

Decision for dispute CAC-UDRP-107593

Case number CAC-UDRP-107593

Time of filing 2025-05-23 09:30:51

Domain names boom-scape.com

Case administrator

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

Complainant

Organization Jagex Limited

Complainant representative

Organization Stobbs IP

Respondent

Name Timmy Turner

Respondent representative

Name Timmy Turner

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 owns the registered word mark RUNESCAPE in the United Kingdom under number UK00002302308, registered since 27 December 2002 and also the EUTM for the word mark DARKSCAPE under number 018613417 registered since 18 May 2022. The Complainant also owns the domain name <runescape.com>, which has resolved to an active website relating to online video games since at least as early as 17 August 2000. In addition the Complainant has acquired various further domain names which incorporate the RUNESCAPE trade marks and SCAPE sign including in particular <runescape.net>, <06scape.com> and <2007scape.com>.

FACTUAL BACKGROUND

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. It is well-known internationally for its Massively Multiplayer Online Role-Playing Games ("MMORPG") RuneScape and Old School RuneScape (collectively, the "Games"). Together, the Games have averaged 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. Old School RuneScape was also awarded the 2019 EE Mobile Game of the Year award at the British Academy Games Awards. The Complainant is also active on social media and has generated a very significant level of endorsement which on certain platforms runs to hundreds of thousands and in some cases, such as on YouTube, to many tens of millions of views.

The disputed domain name was registered on 2 January 2021 and resolves to a website which offers Internet users a video game which, according to the Complainant, is a pirated version of its Old School RuneScape game.

PARTIES CONTENTIONS

Complainant

The Complainant submits that the disputed domain name is confusingly similar to its registered RUNESCAPE mark as noted above and also to its many other national registrations for RUNESCAPE alone or for trade marks that include that mark. Based on these registrations and CAC - UDRP decision 107077 in which the panel found that "scape" was a distinctive element of the RUNESCAPE mark, the Complainant says that it owns rights in the RUNESCAPE and SCAPE marks. It says that "SCAPE" is a colloquial term in common use by its game users and that its trade marks will immediately come to mind when Internet users see the "SCAPE" mark used online. Accordingly, says the Complainant, the disputed domain name incorporates the RUNESCAPE mark contracted as "scape" and is therefore confusingly similar to the disputed domain name and that the addition of "Boom" and a hyphen does not alter an internet user's association of the "SCAPE" mark in the disputed domain name with the Complainant's games.

The Complainant also submits that the Respondent is using the disputed domain name to resolve to a website at which it offers a pirated version of the Complainant's Old School RuneScape game and that the Complainant registered the disputed domain name long after the registration and use of the Complainant's marks in order to take advantage of the rights and reputation attaching to them. The Complainant says that it has never authorised such use, that the Respondent has never legitimately been known as "RUNESCAPE" or "SCAPE" and that this use does not amount to non-commercial or fair use. It says that trading on the Complainant's goodwill and reputation in order to promote a pirated copy of the official game for illegitimate gain through an online store at the disputed domain name that competes with the Complainant's games, cannot amount to bona fide use such as amounts to a legitimate right or interest under the second element of the Policy.

In terms of registration and use in bad faith, the Complainant says that its trade mark registrations significantly pre-date the registration of the disputed domain name and that the Respondent's deliberate impersonation of the Complainant's RUNESCAPE brand and SCAPE mark and of its Old School Runescape in game assets and mechanics, including promotional imagery, use of in game icons and the making available a direct copy of the Old School RuneScape game, indicates that the Respondent had knowledge of the Complainant's marks and game at the time of registration of the disputed domain name. It further says that the Respondent's conduct amounts to diversionary conduct in terms of paragraph 4(b) (iv) of the Policy or in the alternative disruptive conduct under paragraph 4(b)(iii) and (v).

Respondent

The Respondent submits that it has operated under the "Boomscape" name since 2013 with historical ownership of domain names including <boomscape.co.uk> and <boom-scape.co.uk>. It says that "Boomscape" is an original brand that it coined and that the brand seeks to provide an alternative community driven experience on a "not for profit" basis for its current cohort of approximately 100 members. It submits that it has made efforts to distinguish its project from the Complainant's with an entirely different website design, branding and no intention of affiliation. It says that the addition of "Boom" to "Scape" creates a separate brand identity and that reasonable users would not confuse it with "Runescape", or believe that they are operated by the same entity. It says that the Complainant does not hold any valid trade mark for "scape" alone and that the Complainant does not have exclusive rights in "scape" marks.

In terms of legitimate interests, the Respondent asserts that its project has operated since 2013 and has independently developed a server, branding and a community. It says also that it has never claimed any affiliation with the Complainant or its marks and has an appropriate disclaimer on its website. It also submits that it has never used the Complainant's logos or music from the "Runescape" game and that it has subsequently removed some icons to ensure no confusion or copyright conflict. Finally, it reiterates its website serves a small niche group of hobbyists and enthusiasts and that income generated is used to support server infrastructure and development costs and not commercial exploitation.

The Respondent says that he has made longstanding use of the "Boomscape" name since 2013 and that its name was independently coined, without knowledge or intention to exploit the Complainant's trade marks. He notes that he is aware of no evidence of user confusion and that the Complainant has not attempted to contact the Respondent since 2013 and the date of filing the Complaint. He says that after receipt of the Complaint he immediately removed all icons that could be considered to be infringing content and that the disputed domain name has not been used for illicit activities that amount to cybersquatting, but only

in relation to an independent community project.

