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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JFXD TRX ACQ LLC, a Florida Limited Liability Company,

Plaintiff,

v.

<trx.com>, a domain name,

and

Loop Tze Ming, an individual from Malaysia

Defendants.

Case No. 2:23-cv-02330-PHX-ROS

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM IN SUPPORT
THEREOF**

Judge: Honorable Judge Roslyn O. Silver
(Oral argument requested)

Plaintiff JFD TRX ACQ LLC hereby moves this Court for a preliminary injunction pursuant to 15 U.S.C. § 1116(a) and the equitable power of the Court pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the transfer of the unused URL <trx.com> to TRX under the Anticybersquatting Consumer Protection Act (“ACPA” or “15 U.S.C. § 1125(d)”). This Motion is supported by the following Memorandum of Points and

1 Authorities, the affidavit of Mr. Alain Villeneuve, Esq., as well as all pleadings of record,
2 incorporated herein by reference.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. SINGLE ISSUE TO BE DECIDED**

5 Plaintiff is the world-famous U.S. veteran-brand TRX®, fathered by Randy Hetrick
6 of the Navy Seals®. The unused URL is <trx.com> which sleeps in digital limbo held by a
7 Malaysia cyber-pirate. TRX wants return of the URL pending trial. In 2021, Congress, as
8 part of the omnibus law, reinforced rights of brand owners now presumed irreparably harmed
9 by cyberpirates. Defendant filed with this Court a sworn pleading admitting cyber-piracy and
10 purchase of <trx.com> for investment purposes. The ACPA's sole purpose is to protect brand
11 owners when their marks are cyberpirated. The ACPA specifically gives injunctive power
12 and URL transfer to Courts to help brand owners when fighting a digital ghost.

13 **II. LEGAL STANDARD**

14 This Court has express statutory power to grant injunctions, according to the principles
15 of equity and upon such terms as the court may deem reasonable to prevent a violation of the
16 ACPA. See 15 U.S.C. § 1116(a). “Injunctive relief is the remedy of choice for trademark and
17 unfair competition cases, since there is no adequate remedy at law for the injury caused by a
18 defendant’s continuing infringement.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d
19 1175, 1180 (9th Cir. 1988). In order to obtain permanent injunctive relief, “[a] plaintiff must
20 demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law,
21 such as monetary damages, are inadequate to compensate for that injury; (3) that, considering
22 the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted;
23 and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc.*
24 *v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

25 Element 1 has been addressed in that in January 2021, as part of the Trademark
26 Modernization Act of 2020 (TMA) (Public Law 116-260, Subtitle B, Section 221) Section
27 34(a) of the Lanham Act (15 U.S.C. § 1116(a)) was amended to codify a rebuttable
28 presumption of irreparable harm applies upon a finding of likelihood of success on the merits

1 – here a cyber-piracy case as to the ACPA. TRX must demonstrate by a preponderance of
 2 the evidence that (1) it is likely to prevail on the merits, (2) no real remedy is available at
 3 law, (3) the balance of hardship favors TRX, and (4) the public interest favors return of a
 4 URL and the end of cyberpiracy.

5 **III. STATEMENT OF FACTS¹**

6 Veteran Randal aka Randy Hetrick invented in 2003 the famous gym product called
 7 TRX®. Plaintiff sells fitness equipment under the famous brand TRX®. (Villeneuve Decl.
 8 at Exhibit A, ¶ 15). TRX® is one of the best-known fitness brands worldwide. In the U.S.
 9 alone, TRX owns fifteen trademark certificates. The earliest incontestable registration dates
 10 back to 2007. For fifteen years now, TRX has used openly and continuously in commerce
 11 TRX®. (Villeneuve Decl. at Exhibit A, ¶ 8). The previous owners were victims of a tsunami
 12 of counterfeiters and cyber-pirates and infringers. In June 2022, Fitness Anywhere LLC, was
 13 forced to a Chapter 11. (Villeneuve Decl. at Exhibit A, ¶ 11).



24 Plaintiff, owned by Jack Daly board member of the Navy Seal Foundation® and a
 25 friend of veteran Randy Hetrick, acquired TRX® and allowed Randy to return as Chairman.
 26 Randy and the company now must end all IP violations and needs this Court's help.

27 Cyber-piracy has plagued TRX for a decade as TRX® prevailed twenty-two times at

28 ¹ See declaration of Alain Villeneuve as Exhibit A and Attachments A-H.

