

## **ADMINISTRATIVE PANEL DECISION**

### **Brookfield Office Properties Inc. v. Hola Domains, Hola Dominios Limitada Case No. D2022-3015**

#### **1. The Parties**

Complainant is Brookfield Office Properties Inc., Canada, represented by Safenames Ltd., United Kingdom.

Respondent is Hola Domains, Hola Dominios Limitada, Costa Rica.

#### **2. The Domain Name and Registrar**

The disputed domain name is <brookefieldproperties.com>, which is registered with DropCatch.com 1302 LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2022. On August 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from those in the Complaint. The Center sent an email communication to Complainant on August 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. In addition, on the same day, the Center sent an email communication to the Complainant noting that the Complaint was administratively deficient. The Complainant filed an amended Complaint on August 23, 2022.<sup>1</sup>

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 Respondent of the Complaint, and the proceedings commenced on August 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2022. Respondent did not submit any response. Accordingly, the

---

<sup>1</sup> The original Complaint was filed against Private Registration, NameBrightPrivacy.com, which appeared as registrant in the corresponding Whois report. The amended Complaint was filed against Respondent, as per the information disclosed by the Registrar.

Center notified Respondent's default on September 19, 2022.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on September 26, 2022. This Panel finds that it was properly constituted. This 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**

Complainant is a real estate organisation specialising in investment strategies, which forms part of Brookfield Asset Management Inc.

Complainant has rights in the BROOKFIELD mark for which it holds Canadian registration No. TMA472422 registered on March 12, 1997, in classes 36 and 37. Complainant also has rights in the BROOKFIELD PROPERTIES mark for which it holds, *inter alia*, Canadian registration No. TMA767439 registered on May 19, 2010, in classes 36 and 37; United States registration No. 4277629 registered on January 22, 2013, in classes 36 and 37; and European Union registration No. 014684451 registered on February 12, 2016, in classes 36 and 37.

The disputed domain name was registered on August 5, 2022. By the time the Complaint was filed the disputed domain name resolved to a website showing, among others, "FOR SALE – Click here to buy brookefieldproperties.com for your website name!", "Related searches", followed by hyperlinks such as "Construction Projects" and "Office Space for Rent" and which in turn redirected visitors to other web pages.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant's assertions may be summarized as follows.

Complainant is part of Brookfield Asset Management, a global alternative asset management company that focuses on real estate, renewable power, infrastructure and private equity. Brookfield Asset Management was founded in 1899 and has over 1,000 investment professionals and 150,000 operating employees spread over 100 offices in 30 countries and 5 continents.

Complainant is a real estate organisation specialising in investment strategies that also offers a number of investment opportunities, such as public securities under its subsidiary Brookfield Public Securities Group LLC and private funds where investors are offered the opportunity to invest in assets managed by Complainant. Complainant's real estate division owns entire city skylines across the globe, with a significant presence in the commercial real estate market of downtown Los Angeles, Houston, Berlin and London.

Complainant and its associated companies are regularly featured in major publications due to their leading position in the real estate and investment sectors, having received industry awards as well as press coverage for some major acquisitions. As a result, Complainant and its associated companies have acquired a strong global reputation in the real estate and investment sectors.

Complainant holds numerous trademark registrations for BROOKFIELD and BROOKFIELD PROPERTIES in various jurisdictions. Previous UDRP decisions have recognised the value of the BROOKFIELD mark and its association with Complainant.

Complainant operates its main website at <brookfieldproperties.com>, which was registered in 1998 and Brookfield Asset Management has operated its main website at <brookfield.com> also since 1998. They also own many other domain names which incorporate the BROOKFIELD and BROOKFIELD PROPERTIES

marks, such as <brookfieldcapital.us>, <brookfieldfunds.us> and <brookfieldfinancialproperties.com>.

The disputed domain name is confusingly similar to Complainant's marks, which are recognisable within the disputed domain name. The disputed domain name is closely similar to Complainant's BROOKFIELD PROPERTIES mark: the only element of the disputed domain name that differs from such mark is the addition of a letter "e" to said mark. Such addition is not sufficient to prevent a finding of confusing similarity.

Respondent lacks a right and a legitimate interest in the disputed domain name. Respondent is not known, nor has it ever been known as BROOKFIELD PROPERTIES, has not registered any marks for BROOKFIELD PROPERTIES, and there is no evidence that Respondent holds any unregistered right to BROOKFIELD PROPERTIES. Respondent has no connection or affiliation with Complainant and has not received any license or consent to use said mark in any way; in the absence of any license or permission from Complainant to use its mark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed.

