respondent was aware of this when it registered the disputed domain name. In the Panel's mind, and in the absence of any plausible alternative explanation from the Respondent, the most probable reason why the Respondent registered the disputed domain name was for the purpose of selling it to the Complainants for valuable consideration in excess of the Respondent's directly related out-of-pocket costs in violation of paragraph 4(b)(i) of the Policy.

The Panel is fortified in this particular conclusion by the Respondent's "Legal and Disclaimer" notice on the associated website, which simultaneously invites and facilitates communications regarding a disposal of the disputed domain name while attempting to avoid any liability therefor. The opening statement of the notice is at best disingenuous and at worst deliberately misleading. It asserts that the disputed domain name is generic, multi-meaning and descriptive, and not affiliated with any company, organization or trademark. This could not be said of the disputed domain name on any view, as it is an exact match for the Complainants' well-known and globally famous trademark.

The notice goes on to suggest that if the reader makes contact with the Respondent, "[...] any information on the website does not constitute an offer for a domain name transfer, nor does it represent the domain name holder's intention to transfer the domain name". This strikes the Panel as an attempt on the Respondent's part to provide it with plausible deniability as to whether the disputed domain name is or is not being offered for sale. The Panel finds, on the contrary, that such wording demonstrates to its satisfaction that a sale of the disputed domain name was evidently in the Respondent's contemplation when it published the notice on the associated website. The only reasonable target that the Respondent could have had for such contemplated sale would be the Complainants or one of their competitors. Finally, the notice states, "When you contact us, you are the sole initiator of your contact with the domain name holder". This suggests to the Panel that the Respondent is attempting to disassociate itself from, and remove its responsibility for, any communications that it might receive regarding the disputed domain name.

In the Panel's view, the Respondent's "Legal and Disclaimer" statement cannot shield it from the thrust of the Policy, notably in this case as regards paragraph 4(b)(i) thereof. Where, as here, the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. [WIPO Overview 3.0](#), section 3.7.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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.ai> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: September 15, 2023