

No. 25-188

In the Supreme Court of the United States

JFXD TRX ACQ LLC, d/b/a TRX,

Petitioner,

v.

LOO TZE MING, et al.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

When an internet domain name is first claimed, the name is recorded in the domain name registry and assigned an Internet Protocol (IP) number. If the owner of a domain name fails to renew it, the name can be deleted from the registry and then claimed anew by others. However, when domain names are transferred from one owner to another, the name remains in the registry and its information is updated.

The Anticybersquatting Consumer Protection Act (ACPA) applies to a person who “registers,” “traffics in,” or “uses” a domain name that is “identical or confusingly similar to” a trademark that was distinctive or famous “at the time of registration of the domain name.” 15 U.S.C. § 1125(d)(1)(A)(ii). The ACPA defines “traffics” to include all purchases and sales of already-registered domain names. 15 U.S.C. § 1125(d)(1)(E). The question presented is:

Whether “registration” under the ACPA occurs only when an unclaimed domain name is claimed, or whether it extends to all transfers of an already-registered domain name.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Virginia:

- *JFXD TRX ACQ LLC v. trx.com, et al.*, No. 1:23-cv-00217-CMH-LRV (Nov. 6, 2023)

United States District Court for the District of Arizona:

- *Ming v. Fitness Anywhere LLC*, No. 2:22-cv-02052 (Nov. 30, 2022)
- *JFXD TRX ACQ LLC v. trx.com, et al.*, No. 2:23-cv-02330-ROS (Feb. 26, 2024)

United States Court of Appeals for the Ninth Circuit:

- *JFXD TRX ACQ LLC v. trx.com, et al.*, No. 24-1661 (Apr. 4, 2025)
- *JFXD TRX ACQ LLC v. trx.com, et al.*, No. 24-3391 (Apr. 4, 2025)

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INTRODUCTION

Enacted during the dot-com boom, the Anticybersquatting Consumer Protection Act of 1999 (ACPA) prohibits the “internet version of a land grab.” *Virtual Works, Inc. v. Volkswagen of Am., Inc.*, 238 F.3d 264, 267 (4th Cir. 2001) (Wilkinson, C.J.). When Congress passed the ACPA, technologically adept internet speculators were rapidly registering unclaimed domain names associated with *preexisting* prominent trademarks—and then reselling those domains, at a premium, to slower-moving, existing trademark owners. This practice was and is commonly known as “cybersquatting.”

To address this problem, the ACPA creates a cause of action against anyone who “registers, traffics in, or uses” a domain name that, as relevant here, is “identical or confusingly similar” to a mark that is distinctive or famous “at the time of registration of the domain name.” 15 U.S.C. § 1125(d)(1)(A).

In this case, <trx.com> (the domain name) was registered six years before TRX (the brand) was trademarked, and four years before the relevant products were invented and the TRX mark was first used in commerce. Because the TRX mark was not distinctive or famous “at the time of registration of the domain name” (15 U.S.C. § 1125(d)(1)(A)), <trx.com> does not fall within the scope of the ACPA.

According to petitioner, however, “registration” includes not only the act of registering a domain name but also routine transactions following registration, such as domain name transfers and renewals. In other words, petitioner appears to contend that whenever a domain name is sold—and the buyer and seller therefore both “traffic[] in” the name—that act *also* counts

as a “registration” that resets the distinctiveness inquiry, essentially reading the “at the time of registration” requirement out of the statute. 15 U.S.C. § 1125(d)(1)(A). Petitioner labels these subsequent actions “re-registrations,” a term found nowhere in the text of the ACPA.

The court below rejected this theory and affirmed dismissal of petitioner’s complaint in an unpublished opinion. That correct ruling does not warrant further review, for three reasons.

First, “registration” under the ACPA encompasses only claiming a domain name that is unclaimed at the time. It does not attach to actions incidental to the transfer of an already-registered domain name. That is the best reading of the text; further, the statutory structure, contemporary usage, and legislative history all confirm this commonsense understanding.

Second, the alleged circuit conflict unravels upon examination. The courts’ adoption of the non-statutory term “re-registration” has led to muddled doctrine; despite using different terminology, however, it is unclear that any of this is outcome determinative.

Finally, this case is a poor vehicle. The record below is littered with factual inaccuracies and potentially dispositive ambiguities that will impede resolution of any legal question. The lower courts repeatedly awarded respondents’ attorney’s fees because of petitioner’s failing to provide intelligible pleadings; that morass will preclude the Court from readily adjudicating any question.

The Court should deny the petition.

STATEMENT

A. Technical Background

Domain names translate the internet into alphanumeric text for human users. The domain name <facebook.com> enables users to access their Facebook pages without memorizing a long string of numbers called an Internet Protocol (IP) address, which might look something like “157.240.15.35.” Nat’l Rsch. Council, *Signposts in Cyberspace: The Domain Name System and Internet Navigation*, at vi-ix (2005).

The “.com” portion of this name is referred to as the top-level domain, and the “facebook” portion is the second-level domain. Nat’l Rsch. Council, *supra*, at vi-ix. Top-level domains are managed by registry operators, who maintain the registries that hold information about domain names and their corresponding IP addresses. *The Domain Name Registration Process*, ICANN, perma.cc/GM9X-HTZX (last visited Nov. 4, 2025). Registry operators enter into contracts with intermediaries called “registrars.” *Ibid.* Registrars interface with and sell domain names to individual users, who are referred to as “registrants.” *Ibid.* The whole system is supervised by a non-profit entity called the Internet Corporation for Assigned Names and Numbers (ICANN). *Ibid.*

ICANN contracts with a company called Verisign to serve as the registry operator for the “.com” top-level domain. *ICANN Renews .COM Registry Agreement with Verisign*, ICANN, perma.cc/22E4-JGLN (last visited Nov. 4, 2025). *Ibid.* The fee for anyone to claim and register an unclaimed domain name is currently \$10.26. See *.com Fee Schedule*, Verisign (Sept. 1, 2024), perma.cc/9MTG-VSZV.

Individuals who seek to claim a domain name do not interact with Verisign directly. ICANN has accredited “more than two thousand” registrars, which enter into contractual agreements with individual users. *The Domain Name Registration Process, supra*.