Respondent has deliberately used the disputed domain name to create an impression of association with Complainant in order to earn revenue generated from redirections. The disputed domain name is currently used to host a website that displays a pay-per-click (PPC) advertising page and to advertise its availability for sale. Respondent uses the typosquatting variation of Complainant's mark to redirect users to third-party websites with the PPC links. Although such PPC links do not directly compete with Complainant, previous UDRP decisions have accepted that where the links do not correspond to any generic or descriptive meaning, this is sufficient to show that a respondent has not used the disputed domain name at issue in connection with a *bona fide* offering. Such evidence shows that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Respondent both registered and is using the disputed domain name in bad faith. Complainant has accrued substantial goodwill and recognition since Complainant's establishment in 1899, and the Brookfield Properties name has gained a significant reputation in the real estate industry. Complainant's earliest BROOKFIELD PROPERTIES mark registration predates the creation date of the disputed domain name by at least 12 years. Anyone who has access to the Internet can find Complainant's marks on public trademark databases. Results for BROOKFIELD PROPERTIES on popular search engines, such as Google, list Complainant's brand and services as the first result.

Respondent registered the disputed domain name to target Complainant's mark intentionally. The disputed domain name consists of an intentional misspelling of Complainant's mark, which is indicative of typosquatting.

The facts demonstrate that Respondent has registered the disputed domain name to unfairly capitalize on the goodwill and reputation attached to Complainant's mark. The BROOKFIELD PROPERTIES mark is distinctive and not used in commerce other than by Complainant. Given the similarity of the disputed domain name with said Complainant's mark, Respondent's use of PPC links constitutes a clear attempt to generate a commercial gain by creating a likelihood of confusion with Complainant's mark, regardless of whether Respondent itself reaps the profits therefrom or a third-party.

The disputed domain name has been intentionally registered and used with Complainant's mark in mind, in view of selling it back in excess of Respondent's out-of-pocket costs. Respondent has listed the disputed domain name for sale on the domain aftermarket website "www.afternic.com", for the price of USD 6999. Such price is far beyond what would reasonably be expected to be within Respondent's out-of-pocket costs related to the disputed domain name. While the offer for sale has not been made directly to Complainant, the circumstances surrounding the registration and use of the disputed domain name indicate bad faith and suggest Respondent is aware of the value of the disputed domain name as a mark.

Respondent has engaged in a pattern of bad faith conduct, preventing owners of marks from reflecting theirs in corresponding domain names. Respondent holds a portfolio of up to 9,534 domain names, which comprises several third-party marks, such as <burberryplace.com>, <wwwmyspace.com>, and

<bitcoincasher.com>. All of them are used for advertising their availability for sale, which shows that Respondent has made those registrations based on their value as trademarked terms. Respondent has also been subject to several UDRP proceedings, the majority of which have ruled in favour of the corresponding complainant, concluding that Respondent has registered and used third-party trademarks in bad faith.<sup>2</sup>

The disputed domain name currently appears to be set up with mail exchanger (MX) records, which shows that it may be actively used for email purposes. Emails emanating from the disputed domain name could not be reasonably used for any good faith purpose, given its confusing similarity with Complainant's mark. As such, the disputed domain name is likely to be used to facilitate fraudulent activity such as phishing, impersonating or passing off as Complainant, which is indicative of bad faith registration and use.

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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**

It is undisputed that Complainant has rights over the BROOKFIELD and BROOKFIELD PROPERTIES marks.

Since the addition of a generic Top-Level Domain (*i.e.* ".com") after a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. Taking into account the aforesaid, it is clear that the disputed domain name almost identically reproduces the BROOKFIELD PROPERTIES mark. This Panel considers that such mark is recognizable in the disputed domain name and that the additional "e" letter in the term "brookefield" and the lack of spacing between such term and "properties" in the disputed domain name do not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.9 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

---

<sup>2</sup> Complainant cites, among others, *Saddle Butte Ag, Inc. v. Hola Domains*, WIPO Case No. [D2021-1292](#); *Teva Pharmaceuticals USA, Inc v. Private Registration / Hola Domains, Hola Dominios Limitada*, WIPO Case No. [D2020-0569](#); *Love & Green v. Hola Domains, Hola Dominios Limitada*, WIPO Case No. [D2019-0496](#); *Abbott Laboratories v. Hola Domains / Hola Dominios Limitada*, WIPO Case No. [D2017-2463](#); and *Jacobs Douwe Egberts DE GmbH v. Hola Domains, Hola Dominios Limitada*, WIPO Case No. [D2017-0365](#).

