

IN THE
Supreme Court of the United States

JFXD TRX ACQ LLC, A FLORIDA LIMITED
LIABILITY COMPANY,

Petitioner,

v.

TRX.COM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF AMICUS CURIAE THE
INTERNATIONAL TRADEMARK ASSOCIATION
IN SUPPORT OF PETITIONER**

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The International Trademark Association (“INTA”) submits this brief in support of the petition for certiorari by JFXD TRX ACQ LLC (“Petitioner”).¹

INTEREST OF *AMICI CURIAE*

Founded in 1878, *amicus curiae* INTA (formerly known as the United States Trademark Association) is a not-for-profit organization dedicated to the support and advancement of trademarks and related intellectual-property concepts as essential elements of trade and commerce. INTA has more than 7,200 members in 191 countries. Its members include trademark owners as well as law firms and other professionals who regularly assist brand owners in the creation, registration, protection, and enforcement of their trademarks. All INTA members share the goal of promoting an understanding of the essential role that trademarks play in fostering effective commerce, fair competition, and informed decision-making by consumers.

INTA was founded in part to encourage the enactment of federal trademark legislation after the

¹ This brief was authored solely by INTA and its counsel. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, and its counsel made such a monetary contribution to its preparation or submission. See S. Ct. R. 37.6. On September 5, 2025, counsel for INTA timely provided notice to counsel of record for all parties regarding INTA’s intent to file this brief. See S. Ct. R. 37.2.

invalidation on constitutional grounds of the United States’ first trademark act. Since then, INTA has been instrumental in making recommendations and providing assistance to legislators in connection with major trademark legislation.

INTA’s members frequently are plaintiffs, defendants, and advisors in legal actions under the U.S. Trademark (Lanham) Act, including for matters involving cybersquatting, *i.e.*, the practice of registering names—particularly well-known company or brand names—as internet domains for the purposes of selling them at a profit. INTA is interested in the development of clear, consistent, and equitable principles of trademark law. INTA has participated as *amicus curiae* in numerous cases involving significant trademark issues.²

² Cases in which INTA has filed *amicus* briefs include: *Dewberry Grp., Inc. v. Dewberry Eng’rs Inc.*, 604 U.S. 321 (2025); *Vidal v. Elster*, 602 U.S. 286 (2024); *Jack Daniel’s Props., Inc. v. VIP Prod. LLC*, 599 U.S. 140 (2023); *Abitron Austria GmbH v. Hetronic Int’l, Inc.*, 600 U.S. 412 (2023); *U.S. Pat. & Trademark Off. v. Booking.com B. V.*, 591 U.S. 549 (2020); *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212 (2020); *Peter v. Nantkwest, Inc.*, 589 U.S. 23 (2019); *Iancu v. Brunetti*, 588 U.S. 388 (2019); *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370 (2019); *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 585 U.S. 1029 (2018); *Matal v. Tam*, 582 U.S. 218 (2017); *Hana Fin., Inc. v. Hana Bank*, 574 U.S. 418 (2015); *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015); *Pom Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102 (2014); *Already, LLC v. Nike, Inc.*, 568 U.S. 85 (2013); *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543

This case presents the question of whether the term “registration” in the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) (“ACPA”), is limited to only the initial registration of the domain name such that subsequent registrations of the domain name in bad faith are not barred by the ACPA. The ACPA protects against cybersquatting. INTA and its members have a particular interest in this case because protection against cybersquatting is critical for brand owners to preserve goodwill in their trademarks.

In this case, INTA takes no position on whether the Respondent’s registration of *trx.com* was in bad faith and barred by the ACPA. That is properly decided on the facts. INTA does take a position on the correct analytic framework: It urges this Court to grant certiorari and reverse the Ninth Circuit.

U.S. 111 (2004); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003); *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418 (2003); *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23 (2001); *Wal-Mart Stores, Inc. v. Samara Bros.*, 529 U.S. 205 (2000); *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627 (1999); *Dickinson v. Zurko*, 527 U.S. 150 (1999); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988); *see also, e.g., Shammass v. Focarino*, 784 F.3d 219 (4th Cir. 2015); *Ferring B.V. v. Watson Labs., Inc.-Fla.*, 764 F.3d 1382 (Fed. Cir. 2014); *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holding, Inc.*, 696 F.3d 206 (2d Cir. 2012).

