

## **ADMINISTRATIVE PANEL DECISION**

### **CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2022-0751**

#### **1. The Parties**

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

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

#### **2. The Domain Name and Registrar**

The Disputed Domain Name <comfotkeepers.com> 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 March 3, 2022, against Domains By Proxy, LLC. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 5, 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 March 7, 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 on March 12, 2022. Hereafter references to the Complaint are to that amended Complaint and the Panel has determined that the named Respondent is the correct respondent being the person and organization whose details were revealed by the proxy service which remains the named registrant.

The Center verified that the 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 March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2022.

The Center appointed Philip N. Argy as the sole panelist in this matter on April 28, 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.

All other administrative requirements appear to have been satisfied.

#### **4. Factual Background**

In the absence of a Response the following facts, taken from the Complaint, remain uncontested.

The Complainant, which provides in-home care for seniors and adults who need assistance at home, is registrant of the domain name <comfortkeepers.com> which resolves to its official homepage at "www.comfortkeepers.com".

It is also the owner of 30 registered trademarks in 13 different countries around the world all of which comprise or at least include COMFORT KEEPERS. Its earliest registration for that word mark was filed on March 25, 1999 in international class 42 (United States of America trademark registration number 2366096) and has been duly renewed subsequently.

According to the Whois record the Disputed Domain Name was first registered on January 18, 2022 for a period of one year. As noted above the named registrant is a proxy service but that service is simply an agent for the underlying true registrant which the Panel has determined should be the named Respondent in these proceedings.

The Disputed Domain Name resolves to a webpage infected with a known virus (HTML:TechScam-AZ) known to be utilized for malicious purposes.

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

##### **A. Complainant**

The Complaint is based on the three grounds set out in the Policy, namely, that the Disputed Domain Name is identical or confusingly similar to COMFORT KEEPERS being a trademark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and that the Disputed Domain Name was registered and is being used in bad faith.

In support of the first ground the Complainant relies upon its 30 registered trademarks referred to above as well as its use-based reputation globally to found its rights in COMFORT KEEPERS, and on the fact that merely omitting the first "R" from the Complainant's mark to form the Disputed Domain Name cannot dispel the confusing similarity between the two.

The Complainant also notes that the risk of confusion or association with its trademarks is increased because of the similarity between the Disputed Domain Name and the domain name <comfortkeepers.com> which resolves to its official website.

In support of the second ground the Complainant notes that the Disputed Domain Name is registered in the name of a privacy service and that the Respondent has no rights in COMFORT KEEPERS as a corporate name, tradename, shop sign, a trademark, or a domain name either predating the Complainant's first use of the mark or otherwise. The Respondent was not commonly known by the Disputed Domain Name nor by any variant of the Complainant's trademark. Nor does the Respondent have any affiliation, association, sponsorship or connection with the Complainant and has not been authorised, licensed or otherwise permitted by the Complainant or any affiliated entity to register the Disputed Domain name nor to use it.

In support of the third ground the Complainant makes a number of points:

1 – its COMFORT KEEPERS trademark is purely fanciful and nobody could legitimately choose those words or any variation thereof unless seeking to create an association with the Complainant;

2 – the Respondent knew or must have known of the Complainant's mark when it registered the Disputed Domain Name because it is almost identical to the Complainant's domain name and trademarks. This indicates that the Respondent knew perfectly well that it had no rights or legitimate interests in the Disputed Domain Name and that it could not lawfully use it. The Respondent plainly not only knows of the Complainant's trademark but wants to benefit from its reputation, must have had actual knowledge of the Complainant's rights in the trademark and must be taken to have intended to create confusion with the Complainant's mark to divert or mislead third parties for the Respondent's illegitimate profit;

3 – previous UDRP panels have held that the use of a domain name for spreading malware or a virus amounts to registration and use in bad faith<sup>1</sup>. Such use also tarnishes the distinctiveness and reputation of the Complainant's marks and demonstrates the Respondent's bad faith.

4 – Internet users who have a legitimate interest in reaching the Complainant's website could have been exposed to the malicious website to which the Disputed Domain Name resolves. This is not only confusing and disturbing for consumers but also dilutes the Complainant's trademark.

5 – the unauthorized use and registration of the Disputed Domain Name by the Respondent to attract and redirect Internet users to a malicious website is necessarily for the purpose of harming and/or achieving commercial gain and this constitutes bad faith registration and use.

## **B. Respondent**

The Respondent did not file any Response nor otherwise respond to the Complainant's contentions or the Center's communications.

## **6. Discussion and Findings**

Despite the absence of a Response the onus remains on the Complainant to make out each of the Grounds of the Policy and these are dealt with sequentially below.

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

The evidence is quite conclusive that the Complainant is the registered proprietor of 30 trademarks around the world which comprise or include the words COMFORT KEEPERS. It plainly has rights in those words as

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<sup>1</sup> For example:

*Andrey Ternovskiy dba Chatroulette v. Transfer Service, Sedo.com, LLC*, WIPO Case No. [D2018-2510](#) : "In the Panel's opinion, the fact that the website operated under the disputed domain name has in the past been used in connection with an attempt to infect internet users' computers with viruses or malware, giving rise to a legitimate concern on the part of the Complainant that future use of the disputed domain name could result in serious economic damage to the Complainant's reputation. From the early days of the UDRP, it has been consistently recognized that the mere fact that a disputed domain name is not being currently used is insufficient to avoid a finding of use in bad faith. In the Panel's opinion, the circumstances of the present case as described above amply justify a finding of use in bad faith, and the Panel so finds".

*Royal Bank of Canada v. China Capital Investment Limited*, WIPO Case No. [D2017-1025](#): "Since the Domain Name comprises the trademark RBC BANK, and in light of the notoriety of the Complainant, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Marks in mind when it registered the Domain Name. The Respondent has variously used the Domain Name to promulgate computer malware and for pay-per-click links to third party websites, including links that falsely refer to the Complainant. In the Panel's view, the legitimate inference is that the Respondent undertook such activity with a view to commercial gain. Accordingly, the Panel considers that this amounts to paradigm bad faith registration and use for the purposes of the Policy".

a trademark. Furthermore, the mere omission of the first “R” does not prevent a finding of confusing similarity between the Complainant’s trademark and the Disputed Domain Name. Indeed that omission constitutes classic typosquatting.

The Panel finds that ground one has been made out to its satisfaction.

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

The extensive evidence submitted by the Complainant in relation to its use of the COMFORT KEEPERS trademark around the world as well as its use of “www.comfortkeepers.com” to point to its official website makes it difficult to envisage how the Respondent could have any rights or legitimate interests in respect of the Disputed Domain Name. In the absence of a Response the Panel accepts the Complainant’s submissions and is comfortably satisfied that the Respondent has no such rights or legitimate interests.

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

Similarly, the Panel is compelled to accept the Complainant’s submissions in relation to this limb of the Policy given the apparently malicious intent of the website to which the Disputed Domain Name resolves and the fact that the mere misspelling of what is otherwise an invented trademark is strong evidence that the Respondent well knew of the Complainant and its trademarks and its reputation and the nature of its business before it proceeded to register and use the Disputed Domain Name.

The Complainant has accordingly made out this ground of the Complaint to the Panel’s satisfaction.

## **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, <comfotkeepers.com>, be transferred to the Complainant.

*/Philip N. Argy/*

**Philip N. Argy**

Sole Panelist

Date: May 12, 2022