

Alternative Dispute Resolution (ADR)

DECISION

09-05-05

TICKETNUMBER

302

APPLICANT

Jagex Limited
Cambridgeshire
UK

Counsel:

Johan S
Frank Advokatbyrå AB
102 15 Stockholm

OPPONENT

Retail Z
01100 Itasalmi
Finland

MATTER

Alternative Dispute Resolution for the domain name <runescape.se>

.SE decides as follows

DECISION

The registration of the domain name <runescape.se> shall be transferred to the Applicant.

BACKGROUND TO THE DISPUTE

The domain name <runescape.se> was registered for the Opponent on August 9, 2005.

As of July 23, 2008, the domain in question redirected to a website, www.miniclip.se, containing online games which according to the Applicant compete with its products. Applicant's cease and desist communications July 29, 2008, and November 5, 2008, have not been replied to.

The Applicant is the owner of the Community Trade Mark No. 2942761, RUNESCAPE, of November 25, 2002, and other similar registered trademarks (UK, US, Australia and Canada). It also holds use rights to the same trademark.

The Applicant applied to .SE for dispute resolution on March 12, 2009, having paid the application fee that same day and having expressed the wish that the matter be decided by a single Adjudicator.

.SE has appointed Gunnar W. G. Karnell as Adjudicator.

The Opponent has not replied to the application.

CLAIM

The Applicant has claimed that the domain name at issue be transferred to the Applicant.

FACTS OF THE CASE

The Applicant has stated:

It has since 2001 carried on business of designing, developing and operating online computer games. Its most well known product is a game known as "RuneScape". That game was launched in January 2001 at Applicant's site <runescape.com>.

Extensive background information about the nature and history of the Applicant's business, shows, in addition to the right based on its CTM-registration, an established right of use to its trademark RUNESCAPE to have taken hold in Sweden.

The Applicant has no association with the Opponent and has never authorised or licensed it to use its trade marks. The Opponent can have no legitimate reason to use the trade mark RUNESCAPE in connection with the website which it redirects to www.miniclip.se.

There is no evidence that the Opponent has been commonly known by the name comprised in the Domain and it is clear that the Opponent has acted out of an interest in commercial gain.

The domain name is identical or confusingly similar to the trademark RUNESCAPE.

The Opponent has no right or justified interest in the domain name.

It is registered and used in bad faith so as to link to similar services to those offered by the Applicant with the purpose to “confuse, attract and profit from internet users” who search for the Applicant’s business in search engines, web browsers and otherwise on the internet. It is inconceivable that the Opponent registered its domain name independently of the Applicants trade mark. The use of the domain name is intended by the Opponent to create a likelihood of confusion in the minds of the public as to an association between the Opponent and the Applicant. At least one of the Opponent’s purposes was to attract and profit from internet users seeking the Applicant’s website. More specifically the domain name is registered and used in bad faith with the purpose of “disrupting the business operations” of the Applicant and of preventing the Applicant “from being able to use its rights to the Domain”.

FINDINGS OF THE ADJUDICATOR

Relevant criteria for a transfer as desired by the Applicant are given by NIC-SE in its General conditions for registration of domain names, in section 17 c, according to which a domain name may be transferred to the party requesting the dispute resolution proceedings provided 1) that the domain name is identical or confusable with a trade mark, business brand etc. which has a legal basis in Sweden and to which the party requesting the dispute resolution can prove a right, 2) the Holder does not have any right or justified interest in the domain name, and 3) the domain name is registered or used in bad faith. Specifics about what may respectively be a right or justified interest and bad faith as mentioned are – by exemplification – rendered in section 17 under d) and e).

Applying the conditions mentioned the Adjudicator finds as follows:

- 1) The domain name <runescape.se> is confusingly similar to the CTM-registered trademark RUNESCAPE, forming a valid legal basis in Sweden for the Applicant’s claim. That being so, the Adjudicator finds it superfluous to bring to consideration the Applicant’s right by use of the trademark.
- 2) The Opponent has not answered to the application for the dispute resolution. This being so, the Adjudicator finds that there is no sign or indication in the case material of any right or justified interest on the part of the Opponent in the domain name, being confusingly similar to the Applicant’s trade mark at issue.
- 3) Absent any response by the Opponent to the application in the proceeding, the Adjudicator finds that the Applicant has proven such registration and use in bad faith as under applicable conditions warrants a transfer of the domain name to the Applicant.

On behalf of .SE

.....
Gunnar Karnell