

ADMINISTRATIVE PANEL DECISION

Thomas Concrete Group AB v. Jane Jones, EXALOVE LLC
Case No. D2023-0958

1. The Parties

The Complainant is Thomas Concrete Group AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Jane Jones, EXALOVE LLC, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <thomasconcretes.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 March 3, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2023 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 March 9, 2023.

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 March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on April 26, 2023. 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 producer and distributor of high quality ready-mixed concrete to commercial and private customers. With headquarters in Sweden, it has expanded globally and has operations in the United States, Germany, Sweden, Poland, and Norway.

The Complainant owns numerous trademark registrations, *inter alia*, the European Union Trade Mark Registration No. 011327211 for THOMAS CONCRETE GROUP registered on May 15, 2013, and the United States Registration No. 86652895 for THOMAS CONCRETE (logo) registered on September 6, 2016.

The Complainant also holds several domain names, including the domain name <thomasconcrete.com>.

The disputed domain name was registered on January 13, 2023 and resolves to an inactive website. The Complainant provided evidence that the disputed domain name has been used to send emails impersonating one of the Complainant's employees and requesting payment from the Complainant's customers.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) the disputed domain name is confusingly similar to the Complainant's trademarks THOMAS CONCRETE and THOMAS CONCRETE GROUP and the company name Thomas Concrete Group AB. The domain name is almost identical to the registered rights with the exception of an extra letter "s".

(2) the Respondent does not have any rights in the THOMAS CONCRETE or THOMAS CONCRETE GROUP trademark, nor is the Respondent a licensee of the Complainant. The Complainant has not given the Respondent any permission to register the trademark as a disputed domain name. The Respondent is not affiliated with the Complainant, and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests for the *bona fide* offering of legitimate goods or services. There is no evidence that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests in Thomas Concrete.

(3) the disputed domain name was registered and is used in bad faith. The Complainant's trademarks were registered and used by the Complainant well before the Respondent became the owner of the disputed domain name. It is obvious that the Respondent was well aware of the Complainant's business when registering the disputed domain name since the disputed domain name was used in an email address (or more) in order to deceive the Complainant's customers. The disputed domain name has also been registered with a private service and the website does not include any contact information, which strengthens the fact that the disputed domain name was registered in bad faith. The disputed domain name is likely to create confusion on the part of the public, as it constitutes typosquatting.

The Complainant requests transfer the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 and is being used in bad faith.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Complainant has demonstrated ownership of its THOMAS CONCRETE trademark. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the THOMAS CONCRETE mark. See [WIPO Overview 3.0](#), section 1.2.1.

With the Complainant's rights in the THOMAS CONCRETE trademark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to the Complainant's mark.

The first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's mark THOMAS CONCRETE. The disputed domain name includes the entirety of the Complainant's mark THOMAS CONCRETE followed by the extra letter "s". As per Section 1.9 of the [WIPO Overview 3.0](#), such a misspelling of the Complainant's trademark constitutes typosquatting and makes the disputed domain name confusingly similar to the Complainant's mark.

The generic Top-Level Domain ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of “proving a negative”, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

The Panel accepts the Complainant’s submissions that the Respondent does not appear to have been known by the disputed domain name, has not made demonstrable preparations to use the disputed domain name, and the Respondent is not making a legitimate noncommercial use of the disputed domain name.

The Panel has found out that the Respondent is not a licensee of the Complainant and not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its trademarks in a disputed domain name or otherwise.

Moreover, according to the case file, there is no evidence the Respondent has or intends to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Therefore, the Panel concludes that the Respondent has no rights nor legitimate interests in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant has demonstrated the Respondent’s bad faith registration and use of the disputed domain name.

The Respondent registered the disputed domain name long after the Complainant registered its first THOMAS CONCRETE mark. The Respondent provided no explanations for why it registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference (see also *Compagnie Générale des Etablissements Michelin v. Registration Private, Domains By Proxy, LLC / Julie Schultz*, WIPO Case No. [D2022-3499](#)).

It is also obvious to the Panel that the Respondent was well aware of the Complainant’s business when registering the disputed domain name since the latter was used in several email addresses in order to deceive the Complainant’s customers. Therefore, it becomes clear for the Panel that the Respondent specifically targeted the Complainant when registering the disputed domain name almost identical to the Complainant’s mark so that the Respondent could engage in these fraudulent practices. The disputed domain name has also been registered with a private service and the website does not include any contact information, which strengthens the fact that the disputed domain name was registered in bad faith.

Previous panels have held that the use of a domain name for purposes such as sending email, phishing, identity theft, or to send deceptive emails, *e.g.*, to obtain sensitive or confidential personal information to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers is evidence of registration and use of the domain name in bad faith ([WIPO Overview 3.0](#), section 3.4).

The Panel also finds the following factors supporting a bad faith registration and use of the disputed domain name: (i) the Complainant's widely used THOMAS CONCRETE mark and its registration in numerous countries around the world predating the registration date of the disputed domain name, (ii) the nature of the disputed domain name *i.e.*, a typo of the THOMAS CONCRETE known mark, (iii) the Respondent's failure to submit a response or to provide any evidence of actual or contemplated good-faith use, (iv) the Respondent concealing its identity, and (v) the implausibility of any good faith use to which the domain name may be put.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that the Complainant has established its case under 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 <thomasconcretes.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: May 4, 2023