

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Domain Administrator Case No. D2023-4324

1. The Parties

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

The Respondent is Domain Administrator, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <wwwcomfortkeeper.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 20, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 October 23, 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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Center received automatic replies from the Respondent on October 24, 2023. On November 15, 2023, the Center notified the Parties that it would proceed to Panel Appointment.

The Center appointed Roger Staub as the sole panelist in this matter on November 23, 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 provides in-home care for seniors and adults who need assistance at home under the COMFORT KEEPERS brand. It was founded in 1998. Since having been taken over by Sodexo, the world's leading food and facilities management services companies and the global leader in the health care and senior markets, back in 2009, the Complainant has been expanding the COMFORT KEEPERS brand. According to the Complainant's website at "www.comfortkeepers.com", the Complainant has more than 700 offices worldwide. The Complainant's services are available in more than 13 countries worldwide (including the United States, the United Kingdom, France, Australia and China).

The Complainant owns various trademark registrations consisting of, or containing, the words "COMFORT KEEPERS" in the United States of America, in Europe and in various other jurisdictions worldwide. The Complainant's portfolio of COMFORT KEEPERS trademark registrations includes, *inter alia*, the following trademark registrations:

- United States of America service mark No. 2366096 COMFORT KEEPERS, registered on July 11, 2000, in Class 42 (claiming first use in commerce back in 1999);
- European trademark No. 004210456 COMFORT KEEPERS, registered on January 19, 2006, in Classes 39, 43 and 45;
- European trademark No. 009798001 COMFORT KEEPERS, registered on August 22, 2011, in Classes 10, 38 and 44.

The disputed domain name was registered on October 10, 2023.

The disputed domain name redirects either to a potentially malicious website or to a Pay-Per-Click ("PPC") website displaying links to third-party websites of the Complainant's competitors.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name:

First, the disputed domain name is identical or confusingly similar to the Complainant's trademark COMFORT KEEPERS. The disputed domain name is composed of the distinctive and fanciful COMFORT KEEPERS mark, misspelled, with the addition of the element "www" in the first position. The misspelling consists in removing the letter S at the end of "keeper(s)". The addition of the element "www" is not sufficient to distinguish it from the Complainant's marks, as it will be perceived by consumers as the prefix of the website's URL. The risk of confusion or association with the COMFORT KEEPERS mark is further increased by the fact that the Complainant is the owner of the domain name <comfortkeepers.com> connecting to the Complainant's official website.

Second, the Respondent has no rights or legitimate interest in the COMFORT KEEPERS mark, be it as a corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant's rights on COMFORT KEEPERS. Further, 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.

Third, the disputed domain name was registered and is being used in bad faith. The COMFORT KEEPERS mark is purely fanciful and nobody could legitimately choose this element or any variation thereof, unless seeking to create an association with the Complainant. The Respondent knew of the existence of the COMFORT KEEPERS marks when he registered the disputed domain name. The use of the Complainant's trademark COMFORT KEEPERS for a domain name to point to a malicious website or page constitutes evidence of bad faith. Such use tarnishes the distinctiveness and reputation of the Complainant's COMFORT KEEPERS mark. Moreover, the Respondent is exploiting the confusion with the well-known COMFORT KEEPERS mark to attract Internet users and to incite them to click on commercial links of the Complainant's competitors. Finally, the Complainant points out that this is not the first time the Respondent is involved in domain name disputes.

B. Respondent

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

6. Discussion and Findings

According to the Policy, to qualify for a cancellation or transfer, the Complainant must prove each of the following:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Third, the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not submit a reply, the Panel may choose to accept the reasonable contentions of the Complainant as true. This Panel will determine whether those facts constitute a violation of the Policy that is sufficient to order the transfer of the disputed domain name (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7).

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

Although the addition of other terms, here "www", may bear on the assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes the disputed domain name was used in different manners. At times, the disputed domain name redirected to an apparently malicious site, and other times, it redirected to a parking page featuring PPC links connecting to Complainant’s competitor’s websites relating to home care services and retirement homes. In this regard, previous panels have held that the use of a domain name for illegal activity, here, such as potential phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Previous panels have also 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. [WIPO Overview 3.0](#), section 2.9.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant submits as evidence screenshots of the website accessible under the disputed domain name showing, at times, an apparently malicious website and, at other times, a website with PPC links related to the Complainant’s competitors.

Both uses suggest that the Respondent is using this disputed domain name as a tool to attract, for commercial gain, Internet users to its website or to disrupt the Complainant’s business. Hence, circumstance 4(b)(iii) and (iv) is given and suggests bad faith intentions of the Respondent.

Further, Panels have held that the use of a domain name for illegal activity, here phishing, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

This finding is supported by other circumstances of the present case. The Panel notes that the disputed domain name consists of a misspelling of an established mark that had been used for a longer time period by the Complainant prior to the registration of the disputed domain name (see section 3.2.1 of the [WIPO Overview 3.0](#)). No explanation has been given by the Respondent for the registration of the disputed domain name and it is difficult to imagine a *bona fide* explanation for it.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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 <wwwcomfortkeeper.com> be transferred to the Complainant.

/Roger Staub/

Roger Staub

Sole Panelist

Date: December 7, 2023