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C.V. FRANCIS, ADVOCATE

Arbitrator appointed by the (.IN Registry)
National Internet Exchange of India
T-15, Green Park Extension
New Delhi 110016
Cvfc@bol.net.in

ARBITRATION AWARD

Disputed Domain Name : www.runescape.in

In the matter of:

Jagex Limited

St. Andrews House,
90, St. Andrews Road,
Cambridge, Cambridgeshire
CB4 1 DL
UK

.....Complainant

Vs.

Fuzhou tianmen Touzi

Lucky Studio No. 37
55 Rd. Bargedar Hodding
M2r3h4
IQ

.....Respondent

The Parties

The Complainant in this administrative proceeding is the Jagex Limited with its office at St. Andrews House, 90 St. Andrews Road, Cambridge Cambridgeshire CB4 1DL UK.

The Complainant's contact details are ;

Address : **Jagex Limited**
 St. Andrews House,
 90, St. Andrews Road,
 Cambridge,
 Cambridgeshire CB4 1 DL
 UK

Telephone : +44 (0) 207 317 8404

Fax: +44 (0) 207 317 8405

Email: adamt@adlexsolicitors.co.uk

.....Complainant

Vs.

According to the WHOIS database of NIXI in this administrative proceeding, the Respondent is Fuzhou Tianmen Touzi and his contact details are as follows :

Address : **Fuzhou tianmen Touzi**
 Lucky Studio No. 37
 55 Rd. Bargedar Hodding
 M2r3h4

 IQ

Telephone : +81.55334971531

Fax: +81.55334971531

Email: xiaoyalin@gmail.com

.....Respondent



2. Details of the disputed Domain Name

The disputed domain name www.runescape.in and is registered with the Registrar OnlineNIC, Inc.

3. About procedures adopted in the Complaint

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under.

By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Rules.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, sent him a copy of the complaint, and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, and .IN Domain Name Dispute Resolution Policy and



the Rules framed thereunder. I had submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules.

The arbitration proceedings commenced on September 10, 2007, when notice of proceeding was issued by me. The Respondent was advised to file his reply to the complaint within 10 days. The notices were sent by post as well as by the email to the addresses available on the WHOIS DATABASE.

No reply or communication was received from the Respondent. In these facts and circumstances, in-person hearing was unnecessary for deciding the complaint, and consequently on the basis of the statements and documents submitted on record, the present Award is passed.

According to Paragraph 9 of the Rules the language of the proceedings was in English.

4. Parties' Contentions

(a) Complaint

The Complainant inter alia, in its complaint contends as follows:

The Complainant was incorporated in the UK on 28th April 2000 and since 2001 carried on business of designing, developing and operating online computer games. The complainant's most well known product is a game known as "RuneScape".



The domain name runescape.com was registered in January 2000 and the game RuneScape was launched at that site in 2001.

The Complainant owns the registered trademark for RUNESCAPE in different countries in the world in respect of variety of goods and services falling in international classes 1, 2, 16, 25 and 41.

As of June 2006 there were some 4.6 million active registered RuneScape players and some 742,000 RuneScape subscribers worldwide.

Since 2003 there have been approximately 12 million advertising impressions on the webpage runescape.com

The Complainant's turnover over the period 2002 to 2006 was approximately 25 million pounds.

The complainant has generated extensive worldwide press coverage in national and other media.

In support of its contentions the Complainant has annexed the following documents :

- (i) The Incorporation certificate of the Complainant company (Exhibit 2)
- (ii) Whois printout of www.runescape.com (Exhibit 3) depicting that the said domain name is owned by the Complainant.



