

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

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**Decision of Independent Specialist**

**Case Number: 743**

**1. The Parties:**

<b>Complainant:</b>	Mary White (Stobbs (IP) Limited, trading as Stobbs) on behalf of Maxeon Solar Pte. Limited (EUIPO 018700481)
<b>Registrant:</b>	Gheorghe Popescu

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

sun-power.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	17 <sup>th</sup> September 2024
Complaint validated	17 <sup>th</sup> September 2024
Notification of complaint sent to Complainant	18 <sup>th</sup> September 2024
Notification of complaint sent to Registrant	16 <sup>th</sup> October 2024
Phone calls to registrant	6 <sup>th</sup> November 2024 – No answer
Letter sent to registrant	25 <sup>th</sup> November 2024 – No reply
Forum Opened	18 <sup>th</sup> September 2024
Complaint Form received	9 <sup>th</sup> October 2024
Response received	No response
Forum Closed	5 <sup>th</sup> December 2024
Adjudication Started	6 <sup>th</sup> December 2024
Adjudication Decision Posted	6 <sup>th</sup> December 2024
Adjudication Decision accepted / rejected	
Specialist Decision published	

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

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

The Complainant is a large international manufacturer of solar panels under (*inter alia*) the brand name SUNPOWER, and it sells these in Ireland through resellers. The Complainant has used that brand name since 1985 and has registered a number of trade marks for that name and terms incorporating that name, including an EU word mark for SUNPOWER which was registered on 5 April 2006 for Classes 9, 37, 42.

The Registrant registered the domain name sun-power.ie on 28 May 2024 and at the time of this decision that domain name resolves to a single page website ('the website') advertising residential and commercial solar panel sales, installation, maintenance and repair.

#### **5. Parties' Contentions**

##### **Complaint**

A summary of the Complaint is as follows:

The Complainant alleges that the domain name is identical or highly similar to its SUNPOWER trade mark, and that the sun-power.ie website misleads the consumer to believe that the domain holder is authorised to sell SUNPOWER products and use the SUNPOWER mark. The Complainant also alleges that it enjoys a reputation for high quality products in Ireland and that the website is seeking to take unfair advantage of that reputation.

The Complainant notes that the address listed on the website – 171 Green Street, Dublin 2 – does not exist (Green Street is in Dublin 1, and that street's numbering does not go to 171). The Complainant also notes that the phone number listed on the website – +353 (0)83 688705 – is a digit short to be a valid Irish number. The Complainant notes that there are no businesses registered with the Companies Registration Office under the name 'Sun-Power Limited'. The Complainant states that it has attempted to contact the Registrant through the email listed on the website, but that it has received no response.

##### **Response**

A summary of the Response is as follows:

The Registrant did not take part in this process.

# .ie Alternative Dispute Resolution NETNEUTRALS DISPUTE RESOLUTION SERVICE

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## 6. Discussions and Findings

### Matters to be proved:

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) that 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**

While the Complainant is not an Irish company it has provided evidence that it sells products in Ireland through a number of resellers. I therefore find that it has a sufficient connection with the island of Ireland as required by the *IEDR Policy on Registration and Naming in the .IE Namespace* (effective 21 March 2018) and would be eligible to register the domain name if it was not already registered.

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

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

The Complainant holds a European Union Trademark 009583303 in the word mark SUNPOWER and I find that it therefore has rights in an identifier very similar to the domain name (I disregard the hyphen in the domain name, which does not affect this similarity). It is not, therefore, necessary to consider any unregistered rights.

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

Having found that the Complainant has rights in the domain name it is unnecessary to consider the alternative ground that the Complainant's rights are negatively impacted by the domain registration or use.

### **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:

## **.ie Alternative Dispute Resolution**

### **NETNEUTRALS DISPUTE RESOLUTION SERVICE**

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‘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 and/or to act in a way which is in breach of the Registrant’s contractual obligations (as stated in the Registrant Terms and Conditions)

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

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 [...]

Failure by the Registrant to use the domain name for the purposes of email or a web site, the Registrant offering a domain name for sale, or use of domain parking services that may include advertising related to the keyword content of the domain name are not of themselves evidence of abuse or bad faith, however the Specialist may consider these issues in combination with other factors when deciding a case.

In this matter, the Complainant’s core argument is the final bullet quoted above, i.e. “that 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”. I accept this submission. The uncontested evidence is that the domain name is identical (disregarding the hyphen) to the trade mark held by the Complainant, and that the subject matter of the website (solar panels) is within the classes for which that mark is registered. In addition, the screen shots provided by the Complainant show that the website itself is entirely generic in its appearance and does not have any distinctive features or disclaimer which would differentiate it from the Complainant.

In reaching this conclusion I bear in mind that the Registrant has not taken part in these proceedings, and have considered the factors in paragraph 4.2(A) of the ADRP which it might have put forward as countering bad faith. However there is no evidence that any of these apply. In particular, there is no evidence that ‘the Registrant used the domain name or a name reasonably corresponding to the Domain Name in connection with a bona fide offering of

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

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goods or services' given that the phone number and address on the website are both invalid, there are no businesses registered with the Companies Registration Office under the name 'Sun-Power Limited', and that the Registrant did not respond to email inquiries.

I therefore find that the Complainant has met its burden of proof to establish that the domain name has been registered or used in bad faith.

**7. Decision**

For the foregoing reasons the Complaint is upheld and I direct that the domain name be transferred to the Complainant.

**Signed: Dr. TJ McIntyre**

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**Dated: 6 December 2024**

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