

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Privacy service provided by Withheld for Privacy ehf/
Champagne David Eugene
Case No. D2022-0088

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Champagne David Eugene, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing the name of the registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. On January 19, 2022, the Center invited the Complainant to amend the Complaint to reflect the new registrant information received from the Registrar. On January 21, 2022, the Complainant amended the Complaint to name Champagne David Eugene as Respondent.

The Center verified that the Complaint satisfied the formal requirements of the 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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2022. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent of the default on March 9, 2022.

The Center appointed Steven Auvil as the sole panelist in this matter on March 15, 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

According to the Complaint, the Complainant is a leading provider of quality in-home senior and adult care. The Complainant services thousands of seniors every day and has more than 700 offices worldwide. The Complainant operates in the United States, Canada, Australia, Brazil, China, Singapore, France, Ireland, Norway, Portugal, Scotland, and the United Kingdom. The Complainant has also been recognized as a leader in senior home care and has received numerous awards.

The Complainant owns registered service marks for the COMFORT KEEPERS brand, including *inter alia*, United States Registration No. 2366096 (Registered July 11, 2000), United States Registration No. 2335434 (Registered March 28, 2000), United States Registration No. 3172466 (Registered November 14, 2006), United States Registration No. 3172467 (Registered November 14, 2006), United States Registration No. 3258432 (Registered on July 3, 2007), European Union Trade Mark Registration No. 009798001 (Registered August 22, 2011), European Union Trade Mark Registration No. 004210456 (Registered January 19, 2006), and European Union Trade Mark Registration No. 004210481 (Registered January 19, 2006).

The Complainant also owns the domain names <comfortkeepers.com> and <comfortkeepers.org> in connection with the COMFORT KEEPERS mark.

The disputed domain name <comfortkeepers.xyz> was registered on November 25, 2021.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its COMFORT KEEPERS mark because the disputed domain name is the exact same as the COMFORT KEEPERS mark except for the generic Top-Level Domain ("gTLD") ".xyz". At the time of writing the Complaint, the disputed domain name allegedly resolved to a website used as a parking page directing Internet users to the Complainant's competitor's websites for retirement homes and home cleaning services. The disputed domain name no longer resolves to an active website and instead the web browser returns a message "Hmmm...can't reach this page ... comfortkeepers.xyz refused to connect".

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not affiliated with the Complainant and has never obtained a license from the Complainant to use the COMFORT KEEPERS mark. Additionally, the Complainant asserts that the Respondent was not commonly known by the disputed domain name prior to the Complainant's use.

The Complainant further asserts that the Respondent registered and used the disputed domain name in bad faith because the disputed domain name is composed entirely of the Complainant's known mark COMFORT KEEPERS. Additionally the Respondent is exploiting the confusion with the well-known COMFORT KEEPERS mark to attract Internet users and incite them to click on third-party commercial links for commercial gain.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "[a] Panel shall 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 directs that the Complainant must prove each of the following to obtain relief:

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

In view of the Respondent's failure to submit a Response, the Panel renders this Decision on the basis of the Complainant's undisputed allegations, pursuant to paragraphs 5(e), 14(a), and 15(a) of the Rules, and draws such inferences it considers appropriate, pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept as true allegations set forth in the Complaint, unless the evidence is clearly contradictory, and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions on the basis of the allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence.

A. Identical or Confusingly Similar

As noted above, the Complainant is the owner of several registered service marks for the COMFORT KEEPERS brand. The Panel therefore finds that the Complainant has rights in the COMFORT KEEPERS mark.

It is understood that when a disputed domain name fully incorporates a complainant's mark, the domain name will normally be considered confusingly similar to that mark. See Section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Here, the disputed domain name incorporates the Complainant's entire COMFORT KEEPERS mark followed by the gTLD ".xyz". As set forth in section 1.11 of [WIPO Overview 3.0](#), the applicable gTLD (e.g., ".com", ".site", ".info", ".shop") "is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

As such, the Panel finds that the Complainant has proven that the disputed domain name is identical or confusingly similar to the Complainant's mark. Therefore, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

From the Complainant's allegations and evidence, as well as the inferences drawn from the evidence, the Panel concludes that the COMFORT KEEPERS mark is a distinctive and well-known mark of the Complainant. The Complainant has numerous registered trademarks and has used the mark worldwide and gained thousands of customers. The Complainant did not license or otherwise authorize the Respondent's use of the COMFORT KEEPERS mark. Therefore, the Panel finds that the Complainant has made out a

prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Section 2.1 of [WIPO Overview 3.0](#) provides that “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”.

Here, the Respondent did not respond to the Complaint and thus has failed to rebut the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Respondent in fact has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Section 3.1.4 of [WIPO Overview 3.0](#) provides that “[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. Additionally, section 3.2.1 of [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion) [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (vii) other indicia generally suggesting that the respondent had somehow targeted the complainant”.

Here, as noted above, the disputed domain name incorporates the entirety of the Complainant’s registered COMFORT KEEPERS mark. Further, the disputed domain name resolved to a website that attracted and redirected Internet users to third party websites for commercial gain. The Respondent provided no rebuttal evidence suggesting that it adopted the disputed domain name or used it in good faith. Under the circumstances, the Panel finds that the Respondent knew of the Complainant’s COMFORT KEEPERS mark and of the Complainant’s websites <comfortkeepers.com> and <comfortkeepers.org> at the time of registration of the disputed domain name. The Respondent simply changed the gTLD to “.xyz” to facilitate registration for an illicit purpose. See *Enel S.p.A. v. Celso Barros*, WIPO Case No. [D2021-1170](#). Moreover, the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

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

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 <comfortkeepers.xyz> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: March 29, 2022