

ADMINISTRATIVE PANEL DECISION

Thomas Concrete Group AB v. Michael Tzur
Case No. D2023-0959

1. The Parties

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

The Respondent is Michael Tzur, Israel.

2. The Domain Name and Registrar

The disputed domain name <thomascconcrete.com> is registered with Wild West Domains, LLC (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 6, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 9, 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 10, 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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 11, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on April 18, 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 of America, Germany, Sweden, Poland, and Norway.

The Complainant owns numerous trademark registrations, *inter alia*, the European Union Trademark Registration No. 011327211 for THOMAS CONCRETE GROUP registered on May 15, 2013, and the United States of America 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 February 15, 2023.

The disputed domain name resolves to an inactive site.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

The disputed domain name is an obvious misspelling of THOMAS CONCRETE and is therefore confusingly similar to trademarks in which the Complainant has rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent is not known by the disputed domain name, has not been authorized by the Complainant to use its trademarks and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. To the contrary, on February 15, 2023, the Respondent sent an email to a client of the Complainant impersonating an employee of the Complainant and requesting a payment with fake documents and indicating the Respondent's bank account number.

The disputed domain name was registered and is being used in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well-known trademark THOMAS CONCRETE at the time it registered the disputed domain name, and because the use of the disputed domain name in an email address in order to deceive the Complainant's customers constitutes use in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trademark registrations for its THOMAS CONCRETE and THOMAS CONCRETE GROUP trademarks.

The Panel notes that disputed domain name consists of the obvious intentional misspelling of THOMAS CONCRETE and as such is confusingly similar to the Complainant's trademarks under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

The addition of the generic Top-Level Domain ".com" in the disputed domain names is a standard registration requirement and as such is disregarded under the confusing similarity test under Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks THOMAS CONCRETE and THOMAS CONCRETE GROUP.

The first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondent to use its trademarks, that the Respondent is not commonly known by the disputed domain name and that before notice of the dispute, there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in good faith. The Panel does not see any contrary evidence from the record.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy has been met.

C. Registered and Used in Bad Faith

In the view of the Panel, noting that the Complainant's trademark predates the registration of the disputed domain name and that the Respondent sent an email to a client of the Complainant impersonating an employee of the Complainant, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to an inactive site, but the Complainant has shown that the Respondent has sent an email to a client of the Complainant impersonating an employee of the Complainant and fraudulently requesting a payment with fake documents and indicating the Respondent's bank account number. Such a fraudulent use clearly constitutes use in bad faith.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

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, <thomascsoncrete.com>, be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: April 21, 2023