



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2201618</b>
<b>Complainant:</b>	<b>SolaX Power Network Technology (Zhejiang) Co., Ltd.</b>
<b>Respondent:</b>	<b>Roberto Carlos Breijo Villaverde</b>
<b>Disputed Domain Name:</b>	<b>&lt;solaxspain.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is SolaX Power Network Technology (Zhejiang) Co., of Ltd. No. 288, Shizhu Road, Tonglu Economic Development Zone, Tonglu County, Zhejiang Province.

The Respondent is Roberto Carlos Breijo Villaverde of Madrid, Spain.

The domain name at issue is <solaxspain.com>, registered by Respondent with Cronon GmbH, of Otto-Ostrowski-Strasse 7, 10249 Berlin, Germany.

**2. Procedural History**

Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”) electronically on April 25, 2022; the Centre confirmed the receipt of the Complaint on April 25, 2022.

On April 25, 2022, the Centre served an email to the Registrar to confirm the WHOIS information. On April 26, 2022, the Registrar confirmed by email to the Centre that the Disputed Domain Name was registered with the Registrar. The current Registrant of the Disputed Domain Name is Roberto Carlos Breijo Villaverde. The Registrar has verified that Respondent is bound by its registration agreement which is in the Spanish language, and has thereby agreed to resolve domain disputes brought by third parties following ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

On April 29, 2022, the Centre notified the Complainant with the WHOIS information of the Disputed Domain Name and the Language of Registration Agreement being Spanish and requested the Complainant to revise the Complaint on or before May 4, 2022. On April 29, 2022, the Centre invited Complainant to

substantiate its arguments on the language of proceedings by May 4, 2022. The Centre sent Complainant a reminder on May 5, 2022. On the same date, the Complainant submitted the amended Complaint in English and provided arguments in favor of English being the language of the proceedings. No response was received from the Respondent. On May 5, 2022, the Centre confirmed that the Complaint is in administrative compliance with the Policy and its Rules.

On May 5, 2022, the Centre served the Complaint and all Annexes, including Written Notice of the Complaint in Spanish, followed by the Written Notice of the Complaint in English, setting a deadline of May 25, 2022, by which Respondent could file a Response to the Complaint, via email.

On May 5, 2022, the Centre informed Respondent of Complainant's request to change the language of proceedings from Spanish to English, allowing Respondent to provide comments by May 10, 2022. This communication was delivered in Spanish, followed by its translation into English. No response was received from the Respondent on the request to change the language of proceedings.

On May 26, 2022, the Centre confirmed no Response was received within the deadline.

On May 26, 2022, according to Complainant's request to have the dispute decided by a single-member Panel, the Centre served a panelist appointment notice to Mr. Rodolfo Carlos Rivas Rea.

On the same day, having declared no conflict of interests between the parties, Mr. Rivas Rea is appointed as the Panelist. The Panelist shall render a decision on or before June 9, 2022.

### **3. Factual background**

#### **A. Complainant**

The Complainant is an internationally renowned photovoltaic inverter dedicated to developing, producing, and selling solar energy application equipment.

Complainant owns EU trademark registration no. 012166476 from 2014 for "X SOLAX POWER" in class 9.

The Disputed Domain Name was registered on January 16, 2022.

#### **B. Respondent**

The Respondent is an individual in Madrid, Spain.

#### 4. Parties' Contentions

##### A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The complainant has the prior rights to the trademark "X SOLAX POWER". The time of applying for the Disputed Domain Name is much later than the time of applying and using the trademark; The Disputed Domain Name <solaxspain.com> removes the suffix ".com", and the remaining part is "solaxspain", The English word "Spain" is the name of the country of Spain that lacks significance. This word is a commonly used word, which is not compared with the trademark in this case to determine confusion. Therefore, the main identifying part of the disputed domain name is "solax", which partially overlaps with the complainant's trademark "X SOLAX POWER".

The complainant believes that the Disputed Domain Name can easily lead to consumer confusion. The Respondent does not have legal rights to the Disputed Domain Name, and the Respondent has malicious intent in the registration and use of the Disputed Domain Name. Therefore, the behavior of the Respondent has seriously violated the Complainant's legal rights.

