

ADMINISTRATIVE PANEL DECISION

CK Franchising, Inc. v. Tyler Brown
Case No. D2022-4045

1. The Parties

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

The Respondent is Tyler Brown, United States.

2. The Domain Name and Registrar

The disputed domain name <comfortkeeperscda.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 October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 November 3, 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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 1, 2022.

The Center appointed Andrew J. Park as the sole panelist in this matter on December 14, 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 leading provider of quality in-home senior care that was founded in 1998 by Kris Butler, a registered nurse working in home health care to provide more than in-home medical care and assist patients with their non-medical needs. In 2009, the Complainant was purchased by Sodexo, one of the world's leading food and facilities management services companies and the global leader in the health care and seniors markets. Comfort Keepers provides in-home care services to thousands of seniors every day and now is available in 13 countries through independently owned and operated locations with more than 700 offices worldwide.

The Complainant owns the following registered marks and the domain name <comfortkeepers.com> registered on April 6, 1998, for its official website.

Jurisdictions	Trademark	Registration No.	Registration Date	Classes
United States	COMFORT KEEPERS	2366096	July 11, 2000	42
United States	 Comfort Keepers.	2335434	March 28, 2000	42
United States	I AM A COMFORT KEEPER	3172466	November 14, 2006	45
United States	WE ARE COMFORT KEEPERS	3172467	November 14, 2006	45
United States	BE A COMFORT KEEPER	3258432	July 3, 2007	45
European Union	COMFORT KEEPERS	009798001	August 22, 2011	10, 38, and 44
European Union	COMFORT KEEPERS	004210456	January 19, 2006	39, 43, and 45
European Union	 Comfort Keepers.	004210481	January 19, 2006	39, 43, and 45

The disputed domain name was registered on October 19, 2022. Currently, the disputed domain name is inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name should be transferred to the Complainant for the following reasons:

(a) The disputed domain name is identical or confusingly similar to the Complainant's trademark COMFORT KEEPERS in which the Complainant has rights.

The Complainant owns registrations for the trademark COMFORT KEEPERS in many jurisdictions and a strong reputation in the United States, among others, where the Respondent is located. The Complainant

contends that the disputed domain name incorporates the Complainant's trademark COMFORT KEEPERS in its entirety, together with the addition of the letters "cda" which are understood by consumers to be the abbreviation of the city Coeur d'Alene in the United States. Adding the letters "cda" to the Complainant's trademark in the disputed domain name fails to negate the confusing similarity between the disputed domain name and the Complainant's trademark because the Complainant's trademark is clearly predominant in the disputed domain name and can be considered as identifying a COMFORT KEEPERS website relating to its Coeur d'Alene office resulting in reinforcing the risk of confusion between the disputed domain name and the Complainant's trademark COMFORT KEEPERS.

(b) The Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has no rights on COMFORT KEEPERS as a corporate name, trade name, shop sign, mark, or domain name that would be prior to the Complainant's rights on COMFORT KEEPERS. Also, the Respondent is not commonly known by the disputed domain name and does not currently utilize the disputed domain name. 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.

(c) The disputed domain name was registered and is being used in bad faith.

The Complainant contends that the Respondent must have had actual knowledge of the Complainant, its trademarks, and business activities when it registered the disputed domain name because the Complainant's trademark COMFORT KEEPERS is purely fanciful and nobody could legitimately choose this word or any variation thereof to create a domain name unless seeking to create an association with the Complainant and benefit from its reputation. Also, the disputed domain name does not presently seem to have any active content and is registered in the name of a privacy service for protecting personal data. The Complainant, which has recently faced several attacks, fears a possible fraudulent use of the disputed domain name, notably to perpetrate email scams sent to its clients requesting payment of false invoices on fake bank accounts which all can be considered as the Respondent's passive holding of the disputed domain name and support the finding of its bad faith use of the disputed domain name.

In short, the Complainant's argument is that the Respondent's unauthorized registration of the disputed domain name and its passive holding, likely with the aim of fraudulent uses, are for the purpose of commercial gain and, as such, constituting bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

This element consists of two parts: first, whether the Complainant has rights in a relevant trademark and, second, whether the disputed domain name is identical or confusingly similar to that trademark. The Panel finds that the Complainant has established registered rights in the COMFORT KEEPERS trademark and that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name incorporates the Complainant's trademark in its entirety. Further, the mere addition of "cda", whether as a reference to a geographic term, as the Complainant claims, or otherwise, does nothing to prevent a finding of confusing similarity to the Complainant's trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Further, the addition of the generic Top-Level Domain (“gTLD”) “.com” may be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#)).