SUMMARY OF ARGUMENT

The ACPA was adopted as an amendment to overcome limitations in the Lanham Act that made it difficult for trademark owners to enforce their trademarks against cybersquatters. Specifically, before the ACPA was adopted in 1999, some courts had held that merely registering a domain name, even if it was identical to another's trademark, was not infringement because mere registration or sale of a domain name did not constitute use of the trademark in commerce in connection with any goods or services. *See McCarthy on Trademarks and Unfair Competition*, § 25A:42 (5th ed. 2024). The ACPA addressed this limitation to ensure trademark owners had a direct cause of action to target the bad-faith registration of domains that include their trademarks. Under the ACPA, a defendant who “registers” a domain “identical or confusingly similar to” or “dilutive of” a distinctive or famous trademark with a “bad faith intent to profit” from the domain is liable to the trademark owner, even if the domain name was not used in commerce in connection with any goods or services. 15 U.S.C. § 1125(d). Importantly, the ACPA provides a remedy only if the asserted trademark is famous or distinctive “at the time of registration of the domain name[.]” *Id.* § 1125(d). This appeal turns on the interpretation of this requirement.

The Ninth Circuit, applying its precedent established in *GoPets Ltd. v. Hise*, 657 F.3d 1024 (9th Cir. 2011), precluded Petitioner's claim under the ACPA on the grounds that Respondent's acquisition of the domain name, regardless of its intent, was not

the initial registration of the domain name and therefore could not constitute a “registration” in bad faith under the ACPA. The text of the ACPA does not limit “registration” to *first* registrations, a statutory construction that has been recognized by the three other Courts of Appeal that have examined the issue.

The Ninth Circuit’s reading of “registration” to mean only the *initial* domain name registration is unsupported by the ACPA, contrary to the law in three other Courts of Appeal, and bad policy.

Although the ACPA does not define “registration” or “register,” excluding subsequent registrations (or “re-registrations”) from its scope contravenes the plain meaning of the statutory text and Congress’s intent in enacting the ACPA to provide trademark owners a swift, targeted, statutory remedy for cybersquatting. The three other Courts of Appeals that have addressed this issue have all held, contrary to the Ninth Circuit, that a subsequent registration of a domain name qualifies as a “registration” and can serve as the basis of an ACPA violation if made in bad faith. Those decisions are straightforward as a matter of statutory interpretation and are consistent with the furtherance of trademark principles.

Fundamentally, the Ninth Circuit’s *GoPets* analysis fails to recognize that domain names are not “owned” like real property. They are licensed for a limited term subject to conditions and warranties (including a warranty of that “neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party”) that a buyer must make at the time

of purchase, creating a new contract—a new registration.

Leaving the split of authority caused by the Ninth Circuit’s decision undisturbed would undermine the purpose and protection offered to trademark owners by the ACPA and perpetuate inconsistency in the application of trademark principles. Not only does the Ninth Circuit’s interpretation of the ACPA incentivize forum shopping, permit cybersquatters to strategically evade liability for bad faith domain name registrations, and facilitate the flooding of the domain name system with speculative and infringing registrations, but it also actively harms trademark owners by imposing on them increased costs and burdens as part of enforcing their rights.

Reversal of the Ninth Circuit’s decision would further the purpose of the ACPA, protect consumers in the online marketplace, prevent trademark owners from losing control of their goodwill and from bearing the costs and burdens created by bad-faith registrants, stem forum shopping, and ensure consistency for trademark holders in enforcing their rights with respect to domain names. Clarity in trademark law benefits both commerce and consumers by removing uncertainty in how brand owners can conduct and protect themselves in the marketplace.

ARGUMENT

I. The Ninth Circuit’s analysis is unsupported.

- A. The law of several other Circuits applies the plain meaning of the ACPA, which necessarily includes subsequent registrations of the domain name.

