# Panel Decision for dispute CAC-ADREU-007234

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| Case number | CAC-ADREU-007234 |
| Time of filing | 2016-08-19 14:53:58 |
| Domain names | peopleperhour.eu |

## Case administrator

Lada Válková (Case admin)

## Complainant

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| Organization | People Per Hour Ltd |

## Respondent

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| Organization | Dreamscape Networks Limited |

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

1 The Panel is not aware of any other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

2 The Complainant is People Per Hour Ltd, a company incorporated in England and Wales on 12 September 2007 with company registration number 06369697 and having its principal place of business in London.

3 The Complainant owns and operates an online platform bringing together buyers and sellers of freelance services under the trading name PEOPLEPERHOUR via its website, PEOPLEPERHOUR.COM. The Complainant registered that website on 8 June 2007.

4 The Complainant asserts that it has in excess of 82,000 freelancers registered on its site, of which approximately 24,000 are situated in the UK and the remainder are located internationally. In the last three years, over 600,000 jobs have been posted on the site and over 250,000 hourlies have been sold to over 150,000 buyers. On that basis, the Complainant asserts that it has accrued significant goodwill and reputation in the UK and internationally in the trading and company name PEOPLEPERHOUR, and that the trading name PEOPLEPERHOUR is protected as an unregistered trade mark, trade name, business identifier and company name under the English law of passing-off.

5 The Respondent is Dreamscape Networks Limited, a company having its principal place of business in Nicosia, Cyprus. On 10 June 2013, the Respondent registered the disputed domain name PEOPLEPERHOUR.EU. The Complainant says that it only recently became aware of this registration. The home page of the website accessed through the disputed domain PEOPLEPERHOUR.EU is in the form of a registration page. This page is the only page accessible without providing login details. The registrar of the domain name is crazydomains.com, which appears to be an entity connected with the Respondent.

6 The Respondent's main website at DREAMSCAPENETWORKS.COM states that the Respondent "forms the foundation for a variety of globally recognised and renowned online brands, that vary from licenced domain registrars and cloud hosting services, to digital branding and marketing". The Respondent appears predominantly to be in the business of offering domain name and cloud hosting services.

7 The Complainant's legal representatives wrote to the Respondent on 28 April 2016, setting out its complaint and requiring an undertaking from the Respondent to transfer the disputed domain name PEOPLEPERHOUR.EU to the Complainant. The letter was sent by e-mail and received both by the Respondent and by the registrar of the domain name. The Respondent did not reply to that letter.

8 On 23 June 2016, the Complainant filed a complaint in the present ADR proceedings. On 27 June 2016, the Czech Arbitration Court

notified the Complainant of deficiencies in the complaint. On 2 July 2016, the Complainant re-submitted a compliant amended complaint with annexes. The Panel's decision is based on that amended complaint. On 4 July 2016, the Czech Arbitration Court notified the Respondent of the commencement of ADR proceedings against it. Having been notified of the complaint, the Respondent did not submit a response to the Amended Complaint within the required time period, or at all. On 12 July 2016, the Czech Arbitration Court issued a Notification of Respondent's Default. On 26 July 2016, the case file was transmitted to the Panel.

A. COMPLAINANT

9 The Complainant seeks a decision transferring the disputed domain name to it, alternatively, revocation of the disputed domain name.

10 The Complainant submits that, for the reasons outlined in the factual background above, it owns rights in the trading and company name PEOPLEPERHOUR, which is protected under the English law of passing-off and constitutes a right recognised or established by English law.

11 Registration of the disputed domain name occurred some 6 years after registration of the Complainant's website, by which time the Complainant and its website PEOPLEPERHOUR.COM were a well-established business.

12 When users access the website at PEOPLEPERHOUR.EU, the user is taken to a login page, which is the only page on the website accessible without providing login details. It provides no information as to the activities or services offered on the site and provides no information as to who owns and operates the site. A google search describes the site as “a Web based PHP project management system for Freelancers”.

13 The Complainant’s legal representatives have created an account on the site. Once logged in, the user is presented with tabs for Projects, Messages, Invoices, Estimates, Expenses, Payments Sent and Tickets. However, there is no other information. There are no tabs or links to click on to take the user to any of the usual content that he would, according to the Complainant, expect to find on a website of this sort. For example, there are no links to terms and conditions, how the site works, or who owns and operates the site. What is evident from a Google search, and from the little information available on the website once an account has been created, is that the site purports to be aimed at freelancers.

14 The Complainant submits that the disputed domain name:

14.1 has been registered by the Respondent without rights or legitimate interest in the name; or
14.2 has been registered or is being used in bad faith.

15 The Complainant asserts that the Respondent does not have any legitimate interest in the disputed domain name because:

15.1 the site accessed via the domain name appears to be a “shell” and not a fully functioning website;
15.2 the Respondent has not been commonly known by the name PEOPLEPERHOUR and appears to have no recognised right in that name established by national or Community law; and
15.3 the Respondent does not appear to be making any legitimate and non-commercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of the Complainant’s name.

16 The Complainant further submits that the Respondent has registered or is using the disputed domain name in bad faith because:

16.1 circumstances indicate that the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law, given that the Respondent’s main business is in respect of domain names and cloud hosting;
16.2 alternatively, if the disputed domain name was linked to a genuine website aimed at freelancers, then the Complainant submits that the disputed domain name was registered primarily for the purpose of disrupting the professional activities of a competitor, namely the Complainant;
16.3 the Complainant is concerned that that the intended purpose of the website may be in order to obtain the login details of the users of the Complainant's own website, thereby effectively gaining access to the Complainant’s database of users; and
16.4 the disputed domain name is intentionally used to attract internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant’s domain name.

