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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 Loo Tze Ming, an Individual,

14 Plaintiff,

15 vs.

16 Fitness Anywhere LLC, a Delaware
17 LLC,

18 Defendant.

19 Case No.

20 **COMPLAINT UNDER 15 USC 1114**
21 **FOR REVERSE DOMAIN**
22 **HIJACKING AND DECLARATORY**
23 **RELIEF UNDER THE LANHAM ACT**
24 **DEMAND FOR JURY TRIAL**

25 Plaintiff Loo Tze Ming (hereinafter “Ming” or Plaintiff) hereby complains
against defendant Fitness Anywhere, LLC, a Delaware LLC (hereinafter “Fitness”), and
for its causes of action alleges as follows:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff Ming against Defendant Fitness
pursuant to 15 U.S.C. 1114(2)(D)(iv)-(v) and for declaratory relief pursuant to 28
U.S.C. 2201 to establish that Ming’s registration of the internet domain name

1 <TRX.com> (the "Domain Name") is not unlawful under the Anticybersquatting
2 Consumer Protection Act (15 U.S.C. § 1125(d)("ACPA"), or otherwise under the
3 Lanham Act (15 U.S.C. § 1051 et. seq.), and to prevent the transfer of the Domain
4 Name to Defendant, which was ordered in an administrative panel decision notified on
5 or about November 15, 2022 under the Uniform Domain Name Dispute Policy
6 ("UDRP") in a proceeding captioned: *Fitness Anywhere LLC v. au tuu*, Forum Case
7 FA2210002016615.

8 PARTIES

9 2. Plaintiff Loo Tze Ming is a citizen of Malaysia, residing in Selangor,
10 Malaysia.

11 3. On information and belief, Defendant Fitness Anywhere LLC is a limited
12 liability company of Delaware, having a place of business at Suite 200 450 Newport
13 Center Drive, Newport Beach, California.

14 JURISDICTION AND VENUE

15 4. This Court has subject matter jurisdiction over this action because it
16 involves a federal question, and because it requires a declaration of rights and other
17 legal relations. More specifically, this Court has jurisdiction pursuant to 28 U.S.C.
18 1331 (because this cause arises under 15 U.S.C. 1114 in that Plaintiff is the registrant of
19 a domain name which has been suspended, disabled, or transferred under a policy
20 provided by the registrar thereof relating to alleged conflict with a trade or service mark
21 claimed by the Defendant), and under 28 U.S.C. 2201(a) ("In a case of actual
22 controversy within its jurisdiction, . . . any court of the United States, upon the filing of
23 an appropriate pleading, may declare the rights and other legal relations of any
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1 10. Recently, the Plaintiff became interested in investments in digital assets,
2 and was advised that the internet domain name TRX.com was available for sale.

3 11. Internet domain names in the .com top-level domain corresponding to
4 generic words and non-distinctive short groups of letters and/or numbers have inherent
5 value due to their finite supply.

6 12. In the Chinese internet market, short alphanumeric domain names are
7 particularly valuable because the use of Chinese character domain names is relatively
8 recent, and so it is desirable for Latin character domain names to be short in order to be
9 memorable.

10 13. The acronym TRX is used for a variety of non-distinctive purposes in
11 different fields, such as its use as a short term for “transaction” or “transceiver”.

12 14. In the United States the letters “TRX”, apart from specific goods and
13 services, are not distinctive of any particular trademark owner.

14 15. There are more than a dozen different registrants of US registered
15 trademarks for “TRX” in fields as varied as travel agency services (US TM Reg. No.
16 2707451), medical transcription services (US TM Reg. No. 2770820), surgical implants
17 (US TM Reg. No. 4975748), and others.

18 16. After learning that non-distinctive short domain names have substantial
19 value, Plaintiff was informed the Domain Name was available for purchase, and the
20 Plaintiff purchased the Domain Name TRX.com in April 2022, for more than \$138,000
21 in out of pocket costs through a brokerage service provided by an internet domain name
22 marketplace where it was offered for sale.

