Decision for dispute CAC-UDRP-107077

Case number	CAC-UDRP-107077
Time of filing	2024-11-21 10:56:01
Domain names	scape05.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Jagex Limited

Complainant representative

Organization	Stobbs IP

Respondent

Name	Devin Irish

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 several trademarks including the word SCAPE, such as:

- EU trademark registration N° 002942761 for the word RUNESCAPE, applied for on 25 November 2002 and registered for goods and services of classes 16, 25, and 41;
- UK trademark registration UK00002302308 for the word RUNESCAPE, applied for on 7 June 2002 and registered for goods and services of classes 16, 25 and 41.

Moreover, the Complainant is also the owner, among others, of several domain names that include the wordings RUNESCAPE and SCAPE, in the .net and .com domains, such as the domain names <runescape.net> registered on 18 February 2001, <06scape.com> registered on 27 June 2012 and <2007scape.com> registered on 1 June 2012.

FACTUAL BACKGROUND

The Complainant is Jagex Limited, a company incorporated in the United Kingdom on 28 April 2000. The company carries on the business of designing, developing, publishing, and operating online video games and other electronic-based entertainment.

The Complainant asserts to be well-known internationally for its Massively Multiplayer Online Role-Playing Games (“MMORPG”)

RuneScape and Old School RuneScape (RuneScape and Old School RuneScape are hereafter collectively referred to as the "Games"). Old School RuneScape is based on the source code from the 2007 version of the RuneScape MMORPG, and is hence commonly referred to as "OSRS" or "2007scape" by the player base. The Complainant contends that, together, the Games average a total of more than 3 million active users per month.

The disputed domain name <scape05.com> was registered on 3 November 2018. The Complainant demonstrates that the website operated under the disputed domain name resolves to a website offering a pirated version of an older version of the Complainant's Old School RuneScape game.

The Respondent contends that the website is a fan-driven, non-commercial project with a clear disclaimer stating that it is not affiliated with the Complainant, providing a space for community engagement focused on historical gameplay nostalgia.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

The Respondent filed an administratively compliant Response in which he states that the requirements of the Policy have not been met and that the disputed domain name should not be transferred to the Complainant.

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

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

1. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

The Panel finds that the disputed domain name is confusingly similar to the Complainant's word and complex trademark RUNESCAPE.

According to the Complainant, the disputed domain name incorporates a portion of the Complainant's trademark, with the addition of the number "05", which refers to the year 2005, the year in which the Respondent's pirated copy of the Complainant's Game is taken from. This is made more evident as the player base commonly refers to Old School RuneScape as "2007scape" and will interpret 'SCAPE05' to refer to a version of the Games based on the source code from the year 2005.

Furthermore, the Complainant submits that SCAPE is in fact a colloquialism used by users and fans of the Games to commonly refer to them. Such colloquial use is a convenient shorthand to refer to the brand.

Based on the above, the Complainant submits that its trademarks will immediately come to mind when internet users see the word

“SCAPE” in the disputed domain name. This is confirmed when visiting the website under the disputed domain name, because the home page states: "Experience true nostalgia and take a trip down memory lane. We are a recreation of the game as it was on June 27th, 2005."

The Complainant refers to past panels that have held that “an abbreviation of a registered trademark incorporated into a domain name may constitute confusing similarity […]. In this case, the Respondent has abbreviated the Complainant’s SPYDER trademark (“spd”) and combined it with a geographical term (“ca”) and a descriptive term (“shop”)“ (WIPO Case No. D2022-0309, Spyder Active Sports, Inc. v. Name Redacted).

To support the argument that Scape05 would not be confusingly similar to RuneScape or Old School RuneScape, the Respondent sought feedback from its active community. According to the Respondent, numerous community members confirmed that Scape05 is clearly distinct from Old School RuneScape and that they have never mistaken Scape05 for a product or service of the Complainant.

In reality, the “numerous community members” are limited to five persons, which is not representative. Moreover, these persons stated that when visiting the website under the disputed domain name they know that they will not see the Games of the Complainant. The test for confusing similarity under the UDRP, however, involves a direct comparison between the trademark and the disputed domain name, usually applied without regard to website content.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark because a distinctive element of the trademark is being used (SCAPE), together with the merely descriptive “05”, which refers to the year 2005.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant submits that the Respondent is using the disputed domain name to resolve to a website that offers 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 End User License Agreement and applicable copyright laws. UDRP panels have categorically held that use of a domain name for illegal activity - including the sale of counterfeit goods, phishing, and other types of fraud - can never confer rights or legitimate interests on a respondent (see WIPO case No. DCO2021-0077, Montblanc-Simplo GmbH v. Domain Protection Services, Inc. / lee rose).

The Respondent contends that the website is a fan-driven, non-commercial project with a clear disclaimer stating that it is not affiliated with the Complainant, providing a space for community engagement focused on historical gameplay nostalgia. It aims to recreate the Complainant’s game from 2005, preserving the original experience, which the Complainant no longer offers in its 2007 remake of the game.

The Complainant submits that the Respondent’s use of the disputed domain name for what amounts to mere piracy cannot be a bona fide offering of goods or services, due to the illegal activity.

Whereas the Panel agrees that the Respondent seems to be making a non-commercial use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue, the Panel finds that the Respondent’s use is illegitimate and unfair as it violates the Complainant’s End User License Agreement and copyright laws by offering a pirated version of the Complainant’s game as it was in 2005.

The Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The disputed domain name was registered and is being used in bad faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint.

The Panel, on the basis of the evidence presented, agrees with the Complainant that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Obviously, the Respondent was aware of the Complainant’s online video game business and of its Trademarks at the moment of the registration of the disputed domain name, because it offers a pirated version of an older version of the Complainant’s Old School RuneScape game.

It seems that the Respondent disrupts the Complainant’s business by diverting potential customers to the website which offers similar and competing goods and services. Using a confusingly similar disputed domain name in a manner disruptive of a Complainant’s business by trading upon the goodwill of a Complainant can be evince of bad faith under paragraph 4(b)(iii) and (v) of the Policy.

The Respondent contends that, as a non-commercial project, the website cannot and does not compete with the Complainant or divert customers. According to the Respondent, the Complainant's assertion is speculative and unsupported, as no monetization occurs, nor does the website encourage users to leave the Complainant’s games.

The Panel points out that UDRP panels have categorically held that registration and use of a domain name for illegal activity - including sale of counterfeit products, phishing, and other types of fraud - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. The Respondent did not deny that it is using the disputed domain name to offer a pirated version of the Complainant’s Games, which implies infringing the Complainant’s intellectual property rights.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **scape05.com**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2025-01-13

Publish the Decision