Although the ACPA does not provide a definition of “registration” or “registers,” the plain meaning of these terms necessarily includes both the initial registration *and* subsequent registrations. *See Reregister*, in MERRIAM-WEBSTER DICTIONARY (11th ed. 2022) (defining “register” as “to register (someone or something) again”); *see also Registration*, in MERRIAM-WEBSTER DICTIONARY (11th ed. 2022) (defining “registration” as “the act of registering”). The statutory text does not limit “registration” or “registers” to the initial registration or creation registration. 15 U.S.C. § 1125(d). The ACPA refers simply to “registration” or “registers,” such that the plain meaning of these terms must govern. *Id.*

The three other Courts of Appeals that have addressed this issue have applied the plain meaning of the statutory text in holding that a subsequent registration of a domain name qualifies as a “registration” which can be a violation of the ACPA. As the Eleventh Circuit aptly observed, while “[t]he [Lanham] Act does not define the term *register*[.]” it “nowhere contains the qualifications of *initial* or *creation* when it refers to the act of registering” and

under the “plain and unambiguous” meaning of the ACPA, “a re-registration is, by definition, a registration.” *Jysk Bed’N Linen v. Dutta-Roy*, 810 F.3d 767, 777 (11th Cir. 2015) (emphasis in original); accord *Schmidheiny v. Weber*, 319 F.3d 581, 582 (3d Cir. 2003). In fact, applying the dictionary meaning of “registration,” the Fourth Circuit held that “[t]o ‘re-register’ simply means ‘to register again.’ Therefore, the ordinary meaning of the word ‘registers’ necessarily includes both the first registration and any subsequent re-registrations.” *Prudential Ins. Co. of Am. v. Shenzhen Stone Network Info. Ltd.*, 58 F.4th 785, 796 (4th Cir. 2023) (citation omitted).

In holding that “registers” encompasses only the “initial registration” of a domain name, the Ninth Circuit erroneously concluded that the statutory text “considered in isolation does not answer the question whether ‘registration’ includes re-registration.” *GoPets*, 657 F.3d at 1031. But the Ninth Circuit’s holding is an anomaly and is not supported by a plain reading of the statute.

- B. Including subsequent registrations of domain names within the scope of the ACPA is consistent with the legislative intent to protect trademark holders.

The ACPA was enacted as an amendment to the Lanham Act to combat cybersquatters and to prevent trademark infringement and consumer confusion in

the e-commerce landscape.³ In particular, Congress deemed the ACPA necessary because cybersquatters had become “increasingly sophisticated” and were taking “the necessary precautions to insulate themselves from liability.” S. Rep. No. 106-140, at 7 (1999); *see also Sporty’s Farm L.L.C. v. Sportsman’s Market, Inc.*, 202 F.3d 489, 495 (2d Cir. 2000) (recounting legislative history of ACPA). Prior to the passage of the ACPA, the remedies available to trademark holders who were victims of cybersquatting were “expensive and uncertain.” H.R. Rep. No. 106-412, at 6 (1999). The internet’s expansion had created a new form of brand infringement that did not fit the traditional criteria for trademark infringement or dilution, which focused on the commercial use of a mark, rather than the bad faith intent. The ACPA was passed to provide trademark holders with a more effective, targeted legal remedy against cybersquatters.

The Ninth Circuit’s interpretation of the ACPA as limited to only initial domain name registrations fundamentally contravenes the statute’s purpose to prevent cybersquatting. Excluding subsequent registrations from the ACPA allows cybersquatters to, once again, take steps to insulate themselves from

³ S. Rep. No. 106-140, at 4 (1999) (explaining that the ACPA was passed “to protect consumers and American businesses, to promote the growth of online commerce, and to provide clarity in the law for trademark owners by prohibiting the bad-faith and abusive registration of distinctive marks as Internet domain names with the intent to profit from the goodwill associated with such marks—a practice commonly referred to as ‘cybersquatting’”).

liability simply by not being the *first* registrants. As other Circuits have reasoned, “[i]t would be nonsensical to exempt the bad-faith re-registration of a domain name simply because the bad-faith behavior occurred during a noninitial registration[.]” *Jysk Bed’N*, 810 F.3d at 778; accord *Prudential Ins. Co. of Am.*, 58 F.4th at 796–97. To do so would “allow[] the exact behavior that Congress sought to prevent” under the ACPA. See *Jysk Bed’N*, 810 F.3d at 778.

