Anonymized decision for dispute CAC-UDRP-106953

Case number	CAC-UDRP-106953
Time of filing	2024-10-17 09:11:39
Domain names	runewild.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Jagex Limited

Complainant representative

Organization	Stobbs IP

Respondent

Name	[redacted]

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the different valid trademarks with the term RUNE, RUNE SCAPE, RUNECOIN, RUNEFEST, etc. Below some examples of trademarks:

1. RUNE (word) - United Kingdom IPO UK00911161239, covering Nice Classifications 16, 25, 36, 41, registered since 9 October 2013;
2. RUNE (word) - European Union EUIPO 011161239, covering Nice Classifications 16, 25, 36, 41, registered since 9 October 2013;
3. RUNE (word) - European Union EUIPO 018622946, covering Nice Classifications 9, 16, 25, 28, 36, 41, registered since 20 May 2022;
4. RUNE SCAPE (Word) - European Union EUIPO 005077987, covering Nice Classifications 9, 16, 25 & 41, registered since 31 May 2.

In addition, the Complainant owns different domain names with the term “RUNE” such as <runescape.com> registered since August 17, 2000, <runefest.com> registered since March 18, 2010, <runescape.net> registered since February 18, 2001, and <runeservice.com> registered since March 5, 2005, among many other domain names.

FACTUAL BACKGROUND

FACTS PROVIDED BY THE COMPLAINANT:

The Complainant was incorporated on 28 April 2000 and since then has carried on the business of designing, developing, publishing, and operating online video games and other electronic-based entertainment.

The Complainant is well-known internationally for its Massively Multiplayer Online Role-Playing Games ("MMORPG") RuneScape and Old School RuneScape (collectively, the "Games"). Together, the Games average a total of more than 3 million active users per month. Since October 2022 Old School RuneScape has been recognised by the Guinness World Records for being the largest free-to-play MMORPG with over 300 million accounts.

The Complainant is the owner of the different trademarks RUNE®. In addition, the Complainant is the owner of different domain names including the term RUNE® such as <runescape.com>, <runefest.com>, <runescape.net> and <runeservice.com>.

The disputed domain name <runewild.com> (hereinafter, the "Disputed Domain Name") was registered on October 31st, 2017 and it offers a pirated version of the Complainant's Old School RuneScape game.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and he is not related in any way to the Complainant's business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

Respondent did not reply to the Complaint.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

Language of Proceeding

The Complainant has requested that the language of proceedings shall be in English.

First element: Similarity

The Complainant confirms that the Disputed Domain Name <runewild.com> is confusingly similar to its trademarks RUNE® and RUNE formative marks.

The Complainant states that the Disputed Domain Name includes the Complainant's Trade Mark as the dominant element, along with the term 'WILD'. The term 'WILD' is a common term used in the Complainant's Games. The Respondent has also adopted the same naming structure for the Disputed Domain Name as is used in the Complainant's RUNE-formative Trade Marks, such as RUNECOIN, RUNEMETRICS, RUNEFEST, and RUNEWIZARDS, as well as its use of RUNE-formative terms more broadly. The combination of 'RUNE' and 'WILD' does nothing to alter the impression generated by the Disputed Domain Name in the eyes of the average Internet user. As a user would associate the two terms 'RUNE' and 'WILD' separately and combined to indicate the domain originates from the Complainant.

Based on the submissions above, the Complainant requests that the Panel agree that the Disputed Domain Name is confusingly similar to the Complainant's established Trade Marks.

