

## **ADMINISTRATIVE PANEL DECISION**

**CK Franchising, Inc. v. Domains By Proxy, LLC, DomainsByProxy.com / Dorothy Felix, Health care services**  
**Case No. D2022-1729**

### **1. The Parties**

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

The Respondent is Domains By Proxy, LLC, DomainsByProxy.com, United States / Dorothy Felix, Health care services, United States.

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

The disputed domain name <comfortkeepershomecareservice.com> (the “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 May 11, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 16, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 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 May 17, 2022.

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 May 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022.

The Center appointed Martin Schwimmer as the sole panelist in this matter on June 29, 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 was founded in 1998 by a home health aide to provide in-home medical care. It owns a family of COMFORT KEEPERS trademarks (the "Marks") in relation to the provision of in-home care for seniors and adults. The Complainant operates a website at "www.comfortkeepers.com".

The Complainant provides quality of life services to over 75 million consumers in over 80 countries each day. The Complainant's franchise system comprises a large, global network offering the following care services:

- In-Home Care: in-home care to help seniors live independently at home.- Specialized Care: Alzheimer's and dementia home care, end-of-life care, in-facility care (full range of care services to meet the needs of each client and family), private nursing.
- Personal care: preserving seniors' self-esteem by helping them maintain personal hygiene.
- Companionship: personally engaging with seniors.
- Nutrition: preparing meals for senior clients that provide the nutrients and energy needed to prevent illness and maintain health.
- Special assistance: meeting the needs of senior clients who have chronic health conditions, such as Alzheimer's disease, other dementia-related conditions, diabetes, heart disease and Parkinson's disease.
- Technology solutions: providing electronic devices that promote the safety and well-being of seniors between visits by caregivers.

The Complainant is recognized as a leader in senior home care and has received the following awards:

- Extraordinary Achievement, Franchise Satisfaction (Franchise Research Institute): 2008 – 2018
- #1 in Senior Care, Top 500 Franchises (Entrepreneur): 2015
- Circle of Excellence, National Business Research Institute (NBRI), 2018
- Endorsed National Provider by Home Care Pulse, 2016
- COMFORT KEEPERS is first on the list of Newsweek's "AMERICA'S BEST CUSTOMER SERVICE 2020" for the category "home-care services for seniors and disabled".

The Complainant has submitted evidence that the COMFORT KEEPERS marks are registered in many countries, including the following registered marks:

- COMFORT KEEPERS, European Union registration n° 009798001, registered on August 22, 2011, in international classes 10, 38 and 44;
- COMFORT KEEPERS, European Union registration n° 004210456, registered on January 19, 2006, in international classes 39, 43 and 45;
- COMFORT KEEPERS with logo, European Union registration n° 004210481, registered on January 19, 2006, in international classes 39, 43 and 45;
- COMFORT KEEPERS, United States registration n° 2366096, registered on July 11, 2000, in international class 42;
- COMFORT KEEPERS with logo, United States registration n° 2335434, registered on March 28, 2000, in international class 42;

- I AM A COMFORT KEEPER, United States registration n° 3172466, registered on November 14, 2006, in international class 45;
- WE ARE COMFORT KEEPERS, United States registration n° 3172467, registered on November 14, 2006, in international class 45;
- BE A COMFORT KEEPER, United States registration n° 3258432, registered on July 3, 2007, in international class 45.

The Disputed Domain Name was registered on April 18, 2022. The Domain Name resolves to a parking page displaying keyword ads for, among other services, home care services.

## 5. Parties' Contentions

### A. Complainant

The Complainant states that its "COMFORT KEEPERS" mark has a strong reputation and is known all over the world.

The Disputed Domain Name is composed of the mark "COMFORT KEEPERS" and the descriptive term "home care service." The addition of the descriptive term does not distinguish the Domain Name from the Complainant's Marks, and in fact increases the possibility of association with the Complainant, as the additional term describes the Complainant's services.

The Complainant fears that the Domain Name may be used for fraudulent purposes, such as email scam sent to its clients requesting payment of false invoices on fake "COMFORT KEEPERS" bank accounts. The Complainant explains that is why it decided to file the present Complaint.

The Complainant has prevailed in a previous UDRP proceeding against this respondent, *CK Franchising, Inc. v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Dorothy Felix, Comfort Keepers Home Care Services LLC*, WIPO Case No. [D2021-2820](#) for <comfortkeeperseventplanningandtalentrep.art>.

The Complainant states that the Respondent has no rights nor legitimate interests in the Domain Name as she has no rights in COMFORT KEEPERS as a corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant's rights in its COMFORT KEEPERS marks. The Respondent was not commonly known by the Domain Name prior to the Complainant's adoption and use of the business name and mark, "COMFORT KEEPERS". Moreover, the Respondent does not have any affiliation, association, sponsorship or connection with Complainant, and has not been authorized, licensed or otherwise permitted by Complainant or by any subsidiary or affiliated company to register the Domain Name and use it.