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

The Complainant has demonstrated that it owns registered trade mark rights in its RUNESCAPE mark as noted above. It has also provided evidence that its trade mark and RUNESCAPE games are extremely well reputed with a social media following running from hundreds of thousands of followers to more than a million and with many tens of millions of views on certain platform, including on the Reddit platform which handle refers to the term "2007scape". The Complainant also owns domain names including the "scape" name but not the term "rune", including <06scape.com> and <2007scape.com>.

The Complainant has submitted that its game is colloquially known as "scape" and that this refers to its RUNESCAPE brand. A previous panel in CAC - UDRP - 107077 has found that the disputed domain name in that case was confusingly similar to the same Complainant's RUNESCAPE mark because the disputed domain used a distinctive element of the Complainant's mark, being "scape" together with the descriptive term "05", which refers to the year "2005".

Although "scape" is not a registered mark, it appears based upon the evidence on the record that many Internet users abbreviate the Complainant's RUNESCAPE mark to "scape" and refer to it in this manner colloquially and often it is referred to with a year attached, indicating the version of the game. Past panels have found (see Paragraph 1.3, WIPO Overview 3.0) that where there is evidence that a respondent has targeted a complainant's mark (i.e. based on the manner in which the related website is used) that this may support the complainant's assertion that its mark has achieved significance as a source identifier. Past panels that have also held that "an abbreviation of a registered trademark incorporated into a domain name may constitute confusing similarity [...]". See WIPO Case No. D2022-0309, Spyder Active Sports, Inc. v. Name Redacted.

In this case and as set out below, the Panel finds that there is clear evidence on the website to which the disputed domain name resolves, that the Respondent has targeted the Complainant. In these exceptional circumstances and also considering the very substantial following and reputation attaching to the RUNESCAPE trade mark and that "SCAPE" appears to be a known abbreviation of the Complainant's RUNESCAPE mark, the Panel finds strictly for the purposes of the first element of the Policy that the abbreviated term "scape" refers to RUNESCAPE and has achieved significance as a source identifier and as it is wholly contained in the disputed domain name that it is therefore confusingly similar to the Complainant's unregistered "scape" mark. The addition of the word "boom" and a hyphen does not prevent a finding of confusing similarity. Accordingly, the Complaint succeeds under the first element of the Policy.

The Complainant has submitted that it has never authorised the Respondent to use its marks and that the Respondent has never legitimately been known as "RUNESCAPE" or "SCAPE" and that its use of the disputed domain name does not amount to non-commercial or fair use and that the Respondent is using the disputed domain name to resolve to a website at which it offers a pirated version of the Complainant's Old School RuneScape game. The Respondent has not directly rebutted this latter assertion but has expressly said that it that it has never used the Complainant's logos or music from the "Runescape" game and but notably that it has subsequently removed some icons to ensure no confusion or any copyright conflict.

In making this assertion the Respondent has as much as admitted that, prior to the Complaint being filed, certain of the icons used in its game were the icons used in the Complainant's game and upon review by the Panel a number of them look to be identical. In addition, it is apparent to the Panel that certain of the images from the website to which the disputed domain name resolves were originally copied from the Complainant's Old School RuneScape game and have subsequently been cut down or altered for the purpose of the Respondent's website. Overall, the Panel finds that there is evidence of the Respondent having at the least copied various elements from the Complainant's Old School RuneScape game, if not having based its game on the Complainant's game, for the purpose of offering it to its subscribers from the website at the disputed domain name. Illegal conduct of this sort does not amount to bona fide use and cannot support a case that the Respondent has legitimate rights or interests for the purposes of the second element of the Policy and this is so despite the disclaimer of connection or affiliation that the Respondent has included on the website at the disputed domain name.

Although the Respondent has asserted that it has used the BOOMSCAPE name since 2013, it has not provided evidence of such use, in circumstances that the disputed domain name was only registered in January 2021. In any event, the Complainant's RUNESCAPE mark was registered in 2002 long before that date and enjoys substantial reputation based on long and established use. As noted above this use also appears to extend to the abbreviation "SCAPE" to refer to the Complainant's game.

Considering that the disputed domain name resolved to a website which featured material copied from the Complainant's Old School RuneScape game, there is a very strong inference that the Respondent must have been aware of the Complainant's RUNESCAPE mark and of its Old School RuneScape game when it registered the disputed domain name in 2021.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

As set out above the disputed domain name resolved at the date of filing of the Complaint to a website which has various elements copied from the Old School RuneScape game and which the Complainant submits includes a link to a pirated copy of that game, which submission the Panel notes has not been directly denied by the Respondent in his Response. Using the disputed domain name containing the "SCAPE" mark (as an abbreviation of the Complainant's RUNESCAPE mark) to direct Internet users to its website which features various copied elements and or a pirated copy of the Complainant's game amounts to using the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website under paragraph 4(b)(iv) of the Policy and is evidence of both registration and use of the disputed domain name in bad faith. The Panel notes that under the Policy such conduct amounts to bad faith whether it is for a "not for profit" community-based project, as asserted by the Complainant, or not.

Upon reviewing the website at the disputed domain name for the purpose of writing this decision, the Panel notes that it now resolves to a website at <boom-ps.com> and the website to which it resolves is now entitled "Boom" and the game at the website is referred to as "Boom" or "BoomPS". It is apparent therefore that the Respondent has decided even before this decision has been issued to re-brand to avoid the use of the "scape" mark and the Panel also notes that in a note on the website the Respondent mentions that it is releasing a new BOOMPS version of the game.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. boom-scape.com: Transferred

PANELLISTS

| | |
|------|-------------------|
| Name | Mr Alistair Payne |
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DATE OF PANEL DECISION 2025-06-24

Publish the Decision
