

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Michael Richards, Westwood Insurance Group Case No. D2022-3208

1. The Parties

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

The Respondent is Michael Richards, Westwood Insurance Group, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on August 30, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 31, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

Upon request from the Complainant, the proceedings were suspended on September 5, 2022, for purposes of settlement discussions concerning the disputed domain name. Also upon request from the Complainant, the proceedings were reinstated on September 16, 2022.

The Complainant filed an amended Complaint on September 15, 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 October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on October 31, 2022.

The Center appointed Anne Gundelfinger as the sole panelist in this matter on November 9, 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 is a leading provider of in-home senior care that operates as a franchise under the mark COMFORT KEEPERS (“Complainant’s Mark” or “Mark”). It was founded in the United States in 1998 and was acquired in 2009 by Sodexo, a leading global provider of food and facilities management services. The Complainant operates throughout the United States and in a number of countries around the world across the Americas, Europe, and Asia, with over 700 offices worldwide. It has been named one of the fastest growing franchise systems by INC. magazine and has been recognized with a number of industry awards including Franchise Business Review’s Franchise Satisfaction Award for Extraordinary Achievement (2008-2018), Entrepreneur magazine’s Top 500 Franchises #1 in Senior Care (2015), and the National Business Research Institute’s Circle of Excellence (2018).

The Complainant uses the domain name <comfortkeepers.com> for its corporate website and owns a number of trademark registrations in jurisdictions around the world for various COMFORT KEEPER based marks including the following:

- COMFORT KEEPERS, United States Reg. No. 2366096 in International Class 42, registered July 11, 2000;
- COMFORT KEEPERS, European Union Reg. No. 004210456 in International Classes 39, 43, and 45, registered January 19, 2006; and
- COMFORT KEEPERS, European Union Reg. No. 009798001 in International Classes 10, 38, and 44, registered August 22, 2011.

The Respondent is Michael Richards, director of Westwood Insurance Group, located in the United States. According to its website, the Respondent is an insurance broker focused on insurance products for health care services providers including *inter alia* physicians and other medical professionals, hospitals, nursing care facilities, independent living and residential care providers, and adult day care providers.

The Respondent registered the disputed domain name <comfortkeepers.insure> on August 11, 2022. At the time of the filing of the Complaint, the disputed domain name did not resolve to an active website. At the time of the drafting of this decision, the disputed domain name resolved to an active webpage featuring numerous pay-per-click (PPC) links relating to home health care. Among these links is one reading “Comfort Keepers Home Care” which leads to advertisements for various in-home caregiving services including both the Complainant and competitors of the Complainant.

After the filing of the Complaint in this proceeding, the Complainant suspended the proceeding for the purposes of settlement discussions with the Respondent. We do not know what occurred in those discussions (or indeed whether discussions in fact occurred) other than the matter was not amicably resolved and the Complainant then filed an amended Complaint identifying the Respondent (whose identity had previously been cloaked) and requested reinstatement of these proceedings.

It should be noted at this point that the Complainant did not update its submitted evidence after learning the identity of the Respondent and engaging in settlement talks. The Complainant submitted no evidence regarding the Respondent or its line of business. Accordingly, in the interests of reaching a fair and informed result, the Panel performed limited independent research, as permitted by paragraph 10 of the UDRP Rules. See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and cases cited therein. Specifically, during the period from November 10 to November 21, 2022, the Panel checked and re-checked the content hosted under the disputed domain name and visited the Respondent's website at <westwoodinsurancegroup.com>, all in order to better assess the circumstances surrounding the Respondent's registration and use of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-established and widely registered COMFORT KEEPERS Mark because the disputed domain name is identical to the Mark, and identical to the Complainant's corporate domain name with the exception that the disputed domain name is registered in the ".insure" generic Top-Level Domain ("gTLD").

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name and asserts that the Complainant has given no authorization or license for use of the disputed domain name and that the Respondent is not commonly known by the disputed domain name.

Finally, the Complainant contends the disputed domain name has been registered and used in bad faith arguing that its Mark is "purely fanciful and nobody could legitimately choose this word or any variation thereof unless seeking to create an association with the Complainant". The Complainant further argues that the Respondent's passive holding of the disputed domain name is not an obstacle to a finding of bad faith and that it is concerned that the Respondent may use the disputed domain name for some sort of fraudulent email scam.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements to be successful in this action: (i) the disputed domain name is identical or confusingly similar to trademarks or service marks in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name is identical letter-for-letter to the Complainant's long-used and well-established COMFORT KEEPERS Mark. The addition of the gTLD ".insure" is a standard registration requirement and as such is generally disregarded in the confusing similarity analysis. See, section 1.11.1 of the [WIPO Overview 3.0](#) and cases cited therein.