Second element: Rights or legitimate interest

The Complainant contend that the Respondent lacks rights or legitimate interests in the Disputed Domain Name for the following reasons:

The Complainant submits that the Respondent is using the Disputed Domain Name to resolve to a website offering a pirated version of the Complainant's Old School RuneScape game. The creation and use of the pirated version of the game, constitutes a violation of the Complainant's EULA and applicable copyright laws. The Complainant indicates that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorised account access/hacking, impersonating/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

Further and in addition to the above, the Respondent's offering of a pirated version of the game unfairly competes with the Complainant's Games, specifically in relation to online video games and entertainment services; services protected by the Trade Marks. The Complainant submits that the Respondent has chosen to use the RUNE brand and the RUNE-formative naming structure to create the Disputed Domain Name, in order to take advantage of the goodwill generated by the Complainant's well-established and successful online video game business, without the Respondent having to incur its own advertising or branding expenditure. This cannot constitute a bona fide offering of goods or services.

The Complainant submits that the Respondent has never legitimately been known as RUNE or RUNEWILD at any point in time.

The Complainant submits that nothing about the Disputed Domain Name suggests that it is being used by the Respondent legitimately or for non-commercial and fair use. As mentioned above, the Disputed Domain Name has been set-up to take advantage of the Complainant's significant goodwill and valuable reputation in order to promote a pirate copy of the official game for illegitimate financial gain, through purchases via their online store which directs users.

In light of the comments submitted above, the Respondent does not satisfy any of the above-mentioned grounds under Policy, Paragraph 4(c).

Third element: Bad faith

The Complainant reiterates the submissions made above that the Trade Marks significantly pre-date the registration of the Disputed Domain Name and the Complainant enjoys a substantial reputation in the RUNE brand and associated RUNE-formative brands. Furthermore, it is clear that the Respondent was unequivocally aware of the RUNE, RUNESCAPE and RUNE-formative brands, given the Respondent's deliberate impersonation of the Complainant's RUNE brand, the RUNE-formative naming structure and the Complainant's RuneScape and Old School RuneScape in-game assets and mechanics.

The Complainant submits that the Respondent is free riding on the success of the RUNE and/or RUNESCAPE brand including by use of the Complainant's well-known in-game assets and promotional material, including but not limited to the following:

1. The Disputed Domain Name is promoting a pirated copy of the Old School RuneScape game made available for download, the game is a direct copy of Old School RuneScape;
2. Use of promotional imagery relating to the Games;
3. Use of in-game icons, including the images shown on https://www.runewild.com/highscores/ (these icons are taken from Old School RuneScape https://secure.runescape.com/m=hiscore_oldschool/overall); and
4. Under 'Featured Content' and 'Latest News' on the Website's homepage, the Respondent makes references to elements which feature in the Complainant's Games such as: "Tombs of Amascut"; "Nex: The Ancient Prison"; "Voidwaker"; "Wilderness Bosses"; and "Phantom Muspah".

The Complainant submits that the only plausible explanation is the Respondent's service impersonates the Complainant's Games or otherwise intentionally uses the Complainant's copyright-protected works and adopts confusingly similar names and assets, with a view to diverting traffic from the Complainant's websites in order to promote a pirated copy of the Old School RuneScape game.

The Complainant submits that the Disputed Domain Name was registered with prior knowledge of the Complainant and their RUNE and RUNE-formative brands as evidenced by the substantial similarity of in-game assets, naming conventions, and art style, with a view to taking advantage of the attractive power of those brands to consumers of online video games.

The Complainant submits based on the Respondent's use of the RUNE mark, RUNE-formative naming structure and RuneScape assets to sell similar and competing goods and services, the Respondent has actual knowledge of the Complainant's rights in the RUNE brand at the time of registering the Disputed Domain Name, as evidenced above. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name evinces bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant further submits that the Respondent disrupts the Complainant's business by diverting potential customers to the Website which offer similar and competing goods and services. Using a confusingly similar domain name in a manner disruptive of a complainant's business by trading upon the goodwill of a Complainant for the commercial gain evinces bad faith under paragraph 4(b)(iii) and (v) of the Policy.

