

## **ADMINISTRATIVE PANEL DECISION**

Trix Investimentos Ltda, Trx investimentos e participações Ltda. v. Steve Haehnichen, Recreational U-Turns and Falconry  
Case No. D2024-0778

### **1. The Parties**

The Complainants are Trix Investimentos Ltda (“First Complainant”) and Trx investimentos e participações Ltda., Brazil (“Second Complainant”), represented by Newton Silveira, Wilson Silveira e Associados - Advogados, Brazil.

The Respondent is Steve Haehnichen, Recreational U-Turns and Falconry, United States of America (“United States”), represented by Troutman Pepper Hamilton Sanders LLP, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <trix.com> is registered with Squarespace Domains II LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2024. On February 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc.) and contact information in the Complaint. The Center sent email communications to the Complainants on February 23 and 29, 2024, providing the registrant and contact information disclosed by the Registrar, indicating certain deficiencies in the Complaint, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed their first amended Complaints on February 28, 2024, and their second amended Complaint on March 1, 2024.

The Center verified that the second amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2024. The Response was filed with the Center on March 24, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on March 27, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainants are affiliated Brazilian companies that manage third-party funds for investment in the real estate market through real estate funds, buying or developing properties directly or investing through a portfolio of real estate funds owned by other managers. The First Complainant was registered on July 23, 2021, and the Second Complainant was registered on March 5, 2020.

The Second Complainant is the owner of the Brazilian trademark TRIX INVESTIMENTOS with registration No. 923384960, registered on April 18, 2023, for services in International Class 36 (the “TRIX INVESTIMENTOS trademark”).

The First Complainant is the owner of the domain names <trix.com.br>, registered on October 19, 2023, and <trix.com.vc>, registered on May 12, 2021. These domain names currently resolve to the Complainants’ official website. The Wayback Machine contains no archived copies of any websites at the disputed domain names in the period between their registration and April 25, 2022.

The disputed domain name was registered on June 23, 1995. It is inactive.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainants state that the disputed domain name is identical or confusingly similar to their TRIX INVESTIMENTOS trademark, stating that “The disputed domain name contains all of Complainant’s trademark. The Complainant’s trademark and the disputed domain name are the same.” The Complainants maintain that the TRIX INVESTIMENTOS trademark is distinctive to the relevant public, has been extensively used for the relevant audience in an intensive manner, and has gained prominence in the Brazilian financial market. According to the Complainants, Internet users may wrongly assume that the Respondent is associated or affiliated with or sponsored by the Complainants.

According to the Complainants, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because they have never licensed it to use the TRIX INVESTIMENTOS trademark, the Respondent has no trademark rights and is not commonly known by the disputed domain name, and there is no commercial relationship between the Complainants and the Respondent. The Complainants note that there is no content on the website at the disputed domain name, so the Respondent is not using it to offer any goods or services and has not made any legitimate noncommercial or fair use of the disputed domain name, but is only passively holding it. The Complainants submit that “‘TRIX’ is an acronym with no meaning in the dictionary”, and maintain that it is a strong and creative trademark.

The Complainants contend that the disputed domain name was registered and is being used in bad faith. According to them, the circumstances of the case and the lack of use of the disputed domain name indicate that the Respondent has acquired the disputed domain name primarily with the intention of selling it for valuable consideration. The Complainants allege that the passive holding of the disputed domain name indicates that the Respondent is holding it as an illegitimate market reserve that harms the activities of the Complainants.

According to the Complainants, the Respondent creates a situation where Internet users would mistakenly assume that the owner of the disputed domain name is affiliated with them. The Complainants state that it is not possible to conceive of any plausible use of the disputed domain name by the Respondent that would not be illegitimate.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied any of the three of the elements required under the Policy for a transfer of the disputed domain name.

The Respondent describes himself as a hard-working engineer at one of the largest tech companies in the United States. He notes that he registered the disputed domain name for himself in 1995 and has used it only for legitimate purposes, as evident from the archived copies of the associated website that are available with the Wayback Machine. The Respondent submits that by 1994, he had developed audio processing algorithms and signal processing software for sound effects, audio editing, and voice processing and that he formed “Trix Technologies” to solicit business, where “trix” was considered as one of the common alternate spellings of “tricks”. The Respondent adds that the disputed domain name was selected as the shortest domain name for Trix Technologies and related ventures.

