

ADMINISTRATIVE PANEL DECISION

Jam City, Inc. v. Danila Ivanov
Case No. D2022-1714

1. The Parties

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

The Respondent is Danila Ivanov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <championascension.art> 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 May 11, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 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 May 19, 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 document in English and in Russian to the Parties in respect of the language of the proceeding and invited them to respond. On May 19, 2022, the Complainant filed an amended Complaint and requested the proceeding to be held in English. The Respondent did not file comments on the Complainant’s request 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 May 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2022. The Respondent did not submit any response. Accordingly,

the Center notified the Respondent's default on July 21, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on July 25, 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, and employs 825 people. In 2021, the Complainant's games had 31 million monthly active users and 1.3 billion total downloads.

One of the Complainant's new products is the CHAMPIONS ASCENSION blockchain game, developed exclusively for Web3. The game is a player-driven fantasy world where players can collect and create unique NFT (non-fungible token) Champions, battle other players, and stake a path in a developing token economy. The game was launched in early December 2021.

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;
- the trademark application for CHAMPIONS ASCENSION with No. 97151630 of December 1, 2021 for services in International Class 41;
- the trademark application for CHAMPIONS: ASCENSION with No. 97157385 of December 6, 2021 for goods in International Class 9; and
- the trademark application for CHAMPIONS: ASCENSION with No. 97157391 of December 6, 2021 for services in International Class 41.

The Complainant is also the owner of the domain name <championsascension.com> registered on December 1, 2021. It resolves to the Complainant's official website for the CHAMPIONS ASCENSION game, which website went live on December 3, 2021.

The disputed domain name was registered on February 24, 2022. It is currently inactive. At the time of the submission of the Complaint, the disputed domain name resolved to a website that copied the Complainant's official website.

5. Parties' Contentions

A. Complainant

The Complainant maintains that it has unregistered trademark rights in the CHAMPIONS ASCENSION trademark which have arisen as of December 3, 2021. The Complainant states that on this date it announced the CHAMPIONS ASCENSION game 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 Discord account related to its CHAMPIONS ASCENSION brand now has 102,000 members, and prior to the registration of the disputed domain name, it had about 88,000 members. The Complainant's Twitter and Instagram accounts for the CHAMPIONS ASCENSION game have 58,800 and 17,900 followers, respectively. The Complainant's official video for the CHAMPIONS ASCENSION game was uploaded on

YouTube on December 22, 2021. It has been viewed over 450,859 times, and prior to the registration of the disputed domain name on February 24, 2022, it had approximately 62,000 views. According to the Complainant, these statistics show that a substantial number of people identify the CHAMPIONS ASCENSION brand and associate it with the Complainant. 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 and is 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 the CHAMPIONS ASCENSION trademark in which it has unregistered rights, and to the Complainant's domain name, because it fully incorporates their elements. The Complainant states that the only difference is the omission of the "s" in "champions", which is immaterial in any assessment because it is merely turning the plural into the singular.

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 it and is not using the disputed domain name in connection with a *bona fide* offering of goods or services. According to the Complainant, in view of the pre-existing unregistered rights in the CHAMPIONS ASCENSION trademark and the content of the website at the disputed domain name, there is no realistic reason for the registration or use of the disputed domain name other than to make a financial gain by taking advantage of the Complainant's rights. The disputed domain name has resolved to a website featured the Complainant's CHAMPIONS ASCENSION brand, 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.

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 83 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 by passing itself off as the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issue - Language of the proceeding

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 the administrative proceedings should be conducted in English. It submits that the website at the disputed domain name contained English text and that the disputed domain name contains the English words "champion" and "ascension". According to the Complainant, this supports the conclusion that the Respondent understands the English language and would not be put at a disadvantage if the proceeding is to be conducted in English. The Complainant also submits that translating this Complaint into Russian will lead to undue delay and substantial expenses for 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 on March 23, 2022, the disputed domain name 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.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]".

The Respondent however did not submit a Response in this proceeding.

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 game, to the number of followers to the Complainant's Instagram and Twitter accounts, and to the number of people that have viewed the launch video for the game on YouTube, and notes that the content of the Respondent's website at the disputed domain name, being an almost identical copy of the Complainant's own website for the game also supports the conclusion that the CHAMPIONS ASCENSION trademark has become a source identifier for the Complainant and its game.

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 platforms and on the Complainant's website at the domain name <championsascension.com>. There is also evidence that the Discord account related to the CHAMPIONS ASCENSION game now has 102,000 members and prior to the registration of the disputed domain name on February 24, 2022, it had about 88,000 members, while the Complainant's Twitter and Instagram accounts for the CHAMPIONS ASCENSION game have 58,800 and 17,900 followers. The Complainant has shown that its official video for the CHAMPIONS ASCENSION game has been viewed over 450,859 times, and that prior to the registration of the disputed domain name it had already had 62,000 views. 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, at least within the context of this proceeding. 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") 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 ".art" TLD of the disputed domain name.

The disputed domain name incorporates the CHAMPIONS ASCENSION trademark without the letter "s" in the word "champions", and without the addition of any other elements. The missing letter "s" does not significantly change the overall appearance of the disputed domain name and does not prevent confusing similarity with the CHAMPIONS ASCENSION trademark, which remains easily recognizable.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the CHAMPIONS ASCENSION trademark in which the Complainant has demonstrated unregistered rights for the purposes of the Policy.

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 a 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 resembled the official website of the Complainant and contained the following text: "Our presale is opened for a limited time! Join today and claim exclusive Champions. Mint 3 NFT to get Legendary Champion. 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. Champions left: 3999/9999 Sale info: Price: 0,2 ETH + Fee For 1 Champion Supply: 9999 Champions". The website includes a button with the text "CONNECT WALLET", and there is no disclaimer on the website regarding the lack of relationship between the Parties. The text on the website supports the conclusion 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 confusingly similar to the CHAMPIONS ASCENSION trademark and was registered less than three months after the Complainant filed applications for registration of the CHAMPIONS ASCENSION trademark and announced and widely publicized its new CHAMPIONS ASCENSION game.

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 buy "Champions" of the Complainant's game.

The above satisfies the Panel that the Respondent has opportunistically registered and used the disputed 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 <championascension.art> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: August 8, 2022