

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Amelie Simon

Case No. D2023-1555

1. The Parties

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

The Respondent is Amelie Simon, Belgium.

2. The Domain Name and Registrar

The disputed domain name <savcomfortkeepers.com> (the "Domain Name") is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 9, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 11, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 21, 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 April 24, 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 April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 17, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on June 2, 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 following facts are undisputed.

The Complainant was founded in 1998 and has since provided in-house services and care to the elderly. After the Complainant was acquired by Sodexo, its activities expended rapidly. Nowadays, the Complainant has more than 700 offices worldwide providing in-house care services to thousands of seniors every day.

The Complainant is the owner of several trademark registrations, including, but not limited to the European Union trademark, COMFORT KEEPERS (word mark), with registration No. 004210456 and registration date of January 19, 2006, for services in classes 39, 43, and 45, and the United States trademark, COMFORT KEEPERS (word mark), with registration No. 2366096 and registration date of July 11, 2000, for services in class 42. These two trademark registration will together in singular be referred to as the "Trademark".

The Domain Name was registered on February 24, 2023, and resolves to a website (the "Website"), which indicates that the Domain Name is being parked, and includes different sponsored links to third-party websites. In the examples submitted by the Complainant, links were included to e.g. websites for home for the elderly and currently also to websites for home care services.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that the Domain Name is confusingly similar to the Trademark in which the Complainant has longstanding rights. More specifically, the Domain Name consists of the Trademark in its entirety to which the Respondent solely added the term and/or abbreviation "sav". The Trademark, however, is the dominant element of the Domain Name and is also recognizable as such.

Moreover, the Respondent has no prior rights or legitimate interests in the Domain Name, and the Respondent is not commonly known by the Domain Name. Furthermore, the Respondent is unknown to the Complainant and the Respondent is, thus, not affiliated, associated or sponsored by the Complainant. Additionally, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its Trademark or to register a domain name incorporating the Trademark.

The Domain Name has been registered and used in bad faith. The Respondent registered the Domain Name with prior knowledge of the Trademark and the Complainant's activities. This is because, the Respondent chose to register a Domain Name that copies the fanciful trademark of the Complainant. Moreover, the Domain Name resolves to a parked page displaying multiple pay-per-click ("PPC") links that lead to websites that are in direct competition with the Complainant's activities. Therefore, the Respondent is intentionally using the Domain Name to attract Internet users by creating a likelihood of confusion.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "sav") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a Domain Name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not 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 or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

Further adding to the above, panels have generally found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), section 2.9. Seeing that the PPC links on the Website, to which the Domain Name resolves, link to different websites that are in direct competition with the Complainant, the Panel finds that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes. As such, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

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 the Respondent's Website or location or of a product or service on the Respondent's Website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel further notes that the Website to which the Domain Name resolves is a parked Website with sponsored links to third-party websites which sufficiently establishes evidence of bad faith. All the more so, because the sponsored links direct to third-party websites that offer services that are in direct competition with the services of the Complainant.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to the Website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the services that are being offered on the Website.

Certainly lacking a Response, the Panel finds that there is no other plausible explanation than that the Respondent was aware of the existence of the Complainant's rights and activities at the time the Respondent registered the Domain Name.

Furthermore, the Panel takes into consideration that the Respondent could not be reached at the street address it has provided registering the Domain Name, which could be an indication of providing false information. This also supports a finding of bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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

/Willem J.H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: June 16, 2023