Accordingly, the Panel agrees that the disputed domain name is confusingly similar to the Complainant's Mark, and that the first element of the test is satisfied.

B. Rights or Legitimate Interests

It is well established that a complainant must present a *prima facie* case in relation to the second element of the Policy, not mere allegations. Once a *prima facie* showing is made, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the disputed domain name. This burden-shifting is appropriate given that the respondent is often the only party with access to evidence of its own rights or legitimate interests. Accordingly, where a respondent fails to file a response, a UDRP panel may draw inferences from the failure to respond as appropriate under the circumstances of the case and while still weighing all available evidence irrespective of whether a response is filed. See, section 2.1 of the [WIPO Overview 3.0](#) and cases cited therein. See also, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Complainant has asserted that it has no connection or affiliation with the Respondent and has given no authorization for the Respondent's use of the disputed domain name. Moreover, it is difficult to imagine a scenario in which the Respondent could have made a use of the disputed domain name that was nominative and fair, and in the absence of any explanation by the Respondent of its intended use, there is no evidence to support a conclusion of fair use.

Finally, while the disputed domain name resolved only to an error page at the time of the Complaint, the Panel has checked the website several times over the course of drafting this decision and it has consistently resolved to an active webpage featuring numerous PPC links relating to home health care. Among these links is one reading "Comfort Keepers Home Care" which leads to advertisements for various in-home caregiving services including both the Complainant and competitors of the Complainant.

It is the consensus view that such a PPC use is neither a fair use nor a *bona fide* offering of goods or services under the Policy and therefore does not establish rights or legitimate interests. See *e.g.*, *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#). See also section 2.9 of the [WIPO Overview 3.0](#) and cases cited therein. Moreover, in this case, the Respondent uses the Complainant's COMFORT KEEPERS Mark in the text of the PPC links, which lead to ads for senior care and home care providers that are competitors of the Complainant. Such a deceptive use of the Complainant's mark does not form the basis for a finding of legitimate interest. See section 2.9 of the [WIPO Overview 3.0](#) and cases cited therein.

In the absence of countervailing evidence from the Respondent, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element of the test is satisfied.

C. Registered and Used in Bad Faith

As noted above, in support of its claim of bad faith registration, the Complainant argues that its Mark is "purely fanciful and nobody could legitimately choose this word or any variation thereof unless seeking to create an association with the Complainant". In support of this proposition, the Complainant cites prior UDRP cases holding that a respondent's knowledge of a complainant's mark may be inferred where the mark is extremely "well-known" or "famous".

However, the Panel cannot agree that the COMFORT KEEPERS Mark is "purely fanciful", as it is made up of common English words. That said, the Mark is long established and widely known in the healthcare industry, and while not "fanciful" the Mark is certainly an unusual construction not found in normal English speech, making it clearly distinctive. It is therefore difficult to imagine that the Respondent did not know of the Mark, given the prominence of the Complainant in the healthcare industry, and given that the Respondent's business is to provide insurance to all manner of healthcare providers, including providers such as the Complainant. Accordingly, in the absence of any explanation from the Respondent, the Panel concludes that the Respondent must have known of, and targeted, the Complainant's Mark in registering the disputed domain name.

Turning to bad faith use, the Complainant argues that the Respondent's passive holding of the disputed domain name is not an obstacle to a finding of bad faith and further asserts – without providing supporting evidence – that the Respondent's passive holding is “likely in the aim of fraudulent uses”.

On the limited evidence available here, the Panel is not willing to speculate that fraudulent use of the disputed domain name is likely. However, the Panel agrees that other UDRP panels have found passive holding would not prevent a finding of bad faith, where – as here – a complainant's mark is distinctive and well-established and the domain name is identical to such mark, where the respondent attempted to conceal its identity with a privacy service, and where the respondent has failed to provide any explanation for the registration. See section 3.3 of the [WIPO Overview 3.0](#) and cases cited therein.

In this case, however, we do not need to reach the question of passive holding because, at some point since the filing of the Complaint, the Respondent began hosting PPC links under the disputed domain name, thereby using the disputed domain name to drive traffic for commercial gain to the Respondent's website by creating a likelihood of confusion with the Complainant's Mark. Moreover, as previously noted, the Respondent's PPC links are misleading in that they use the Complainant's Mark to link users to ads for competitors of the Complainant. For these reasons, the Panel concludes that the disputed domain name has been used in bad faith. See, paragraph 4(b)(iv) of the UDRP; sections 3.1 and 3.1.4 of the [WIPO Overview 3.0](#); *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service*, WIPO Case No. [D2011-1753](#).

Accordingly, the Panel concludes that the disputed domain name has been registered and used in bad faith, and that the third element of the test 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.insure> be transferred to the Complainant.

/Anne Gundelfinger/

Anne Gundelfinger

Sole Panelist

Date: November 21, 2022