

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. 杨智超 (Zhichao Yang)
Case No. D2022-0290

1. The Parties

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

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <comfortkeepers.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2022, 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 in English on February 3, 2022.

On January 31, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 3, 2022, the Complainant submitted its 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 in Chinese and English of the Complaint, and the proceedings commenced on February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. The Respondent did not submit

any response. Accordingly, the Center notified the Respondent's default on March 1, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on March 7, 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 Complainant, CK Franchising, Inc., operates a franchise system under the COMFORT KEEPERS mark. It states that it is a leading provider of quality in-home senior care. The Complainant's COMFORT KEEPERS business was established in 1998 to provide in-home medical care. In 2009, Sodexo, one of the world's leading food and facilities management services companies and renowned in the health care industry, purchased the COMFORT KEEPERS business. The Complainant states that Sodexo has expanded the COMFORT KEEPERS brand to provide quality services to over 75 million customers in over 80 countries including, Canada, China, and the United Kingdom. With more than 700 offices worldwide, COMFORT KEEPERS has been named one of the fastest-growing franchise systems by INC. Magazine. The Complainant's care services include in-home care, specialized care, companionship, and providing technology solutions.

The Complainant asserts that the COMFORT KEEPERS mark has a strong reputation and is known all over the world, particularly in China where the Respondent is located.

The Complainant owns the following trade mark registrations of the COMFORT KEEPERS word mark and formative marks:

- (i) Chinese Registration No. 5979380 for COMFORT KEEPERS, registered on February 21, 2010;
- (ii) U.S. Registration No. 2366096 for COMFORT KEEPERS, registered on July 11, 2000;
- (iii) U.S. Registration No. 2335434 for  **Comfort Keepers**, registered on March 28, 2000;
- (iv) U.S. Registration No. 3172466 for I AM A COMFORT KEEPER, registered on November 14, 2006;
- (v) U.S. Registration No. 3172467 for WE ARE COMFORT KEEPERS, registered on November 14, 2006;
- (vi) U.S. Registration No. 3258432 for BE A COMFORT KEEPER, registered on July 3, 2007;
- (vii) European Union Trade Mark No. 009798001 for COMFORT KEEPERS, registered on August 22, 2011; and
- (viii) European Union Trade Mark No. 004210456 for COMFORT KEEPERS, registered on January 19, 2006.

The Complainant is the owner of the domain name <comfortkeepers.com> which connects to its official website.

The disputed domain name <comfortkeeers.com> was registered on December 27, 2021, and resolves to a parking page with third-party pay-per-click ("PPC") links. As at the time of filing of the Complainant, the parking page links displayed were "Elder Care", "Senior Care Near Me", and "Comfortkeepers".

5. Parties' Contentions

A. Complainant

The disputed domain name is nearly identical and confusingly similar to the Complainant's COMFORT KEEPERS mark. The only difference between the disputed domain name and the COMFORT KEEPERS trade mark is the omission of the letter "p" in the word "keepers". The risk of confusion or association with the COMFORT KEEPERS mark is increased as the Complainant is the owner of the domain name <comfortkeepers.com> which operates as its official website.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not in any way associated or affiliated with the Complainant nor authorized by the Complainant to use the disputed domain name. The Respondent was not commonly known by the disputed domain name prior to the Complainant's adoption and use of the COMFORT KEEPERS business name and trade mark.

The disputed domain name was registered and is being used in bad faith. The COMFORT KEEPERS mark is purely fanciful, and nobody could legitimately have chosen the term "comfort keepers" (albeit misspelt in the disputed domain name) unless it was seeking to create an association with the Complainant. The Respondent was aware of the Complainant's existence when he registered the disputed domain name which is almost identical to the term "Comfort Keepers". The Respondent therefore perfectly knew he had no rights or legitimate interests in the disputed domain name. Further, the Respondent has been named as respondent in numerous domain name disputes involving the reproduction of third-party trade marks (including the SODEXO trade mark), in which orders were made to transfer the domain names registered by the Respondent.

The Respondent is using the disputed domain name to create confusion with the Complainant's well-known COMFORT KEEPERS mark to attract Internet users and induce them to click on PPC links for commercial gain. Internet users who are legitimately seeking the Complainant could be exposed to PPC links which not only confuses consumers but also dilutes the COMFORT KEEPERS mark. The Respondent's registration and use of the disputed domain name can harm the Complainant's business goodwill and confuses potential and existing customers of the Complainant and interferes with the Complainant's business by frustrating attempts by Internet users seeking the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) the disputed domain name is registered in Latin script, rather than Chinese characters;
- (ii) the webpage to which the disputed domain name resolves is in the English language and not in Chinese; and
- (iii) the Complainant would have to incur substantial expenses for Chinese translations to be prepared.

The Respondent did not comment on the 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 Panel agrees with the Complainant’s submission that the spirit of paragraph 11 is to ensure fairness in the selection of the language by giving full consideration to the parties’ comfort level with each language, the expenses to be incurred, and the possibility of delay in the proceeding if translations are required. Having considered the relevant factors and interests of the respective parties, as well as to ensure that the proceeding takes place in an expedient manner, the Panel determines that it would be appropriate for English to be the language of the proceeding. The Panel agrees that the Respondent appears to be familiar and comfortable with the English language, taking into account his selection of the disputed domain name which comprises letters of the English alphabet and what appears to be a deliberate misspelling of the term “comfort keepers”. In the absence of an objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the COMFORT KEEPERS mark. The Panel agrees that the omission of the letter “p” in the word “keepers” does not prevent a finding of confusing similarity with the Complainant’s trade mark. This case appears to be a deliberate typosquatting of the Complainant’s well-established COMFORT KEEPERS trade mark. Further, the generic Top-Level Domain (“gTLD”) “.com” is a technical requirement for domain name registrations and not relevant to the issue of the identity or confusing similarity between the disputed domain name and the Complainant’s trade mark in this case.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant’s registrations of the COMFORT KEEPERS trade mark and first use of the mark long predate the registration date of the disputed domain name. The Complainant did not license nor authorize the Respondent to use the COMFORT KEEPERS mark as a trade mark or in a domain name. Neither is there evidence that the Respondent is commonly known by the name “comfort keepers”. The use of the disputed domain name which incorporates a misspelling of the Complainant’s COMFORT KEEPERS mark for a website containing PPC links to competing websites and which explicitly refers to the Complainant’s trade mark and services, does not constitute a legitimate noncommercial or fair use of the disputed domain name.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that he has rights or legitimate interests in the disputed domain name. The Respondent failed to respond to or rebut the Complainant’s assertions in this proceeding. The Panel draws an adverse inference from this and the fact that the Respondent appears to be an active cybersquatter, as the evidence shows that he has been involved as a respondent in numerous UDRP cases filed by brand owners.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

As the disputed domain name comprises an intentional misspelling of the Complainant's well-established COMFORT KEEPERS mark, the Panel is persuaded that the Respondent has sought to typosquat on the Complainant's trade mark and that the Respondent selected the disputed domain name with the Complainant and its COMFORT KEEPERS trade mark in mind. 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 trade mark by an unaffiliated entity can by itself create a presumption of bad faith" (see section 3.1.4 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions](#), Third Edition). In addition, the Panel notes the Respondent's pattern of trade mark-abusive domain name registrations, as discussed above, and finds it most likely in the present circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's COMFORT KEEPERS trade mark.

In the absence of any evidence to the contrary, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been 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.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: March 21, 2022