

## **ADMINISTRATIVE PANEL DECISION**

Brookfield Office Properties Inc. v. ALEX MARS, Wasserman  
Case No. D2024-2954

### **1. The Parties**

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

The Respondent is ALEX MARS, Wasserman, United States of America (“United States”).

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

The disputed domain name <brookfieldproperties.org> (“Disputed 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 July 19, 2024. On July 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 19, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 25, 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 July 25, 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 August 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 7, 2024.

The Center appointed Christos A. Theodoulou as the sole panelist in this matter on September 11, 2024. 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, Brookfield Office Properties Inc., is a global real estate firm and a wholly-owned subsidiary of Brookfield Asset Management, a multinational company focusing on real estate, renewable power, infrastructure, and private equity. According to the Complainant, the corporate structure of Brookfield Asset Management is referred to as the "Brookfield Ecosystem", which includes the main entity and subsidiaries, such as the Complainant. Across this Ecosystem, it has 240,000 operating employees in 30+ countries across five continents. The Complainant is a real estate organization that specializes in real estate investment strategies and focuses on the real estate investment activities of its parent. The Complainant was initially founded in 1923, 24 years after its parent company.

According to the information provided by the Complainant and not refuted by the Respondent, the Complainant operates a diverse portfolio of properties internationally across nine countries and regions, including but not limited to the United Kingdom, Europe, United States, Canada, India, China, and Australia. The business operates under the website "www.brookfieldproperties.com" where they have operated since 1998. The Complainant states that their business has a global presence and that it manages over 1,000 properties worldwide, overseeing over 380 million square feet of buildings globally. It is thus claimed by the Complainant that they have acquired widespread consumer goodwill by virtue of more than 100 years of global use under the brand name BROOKFIELD PROPERTIES. It is further supported by the Complainant that their company received a number of accolades for their property developments worldwide.

The Complainant claims to have protected the BROOKFIELD PROPERTIES mark by registering their trademarks in various jurisdictions.

The Complainant's trademarks include:

- (i) Canada Trademark Registration No. TMA767439, BROOKFIELD, registered on May 19, 2010;
- (ii) United Kingdom Trademark Registration No. UK00002558995, BROOKFIELD PROPERTIES, registered on January 7, 2011;
- (iii) United States Trademark Registration No. 4277629, BROOKFIELD PROPERTIES, registered on January 22, 2013;
- (iv) Australia Trademark Registration No. 1728650, BROOKFIELD PROPERTIES, registered on October 16, 2015;
- (v) European Union Trademark Registration No. 014684451, BROOKFIELD PROPERTIES, registered on February 12, 2016.

Furthermore, the Complainant also owns and uses domain names consisting of or incorporating the trademarks BROOKFIELD and BROOKFIELD PROPERTIES. The Complainant claims that it actively promotes its activities online and has operated its main websites at the domain names <brookfieldproperties.com> and <brookfield.com>. In addition, the Complainant has registered and used, for the past 26 years or so, the domain name <brookfieldproperties.com>, which is practically identical to the Disputed Domain Name.

As it can be inferred from the case record, the Disputed Domain Name was registered on June 17, 2024, by the Respondent, and does not resolve to an active webpage, following a suspension by the Registrar. The Complainant submitted evidence showing that the Disputed Domain Name was used by the Respondent to

distribute phishing email communications to third parties impersonating an employee of the Complainant's company, attempting to carry on business as the Complainant (i.e., sending out emails requesting invoices).

## **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 Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is identical or confusingly similar to the trademarks in which the Complainant has rights, that the Respondent lacks any rights or legitimate interests in respect of the Disputed Domain Name, and that the Respondent's fraudulent use of the Disputed Domain Name amounts to bad faith. As to the generic Top-Level Domain ("gTLD") ".org", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant states that the Disputed Domain Name is identical to the BROOKFIELD PROPERTIES mark in which the Complainant has rights. It is mentioned by the Complainant that the Disputed Domain Name includes the entirety of the Complainant's BROOKFIELD PROPERTIES mark.