One major registrar is GoDaddy Inc. A person can register an unclaimed “.com” domain name by purchasing the domain name through GoDaddy and providing information required by ICANN: the registrant’s name, postal address, email address, and phone number. *The Domain Name Registration Process, supra*. GoDaddy then records the domain name in the “.com” registry maintained by Verisign. *Ibid*.

Domain names can be registered for an initial period, after which they must be renewed (often through automated renewal without “manual” action by the registrant). See *Standard Domain Expiration Timeline*, GoDaddy, perma.cc/E5VM-SK6V (last visited Nov. 4, 2025). Typically, if the registrant stops paying the annual domain-name fee, the registrar will eventually delete the name from the registry, rendering the domain name available for anyone to claim. See, e.g., *Domain Name Registration Agreement*, GoDaddy, perma.cc/Q8FH-LY2Q (last visited Oct 4., 2025).

Per ICANN’s accredited-registrar requirements, when a registrant fails to renew a domain name, the registrar must “delete” the domain name from the registry within 45 days, but may offer the registrant an “Auto-Renew Grace Period” in the meantime. *Registrar Accreditation Agreement*, ICANN, perma.cc/7ZCC-A8AL (last visited Nov. 4, 2025). Once the registrar has deleted the name, ICANN requires a 30-day “Redemption Grace Period.” During this period, “the deleted registration may be restored at the

request of the [initial registrant] by the registrar that deleted it.” *Expired Registration Recovery Policy*, ICANN, perma.cc/CA3S-D2UF (last visited Nov. 4, 2025). After the Redemption Grace Period (and when the entry for the domain name has therefore been deleted from the registry) the domain name can again be claimed by anyone for a nominal fee as if it had never been registered. See *Domain Name Registration Agreement*, *supra*.

But some domain names never reach the Redemption Grace Period—meaning they are never deleted from the registry. When domain names expire, they typically “are not deleted by the registrar; but instead their registrations are sold, auctioned and/or transferred to a third party during the preceding Auto-Renew Grace Period when the registrant fails to renew.” *GNSO Issues Report on Post-Expiration Domain Name Recovery*, ICANN, at 3 (Dec. 5, 2008), perma.cc/DC9B-6D4T.

Selling domain names at auction, rather than deleting them from the registry, is GoDaddy’s standard practice, for example. For 12 days after expiration, the registrant may renew the domain name for its pre-expiration renewal price. *Standard Domain Expiration Timeline*, *supra*. If the registrant does not renew, the domain name is placed into a series of auctions through which it will be sold to a third party; only if there is no purchase will it be deleted from the registry, in keeping with ICANN rules. *Ibid*.

When a registrar offers an expired domain name for sale at auction, or when a registrant offers a domain name for sale to others at any time, the domain name is on the “secondary market.” See *The Secondary Market for Domain Names*, OECD (Apr. 12, 2006),

perma.cc/D9E9-QSU9. In contrast, the “primary market” refers to registering an unclaimed domain name: one that does not currently exist in the registry. *Id.* at 8. In 2021, Boston Consulting Group (BCG) estimated that the size of the secondary market for “.com” domain names was over \$2 billion. *What’s in a (Domain) Name? The \$2 Billion Secondary Market for Dot-Com Domains*, BCG. (Jan. 2021), perma.cc/9H5M-UB3V. BCG noted that the secondary market includes not only private individuals, but sophisticated corporate actors who invest in available domain names as assets based on predictions about the current and future value of the asset. *Ibid.*

B. Statutory Background

Enacted in 1999, the ACPA created the first private cause of action that explicitly protected the holders of distinctive trademarks from so-called cybersquatters, who registered domain names with intent to encroach on others’ marks. See Pub. L. No. 106-113, § 3001 et seq., 113 Stat. 1501, 1501A-545 (1999).¹

The ACPA, in relevant part, states that “[a] person shall be liable in a civil action by the owner of a [trademark]” if “that person * * * has a bad faith intent to profit from that mark * * * and registers, traffics in, or uses a domain name that * * * in the case of a mark that is distinctive [or famous] at the time of registration of the domain name, is identical or confusingly similar to that mark.” 15 U.S.C. § 1125(d)(1)(A). That is, the ACPA’s cause of action is

¹ A predecessor law sought to protect trademark holders from similar conduct but without provisions specific to domain names or cybersquatting. See Federal Trademark Dilution Act of 1995, Pub. L. No. 104-98, 109 Stat. 985 (1996).

only available where the trademark “is distinctive at the time of registration of the domain name” or “is famous at the time of registration of the domain name.” 15 U.S.C. § 1125(d)(1)(A)(ii)(I)-(II). The time of “registration” of the domain name is therefore critical to determining liability.

C. Factual Background

This case concerns <trx.com>, a domain name owned by Loo Tze Ming. Petitioner JFXD TRX ACQ LLC (JFXD) does business as TRX and currently owns the “TRX” mark, which was originally registered by Fitness Anywhere LLC.

The <trx.com> domain was registered—that is, it was claimed and was entered into a registry—in March 1999. Pet. App. 6a. Around 2000, <trx.com> was transferred to TRX Inc., a now-defunct entity unrelated to these proceedings. D. Ct. Dkt. 83, at 6. Then, in 2013, a company called Concur acquired TRX Inc. and the <trx.com> domain name, which redirected to <concur.com> through 2019. *Id.* at 6-7.

Meanwhile, the “gym product called TRX” was “invented” “[a]pproximately four years after [the domain name] registration,” and Fitness Anywhere LLC began using “TRX” branding for its fitness products. Pet. App. 6a, 30a. In 2005—six years after <trx.com> was registered—Fitness Anywhere obtained trademarks covering various uses of “TRX” in the fitness field. Pet. 10. So as of 2019, Concur owned the <trx.com> domain name while Fitness Anywhere owned the later-registered trademark.

Though petitioner’s various pleadings and incorporated exhibits are self-contradictory, the courts below concluded that Ming obtained <trx.com> after

2019 exclusively through secondary-market transfers, not primary-market registrations. That is, the domain name has been continuously registered since 1999, and it never returned to unclaimed status.

