

## **ADMINISTRATIVE PANEL DECISION**

Jam City, Inc. v. Aleksei Prokudin

Case No. D2022-0414

### **1. The Parties**

The Complainant is Jam City, Inc., United States of America (“United States”), represented by Stobbs IP Limited, United Kingdom.

The Respondent is Aleksei Prokudin, Russian Federation.

### **2. The Domain Name and Registrar**

The disputed domain name <championsascension.shop> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 11, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center sent a communication in English and Russian to the Parties in respect of the language of the proceeding. On February 14, 2022, the Complainant filed an amended Complaint and a request that the proceeding be held on English. The Respondent did not file comments in respect of the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 14, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on March 22, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a mobile entertainment company founded in 2010. It has nine studios in the United States, Canada, South America, and Europe. As of 2021, the Complainant employed 825 people. One of the Complainant's new brands is the CHAMPIONS ASCENSION blockchain game - a player-driven fantasy world where players can collect and create unique NFT (non-fungible token) Champions, battle other players, and participate in a developing token economy.

The Complainant has filed the following trademark applications in the United States for the sign "CHAMPIONS ASCENSION":

- the trademark application for CHAMPIONS ASCENSION with No. 97151625 of December 1, 2021 for goods in International Class 9; and
- the trademark application for CHAMPIONS ASCENSION with No. 97151630 of December 1, 2021 for services in International Class 41.

The Complainant is also the owner of the domain name <championsascension.com> registered on December 1, 2021, which resolves to the Complainant's main website.

The disputed domain name was registered on December 28, 2021. It is currently inactive. At the time of the submission of the Complaint, the disputed domain name resolved to a website that was a copy of the Complainant's official website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant maintains that it has unregistered trademark rights in the trademark CHAMPIONS ASCENSION that have arisen as of December 3, 2021. The Complainant states that on this date it announced the CHAMPIONS ASCENSION brand on social media and activated its website at the domain name <championsascension.com>. Since then, there has been a lot of recognition of its CHAMPIONS ASCENSION brand in the public domain through its social media following and third-party press articles. The Complainant submits that the Discord account related to its CHAMPIONS ASCENSION brand now has 88,000 members, and 62,000 people have viewed the product launch video on YouTube to date. According to the Complainant, a substantial number of people identify the CHAMPIONS ASCENSION brand and associate it with the Complainant. The Complainant maintains that it has therefore established that it has accumulated sufficient goodwill in this brand to achieve the status of an unregistered trademark right. The Complainant notes that its CHAMPIONS ASCENSION brand had already entered the public domain by the time that the disputed domain name was registered by the Respondent, and the content of the Respondent's website at the disputed domain name, which is almost an exact copy of the Complainant's official website, also supports the conclusion that this brand has acquired unregistered rights, as it has been established enough for someone to copy it and try to disrupt the Complainant's business.

The Complainant submits that the disputed domain name is confusingly similar to its unregistered trademark CHAMPIONS ASCENSION and to the Complainant's domain name <championsascension.com>, because it fully incorporates their elements.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known by the name CHAMPIONS ASCENSION and is not using the disputed domain name in connection with a *bona fide* offering of goods or services. On January 20, 2022, the disputed domain name resolved to a website that featured the Complainant's CHAMPIONS ASCENSION brand and was an almost exact copy of the Complainant's official website and included a link for users who visit another website to disclose their personal cryptocurrency wallet information. According to the Complainant, the disputed domain name was set up with the intention to create an impression that the Respondent is the Complainant or is affiliated with it and to cause consumer confusion and to obtain personal and financial information of the Complainant's customers.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It claims that its unregistered trademark rights in CHAMPIONS ASCENSION predate the registration of the disputed domain name, which took place 25 days later. According to the Complainant, the Respondent chose to register the disputed domain name and direct it to a website that is almost identical to the Complainant's official website, having the Complainant's CHAMPIONS ASCENSION trademark in mind, and did this to attract the Complainant's customers to the Respondent's website and deceive them to disclose their personal cryptocurrency wallets.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Procedural issue - Language of Proceedings**

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that these administrative proceedings should be conducted in English. It submits that the disputed domain name includes the English words "champions" and "ascension", and the content of the website at the disputed domain name as of January 20, 2022 contained English text. According to the Complainant, that indicates that the Respondent understands English and would not be put at a disadvantage if the proceeding is conducted in English. The Complainant also notes that the translation of the Complaint in Russian would lead to undue delay and substantial expenses incurred by the Complainant.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainant's request that the proceedings be held in English. The evidence submitted by the Complainant shows that the disputed domain name has resolved to an English-language website, which supports a conclusion that the Respondent understands and uses this language.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

### **A. Identical or Confusingly Similar**

The Complainant does not have a registered trademark. It has filed applications for the registration of the sign CHAMPIONS ASCENSION as a trademark, and these applications are currently pending. As discussed in section 1.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i). This Panel shares that view that until a trademark application proceeds to grant, it does not constitute a trademark in which a complainant has rights for the purposes of the Policy.

