

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2023-4144

1. The Parties

The Complainant is CK Franchising, Inc., United States of America (“United States”), represented by Areopage, France.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <comfortkeepersc.com> (“Domain Name”) 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 October 4, 2023. On October 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC, DomainsByProxy.com), and contact information in the Complaint. The Center sent an email communication to the Complainant on October 9, 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 October 10, 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 October 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 2, 2023.

The Center appointed Tommaso La Scala as the sole panelist in this matter on November 28, 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 leading provider of quality in-home senior care, operating both in the United States, and in other 13 countries worldwide.

The Complainant is also the owner of several national and international trademark registrations - in many classes - consisting of / comprising the name COMFORT KEEPERS, including - among others - the followings:

- COMFORT KEEPERS, United States Trademark registration No. ° 2366096 filed on March 25, 1999, registered on July 11, 2000 in international class 42 and duly renewed;
- COMFORT KEEPERS (device), United States Trademark registration No. ° 2335434 filed on March 9, 1999, registered on March 28, 2000 in international class 42 and duly renewed;
- COMFORT KEEPERS, European Union ("EU") Trade mark registration No. ° 009798001 filed on March 9, 2011, and registered on August 22, 2011 in international classes 10, 38, and 44, duly renewed;
- COMFORT KEEPERS, EU Trade mark registration No. ° 004210456 filed on December 16, 2004 and registered on January 19, 2006 in international classes 39, 43, and 45, duly renewed.

The Domain Name was registered on October 2, 2023. The registrant of the Domain Name – initially covered by a proxy registration service – is Carolina Rodrigues, Fundacion Comercio Electronico, Panama. The Domain Name redirects to a parking page featuring different links connecting to competitor's websites relating to Alzheimer's homes care and retirement homes.

5. Parties' Contentions

A. Complainant

The Complainant submits that the Domain Name is confusingly similar to the Complainant's COMFORT KEEPERS trademark, as it entirely incorporates such distinctive sign with the addition of letter "c". According to the Complainant, such circumstance would demonstrate this is a typosquatting case.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not commonly known by the Domain Name, nor is it making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademarks of another.

The Domain Name resolves to a pay-per-click parking site which redirects Internet users to a variety of third-party websites, namely websites of some of the Complainant's direct competitors.

Given the above, the Complainant further states that the Domain Name has been registered and used in bad faith, considering that the Respondent surely was aware that the COMFORT KEEPERS trademark existed and was registered in many jurisdictions. According to the Complainant, the Respondent is generating pay-per-click revenues by exploiting a typosquatting website.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (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

The Complainant has established its registered rights in the COMFORT KEEPERS trademark.

The Domain Name is composed of the COMFORT KEEPERS trademark to which letter "c" is added. Such addition does not alter the consumer's perception who immediately recognize the Complainant's mark. On the contrary, it might create visual confusion resulting from the creation of the abbreviation "sc", corresponding to the Unites States, South Carolina, where the Complainant is located and this is why the Panel believes this is a case of typosquatting.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is 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.

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 Domain Name. 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 Domain Name such as those enumerated in the Policy or otherwise.

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.

In the present case, the Panel notes that the Domain Name resolves to a pay-per-click parking page, a conduct which clearly demonstrate the intention to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

The Panel notes that the trademark COMFORT KEEPERS is rather known in relation with the classes for which it has been applied for and – given its renown for those goods and services – the Panel concludes that the Respondent must have been aware of the Complainant's trademark when it registered the Domain Name consisting of an exact reproduction of the Complainant's trademark (with the addition of letter "c") and decided to direct it to a pay-per-click parking site containing the Complainant's direct competitors websites.

As for the use of the Domain Name, based on the evidence submitted the Respondent is using it in order to obtain click-through-revenue from the pay-per-click parking site and such circumstance is a clear indication of bad faith (see, among others, *Ifscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#)).

Based on the available record, 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 Domain Name <comfortkeepersc.com> be transferred to the Complainant.

/Tommaso La Scala/

Tommaso La Scala

Sole Panelist

Date: December 12, 2023