

## **ADMINISTRATIVE PANEL DECISION**

### **CK Franchising, Inc. v. Jessica Bernal, N7 Creatives Case No. D2022-3279**

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

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

Respondent is Jessica Bernal, N7 Creatives, United States of America.

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

The disputed domain name <comfortkeepersabq.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 September 2, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on September 5, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant requested a suspension on September 8, 2022, and accordingly, the Center suspended the proceeding on September 9, 2022. Complainant requested an extension to the suspension on October 7, 2022, so the Center notified extension of the suspension on the same day. Complainant requested another extension to the suspension on November 7, 2022, so the Center notified extension of the suspension on November 8, 2022. Complainant requested an additional extension to the suspension on December 5, 2022, so the Center notified extension of the suspension on the same day. Complainant requested an additional extension to the suspension on January 5, 2023. The Center noted that since no exceptional circumstances were evidenced by Complainant to support an additional extension, the Center would not further extend the suspension and therefore the Center notified reinstatement of the proceeding on January 9, 2023. As such, Complainant filed an amended Complaint on January 9, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 2, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on February 27, 2023. 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

Since 1998, Complainant has been a franchiser to organizations that provide in-home care for seniors and adults who need assistance at home. In 2009, Complainant was acquired by Sodexo, a large food and facilities management services company that has expanded Complainant's presence to more than 700 offices in 13 countries and most of the states in the United States of America, including New Mexico. Complainant is the owner of numerous trademark registrations in the United States of America and other countries for COMFORT KEEPERS and other marks that incorporate COMFORT KEEPERS (the "COMFORT KEEPERS Marks"), including the following:

| Mark                       | Designation              | Class(es) | Registration No. | Registration Date |
|----------------------------|--------------------------|-----------|------------------|-------------------|
| COMFORT KEEPERS            | United States of America | 42        | 2366096          | July 11, 2000     |
| COMFORT KEEPERS (Combined) | United States of America | 42        | 2335434          | March 28, 2000    |
| I AM A COMFORT KEEPER      | United States of America | 45        | 3172466          | November 14, 2006 |
| WE ARE COMFORT KEEPERS     | United States of America | 45        | 3172467          | November 14, 2006 |
| BE A COMFORT KEEPER        | United States of America | 45        | 3258432          | July 3, 2007      |

The disputed domain name was registered August 19, 2022.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that the disputed domain name is essentially identical and/or confusingly similar to the COMFORT KEEPERS Marks because it incorporates the entirety of the COMFORT KEEPERS Marks and merely adds the geographically descriptive term "abq", which is an abbreviation for Albuquerque, a city in New Mexico, which does not negate the confusing similarity. Complainant has an office in Albuquerque and contends that the disputed domain name can be perceived by the public as identifying Complainant's website relating to its Albuquerque office.

Complainant alleges that at the time the Complaint was filed the disputed domain name was used in connection with a parking page that featured links to third party websites related to home care services. Subsequently, the disputed domain name was utilized in association with a malicious website.

Complainant contends that Respondent has no rights or legitimate interest in the disputed domain name because Respondent has no prior rights to the COMFORT KEEPERS Marks as a corporate name, trade

name, shop sign, mark or domain name. Complainant alleges Respondent has not been commonly known by the disputed domain name nor does Respondent have any affiliation, association, sponsorship or connection with Complainant and has not been authorized, licensed or otherwise permitted by Complainant to register or use the disputed domain name.

Complainant contends the COMFORT KEEPERS Marks are purely fanciful and no one could legitimately choose the same words, especially in association with the geographic reference to Albuquerque, unless Respondent was seeking to create an association with Complainant. For this reason, Complainant contends that Respondent knew Respondent had no rights or legitimate interests in the disputed domain name at the time it is was registered and only registered the disputed domain name for the purpose of creating confusion with the COMFORT KEEPERS Marks so as to divert or mislead Internet users for illegitimate reasons.

Complainant contends that Respondent initially used the disputed domain name to exploit confusion with the COMFORT KEEPERS Marks to attract Internet users to click on third party commercial links that compete with Complainant and thereafter used the disputed domain name for a malicious website. Complainant contends both uses are evidence of bad faith use of the disputed domain name.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

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

Complainant's use of the COMFORT KEEPERS Marks and registrations are more than sufficient to establish that Complainant has trademark rights in the COMFORT KEEPERS Marks.

Complainant contends that the disputed domain name is identical and/or confusingly similar to the COMFORT KEEPERS Marks. Complainant contends that the addition of the geographically descriptive abbreviation "abq" in the disputed domain name does not prevent a finding of confusing similarity to Complainant's COMFORT KEEPERS Marks.

The Panel agrees and finds that the disputed domain name is confusingly similar to the COMFORT KEEPERS Marks.

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

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name. Complainant has not licensed or authorized Respondent to use the COMFORT KEEPERS Marks. Neither of Respondent's initial use nor subsequent use of the disputed domain name constitute a legitimate noncommercial or fair use and do not constitute a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the COMFORT KEEPERS Marks and adding the geographically descriptive abbreviation "abq", carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant. According to the Whois data provided in Annex 1 of the Complaint, Respondent's registered city for the disputed domain name is Albuquerque. Complainant has an office in the same city and "abq" is a commonly used abbreviation for Albuquerque, suggesting a further affiliation with Complainant. Accordingly, such uses cannot constitute fair use. See section 2.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("the [WIPO Overview 3.0](#)").

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

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

Complainant's first use of some of the COMFORT KEEPERS Marks was in 1998, and the first registrations of the COMFORT KEEPERS Marks were in 2000, both well predating registration of the disputed domain name. The COMFORT KEEPERS Marks are unique enough that it is unlikely that someone would use the same combination of words without some knowledge of Complainant's use of the COMFORT KEEPERS Marks in association with the noted services. These facts, coupled with misleading nature of the disputed domain name in combination with the use on a parking page providing links to services competitive to Complainant, as well as a malicious website, suggest that Respondent's registration of the disputed domain name was not in good faith.

Use of the disputed domain name for the parking page and the malicious website also constitute use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

### **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 <comfortkeepersabq.com> be transferred to Complainant.

*/Timothy D. Casey/*

**Timothy D. Casey**

Sole Panelist

Date: March 16, 2023