1 the ICANN / UDPR as it fought an army of cyber-pirates and counterfeiters to close and
2 recapture hundreds of websites. (Villeneuve Decl. at Exhibit A, ¶ 10). Using the adage that
3 one image is worth a thousand words, CNN® filmed cancer survivor and Supreme Court
4 Justice Ruth Bader Ginsburg at 85, using TRX to stay in shape.

5 Image of the CNN® Story “How Ruth Bader Ginsburg stays in shape”



18 The brand is known everywhere and for example BarBend® article was “See Ruth
19 Bader Ginsburg Crush a TRX Workout.” (Villeneuve Decl. at Exhibit A, ¶ 13). The TRX®
20 brand is famous, distinctive, incontestable, and more importantly unique. At issue is the
21 domain <trx.com> and Plaintiff’s mark is identical, namely TRX®. The WHOIS® registry
22 was at the time of filing wrong and remains to this day wrong and unchanged. (Villeneuve
23 Decl. at Exhibit A, ¶ 5-6). The website <trx.com> currently is estimated at \$42,000 by online
24 tools. (Villeneuve Decl. at Exhibit A, ¶ 16).

25 **IV. VICTORY ON MERITS IS SIMPLY ESTABLISHED IN THIS CASE**

26 Count I is directed to a violation of the ACPA. (2:23-cv-02330, Dkt. #4, Amended
27 Complaint). TRX must prove that (1) the defendant registered, trafficked in, or used a domain
28 name, (2) the domain name is identical or confusingly similar to a protected mark owned by

1 the plaintiff, and (3) the defendant acted with a bad faith intent to profit from that mark. *Axon*
2 *Enter. V. Luxury Home Buyers, LLC*, 2:20-cv-01344-JAD-VCF, at *30 (D. Nev. Jul. 19, 2023).
3 Defendant admits it has registered the domain name <trx.com>. *Ming v. Fitness Anywhere*
4 *LLC*, 2:22-cv-02042, Dkt. #1, Complaint ¶ 16. (D. Nev. Nov. 30, 2022).

5 First, Panelist David E. Sorkin of Forum® (See Villeneuve Decl. at Exhibit A,
6 Attachment B for decision) found bad faith from (a) Respondent refusal to participate, (b)
7 entry of a completely fictitious name in the ownership, and (c) online pages on the URL it was
8 up for sale for 1.2 million euros. (Villeneuve Declaration at Exhibit A, ¶ 6, Attachment C).

9 The #1 online value estimator for three-letter domains is Estibot®, a public website. It
10 shows <trx.com> at \$42,000. (Villeneuve Declaration at Exhibit A, ¶ 16, Attachment H). The
11 value is extrapolated comparable from \$33,333 (<eok.com>) to \$38,000 (<yeb.com>). *Id.* The
12 Defendant admitted paying \$138,000, or more than 350% the value. (2:22-cv-02042,
13 Complaint, Dkt. #1, ¶ 16). Payment of 350% of the basic value of any “investment” is not
14 random.

15 Turning to the nine-factor test, bad faith is easy to establish. “Courts need not march
16 through the nine factors seriatim because their use is merely permissive and the most important
17 grounds for finding bad faith are the unique circumstances of the case.” *IFIXITUSA LLC*, 2022
18 WL 2117845, at *4 (quotations omitted) quoted by *Mira Holdings Inc. v. UHS of Del.*, cv-23-
19 00169 (D. Ariz. Aug. 18, 2023). The ACPA at Section 15 U.S.C. § 1125(d)(1)(B)(i)-(ix) lists
20 nine factors, reviewed in turn below:

21 **I. The Trademark Rights of a Party In The Domain Name**

22 The first factor looks at ownership of any rights in “trx.” Under trademark law, two or
23 more registrants can own any word and since trademark law is national, the same right could
24 be given to both parties. Defendant explains, “[r]ecently, the Plaintiff became interested in
25 investments in digital assets, and was advised that the internet domain name TRX.com was
26 available for sale.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 10). “Plaintiff arranged to have the
27 Domain Name resolve to a “for sale” page through which prospective purchasers could express
28 interest in obtaining the Domain Name.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 19). “Plaintiff

1 has never used the Domain Name to advertise exercise products or services...” (2:22-cv-
2 02042, Complaint, Dkt. #1, ¶ 21). Defendants admit having no rights and in contrast, Plaintiff
3 is the owner of TRX in the United States and in most places around the world including
4 Malaysia, where the alleged cyber-pirate is from. Evidence is given that TRX is registered in
5 Malaysia, gyms use the product as TRX® and even Facebook® groups use the TRX brand in
6 that location. (Villeneuve Declaration at Exhibit A, ¶14, Attachment G). Plaintiff owns
7 TRX®, not Defendant.