The Complainant's trademark "X SOLAX POWER", and comparing the abbreviation of the complainant's full name "SOLAX POWER" with the logos of the complainant's main products, we can determine that the most distinctive part of the complainant's mark is the "SOLAX" part, which is identical to the main identifying feature of the Disputed Domain Name.

By searching for "solax" on google, we can see that most of the search results point to the Complainant, so we can conclude that "solax" has a unique relationship with the Complainant. Therefore, the Complainant submits that the Disputed Domain Name satisfies these conditions.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name(s):

The Complainant investigated on the official trademark website of the Spain Trademark Office and confirmed no trademark application was found under the Respondent "Roberto Carlos Breijo Villaverde".

According to the Complainant's feedback, the Respondent is not in the identity of the Complainant's distributor or partner, and the Complainant has never directly or indirectly authorized the Respondent to use the "X SOLAX POWER" trademark and domain name in any form.

The Respondent's name is "Roberto Carlos Breijo Villaverde", and it is impossible for it to enjoy the relevant name rights for "X SOLAX POWER".

The Respondent does not have any rights or legitimate interest in the Disputed Domain Name.

- iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith:

The Complainant believes that the registration time of the Disputed Domain Name was January 16, 2022, which was far later than when the complainant applied for and used the trademark "X SOLAX POWER", in the world. Before the Disputed Domain Name was registered, the Complainant's "X SOLAX POWER" had already gained sufficient visibility worldwide.

The Complainant believes that the Respondent applied for the Disputed Domain Name with malicious intent. The Complainant is a world-renowned provider of clean energy equipment. The Complainant has a high global profile in the world. The website's content pointed to by the Disputed Domain Name is basically the same as that of the Complainant's official website. This clearly shows that the Respondent knew or should have known the Complainant's business name and trademark when registering the Disputed Domain Name. By the Respondent's use of the Disputed Domain Name, it is inferred that the Respondent registered the Disputed Domain Name in bad faith.

The Respondent's true intent in registering the Disputed Domain Name was to sell its products. The Respondent did not prominently display that there was no affiliation between itself and the Complainant on its website.

The Complainant cannot identify whether the products sold by the Respondent are counterfeit, and then real users are even more unable to distinguish them. The Respondent attracts Internet users to its website through the possibility of confusion with the Complainant's trademark and in such a way as to "hitchhike". The Complainant believes that the Respondent has infringed the rights of others to obtain commercial benefits.

The Complainant believes that the Respondent's use of the Disputed Domain Name does not demonstrate sufficient "good faith." The Complainant believes that the above qualifies as "bad faith use" for purposes of Section 4(b)(iv) of the Policy: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or a product or service on your web site or location.

In summary, the significant identifying aspects of the Disputed Domain Name are sufficiently similar to the Complainant's "X SOLAX POWER" trademark to confuse consumers. The Respondent has no legitimate rights and interests in the Disputed Domain Name. The Respondent has acted in bad faith in registering and using the Disputed Domain Name. The actions of the Respondent have seriously infringed upon the lawful rights and interests of the Complainant. Based on the above argument, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the Disputed Domain Name be transferred to the Complainant.

iv. Language of Proceedings

According to the registrar agreement, in this case, the Complainant should theoretically use German to file a complaint, but the Disputed Domain Name points to a page that is in Spanish.

The Complainant considers that the translation of the evidence, in this case, would be too difficult and therefore applies to the Panel to use English; English, as an international language, can cover German, Spanish, and the Complainant's country, China, as described above.

B. Respondent

The Respondent has not filed an official response within the required period. The Respondent also did not provide comments on the request to change the language of proceedings.

**5. Findings**

The ICANN Uniform Domain Name Dispute Resolution Policy provides, in Paragraph 4(a), that each of three findings must be made for a Complainant to prevail:

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

**A) Procedural Matters**

According to paragraph 11(a) of the Rules, unless otherwise agreed by the parties or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. The Registration Agreement is in Spanish. The Complaint was filed in English.

