

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Steven Fitzpatrick
Case No. D2023-1836

1. The Parties

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

The Respondent is Steven Fitzpatrick, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <comfortkeepershomehealthcare.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 25, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 25, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 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 27, 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 May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2023. Following the Center’s default notice, the Center received an email from a third party, which was followed-up with another email from the third party on June 2, 2023.

The Center appointed Ezgi Baklacı Gülkökar as the sole panelist in this matter on June 7, 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

The Complainant is a provider of quality in-home senior care. The franchise operated by the Complainant provides in-home care for seniors and adults who need assistance at home and operates a website at “www.comfortkeepers.com”. The business conducted under the mark COMFORT KEEPERS was founded in 1998 by a home health aide to provide in-home medical care. In 2009, the business operated by the Complainant was strengthened, when the same was purchased by Sodexo, one of the world’s leading food and facilities management services companies, and is a leading business globally in the health care and seniors markets. The business operated by the Complainant provides in-home care services to thousands of seniors every day. The business has more than 700 offices throughout the world.

The care provided by the business operated by the Complainant covers 13 countries around the globe, providing a wide range of care, including in-home care, specialized care, care for elderly people and technology for the care area.

COMFORT KEEPERS has been recognized as a leader in senior home care and has received numerous awards. The Complainant owns trademark registrations in the United States and the European Union for its COMFORT KEEPERS trademark, as set out in Annexes 3-10 to the Complainant, including United States registered trademark no. 2366096 with registration date July 11, 2000, and European Union registered trademark no. 9798001 registration date August 22, 2011.

The COMFORT KEEPERS trademark is also registered in many other jurisdictions throughout the world, evidenced with annex 11 to the Complaint.

The Disputed Domain Name was registered by the Respondent on April 20, 2023. The Disputed Domain Name resolves to an inactive website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows.

Identical or confusingly similar

The Complainant submits that the Disputed Domain Name is identical or confusingly similar to the Complainant’s COMFORT KEEPERS marks.

The Complainant also argues that its COMFORT KEEPERS trademarks have strong reputation and is known all over the globe.

The Complainant further argues that the addition of the terms “home” and “healthcare” are not sufficient to distinguish the Disputed Domain Name from the Complainant’s domain names and trademarks, and asserts that previous UDRP panels have found that the addition of generic or descriptive terms or letters to a domain name does not prevent a finding of confusing similarity.

The Complainant lastly asserts that the risk of confusion or association with the COMFORT KEEPERS mark

is further increased considering that the Complainant specifically offers in-home healthcare services. The Complainant refers to previous UDRP panel decisions, accepting the confusing similarity between the Complainant's trademarks and domain names, see *CK Franchising, Inc. v. Registration Private, Domains By Proxy, LLC / Dorothy Felix, Health care services*, WIPO Case No. [D2022-1426](#); *CK Franchising, Inc. v. Domains By Proxy, LLC, DomainsByProxy.com / Dorothy Felix, Health care services*, WIPO Case No. [D2022-1729](#); and *CK Franchising, Inc. v. Dorothy Felix*, WIPO Case [D2023-0129](#).

Rights or legitimate interests

The Complainant argues that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant further submits that the Respondent has no rights on the Complainant's trademarks, corporate name, trade name, shop sign or domain name and that the Respondent is not known by the Disputed Domain Name.

The Complainant also argues that the Respondent has no affiliation with the Complainant and that the Complainant has not authorized the Respondent to register and/or use the Complainant's trademarks in any manner.

Registered and use in bad faith

The Complainant initially argues that the COMFORT KEEPERS trademark is purely fanciful and no person could legitimately choose this mark and/or any variation of it, without an intention to create an association with the Complainant.

The Complainant also notes that previous UDRP panels have found that the registration of a domain name that incorporates a complainant's trademark shows the respondent's knowledge of the trademark and may be considered as an inference of bad faith.

The Complainant further asserts that the Respondent not only knows the Complainant's trademarks but intends to benefit their goodwill as well. In addition, passive holding of a domain name can also constitute bad faith use under the Policy.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy.

B. Respondent

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

Following the Center's default notification, the Center received an email from a third party identifying as the Respondent, initially claiming not to own the Disputed Domain Name and then stating in its follow-up email dated June 2, 2023, that the domain name has been terminated. The informal communications failed to provide any further information, documentation, and/or evidence .

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the Disputed Domain Name is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and
- (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 Panel finds that the Complainant has demonstrated that it has well-established rights in the COMFORT KEEPERS trademarks.

The Disputed Domain Name includes the Complainant's registered trademark COMFORT KEEPERS entirely with the additional terms "home" and "healthcare". In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will be considered confusingly similar (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

In similar cases, previous UDRP panels have considered that the addition of other terms (whether descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#), section 1.8).

In the light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademarks and the first element of paragraph 4(a) 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. While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving that a respondent that it lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the Respondent. As such, 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. See [WIPO Overview 3.0](#), section 2.1; and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel notes that there is no evidence showing that the Respondent holds any rights for COMFORT KEEPERS marks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's trademark COMFORT KEEPERS.

The case file also does not contain any evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization. Further, the Panel notes that there is no evidence of the Respondent's use of, or preparation to use the Disputed Domain Name for any purpose (*bona fide* or not); and there is also no evidence that the Respondent is making a legitimate noncommercial or fair use under the Disputed Domain Name.

Furthermore, the third party identifying as Respondent has apparently "terminated" the Disputed Domain Name, while also claiming to have no connection with the Disputed Domain Name, neither statement expressing any rights or legitimate interests in the Disputed Domain name, even if the third party was truly the Respondent.

Lastly, the nature of the Disputed Domain Name (consisting of the Complainant's trademark plus the additional descriptive terms "home" and "healthcare") carries a risk of implied affiliation with the Complainant, contrary to the fact, and thus such composition cannot constitute fair use. ([WIPO Overview 3.0](#), Section 2.5.1).

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the Disputed Domain Name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the Disputed Domain Name was registered, the Respondent more likely than not was aware of the Complainant's trademarks COMFORT KEEPERS as the Complainant's trademark registrations as well as its domain names predate the registration date of the Disputed Domain Name. Panel notes from the Complaint and annexes the extensive use and worldwide registrations of the COMFORT KEEPERS trademark. According to the evidence submitted by the Complainant, the Panel finds that the Respondent knew or should have known about the Complainant's rights (and such information could readily have been reached by a quick online search; see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

In addition, previous UDRP panels have held that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4). Here, it is the Panel's view that the Disputed Domain Name is obviously connected with the Complainant and its trademark, that already its very registration by the Respondent, clearly suggests the Disputed Domain Name has been selected with a deliberate intent to create an impression of an association with the Complainant (see *General Motors LLC v. desgate*, WIPO Case No. [D2012-0451](#)).

The Panel notes that the Disputed Domain Name does not resolve to an active website. The Panel finds that passive holding and non-use of the Disputed Domain Name does not prevent a finding of bad faith, considering the totality of the circumstances of the current case ([WIPO Overview 3.0](#), section 3.3).

In light of these present circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the Disputed Domain Name has been registered and used in bad faith by the Respondent.

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, <comfortkeepershomehealthcare.com>, be transferred to the Complainant.

/Ezgi Baklacı Gülkökar/

Ezgi Baklacı Gülkökar

Sole Panelist

Date: June 21, 2023