The Complainant states the Domain Name incorporates the Complainant's known mark "COMFORT KEEPERS", which is a purely fanciful mark. The Complainant asserts that nobody could legitimately choose this word or any variation thereof, unless seeking to create an association with the Complainant.

Previous decisions issued under the UDRP already recognize that actual knowledge of a complainant's trademarks and activities at the time of the registration of the disputed domain names may be considered an inference of bad faith. The Complainant claims that the Respondent not only knows the "COMFORT KEEPERS" marks but wants to benefit from its reputation. It is obvious that the Respondent registered the Domain Name with actual knowledge of the Complainant's rights in the "COMFORT KEEPERS" marks and business name very likely for the purpose of creating confusion with the Complainant's marks to divert or mislead third parties for the Respondent's illegitimate profit.

The Complainant states that even if the Domain Name does not presently have any active content, a passive holding of a domain name does not prevent a finding of bad faith. Panels have among others taken into consideration:

- the strong reputation and well-known character of the Complainant's mark;
- the lack of evidence provided by the Respondent of any good faith use with regard to the Domain Name; and
- the identity of the Domain Name with the Complainant's name and mark intended to divert or mislead potential web users from the Complainant's website they are actually trying to visit.

The Complainant asserts that these circumstances apply to the present case. Moreover, bad faith use may also result from the threat of an abusive use of the Domain Name by the Respondent. The presence of the Domain Name in the hands of the Respondent represents an abusive threat hanging over the head of Complainant (*i.e.*, an abuse capable of being triggered by the Respondent at any time) and therefore a continuing abusive use. The Complainant states the unauthorized registration of the Domain Name by the Respondent and its passive holding, likely in the aim of fraudulent uses, are for the purpose of commercial gain and constitute bad faith registration and use.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated it has well-established rights and significant reputation in its COMFORT KEEPERS marks, through the ownership of its various registrations, such as U.S. Trademark Registration no. 2366096. Furthermore, the Complainant demonstrates its use of the "COMFORT KEEPERS" trademark at its website "www.comfortkeepers.com".

The Domain Name incorporates the "COMFORT KEEPERS" mark in its entirety, along with the phrase "home care service" which describes the Complainant's services.

Numerous UDRP decisions have found that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also section 1.7 of the [WIPO Overview 3.0](#), which states, "where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

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

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#), states, "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".

The Complainant asserts that it has not authorized the Respondent to use the “COMFORT KEEPERS” trademark; that the Respondent is not commonly known by the Domain Name; that the Respondent has not used the Domain Name for a legitimate noncommercial or fair use; nor used it in connection with a *bona fide* offering of goods or services.

Instead, the Domain Name resolves to a parking page, which page displayed advertisements for services, some of which were competitive with those of the Complainant.

The Respondent has not responded. The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name, which case has not been rebutted by the Respondent. Therefore, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. [WIPO Overview 3.0](#), section 3.1, states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

Here, the Respondent has registered this Domain Name, <comfortkeepershomecareservice.com>, as well as the nearly identical Domain Name <comfortkeeperseventplanningandtalentrep.art>, which was the subject of a prior decision) which resulted in the transfer of the Domain Name to the Complainant (the “Prior Proceeding”) (see *supra*).

The Respondent had communicated with the Center in the Prior Proceeding, thus removing any question as to whether she had received the complaint in this present proceeding. The decision was issued November 24, 2021.

The Domain Name here was registered on April 18, 2022, some five months after the decision in the Prior Proceeding. Accordingly, it is indisputable that the Respondent registered the Domain Name with actual notice of the Complainant’s rights in its “COMFORT KEEPERS” trademark, and with actual notice that her registration of a domain name reflecting the Complainant’s “COMFORT KEEPERS” trademark was deemed to have been in bad faith.

A pattern of abuse can be found where the respondent registers, simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinctive marks of individual brand owners. [WIPO Overview 3.0](#), Section 3.1. See, e.g., *Autodesk, Inc. v. Bayram Fatih Aksoy*, WIPO Case No. [D2016-2000](#) (disputed domain name transferred after respondent registered names reflecting three variations of the complainant’s AUTOCAD trademark). In the absence of any response explaining this new registration, the Panel concludes that the Respondent targeted the Complainant and its “COMFORT KEEPERS” mark when registering the Domain Name.

Additionally, other elements present in this dispute were also present in the Prior Proceeding, including the direction of the Domain Name to a parking site, and the use of a privacy service. Those elements were cited by the Panel in the Prior Proceeding to find that the Respondent had acted in bad faith, and this Panel notes these elements as well.

In conclusion, the Panel determines that, for all of the above reasons, the Domain Name was registered and is being used in bad faith. Accordingly, the Complainant has satisfied 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 <comfortkeepershomecareservice.com> be transferred to the Complainant.

*/Martin Schwimmer/*

**Martin Schwimmer**

Sole Panelist

Date: July 17, 2022