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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 JFXD TRX ACQ LLC,

10 Plaintiff,

11 v.

12 trx.com, et al.,

13 Defendants.
14

No. CV-23-02330-PHX-ROS

ORDER

15 On January 9, 2024, the Court issued an Order explaining that Plaintiff's
16 cybersquatting claim involving <trx.com> appeared to be foreclosed by Ninth Circuit
17 authority. (Doc. 82). That authority provides, at least under some circumstances, when "a
18 domain name is registered before a particular trademark exists, the trademark owner cannot
19 assert a viable cybersquatting claim against the domain name owner." (Doc. 82 at 4). Here,
20 Plaintiff has admitted <trx.com> was first registered years prior to when Plaintiff's TRX
21 trademark came into existence. Based on that, the Court ordered Plaintiff to explain its
22 basis for pursuing a cybersquatting claim. (Doc. 82). The Court also ordered Plaintiff to
23 explain why its counsel has made contradictory statements regarding the current owner of
24 all TRX-related property. (Doc. 82 at 5). Plaintiff responded by presenting arguments
25 addressing the viability of its cybersquatting claim, but Plaintiff did not address its
26 counsel's contradictory statements.

27 Plaintiff now admits its cybersquatting claim would not be viable if <trx.com> had
28 remained registered the entire time after it was first registered in 1999. (Doc. 83 at 2-3).

1 However, Plaintiff believes that at some point in time the registration of <trx.com> expired
2 such that it was returned to the “common depository.” (Doc. 83 at 9). Presumably Plaintiff
3 is referring to the fact that domain names may become available to the public if they are
4 not renewed.¹ According to Plaintiff, once the registration of <trx.com> expired, the
5 subsequent registration of <trx.com> could not take advantage of the Ninth Circuit
6 authority.² Assuming Plaintiff is correct on that point, the current complaint does not allege
7 facts showing the registration of <trx.com> expired, <trx.com> became available to the
8 public, and <trx.com> was registered again. Thus, the current complaint will be dismissed
9 with leave to amend.

10 Should Plaintiff choose to amend, it must allege facts establishing when three
11 crucial events occurred: 1) when <trx.com> was first registered; 2) when the registration
12 of <trx.com> expired and the domain name became available to the public; and 3) when
13 <trx.com> was registered again. The Court expresses no opinion on whether this sequence
14 of events would state a claim under Ninth Circuit authority.

15 Finally, if Plaintiff chooses to amend, Plaintiff will be required to file a separate
16 statement explaining the conflicting positions adopted by its counsel regarding ownership
17 of the TRX-related property. As set forth in the previous Order, that statement “must
18 explain whether Fitness Anywhere owned any TRX-related property at the time Mr.
19 Villeneuve stated Fitness Anywhere ‘is the owner of the famous trademark TRX.’” (Doc.
20 82 at 5).

21 Accordingly,

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24 ...

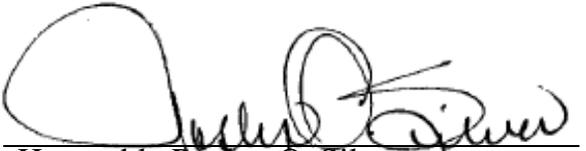
25 ¹ See *FAQs for Registrants: Domain Name Renewals and Expiration*,
26 <https://www.icann.org/resources/pages/domain-name-renewal-expiration-faqs-2018-12-07-en> (“If you do not timely renew your domain name registration, it may be transferred or released and made available for registration on a first-come-first-serve basis.”).

27 ² The Court cannot understand large portions of Plaintiff’s response and it is not clear
28 whether this is, in fact, Plaintiff’s argument. Liberally construed, however, Plaintiff is arguing the registration of <trx.com> expired on some date after the TRX trademark purportedly owned by Plaintiff came into existence.

1 **IT IS ORDERED** the Amended Complaint (Doc. 4) is **DISMISSED WITH**
2 **LEAVE TO AMEND.** No later than **February 21, 2024**, Plaintiff shall file an amended
3 complaint. If an amended complaint is filed, no later than **February 21, 2024**, Plaintiff
4 shall file a statement explaining the contradictory statements regarding the owner of TRX-
5 related property.

6 Dated this 12th day of February, 2024.

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Honorable Roslyn O. Silver
Senior United States District Judge