

**.ie Alternative Dispute Resolution  
NETNEUTRALS DISPUTE RESOLUTION SERVICE**

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**Decision of Independent Specialist**

**Case Number: 729**

**1. The Parties:**

<b>Complainant:</b>	Arnas Sruoga on behalf of Biodela, UAB, EUTM 018909692
<b>Registrant:</b>	Strong Energy Recovery Ltd.

**2. The Domain Name(s):**

logsonline.ie	(‘the Domain Name’)
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**3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

The procedural history is as follows:

Action	Comment / date
Dispute received	2 <sup>nd</sup> April 2024
Complaint validated	2 <sup>nd</sup> April 2024
Notification of complaint sent to Complainant	5 <sup>th</sup> April 2024
Notification of complaint sent to Registrant	5 <sup>th</sup> April 2024
Reminder sent to Registrant	
Phone calls to Registrant	
Forum Opened	5 <sup>th</sup> April 2024
Complaint Form received	22 <sup>nd</sup> April 2024
Response received	9 <sup>th</sup> May 2024
Forum Closed	27 <sup>th</sup> May 2024
Adjudication Started	28 <sup>th</sup> May 2024
Adjudication Decision Posted	30 <sup>th</sup> May 2024
Adjudication Decision accepted / rejected	
Specialist Decision published	31 <sup>st</sup> May 2024

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

The Complainant is a Lithuanian registered firewood trading company, registration number 300906048.

The Registrant is a UK registered firewood trading company, registration number 11516561.

The Domain Name was registered by the Registrant on 1 April 2020 and was used by the Registrant for the purposes of its business selling firewood and related products into the Irish market.

The Complainant supplied firewood to the Registrant until 2022.

The Registrant was put into administration on 6 June 2023, owing approximately €38,000 to the Complainant.

On 3 August 2023 the Complainant filed for an EU trade mark on a figurative mark incorporating the words 'Logs Online' in classes 4 (Wood for use as fuel etc.) and 35 (Retail services in relation to firewood etc.). This was registered and published on 9 January 2024, number 018909692.

On 29 January 2024 the Complainant notified the Administrator of the Registrant of its trademark and asked that the Domain Name be transferred to the Complainant.

On 6 February 2024 the Complainant sent a cease and desist notice to an Irish registered company, Bukoba Ltd., stating that it was the user and beneficiary of the Domain Name and alleging that this use was in violation of its EU trademark.

On an unknown date the Registrant sought to transfer the Domain Name to a third party and on 1 March 2024 the registrar (Register365) informed the Registrant that updated registrant details had been sent to the IEDR to be actioned.

On 26 March 2024 the Administrator informed the Complainant that the Domain Name had been included in a sale of assets to a third party, prior to their appointment. It appears that the Domain Name was sold to a UK registered company Good Wood Distribution Ltd. with Bukoba Ltd. acting as its agent to fulfil sales made through the website at the Domain Name.

On 2 April 2024 this complaint was received.

At the time of the complaint the Domain Name remained registered to the Registrant.

There is also a UK trade mark consisting of a figurative mark incorporating the words LogsOnline for Class 4 (number UK00003487618) which was registered on 11 August 2020 to Rex Carbon Ltd. which appears to have some connection to the Registrant.

## **5. Parties' Contentions**

### **Complaint**

A summary of the Complaint is as follows:

The Complainant alleges that:

- It has an EU trade mark incorporating the words logs online which is equivalent to the Domain Name.
- It owns the domain logsonline.eu and sells into all EU countries.
- The use of the Domain Name is contrary to its trade mark rights.
- The purported transfer of the Domain Name to a third party shortly before the Registrant went into administration was very likely to be illegal.
- This Complaint is being defended by Fergal Murtagh who is a director of the Registrant but has no right to represent it since it has been put into administration.

### **Response**

A summary of the Response is as follows:

The Registrant states that:

- It has used 'LogsOnline' or logsonline.ie' in commerce for three years prior to the Complainant's trademark registration and has established common law rights to the name with significant goodwill associated with its investment in marketing over the past number of years.
- The logo on the Logsonline.ie website is LogsOnline while the complainants trademark is 'Logs Online' which is two separate words.
- The Domain Name is a generic domain in relation to selling logs online.
- This Complaint is not genuinely a domain name dispute but is part of the Complainant's attempt to secure payment of the money owed by the Registrant.

