

## **ADMINISTRATIVE PANEL DECISION**

Jam City, Inc. v. Vyacheslav Pertsev  
Case No. D2022-0695

### **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 Vyacheslav Pertsev, Russian Federation.

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

The disputed domain name <championascension.com> (the “Domain Name”) 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 28, 2022. On March 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 2, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Registrar confirmed that the language of the Registration Agreement for the Domain Name is Russian. On March 8, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on March 8, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in English and Russian of the Complaint, and the proceedings commenced on March 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 20, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on May 5, 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**

Jam City, Inc., the Complainant in the present proceedings, is a mobile entertainment company developing video games. As of 2021, the Complainant's games had 31 million monthly active users and 1.3 billion total downloads. One of the Complainant's new games is "Champions Ascension" (the "Game") announced on December 3, 2021.

On December 1, 2021, the Complainant filed with the United States Patent and Trademark Office (the "USPTO") two registration applications (Nos. 97151625 and 97151630) for the CHAMPIONS ASCENSION trademark.

Moreover, on December 1, 2021, the Complainant registered the domain name <championsascension.com> resolving to the website promoting the Game (the "Complainant's Official Website"). This website is active since at least December 3, 2021.

The Respondent registered the Domain Name on January 23, 2022.

In accordance with the screenshots attached to the Complaint, as of February 25, 2022, the Domain Name resolved to a website (the "Website") imitating the Complainant's Official Website and featuring a link to disclose personal cryptocurrency wallets by Internet users. As of the date of this Decision, the Domain Name resolves to a website promoting goods and services of Barista-ltd.ru related to vending.

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

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

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the CHAMPIONS ASCENSION trademark in which the Complainant holds unregistered rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the

complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

### **A. Language of the Proceedings**

The language of the Registration Agreement for the Domain Name is Russian. Paragraph 11(a) of the Rules provides that “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 Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceedings be English.

The Complainant contends that the Website contains text in English. Moreover, the Complainant notes that the Domain Name consists of the English words “champion” and “ascension”. Lastly, the Complainant submits that translating the Complaint into Russian would lead to undue delay and substantial expenses incurred by the Complainant.

The Panel accepts that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the language of the proceedings.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceedings to be conducted in English.

### **B. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the Complainant’s trademark rights.

The Complainant submits that it has unregistered rights in the CHAMPIONS ASCENSION trademark since at least December 1, 2021.

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must generally show that its trademark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services. See section 1.3, [WIPO Overview 3.0](#).

In the present case, the Panel notes that the CHAMPIONS ASCENSION trademark comprises of an inherently distinctive combination of terms. Thus, it should be easier for the Complainant to present

evidence of acquired distinctiveness than it would be in the case of the trademark comprising solely of descriptive terms. See section 1.3, [WIPO Overview 3.0](#).

In any case, the Panel considers that the Complainant presented sufficient evidence demonstrating the acquired distinctiveness of the CHAMPIONS ASCENSION trademark. In particular, the Complainant demonstrated that such distinctiveness results from the extensive advertising of this trademark by the Complainant through its social media, YouTube videos or third-party press articles. In results of the Complainant's marketing efforts and consequently, significant Internet presence, the CHAMPIONS ASCENSION trademark has been acquiring rapid recognition since announcement of the Game on December 3, 2021. The Claimant proved that currently significant amount of public recognizes the CHAMPIONS ASCENSION trademark and associate it with the Complainant.

Moreover, the fact that the Respondent is shown to have been targeting the CHAMPIONS ASCENSION trademark supports the Complainant's assertion that it has achieved significance as a source identifier. This finding is, in particular, based on the content and appearance of the Website which is highly similar to that of the Complainant's Official Website.

Furthermore, the Domain Name incorporates the CHAMPIONS ASCENSION trademark in the entirety with the omission of the "S". As numerous UDRP panels have held, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. See section 1.9, [WIPO Overview 3.0](#).

The Top-level Domain ".com" in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the CHAMPIONS ASCENSION trademark in which the Complainant has unregistered rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

### **C. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

(i) that it has used or has made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or

(ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or

(iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that there is the CHAMPIONS ASCENSION trademark in which the Complainant has unregistered rights and which predate the Respondent's registration of the Domain Name. There is no evidence in the case that the Complainant has licensed or otherwise permitted the Respondent to use the CHAMPIONS ASCENSION trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly

known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

On the contrary, the screenshots attached to the Complaint show that as of February 25, 2022 the Domain Name resolved to the Website imitating the Complainant's Official Website and featuring a link to disclose personal cryptocurrency wallets by Internet users. Currently the Domain Name resolves to the website promoting goods and services of Barista-ltd.ru related to vending. Given the above, the Respondent in all likelihood intended to use the Domain Name to obtain personal and/or financial information of the potential users of the Complainant's Game. Thus, the Panel accepts that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the CHAMPIONS ASCENSION trademark as to the source, sponsorship, affiliation, or endorsement of the Website by the Complainant.

To sum up, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's submissions. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's unregistered rights in the CHAMPIONS ASCENSION trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant and/or the Complainant's unregistered trademark rights at the time of registration of the Domain Name. Such finding is supported by the content of the Website imitating the Complainant's Official Website. Moreover, it has been proven to the Panel's satisfaction that the CHAMPIONS ASCENSION gains rapid recognition and is unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of the product this unregistered trademark rights identifies.

In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the CHAMPIONS ASCENSION in which the Complainant has rights.

Moreover, the Complainant proved that the Domain Name is being used in bad faith. The Panel acknowledges that the Respondent displayed on the Website the link to disclose personal cryptocurrency wallets by the Internet users. Thus, the Respondent intended to use the Domain Name to obtain personal and/or financial information of the potential users of the Complainant's Game. Such use of the Domain Name proves the Respondent's bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) of the Policy.

## **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 Domain Name <championascension.com> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: May 18, 2022