

## **ADMINISTRATIVE PANEL DECISION**

ThinkAnalytics Ltd v. Walter Thamaha, Business Managers  
Case No. DIO2024-0001

### **1. The Parties**

The Complainant is ThinkAnalytics Ltd, United Kingdom, represented Thorntons Law LLP, United Kingdom.

The Respondent is Walter Thamaha, Business Managers, South Africa.

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

The disputed domain name <thinkanalytics.io> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2024. On January 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 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 (“Think Analytics (Pty) Ltd and “100% Digital”) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 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 January 25, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. The Respondent sent informal email communications on January 25, February 20, and February 21, 2024. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on February 20, 2024.

The Center appointed John Swinson as the sole panelist in this matter on February 22, 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 is a company based in Glasgow, United Kingdom. The Complainant provides products and services directed to AI personalized content discovery, hyper-targeted advertising, and customer insight.

The Complainant owns trademark registrations for THINKANALYTICS in various countries, including for example, Australian Registration No. 1722107, which is based on IR 1264486, with has a registration date of May 7, 2015. The Complainant commenced use of the THINKANALYTICS trademark in about 2000.

The Complainant operates a website located at <thinkanalytics.com>.

The disputed domain name was registered on July 14, 2020.

The Respondent did not submit a formal response, so little information is known about the Respondent. In informal email communications to the Center using a Gmail email address, the Respondent states that he is not a lawyer.

The website at the disputed domain name is titled “Data-Driven Growth for Small & Medium Businesses”. The website states “Think Analytics is a Business Intelligence, CRM, and Marketing Automation Platform for Small and Medium Businesses”. The website includes the following in the footer of this website: “Copyright 2020 Think Analytics (Pty) Ltd.” The website uses a different logo to the Complainant’s logo and does not have the same look and feel as the Complainant’s website.

During the period October 1, 2020, to December 11, 2023, the Complainant sent correspondence to the Respondent using various methods. No response was received to this correspondence.

The Complainant has been successful in respect of a request to Facebook to have the Respondent’s Facebook page removed.

#### **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 names.

Notably, the Complainant contends that the disputed domain name is identical to the Complainant’s trademark and that the Respondent’s website appears to promote products that compete with the Complainant’s products.

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

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

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

The onus of proving these elements is on the Complainant.

### 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.<sup>1</sup>

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 to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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.

The website at the disputed domain name refers to a company, Think Analytics (Pty) Ltd. There is no evidence before the Panel to prove that this company exists, when it was established or to explain the relationship, if any, between this company and the Respondent. There is also no evidence, other than the

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<sup>1</sup> The Panel notes that the Policy is similar to the Uniform Domain Name Dispute Resolution Policy (the "UDRP"). Thus, the Panel, has referred to the [WIPO Overview 3.0](#), where appropriate.

website at the disputed domain name, to demonstrate that this company carries on a bona fide business. As discussed below, the website at the disputed domain name does not appear to be legitimate.

The Panel finds the second element of the Policy has been established.

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

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 Complainant asserts that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location. As evidence of this, the Complainant points to (a) actual user confusion in respect of the Respondent's previous Facebook and LinkedIn pages; (b) the fact that the Respondent did not respond to the Complainant's demand letters; and (c) Facebook's action in taking down the Respondent's Facebook page.

The Complainant does have long-standing use of its THINKANALYTICS trademark, and the online searches that the Panel has conducted demonstrate that the Complainant has a significant online reputation. [WIPO Overview 3.0](#), section 4.8. The Complainant's trademark is distinctive. The website at the disputed domain name – which is identical to the mark – appears to market products that, broadly speaking, are in the same field as the Complainant's products.

The Panel has carefully reviewed the website at the disputed domain name. It is not fully functional. For example, when one tries to sign up for a free trial, the links to the Privacy Policy and Terms of Use are broken links and display an error message. The online sign-up process does not appear to operate correctly. When trying to log in to the Respondent's online product, Internet users are directed to a different website for a different product.

The Respondent had the opportunity to rebut the Complainant's assertions and present evidence that the Respondent operated a legitimate business using the disputed domain name but did not do so.

On balance, the Panel finds that the disputed domain name was registered with knowledge of and to take advantage of the Complainant's trademark rights, and that the website at the disputed domain name was created for ulterior purposes.

The Panel finds the third element of the Policy has been established.

## **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, <thinkanalytics.io>, be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: March 6, 2024