

ADMINISTRATIVE PANEL DECISION

Brasa Capital Management, LLC v. james pad
Case No. D2024-2089

1. The Parties

Complainant is Brasa Capital Management, LLC, United States of America ("US"), represented by Gibson, Dunn & Crutcher LLP, US.

Respondent is james pad, US.

2. The Domain Name and Registrar

The disputed domain name <barsacap.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 18, 2024. On May 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 20, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 27, 2024.

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 May 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 21, 2024.

The Center appointed Phillip V. Marano, Lynda J. Zadra-Symes, and James A. Barker as panelists in this matter on July 16, 2024. The Panel finds that it was properly constituted. Each member of 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

Complainant is a real estate investment firm based in Los Angeles, California that invests in multifamily, office, industrial, and retail projects in the western US and Texas. Complainant offers information about its services through its official <brasacap.com> domain name and website. Complainant owns valid and subsisting registrations for the BRASA CAPITAL trademark in the US, including Reg. No. 6,003,131, registered on March 3, 2020, with the earliest priority dating back to May 1, 2018. The name “Brasa” was coined by Complainant’s founder, Eric Samek, as a play on the words “Brothers Samek”.

Respondent registered the disputed domain name on March 18, 2024. At the time this Complaint was filed, the disputed domain name resolved to a parking page with pay-per-click advertisements. Complainant has further provided evidence showing that the disputed domain name was used to send an email impersonating a Director of Complainant and instructing the recipient to contact another employee of Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant asserts ownership of the BRASA CAPITAL trademark and has adduced evidence of trademark registrations in the US, with earliest priority dating back to May 1, 2018. The disputed domain name is confusingly similar to Complainant’s BRASA CAPITAL trademark, according to Complainant, because Respondent purposefully misspelled “brasa” as “barsa” by inverting the “a” and “r” to create a typographical variation of Complainant’s BRASA CAPITAL trademark. Further according to Complainant, the addition of the term “cap” does not distinguish the disputed domain name from Complainant’s trademark especially given that Complainant’s official website <brasacap.com> also uses the term “cap”.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent’s use of the disputed domain name in connection with a parking page with pay-per-click advertisements; and Respondent’s use to attempt to impersonate a Director of Complainant in an email (with the “@barsacap.com” email extension) to one of Complainant’s Operating Partners. Complainant submitted a copy of that email, in which Respondent instructed the recipient to contact one of Complainant’s associates “to discuss a couple of things” and provided a phone number not actually maintained by Complainant or its associate.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent’s intentional registration of a typographical variation of Complainant’s BRASA CAPITAL trademark and official <brasacap.com> domain name; Respondent’s use of the disputed domain name to attempt to impersonate Complainant’s personnel in furtherance of phishing or other fraud; Respondent’s use of a privacy registration service to mask its identity; and Respondent’s use of false registration data in connection with the disputed domain name. With regard to the latter argument, Complainant was unable to confirm either the name, physical address, or phone number provided by Respondent in searches with the US Postal Service or the White Pages.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. It is well established that domain names which consist of common, obvious or intentional misspellings of trademarks are considered to be confusingly similar for the purposes of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9 ("Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters [...] (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers"). See e.g., *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#) ("This is clearly a 'typosquatting' case where the disputed domain name is a slight misspelling of a registered trademark to divert internet traffic. In fact, the [...] domain name comprises the Complainant's trademark [...] with a single misspelling of an element of the mark: a double consonant 's' at the end.") In this case, Respondent has inverted the letters "a" and "r" in Complainant's BRASA CAPITAL trademark, an obvious and intentional misspelling of Complainant's trademark. Although the addition of other terms here, "cap", 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 disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, as applicable to this case (email phishing, impersonation/passing off, and other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. As discussed above, in this case Complainant has proffered direct and uncontroverted email evidence that Respondent has used the disputed domain name in an attempt to impersonate one of Complainant’s employees, most likely as part of a scheme to phish or defraud one of Complainant’s Operating Partners.

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.

In the present case, the Panel notes that Respondent has intentionally registered the disputed domain name incorporating a typographical variation of Complainant’s BRASA CAPITAL trademark and official <brasacap.com> domain name, in an attempt to impersonate one of Complainant’s employees, all in furtherance of Respondent’s illegal scheme to phish or defraud one of Complainant’s Operating Partners. Complainant has submitted direct and uncontroverted email evidence to establish illegal use of the disputed domain name by Respondent. Panels have held that the use of a domain name for such illegal activity, as applicable to this case (email phishing, impersonation/passing off, or other types of fraud), constitutes axiomatic bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

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 <barsacap.com> be transferred to Complainant.

/Philip V. Marano/

Philip V. Marano

Presiding Panelist

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Panelist

/James A. Barker/

James A. Barker

Panelist

Date: July 24, 2024