

## ADMINISTRATIVE PANEL DECISION

Thomas Concrete Group AB v. alex max frux  
Case No. D2024-2544

### 1. The Parties

The Complainant is Thomas Concrete Group AB, Sweden, represented by Abion GmbH, Switzerland.

The Respondent is alex max frux, Morocco.

### 2. The Domain Name and Registrar

The disputed domain name <thomasconcrere.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 June 21, 2024. On June 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 June 24, 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 June 25, 2024.

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 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2024. The Respondent sent email communications to the Center on July 27, August 18, August 19, and September 27, 2024. The case was suspended on August 28, 2024, and reinstituted on September 27, 2024 upon the Complainant’s request.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on October 2, 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 producer and distributor of concrete and a provider of associated services.

The Complainant was founded in Sweden in 1955.

The Complainant owns several trade marks in the term THOMAS CONCRETE or THOMAS CONCRETE GROUP including the following:

- United States Patent and Trademark Office trade mark No. 5037560 for THOMAS CONCRETE (figurative), registered on September 6, 2016; and
- European Union trade mark registration No. 011327211 for THOMAS CONCRETE GROUP (word), registered on May 15, 2013.

The Complainant owns several domain names corresponding to its THOMAS CONCRETE trade mark including <thomasconcrete.com>.

The disputed domain name was registered on April 20, 2024, and points to a Pay-Per-Click ("PPC") page.

On May 15, 2024, the Complainant sent a cease-and-desist letter to the Respondent, via the privacy protection service provider used by the Respondent.

#### **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 name.

Notably, the Complainant contends that its THOMAS CONCRETE trade mark is clearly recognizable in the disputed domain name which is an obvious misspelling of the Complainant's trade mark.

The Complainant submits that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated with the Complainant in any form. The Complainant also stresses that the use of an obvious misspelled version of its trade mark in the disputed domain name shows the Respondent's clear attempt to capitalize on Internet users' possible errors and cannot be considered fair use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. In terms of registration of the disputed domain name in bad faith the Complainant points to the fact that the registration of the disputed domain name incorporating a misspelled version of the Complainant's trade mark by replacing the letter "t" with the adjacent keyboard letter "r" is deliberate and shows the Respondent's intent to target the Complainant. Turning to the issue of use of the disputed domain name in bad faith, the Complainant points to the fact that it directs to a PPC page and contends that such use aims at attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name and associated website.

The Complainant also considers as a further indication of bad faith on the part of the Respondent the fact that the Respondent ignored the cease-and-desist letter sent by the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. The Respondent sent informal communications to the Center on July 27, August 18, August 19, and September 27, 2024. In essence, the Respondent initially stated that he was ready to transfer the disputed domain name to the Complainant. Further to this the Complainant requested a suspension of the proceedings, which were reinstated at the Complainant's request given that the Respondent had not executed the Standard Settlement Form within the agreed timeframe.

## **6. Discussion and Findings**

### **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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the trade mark THOMAS CONCRETE is recognizable within the disputed domain name. The only difference between the Complainant's trade mark and the disputed domain name at the second level is the replacement in the word "concrete" of the letter "t" with the letter "r". The Panel finds that this is an obvious and intentional misspelling of the Complainant's trade mark and that the disputed domain name is confusingly similar to the trade mark THOMAS CONCRETE for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

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 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 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 Complainant has stated that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark THOMAS CONCRETE. There is no indication that the Respondent is commonly known by the disputed domain name.

In addition, in light of the present circumstances, the Panel finds that the use of the disputed domain name to point to PPC links redirecting Internet users to third party websites cannot constitute a legitimate interest in the disputed domain name for the purpose of the Policy.

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

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

The Panel notes that, 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.

In the present case, the Panel finds that when registering the disputed domain name, the Respondent must have had the Complainant's trade mark in mind and targeted it specifically by registering the disputed domain name which is a deliberate misspelling of the Complainant's THOMAS CONCRETE trade mark (the letter "t" in "concrete" having been replaced with the letter "r" where the letters "t" and "r" are next to each other on Azerty and Qwerty keyboards).

Further, all first page results obtained when searching for the term "thomasconcrere" in a Google search refer to the Complainant. In light of this, it seems inconceivable that the Respondent would have registered the disputed domain name for a reason other than seeking to unduly benefit from the Complainant, its trade mark and associated goodwill. The Panel thus considers that the disputed domain name was registered in bad faith.

As for use of the disputed domain name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the disputed domain name is used in bad faith.

In light of the present circumstances, including the reputation of the Complainant's trade mark, and the composition of the disputed domain name, the Panel finds that the use of the disputed domain name to point to PPC links redirecting Internet users to third party websites is an attempt to capitalize on the goodwill of the Complainant by misleading Internet users. Even where such targeted PPC links are automatically generated, as may be the case here, previous panels under the Policy have found that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name and the fact that such links are generated by a third party such as a registrar would not by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

The fact that the Respondent did not respond to the Complainant's cease-and-desist letter and that it chose not to object to the Complainant's assertions can only reinforce the Panel's view that the disputed domain name is used in bad faith.

Thus, the Panel finds that the disputed domain name has been registered and is also being used in bad faith.

## **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 <thomasconcrere.com> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: October 16, 2024