8 **II. Common Personal Name URLs**

9 Some web addresses may be related to a personal name (e.g. <frank.com>, <smith.jp>).
10 URL’s which pair as names arguably hint at a good faith purchase. The URL <trx.com> has
11 no vowels and is not a word. <trx.com> is not a legal or common name. This prong favors the
12 Plaintiff.

13 **III. Defendant’s Prior Use**

14 Certain words, expressions, might be used for a purpose. For example, the URL
15 <262.com> could be purchased by a runner as a marathon is 26.2 miles long and while not a
16 mark, could be used in the website for a purpose. TRX are three random letters and have no
17 vowels. The pirate explains: “Plaintiff arranged to have the Domain Name resolve to a “for
18 sale” page through which prospective purchasers could express interest in obtaining the
19 Domain Name.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 21). The pirate admits no prior use of
20 TRX on any site. This favors bad faith.

21 **IV. Use Of Brand in Site**

22 The next factor relates to a defendant’s “bona fide noncommercial or fair use of the
23 mark in a site accessible under the domain name.” 15 U.S.C. § 1125(d)(1)(B)(iv). For example,
24 if a person buys <faucets.com> and has a plumbing service and the site uses the word
25 “plumbing,” this would evidence good faith. As explained above, this pirate admits it put the
26 page up “for sale.” It did not use “trx” on the site. This factor favors a finding of bad faith
27 piracy.

28 ///

1 **V. Diversion of Web Traffic / Illicit Use**

2 TRX has fought hundreds of cyberpirates who were also counterfeiters selling illegal
3 products. This prong is directed as the misuse of the web address for illicit purpose. In this
4 case, the cyber-pirate admits it bought the URL as a financial investment for resale. This factor
5 does not apply.

6 **VI. Offer for Sale**

7 The next factor relates to a pirate’s offer to transfer, sell, or otherwise assign the domain
8 name to the mark owner or any third party for financial gain without having used . . . the
9 domain name in the bona fide offering of any goods or services. This prong is clearly admitted
10 in the pleading to this Court as it reads: “Recently, the Plaintiff became interested in
11 investments in digital assets, and was advised that the internet domain name TRX.com was
12 available for sale.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 10). “Plaintiff arranged to have the
13 Domain Name resolve to a “for sale” page through which prospective purchasers could express
14 interest in obtaining the Domain Name.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 19). “Plaintiff
15 has never used the Domain Name to advertise exercise products or services...” (2:22-cv-
16 02042, Complaint, Dkt. #1, ¶ 21). This prong strongly suggests bad faith and cyberpiracy.

17 **VII. Misleading Contact Information When Securing Domain**

18 By far the best indicia of a bad faith mindset is a desire for an owner of something to
19 obfuscate his/her identity. A cyber-pirate hides while a good faith investor discloses. This
20 seventh prong relates to the “provision of misleading false contact information when applying
21 for the” domain-name registration.” 15 U.S.C. § 1125(d)(1)(B)(vii). The information provided
22 was initially “au tuu” and located at street “Iceland” and city “Iceland.” It is difficult to be
23 more insulting. Even today, the pirate has never updated the information or even moved to a
24 “privacy” service provider common in this space. The pirate even wrote: “Plaintiff used an
25 alias as the Registrant name in the belief it would protect his personal privacy, as the owner of
26 a valuable asset.” (2:22-cv-02042, Complaint, #1, ¶ 20).

27 **VIII. Multiple Domains**

28 The next prong is a defendant’s “registration or acquisition of multiple domain names”

1 that are “identical or confusingly similar to the marks of others that are distinctive at the time
2 of registration of such domain names.” 15 U.S.C. § 1125(d)(1)(B)(vii). The owner admits
3 paying \$138,000 for a URL as a digital investment is evidence of clear cyber-piracy. (2:22-
4 cv-02042, Complaint, #1, ¶ 16). URL’s are generally sold at \$1.99/year and this person
5 acquired one for \$138,000 if the pleading is to be believed. It is difficult to conceive this party
6 could randomly have acquired only a single domain. Discovery remains to be secured.