The Respondent submits that he has rights or legitimate interests in respect of the disputed domain name. The Respondent adds that the disputed domain name has not been used for click-through advertisements or third-party traffic. The Respondent’s online content has never been about real estate, let alone real estate in Brazil, and no part of the disputed domain name suggests real estate investment. The Respondent explains that the disputed domain name has become his primary email domain and has been used to host respected businesses and others who did not have their own email domain or website. The Respondent adds that no one has a monopoly over the use of common or generic words in domain names and the principle of “first come, first served” is a sufficient basis for acquiring rights or legitimate interests in the disputed domain name.

The Respondent states that the disputed domain name has not been registered and is not being used in bad faith. He points out that the Complainants were established 25 years after he registered the disputed domain name, that the Complainants have submitted no evidence of actual usage, marketing or advertising of their trademark, and that their <trix.com.br> domain name is inactive. The Respondent submits that he has never heard of and does not know of the Complainants, as they have no presence in his sphere. The Respondent notes that there are hundreds of other entities that use some form of the common term “trix” in their names, as it is an alternative spelling of the common word “tricks”. The Respondent adds that he has never attempted to sell the disputed domain name.

The Respondent requests a finding of Reverse Domain Name Hijacking against the Complainants.

## **6. Discussion and Findings**

### **6.1. Procedural issue – Consolidation of the Complainants**

The Complaint was filed by two Complainants.

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1.

It appears from the Complaint that the Complainants have a common legal interest in the TRIX INVESTIMENTOS trademark and that they allege being the target of a common conduct by the Respondent which has affected their individual legal interests in a similar fashion. The Complainants also share the same postal address and website and are represented by the same counsel.

This is sufficient for the Panel to accept that the Complainants have specific common grievances against the Respondent. The Respondent has not objected to the fact that it has been filed by two Complainants jointly, and has not brought to the Panel's attention any reasons why the admission of two Complainants would not be equitable or procedurally efficient.

Therefore, the Panel accepts the Complaint filed by two Complainants.

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have shown rights in respect of the TRIX INVESTIMENTOS trademark for the purposes of the Policy. It appears from the Complaint that the two Complainants are related entities sharing the same postal address, website, and counsel in this proceeding. [WIPO Overview 3.0](#), sections 1.2.1 and 1.4.1.

The Panel finds the TRIX INVESTIMENTOS trademark is recognizable within the disputed domain name, since the element "TRIX" represents the second level portion of the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the TRIX INVESTIMENTOS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Since the Complainants have failed to establish that the disputed domain name has been registered in bad faith, it is not necessary for the Panel to make a finding under the second element of the Policy.

Nevertheless, the Panel notes that the Respondent has shown use of the disputed domain name for purposes unrelated to the Complainants years before their establishment and before the registration of the TRIX INVESTIMENTOS trademark, which would support a conclusion that the Complainants have failed under this element as well.

### **C. Registered and Used in Bad Faith**

As discussed in section 3.8 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

The Complainants do not allege the existence of any of these limited circumstances, and do not even attempt to explain how the Respondent could have targeted them with the registration of the disputed domain name in 1995, when they only came into existence 25 years later. The Complainants have not submitted any evidence of actual usage, marketing, or advertising of their trademark prior to its registration in 2023, and the Wayback Machine reflects that that their domain names have been used as of 2022 – albeit registered a year earlier.

This timeline of the events makes it impossible that in 1995 the Respondent may have known the Complainants or targeted them with the registration of the disputed domain name.

The Panel therefore finds that the Respondent did not register the disputed domain name in bad faith and that the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking (“RDNH”)**

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. [WIPO Overview 3.0](#), section 4.16.

Given the undertakings in paragraphs 3(b)(xiii) and (xiv) of the UDRP Rules, some panels have held that a represented complainant should be held to a higher standard.

In the present case, the Complainants were represented by counsel. The facts are that the Complainants and their trademark TRIX INVESTIMENTOS came into existence more than 25 years after the registration of the disputed domain name. This fact should have been appreciated by the Complainants and their counsel and they should have known that the Complaint could not succeed. Nevertheless, they chose to commence the present proceeding, which is sufficient to support a finding that the Complaint was brought in bad faith.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: April 3, 2024