Moreover, the Complainant contends that the Disputed Domain Name does not resolve to an active webpage, following a suspension by the Registrar. The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name and has not received any license from the Complainant to use domain names featuring the BROOKFIELD PROPERTIES trademark. Also, the Complainant asserts that by using the Complainant's trademark, distributing phishing emails and posing as an employee of the Complainant's company, attempting to carry on business as the Complainant by sending out emails requesting invoices cannot be considered a bona fide offering of goods and services and there is a high likelihood of confusion given the similarity between the Complainant's trademark and the Disputed Domain Name.

Lastly, according to the Complainant, there is no indication that the Respondent is commonly known by any terms used in the Disputed Domain Name, nor is offering any genuine goods or services. Thus, the Complainant asserts that there is no plausible reason that the Respondent registered or used the Disputed Domain Name other than to carry out fraudulent activity and submitted evidence showing that the Respondent's intention was to carry out a phishing scheme.

### **B. Respondent**

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

## **6. Discussion and Findings**

The Panel shall now proceed to the analysis of the evidence in this case and shall decide if the Complainant has satisfied the three elements of paragraph 4(a) of the Policy.

### **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 Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has presented evidence to demonstrate that it owns registered trademark rights to BROOKFIELD PROPERTIES. Therefore, 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 entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical and confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Disputed Domain Name incorporates the entirety of the Complainant's BROOKFIELD PROPERTIES trademark exactly without any additions or amendments. The mark of the Complainant remains recognizable in the Disputed Domain Name, and, this is by itself sufficient to establish the criterion of identity and confusing similarity for purposes of the Policy, as many previous UDRP panels have found. [WIPO Overview 3.0](#), supra.

As far as the gTLD “.org” is concerned, it is generally recognized that Top-Level Domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof on this point and holds that the Disputed Domain Name is identical and confusingly similar to the Complainant's trademark BROOKFIELD PROPERTIES for the purposes of the Policy.

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 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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed 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 Disputed Domain Name such as those enumerated in the Policy or otherwise.

In particular, the Panel finds that the Respondent has not used the Disputed Domain Name (or has made demonstrable plans for such use) with a bona fide offering of goods or services; that the Respondent is not commonly known by the Disputed Domain Name; and that the Respondent has not made legitimate noncommercial or fair use of the Disputed Domain Name.

Panels have held that the use of a Domain Name for illegal activity such as phishing, impersonation/passing off, or other types of fraud – here claimed as applicable to this case - can never confer rights or legitimate interests on a Respondent. [WIPO Overview 3.0](#), section 2.13.1.

As a conclusion on this point, the Panel finds the second element of the Policy has been established and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and the Complainant has thus satisfied 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.

In the present case, the Panel notes that the Disputed Domain Name has only been registered since June 17, 2024, while the Complainant's marks had been registered many years earlier. The Complainant has also demonstrated that the Brookfield Properties businesses operated pages in various social media platforms where the Complainant's marks are also featured prominently and are well-known globally. From the case record at hand, the Panel thus finds that the Respondent, when registering the Disputed Domain Name, was well aware of the Complainant's trademarks. Therefore, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (See *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#); *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#)).

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.

Further, the Panel finds that the Respondent has shown a bad faith conduct in the way the Respondent has used the Disputed Domain Name. The fact that the Respondent sent communications from an email address connected to the Disputed Domain Name to a third party, posing as an employee of the Complainant's company and attempting to carry on business as the Complainant, for example sending out emails requesting invoices, constitutes bad faith in the eyes of the Panel. Panels have held that the use of a domain name for illegal activity, claimed as applicable to this case: phishing and impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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

As a consequence of the above, the Panel finds that the Respondent has registered and is using the Disputed Domain Name in bad faith, thus 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 <brookfieldproperties.org> be transferred to the Complainant.

*/Christos A. Theodoulou/*

**Christos A. Theodoulou**

Sole Panelist

Date: September 24, 2024