

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Sean Sandefer, hghtowerpetroleum
Case No. D2022-1502

1. The Parties

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

The Respondent is Sean Sandefer, hghtowerpetroleum, United States.

2. The Domain Name and Registrar

The disputed domain name <cornfortkeepers.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2022. On April 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 28, 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 28, 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 May 2, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2022.

The Center appointed Michelle Brownlee as the sole panelist in this matter on June 2, 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 owns the following registrations for the COMFORT KEEPERS and COMFORT KEEPERS design trademarks:

United States Trademark Registration Number 2366096 for COMFORT KEEPERS, filed on March 25, 1999, and registered on July 11, 2000, for services in International class 42;

United States Trademark Registration Number 2335434 for COMFORT KEEPERS and design (see below), filed on March 9, 1999, and registered on March 28, 2000, for services in International class 42;



European Union Trade Mark Registration Number 009798001 for COMFORT KEEPERS, filed on March 9, 2011, and registered on August 22, 2011, in international classes 10, 38, and 44;

European Trade Mark Registration Number 004210456 for COMFORT KEEPERS, filed on December 16, 2004, and registered on January 19, 2006, for services in international classes 39, 43, and 45.

The Domain Name was registered on April 17, 2022. The Domain Name resolves to a parked page of a web hosting provider.

5. Parties' Contentions

A. Complainant

The Complainant states that it is a franchised business that provides home care for seniors and adults who need care at home. The Complainant states that its business was started in 1998, and since that time it has grown to having 700 locations worldwide and has been named as one of the fastest growing franchises by INC. Magazine. The Complainant states that Comfort Keepers franchises can be found in 46 of the 50 United States and in a number of other countries throughout the world. The Complainant contends that its COMFORT KEEPERS mark has a strong reputation and is known throughout the world. The Complainant states that its services have earned numerous awards. The Complainant maintains a website at "www.comfortkeepers.com".

The Complainant argues that the Domain Name is confusingly similar to its COMFORT KEEPERS mark because the placement of "r" and "n" next to each other creates a visual impression that is nearly identical to an "m". The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Respondent registered and is using the Domain Name in bad faith. The Complainant presented evidence that the Domain Name resolves to a parked page of a web hosting provider.

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 be entitled to a transfer of a domain name, a complainant must prove the following three elements:

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (2) the respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns rights in the COMFORT KEEPERS trademark. The Domain Name is identical to the trademark except that the letters “r” and “n” have been substituted for the “m”. This creates a visual impression that is nearly identical to the trademark. Under these circumstances, the Panel finds that the Domain Name is confusingly similar to the Complainant’s COMFORT KEEPERS trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides that a respondent can demonstrate rights to or legitimate interests in a domain name by demonstrating one of the following facts:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name at issue in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; 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 at issue.

In this case, the Complainant has put forward a *prima facie* case and no evidence has been presented that the Respondent used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services; that the Respondent is commonly known by the Domain Name; that the Respondent is making a legitimate noncommercial or fair use of the Domain Name; or in any other way refuted the Complainant’s *prima facie* case. The Complainant has alleged that the Domain Name resolves to a parked page for a website hosting service provider. The Respondent has not refuted these allegations and evidence. Under the circumstances, there is no basis to find that the Respondent has demonstrated rights to or legitimate interests in the Domain Name. See *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#).

Accordingly, the Panel finds that the Complainant has established this element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances are evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name at issue primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Complainant's rights in its COMFORT KEEPERS trademark predate the registration of the Domain Name by more than 20 years, and the Complainant has presented evidence regarding the fame of its mark in the United States. The Respondent has not refuted the Complainant's allegations and evidence. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 3.1.4. The Panel finds that the Complainant has established that the Respondent registered the Domain Name in bad faith.

The Domain Name resolves to a parked page for a website hosting service provider. In this case, the totality of the circumstances suggests that the Domain Name is being used in bad faith. The Complainant has presented evidence regarding the well-known nature of its COMFORT KEEPERS trademark in the United States, and the misspelling of the mark in the Domain Name using letters that are visually similar suggests a likely intent to confuse Internet users into the expectation that they would reach a website operated by the Complainant. The Respondent has not offered any arguments or provided any evidence to support a finding of actual or contemplated good faith use.

Accordingly, the Panel finds that the Complainant has met its burden of demonstrating bad faith registration and use in this case.

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, <cornfortkeepers.com> be transferred to the Complainant.

/Michelle Brownlee/
Michelle Brownlee
Sole Panelist
Date: June 14, 2022