To be sure, the pleadings are far from clear. The operative complaint alleges that <trx.com> “would have expired and returned to the public domain” by 2022, when it alleges Ming purchased the domain name. D. Ct. Dkt. 86, ¶ 23 (SAC); see D. Ct. Dkt. 83, at 6-7 (representing that “the URL was abandoned”). But an incorporated exhibit states that the name was up for sale from an “internet brokerage” for six-figure prices, which is inconsistent with the notion that it was obtained by registering it as an unclaimed domain name. SAC Ex. C ¶¶ 16, 18.² The district court therefore determined that JFXD’s pleadings on this issue were contradicted by the incorporated exhibits and therefore were not plausible, a conclusion that is not challenged here. Pet. App. 3a, 21a-22a.

The upshot: Ming now owns <trx.com>, and he has owned it since at least April 2022. SAC ¶ 30. And JFXD claims ownership of the TRX marks as of August 2022. Pet. App. 7a-8a.

D. Proceedings Below

1. In October 2022, Fitness Anywhere—which at that time may have already transferred the TRX trademarks to JFXD (Pet. App. 23a; SAC Ex. C ¶ 29)—filed a complaint against Ming with a

² According to the operative complaint, Ming bought the name in April 2022 for \$138,000 from the “public domain,” SAC ¶¶ 23-30; according to the complaint’s incorporated exhibits, Ming bought the name in “2020 or early 2021” for “more than \$138,000” from a broker, SAC Ex. B at 2; Ex. C ¶¶ 16-18.

nongovernmental dispute administrator, requesting transfer of <trx.com>. SAC ¶ 25. Ming never learned of the proceeding until he had defaulted and received a transfer notice. SAC Ex. C ¶ 33. He then filed suit in the U.S. District Court for the District of Arizona to block the transfer. SAC ¶ 29.

While Ming's action against Fitness Anywhere was pending, JFXD brought this action in the Eastern District of Virginia. Pet App. 31a. JFXD alleged that Ming violated the ACPA by "acquir[ing]" and "us[ing]" <trx.com>, arguing that the name was "confusingly similar" to JFXD's trademarks. D. Ct. Dkt. 4, ¶¶ 47-48. Noting the lack of personal jurisdiction and the parallel litigation, that court transferred the case to the District of Arizona. D. Ct. Dkt. 59.

JFXD's initial complaint puzzled the district court. The court noted that <trx.com> was registered *before* the TRX trademarks became distinctive (Pet. App. 33a), whereas ACPA liability attaches only if the mark was already "distinctive [or famous] at the time of registration of the domain name." 15 U.S.C. § 1125(d)(1)(A)(ii)(I)–(II). The district court also noted the discrepancy about whether and when JFXD acquired the marks from Fitness Anywhere. Pet. App. 34a. The district court ordered JFXD to file a statement clarifying its ACPA theory and its ownership of TRX marks. Pet. App. 35a.

The district court could "[n]ot understand large portions of [JFXD's] response." Pet. App. 27a n.2. Though it was "not clear" (*ibid*), the district court speculated that JFXD might argue that <trx.com>'s registration expired and was deleted from the registry, returning the name to the public. Pet. App. 27a. If so, Ming (or a prior owner) would have had to

register the name by claiming it with a registry (as an otherwise unclaimed name), placing the most recent registration *after* the TRX trademarks became distinctive. The district court therefore gave JFXD another opportunity, letting it amend the complaint to allege those facts and clear up the trademark-ownership issue. Pet. App. 28a.

JFXD's third attempt fared no better than its first two. The district court explained that the new allegations were "based on a misunderstanding of how the domain name system operates" (Pet. App. 21a), and an accompanying explanatory letter was "largely indecipherable" (Pet App. 24a). The new allegations did allege that "the registration of <trx.com> lapsed" to the "public domain." Pet. App. 21a n.1. But as noted above, JFXD contradictorily alleged that Ming bought <trx.com> for secondary-market prices, implying that it was already owned by someone and therefore was not unclaimed at the time. Pet. App. 22a. Accordingly, the district court found that the second amended complaint's irreconcilable allegations were not "plausible." *Ibid.* Without plausibly alleged "facts supporting [the alleged] sequence of events" (Pet. App. 20a), the case could not go forward. Rather than give JFXD a fourth try, the court dismissed without leave to amend. Pet. App. 22a.

Citing JFXD's "shifting positions" (Pet. App. 10a), "improper behavior" (Pet. App. 14a), and "unintelligible assertions" that left "Ming and the Court to guess" its ACPA theory (Pet. App. 16a-17a), the district court also awarded Ming attorneys' fees under the Lanham Act's exceptional-case standard. Pet. App. 17a.

2. The court of appeals affirmed the dismissal in an unpublished decision. Pet. App. 4a. As that court

concluded, “[t]he district court reasonably rejected JFXD’s [SAC] because JFXD had already pleaded facts that made contradictory allegations in its newest complaint implausible.” Pet. App. 3a.

The court not only affirmed the fee award, it also awarded appellate fees to Ming. As the court of appeals explained, “JFXD filed suit in the Virginia district court even though its attorney knew that Ming was already litigating in Arizona”; “JFXD and its counsel were unable to present intelligible factual or legal arguments, leaving Ming and the [Arizona district court] to guess as to why JFXD believed its cybersquatting claim was viable”; and “JFXD ignored court orders, communicated with the court *ex parte*, and inexplicably shifted its position multiple times throughout the course of litigation.” Pet. App. 4a.

JFXD petitioned for rehearing en banc, which was denied without a poll. Pet App. 37a.

REASONS FOR DENYING THE PETITION

The petition should be denied for three reasons. *First*, the decision below is correct. “Registration” under the ACPA encompasses claiming a domain name that is unclaimed by others, resulting in a new entry in a registry. Petitioner’s contrary conclusion—that a registration occurs whenever a transfer of the domain name results in an update to an existing entry in the registry—is irreconcilable with the statutory text. *Second*, the circuits are not neatly split but are at worst confused, counseling in favor of further analysis and percolation. *Third*, this case presents a poor vehicle in view of the factual contradictions and potentially outcome-determinative ambiguities that pervade the record.

A. The ACPA does not cover the conduct alleged here.

As relevant here, the ACPA prohibits “register[ing], traffic[king] in, or us[ing]” a domain name that is confusingly similar to a trademark “that is distinctive at the time of registration of the domain name.” 15 U.S.C. § 1125(d)(1)(A). Properly understood, that prohibition does not encompass sales of already-registered domain names, when the name was registered prior to the trademark becoming distinctive. That understanding comports with the contemporary technical meaning of “registration”; it is the only way to make sense of the entire statutory text; and it avoids serious practical problems posed by petitioner’s contrary approach.

