

## **ADMINISTRATIVE PANEL DECISION**

Organization for Transformative Works, Inc. v. Domains By Proxy, LLC /  
Yi Xin Zhang  
Case No. D2022-2428

### **1. The Parties**

The Complainant is Organization for Transformative Works, Inc., United States of America (“United States”), represented by Heidi Howard Tandy, United States.

The Respondent is Domains By Proxy, LLC, United States /Yi Xin Zhang, China.

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

The disputed domain name <ao3.site> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2022. On July 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 7, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 7, 2022.

The Center verified that the Complaint together with the amendment to the 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 July 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2022. The Respondent sent email communications to the Center on July 7, 2022, and July 8, 2022, however did not submit any formal response. The Center informed the parties that it will proceed to panel appointment on July 29, 2022.

The Center appointed Ian Lowe as the sole panelist in this matter on August 3, 2022. 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**

According to its website at “www.archiveofourown.org” (the “Complainant’s Website”) the Complainant is a nonprofit organization established in 2007 “to serve the interests of fans by providing access to, and preserving the history of, fanworks and fan culture in its myriad forms”. A fanwork is said to be a creative work produced by a fan, based on a book, movie, television show, musical group or the like. “AO3” is an abbreviation of “archive of our own”. The Complainant’s Website is an interactive repository of such works with multiple cross-references and tags.

The Complainant is the registered proprietor of a number of trademarks in respect of AO3, including United States trademark number 6589808 AO3 registered on December 14, 2021.

The Domain Name was registered on December 31, 2021. It currently redirects to a website at “www.fghy.org” that is in the Chinese language. The Google Translate English version of the website discloses a heading comprising an image of a tomato and “Tomato Garden” and a menu bar that includes “AO3” and “AO3 use tutorial”. The sub-menu bar includes an option to “Create your work!” and the content of the webpage appears to comprise what may be described as fanworks. At the time of preparation of the Complaint, the Domain Name resolved to a website at “www.ao3.site” principally in the Chinese language. Google Translate indicated a heading referring to “Tomato Garden Fan Community”, various postings and references to advertisements.

#### **5. Parties’ Contentions**

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

The Complainant contends that the Domain Name is identical to its AO3 mark (the “Mark”), that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Respondent registered and is using the Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

##### **B. Respondent**

The Respondent did not reply formally to the Complainant’s contentions. However, in its email to the Center of July 8, 2022, the Respondent stated “If you want this domain name, I can give it to you. This domain name is not worth much to me”.

#### **6. Discussion and Findings**

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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

The Complainant has uncontested rights in the Mark, by virtue of its trademark registrations. Ignoring the generic Top-Level Domain (“gTLD”) “.site”, the Domain Name is identical to the Mark.

Accordingly, the Panel finds that the Domain Name is identical to a trademark in which the Complainant has rights.

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

The Complainant has made out a *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent has used the Domain Name not in connection with a *bona fide* offering of goods or services, but for a website apparently providing similar functionality to the Complainant’s Website, together with advertising links. The Complainant has not given its consent to the use of the Mark by the Respondent and there is no suggestion that the Respondent has ever been known by the Domain Name (section 2.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case established by the Complainant, save to offer a transfer of the Domain Name.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

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

In light of the nature of the Mark and the use being made of the Domain Name by the Respondent, offering functionality similar to the Complainant’s Website, the Panel considers it likely on balance that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. In the Panel’s view, the Respondent registered the Domain Name with a view to deceiving Internet users into believing that the Domain Name was operated by or with the authority of the Complainant, the legitimate inference being that it did so for commercial gain. The Panel considers that the use of a domain name for such activity amounts to paradigm bad faith registration and use for the purposes of the Policy.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <ao3.site> be transferred to the Complainant.

/lan Lowe/

**Ian Lowe**

Sole Panelist

Date: August 17, 2022