C. Domain names are services contracts,
not real property.

The lynchpin of the Ninth Circuit’s analysis in *GoPets* was its ruling that domain names should be treated like real property because “a property owner may sell all of the rights he holds in property.” *GoPets*, 657 F.3d at 1031. The *GoPets* Court thus warned that treating subsequent registrations as new “registrations” would make domain names “effectively inalienable.” *Id.* at 1031–32. Although a domain name registrant may sell its rights, the Court’s analogy here was fundamentally flawed because domain names are not perpetual property interests. Instead, domain names are transferable only if the transferee agrees to a *new contract* with the registrar.

Domain names do not equate to real property. To the contrary, they are contractual licenses that expire unless renewed and require each new registrant to assent to a new registration agreement. *Network Sols., Inc. v. Umbro Int’l, Inc.*, 259 Va. 759, 770 (2000) (quoting *Dorer v. Arel*, 60 F. Supp. 2d 558, 561 (E.D. Va. 1999)) (“[A] domain name registration is the

product of a contract for services between the registrar and registrant.”). More specifically, domain name registrations are service contracts: the registrant receives a limited, revocable right to use a specific domain name in accordance with the terms of the domain name registration agreement for the period specified. *See* Jay Prendergast, Note, *Kremen v. Cohen: The “Knotty” Saga of Sex.com*, 45 *Jurimetrics J.* 75, 88 (2004) (there is “a judicial consensus recognizing that domain names are products of contracts for services”); *see also Lockheed Martin Corp. v. Network Solutions*, 194 F.3d 980, 985 (9th Cir. 1999) (noting that Network Solutions’ domain name routing service is “just that—a service”).

The ACPA reflects this understanding, defining a domain name as an “alphanumeric designation which is registered with or assigned by any domain name registrar,” 15 U.S.C. § 1127, implying that domain names do not exist separate and apart from the registrar’s contractual registration services. The domain registration system is similarly in accord. The domain Name system is governed by the Internet Corporation for Assigned Names and Numbers (“ICANN”).⁴ Under ICANN’s .COM Registry Agreement, registrars must maintain a valid and

⁴ *What Does ICANN Do*, ICANN, <https://www.icann.org/resources/pages/what-2012-02-25-en> (last visited Sep. 3, 2025).

enforceable registration agreement with each registrant.⁵

Critically, every domain name registrant must expressly warrant to the registrar that “to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.”⁶ The new registrant must also agree to submit to resolve domain name disputes pursuant to ICANN’s Uniform Dispute Resolution Policy.⁷ These are warranties and

⁵ “Registrar shall have in effect a valid and enforceable electronic or paper registration agreement with each Registered Name Holder[.]” *.COM Registry Agreement*, ICANN, § 2.7(a) (Dec. 1, 2024), <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-agreement-html-01-12-2024-en.htm>.

⁶ ICANN requires that all domain name registrars include this warranty in all domain name registration agreements. *See 2013 Registrar Accreditation Agreement (RAA)*, ICANN (Jan. 21, 2024), <https://www.icann.org/en/contracted-parties/accredited-registrars/registrar-accreditation-agreement>. Specifically, in section 3.7.7.9, the RAA requires that “[t]he Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.” *Id.*

⁷ *Id.* at section 3.7.7.11. *See also Uniform Domain Name Dispute Resolution Policy*, ICANN (Feb. 21, 2024), <https://www.icann.org/resources/pages/policy-2024-02-21-en>.

obligations that did not bind the new owner prior to its consent to the contractual terms in the new registration agreement.

