

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-0418

1. The Parties

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

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

2. The Domain Name and Registrar

The disputed domain name <comfortkeepersd.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 January 30, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 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 February 8, 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 February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on March 15, 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a provider of in-home senior care. The letters “ck” in the name of the Complainant are the abbreviation of “Comfort Keepers”. Comfort Keepers was established in 1998 and was purchased by Sodexo which provides life care services in many countries.

The Complainant owns COMFORT KEEPERS trademarks in several countries, such as:

- United States Registration for COMFORT KEEPERS No. 2366096, registered on July 11, 2000;
- European Union Registration for COMFORT KEEPERS No. 009798001, registered on August 22, 2011.

The disputed domain name was registered on January 24, 2023 and connects to a parking page displaying pay-per-click (“PPC”) links.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark. The disputed domain name consists of a set of letters “comfort” and “keepers”, followed by the letters “sd”, and the generic Top-Level Domain (“gTLD”) “.com”. The letters “comfort” and “keepers” are exactly the same as the Complainant’s COMFORT KEEPERS trademark. The letters “sd” should be considered to be an abbreviation of South Dakota, a state in the United States, where the Complainant has its head office. Further, on the basis of well-established authority, the gTLD, in this case “.com”, should be disregarded in assessing confusing similarity.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since 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.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. Since the Complainant’s COMFORT KEEPERS trademark is well known, the Respondent obviously knew the existence of the COMFORT KEEPERS trademark when the disputed domain name was registered. And, the Respondent has used the disputed domain name in connection with a PPC parking website. This shows that the disputed domain name is being used in bad faith by the Respondent.

Further, the Complainant asserts that the Respondent has been a respondent in more than 200 cases filed under the UDRP in which the Respondent registered the domain names incorporating third party trademarks. Therefore, the Respondent has been engaged in a pattern of bad faith.

B. Respondent

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

6. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has the right in the COMFORT KEEPERS trademark.

The disputed domain name includes the Complainant's COMFORT KEEPERS trademark in its entirety. Such inclusion is by itself enough to consider the disputed domain name confusingly similar to the Complainant's COMFORT KEEPERS trademark. The addition of the term "sd" in the disputed domain name does not prevent a finding of confusing similarity, irrespective whether the term is an abbreviation of South Dakota or not. Further, as well-established in prior UDRP decisions, the gTLD ".com" contained in the disputed domain name is typically irrelevant in the determination of the confusing similarity.

The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

Nothing in the disputed domain name bear any reasonable relevance to the Respondent. The Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant's COMFORT KEEPERS trademark. No *bona fide* offering of goods or services, or legitimate noncommercial or fair use has been made of the disputed domain name. According to the evidence provided by the Complaint, the disputed domain name resolves to a website displaying PPC links.

Noting that the Complainant must prevail on all three elements to succeed, the Respondent's default is not necessarily an admission that the Complainant's claims are true. However, according to prior UDRP decisions, it is sufficient that the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. Since the Respondent did not reply to the Complainant's *prima facie* contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

The Complainant is a large company providing in-home senior care in many countries. Further, the Respondent has already registered other domain names incorporating the Complainant's COMFORT KEEPERS trademark with negligible typo, such as *CK Franchising, Inc. v. Carolina Rodrigues, Fundacion*

Comercio Electronico, WIPO Case No. [D2022-0751](#) (<comfotkeepers.com), and *CK Franchising, Inc. v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO case No. [D2022-4247](#) (<ccomfortkeepers.com>). Therefore, it is no doubt that the Respondent knew of the Complainant's right in the COMFORT KEEPERS trademark at the time of registration of the disputed domain name. There can be found no possibility of fortuity in the Respondent's innocent registration of the disputed domain name.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the use of the disputed domain name to host a parked page comprising PPC links misleads, for commercial gain, Internet users to the Respondent's website. According to paragraph 4(b)(iv) of the Policy, this sufficiently shows the Respondent's use of the disputed domain name in bad faith.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <comfortkeeperssd.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: March 24, 2023