7 **IX. Fame of the Brand**

8 The final prong relates to the extent to which the mark incorporated in the . . . domain[-
9]name registration is or is not distinctive and famous within the meaning of section (c). 15
10 U.S.C. § 1125(d)(1)(B)(ix). Section 15 U.S.C. § 1125(c)(2)(A) provides that “a mark is famous
11 if it is widely recognized by the general consuming public of the United States as a designation
12 of source of the goods or services of the mark’s owner.” *Id.* In the United States, the TRX GO
13 product on Amazon has 10,528 ratings with an average of 4.8/5 stars. The online TRX Training
14 Club App has well over 20,000 ratings and a score of 4.6/5 stars. The product is found in
15 almost every gym in the world including – statistically - the gym of the Court of the District
16 of Arizona. As part of Annex C to the Attachment A of the Forum® brief, TRX summarized,
17 “we offer online printouts of websites from (a) Nigeria, (b) Madagascar, (c) Iceland, or even
18 (d) Irak where TRX is used, advertised, and a symbol of quality.... A copy of the international
19 distributor list which includes countries outside of the already numerous list of registered
20 countries such as Colombia, Cyprus, Egypt, Hong Kong, Kazakhstan, Lebanon, UAE,
21 Bahrain, Turkey, to name a few.” (Villeneuve Declaration at Exhibit A, ¶ 15).

22 **V. THERE IS NO REMEDY AT LAW**

23 Generally, “[i]njunctive relief is the remedy of choice for trademark and unfair
24 competition cases, since there is no adequate remedy at law for the injury caused by
25 defendant’s continuing infringement.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d
26 1175, 1180 (9th Cir. 1988). In particular, the ACPA gives courts the power to “order the
27 forfeiture or cancellation of the domain name or the transfer of the domain name to the owner
28 of the mark.” 15 U.S.C. § 1125(d)(1)(C) quoted in *Wilens v. Doe*, 3:14-cv-02419 (N.D. Cal.

1 Jul. 31, 2015). Public Law 116-260 passed on December 27, 2020, titled the “Consolidated
2 Appropriations Act, 2021.” The massive 2126-page bill changed only a couple of parts of the
3 Lanham Act. Congress clarified the rebuttable presumption of irreparable harm to famous
4 trademark owners as is the case here. The URL, in the context of infringement or cyber-piracy
5 is irreparably harms and leaves TRX no remedy at law. The Lanham Act even gives TRX the
6 choice between actual damages and profits or the election of statutory damages “of not less
7 than \$1,000 and not more than \$100,000 per domain name, as the court considers just.” 15
8 U.S.C. § 1117(d). TRX cannot imagine a set of circumstances where \$1 can be secured from
9 the elusive and secretive pirate. TRX has no remedy available at law.

10 **VI. THE BALANCE OF HARDSHIP FAVORS THE BRAND OWNER**

11 The Ninth Circuit has held that district courts may issue an injunction if the first two
12 elements of the test are met and there are “serious questions going to the merits” and there is
13 “a hardship balance that tips sharply toward the plaintiff.” *Alliance for the Wild Rockies v.*
14 *Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). On November 30, 2022, the alleged pirate filed
15 a pleading with this Court in case No. 2:22-cv-02042. In a year, the WHOIS® database has
16 never been updated. It still lists “au tuu” located at the street “Iceland” in the city of “Iceland”
17 with the postal code “120” as the owner. (Villeneuve Declaration, Exhibit A, ¶ B-C). The
18 pleading reads: “Recently, the Plaintiff became interested in investments in digital assets, and
19 was advised that the internet domain name TRX.com was available for sale.” (2:22-cv-02042,
20 Complaint, Dkt. #1, ¶ 10). “Plaintiff arranged to have the Domain Name resolve to a “for sale”
21 page through which prospective purchasers could express interest in obtaining the Domain
22 Name.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 19). “Plaintiff has never used the Domain
23 Name to advertise exercise products or services...” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 21).
24 To Defendant, this is only an investment and compensation from TRX will suffice. The
25 website has never been used. In sharp contrast, the nebula of pirates, counterfeits, and
26 infringers has already pushed the brand to Chapter 11. (Villeneuve Decl. at Exhibit A, ¶ 11).
27 TRX needs infringement, cyber-piracy to end. It needs this property back and is irreparably
28 harmed from a phantom located around the world. While TRX® is famous, the same cannot

1 be said for TRX TRAINING™.