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## **6. Discussions and Findings**

Under paragraph 4.1 of the Alternative Dispute Resolution Policy ('ADRP') the burden of proof is on the Complainant who must prove three elements, specifically that:

- A. the Complainant would ordinarily be eligible to register the domain name in question if it was not already registered by the Registrant, and
- B. the Complainant
  - (i) has rights in the domain name or in marks or identifiers very similar to it, or
  - (ii) the Complainant's rights have been negatively impacted by the registration, and
- C. the registration of the domain should be revoked as it has been registered or used abusively or in bad faith.

### **A. Complainant Eligibility to Register the Domain Name**

The Complainant is a Lithuanian company and must therefore show an Irish connection for eligibility to register the Domain Name. While it has not provided specific proof of this point, for the sake of this decision I will accept its assertion that it sells goods directly to consumers and businesses in Ireland through its logsonline.eu site and is therefore eligible.

### **B. Complainant's Rights in the Domain Name**

#### ***(i) Rights in the domain name or in marks or identifiers very similar to it***

Paragraph 4.1.B(i) of the ADRP defines the term 'rights' as follows:

'Any legal or other enforceable right can be considered, including but not limited to:

- Trade and service marks protected in the island of Ireland, or
- Personal names (including pseudonyms) by which the Complainant is commonly known or has acquired a reputation in on the island of Ireland, or
- Geographical indications that can prima facie be protected in the island of Ireland,
- Unregistered rights acquired through use.'

In this case the Complainant has an EU trade mark incorporating the words 'logs online' (two words). I accept, in line with consistent precedent, that this should be regarded as very similar to 'logsonline' (one word) in the Domain Name. I therefore find that the Complainant has established 'rights in the domain name or in marks or identifiers very similar to it' for the purpose of the ADRP.

#### ***(ii) Complainant's rights negatively impacted by registration***

It is not necessary to consider this point.

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#### **C. Domain Used or Registered Abusively or in Bad Faith**

Under paragraph 4.1 of the ADRP the Complainant must prove that 'the registration of the domain should be revoked as it has been registered or used abusively or in bad faith'. These terms are defined in paragraph 1 of the ADRP which provides that:

'Abusively registered' refers to a domain name which was registered or used to take unfair advantage of or was unfairly detrimental to the Complainant's Rights; [and]

'Bad Faith' means a domain name which was registered or used without legitimate intent, and/or to engage in deceptive conduct [...]

Paragraph 4.1.C of the ADRP includes a non-exhaustive list of examples of abuse and bad faith, and as far as relevant provides that:

'A Complainant can demonstrate that the domain has been registered or is being used Abusively or in Bad Faith by the Registrant if it can provide evidence that:

- The domain name was registered or is being used with the primary purpose of selling or renting it specifically to the Complainant (or a competitor) for more than the Registrant paid for it, or
- The domain name was registered or is being used with the primary purpose of preventing the Complainant registering a name or mark in which the Complainant has rights, or
- The domain name was registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business, or
- The domain name is being used in a way that is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant, or [...]
- The domain name is registered to a company which currently has a dissolved company trading status'

The Complainant has not put forward any evidence tending to show any of the first four of these factors. The fact that the Complainant registered an identical EU trade mark several years after the Registrant began to carry on business using the Domain Name is not proof of abuse or bad faith by the Registrant. Regarding the fifth factor, while the Registrant is in administration it has not been dissolved and therefore this point does not apply.

The Complainant has therefore not shown either that the domain name was 'registered or is being used with the primary purpose of unfairly disrupting or interfering with the Complainant's business' or that it is 'being used in a way that is likely to confuse people or businesses into believing that it is registered to, operated or authorised by, or otherwise connected with the Complainant'.

The Complainant has also made further claims relating to the insolvency of the Registrant. The Complainant states that the purported transfer of the Domain Name to a third party shortly before the Registrant went into administration was 'very likely to be illegal' and that the Complaint is being defended by Fergal Murtagh who is a director of the Registrant but has no right to represent it since it has been put into administration. However these claims are a

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matter of UK insolvency law, do not in themselves go to showing abuse or bad faith within the meaning of the ADRP, and are not relevant for the purposes of this Complaint. In any event, this decision has been made on the basis that the Domain Name remains registered to the Registrant at the time of the decision, and this decision does not make any finding as to whether the apparent purchaser Good Wood Distribution Ltd. is entitled to be registered as owner.

I therefore find that the Complainant has not established abuse or bad faith and I do not need to consider any further points which might be made by the Registrant under paragraph 4.2.A.

**7. Decision**

For these reasons the complaint is dismissed.

**Signed: Dr. TJ McIntyre**

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**Dated: 30 May 2024**

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