Because Ming’s alleged purchase of <trx.com> in the secondary market constitutes, at most, “traffic[king] in” a domain name that was registered *before* the existence of petitioner’s distinctive trademark, the courts below correctly concluded that no ACPA violation is plausibly alleged here.

1. The term “registration” encompasses only claiming an unclaimed domain name.

The ACPA does not define “registration,” and general-purpose dictionary definitions are not especially helpful in resolving the technical dispute here: whether “registration of [a] domain name” encompasses only the entry of the domain name into a registry where it did not previously exist, or whether it also includes updating an existing entry in the registry with additional information (such as a new owner). See, *e.g.*, Register, *Oxford English Dictionary* (Rev. 2009) (“To make formal entry of (a fact, document, etc.) in a register; to cause this to be done.”);

Registration, *Oxford English Dictionary* (rev. 2009) (“The action of registering or recording something.”).³

However, “registration” in the domain-name context has a distinct technical meaning that encompasses only claiming a domain name that is otherwise unclaimed, not any acts incident to the transfer of an already-claimed domain name. See, e.g., *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974) (“[W]here Congress has used technical words or terms of art, it is proper to explain them by reference to the art or science to which they are appropriate.”) (quotation marks omitted; alterations incorporated). When Congress uses a technical term, including in the computing context, courts often rely on enactment-era sources to inform statutory construction. See *Van Buren v. United States*, 593 U.S. 374, 388 & n.6 (2021) (interpreting the statutory term “access” in the technical “computing context” by analyzing several contemporary computer-specific dictionaries and handbooks); accord *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 571 (2012) (interpreting “technical terminology” in a statute by reference to the “relevant professional literature”).

Here, established internet terminology contemporaneous with the enactment of the ACPA supports that “registration” means claiming a domain name that is unclaimed on a registry.

³ If anything, the fact that the statute turns on “registration of the domain name” (15 U.S.C. § 1125(d)(1)(A) (emphasis added)) suggests that the thing that must be “ent[ered] * * * in a register” (Register, *Oxford English Dictionary* (Rev. 2009)) is the domain name itself, which would exclude updates to the records of domain names already existing in the registry.

An informative source of enactment-era technical meaning is memoranda produced by the Internet Engineering Task Force (IETF) describing domain-name registration procedures. The IETF, founded in 1986, is “the premier standards development organization * * * for the Internet.” *About, IETF*, perma.cc/7PBX-2UUA (last visited Nov. 4, 2025).

One 1999 IETF memorandum refers to claiming an unclaimed domain name in the IETF’s domain tree as a “registration,” and it refers to a transfer of ownership as an “update” to a registration. Rich Petke & Ian King, *Registration Procedures for URL Scheme Names*, IETF (Nov. 1999), perma.cc/27QF-K38V. This is why ICANN equates the “registration” of a domain name with its creation. As part of its mission to ensure the operability of the internet, ICANN maintains a publicly accessible registration data lookup tool for domain names, commonly known as the WHOIS service. As ICANN’s FAQ document explains, the data includes the “date when the domain name registration was created,” as distinct from when it was “updated.” ICANN, *Registration data lookup tool FAQs*, perma.cc/J2TQ-7JJ3 (last accessed Nov. 4, 2025); see also ICANN, *Registration data lookup tool*, perma.cc/H8SZ-LXQ7 (last accessed Nov. 4, 2025) (after searching for <trx.com>, displaying a “Registry * * * Created” date in 1999, and a “Registry * * * Updated” date in 2022).

A second IETF memorandum, published in October 1998, describing “Best Current Practices for the Internet Community,” also refers to “registration” as claiming a domain name that does not yet have an IP number. Thomas Narten & Harald Tveit Alvestrand, *Guidelines for Writing an IANA Considerations*

Section in RFCs, IETF (Oct. 1998), perma.cc/9B4Y-HEP9 (“Registrations are a request for an assigned [IP] number, including the related information needed to evaluate and document the request.”). This definition of “registration” implies that to transfer a domain name that is already in the registry—which already has an assigned IP number—does not constitute a “registration.”

Another informative source is Verisign’s 2001 registry agreement with ICANN to operate the “.com” registry. *Revised VeriSign Registry Agreements: Appendix C*, ICANN, perma.cc/2QH8-58QZ (last visited Nov. 4, 2025). In the context of registrants’ failure to renew domain names, the agreement lists five functions that registrars may execute in the “.com” registry: (1) “Registration of a new domain,” (2) “Extension of an existing domain,” (3) “Auto-Renew of an existing domain,” (4) “Transfer of an existing domain,” and (5) “Deletion of an existing domain.” *Ibid.* If a domain name “is deleted from the Registry database,” it becomes “immediately available for registration by any Registrar.” *Ibid.* But a sale of a domain from one registrant to another is classified as a “transfer of an existing domain,” after which there is no need to “register” the domain—it has already been registered by the seller. *Ibid.*

Legislative materials from the time of enactment of the ACPA similarly refer to “registration” as claiming domain names that are then unclaimed.⁴ The

⁴ Because legislative history can help to clarify “the law’s ordinary meaning at the time of enactment,” it can be “useful” to rely on legislative history where a statutory term “means one thing * * * in one context” but “might mean something different

House Report on the proposed ACPA describes domain-name registrants as the first to claim their names. H.R. Rep. 106-412, at 5 (1999) (“Since domain names are available * * * on a first-come, first-served basis, some owners have discovered that the domain name containing their trademark has already been registered.”). The same is true of the Senate Report, which, for example, describes a “speculator” who, after the Exxon-Mobil merger was announced, “registered every variation of the possible resulting domain name, i.e., mobil-exxon.com, exxon-mobil.com, mobilexxon.com, etc., ad infinitum.” S. Rep. 106-140, at 4 (1999). The House and Senate Reports on the proposed ACPA refer to no examples of transferring a domain name as “registration.”

In sum, contemporaneous technical sources and legislative materials demonstrate that “registration” in the domain-name context means claiming a domain that is currently unclaimed, resulting in the creation of a new entry in the registry. A domain name is not subject to “registration” incident to its transfer from one owner to another, which merely results in an update to the existing entry in the registry.