B. RESPONDENT

17 The Respondent did not file a response to the Amended Complaint.

General

18 The Panel has reviewed and considered the Complainant's amended complaint, together with the annexed supporting documents, in detail.

19 Article 22.10 of Commission Regulation EC 874/2004 (the "Regulation") and Paragraph B10(a) of the ADR Rules provide that if, as in the present case, a party fails to respond to a complaint within the applicable deadlines, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other party.

20 However, the Panel does not consider that the Regulation or the ADR Rules envisage the Panel simply upholding the Complaint in all cases where a Respondent fails to respond. Rather, in order for the complaint to succeed, the Complainant must still demonstrate that the requirements of Article 21.1 of the Regulation and Paragraph B11(d)(1) of the ADR Rules are satisfied.

21 In order for the Complaint to succeed, the Complainant must show, in accordance with Article 21.1 of the Regulation and Paragraph B11(d)(1) of the ADR Rules, that:

(a) the disputed domain name is identical with or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law; and either

(b) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(c) the domain name has been registered or is being used in bad faith.

22 If the Complainant succeeds in this respect, in order to obtain a transfer of the disputed domain name to itself, Article 22.11 of the Regulation further requires that the Complainant applies for the disputed domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

23 The Panel notes that the Complainant does meet the general eligibility criteria within the meaning of Article 22(11) of the Regulation and Article 4(2)(b) of Regulation (EC) No 733/2002, being a company registered in England and Wales.

Is the domain name identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law?

24 Article 10.1 of the Regulation recognises unregistered trade marks, trade names, business identifiers and company names as possible 'prior rights'. Prior domain name registrations have not been included in that definition. The Complainant may therefore not rely on the rights which it has in the domain name PEOPLEPERHOUR.COM as such. However, the Complainant has adduced evidence of extensive use of the name PEOPLEPERHOUR in the course of trade, including on its e-commerce website, in the European Union and in the United Kingdom, and has shown that it is known and referred to by that name.

25 The Complainant's evidence establishes long-standing use of the name PEOPLEPERHOUR and the extensive use of its website supports the Complainant's submission that it accrued substantial goodwill in that name. The Complainant's use of the unregistered trade mark, trade name and company name PEOPLEPERHOUR is protected under English common law by the tort of passing-off and may therefore be relied upon by the Complainant as a name in respect of which a right is recognised by the national laws of a Member State (see, for example, case 5118 (Byron Advertising) for another instance of successful reliance on an unregistered trade name protected by passing off, and case 06139 (Euroclima) for reliance on rights in a company and trade name).

26 The disputed domain name is identical with the protected trade name PEOPLEPERHOUR.

Has the domain name been registered by the Respondent without rights or legitimate interest in the name?

27 While the overall burden of proof lies with the Complainant, the Complainant only has to make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The burden of proof then shifts to the Respondent to show evidence of such rights or legitimate interests. Paragraph B10(b) of the ADR Rules provides that "Unless provided differently in these ADR Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, …, the Panel shall draw such inferences therefrom as it considers appropriate."

28 The Respondent clearly is not known by the domain name PEOPLEPERHOUR within the meaning of Article 21.2(b) of the Regulation and neither is it making a legitimate and non-commercial or fair use of the domain name within the meaning of Article 21.2(c) of the Regulation.

29 The website accessed via the disputed domain name has some limited content and appears to have done so since prior to notice of the ADR proceedings. The question therefore arises whether the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparations to do so within the meaning of Article 21.2(a) of the Regulation. The Complainant submits that the website accessed through the disputed domain name is a "shell" and has no actual functionality or content. The site does not provide any information as to any goods or services provided. The Complainant further submits that the Respondent's business is domain names and cloud hosting services. There is no indication that the Respondent actively operates or is preparing to operate a project management system for freelancers. The Complainant supports these submissions with print-outs from the Respondent's website. The Panel is satisfied that the Complainant's submissions establish a prima facie case that the Respondent has no rights or legitimate interest in the name PEOPLEPERHOUR.

30 The Respondent is in default and has filed no response in these ADR proceedings or otherwise sought to assert the existence of any such rights or legitimate interest. The Panel therefore derives further support from the Respondent's default for its finding that no such rights or legitimate interest exist.

Has the disputed domain name been registered or is it being used in bad faith?

31 Having established that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name PEOPLEPERHOUR, it is not necessary for the Complainant to show, or for the Panel to find, that the Respondent registered or is using the disputed domain name in bad faith.

DECISION

32 For all the foregoing reasons, in accordance with paragraphs B12 (b) and (c) of the ADR Rules, the Panel orders that the disputed domain name PEOPLEPERHOUR.EU be transferred to the Complainant.

## PANELISTS

| Name | **Gregor Kleinknecht, LLM MCIArb** |
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DATE OF PANEL DECISION 2016-08-19

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant seeks the transfer of the disputed domain name PEOPLEPERHOUR.EU to itself. The Respondent failed to respond to the ADR proceedings. The Complainant has established that it owns the name PEOPLEPERHOUR in respect of which a right is recognised by the national laws of a Member State. The Complainant has further established that the disputed domain name is identical with the name PEOPLEPERHOUR and that the Respondent has no rights or legitimate interest in the disputed domain name. Since the Complainant meets the general eligibility criteria for the transfer of the domain name, the Panel ordered that the disputed domain name PEOPLEPERHOUR.EU be transferred to the Complainant.