For instance, GoDaddy, the registrar at issue here, provides a “Change of Registrant Agreement” that requires both parties to confirm the transaction within five days, and the transfer will not occur unless the new registrant consents to a new registration agreement.⁸ Upon consenting under that agreement, the transferee makes fresh warranties and agrees to comply with ICANN policies at the time of transfer as set forth in GoDaddy’s “Domain Name Registration Agreement.”⁹ This contractual reset underscores that domain names are not inalienable property interests

⁸ “New Registrant will need to enter into a new registrant agreement with GoDaddy (if applicable). Both the Prior Registrant and New Registrant must confirm the terms of the change of registrant transaction within five (5) days of receipt of the confirmation email. In the event either . . . fails to confirm the terms . . . the change will not occur[.]” *See Change of Registrant Agreement*, GoDaddy, ¶ 2.A. (Feb. 1, 2021) <https://www.godaddy.com/en/legal/agreements/change-of-registrant-agreement>.

⁹ “[Each registrant] agree[s] to comply with the ICANN requirements, standards, policies, procedures, and practices[.]” *Domain Name Registration Agreement*, GoDaddy, ¶ 2.4. (Aug. 29, 2025), <https://www.godaddy.com/en/legal/agreements/domain-name-registration-agreement>.

but rather governed by a series of discrete agreements.

Treating domain names as service contracts rather than property is critical to understanding why subsequent registrations should fall within the ACPA's bad faith inquiry. A service contract, by definition, is limited in duration and conditioned on continued compliance with agreed upon terms. Each subsequent registration is not merely a continuation of a static ownership right, but rather a new contractual transaction between the registrar and registrant. This means that the new registrant's intent and conduct at the moment of registration properly bears on whether the registration was undertaken in bad faith. Doing so aligns with the judicial consensus and practical reality that domain name registrations are service contracts rather than property rights.

II. The Ninth Circuit's bad faith analysis creates bad public policy that would harm trademark owners.

- A. Prohibiting subsequent registrations from falling under the ACPA allows cybersquatters to strategically evade liability and creates a loophole contrary to trademark principles.

Restricting the ACPA's bad faith analysis to first registrations of domain names creates a loophole for subsequent registrations that cybersquatters can readily exploit to evade liability in a manner reminiscent of the legal landscape prior to the

statute's enactment. The Ninth Circuit's interpretation incentivizes cybersquatters to buy and sell domain names indefinitely and avoid liability simply because the cybersquatters were not the first registrant of the domain name at issue. Bad actors will be free to exploit previously registered domain names in bad faith without fear of penalty under the ACPA.

As an illustration, suppose Party A registers a domain name with its trademark but later transfers the domain name or abandons the mark and does not renew its domain name registration, allowing it to lapse. Party B adopts the mark, builds goodwill, and gains recognition. Party C then acquires the transferred or lapsed domain name without any rights to the mark, intending only to extort Party B. Under the Ninth Circuit's rule, Party B has no ACPA claim because Party A was the original registrant, and Party C's bad-faith conduct is ignored.

This major loophole fosters a secondary market for bad-faith successive registrations of domain names that harms trademark owners. Rightsholders confronting cybersquatting subsequent registrations would be blocked from using the ACPA's tailored remedies to vindicate their rights. Individuals or companies that have invested in building their brands are prevented from obtaining a key piece of those brands—the domain names that capture their trademarks.

Trademark owners may be left with little recourse in the event of these types of cybersquatting. As noted above in Section I.B, infringement and dilution claims

look at commercial use of the mark (and the likelihood of confusion and dilution, respectfully). Congress passed the ACPA because it understood that these traditional causes of action did not adequately address cybersquatting. *See McCarthy on Trademarks and Unfair Competition*, § 25A:42 (5th ed. 2024). If cybersquatters are not using the trademark at issue, other than to hold on to it to force the trademark owner to pay a large sum to acquire it, no infringement or dilution claim will succeed. In the worst scenario, where cybersquatters are using the infringing domain names to commit fraud, phishing, scams, or host pornography, causing reputational harm to the trademark owners, rights holders are forced to bring uncertain actions. Simply put, Lanham Act causes of action are ill-equipped to handle this kind of cybersquatting because they have different and potentially inapplicable elements of proof (*e.g.*, burdens to show likelihood of confusion or secondary meaning) compared to ACPA cases, which focus on domain names that can be re-registered repeatedly and may not be used in connection with specific competing goods or services. The ACPA was specifically enacted to target bad-faith registrations of domain names, and it is uniquely effective at stopping cybersquatting speculators before any confusion or damage occurs. Preventing rightsholders from seeking relief under the ACPA not only runs contrary to principles of judicial economy, as trademark owners are unable to use the most effective manner of vindicating their rights, but also undermines the very purpose of the ACPA—to give trademark holders a clear, effective legal remedy against cybersquatters.