2. *The whole statutory text confirms that “registration” refers to claiming an unclaimed domain name.*

Several other aspects of the statutory text compel the conclusion that “registration” must mean only

in another context.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 674-675 (2020); see also, e.g., *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (legislative history may play a valuable role by “shed[ding] a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

claiming an unclaimed domain name. Petitioner’s contrary conclusion—that updating “name and contact information” incident to a transfer of domain name ownership qualifies as “registration” (Pet. 29)—is belied by several textual provisions.

First, our construction is necessary to distinguish between the distinct statutory terms “registers” and “traffics in.”

As described, there are three distinct acts that can trigger ACPA liability: “register[ing], traffic[king], or us[ing]” a domain name that is identical or confusingly similar to a trademark. 15 U.S.C. § 1125(d)(1)(A)(ii). But these acts give rise to liability *only* if the trademark “is distinctive at the time of *registration* of the domain name.” *Ibid.* (emphasis added). By creating three different *actus rei* but pegging liability to a condition being satisfied at the time only *one* of them occurs, Congress made clear that registration and trafficking are distinct concepts. See, e.g., *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017) (“[W]hen we’re engaged in the business of interpreting statutes we presume differences in language like this convey differences in meaning.”); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-431 (1987) (when Congress uses different language to describe two different standards in the same Act, the court “cannot conclude that the standards are identical”).

Petitioner’s interpretation is incompatible with this purposeful distinction. Transfers of domain names are explicitly encompassed within the “traffic[king]” *actus reus*. See 15 U.S.C. § 1125(e) (defining “traffics in” to include “any * * * transfer for consideration or receipt in exchange for consideration.”). So “registers” must mean something different from

conduct incident to the “transfer” of a domain name—and as we have described, its natural meaning in this technical field is claiming an unclaimed domain name.

Petitioners’ theory of “registration,” by contrast, would render superfluous the “trafficking” provisions in the ACPA because every transfer of a domain name (“trafficking”) would also entail a “registration.” The canon against surplusage counsels against this interpretation. See *Marx v. General Revenue Corp.*, 568 U.S. 371, 392 (2013).

Second, and perhaps more telling, petitioner’s construction would also effectively read the “at the time of registration” requirement out of the statute.

If, as petitioner would have it, every transfer of a domain name also necessarily entailed a registration, then the distinctiveness (or famousness) timing requirement would necessarily be satisfied every time anyone traffics in a domain name that is distinctive *at the time of the trafficking*. But the statute ties liability instead to distinctiveness at the time of *registration*—in a statute that distinguishes between registration and trafficking. It makes no sense for Congress to have distinguished between registration and trafficking, but then to have rendered the distinction a nullity. “So we’re left with nothing but the doubtful proposition that Congress sought to accomplish in a ‘surpassingly strange manner’ what it could have accomplished in a much more straightforward way” (*Azar v. Allina Health Servs.*, 587 U.S. 566, 577 (2019) (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 647 (2012))—such as by substituting “at the time of the registration, trafficking, or use of the domain name.” The court of appeals was

correct to reject such judicial re-writing of Congress’s work.

Third, the same statute elsewhere clearly distinguishes “registration” from actions that occur after a domain name is claimed on a registry.

For example, in providing factors governing what may qualify as bad faith conduct, the ACPA addresses a “person’s registration *or acquisition* of multiple domain names which the person knows are identical or confusingly similar to marks of others.” 15 U.S.C. § 1125(d)(1)(B)(i)(VIII) (emphasis added). An “acquisition” of a mark—which is what petitioner calls a “re-registration” (see Pet. 29)—is a separately identified term.⁵ See, e.g., *Santander*, 582 U.S. at 86 (“[W]e presume differences in language like this convey differences in meaning.”); *Cardoza-Fonseca*, 480 U.S. at 430-431. Acquisition of a domain name does not, as petitioner would have it, qualify as a “registration” under the ACPA.

More, the same provision goes on to consider “the person’s registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive *at the time of registration of such domain names*.” 15 U.S.C. § 1125(d)(1)(B)(i)(VIII) (emphasis added). While the relevant *act* is either registering or acquiring marks, the *knowledge* element turns on whether

⁵ Petitioner asserts that respondent “registered” <trx.com> in 2022 because he updated the “name and contact information” upon acquisition. Pet. 29. But, as we have shown, nothing about this qualified as a “registration” because incorporated complaint exhibits demonstrate that <trx.com> remained claimed the entire time, and thus no “registration” occurred in 2022.

the mark was distinctive at the time of registration alone, not at time of acquisition.

Our reading of the statute is thus harmonious: The ACPA applies to marks that are distinctive *at the time* they are claimed and therefore entered into a registry. ACPA liability does not attach to the transfer of a domain name that gained distinctiveness *after* it was registered—that is, after it was claimed and an entry in a registry was created for the name. Petitioners’ contrary construction contorts the meaning of the ACPA beyond recognition.

3. *Petitioners’ construction is inconsistent with the ACPA’s statutory purpose.*

There is good reason to conclude that Congress did not intend the textually strained result petitioner seeks.

If a registration occurred with every transfer, domain-name owners who registered their names prior to the existence of any relevant trademark would forever lose the right to sell their domain names if a brand later registers a “confusingly similar” mark. 15 U.S.C. § 1125(d)(1)(A)(ii)(I), (II). That is, what is essentially a property right in the domain name—acquired by its initial registrant in a process analogous to first possession under property law (see *Pierson v. Post*, 3 Caines 175 (N.Y. Sup. Ct. 1805))—could be destroyed by the acts of a third party, contrary to traditional property law principles.⁶

⁶ To illustrate our approach: if John Doe registered <xyz.com> as an unclaimed domain name despite the existence of a distinctive XYZ brand, the ACPA prohibits trafficking in the domain name by transferring it to Jane Doe (or registering it in the first place). But suppose John claimed <xyz.com> years before the

Properly construed, the ACPA is consistent with this property-law approach to domain names. Indeed, the ACPA directly treats domain names as property by giving courts “in rem” jurisdiction over them. 15 U.S.C. § 1125(d)(2). Here, for example, the lower courts have exercised jurisdiction over <trx.com> directly. See, e.g., Pet. App. 1a, 9a. Congress’s grant of *in rem* jurisdiction over domain names to federal courts would be nonsensical if a domain name was anything but a type of property held by its owner. See Jurisdiction, *Black’s Law Dictionary* (12th ed. 2024) (defining “in rem jurisdiction” as “[a] court’s power to adjudicate the rights to a given piece of property, including the power to seize and hold it”). In other words, “Congress plainly treated domain names as property in the ACPA.” *Porsche Cars N. Am., Inc. v. Porsche.net*, 302 F.3d 248, 260 (4th Cir. 2002) (“Congress may treat a domain name registration as property subject to *in rem* jurisdiction if it chooses, without violating the Constitution.”).

