

## **ADMINISTRATIVE PANEL DECISION**

### **CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico Case No. D2023-1153**

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

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

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

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

The disputed domain name <comfortkeppers.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 15, 2023. On March 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 2023, 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 April 12, 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 the Respondent of the Complaint, and the proceedings commenced on April 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 9, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on May 16, 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**

According to information in the Complaint, the Complainant was founded in 1998 and is one of the leading providers of quality in-home senior care. It provides in-home care for seniors and adults who need assistance at home. The Complainant is available in 13 countries, has more than 700 offices worldwide and has been named one of the fastest growing franchise systems by INC. Magazine. It has received various awards for its activity.

The Complainant has registered various trademarks consisting of or including COMFORT KEEPERS, such as the United States trademark registration for COMFORT KEEPERS (word), registered under No. 2366096 as of July 11, 2000 or the European Union Trade Mark for COMFORT KEEPERS (word), registered under No. 004210456 on January 19, 2006. The Complainant is the registrant owner of the domain name <comfortkeepers.com> used as the Complainant's official website.

The disputed domain name was registered on March 13, 2023 and resolves to a parking page with pay-per-click ("PPC") links to third party service offerings.

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

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

The Complainant argues that the disputed domain name is composed of the Complainant's misspelled version of its distinctive and fanciful COMFORT KEEPERS trademark. The spelling mistake consists in replacing one of the letters "e" in the double vowels "ee" with the letter "p" to form a double consonants "pp: comfort ke(e)ppers", which corresponds to a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

As regards the second element, the Complainant argues that the Respondent does not have any affiliation, association, sponsorship or connection with the Complainant and has not been authorized, licensed or otherwise permitted by the Complainant or by any subsidiary or affiliated company to register the disputed domain name and to use it. The disputed domain name is used as a parking page.

With respect to the third element, the Complainant argues that its trademark is purely fanciful and nobody could legitimately choose this word or any variation thereof, unless seeking to create an association with the Complainant. The unauthorized use and registration of the disputed domain name by the Respondent to attract and redirect Internet users to third party websites are solely for the purpose of achieving commercial gain and then constitute bad faith registration and use. Also, the bad faith registration and use of the disputed domain name is also affirmed by the Respondent's pattern of conduct.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the

particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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**

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the COMFORT KEEPERS trademarks by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well-established that the generic Top-level Domain (“gTLD”), in this case “.com” may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant’s trademarks. Only the second-level portion of the disputed domain name is taken into consideration.

Here the disputed domain name consists of the obvious misspelling of the COMFORT KEEPERS trademark of the Complainant, with the replacement of one of the double “e” in the second word of the Complainant’s trademark with a “p”. This misspelling in the disputed domain name also referred to as typosquatting, does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests in the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Complainant has established a *prima facie* case that it holds rights over the trademark COMFORT KEEPERS, and that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to the un rebutted evidence put forward by the Complainant, at the date of the Complaint the disputed domain name was used to host a parked page comprising PPC links to third-party services. According to section 2.9 of the [WIPO Overview 3.0](#). “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising 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 or otherwise mislead Internet users”. The fact that the links on the Respondent’s webpage have no obvious connection with the Complainant is insufficient for the Respondent’s activities to comprise a *bona fide* offering of goods and services. Noting the circumstances of this case, the Panel does

not foresee any reasonable explanation for the selection of the disputed domain name (a typosquatting version of the Complainant's trademark), and none has been provided.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because it did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the un rebutted assertions of the Complainant, its COMFORT KEEPERS trademarks were widely used in commerce well before the registration of the disputed domain name and are reputed. The disputed domain name is confusingly similar with the Complainant's trademarks. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark and that it targeted that trademark. The typosquatting nature of the disputed domain name further supports this inference.

As regards the use of the disputed domain name, from the evidence put forward by the Complainant and not rebutted by the Respondent, it results that the disputed domain name redirects Internet traffic to a website displaying PPC advertisements. Given the confusing similarity between the Complainant's COMFORT KEEPERS trademark and the disputed domain name, and that the PPC links operate for the commercial gain of the Respondent or of the operators of those linked websites, or both, the Panel considers that the disputed domain name is intended to attract Internet users by creating a likelihood of confusion with the Complainant's COMFORT KEEPERS trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or other online location or of a service offered on such other online location within the terms of paragraph 4(b)(iv) of the Policy.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the un rebutted information in the case file shows that the Respondent was involved in numerous other UDRP proceedings where similar factual situations caused the concerned UDRP panels to decide in favor of the complainants, including of the Complainant. (See *e.g.*, *CK Franchising, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-2217](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct".

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good faith use and indeed none would seem plausible.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(iii) of the Policy 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 <comfortkeppers.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: May 30, 2023