The loophole also harms the domain registration system and consumers as a whole. By allowing successor registrants to avoid liability under the ACPA, cybersquatters have greater latitude to flood the domain name system with speculative and infringing registrations. As a result of this increase in bad-faith and fraudulent registrations, consumers are more likely to encounter misleading and confusing websites that misappropriate the goodwill of trademark holders, misdirect consumers to competitors, and potentially deceive consumers into buying goods or services based on the false association created by the bad faith registration. This will in turn increase the risk of consumer confusion on the internet, subject greater numbers of consumers to fraud, undermine the ability of users to trust digital businesses, and leave rightsholders vulnerable to cybersquatting.

B. The Ninth Circuit’s shielding of re-registrants shifts costs and burdens to trademark owners.

Congress expressly enacted the ACPA to address the “unreasonable, intolerable, and overwhelming burdens on trademark owners in protecting their own marks” against cybersquatting and cyberpiracy.¹⁰ By providing a swift, targeted statutory remedy for cybersquatting, Congress sought to reduce the burden and costs on trademark owners who previously had to rely on repeated, expensive, and more complex enforcement through drawn-out trademark or alternative litigation strategies. The Ninth Circuit’s

¹⁰ S. Rep. No. 106-140 at 12 (1999).

exemption of successor registrants from the ambit of the ACPA's bad-faith consideration forces trademark owners to take on again those exact burdens and costs in situations where rightsholders made the first domain registration. This frustrates Congress's purpose in allowing rightsholders to act quickly to protect their legal interests and prevent harm to themselves and their consumers.

In addition, foreclosing ACPA remedies for subsequent registrations weakens trademark owners' leverage in negotiations because cybersquatters know that, without the ACPA, trademark owners' legal recourse is prolonged trademark litigation. Cybersquatters are thus able to get rightsholders to the table and demand higher ransoms to return domains. And trademark owners cannot rely on the deterrent threat of an ACPA claim if cybersquatters know that they can evade liability if they trade in infringing domains on the secondary market. Ultimately, this burden shifting leaves trademark owners vulnerable to higher cyberpiracy ransom demands and ignores Congress's express purpose in enacting the ACPA.

- C. The split caused by the Ninth Circuit allows for cybersquatters to engage in forum shopping.

The Ninth Circuit's divergence from all other circuit courts that have addressed the definition of bad-faith registrations under the ACPA also encourages forum shopping and unnecessary litigation, as trademark owners are incentivized to file suit against subsequent registrants in courts that

apply the Third, Fourth, and Eleventh Circuits' approach, while domain name re-registrants accused of cybersquatting are incentivized to file declaratory judgment actions in courts that apply the Ninth Circuit's approach.

Indeed, the Ninth Circuit's minority view has an outsized impact on the practical functioning of the domain name system. The ACPA grants *in rem* jurisdiction over a domain name to the jurisdiction in which that domain name's registry or registrar is located.¹¹ Given the propensity for registrars to reside in the Ninth Circuit, a disproportionately high percentage of domain names may be subject to the Ninth Circuit's minority rule under the current circuit split. For example, the two largest domain name registrars alone, GoDaddy and NameCheap, Inc., which together manage over 64 million .com registrations,¹² are located in the Ninth Circuit (as are countless other registrars).

In many cases, the cybersquatter will be based outside the United States (if able to be located at all), and the only realistic option will be to seek relief in the jurisdiction where the domain name's registrar or registry are located—both of which can confer *in rem* jurisdiction under the ACPA. For many domains, the

¹¹ 15 U.S.C. § 1125(d)(2)(A) (1999).