1 17. The domain name TRX.com has been registered since 1999, has never
2 been used by the Defendant, and was used by prior registrants for purposes having
3 nothing to do with the Defendant.

4 18. The Domain Name was available for purchase through a publicly
5 accessible internet brokerage at www.4.cn. Prior to Plaintiff's purchase of the Domain
6 Name at substantial cost, any other person, including Defendant could have purchased
7 the Domain Name on the same terms.

8 19. Plaintiff arranged to have the Domain Name resolve to a "for sale" page
9 through which prospective purchasers could express interest in obtaining the Domain
10 Name.

11 20. Plaintiff used an alias as the registrant name in the belief it would protect
12 his personal privacy, as the owner of a valuable asset.

13 21. Plaintiff has never used the Domain Name to advertise exercise products
14 or services or to compete with the Defendant in any way.

15 22. The domain registration contract governing Plaintiff's registration of the
16 Domain Name- with GoDaddy LLC incorporates a non-binding "Uniform Domain
17 Name Dispute Resolution Policy (UDRP)", under which a third party may request
18 transfer of rights under said contract to that third party on the basis of a claim of trade or
19 service mark rights.
20

21 23. The UDRP is an administrative proceeding, which provides in pertinent
22 part: "k. Availability of Court Proceedings. The mandatory administrative proceeding
23 requirements set forth in Paragraph 4 shall not prevent either you or the complainant
24 from submitting the dispute to a court of competent jurisdiction for independent
25 resolution before such mandatory administrative proceeding is commenced or after such

1 proceeding is concluded. If an Administrative Panel decides that your domain name
2 registration should be canceled or transferred, we will wait ten (10) business days (as
3 observed in the location of our principal office) after we are informed by the applicable
4 Provider of the Administrative Panel's decision before implementing that decision. We
5 will then implement the decision unless we have received from you during that ten (10)
6 business day period official documentation (such as a copy of a complaint, file-stamped
7 by the clerk of the court) that you have commenced a lawsuit against the complainant in
8 a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the
9 Rules of Procedure. (In general, that jurisdiction is either the location of our principal
10 office or of your address as shown in our Whois database. See Paragraphs 1 and
11 3(b)(xiii) of the Rules of Procedure for details.) If we receive such documentation
12 within the ten (10) business day period, we will not implement the Administrative
13 Panel's decision, and we will take no further action, until we receive (i) evidence
14 satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that
15 your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such
16 court dismissing your lawsuit or ordering that you do not have the right to continue to
17 use your domain name.”

18 24. On or about October 22, 2022, in spite of the non-distinctive nature of the
19 acronym “TRX”, and in spite of the fact that the Plaintiff does not compete in any way
20 with Defendant, and does not utilize the domain name in a way that might infringe upon
21 any rights Defendant might have the Defendant proceeded to file a complaint under the
22 UDRP with the World Intellectual Property Organization.

23 25. In the UDRP Complaint, Defendant admitted to the jurisdiction of this
24 court as follows: “[10.] MUTUAL JURISDICTION The Complainant will submit, with
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1 respect to any challenges to a decision in the administrative proceeding canceling or
2 transferring the domain name, to [choose one jurisdiction]:

3 X a) the location of the principal office of the concerned registrar or
4 _____ b) where the Respondent is located, as shown by the address(es) given for
5 the domain name holder in the Whois Database at the time of the submission of
6 the Complaint to FORUM. UDRP Rule 3(b)(xii).”

7 26. In the UDRP Complaint, the Defendant alleged “At the moment,
8 [Defendant] owns registered rights” in a claimed TRX mark, and specifically alleged to
9 be the owner of the following US trademark registrations for “TRX” in relation to
10 fitness goods and services, recited in the UDRP Complaint: US TM Reg. No.
11 3,202,696; US TM Reg. No. 3,384,871; US TM Reg. No. 4,018,159; US TM Reg. No.
12 4,731,160; and US TM Reg. No. 4,542,811.