The property-law grounding of the ACPA thus indicates that a domain name is only “register[ed]” when it is claimed from an unclaimed state and entered into the registry, not when it is transferred between private parties thereafter.

In *GoPets*, the Ninth Circuit recognized how boundless the scope of the ACPA would become under petitioner’s contrary approach. Although it was

appearance of the XYZ brand. If John then transfers his domain name to Jane, the ACPA presents no barrier because the name was not “distinctive” or “famous” at the time he registered the domain name, even if an XYZ brand appeared between the time of his registration and his transfer. 15 U.S.C. § 1125(d)(1)(A)(ii)(I)-(II).

“obvious” that the “initial contract with the registrar constitutes a ‘registration’ under ACPA,” reading the statute more broadly could subject individuals to liability for all manner of “actions that modify the registration.” *GoPets Ltd. v. Hise*, 657 F.3d 1024, 1030 (9th Cir. 2011). There are many reasons to “update [a] registration,” such as when the registrant’s “contact or billing information changes,” or when a registrant transfers their domain name from one registrar to another. *Id.* at 1030-1031. The court held that to classify such conduct as “registration” would “make rights to many domain names effectively inalienable” despite no indication that Congress had such a purpose in enacting the ACPA. *Id.* at 1032.

Indeed, petitioner’s definition of “registration” could undermine property rights in contexts beyond the circumstances of this case. There is a developing division among the states over whether, and under what circumstances, domain names are a species of property under state law (and thus, for example, can be the subject of torts like conversion). Compare, *e.g.*, *Hao v. GoDaddy.com LLC*, 2023 WL 3078660, at *1-2 (D. Ariz. 2023) (applying Arizona property law and holding that a domain name must be (and is not) “merged in” a physical document in order to be subject to conversion), with *Domain Protection, LLC v. Sea Wasp, LLC*, 426 F. Supp. 3d 355, 391-394 (E.D. Tex. 2019) (under Texas property law, applying merger rule but finding it satisfied and granting summary judgment of conversion); and *Kremen v. Cohen*, 337 F.3d 1024, 1030-1035 (9th Cir. 2003) (applying California property law, holding that California does not follow the merger rule and domain name was property). The interpretation petitioner advances would

have sweeping and unpredictable consequences, altering how tort law applies to domain names, how courts exercise jurisdiction over them, and in myriad other unforeseen ways.

The best textual and structural reading—that “registration” occurs only when a domain name is claimed from an unclaimed state—is also the best practical one. The court of appeals’ result was correct.

B. The circuits are not cleanly divided.

1. *“Re-registration” means different things to different circuits.*

As petitioner would have it, “[t]hree circuits hold that the *re-registration* of a domain name counts as registration for ACPA purposes [while the] Ninth Circuit * * * alone holds that only the *initial* registration of a domain name is a ‘registration.’” Pet. i (emphasis added). This characterization elides the fact that the cases comprising petitioner’s alleged split use the term “re-registration” to refer to very different underlying actions without interrogating what qualifies as “re-registration.”

For its part, petitioner does not appear to describe what it believes qualifies as “re-registration”—and that is for good reason: “re-registration” is a non-statutory, invented concept. The best petitioner does is suggest that a re-registration occurs when “the owner of a domain-name takes steps to ‘register’ a domain name that has previously been registered in the past.” Pet. 24. The petition is silent as to what those “steps” actually are. But the answer to that question is quite important to the legal analysis.

Upon inspection, the circuits that make up petitioner’s alleged split use “re-registration” to refer to a

variety of underlying actions, exhibiting widespread confusion—not unanimity on a point of law.

Start with the Third Circuit. In *Schmidheiny v. Weber*, 319 F.3d 581 (3d Cir. 2003), the registered domain name was transferred from one registrant to another, and the new registrant “contractually bound itself in a new registration agreement with a new registrar * * * for a new one-year period.” *Id.* at 583. The Third Circuit “h[e]ld that the word ‘registration’ includes a new contract at a different registrar and to a different registrant.” *Ibid.* There, the “new registrar” appears essential to the holding.

Next, the “re-registration” identified by the Eleventh Circuit involved a registered domain name that “expired” but was then restored eleven days later by the same registrant. *Jysk Bed’N Linen v. Dutta-Roy*, 810 F.3d 767, 772 (11th Cir. 2015). In holding that this “re-registration” gave rise to an ACPA claim, the Eleventh Circuit expressed its “agree[ment] with the Third Circuit” (*id.* at 777) that “the language of the statute does not limit the word ‘registration’ to the narrow concept of ‘creation registration’” (*ibid.* (quoting *Schmidheiny*, 319 F.3d at 582-583)). But because the Third Circuit’s holding in *Schmidheiny* was limited to an action involving a *different* registrar and a *different* registrant, it is far from clear that the Third Circuit would agree that the underlying action in *Jysk* amounted to a “registration” for purposes of the ACPA.

Finally, the Fourth Circuit addressed a registered domain name that was purchased through “an online domain name marketplace”; the purchaser updated the registration and entered into a registration agreement with GoDaddy, Inc., the existing registrar for

the domain name. *Prudential Ins. Co. of Am. v. Shenzhen Stone Network Info. Ltd.*, 58 F.4th 785, 789 (4th Cir. 2023). The Fourth Circuit deemed this underlying action “re-registration.” *Id.* at 794, 797. Again, because the registrar remained the same, it is not clear that the Third Circuit would agree that *Prudential* involved a “registration” for purposes of ACPA. What is more, because the domain name never “expired” (as in *Jysk*), the Eleventh Circuit also could reach a different conclusion as to whether a “re-registration” occurred.

In sum, the long side of petitioner’s alleged split is not especially neat. There is no settled view as to what actually qualifies as “re-registration”—and, as applied to the ACPA, that can make all the difference.

