

ADMINISTRATIVE PANEL DECISION

Thomas Concrete Group AB v. Don Du
Case No. D2023-2900

1. The Parties

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

The Respondent is Don Du, Australia.

2. The Domain Name and Registrar

The disputed domain name <thomasc0ncrete.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 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 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 July 17, 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 July 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 11, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on August 21, 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 global producer and distributor of high-quality ready-mixed concrete to commercial and private customers.

The mark THOMAS CONCRETE GROUP is registered in several countries throughout the world, *inter alia* as word mark with the European Union Intellectual Property Office, Reg. No 11327211, registered May 15, 2013, for the classes 19, 37, 40. Moreover, the Complainant owns several figurative trademark registrations with the mark THOMAS CONCRETE GROUP as well as the figurative trademark registration THOMAS CONCRETE, registered with the United States Patent and Trademark Office, Reg. No. 5037560, registered September 6, 2016, for the classes 19, 37, 40 (Annex 4 to the Complaint).

The Complainant also owns a variety of domain names containing the mark THOMAS CONCRETE, *inter alia* <thomasconcrete.com>, <thomasconcrete.de>, <thomasconcrete.eu>, <thomasconcrete.se>, <thomasconcrete.net>, and <thomasconcrete.group> (Annex 5 to the Complaint).

The Complainant sent a cease-and-desist letter on June 30, 2023 – the Respondent did not reply (Annex 10 to the Complaint).

The disputed domain name was registered on June 15, 2023 (Annex 1 to the Complaint).

On June 28, 2023, the Respondent sent an email to a client of the Complainant, impersonating an employee of the Complainant, demanding the replacement of the invoicing email address (Annex 6 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is a global producer and distributor of high-quality ready-mixed concrete to commercial and private customers and was founded 1955 in Sweden; it is still owned by the Thomas family. With headquarters in Gothenburg, Sweden, the Complainant has expanded globally and has operations in the United States of America, Germany, Sweden, Poland and Norway.

The mark THOMAS CONCRETE GROUP has proper protection through several trademark registrations worldwide, and the Complainant has a comprehensive portfolio of domain names containing the mark THOMAS CONCRETE:

The disputed domain name is confusingly similar to the Complainant's registered trademarks and its company name. It is almost identical to the registered rights except for the letter "o" in concrete which is replaced by the number "0". This obvious and intentional misspelling of the Complainant's trademark constitutes typosquatting and makes the disputed domain name confusingly similar to the mark in question.

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 domain name. Further, there is no evidence in the present record that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interest in the mark THOMAS CONCRETE. Neither is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

Finally, the disputed domain name was registered and used in bad faith by the Respondent. It is obvious that the Respondent was well aware of the Complainant's business when registering the disputed domain name since it was used in an email address (or more) in order to deceive the Complainant's customers. On June 28, 2023, the Respondent sent an email to CBM Concrete, a client of the Complainant, impersonating an employee of the complainant. The email was about the replacement of invoicing email address thus an intentional attempt to commit fraud.

The disputed domain has also been registered with private WhoIs, and the website does not include any contact information, which strengthens the fact that the disputed domain was registered in bad faith. It also follows that the disputed domain name is likely to create confusion on the part of the public as it constitutes typosquatting - misspellings alone are sufficient to prove bad faith under the Policy. By using the disputed domain name, the Respondent disturbs and hinders the business of the Complainant. The circumstances indicate that the Respondent registered the disputed domain name primarily for typosquatting and to commit email fraud and otherwise with the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant. Since MX Records are active, there is a risk that the domain is still used for email communication and furthers fraudulent emails are being sent.

The Complainant has contacted the Respondent on June 30, 2023 and sent a cease-and-desist letter, but the Respondent has not sent any answer.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to 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

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. 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.

In the case at issue, the Complainant submitted evidence, which incontestably and conclusively establishes rights in the marks THOMAS CONCRETE and THOMAS CONCRETE GROUP.

The disputed domain name is confusingly similar to the Complainant's marks since the Complainant's marks are clearly recognizable in the disputed domain name and THOMAS CONCRETE is the dominant and distinctive element in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

This is the case at hand: Replacing the letter “o” with the number “0” in the disputed domain name does not prevent a finding of confusing similarity; in fact, the disputed domain name consists of a misspelling of the Complainant’s trademark (see section 1.9 of the [WIPO Overview 3.0](#)).

Finally, it has also long been held that generic Top-Level Domains (“gTLDs”) are generally disregarded when evaluating the confusing similarity under the first element.

B. Rights or Legitimate Interests

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant’s marks together with an obvious and intentional misspelling of the Complainant’s trademarks, along with its use as email address, impersonating an employee of the Complainant and demanding clients of the Complainant to replace the invoicing email address, cannot be considered fair – the opposite is the case: Such conduct is fraudulent and criminal (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) In the present case, the Complainant has rights and is the owner of various registered trademarks containing the mark THOMAS CONCRETE, which is registered and used in many jurisdictions around the world long before the registration of the disputed domain name. Moreover, the Complainant registered and is using a wide variety of domain names containing the mark THOMAS CONCRETE e.g. <thomasconcrete.com>, <thomasconcrete.de>, <thomasconcrete.group>, and <thomasconcrete.eu> to address its company website.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant’s rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant’s trademark THOMAS CONCRETE together with a common, obvious and intentional misspelling of it.

Further, it is well-settled case law that the practice of typosquatting may in itself be evidence of a bad faith registration of a domain name (see, e.g., *Longs Drug Stores California, Inc. v. Shep Dog*, WIPO Case No. [D2004-1069](#); *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2004-0816](#); *Compagnie Générale des Etablissements Michelin v. Super Privacy Service LTD c/o Dynadot / Reed Mueller*, WIPO Case No. [D2004-0816](#)).

[D2021-1771](#); *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-4582](#); *Sopra Steria Group v. Sopra Steria, soprasteria*, WIPO Case No. [D2023-2397](#)).

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith (see section 3.1.4 [WIPO Overview 3.0](#)).

(ii) The Complainant has put forward evidence that the disputed domain name was used by the Respondent to send an email to a client of the Complainant, impersonating an employee of the Complainant and demanding the client to replace the invoicing email address. This clearly constitutes bad faith by willful mislead and intentional deceive Internet users by pretending a false identity in order to gain financial advantage and thus an intentional attempt to commit fraud. This fraudulent and deceptive scheme undoubtedly represents bad faith use of the disputed domain name.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent did not reply to a cease-and-desist letter and has failed to file a Response and therefore failed to present any evidence of any good faith registration and use with regard to the disputed domain name clearly prove, that the disputed domain name was registered and used by the Respondent in bad faith 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 <thomasc0ncrete.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: September 4, 2023