13 27. Defendant certified the UDRP Complaint, through its attorney:
14 “Complainant certifies that the information contained in this Complaint is to the best of
15 Complainant's knowledge complete and accurate....”

16 28. At the time Defendant certified its Complaint, Defendant knew it was not
17 the owner of any of the US registered marks listed therein.

18 29. At the time Defendant certified its Complaint in October 2022, Defendant
19 was aware that it had assigned the entire interest in the listed US registered marks to
20 another entity in an assignment dated August 26, 2022 and recorded with the
21 Assignment Branch of the United States Patent and Trademark Office on September 7,
22 2022 at Reel/Frame 7847/0407. The Defendant did not mention in the UDRP
23 Complaint that the asserted trademarks had been assigned to a non-party to the UDRP
24 Proceeding.
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1 30. Defendant knew that its statement claiming to own the US trademark
2 registrations recited in the UDRP Complaint was false when made.

3 31. Defendant's false statement was made for the purpose of obtaining a
4 UDRP decision in its favor.

5 32. Upon Commencement of the UDRP proceeding, an email notice was sent
6 to the administrative contact email address of Plaintiff's domain name. Because
7 Plaintiff's domain administrator was not expecting to receive email to that address and
8 the email was in English, the email notice was overlooked by the Plaintiff's domain
9 administrator. Accordingly, Plaintiff defaulted in the UDRP proceeding.

10 33. On or about November 15, 2022, a default UDRP decision issued, based
11 on Defendant's allegations in the UDRP Complaint, and Plaintiff received an email
12 from GoDaddy LLC, stating that the domain name would be transferred on December
13 1, 2022, absent an action filed in the Mutual Jurisdiction – i.e. this court – pursuant to
14 the terms of the UDRP.

15 34. Prior to receiving the UDRP decision, Plaintiff had never heard of the
16 Defendant or the Defendant's marks,
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19 **FIRST CLAIM FOR RELIEF**
20 **(FRAUD IN DOMAIN DISPUTE PROCEEDING)**

21 **[15 U.S.C. 1114(2)(D)(IV)]**

22 35. Plaintiff incorporates the allegations set forth in paragraphs 1 through 34
23 above.

24 36. Defendant made a knowing and material misrepresentation that a domain
25 name is identical to, confusingly similar to, or dilutive of a mark that it owns.

1 37. Defendant's misrepresentation caused a registration authority to transfer,
2 disable, or cancel a domain name.

3 38. Plaintiff's Domain Name has been locked, preventing Plaintiff from
4 exercising the full enjoyment of the benefits of registration thereof as a consequence of
5 false statements made by Defendant in a dispute policy proceeding (the UDRP)
6 followed by the domain registrar GoDaddy LLC. The Domain Name has been ordered
7 transferred, and will be transferred to Defendant but for this Action.

8 39. Plaintiff has provided Defendant with notice of this Action.

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10 40. Plaintiff has incurred costs in seeking to prevent transfer of the Domain
11 Name as a consequence of Defendant's false statements.

12 41. Plaintiff's registration and/or use of the Domain Name does not violate
13 any cognizable right of the Defendant under the Lanham Act.

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15 **SECOND CLAIM FOR RELIEF**
16 **(REVERSE DOMAIN HI-JACKING)**

17 **[15 U.S.C. 1114(2)(D)(V)]**

18 42. Plaintiff incorporates the allegations set forth in paragraphs 1 through 41
19 above.

20 43. Plaintiff registered the TRX.com domain name.

21 44. Plaintiff's Domain Name has been suspended, disabled, or transferred,
22 preventing Plaintiff from exercising the full enjoyment of the benefits of registration
23 under a dispute policy proceeding (the UDRP) followed by the domain registrar
24 GoDaddy LLC. The Domain Name has been ordered transferred, and will be
25 transferred to Defendant but for this Action.

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/s/John Berryhill/

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Pro Hac Vice Pending

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