

## **ADMINISTRATIVE PANEL DECISION**

Brookfield Office Properties Inc. v. Privacy service provided by Withheld for Privacy ehf / Carolina Rodrigues, Fundacion Comercio Electronico  
Case No. D2022-2563

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

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

The disputed domain name <brookfieldpropeeties.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 July 13, 2022. On July 14, 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 the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 28, 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 July 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 24, 2022.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on September 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 real estate organisation that specialises in real estate investment strategies. The Complainant is part of Brookfield Asset Management, a global alternative asset management company, which focuses on the areas of real estate, renewable power, infrastructure and private equity. Brookfield Asset Management was initially founded in 1899 and has approximately USD 500 billion in assets under management, with over 1,000 investment professionals, 150,000 operating employees spread over 100 offices in 30 countries and 5 continents. The Complainant itself operates a number of properties around the globe employing around 22,000 employees.

The Complainant has registered a number of BROOKFIELD PROPERTIES trademarks worldwide for services in classes 36, 37 related to the activities of the Complainant. Some of the BROOKFIELD PROPERTIES trademark registrations are indicated below:

- European Union ("EU") Trade Mark for BROOKFIELD PROPERTIES No. 014684451 dated February 12, 2016, for the services in classes 36 and 37.

- Canada Trademark for BROOKFIELD PROPERTIES No. TMA767439 dated May 19, 2010, for the services in classes 36 and 37.

- United States of America ("United States") for BROOKFIELD PROPERTIES No. 4277629 dated January 22, 2013, for the services in classes 36 and 37.

The Complainant actively promotes its activities online on the website corresponding to domain name <brookfieldproperties.com>, which was registered in 1998. The Complainant and Brookfield Asset Management also own many other domain names which incorporate the BROOKFIELD and BROOKFIELD PROPERTIES marks, such as, but not limited to, <brookfieldcapital.us>, <brookfieldfunds.us> and <brookfieldfinancialproperties.com>.

The Respondent appears to be an individual located in Panama. According to the Whois, the disputed domain name was registered in the name of the Respondent on July 2, 2021. The Complainant provided evidence suggesting that the disputed domain name resolved to a number of pages randomly provided with advertising, however, at the time of the decision, the disputed domain name did not resolve to an active webpage.

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

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

The Complainant contends that it has strong rights in BROOKFIELD PROPERTIES trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world. Also, the Complainant indicates that its activities and initiatives receive attention in media worldwide.

A number of previous panels have recognized the value of the Complainant's trademark and its association with the Complainant.

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's BROOKFIELD PROPERTIES mark as the only element of the disputed

domain name that differs from the Complainant's mark is the replacement of the letter "r" with the letter "e".

The Respondent has no rights or legitimate interests in the disputed domain name as the BROOKFIELD PROPERTIES trademark precedes the registration of the disputed domain name for years.

The Complainant has not authorized the Respondent to use the BROOKFIELD PROPERTIES mark in the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The Respondent is using the disputed domain name for a website at which Internet users are presented with a series of rotating home pages for corresponding third-party websites, some of them related to real estate development which is the Complainant's core business. According to the Complainant such use could not be considered as a *bona fide* offering of goods or services that would give rise to rights or legitimate interests in the disputed domain name.

The Respondent was fully aware of the Complainant's reputation and the Complainant's trademark rights on the BROOKFIELD PROPERTIES mark when the Respondent registered the disputed domain name. On February 16, 2022, the Complainant sent a cease and desist letter to the Respondent, which also demanded that the Respondent transfer the disputed domain name to the Complainant. Thus far, the Complainant has not received any response.

The disputed domain name was registered in bad faith by the Respondent for the purpose of creating confusion with the Complainant's marks to divert or mislead third parties for the Respondent's illegitimate profit.

The Respondent is also offering for sale the disputed domain name through the website "www.sedo.com" for no less than USD 899.00.

The disputed domain name has an associated MX (mail exchange) record enabling it to use an e-mail server, addressed by that name, to source outgoing e-mail.

The Respondent is a repeated infringer and was involved in a number of domain name disputes, including in the prior disputes with the Complainant.