- (iii) Spreadsheet of Active players on www.runescape.com (Exhibit 4)
- (iv) Spreadsheet depicting total number of advertising impressions (Exhibit 5)
- (v) Complainant's Annual Accounts depicting its turnover (Exhibit 6)
- (vi) Press coverage and articles from various sources such as Wall Street Journal, The Guardian Sunday Times and various others depicting the mark RUN ESCAPE and referring to the Complainant (Exhibit 7)
- (v) Selection of Complainant's press releases (Exhibit 8)
- (vii) Various rankings of runescape.com from Lycos, Yahoo, Alexa etc. (Exhibit 9 &10)
- (viii) List of domain names (TLDs and GTLDs) owned by the Complainant (Exhibit 11)
- (ix) Certificates of Registration of Trademark "RUNESCAPE" held by the Complainant in various countries.(Exhibit 12, 13, 14, 15 and 16)
- (x) Copy of the UDRP case (Jagex Limited vs. xc2 c/o Internet coordinator, runescapeclassic.com wherein the trademark rights of the Complainant have been accepted by the panel (Exhibit 24)

(b) Respondent

As previously indicated, the Respondent has not filed any response to the Complaint and has not answered the Complainant's contentions in any manner.

5. Discussion and Findings

The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant,



nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate, non-commercial or fair use of the domain name.

Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

(a) The Respondent's Default

The Rules paragraph 8(b) requires that the Arbitrator ensure that each party is given a fair opportunity to present its case. Paragraph 11(a) of the Rules reads as follows;

"11. Default

(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

The Respondent was given notice of this proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.



As previously indicated the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case, and the Arbitrator will proceed to a decision on the Complaint.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

(b) The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads

"Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;



(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

(Hi) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the IN Registry, in compliance with this Policy and Rules thereunder."

Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

(i) The domain name registered by the Respondent is identical to the Trademark of the Complainant.

The Complainant has given substantial documents to prove that he has Intellectual property and other rights in the mark "RUNESCAPE". The mark is being used by the Complainant since the year 2001 in relation to its business. The Complainant has registered the mark RUNESCAPE in various countries. The INDRP paragraph 3 clearly states that it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violates the rights of any body. Since the Complainant's mark "RUNESCAPE" is a famous and well-known mark specially on the Internet and is registered in so many countries, it is unlikely that the Respondent did not know about the Complainant's rights in the mark or the domain name.



Paragraph 3 of the INDRP is reproduced below:

"he Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:

(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;

(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

(c) the Registrant is not registering the domain name for an unlawful purpose; and

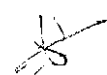
(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

In the absence of any response from the Respondent and in the presence of the pleadings and documents filed by the Complainant, the Arbitrator finds that the disputed domain name is identical with or deceptively similar to the Complainant's trademark "RUNESCAPE". Accordingly, the Arbitrator finds that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

(ii) The Respondent's Rights and Legitimate interests

The second element required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.



The burden of proof on a complainant regarding the second element is necessarily light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant; makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent in this case has not at all filed any response to show his interest in protecting his own right and interest in the domain name.

The Complainant has categorically contended that the Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate, non-commercial or fair use of the domain name.

In the above facts and circumstances and because of the reasons explained above, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.



(iii) Bad Faith Registration and Use

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

Paragraph 6 of the Rules provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

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

(ii) the registrant 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 the registrant has engaged in a pattern of such conduct; or

(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its Website or other on-line location, by creating a likelihood of confusion with the complainants mark as to the source, sponsorship, affiliation or endorsement of its Website or location or of a product or service on its Website or location."

I am of the opinion that all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the



registration of the impugned domain name by the Respondent/ Registrant is a registration in bad faith.

6. Decision

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name. Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.

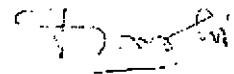
As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.



The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

Considering the infringement of the Complainant's trademark by the Respondent,

- (a) I direct that the registration of the disputed domain name www.runescape.in to be **transferred** from the Respondent to the Complainant immediately. NIXI to monitor.
- (b) The Respondent shall pay to the Complainant the legal costs of Indian Rupees 30,000 and the lawyer's fees upon production of the evidence thereof, within 30 days of this decision, under supervision of NIXI.



C.V.Francis
Sole Arbitrator.
February 5, 2008.