

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Privacy Protection / Domain, Administrator Case No. D2022-1117

1. The Parties

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

The Respondent is Privacy Protection / Domain, Administrator, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <comfortkeeperscareacademy.com> (the “Disputed Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 10, 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 April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 9, 2022.

The Center appointed Michael D. Cover as the sole panelist in this matter on May 16, 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 provider of quality in-home senior care. The franchise operated by the Complainant provides in-home care for seniors and adults who need assistance at home and operates a website at “www.comfortkeepers.com”. The business operated under COMFORT KEEPERS was founded in 1998 by a home health aide to provide in-home medical home. In 2009, the business operated by the Complainant was strengthened in 2009, when it was purchased by Sodexo, one of the world’s leading food and facilities management services companies, and is a leading business globally in the health care and seniors markets. The business operated by the Complainant provides in-home care services to thousands of seniors every day. The business has more than 700 offices throughout the world.

The care provided by the business operated by the Complainant extends to 13 countries around the world, providing a range of care, including in-home care, specialized care, care for elderly people and technology for the care area. The Complainant offers an academy service for care givers, as further described in the Amended Complaint.

COMFORT KEEPERS has been recognized as a leader in senior home care and has received awards, including from the Franchise Research Institute and the National Business Institute.

The Complainant owns trademark registrations in the United States of America (“United States”) and the European Union for its COMFORT KEEPERS trademark, as set out in Appendices 4-11 to the Complaint, including United States registered trademark No 2366096 with an application dated March 25, 1999 and European Union registered trademark No 9798001 with an application dated March 9, 2011. The COMFORT KEEPERS trademark is also registered in many other countries throughout the world, as set out in Annex 12 to the Complaint.

The Disputed Domain Name was registered by the Respondent on February 12, 2022. The Disputed Domain Name resolves to a parking website, connecting Internet users to services which compete with those of the Complainant, namely retirement home and home care services.

5. Parties’ Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant sets out in the Amended Complaint that the Disputed Domain Name is identical or confusingly similar to the marks COMFORT KEEPERS in which the Complainant has rights.

The Complainant submits that its COMFORT KEEPERS trademark has a strong reputation and is known all over the world. The Complainant notes that the word “Academy” is misspelt in the Disputed Domain Name, with the mistake being the deletion of the first letter “a”. The Complainant also submits that consumers would clearly perceive that the dominant part of the Disputed Domain Name is its trademark COMFORT KEEPERS. The Complainant states that the descriptive elements in the Disputed Domain Name are not sufficient to distinguish the Disputed Domain Name from the Complainant’s trademark COMFORT KEEPERS.

The Complainant notes that it is widely admitted that the addition of a generic or descriptive term to a mark will not alter the fact that the domain name at issue is confusingly similar to the mark in question and cites various UDRP Decisions, including *Terex Corporation v. Texas International Property Associates- NA NA* WIPO Case No. [D2008-0733](#).

The Complainant goes on to submit that the risk of confusion or association with its COMFORT KEEPERS trademark is further increased by the fact that the Complainant offers an academy service for caregivers.

Rights or Legitimate Interests

The Complainant sets out that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant points out that the Disputed Domain Name is registered in the name of a privacy service for protecting personal data.

The Complainant submits that the Respondent has no rights in COMFORT KEEPERS as a corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant's rights in its COMFORT KEEPERS trademark.

The Complainant states that 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 trademark COMFORT KEEPERS and that the Respondent does not have any affiliation, association or connection with the Complainant and has not been authorized, licensed or otherwise permitted by the Complainant or by any subsidiary or affiliated Company of the Complainant to register and use the Disputed Domain Name.

Registered or Used in Bad Faith

The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith.

Having set out the non-exhaustive (as the Complainant describes it) list of circumstances indicative of bad faith, the Complainant states that the COMFORT KEEPERS trademark is purely fanciful and that nobody could legitimately choose this mark or any variation of it, especially in association with the expression "Care Academy", unless to create an association with the Complainant. The Complainant submits that the Respondent knew of the existence of the COMFORT KEEPERS trademarks when the Respondent registered the Disputed Domain Name, such that the Respondent perfectly knew that the Respondent had no rights or legitimate interests in the Disputed Domain Name.

The Complainant notes that previous UDRP Decisions already recognize that actual knowledge of a complainant's trademarks and activities at the time of registration of a disputed domain name may be considered an inference of bad faith and cites in support various previous UDRP Decisions, including *Accor, So Luxury MNC v. Youness Itsmail*, WIPO Case No. [D2015-0287](#).

The Complainant continues that the Respondent is using the Disputed Domain Name by exploiting confusion with the well-known 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 cites in support the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.9 and previous UDRP Decisions, including *Champagne Lanson v. Development Service/ MailPlanet.com, Inc.*, WIPO Case No. [D2006-0006](#) in support of its submission that bad faith registration and use has been recognized where the disputed domain name resolves to parking pages containing pay-per-click sponsored links, based on the trademark value of the domain name.

The Complainant concludes that the unauthorized use and registration of the Disputed Domain Name by the Respondent to attract and redirect Internet users to third party websites is solely for the purpose of achieving commercial gain and constitute bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; and that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that 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 established registered rights in its trademark COMFORT KEEPERS.

The Panel also finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark COMFORT KEEPERS, in which the Complainant has rights. The Disputed Domain Name incorporates the Complainant's COMFORT KEEPERS trademark, in which the Complainant has rights, in full. In assessing confusing similarity, it is well established that elements, such as "careacademy", are to be disregarded. It is also well established that the generic Top Level Domain ("gTLD") as "com" is viewed as a standard registration requirement and, as such, is disregarded under the first element of the Policy.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark COMFORT KEEPERS, in which the Complainant has rights, and that the provisions of the Policy, paragraph 4(a)(i) have been met.

B. Rights or Legitimate Interests

The Panel accepts and finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and finds that the provisions of paragraph 4(a)(ii) have been met. The Panel accepts and finds that the Respondent has not been authorized, licensed or otherwise permitted by the Complainant to register or use the Disputed Domain Name and has registered the Disputed Domain Name in the name of a privacy service.

The Complainant has established a case, to which no response has been filed, that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not, before any notice to the Respondent of the dispute, made use or demonstrable preparations to use the Disputed Domain Name or a name corresponding to it in connection with a *bona fide* offering of goods or services nor has the Respondent been commonly-known by the Disputed Domain Name nor has the Respondent made noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Such use as has in fact taken place of the Disputed Domain Name involves the Disputed Domain Name resolving to a parking website, with links to websites which offer services, which compete with those offered by the Complainant, which could have any of the impacts outlined in this paragraph.

Accordingly, the Panel finds that the provisions of the Policy, paragraph 4(a)(ii) have been met.

C. Registered and Used in Bad Faith

The Panel accepts and finds that the Disputed Domain Name has been registered and is being used in bad faith. It is a reasonable inference that the Respondent knew of the Complainant's COMFORT KEEPERS trademark, which, the Panel accepts, is well-known, at the time of registration of the Disputed Domain Name and finds that the Respondent could have had no reason to register the Disputed Domain Name if not for the significance of the dominant COMFORT KEEPERS element as the trademark of the Complainant.

With regard to the use of the Disputed Domain Name, this has been in association with a parking website, which offers services which compete with the services offered by the Complainant. In addition, the

Respondent has failed to file a Response to the Complaint and, in particular, to file evidence of any good faith use, and has concealed the Respondent's identity.

The Panel accordingly finds that the Respondent has registered and used the Disputed Domain Name in bad faith and the provisions of the Policy, paragraph 4(a)(iii) have been met.

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

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: May 28, 2022