Therefore, the disputed domain name has been registered by the Respondent in an unfair manner and in bad faith. It is also inconceivable that the Respondent had any good faith intentions at the point of registering the disputed domain name.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has proved its rights in the BROOKFIELD PROPERTIES mark through the Canada, EU and United States and other trademarks dating at least back to 2010 and covering numerous countries worldwide.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having trademark rights.

The disputed domain name is comprised of the words “brookfield”, “propeeties” and combined with the generic Top-Level Domain (“gTLD”) “.com”.

The Panel concludes that misspelling of the Complainant’s mark by replacement of the keyboard letter “r” with the adjacent letter “e” constitutes a clear case of typosquatting, which does not prevent a finding of confusing similarity. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

The Panel finds that according to a side-by-side comparison, the Complainant’s BROOKFIELD PROPERTIES trademark is recognizable within the disputed domain name.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a) of the Policy has therefore been satisfied by the Complainant.

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

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the disputed domain name. Once the complainant establishes a *prima facie* case against the respondent under this ground, the burden of production shifts to the respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant’s *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent’s rights or legitimate interests in the disputed domain name, and that the complainant frequently address to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not making a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the Complainant, the Respondent is not authorized or licensed to use the Complainant’s BROOKFIELD PROPERTIES trademark in the disputed domain name, as well as not in any way affiliated with the Complainant.

The Panel also notes that the Respondent failed to come forward with any relevant evidence confirming use or demonstrable preparations to use of the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The provided by the Complainant evidence indicates that the Respondent used the disputed domain name to host a page with pay-per-click links, and such use does not represent a *bona fide* offering of goods or services. The Respondent clearly intended to capitalize on the reputation and goodwill of the Complainant’s BROOKFIELD PROPERTIES mark and mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Taking into account the typosquatting nature of the disputed domain name, the reputation and long period of use of the Complainant’s BROOKFIELD PROPERTIES trademark, including in the corresponding Complainant’s domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent’s activities does not fall under a legitimate noncommercial use (under

paragraph 4(c)(iii) of the Policy).

According to the Registrar's information, "Carolina Rodrigues, Fundacion Comercio Electronico" is the registrant of the disputed domain name. The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name. The Panel concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

As the Panel established above, the Complainant's BROOKFIELD PROPERTIES trademark was used in commerce well before the registration of the disputed domain name on July 2, 2021. The Complainant's BROOKFIELD PROPERTIES trademark predates registration of the disputed domain name for at least 11 years.

The Panel finds that the Respondent knew of the Complainant's BROOKFIELD PROPERTIES trademark and reputation when registering the disputed domain name. This conclusion is supported by the fact that the disputed domain name is almost identical to the Complainant's BROOKFIELD PROPERTIES trademark, and official domain name <brookfieldproperties.com>, except for the replacement of the letter "r" with the adjacent keyboard letter "e", which is a clear sign of the intentional typosquatting and bad faith. See section 3.2.1 of the [WIPO Overview 3.0](#).

Furthermore, the Complainant did inform the Respondent of its trademark rights allowing to settle the matter amicably, however, such request was ignored by the Respondent.

The Respondent has been involved in more than 500 UDRP cases with majority of cases resulting in transfer of the disputed domain names to complainants. A number of previous UDRP panels found that the Respondent is a serial cybersquatter that registers domain names comprising of well-known trademarks, for no proper purpose but to profit from such conduct, including cases involving the same Complainant. See *Brookfield Office Properties Inc. v. Privacy service provided by Withheld for Privacy ehf / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2022-2572](#).

The Respondent offered the disputed domain name for sale at a price, which likely exceeds its out-of-pocket costs of registration.

The Panel concludes that it is difficult to conceive of any plausible use of the disputed domain name that would amount to good faith use, given that the disputed domain name is almost identical to the Complainant's BROOKFIELD PROPERTIES mark.

The Panel finds here as well that the Respondent's intention has always been to use the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location (see paragraph 4(b)(iv) of the Policy). The current non-use of the disputed domain name does not prevent a finding of bad faith.

The Respondent failed to submit a response or provide any evidence of a good-faith use or to show rights or legitimate interests in the disputed domain name.

Therefore, under the totality of the circumstances, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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, the Panel orders that the disputed domain name, <brookfieldpropeeties.com>, be transferred to the Complainant.

*/Oleksiy Stolyarenko/*

**Oleksiy Stolyarenko**

Sole Panelist

Date: October 4, 2022