

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2022-3205

1. The Parties

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

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <oklahomaaatcomfortkeepers.com> is registered with Media Elite Holdings Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2022. On August 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 30, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on November 8, 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 the owner of 30 registered trademarks in 13 different countries around the world all of which comprise or at least include COMFORT KEEPERS. Its earliest US trademark COMFORT KEEPERS was registered in the United States on July 11, 2000, US trademark registration No. 2366096, in class 42, and has been duly renewed subsequently.

The Complainant is the owner of the domain name <comfortkeepers.com> which resolves to its official homepage at "www.comfortkeepers.com".

The disputed domain name was registered on July 27, 2022. At the moment the Complaint was filed the disputed domain name did not resolve to an active website, at the time of rendering this decision it resolved to pay-per-click (PPC) website.

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 states in the United States, including Oklahoma, 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 asserts that the COMFORT KEEPERS mark has a strong reputation and is known all over the world.

The Complainant contends as follows:

(1) The Complainant relies upon its 30 registered trademarks as well as its use-based reputation globally to found its rights in COMFORT KEEPERS. The disputed domain name wholly reproduces the mark COMFORT KEEPERS with the addition of the terms OKLAHOMA AT, OKLAHOMA being a US region and AT being a preposition of location. In the disputed domain name, the COMFORT KEEPERS mark keeps its individuality and is clearly perceived by consumers as the predominant part of the disputed domain name. The addition of the geographic name OKLAHOMA and the preposition AT are inoperative to distinguish it from the Complainant's marks. On the contrary, the terms OKLAHOMA AT contributes to reinforce a risk of confusion with the mark COMFORT KEEPERS especially because the Complainant is among others located in four different locations in OKLAHOMA. The Complainant which has recently faced several attacks, also fears a possible fraudulent use of the disputed domain name, notably to perpetrate email scam sent to its clients requesting payment of false invoices on fake bank accounts.

(2) The Respondent has no rights nor legitimate interests in the disputed domain name as it has no rights on COMFORT KEEPERS as corporate name, trade name, shop sign, mark or domain name that would be earlier to the Complainant's rights on COMFORT KEEPERS. The Respondent was not commonly known by the disputed domain name prior to the adoption and use by the Complainant of the business name and mark COMFORT KEEPERS. Moreover, 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 or by any subsidiary or affiliated company to register the disputed domain name and to use it.

(3) The COMFORT KEEPERS mark is purely fanciful and nobody could legitimately choose this word or any variation thereof (especially in association with the geographic reference to Oklahoma where the Complainant is located), unless seeking to create an association with the Complainant.

The Respondent very likely knew the existence of the COMFORT KEEPERS marks when it registered the disputed domain name, so it perfectly knew that it had no rights or legitimate interests in the disputed domain name and that it cannot lawfully use it. The Respondent registered the disputed domain name with actual knowledge of Complainant's rights in the COMFORT KEEPERS mark very likely for the purpose of creating confusion with Complainant's mark to divert or mislead third parties for the Respondent's illegitimate profit. The unauthorized registration of the disputed domain name by the Respondent and its passive holding, likely in the aim of fraudulent uses, are for the purpose of commercial gain and then constitute bad faith registration and use.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights.

The Complainant has clearly established that there are trademarks in which it has rights in numerous countries of the world. The Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel observes that the disputed domain name incorporates the Complainant's trademark in its entirety, simply adding the geographical term "oklahoma" and preposition "at". It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, 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. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The addition of the generic Top-Level Domain “.com” shall be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration. See [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark and that the requirement of paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of “proving a negative”, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

From the Complainant’s allegations and evidence, as well as the inferences drawn from the evidence, the Panel concludes that the COMFORT KEEPERS mark is a distinctive and well-known mark of the Complainant. The Complainant has numerous registered trademarks and has used the mark worldwide and gained thousands of customers. The Complainant did not license or otherwise authorize the Respondent’s use of the COMFORT KEEPERS mark. There is no evidence in the case file showing that the Respondent was commonly known by the disputed domain name prior to the adoption and use by the Complainant of the business name and mark COMFORT KEEPERS.

Additionally, the composition of the disputed domain name consisting of the Complainant’s well-known mark, the geographic term “oklahoma” (the name of a state in the South Central region of the United States), and the preposition “at”, suggests sponsorship or endorsement by the Complainant.

Therefore, the Panel finds that the Complainant has made out *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Section 2.1 of [WIPO Overview 3.0](#) provides that “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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

Here, the Respondent did not respond to the Complaint and thus has failed to rebut the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Respondent in fact has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

Accordingly, the Panel finds that the Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant has demonstrated the Respondent’s bad faith registration and use of the disputed domain name.

The disputed domain name incorporates the entirety of the Complainant's registered COMFORT KEEPERS mark. Further, the disputed domain name, formerly inactive, and which currently redirects Internet users to third parties websites (PPC). Having learned the case file, the Panel found that the Respondent is using the disputed domain name to create confusion with the famous Complainant's trademark COMFORT KEEPERS to attract Internet users and incite them to click on third (party) commercial links, which is an intentional attempt to attract, for commercial gain, Internet users to websites by creating a likelihood of confusion with the well-known trademark COMFORT KEEPERS.

The Respondent provided no rebuttal evidence suggesting that it registered the disputed domain name or used it in good faith. Under these circumstances, the Panel finds that the Respondent knew of the Complainant's COMFORT KEEPERS mark and of the Complainant's websites and at the time of registration of the disputed domain name.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that the Complainant has established its case under paragraph 4(a)(iii) 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 <oklahomaaatcomfortkeepers.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: November 22, 2022