

## **ADMINISTRATIVE PANEL DECISION**

CK Franchising, Inc. v. Nicole Acosta  
Case No. D2024-0527

### **1. The Parties**

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

The Respondent is Nicole Acosta, United States.

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

The disputed domain name <comfortkeeperhomehealth.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 February 5, 2024. On February 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 5, 2024, 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 February 8, 2024, 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 February 12, 2024.

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 February 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2024.

The Center appointed Gregory N. Albright as the sole panelist in this matter on March 15, 2024. 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, founded in 1998, is a franchisor providing in-home care for seniors and adults who need assistance at home. With more than 700 offices, in 11 countries, the Complainant's franchise system provides in-home care services to thousands of seniors every day.

The services provided include in-home care (custom in-home care to help seniors live independently at home); specialized care (Alzheimer's and Dementia Home Care, End-of-Life Care, In-Facility Care, and Private Duty Nursing); personal care (preserving seniors' self-esteem by helping them maintain personal hygiene), companionship (personally engaging with seniors); nutrition (preparing meals for senior clients that provide the essential nutrients and energy needed to prevent illness and maintain optimal health); special assistance (meeting the needs of senior clients who have chronic health conditions); and technology solutions (providing electronic devices that promote the safety and well-being of seniors between visits by caregivers).

The Complainant's franchise system has received numerous awards in recognition of its leadership in senior home care.

The Complainant owns numerous trademark registrations in the United States and the European Union, including the following:

- Registration No. 2366096 for the COMFORT KEEPERS mark, issued by the United States Patent and Trademark Office ("USPTO") on July 11, 2000;
- Registration No. 2335434 for the COMFORT KEEPERS design and word mark, issued by the USPTO on March 28, 2000; and
- European Union trademark Registration No. 004210481 for the COMFORT KEEPERS design and word mark, issued on January 19, 2006.

The Complainant also has a website at "www.comfortkeepers.com".

The disputed domain name was registered on January 8, 2024. The disputed domain name resolves to an active website that advertises "Comfort Keeper's Home Care," "Professional Home Care Attendants and Home Support," and "Companion Care Services."

#### **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 contends the disputed domain name is confusingly similar to the Complainant's COMFORT KEEPERS mark even though the disputed domain name omits the "s" after "keeper" and adds "homehealth." The Complainant cites numerous decisions by prior panels finding confusing similarity in closely analogous cases. 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](#); *CK Franchising,*

*Inc. v. Dorothy Felix*, WIPO Case No. [D2023-0129](#); *CK Franchising, Inc. v. Steven Fitzpatrick*, WIPO Case No. [D2023-1836](#).

The Complainant certifies that the Respondent does not have any affiliation, association, sponsorship or connection with the Complainant, and the Complainant has not authorized, licensed or otherwise permitted the Respondent to register or use the disputed domain name.

The Complainant also contends the COMFORT KEEPERS mark is purely fanciful and no one could legitimately choose to use it or any variation thereof unless seeking to create an association with the Complainant. Further, the Complainant asserts that the Respondent surely was aware of the Complainant's COMFORT KEEPERS marks at the time the disputed domain name was registered, and therefore registered the disputed domain name in bad faith for the purpose of creating confusion with the Complainant's marks or to divert or mislead consumers for the Respondent's illegitimate profit. The Respondent is also using the disputed domain name in bad faith, the Complainant contends, because the website to which the disputed domain name resolves offers competing home care services, and looks like an official website of the Complainant promoting home care services.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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.

The Complainant owns trademark registrations for its COMFORT KEEPERS mark and therefore 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 entirety of the Complainant's COMFORT KEEPERS mark is reproduced and recognizable within the disputed domain name, as its predominant element, even though the "s" is removed from "keepers," and "homehealth" is added. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

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.

Moreover, panels have held that the use of a domain name for illegal activity – here, claimed impersonation/passing off – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

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

For 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 Respondent registered the disputed domain name on January 8, 2024, more than 20 years after the Complainant obtained registration of the COMFORT KEEPERS marks in the United States, where the Respondent is located. It therefore may be inferred that the Respondent knew or should have known of the Complainant's trademark rights, and registered the disputed domain name for the bad faith purpose of creating confusion of a false association with the Complainant, and/or diverting clients for wrongful profit.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. In this regard, the Panel notes that the disputed domain name resolves to a website similar to the Complainant's official website, advertising home care services. Panels have held that the use of a domain name for illegal activity -- here, claimed impersonation/passing off -- constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Further, the Complainant suspects that the disputed domain name may possibly be used for fraudulent email scheme based on its recent experience -- a suspicion the Respondent did not rebut.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy, and 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 <comfortkeeperhomehealth.com> be transferred to the Complainant.

*/Gregory N. Albright/*

**Gregory N. Albright**

Sole Panelist

Date: March 29, 2024