

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Alexa Macklin, ComfortKeppers
Case No. D2023-1995

1. The Parties

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

The Respondent is Alexa Macklin, ComfortKeppers, United States.

2. The Domain Name and Registrar

The disputed domain name <comfortkeepershr.com> (“the Disputed Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 May 10, 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 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 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 aid 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 3-12 to the Complaint, including the United States trademark registration No. 2366096 with an application date of March 25, 1999 and the registration date of July 11, 2000, and European Union trademark registration No. 9798001 with an application date of March 9, 2011, and the registration date of August 22, 2011.

The COMFORT KEEPERS trademark is also registered in many other jurisdictions throughout the world, evidenced with the Annex 13 to the Complaint.

The Disputed Domain Name was registered on April 27, 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 is 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 letters "hr" will be understood either as the abbreviation of the term "Human Resources" or as the ISO Country Code for Croatia and asserts that the previous panels find that the addition of generic or descriptive terms or letters to a domain name does not differentiate the contested domain name in a manner to eliminate the confusing similarity.

Rights or legitimate interests

The Complainant argues that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Furthermore, it has been argued in the original Complaint that the Disputed Domain Name is registered in the name of a privacy service.

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 the Complainant has not given the Respondent permission to register and/or use the Complainant's trademarks in any manner.

The disputed domain name was registered and used 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 in previous UDRP decisions, panels already recognize that actual knowledge of a complainant's trademarks and activities at the time of registration of a disputed domain name may be considered an inference of bad faith and cites in support various previous UDRP decisions.

The Complainant further asserts that the Respondent not only knows the Complainant's marks but intends to benefit their reputation as well, also adding that passive holding of a domain name can also constitute a 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 for a transfer of the disputed domain name.

B. Respondent

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

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 Complainant has demonstrated that it has well-established rights in the COMFORT KEEPERS trademarks.

The disputed domain name identically includes the registered trademark COMFORT KEEPERS belonging to the Complainant with an additional element "hr" at the end. 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 to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#), section 1.7)).

The additional letters “hr” after the COMFORT KEEPERS trademark does not prevent a finding of confusing similarity between the disputed domain name and the COMFORT KEEPERS trademark. In similar cases, earlier panels 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 is in the view that the disputed domain 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 a respondent 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 ([WIPO Overview 3.0](#), section 2.1) (*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 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.

Lastly, the nature of the Disputed Domain Name (consisting of the Complainant’s trademark plus the additional term “hr”) 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 disputed 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 predating the registration date of the disputed domain name. Importantly, the Panel notes that the Respondent utilized an email address for purposes of registering the

disputed domain name that featured the Complainant's genuine domain name, namely "[...].@comfortkeepers.com". Further, the 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 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 so obviously connected with the Complainant and its trademark that already its very use by the Respondent, which has no connection with the Complainant, 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 submits that the disputed domain does not resolve to an active website and the Panel finds that holding and use of the disputed domain name does not prevent a finding of bad faith, considering the totality of the circumstances of the current case. Particularly, the Panel takes note of the considerations listed above and that the Respondent appears to have engaged in the use of a privacy service to mask its details in the publicly-available WhoIs and even after the Registrar's disclose of the underlying details, it appears that the Respondent used false contact information regarding at least its email when registering the Disputed Domain Name, seeing as the email included the Complainant's genuine domain name as the Respondent's email address. This further support the bad faith of the Respondent.

In light of these particular 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, <comfortkeepershr.com>, be transferred to the Complainant.

/Ezgi Baklacı Gülkökar/

Ezgi Baklacı Gülkökar

Sole Panelist

Date: June 21, 2023