

## **ADMINISTRATIVE PANEL DECISION**

Brasa Capital Management, LLC v. Gen Marchant, GMG  
Case No. D2024-2090

### **1. The Parties**

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

The Respondent is Gen Marchant, GMG, Qatar.

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

The disputed domain name <brasacap.org> (the "Domain Name") 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 17, 2024. On May 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 20, 2024, 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 (Redacted for Privacy, Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2024, 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 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 the Respondent of the Complaint, and the proceedings commenced on June 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 26, 2024.

The Center appointed Mathias Lilleengen, James A. Barker and Nayiri Boghossian as panelists in this matter on July 18, 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**

The Complainant is a real estate investment firm that invests in multifamily, office, industrial, and retail projects in the western United States and Texas. It has been known as Brasa Capital since its founding in 2018 and today it has over USD 1 billion in assets under management.

The Complainant registered the trademark BRASA CAPITAL on March 3, 2020, cf. US trademark registration number 6,003,131. The Complainant has also registered domain names consisting of or incorporating the Brasa Capital mark, such as <brasacap.com> registered in 2018.

The Domain Name was registered on March 20, 2024. The Complaint documents that the Domain Name has been used to set up an email account used in a phishing attempt. At the time of drafting the Decision, the Domain Name resolves to an error page.

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

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

The Complainant argues that the Complainant is well known throughout the United States and that the Complainant's "Brasa" mark is not a generic or descriptive but coined by the Complainant's founder. The Complainant argues that the Domain Name is confusingly similar to the Complainant's trademark. The dominant feature of the Complainant's mark is recognizable in the Domain Name.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant asserts that the Respondent has not been granted any authorization to use the Complainant's trademark. The present non-use of the Domain Name does not support a finding of rights or legitimate interest, as the Complainant's trademark is well-known and the Complainant has not given the Respondent any right, license or authorization to use the Domain Name. The Respondent's only known use of the Domain Name was a phishing attempt. Such illegal use cannot confer rights or legitimate interests on the Respondent.

The Complainant states that the Respondent's use of the Domain Name for phishing activity is evidence of bad faith. The mere registration of the Domain Name as confusingly similar to the Complainant's well-known trademark by the unaffiliated Respondent creates by itself a presumption of bad faith. Moreover, the Respondent's use of a privacy service to mask its identity, and/or listing of false contact information, are further indication of bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

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.

The Complainant has established that it has rights in the trademark BRASA CAPITAL. The Domain Name incorporates the Complainant’s trademark albeit the word “capital” in the short form “cap”. This difference does not prevent a finding of confusing similarity between the Domain Name and the trademark. [WIPO Overview 3.0](#), section 1.8. When assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain (“gTLD”). [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

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

Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent’s use of, or 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. On the contrary, the Respondent’s use for phishing activity is evidence of bad faith, see below. Finally, the Panel finds that the composition of the Domain Name carries a risk of implied affiliation with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

## **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 Respondent most likely knew of the Complainant when it registered the Domain Name. It follows from the composition and use of the Domain Name. The Respondent’s use of the Domain Name indicates fraudulent intent. Moreover, the Respondent has not offered any explanation as to why it registered the Domain Name, nor provided any evidence of actual or contemplated good faith use of the Domain Name. In the context of this case, the Respondent’s use of a privacy service further points to bad faith.

Based on the available record, 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 the Domain Name <brasacap.org> transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Presiding Panelist

*/James A. Barker/*

**James A. Barker**

Panelist

*/Nayiri Boghossian /*

**Nayiri Boghossian**

Panelist

Date: August 1, 2024