In view of the distinctive nature of the RUNE brand, the colossal scope of the Complainant's business, and the substantial evidence of the Respondent copying/impersonating the Complainant, the Complainant submits that the Respondent's actual knowledge of the RUNE brand at the time of registration of the Disputed Domain Name is unequivocal, and there is no plausible reason why the Respondent registered the Disputed Domain Name in question other than to target the Complainant and its RUNE Trade Marks.

Based on the submissions above, the Complainant maintains that the Disputed Domain Name was registered and used in bad faith. Consequently, all elements of the Policy are satisfied.

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RESPONDENT

Respondent did not reply to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is identical or confusingly similar to a

trademark 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 Disputed 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 Disputed 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

- Language of Proceeding

The Complainant has requested that the language of proceedings shall be in English. The Registrar confirmed on October 15, 2024 that the language of the registration agreement is English. Therefore, the Panel agrees that the current process should be conducted in English.

- Respondent's default

This Centre sent a notification concerning the "Commencement of Administrative Proceeding" on October 22, 2024 providing Respondent with a deadline to submit a Response within 20 days as well as with instructions about how to communicate the Response. Furthermore, this Centre also informed that the Respondent would be considered in default in case the Respondent is not sent within the deadline or if the response does not comply with all administrative requirements listed in the Rules and/or Supplementary Rules.

On October 24, 2024 the Respondent sent an e-mail to this Centre providing with information regarding some general aspects. On November 7, 2024 the Centre sent a reminder concerning the response expiration and on November 8, 2024 the Respondent submitted a Non-standard communication named "Response to UDRP case" informing different general aspects. Since the Respondent did not respond following the administrative requirements, this Centre notified Respondent's Default on November 12, 2024. On November 12, 2024 this Centre provided the Parties with a "Notification of delivery" whereby the Panel explained about the efforts to notify the Complaint and also the confirmation that the Respondent contacted the centre via e-mails communication but failed to file an administratively complaint response via online platform. However, the Respondent filed its statement via Nonstandard Communication

The Panel is of the impression that this Centre undertook all necessary steps to notify the Complainant to the Respondent and the Respondent had enough time to file an administrative complaint response via the online platform as indicated at the Rules and Supplementary Rules. In this sense, this Panel is neither ready to consider the statement filed by Respondent as an administrative complaint response nor accept the filing. Therefore, this Panel will not consider the Statement filed by the Respondent for the purpose of analyzing this case.

Please see paragraph 4.3. of the WIPO where it indicates:

"Panels have typically treated a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default".

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

- THE DISPUTED DOMAIN NAME IS IDENTICAL TO THE TRADEMARKS RUNE® OF THE COMPLAINANT.

The Uniform Domain Name Dispute Resolution Policy (the Policy) in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The Complainant has confirmed that it owns the following trademarks:

1. RUNE (word) - United Kingdom IPO UK00911161239, covering Nice Classifications 16, 25, 36, 41, registered since 9 October 2013;
2. RUNE (word) - European Union EUIPO 011161239, covering Nice Classifications 16, 25, 36, 41, registered since 9 October 2013;
3. RUNE (word) - European Union EUIPO 018622946, covering Nice Classifications 9, 16, 25, 28, 36, 41, registered since 20 May 2022;
4. RUNE SCAPE (Word) - European Union EUIPO 005077987, covering Nice Classifications 9, 16, 25 & 41, registered since 31 May 2.

From the Panel's perspective, the Disputed Domain Name <runewild.com> fully incorporates the trademark **RUNE®**. In assessing confusing similarity, the Panel finds the Disputed Domain Name is indeed identical to the Complainant's trademarks RUNE® with the only inclusion of the word "WILD" which it is a term used in the Complainant's Games in accordance with the evidence submitted by the Complainant and not contested by the Respondent.

The inclusion of the term WILD does not prevent to find confusion with respect to Complainant's trademarks "RUNE®". In this vein, UDRP past panels agree that where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See paragraph 1.8. of the WIPO Jurisprudential Overview 3.0.

