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**MOSCOW CITY COMMERCIAL (“ARBITRATION”) COURT**

17 Bolshaya Tuskaya St, Moscow 115225

<http://www.msk.arbitr.ru>

In the name of the Russian Federation

RESOLUTION

Moscow
14 September 2020

Case No. A40-87427/20-110-652

The operative part of the Resolution was announced on 7 September 2020

The full text of the Resolution was prepared on 14 September 2020

The Moscow City Commercial Court consisting of:

judge A.V. Mischenko /acting alone/,

with the minutes of the court hearing kept by the secretary V.V. Ermolova,

having examined in an open court hearing further to the application filed by InCruises International, LLC (St.1 -Lot 3, Suite 500 (metro Office Park 3), Guaynabo, Puerto Rico, 00968-1705), the case to declare as false and defamatory to the business reputation of the company the information,

with the participation of:

T.A. Udodova on the part of the applicant pursuant to the power of attorney dated 27 December 2019,

HAS ESTABLISHED THAT: InCruises International, LLC filed with the Moscow City Commercial Court an application for establishing the facts of legal significance, which involves declaring the information discrediting honour, dignity or business reputation as false.

Having heard the applicant’s representative and having examined and assessed the evidence, the court has concluded as follows.

Based on the materials of the case, the Publication appeared on the website <https://extinvest.com/> under the link <https://extinvest.com/incruises/> without the date or the author of the Publication being specified.

The Publication contains information that is contrary to the facts and defames the Applicant’s business reputation.

The fact that the above information was placed in and disseminated through the Internet is confirmed by notarised inspection record No. 77 AG 3228367 dated 30 January 2020 with respect to the website <https://extinvest.com/> (the “Publication Inspection Record”).

The business reputation of InCruises has been affected by the dissemination of the false information aimed at forming a negative attitude of potential partners and contracting parties towards the Applicant and creating a false impression that the Applicant acts illegally and in bad faith and, specifically, that it is a pyramid scheme.

In accordance with clause 5 of Resolution No. 3 of the Plenum of the Russian Supreme Court dated 24 February 2005 “On courts’ practice in cases involving the protection of the honour and dignity of individuals as well as the business reputation of individuals and legal

entities” (also “Resolution No. 3 of the Russian Supreme Court’s Plenum”) proper defendants under lawsuits regarding the protection of the honour, dignity and business reputation are the authors of false and defamatory information, as well as the persons having disseminated such information.

A similar position is set out in the “Overview of the practice of courts considering cases that stem from the disputes over the protection of honour, dignity and business reputation” (as approved by the Supreme Court’s Presidium on 16 March 2016).

Yet, there is no information available on website <https://extinvest.com/> about the author of the Publication or the domain administrator.

The Applicant took actions to obtain information about the proper defendants, including sending an attorney’s request to the registrar of the domain <https://extinvest.com/>, but no information about the domain administrator was provided.

Owing to the absence of any information about the defendants under the claim for protecting business reputation, the Applicant is unable to protect its rights in litigation proceedings.

At the same time, according to the legal position expressed in clause 2 of Resolution No. 3 of the Russian Supreme Court’s Plenum, a person about which false and defamatory information has been disseminated remains entitled to protect its honour, dignity and business reputation through a court even in situations when it is impossible to identify the person that has disseminated such information (for instance, when anonymous letters have been sent to individuals and organisations or when information has been disseminated through the Internet by an unidentifiable person). Pursuant to article 152(8) of the Russian Civil Code, in the case in question the court may, upon the application of an interested party, acknowledge that the information disseminated with respect to such person is contrary to the facts and is defamatory in nature. Such an application is examined under special proceedings.

According to article 254(2) of the Russian Commercial Procedure Code, foreign persons have the right to apply to Russian state commercial courts in compliance with the rules of competence set out in the Code in order to protect their violated or contested rights and legitimate interests in the sphere of entrepreneurial and other economic activity.

According to article 247(1)(8) of the Russian Commercial Procedure Code, state commercial courts of the Russian Federation examine cases involving economic disputes and other cases connected with entrepreneurial and other economic activity involving foreign nationals, including in situations when an applicant in a case that concerns establishing a fact of legal significance points out that such fact has taken place in the Russian Federation.

Based on article 247(1)(9) of the Russian Commercial Procedure Code, Russian state commercial courts examine cases on economic disputes involving foreign nationals if a dispute arises out of relationships connected with the state registration of names and other items and the supply of services in the international association of Internet networks in the territory of the Russian Federation.

At the same time, according to the legal position set out in Resolution No. 5560/08 of the Presidium of the Russian Supreme Commercial Court dated 11 November 2008 on case No. A56-46111/2003, state commercial courts are competent to examine disputes connected with the use of the Internet even if the website is registered in the .com domain zone, provided that the dispute has a legal link with Russian jurisdiction.