## B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that it has no relationship with Respondent, that it has not authorized Respondent to use the BROOKFIELD PROPERTIES mark, that Respondent is not commonly known by such mark, that the disputed domain name creates an impression of association with Complainant and its mark, and that Respondent is not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain. The evidence in the file shows that the website associated with the disputed domain name shows links, apparently of PPC nature, to other web pages.

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name (see *Intocast AG v. Lee Daeyoon*, WIPO Case No. [D2000-1467](#) and section 2.1 of the [WIPO Overview 3.0](#)). In the file, there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

## C. Registered and Used in Bad Faith

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

Taking into consideration Complainant's international presence and press coverage, that the registration and use of its BROOKFIELD PROPERTIES mark preceded the registration of the disputed domain name, and that Complainant's business is featured at "www.brookfieldproperties.com", this Panel is of the view that Respondent should have been aware of the existence of Complainant and its BROOKFIELD PROPERTIES mark at the time it obtained the registration of the disputed domain name.

In the case at hand, the Panel notes the use of the disputed domain name for a parking website with links that may generate PPC revenue, and finds that such use in the circumstances of this case tries to capitalize on the reputation and goodwill of Complainant's BROOKFIELD PROPERTIES mark. In addition, Respondent's bad faith may be deduced from the following facts: (i) the disputed domain name incorporates Complainant's BROOKFIELD PROPERTIES mark coupled with just a minor typographical error variation, practice commonly known as typosquatting and which has been deemed as a strong indicative of bad faith under a number of UDRP cases;<sup>3</sup> (ii) Complainant is a well-established company; (iii) Respondent is using Complainant's mark in the disputed domain name (albeit with such minor letter variation) without Complainant's authorization; (iv) Respondent's use of a privacy service to hide its name and contact details; (v) the risk of confusion of the disputed domain name with Complainant and its mark; (vi) several prior UDRP decisions against Respondent for having registered as domain names marks of third parties;<sup>4</sup> (vii) Respondent's intent to sell the disputed domain name for a price likely in excess of its registration cost;<sup>5</sup> and (viii) Respondent has failed to appear at this proceeding, and considering the circumstances of the case, the

---

<sup>3</sup> See *Amazon.com, Inc. v. Steven Newman a/k/a Jill Wasserstein a/k/a Pluto Newman*, WIPO Case No. [D2006-0517](#): "the practice of typosquatting, in and of itself, constitutes bad faith registration". See also *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#): "Typosquatting is virtually *per se* registration and use in bad faith".

<sup>4</sup> See section 3.1.2 of the [WIPO Overview 3.0](#). See also *Discover Financial Services v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3107](#): "The Panel agrees that the Respondent is clearly in the business of registering domain names that include the trademarks of others [...] This alone constitutes evidence of registration and use in bad faith".

<sup>5</sup> See *Esteban Ceca Magán v. John Gray*, WIPO Case No. [D2011-1202](#): "Respondent's attempt to sell (through the Registrar) the disputed domain name for an amount well in excess of its registration cost is also indicative of bad faith registration and use". See also section 3.1.1 of the [WIPO Overview 3.0](#).

Panel finds that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its substantial similarity with, and with the likely intention to benefit from the reputation and goodwill of, Complainant's BROOKFIELD PROPERTIES mark, which denotes bad faith.<sup>6</sup>

In light of the above, this Panel finds that Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <brookefieldproperties.com> be transferred to Complainant.

*/Gerardo Saavedra/*

**Gerardo Saavedra**

Sole Panelist

Date: October 19, 2022

---

<sup>6</sup> See *Jafra Cosmetics, S.A. de C.V. and Jafra Cosmetics International, S.A. de C.V. v. ActiveVector*, WIPO Case No. [D2005-0250](#): "due to the intrinsically distinctive character of Complainants' trademarks, it is inconceivable that the contested domain name would have been registered and used if it were not for exploiting the fame and goodwill of Complainants' marks by diverting Internet traffic intended for Complainant".