¹² Andrew Allemann, *Ranking Domain Registrars Based on the Latest .com Data: GoDaddy, Namecheap and More*, Domain Name Wire (Aug. 12, 2025), <https://domainnamewire.com/2025/08/12/ranking-domain-registrars-based-on-the-latest-com-data-godaddy-namecheap-and-more/>.

registry is Verisign, which is based in *Virginia*, while many major registrars, including GoDaddy, are based in *Arizona or California*. This dynamic will encourage forum shopping, with trademark owners filing in federal district courts located in Virginia to take advantage of more favorable precedent, while registrants may preempt that by filing first in federal district courts located in Arizona or California, which fall within the Ninth Circuit and apply a narrower interpretation of the ACPA. Ultimately, allowing the circuit split to persist undermines the national uniformity that all trademark owners depend on to consistently enforce their rights and develop their online businesses.

- D. The UDRP's approach to domain name acquisition undermines the Ninth Circuit's interpretation and creates uncertainty for trademark holders.

The Uniform Domain Name Dispute Resolution Policy (UDRP) provides a widely adopted, contract-based mechanism for resolving disputes between trademark holders and domain name registrants. While distinct from the ACPA in legal basis and scope, the UDRP addresses many of the same underlying issues, including registration and use of domain names in bad faith.

Unlike the Ninth Circuit's narrow interpretation of "registration" under the ACPA, the UDRP considers whether the current registrant acquired the domain name in bad faith—regardless of whether it was the initial registration. *See Uniform Domain Name Dispute Resolution Policy*, ICANN, ¶ 4(b)(i)

(Feb. 21, 2024), <https://www.icann.org/resources/pages/policy-2024-02-21-en> (listing as evidence of bad faith the respondent’s conduct in “register[ing]” or “acquir[ing]” the domain name for profit); *see also* *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition*, WIPO, §§ 3.8.1, 3.9 (2017), <https://www.wipo.int/amc/en/domains/search/overview3.0/> (“[T]he date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith.”). This broader approach reflects the reality of domain transfers and aligns with the goals of preventing abusive registrations.

There is no requirement that the ACPA and UDRP be interpreted in lockstep. However, with over 73,000 cases brought under the UDRP since 1999, and more than 6,000 in 2024 alone, it has become a central feature of trademark enforcement in the domain name space.¹³ A sharp divergence between UDRP outcomes and ACPA eligibility introduces unnecessary confusion and risk. Trademark holders may prevail under the UDRP but have their domain transfers stopped when registrants file suit under the ACPA. In this case, the ACPA filing halted the UDRP transfer and, due to the Ninth Circuit’s narrow interpretation, ultimately prevented relief in federal court. This inconsistency undermines predictability,

¹³ WIPO Arbitration and Mediation Center, Caseload Summary, <https://www.wipo.int/amc/en/center/caseload.html> (last visited Sep. 3, 2025). Notably, WIPO is just one forum where UDRP complaints may be filed, so the total number of cases administrated under the UDRP is likely much higher than 73,000.

encourages forum shopping, and weakens confidence in the ACPA as a reliable tool for addressing cybersquatting. This divergence also frustrates Congress’s intent in enacting the ACPA to provide trademark holders with a uniform, predictable remedy for abusive domain name registrations.¹⁴ By adopting an unduly narrow interpretation of “registration,” courts following the Ninth Circuit’s approach risk reintroducing the very uncertainty and inconsistency the ACPA was meant to eliminate. Aligning the ACPA’s interpretation of “registration” with the common-sense understanding used in the UDRP would promote clarity and better serve the interests Congress sought to protect.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner’s petition for certiorari.

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Respectfully submitted,

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¹⁴ S. Rep. No. 106-140 at 4, 7 (1999) (emphasizing Congress’s intent to “protect consumers[,]” “promote the growth of electronic commerce[,]” and provide “clarity in the law for trademark owners” while avoiding “inconsistent judicial decisions”).

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