Decision for dispute CAC-UDRP-100673

Case number	**CAC-UDRP-100673**
Time of filing	**2013-10-21 16:30:13**
Domain names	**penum.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Penum Ltd**

Respondent

Organization	**MicroInvest S.A**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name PENUM.COM (the 'Domain Name').

IDENTIFICATION OF RIGHTS

Penum Ltd (the 'Complainant') is the owner of a registered trade mark in the UK under number 2655128 for the word PENUM in class 39 for "delivery of food and consumable products", filed on 6 March 2013 and registered on 19 July 2013.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Penum Ltd was incorporated on 31 October 2012.

The previous owner of the Domain Name was approached (presumably by the Complainant) on 19 December 2012, and the registrant offered to sell the Domain Name for $7,288. The Complainant was not able to pay this sum.

Somewhere between 19 July 2013 and 23 September 2013 the ownership of the Domain Name changed and became registered in the name of the Respondent.

On the 23 September 2013 the domain was re-directed to a website of a business which competes with the Complainant (the "Competitor"), but for the purpose of this Complaint (and in view of the flat denial of involvement - see below) the Competitor does not need to be named.

On 28 September 2013 a member of the Complainant's staff was contacted personally by the owner of the Competitor saying, inter alia, "...No case to answer".

On 2 October 2013 the Complainant attempted to call the Respondent by telephone, but the telephone details on the WHOIS

were found to be incorrect.

On 3 October 2013 the Complainant sent a cease and desist letter to both the Respondent and the head office of the Competitor. No response has been received from the Respondent. Further, a short response was received by the legal representatives of the Competitor stating that the Competitor "...own no rights whatsoever in the domain name www.penum.com nor are they using the domain name. They have no intention of using the domain name in the future".

The Respondent failed to submit a Response within the time frame required, or at all, and a Notification of Respondent's Default was therefore issued by the Czech Arbitration Court on 22 November 2013.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Legal - Solicitors, as the Panel in these UDRP proceedings.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Domain Name is confusingly similar to the Complainant's registered PENUM mark.

The Respondent does not have any rights or legitimate interest in the Domain Name as it:
- is not the holder of the trade mark PENUM;
- does not use the trade mark PENUM and the Domain Name in connection with any offering of its own goods or services; and
- is not authorised in any way, nor is it a licensee of the Complainant.

The Domain Name has been registered and is being used in bad faith.

The Complainant believes that the Respondent registered the Domain Name in bad faith in order to damage the Complainant's business by pointing the Domain Name at a Competitor's website.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is virtually identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a)(i) of the Policy

The Panel finds the Domain Name identical or confusingly similar to the PENUM trade mark in which the Complainant has registered rights.

Paragraphs 4(a)(ii) and 4(a)(iii) of the Policy

The Respondent failed to file an administratively compliant response. In the circumstances the Panel finds from the facts put forward that:

The Respondent has no rights or legitimate interests in respect of the Domain Name. There was nothing put forward in this case file which might suggest otherwise.

The Domain Name has been registered and is being used in bad faith:
- The Domain Name was registered by the Respondent sometime after 19 July 2013.
- The Panel believes from the facts that the Respondent had the Complainant and its PENAM trade mark in mind when registering the Domain Name.
- The Panel finds that the Domain Name has, since registration, been held by the Respondent - with the end purpose of selling the Domain Name to the Complainant for a sum which is in excess of the Respondent's out of pocket expenses related to the Domain Name (paragraph 4(b)(i) of the Policy).
- The Panel finds that the Domain Name is likely to have been registered in order to prevent the Complainant from reflecting its trade marks in the form registered in the Domain Name (paragraph 4(b)(ii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **PENUM.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2013-12-10

Publish the Decision