According to article 247(1)(10) of the Russian Commercial Procedure Code, when a competent state commercial court in Russia is determined, the criterion of a close link should be taken into account between the legal relationship in dispute and the corresponding state.

At the same time, for determining the jurisdiction of courts it is insignificant whether the applicant is located in the Russian Federation.

The presence of a close link between the legal relationship in dispute and Russia is conditioned by the following circumstances:

- the website as well as the Publication are compiled exclusively in the Russian language;
- the principal purpose of publishing negative information about the Claimant was to spread such information specifically in the Russian Federation; in other words, the Publication is targeted at the Russian audience;

In addition, social relationships in the area of Internet use have their own specifics, as the hosting provider, registrar of the domain and owner of the website may potentially be located in different jurisdictions and it may be technically difficult to search for these persons.

In connection with the above, in legal doctrine, as well as in the court practice of the European Union and USA the ‘sliding scale’ theory has become widespread. Under this theory civil cases pertaining to the use of the Internet fall under the jurisdiction of the territory, in which:

most of the people that are consumers of the website's content reside;
in which there is technical access to the information published on the website.

This legal position has also been reflected in article 13(2) of Federal Law No. 114-FZ dated 25 July 2002 “On counteracting extremist practices” and Ruling No. 384-0-0 of the Russian Constitutional Court dated 22 March 2011.

Russian legislation, along with establishing any person’s right to the free expression of an opinion, limits the same by providing that the rights of other persons to honour, dignity and business reputation must not be infringed, which is totally in line with the fundamental legal principle that the exercise by a person of their civil rights must not result in the rights and legitimate interests of another person being infringed (article 10 of the Russian Civil Code).

In relation to freedom of expression and freedom of the media, article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 has effect in Russia. In accordance with part 1 of the specified article everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of state borders.

At the same time, article 10(2) of the above Convention specifies that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such conditions, restrictions or penalties as are prescribed by law and are necessary, among other things, for the protection of business reputation.

Pursuant to clause 7(5) of Resolution No. 3 of the Russian Supreme Court’s Plenum a business reputation may be defamed by false information including statements to the effect that an individual or legal entity has breached current legislation, has acted dishonestly or in bad faith when conducting production, business or entrepreneurial activity, or has behaved in a manner that is contrary to professional codes of conduct and good business practices.

Pursuant to the above clause the act of disseminating information that defames the honour and dignity of individuals or the business reputation of individuals and legal entities must be understood as the act of publishing such information in printed media, broadcasting it by radio and TV, demonstrating it in newsreel programmes and through other mass media, disseminating it on the Internet and with other means of telecommunications, setting it out in performance reports, declaring it in public speeches or in statements addressed to officers, or divulging it to at least one person in some form or other, including oral form.

The fact that such information has been disseminated is confirmed by the Publication Inspection Record.

The Publication contains the following information defaming the Applicant’s business reputation:

InCruises — feedback on the cruise club. Scam and deceit.

This article must clearly demonstrate why InCruises is a fraud company. Before we proceed with the story, we need to make it clear from the start that InCruises is a pyramid scheme.

When they tell you InCruises have free cabins which have been made available due to high turnover, this is a lie and deception.

As the article about the company caused a giant hullabaloo, we strongly suggest that you read our overview of a similar fraud company Qnet that started operating actively in Russia and CIS.

The essence of this very pyramid is no different than that of its predecessors.

And if you are looking for reviews on InCruises, then you are already in doubt about the purity of this cruise club’s intentions. These doubts are justified, because a 50% discount in a

cruise business is totally out of the question. Unfortunately, there are plenty of false reviews and comments from people arguing that there is no deceit and everything is honest. We will try to put together an argumentation as to why this is not true, despite that the service is widely advertised by many video bloggers. Yet, we will not focus on details, because in any pyramid scheme details are immaterial.

One needs to understand that in a scam like this nobody's goal is to sell a cruise, like in a normal company, which sells cruises at their market value.

By virtue of article 152 of the Civil Code, to protect an infringed right of the Applicant through the court, the disputed information must meet the following three conditions at the same time:

- one develops a certain (negative) attitude after reading this information;
- the information contains statements of facts, as it is set out in an affirmative form and does not contain value judgements;
- the information is not an expression of the author's subjective opinion and can be verified in terms of its correspondence to reality.

The disputed Publication contains information that the Applicant has violated Russian legislation and conducts its activity in bad faith. At the same time, all the negative information about the Applicant set out in the Publication has been represented as a statement of facts, rather than value judgements of the author, which is confirmed by an expert's opinion dated 19 March 2020 issued further to a linguistic study (the "Expert's Opinion"). The Expert's Opinion allows for it to be concluded that the Publication contains information of discrediting nature.