2 **VII. THE PUBLIC INTEREST FAVORS THE BRAND OWNER**

3 Here, if Defendants were using the URL and operated a website, the Court might factor
4 the market interest. The URL is unused. Also, Congress passed into law the “Trademark
5 Cyberpiracy Prevention Act” on October 25, 1999, it explained:²

6 Since domain names are available from Network Solutions, Inc. (NSI), and
7 now other registrars, on a first-come, first-served basis, some owners have
8 discovered that the domain name containing their trademark has already been
9 registered. The situation has been aggravated by some people, known as
10 “cyberpirates,” registering domain names in the hope that they might be able to sell
11 them to companies that place a high value on these trademarks. These cyberpirates
12 have no intention of using the domain name in commerce, and instead often attempt
13 to exact money from a company in exchange for domain names that relate to that
14 company’s trademarks. *Report to H.R. 3028 – Background and Need for*
15 *Legislation.*

16 The ACPA’s primary goal is to help owners of famous U.S. brands like Plaintiff
17 against cyber-piracy and monetization of these URL’s. The pleading filed in *Ming v. Fitness*
18 *Anywhere LLC*, 2:22-cv-02042 confirms a 37-year-old restaurant industry operator from
19 Malaysia asserts ownership. (2:22-cv-02042, Complaint, Dkt. #1, ¶¶ 2,9). As sole
20 justification of ownership, it provides: “[r]ecently, the Plaintiff became interested in
21 investments in digital assets, and was advised that the internet domain name TRX.com was
22 available for sale.” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 10) (emphasis added). “Plaintiff
23 arranged to have the Domain Name resolve to a “for sale” page through which prospective
24 purchasers could express interest in obtaining the Domain Name.” (2:22-cv-02042,
25 Complaint, Dkt. #1, ¶ 19). “Plaintiff has never used the Domain Name to advertise exercise
26 products or services...” (2:22-cv-02042, Complaint, Dkt. #1, ¶ 21). The ACPA’s primary

27 _____
28 ² Full report at:
<https://www.govinfo.gov/content/pkg/CRPT-106hrpt412/html/CRPT-106hrpt412.htm>

1 purpose is to avoid such scenarios.

2 **VIII. CONCLUSION**

3 U.S. veteran Randy Hetrick proudly invented TRX® and protected it around the
4 world. He went to Stanford University for an MBA and launched the best fitness product.
5 But he became the victim of infringers and cyberpirates and today needs this Court's help.
6 Cyberpiracy places brand owners in a difficult business position, either pay the ransom to get
7 back its own URL and avoid costs of the legal battle, or embark on a multi-year expensive
8 battle against a foreign ghost who refuses to play discovery. Congress enacted the ACPA and
9 recently clarified the irreparable harm factor specifically to help famous brands like TRX®.
10 Here, the filing with this Court of a pleading gives light in this darkness. A \$42,000 three-
11 letter URL, made with no vowels was purchased for a whopping \$138,000. No one pays
12 350% of the value of something as an investment unless they know a fish is ready to bite on
13 the hook. Here, the balance of hardship clearly favors TRX as the URL sits unused. TRX can
14 indemnify and give remedy of law if Defense prevails at trial but no one can imagine this
15 pirate can be paid to pay any portion of a judgment. Congress, as a matter of public policy,
16 wants to regulate the internet, protect U.S. brand owners like TRX, and send messages that
17 cyberpiracy is illegal. This Defendant hid his identity for a good reason, it knows what it does
18 is illegal and the Court must help TRX. Based on the foregoing, Plaintiff respectfully
19 requests the Court issue a preliminary injunction pursuant to Rule 65 of the Federal Rules of
20 Procedure.

21
22 DATED this 20th Day of November, 2023

23
24 **Tyler Allen Law Firm, PLLC**

25 By: /s/ Anjali J. Patel

26 Anjali J. Patel
27 *Attorney for Plaintiff*
28

CERTIFICATE OF SERVICE

I hereby certify on November 20, 2023, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

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