For these reasons, pursuant to the Policy, paragraph 4(a)(i), the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the Respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (See *Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

Here, the Panel finds that the Complainant has made out a *prima facie* case.

The Panel finds that the Respondent has no relationship with or authorization from the Complainant to use its trademarks, COMFORT KEEPERS. There is nothing in the record to suggest that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name or has been commonly known by the disputed domain name. Also, there is no evidence that the Respondent has the intention to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Panel’s view is that these facts may be taken as true in the circumstances of this case.

Accordingly, the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark, or to a competitor of that the complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, 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.

The Complainant claims that the Respondent registered and is using the disputed domain name in bad faith in violation of the Policy, paragraph 4(a)(iii). Specifically, the Complainant claims that the Respondent violated the Policy, paragraph 4(b)(iv) by registering the disputed domain name in order to attempt to attract, for commercial gain, Internet users to the Respondent’s website which the disputed domain name resolves

to by creating a likelihood of confusion with the Complainant's trademark.

As stated previously, the Respondent did not file any response to the Complaint, failing thereby to rebut the Complainant's allegations of the Respondent's bad faith registration and use of the disputed domain name.

Nevertheless, the Panel still has the responsibility of determining which of the Complainant's assertions are established as facts and whether the conclusions asserted by the Complainant can be drawn from the established facts (see *Harvey Norman Retailing Pty Ltd v. Oxford-University*, WIPO Case No. [D2000-0944](#)).

First, the Panel finds the Respondent intentionally registered the disputed domain name in bad faith. The Respondent registered the disputed domain name, which is identical or confusingly similar to the Complainant's trademark, COMFORT KEEPERS, while aware of the Complainant's business and its trademark. The Complainant started its business in 1998 and created its own trademark COMFORT KEEPERS, which is sufficiently qualified as the identification for the Complainant and its business activities.

Also, the Complainant first registered its trademark in 2000 which predates the Respondent's registration date of the disputed domain name by some 22 years. Moreover, the disputed domain name was created by combining the Complainant's trademark COMFORT KEEPERS, and the city name where one of the Complainant's care centers is located. These facts clearly show that the Respondent had knowledge of the Complainant's trademark and its reputation when it registered the disputed domain name and that it tried to show that there was a business relationship between the disputed domain name and the Complainant and to benefit from the likelihood of confusion with the Complainant's trademark.

This finding is supported by facts and evidence that the disputed domain name has been inactive since the Respondent's registration and there is no evidence whatsoever that the Respondent is currently using or is commonly known by, has used or has been commonly known under, or has a *bona fide* intent to use the disputed domain name. Passive holding of a domain name may not prevent a finding of bad faith under the so-called doctrine of passive holding. In particular, the following factors have been considered relevant in applying the passive holding doctrine (see *Andrey Ternovskiy dba Chatroulette v. WhoisGuard Protected, WhoisGuard, Inc. / Armando Machado*, WIPO Case No. [D2018-0082](#)):

- (i) the degree of distinctiveness or reputation of the complainant's mark,
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use,
- (iii) the respondent's concealing its identity or use of false contact details, and
- (iv) the implausibility of any good faith use to which the domain name may be put

The Panel looks at the totality of the circumstance of this case and notes that the Complainant clearly shows that it has trademark registrations for COMFORT KEEPERS in many countries which all predate the registration date of the disputed domain name and ever since the Complainant started its business in 1998, and it has continuously used its trademark, COMFORT KEEPERS, in connection with its in-home caregiving services. The Panel confirmed that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and goodwill in its trademark worldwide. The Respondent did not submit a response nor provide any evidence of actual or contemplated good-faith use of the disputed domain name. Furthermore, the Complainant's COMFORT KEEPERS trademark has a degree of awareness among the public, such that it is implausible to believe that the Respondent was not aware of that mark when he registered the disputed domain name. According to section 3.1.4 of the [WIPO Overview 3.0](#), the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Accordingly, all of the above evidence shows that the Respondent had knowledge of the Complainant's trademark and business when it registered the disputed domain name and that it tried to falsely imply there was a business relationship between the disputed domain name and the Complainant by creating a likelihood of confusion. Thus, it is clear that the Respondent registered and is using the disputed domain name in bad faith, with full knowledge of the Complainant's trademarks and business.

Accordingly, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith pursuant to the Policy, paragraph 4(a)(iii).

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 <comfortkeeperscda.com> be transferred to the Complainant.

/Andrew J. Park/

Andrew J. Park

Sole Panelist

Date: December 28, 2022