Business defamation cases examined under special proceedings have their own specific features making them different from ordinary contentious proceedings. As noted in the Ruling No. 305-ES17-19225 of the Economic Panel of the Russian Supreme Court dated 28 March 2018 on case No. A40-97932/2015, "bearing in mind the specifics of modern technology that allows for information to be placed in various ways, including by publishing it in the Internet, it is impossible in a number of cases to establish a proper defendant in the case, but such circumstances cannot deprive a legal entity or individual of their right to seek protection through court, and the application of such a person is examined under the procedure of chapter 27 of the Code, the Court establishes whether or not the disseminated information is in line with the actual circumstances based on the arguments of the applicant and other interested persons. At the same time, it should be borne in mind that the procedure of proving whether or not the disputed information conforms to the facts is objectively difficult for the applicant; consequently, it is impossible to impose on the applicant the burden of providing the court with the proof that the applicant could not objectively possess and does not possess by virtue of current legislation and business practices".

In the Applicant's opinion, the accuracy of the information set out in the Publication may be checked by verifying whether it conforms to the actual facts. That InCruises has never been held liable under administrative or criminal law for conducting its operations illegally either in Russia or in other states is the objective and easily verifiable circumstance attesting to the fact that the disseminated information is false.

InCruises is a registered seller of travel services that specialises in the booking of cruises through its website. To access the Applicant's website it is required to register as a member and pay a monthly membership fee. InCruises membership is similar to membership of a gym or a subscription to Netflix or Amazon Prime, all of which charge membership fees in order for consumers to access various benefits.

The Applicant submitted to the Court the opinion of Steven A. Richards, a lawyer at Reese Poyfair Richards PLLC, prepared for the Russian Association of Cruise Operators. The opinion describes the business model of InCruises, which is a multilevel marketing program that is legal and is neither a Ponzi scheme nor a pyramid scheme. Similar information with respect to InCruises's operating procedures is presented on its official website and is available to the general public.

That InCruises is conducting real and legal operations is confirmed, among other things, by the fact that in 2019, 47,042 persons booked cruises via the Applicant's service and that InCruises has 9,827 Partners who have earned "membership free" status according to the reward

and compensation program, which in effect allows them to travel for free.

The above attests to the fact that InCruises conducts economic activity in good faith, which leads to the conclusion that the information set out in the Publication is at variance with the facts and discredits the Applicant's business reputation.

Therefore, the Applicant has proved the presence of the aggregate of the three conditions, as necessary to apply the judicial method for protecting its violated right in accordance with article 152 of the Russian Civil Code:

the information disclosed in the Publication is defamatory – when perusing the Publication one forms a negative view of the Applicant;

the information is set out in an affirmative form and does not contain value judgements;

the information is not an expression of the author's subjective opinion and can be verified in terms of its correspondence to reality.

Thus, the Applicant believes that it has proved both the fact that the information has been disseminated and the fact that such information is defamatory. In view of this, the Applicant believes that it has the right to demand that the published information be recognised as false information that discredits the Applicant's business reputation.

Based on the above, the application establishing a fact of legal significance shall be upheld.

Based on the above and being guided by articles 11, and 167-171 of the Russian State Commercial Procedure Code, the court has

RESOLVED that:

it declares as false and defamatory to the business reputation of InCruises International LLC the following information contained in the article titled "InCruises — feedback on the cruise club. Scam and deceit" placed on the website <https://extinvest.com/> under the link <https://extinvest.com/incruises/>:

InCruises — feedback on the cruise club. Scam and deceit.

This article must clearly demonstrate why InCruises is a fraud company. Before we proceed with the story, we need to make it clear from the start that InCruises is a pyramid scheme.

When they tell you InCruises have free cabins which have been made available due to high turnover, this is a lie and deception.

As the article about the company caused a giant hullabaloo, we strongly suggest that you read our overview of a similar fraud company Qnet that started operating actively in Russia and CIS.

The essence of this very pyramid is no different than that of its predecessors.

And if you are looking for reviews on InCruises, then you are already in doubt about the purity of this cruise club's intentions. These doubts are justified, because a 50% discount in a cruise business is totally out of the question. Unfortunately, there are plenty of false reviews and comments from people arguing that there is no deceit and everything is honest. We will try to put together an argumentation as to why this is not true, despite that the service is widely advertised by many video bloggers. Yet, we will not focus on details, because in any pyramid scheme details are immaterial.

One needs to understand that in a scam like this nobody's goal is to sell a cruise, like in a normal company, which sells cruises at their market value.

The Resolution may be appealed in the Ninth State Commercial Court of Appeal within a month from the date it was issued.

Judge:

A.V. Mischenko

The electronic signature is valid.

Information pertaining to the electronic signature: The
 Certifying Centre of the Federal State Budgetary
 Institution (FGBU) of the Information and Analysis
 Centre (IATs) of the Judicial Department
 Date 29 June 2020 12:30:14
 Holder Anna V. Mischenko