

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-2217

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <nwmontanacomfortkeepers.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 June 17, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 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 the same date, 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 June 23, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 8, 2022.

The Center appointed Alfred Meijboom as the sole panelist in this matter on August 16, 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 as a franchise organization in 1998 and provides in-home senior care services of different kinds in the United States and currently 12 other countries. In 2009, the Complainant was acquired by Sodexo, which is one of the world's leading food and facilities management services companies and a global leader in the health care and seniors markets. The Complainant has been recognized as a leader in senior home care and has received different awards. The Complainant owns a number of registrations for trademarks consisting, in whole or in part, of the term COMFORT KEEPERS, including the following trademarks for the term COMFORT KEEPERS:

- United States trademark registration with number 2366096 of July 11, 2000 for services in class 42; and
- European Union Trade Mark registration with number 004210456 of January 19, 2006 for services in classes 39, 43, and 45;

as well as a number of other national trademark registrations of the word mark COMFORT KEEPERS.

The disputed domain name was registered on June 10, 2022 and reverts to a parking page featuring links relating to home care services and health services connecting to third-party websites.

5. Parties' Contentions

A. Complainant

According to the Complainant the disputed domain name wholly reproduces the mark COMFORT KEEPERS with the addition of "nwmontana", which is the name of the region of Northwest Montana in the United States; in the disputed domain name, the COMFORT KEEPERS mark keeps its individuality and is clearly perceived by consumers as the predominant part of the disputed domain name. The Complainant alleges that the element "nwmontana" actually contributes to reinforce a risk of confusion with the mark COMFORT KEEPERS especially because the Complainant is, among others, located in the northwestern Montana town of Kalispell.

According to the Complainant's knowledge, the Respondent has no rights or legitimate interests in the disputed domain name as it has no rights in "Comfort Keepers" as corporate name, trade name, shop sign, mark or domain name that predates the Complainant's COMFORT KEEPERS mark, and the Respondent has not been authorized, licensed or otherwise permitted by the Complainant or by any subsidiary or affiliated company to register and use the disputed domain name.

The Complainant asserts that the COMFORT KEEPERS mark is purely fanciful and nobody could legitimately choose this word or any variation thereof, especially in association with the geographic reference to northwestern Montana where the Complainant is also located, unless seeking to create an association with the Complainant. Consequently, the Respondent was aware of the COMFORT KEEPERS marks when she registered the disputed domain name, and knew that she lacked rights or legitimate interests in the disputed domain name and that she could not lawfully use the disputed domain name. The Respondent has been involved in numerous domain name disputes which found that she had violated the Policy by registering and using third parties' trademarks as domain names, including a number of domain names incorporating the Complainant's parent company's SODEXO mark, including but not limited to *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-3132](#); *Sodexo v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio*

Electronico, WIPO Case No. [D2020-0310](#); *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1580](#); and *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-1735](#). According to the Complainant, the Respondent is using the disputed domain name by exploiting the confusion with the mark COMFORT KEEPERS to attract Internet users and to incite them to click on third-party commercial links of services which directly compete with the Complainant's activity, which is an intentional attempt to attract, for commercial gain, Internet users to third parties' competing websites by creating a likelihood of confusion with the Complainant's mark. The Complainant alleges that the Respondent's use of the disputed domain name in bad faith may also result from the threat of an abusive use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the Respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences, as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark COMFORT KEEPERS.

It is well established that the Top-Level Domain may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy. The disputed domain name incorporates the Complainant's mark COMFORT KEEPERS in its entirety in addition to the term "nwmontana". This does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark COMFORT KEEPERS. See, [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Consequently, the Panel finds that the Complainant has satisfied the first requirement of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel takes note of the Complainant's various allegations and more specifically that the Respondent is not commonly known under the name "Comfort Keepers" or the disputed domain name, and was not given authorization by the Complainant to use the Complainant's mark COMFORT KEEPERS as part of the disputed domain name. These allegations of the Complainant remain unchallenged.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation, noting the whole incorporation of the Complainant's COMFORT KEEPERS mark with the added geographical term "nwmontana", which is likely a reference to the northwestern Montana region in the United States, where the Complainant's subsidiary is operating. See [WIPO Overview 3.0](#), section 2.5.1. The use of the disputed domain name to host a parked page comprising pay-per-click ("PPC") links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark, see [WIPO Overview 3.0](#), section 2.9.

There is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have had the Complainant's mark COMFORT KEEPERS in mind when she registered the disputed domain name, as the Complainant secured registration for the mark COMFORT KEEPERS more than 20 years before the registration of the disputed domain name. Further, numerous UDRP cases show that the Respondent displayed a pattern of conduct of registering domain names which include third parties' trademarks, including at least 12 registrations of domain names which incorporate the SODEXO mark, of the Complainant's parent company, from which the Panel infers that it is likely the Respondent is familiar with the Complainant and its affiliated companies. The Respondent must therefore have been aware of the Complainant's mark COMFORT KEEPERS when she registered the disputed domain name, which registration was consequently made in bad faith.

With respect to the Respondent's alleged use of the disputed domain name in bad faith, the Panel concludes that the Respondent has attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's COMFORT KEEPERS trademark through displaying third-party PPC links of services competing with the Complainant's area of business on the website to which the disputed domain name resolves. Furthermore, the Complainant had submitted compelling evidence, reinforced by the Panel's own finding of many more decisions against the Respondent in cases under the Policy, demonstrating that the Respondent has been involved in a pattern of conduct of registering trademark-abusive domain names. Other panels have accordingly decided it to be an "undeniable fact that Respondent is a serial cybersquatter" (*The Commissioners for HM Revenue and Customs v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-2068](#)), "it is apparent that the Respondent is a serial cybersquatter that registers domain names comprising well-known trademarks, for no proper purpose but to profit from such conduct" (*Universal Services of America, LP d/b/a Allied Universal v. Privacy service provided by Withheld for Privacy ehf / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-0789](#)), and "the Respondent is just the sort of cyber-squatter that the Policy was designed to foil" (*Gilead Sciences, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-0761](#)). This Panel agrees with all of these observations.

Consequently, the Panel finds that the Complainant has also satisfied the third requirement of paragraph 4(a) 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 disputed domain name <nwmontanacomfortkeepers.com> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: August 30, 2022