2. *It is unclear that different legal statements would yield different outcomes.*

Upon closer inspection, applying the Ninth Circuit’s *GoPets* holding to the cases where petitioner alleges a conflict, the outcome likely would not change. The courts’ judgments are therefore compatible. Cf., e.g., William Baude, *The Judgment Power*, 96 Geo. L.J. 1807, 1844 (2008) (“*Judgments* become binding law, not *opinions*.”).

In *GoPets*, the Ninth Circuit held that “registration” for purposes of the ACPA “refer[s] only to the initial registration” of an unclaimed domain name. 657 F.3d at 1031. The defendant there, Hise, registered the domain name <gopets.com> in March 1999. *Id.* at 1026-1027. A company called GoPets Ltd. was later founded in Korea, and registered the service mark “GoPets” in the United States in 2006. *Id.* at 1027. Later that year, after rebuffing GoPets Ltd.’s efforts to purchase the domain name, Hise transferred the

registration of <gopets.com> to a corporation, Digital Overture. *Id.* at 1028.

GoPets Ltd. sued Hise under the ACPA, contending that “the re-registration of the domain name by Digital Overture in December 2006, after Edward Hise transferred it, was a ‘registration’ within the meaning of § 1125(d)(1).” 657 F.3d at 1030. Because the service mark GoPets was distinctive at that time, GoPets Ltd. argued that this 2006 “re-registration” violated the ACPA. *Ibid.* It was undisputed that <gopets.com> was not “identical or confusingly similar to” a protected mark when Hise registered it in 1999. *Ibid.*

The Ninth Circuit rejected GoPets Ltd.’s expansive construction of “registration,” as it “would make rights to many domain names effectively inalienable,” despite nothing in the text or structure of the statute indicating that Congress intended that result. 657 F.3d at 1031-1032. In sum, only the claiming of an unclaimed domain name, resulting in the creation of a new registry entry—which occurred in 1999—qualified as “registration” for purposes of the statute. *Ibid.*

Application of that interpretation of the ACPA to the facts of petitioners’ allegedly conflicting cases shows there is no difference in outcome.

a. In *Jysk*, Jysk (a furniture seller operating under the trade name By Design) sued Dutta-Roy (its website designer) under the ACPA based on Dutta-Roy’s bad-faith actions in connection with the domain name <bydesignfurniture.com>. 810 F.3d at 771-772. In 1999, Jysk instructed Dutta-Roy to register the domain name, listing Jysk as the owner. *Ibid.* Dutta-Roy registered the domain name in April 1999—but he listed himself as the owner. *Id.* at 772. Years later, on

April 9, 2012, “Dutta-Roy’s registration of [the domain name] expired, which caused Jysk’s website to go down.” *Ibid.* Having discovered that Jysk “did not own the registration because it was in Dutta-Roy’s name,” Jysk asked Dutta-Roy “to re-register [the domain name] in its name.” *Ibid.* Dutta-Roy refused, and instead “[o]n April 20, he re-registered [the domain name]” in his own name. *Ibid.*

The Eleventh Circuit focused on Dutta-Roy’s 2012 actions. 810 F.3d at 773-774. But Jysk had “operated under the trade name and common-law trademark *By Design*” since 1990. *Id.* at 771. Thus, when Dutta-Roy registered the unclaimed domain name nine years later, in 1999, *that* was the relevant registration, and any subsequent bad faith actions would be unlawful. *Id.* at 771-772. Under the Ninth Circuit’s approach, then, Jysk would have had an ACPA claim against Dutta-Roy all the same.

b. So too with respect to the Third Circuit’s decision in *Schmidheiny*. The defendant in that case registered the domain name <schmidheiny.com> in February 1999. 319 F.3d at 581. At that time, the plaintiff, Stephan Schmidheiny, had already been “ranked among the wealthiest individuals in the world” for several years. *Ibid.* The Third Circuit looked to later actions as the hook for a “registration” because the February 1999 registration took place before the ACPA took effect. *Ibid.* But, under Ninth Circuit precedent, Section 1125(d)(1) “appl[ies] to registrations made before the passage of the ACPA” (*GoPets*, 657 F.3d at 1031), so the outcome would have been the same under Ninth Circuit law. Indeed, the Ninth Circuit expressly said as much. *Ibid.* (court would have

held that the February 1999 registration in *Schmidheiny* violated the ACPA).

c. Finally, the Fourth Circuit’s decision in *Prudential* also concerned a domain name that was identical or confusingly similar to a distinct mark at the time it was registered. Prudential sued Shenzhen Stone Network Information Ltd. (SSN) over the domain name <PRU.com>. 58 F.4th at 788. That domain name was registered “by a non-party, PRU International” in 1997. Appellants’ Br., No. 21-1822, 2021 WL 4514258, at *5 (4th Cir. Sept. 27, 2021). SSN’s CEO, Frank Zhang, then purchased the domain name on the secondary market “at the behest of SSN” in 2017. 58 F.4th at 789.

Though Prudential did not register the trademark PRU in the United States until 2002, Prudential had operated for more than a century prior to the suit and “owns longstanding registered and common-law rights in PRU and PRU-formative marks” Appellee’s Br., No. 21-1822, 2022 WL 1720741, at *1 (4th Cir. May 24, 2022). Thus, under the Ninth Circuit’s approach, the 1997 registration of <PRU.com> likely occurred while the relevant marks were famous or distinctive, leading to the same outcome.

* * *

In sum, petitioners’ proffered circuit split rests on confusion over what qualifies as a “re-registration.” But that term—which appears nowhere in the statute—is entirely unhelpful to resolving the reach of the term that *does* appear: “registration.” And when the correct construction of that statute is applied to the facts of the allegedly conflicting cases, they come out the same way.

C. This case is a poor vehicle.

Finally, this case is also an exceptionally poor vehicle for resolving the question presented. The litigation has been plagued from start to finish with confusion and contradictions. Factual complexity surrounds both types of property at issue—Ming’s domain name and JFXD’s trademark. For both, that uncertainty affects the holdings below. And those are just two examples of a “number of unintelligible assertions made by JFXD” below. Pet. App. 16a-17a. As the courts below observed, this case is an “exceptional” and “unique” one (*ibid.*)—rendering further review improper.