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration. See paragraph 1.11.1 of WIPO Jurisprudential Overview 3.0.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to Complainant's mark.

- RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Jurisprudential Overview 3.0., paragraph 2.1).

The Complainant indicates that the Respondent is not affiliated nor authorized in any way to use the trademarks "**RUNE®**".

Furthermore, the Complaint argues that it does not carry out any activity for, nor has any business with the Respondent. Finally, the Complainant has not granted a license or authorization to the Respondent to make any use of the trademarks.

From the information provided by Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name. The Respondent's name provided in the Registrar's verification indicates Burak Gurkan as the owner of the Disputed Domain Name. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant also mentioned that the Disputed Domain Name resolves to a website offering a pirated version of the Complainant's Old School RuneScape game. In this regard, the evidence provided by the Complainant shows that the Respondent is using the Disputed Domain Name to promote an online video game purportedly similar to Complainant's video game. The Disputed Domain Name also shows different pictures and information about additional offerings such as "Featured content" as well as news and community videos. The complainant states that the creation and use of the purportedly similar version of the game constitutes a violation of Complainant's EULA and copyright laws. Furthermore, the Complainant also presented some arguments indicating that the Respondent is using promotional imagery relating to the Complainant's games as well as the use of in-game icons which are taken from Complainant's game. Last but not least the Respondent makes references to elements which feature in Complainant's games such as "Tombs of Amascut", "Voidwaker", etc.

While this UDRP proceeding is not suitable for copyright disputes, the evidence provided by the Complainant shows that the Respondent might be using some copyright elements which belong to Complainant. Past Panels have confirmed that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. Panels are generally not prepared however to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, even when the respondent is in default. On the other hand, panels have found that circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity. Evidence that the goods are offered disproportionately below market value, that the goods are only sold under license or through a prescription (especially with pharmaceutical products), that the images of the goods prima facie suggest (e.g., where the relevant logo is distorted) that they are not genuine, that the respondent has misappropriated copyrighted images from the complainant's website, that the goods are extremely rare, that the goods have prompted consumer complaints, or that a respondent has improperly masked its identity to avoid being contactable, have each been found relevant in this regard.

See paragraph 2.13 of WIPO Jurisprudential Overview 3.0.

The Complainant contends that nothing about the Disputed Domain Name suggests that it is being used by the Respondent legitimately or for non-commercial and fair use and to prove this, the Complainant submitted with evidence showing that the Respondent is selling credits in game at the Disputed Domain Name. Absent of an explanation from Respondent, the Panel is of the opinion that the Respondent's decided to incorporate this selling opportunity for commercial gain by misleading as to source and, therefore, this use cannot be considered as fair use.

The Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the Disputed Domain Name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

- THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH IN ACCORDANCE WITH THE POLICY.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

The evidence submitted by Complainant confirms that its trademarks "RUNE®" are distinctive and they have a strong reputation in the videogame industry. Absent of Respondent's reply, the Panel finds that Respondent, prior to the registration of the Disputed Domain Name was aware of Complainant's trademark, in particular since the Disputed Domain Name was registered on October 31, 2017 and Complainant's trademarks were registered long before the registration of the Disputed Domain Name.

In this vein, past panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

See WIPO Jurisprudential Overview 3.0., paragraph 3.1.4

As indicated by Complainant, the website associated with the Disputed Domain Name redirects to a website which promotes an online video game purportedly similar to Complainant's video game. Past panelist have found that the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use.

In the current case, the Complainant has been able to provide with additional elements which shows that the Respondent might be using some copyright elements which belong to Complainant. For instance, the Respondent is using promotional imagery relating to the Complainant's games as well as the use of ingame icons which are taken from Complainant's game. Last but not least the Respondent makes references to elements which feature in Complainant's games such as "Tombs of Amascut", "Voidwaker", etc.

In light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Name in bad faith and thus has satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **runewild.com**:

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision