

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-4587

1. The Parties

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

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

2. The Domain Name and Registrar

The disputed domain name <comfortkeepers.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 November 6, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on November 6, 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 (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 13, 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 November 17, 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 November 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2023.

The Center appointed Iris Quadrio as the sole panelist in this matter on December 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

The Complainant – operating since 1998 – is a leading provider of in-home care for seniors and adults who need assistance at home. In 2009 it was purchased by Sodexo, one of the world's leading food and facilities management services companies, that continued to expand the Complainant's brand giving seniors and families around the world options on how and where elders age.

The Complainant asserts to have more than 700 offices worldwide in 13 countries including: United States of America, Canada, Norway, Australia, Singapore, Portugal, Brazil, France, Denmark, China, Ireland, and United Kingdom.

Some of the services that the Complainant provides include in-home care, specialized care, personal care, companionship, nutrition, special assistance, and technology solutions. In fact, the Complainant claims to have been consistently recognized as a leader in the home care field and to have received numerous awards.

The Complainant is the owner of the trademark COMFORT KEEPERS in many jurisdictions, including United States Patent and Trademark Office ("USPTO") registration No. 2366096, in class 42, registered July 11, 2000; USPTO registration No. 2335434 in class 42, registered March 28, 2000; European Union Intellectual Property Office (EUIPO) registration No. 009798001 in classes 10, 38, and 44, registered March 9, 2011; among others.

The Complainant claims to own the domain name "www.comfortkeepers.com" as its official website.

The disputed domain name was registered on October 26, 2023, and as evidenced by the Complainant, the disputed domain name resolves to a webpage containing pay-per-click links (PPC) to pages related to 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.

Notably, the Complainant claims that the disputed domain name is confusingly similar to its trademark COMFORT KEEPERS on which the Complainant has prior rights.

The Complainant argues that the Respondent has no rights or legitimate interest in respect of the disputed domain names, nor is the Respondent related in any way to the Complainant. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark COMFORT KEEPERS or apply for registration of the disputed domain names.

More specifically, the Complainant alleged that the Respondent has not used and/or has no demonstrable intention to use the disputed domain name except to create a likelihood of confusion with the Complainant's trademark. In fact, the Complainant claims that the Respondent has selected the disputed domain name only to intentionally lead Internet users to believe they are accessing the Complainant's website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is virtually identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The typosquatting practice of adding the letter "s" at the end of the word "keepers" does not prevent this Panel to conclude that the disputed domain name is confusingly similar to the Complainant's trademark under [WIPO Overview 3.0](#), section 1.9.

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.

Even more, it does not seem that the Respondent made nor is making a legitimate noncommercial or fair use of the disputed domain name. In this regard, the Complainant demonstrated that the disputed domain name is parked with PPC links that redirect users to websites related to the Complainant's competitors. It is clear that the Respondent's sole intention is to generate confusion among consumers as to the origin of the website only for the purpose of gaining commercial profit.

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 such connection, the Complainant has submitted evidence to support that the trademark COMFORT KEEPERS is widely known and was registered and used many years before the Respondent registered the disputed domain name. When registering the disputed domain name, the Respondent has targeted the Complainant's trademark COMFORT KEEPERS to generate confusion among Internet users and benefit from the Complainant's reputation under paragraph 4(b)(iv) of the Policy.

Moreover, it is obvious that the Respondent registered a domain name containing a misspelled version of the Complainant's trademark COMFORT KEEPERS in what appears to be a typosquatting registration, to generate confusion among Internet users and benefit from the Complainant's reputation.

The disputed domain name resolves to a PPC parking page with various links. The Panel finds therefore that the Respondent's use of the disputed domain name incorporating the Complainant's distinctive and well-known mark COMFORT KEEPERS is intended to attract and mislead Internet users when searching for the Complainant's website and to redirect them to the links related to the Complainant's potential competitors from which the Respondent most probably derives commercial revenue.

Finally, the Respondent has been involved in previous UDRP cases related to the Complainant's and third parties' trademarks, where the domain names were transferred to the trademark owner. This confirms that the Respondent has already engaged in similar illicit behavior in the past.

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 <comfortkeepers.com> be transferred to the Complainant.

/Iris Quadrio/

Iris Quadrio

Sole Panelist

Date: January 10, 2024