1. The unpublished decisions below rest on fact-bound assessments of the plausibility of contradictory pleadings.

To hear petitioner describe it, this case tees up a clean legal question about the vitality of *GoPets*. To be sure, the Ninth Circuit recited the governing *GoPets* standard, which required JFXD to allege that it possessed rights in the “TRX” trademark before <trx.com> was registered. Pet. App. 3a. But the Ninth Circuit’s rationale for affirming dismissal of the operative amended complaint was, in large part, case-specific: “The district court reasonably rejected [the complaint] because JFXD had already pleaded facts that made contradictory allegations in its newest complaint implausible.” *Ibid.*

In other words, *GoPets* requires ACPA plaintiffs to plausibly plead certain facts. JFXD failed, in part because no court has been able to parse its contradictory pleadings for relevant, plausible allegations in the first place. That makes this case an inauspicious vehicle: “Judges are not like pigs, hunting for truffles

buried in the record.” *Albrechtsen v. Bd. of Regents of Univ. of Wis. Sys.*, 309 F.3d 433, 436 (7th Cir. 2002) (cleaned up).

To illustrate the lower courts’ struggles, consider three mutually exclusive theories—each presented in JFXD’s operative complaint or an incorporated exhibit—of how Ming acquired <trx.com>.

- Sometime between “2018” and “2022, the URL <trx.com> would have expired and returned to the public domain, and in 2022, it was purchased by [Ming] from the public domain” for “\$138,000.” SAC ¶¶ 23, 30.
- The <trx.com> domain name was “transferred to [GoDaddy]” in “2020 or early 2021,” and “[JFXD] contends that [Ming] acquired the domain name at this time.” SAC Ex. B at *2.
- Ming bought <trx.com> “for *more* than \$138,000” through “a publicly accessible internet brokerage at www.4.cn,” an “internet domain name marketplace.” SAC Ex. C ¶¶ 16, 18 (emphasis added).

These theories differ with respect to what year Ming obtained <trx.com> and how much he paid. More importantly, they differ on whether Ming bought an already-registered name from a broker on the secondary market or claimed an unclaimed name from the “public domain.”

Venture outside the pleadings to JFXD’s other representations, and the confusion only worsens. JFXD submitted a clarifying statement to the district court, but the court had “significant difficulty in understanding” it. Pet. App. 20a. For good reason: JFXD stated both that <trx.com> was purchased from a

GoDaddy company (supporting the theory that Ming bought an already claimed domain name from a brokerage), and that the “URL was abandoned,” *not* sold back to a registrar (supporting the theory that <trx.com> was unclaimed on the primary market). D. Ct. Dkt. 83, at 7. No wonder two courts below struggled to parse the pleadings. This Court should not be the third.

Deciding the question presented will require carefully delineating between registering, trafficking in, selling, transferring, and renewing domain names. An appropriate vehicle should *at least* present a coherent theory of which actions are involved in the case. This case’s operative pleadings fail to do so. They facially allege that Ming registered <trx.com> off the “public domain” (which is itself incoherent but was liberally construed to refer to the category of unclaimed names, see Pet. App. 21a n.1), but they contradictorily suggest that the name was transferred to Ming on the secondary market—perhaps from GoDaddy or a brokerage. As we have described (see pages 12-23, *supra*), that distinction is outcome determinative for the merits. It also determines whether this case even implicates the alleged circuit split: If Ming actually did register <trx.com> in the primary market, then this case would fall outside the *GoPets* rule that “a re-registration of a *currently registered* domain name by a new registrant” is not a “registration” of that domain name. 657 F.3d at 1026 (emphasis added).

Because of all this factual confusion, the decision below boils down to an unpublished exercise in complaint interpretation. It does not merit this Court’s review.

2. Petitioner’s inability to maintain a consistent theory of the case pervaded the entirety of the proceedings below. “[T]hroughout this case,” JFXD was “unable to present intelligible factual or legal arguments, leaving Ming and the Court to guess as to why JFXD believed its cybersquatting claim was viable.” Pet. App. 16a. Along the way, “JFXD ignored court orders, communicated with the court *ex parte*, and inexplicably shifted its position multiple times throughout the course of litigation.” Pet. App. 4a.

For example, JFXD argued below that Ming *was not* a proper party in a hearing meant to establish that the district court *did* have personal jurisdiction over Ming. Pet. App. 10a. JFXD also argued that Ming *did not* own <trx.com>, even though its complaint argued that Ming *did* own it. *Ibid.* The district court described JFXD’s briefing as “indecipherable.” Pet. App. 11a. After the district court ordered JFXD to explain its inconsistent statements, JFXD submitted a statement that was “exceptionally difficulty to understand” and repeated the “inexplicable” theory that (contrary to the complaint) Ming did not own <trx.com>. Pet. App. 11a-12a. And to explain contradictory representations about ownership of TRX trademarks, JFXD submitted another “largely indecipherable” statement, leaving the court “unable to understand what [it] was trying to convey.” Pet. App. 24a. Piling impropriety on indeterminacy, that statement took the form of an “improper” *ex parte* communication emailed by JFXD directly to the judge’s chambers. *Ibid.*

Unsurprisingly, the proceedings below are also replete with technical errors. The district court said that JFXD confused “registration with a registrar” and “purchasing a domain name through” a brokerage.

Pet. App. 13a. JFXD also “misunderst[ood] how the domain name operates,” misusing a copyright term (“public domain”) to describe a domain *name*, an unrelated concept. Pet. App. 21a & n.1. The flummoxed courts concluded that the complaint and statement “misunderstood basic aspects” of an ACPA claim. Pet. App. 11a-13a.

As the district court summarized: “Many cases involve one or two bad arguments or positions, but this case was unique in the number of unintelligible assertions made by JFXD and its counsel.” Pet. App. 16a-17a. Those “shifting positions” were “indecipherable” as to the facts (*id.* at 10a, 24a); “misunderstand” the technical operation of the domain name system, (*id.* at 21a); and disregarded *ex parte* contact norms along the way (*id.* at 24a).

In these circumstances, the record below simply does not provide nearly the clarity required, given that the issue presented for review is the precise coverage of the ACPA. Since nothing about this record is precise, it will be difficult, if not impossible, for the Court to actually apply its construction of the ACPA to this case. And of course, “[f]ederal courts may not * * * give opinion[s] advising what the law would be upon a hypothetical state of facts.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quotation marks omitted).

CONCLUSION

The Court should deny the petition.

Respectfully submitted.

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