

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Jeri Seratti, Jeri Lyn Broadcasting
Case No. D2023-0199

1. The Parties

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

The Respondent is Jeri Seratti, Jeri Lyn Broadcasting, United States.

2. The Domain Name and Registrar

The disputed domain name <santaclaritacomfortkeepers.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 16, 2023. On January 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 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, Domains By Proxy, LLC, and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 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 January 20, 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 January 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 16, 2023.

The Center appointed Carol Anne Been as the sole panelist in this matter on February 28, 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

The Complainant identifies itself as CK Franchising, Inc. (Comfort Keepers franchise) which is a “leading provider of quality in-home senior care”.

The Complainant owns United States federal trademark registrations for COMFORT KEEPERS in Class 42, Registration Nos. 2,366,096 and 2,335,434; I AM A COMFORT KEEPER, Registration No. 3,172,466 in Class 45; WE ARE COMFORT KEEPERS, Registration No. 3,172,467 in Class 45; and BE A COMFORT KEEPER, Registration No. 3,258,432 in Class 45. Additionally, the Complainant owns European Union trademark registrations for COMFORT KEEPERS, such as Registration No. 004210456 in Classes 39, 43, and 45. The Complainant’s word mark for COMFORT KEEPERS was initially filed in the United States on March 25, 1999, and claims first use in the United States in 1998.

In addition to its registered trademarks, the Complainant operates a website using the domain name, <comfortkeepers.com>, which was initially registered on April 6, 1998.

The Respondent is Jeri Seratti, Jeri Lyn Broadcasting.

The Respondent registered the Disputed Domain Name, <santaclaritacomfortkeepers.com>, on January 6, 2023.

No facts have been asserted by the Respondent since the Respondent did not submit a Response in this proceeding.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Disputed Domain Name is practically identical with and confusingly similar to the Complainant’s trademarks and domain name. The Complainant claims to be well known for its elder care services, pointing to its trademark registrations and use of its marks since 1998, 700 worldwide offices, and availability of its services in 13 countries and 46 states within the United States. The Complainant contends that the Disputed Domain Name fully reproduces its mark, and that the addition of the geographic term “Santa Clarita” does not dispel the confusing similarity to the Complainant’s mark, especially given that the Complainant operates in Santa Clarita, California.

The Complainant contends that the Respondent has not demonstrated any rights or legitimate interests in the Disputed Domain Name. The Complainant contends that the Respondent was not known by the Disputed Domain Name prior to its adoption and use by the Complainant. Additionally, the Complainant contends that there is no relationship between itself and the Respondent that could give rise to any license, permission or rights. According to the Complainant, this creates a strong presumption that the Respondent lacks rights or legitimate interest in the Disputed Domain Name.

The Complainant alleges that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Complainant alleges that the Respondent knew of the existence of the Complainant’s COMFORT KEEPERS marks when it registered the Disputed Domain Name, based on the unique and “fanciful” nature of the trademark. The Complainant alleges that the Respondent was using the Disputed Domain Name to point to a malicious website, claiming that it received a malware warning when trying to access the site at the Disputed Domain Name. The Complainant notes that previous WIPO decisions have held that use of a domain name to spread malware constitutes registration in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it holds rights in its COMFORT KEEPERS marks. The Disputed Domain Name replicates the entirety of the Complainant's mark, adding the geographic term "Santa Clarita" as a prefix. "The addition of a geographical term, such as the well-known city Mumbai, to a registered trademark will not avoid a finding of confusing similarity." See *SODEXO v. Ashutosh Dwivedi, Food & Beverages*, WIPO Case No. [D2020-2686](#) (January 1, 2021).

Therefore, the Disputed Domain Name is confusingly similar to the Complainant's "COMFORT KEEPERS" marks.

B. Rights or Legitimate Interests

The Respondent has not set forth any evidence of circumstances of the type described in Paragraph 4(c) of the Policy to demonstrate rights to or any legitimate interest in the Disputed Domain Name. The Complainant's assertion that the Respondent has no rights or legitimate interests in the Disputed Domain Name is unopposed. After a complainant has made a *prima facie* case, the burden of production shifts to the respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#) (August 21, 2003). Additionally, the apparent use of the Disputed Domain Name to spread malware seriously undermines any possible claim to rights or legitimate interests.

The Panel finds that the composition of the Disputed Domain Name, which couples together the name of a geographic location where the Complainant operates along with the Complainant's trademark, carries a risk of implied affiliation with the Complainant, contrary to the available facts, and thus such composition cannot constitute fair use. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

Therefore, the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

The Complainant claims that "[i]t is obvious that the Respondent registered the Disputed Domain Name [santaclaritacomfortkeepers.com](#) with actual knowledge of Complainant's rights", given the Disputed Domain Name's incorporation of the trademark in its entirety. Also, the Complainant points to its notoriety and consistent recognition as a leader in senior home care, evidenced by various awards and national rankings in the United States, as circumstantial evidence supporting the Respondent's likely awareness of the Complainant.

"[W]here the parties are both located in the United States and the complainant has obtained a federal trademark registration pre-dating the relevant domain name registration – panels have been prepared to apply the concept of constructive notice." See [WIPO Overview 3.0](#), Section 3.2.2. Given the Complainant's pre-existing federal trademark registration, the presence of the Respondent in the United States, and the default of the Respondent, the Panel may find constructive notice in this case.

The Complainant also claims that the Disputed Domain Name pointed to a "malicious site" and argues that this is clear evidence of bad faith. As evidence, the Complainant provides a single French language screenshot of Avast anti-virus software blocking access to the website hosted at the Disputed Domain

Name. In the absence of a response filed by the Respondent, the Panel may accept the Complainant's allegation of malicious use as true except "[i]n cases involving wholly unsupported and conclusory allegations advanced by the complainant". See [WIPO Overview 3.0](#), section 4.3. While the evidence for the Complainant's claims is limited, the claims are not "wholly unsupported." Use of the Disputed Domain Name to host malware is evidence of registration and use in bad faith. See *Carvana, LLC v. Domain Privacy, Above.com* WIPO Case No. [D2021-0290](#) (April 22, 2021) ("Using a disputed domain name to disseminate malware indicates bad faith *per se*").

Therefore, the Panel holds that the Respondent registered and is using the Disputed Domain Name in bad faith.

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

/Carol Anne Been/

Carol Anne Been

Sole Panelist

Date: March 14, 2023