

## ADMINISTRATIVE PANEL DECISION

### CK Franchising, Inc. v. Name Redacted

### Case No. D2022-1411

#### 1. The Parties

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

The Respondent is Name Redacted.<sup>1</sup>

#### 2. The Domain Name and Registrar

The disputed domain name <comfortkeepcrs.com> (the “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 April 20, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 22, 2022, 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, 2022.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the Domain Name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the Domain Name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#)

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 19, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on May 24, 2022. 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 business corporation organized under the law of the State of Ohio, United States, to franchise in-home senior care services. The business was launched by a home health aide in 1998 under the COMFORT KEEPERS mark and has expanded greatly since 2009, when it was acquired by SODEXO, the catering and facilities management services company that is a global leader in seniors care markets. The Complainant has more than 700 offices in nearly all states of the United States and in twelve other countries. The record includes examples of media mentions and awards associated with the Complainant's COMFORT KEEPERS brand from 2008 to the present.

The Complainant holds numerous trademark registrations comprised of or incorporating the words COMFORT KEEPERS, including the following:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
COMFORT KEEPERS (standard characters)	United States	2366096	July 11, 2000
COMFORT KEEPERS (word)	European Union	009798001	August 22, 2011

The Whois database shows that the Domain Name was created on March 25, 2022. The Registrar reports that it is registered in the name of an individual residing in the United States, naming the organization as an affiliate of the Complainant. As the Complainant indicates that this person has not registered the Domain Name on behalf of its affiliate, this appears to be a case of fraud or identity theft. The Respondent has not replied to communications from the Complainant or the Center.

It does not appear that the Domain Name has been used for an active website to date. There are no archived screenshots associated with the Domain Name on the Internet Archive's Wayback Machine, and the Domain Name produces only an error message at the time of this Decision.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that the Domain Name is an instance of typosquatting, as it differs by one letter (an easily misread "c" rather than "e") from the Complainant's COMFORT KEEPERS trademark. The Respondent has no permission or evident rights to use the Complainant's trademark and is not, in fact, an employee or agent of the Complainant as falsely suggested by the Domain Name registration details. This false reference and effort at identity theft reinforces the assumption that the Respondent was aware of the Complainant and sought to use the Domain Name for likely illicit purposes by creating confusion with the Complainant's trademark. The Complainant reports that it has recently been the subject of other fraudulent attacks. The Complainant points to "passive holding" decisions such as *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), to argue that the disputed domain name constitutes

an abusive threat over the Complainant, noting there is no plausible legitimate purpose for the Domain Name based on typosquatting of a distinctive and well-established trademark.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### **A. Identical or Confusingly Similar**

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a straightforward comparison between the complainant's trademark and the domain name". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The Domain Name differs by one letter from the Complainant's registered COMFORT KEEPERS word mark (and the absent space between words, which cannot exist in the DNS scheme). The Domain Name string is similar in appearance to the trademark, and the substituted letter "c" would easily be mistaken for an "e". As usual, the Top-Level Domain ".com" is disregarded as a standard registration requirement. See *id.*, section 1.11.2.

The Panel finds, therefore, that the Domain Name is confusingly similar to the Complainant's registered mark for purposes of the Policy, paragraph 4(a)(i) and concludes that the Complainant has established the first element of the Complaint.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the Respondent's failure to use the Domain Name to date. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent has not offered any evidence or argument for rights or legitimate interests. The Panel concludes, therefore, that the Complainant prevails on the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following (in which "you" refers to the registrant of the domain name). The list does not exclude other possibilities for establishing bad faith, which panels have found, for example, in abusive uses of domain names for phishing and identity theft (see [WIPO Overview 3.0](#), section 3.4). Here, the combination of typosquatting with a domain name registration based on the apparently fraudulent reference to one of the Complainant's affiliates is an indication of bad faith and suggests preparation for such abusive and illicit uses of the Domain Name.

The Complaint cites as well the "passive holding" doctrine (see [WIPO Overview 3.0](#), section 3.3), which is also apt. The Complainant's mark is distinctive and well-established, the Domain Name is patently an instance of typosquatting on the mark, and there is no plausible legitimate use of the Domain Name. As in other such cases, it is not necessary to wait for direct evidence the Respondent has acted in bad faith (e.g. by publishing a misleading website or sending fraudulent emails):

"The presence of the Domain Name in the hands of the Respondent represents, in the view of the Panel, an abusive threat hanging over the head of the Complainant (*i.e.*, an abuse capable of being triggered by the Respondent at any time) and therefore a continuing abusive use." *Conair Corp. v. Pan Pin, Hong Kong Shunda International Co. Limited*, WIPO Case No. [D2014-1564](#).

The Panel finds that the Domain Name has been registered and used in bad faith within the meaning of the Policy and concludes that the Complainant has established the third element of the Complaint.

### **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 Domain Name, <comfortkeepcrs.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: May 30, 2022