The Complainant maintains that it has unregistered trademark rights in the trademark CHAMPIONS ASCENSION. On December 3, 2021, it announced its new CHAMPIONS ASCENSION game on social media and activated its website at the domain name <championsascension.com>. The Complainant refers to the number of members of the Discord account related to its CHAMPIONS ASCENSION brand and to the number of people that have viewed the product launch video on YouTube, and notes that the content of the Respondent's website at the disputed domain name also supports the conclusion that the Complainant has acquired unregistered rights in the CHAMPIONS ASCENSION trademark.

As discussed in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services. The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier.

The Complainant has provided evidence that in the beginning of December 2021 its new game CHAMPIONS ASCENSION was officially announced on a number of online media and on the Complainant's website at the domain name <championsascension.com>. There is also evidence that the Discord account related to the Complainant's CHAMPIONS ASCENSION brand has attracted 88,000 members and that 62,000 people have viewed the Complainant's product launch video on YouTube. This publicity and the nature of the Complainant's product – an online game that is instantly offered and can be simultaneously provided to an indefinite number of users worldwide, and the Respondent's website at the disputed domain name being an almost exact copy of the Complainant's official website, support the Complainant's assertion that its CHAMPIONS ASCENSION trademark has achieved significance as a source identifier. Therefore, the Panel finds that the Complainant has shown that for the purposes of the Policy it has unregistered rights in the CHAMPIONS ASCENSION trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain ("TLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the ".shop" TLD section of the disputed domain name.

The disputed domain name incorporates the CHAMPIONS ASCENSION trademark in its entirety without the addition of any other elements.

Therefore, the Panel finds that the disputed domain name is identical to the unregistered trademark CHAMPIONS ASCENSION in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that it is not known by the name CHAMPIONS ASCENSION and has used the disputed domain name for a website that featured the Complainant’s CHAMPIONS ASCENSION brand and was an almost exact copy of the Complainant’s official website and was part of scheme impersonating the Complainant and attempting to collect personal and financial information of the Complainant’s customers. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response. It has not alleged that it has rights or legitimate interests in the disputed domain name and has not disputed the Complainant’s allegations in this proceeding. The evidence in the case file shows that the disputed domain name has indeed resolved to a website that looked like the official website of the Complainant and contained the following text: *“Champions: Ascension is a blockchain game built by Jam City, an award-winning game company led by former MySpace co-founder and CEO Chris DeWolfe. Our presale is open for a limited time! Join today and claim exclusive Champions.”* This “presale” is offered to be made in exchange of NFTs, and there is no disclaimer on website for the lack of relationship between the Parties. The text on the website shows that the Respondent is well aware of the Complainant and of its CHAMPIONS ASCENSION brand and product and attempts to extract financial gain from the operation of the website at the disputed domain name by impersonating the Complainant and misleading visitors of the website of the affiliation and endorsement by the Complainant of the Respondent’s website and of the offer contained on it. To the Panel, such conduct does not appear to be legitimate nor giving rise to rights or legitimate interests of the Respondents in the disputed domain name.

In view of the above, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

As discussed in section 3.8 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.

The disputed domain name is identical to the CHAMPIONS ASCENSION trademark and was registered less than a month after the Complainant filed applications for registration of the CHAMPIONS ASCENSION trademark and announced and widely publicized its new CHAMPIONS ASCENSION game. It is registered in the ".shop" gTLD, which creates an impression that the associated website is an official website of the Complainant offering its CHAMPIONS ASCENSION game for sale. The Respondent does not deny that it has used the disputed domain name for a website that mimicked the website of the Complainant and attempted to collect personal and financial information from visitors of the website by offering them to participate in a "presale" of the Complainant's game against NFTs.

The above satisfies the Panel that the Respondent has opportunistically registered and used the domain name was to unfairly capitalize on the Complainant's yet unregistered trademark rights, with knowledge of the Complainant and targeting its CHAMPIONS ASCENSION brand in an attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the CHAMPIONS ASCENSION brand as to the affiliation or endorsement of its website and the offer included on it for commercial gain. The fact that the disputed domain name is currently inactive does not prevent a finding of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and used in bad faith.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <championsascension.shop> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: April 7, 2022