On May 5, 2022, the Complainant submitted a reply to the Centre requesting the language of the proceedings be English noting that the Complainant

considers that the translation of the evidence, in this case, would be too difficult and therefore asks the Panel to use English. Since English, as an international language, can cover German, Spanish, and the Complainant's country, China.

The Respondent was provided an opportunity to comment on the language of proceedings at the moment of the Written Notice of the Complaint on May 5, 2022, allowing the Respondent to provide comments by May 10, 2022. This communication was delivered in Spanish, followed by its translation into English. From the record at hand, it appears that the Respondent did not submit a Response, nor did it formally object to English as the language of the proceedings.

The Centre has, throughout the proceedings, issued its case-related communications, including the Centre's Written Notice of the Complaint documents, in both Spanish and English. The Respondent has chosen not to participate in the proceedings and has been notified of its default.

Although the Panel is not entirely convinced by the Complainant's sparse arguments on the language of the proceedings, including the Complainant mistakenly recognizing German as the language of Registration, the Panel considers the following:

- a) The Respondent did not object to the Complainant's request that English be the language of the proceedings.
- b) The Respondent has been given a fair chance to object to the Complainant's choice of English as the language of the proceedings but has not done so, nor has it participated in the proceedings generally.
- c) The Respondent has been given the possibility to submit a Response in Spanish.
- d) The Centre's communications have been in Spanish and English, with Spanish being prominently displayed at the top of each communication.
- e) The Disputed Domain Name contains an element, namely "Spain" in English.

Upon considering the above, the Panel concludes, according to the Rules, paragraph 11(a), and being persuaded by WIPO's 3.0 Overview paragraph 4.5.1. "[w]here it appears the parties reasonably understand the nature of the proceedings, panels have also determined the language of the proceeding/decision taking account of the panel's ability to understand the language of both the complaint and the response such that each party may submit pleadings in a language with which it is familiar", that there is no prejudice or unfairness to the Respondent for these proceedings to be conducted in English and for its decision to be rendered in English. Accordingly, the Panel determined that the language of these administrative proceedings be English.

## **B) Identical / Confusingly Similar**

The Panel is satisfied that the Complainant has shown its rights to the "X SOLAX POWER" trademark since 2014.

Now, the Panel must analyze if there is a confusing similarity between the Disputed Domain Name and the trademark. As contained in the record before the Panel, the Disputed Domain Name reproduces the most distinctive element of the trademark, namely, "SOLAX", with the addition of the term "Spain", which is the country where the Respondent is located.

As per paragraph 1.7 of the WIPO 3.0 Overview, "[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." In this case, the Disputed Domain Name incorporates the dominant part of the trademark, namely "SOLAX", which also appears to be the dominant part of the Disputed Domain Name since "SPAIN" seems to refer to the location of the Respondent, serving as a sort of qualifier to the dominant part of the Disputed Domain Name.

Having considered all of the above, the addition of the term "SPAIN" is immaterial enough to dispel a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademark.

Consequently, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

## **C) Rights and Legitimate Interests**

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the Disputed Domain Name, the Panel must turn to the uncontested facts. These indicate that a) the Respondent is not commonly known by the Disputed Domain Name; b) the Respondent has no license or authorization to use the trademark; c) the Respondent is not affiliated with the Complainant and d) the Respondent is not authorized to carry out any activity for the Complainant and has no business dealings with the Complainant.

In failing to respond to the Complainant's contentions, the Respondent has not rebutted the *prima facie* case, as described in paragraph 2.1 of WIPO 3.0 Overview.

In addition to this, the Respondent's use of the dominant element of the trademark for the sale of what appears to be competing products to those of the Complainant, regardless of these being counterfeit or not, seems to indicate that the Respondent not only was aware of the Complainant but

deliberately targeted the Complainant. This is likely to benefit from the association with the Complainant and confuse Internet users regarding the source of sponsorship. A practice like this can never be considered a *bona fide* offering under the Policy.

The Panel finds for all the reasons set out above (and below under the third element analysis) that the Respondent's conduct runs contrary to many of the persuasive principles contained in paragraphs 2.4 and 2.5 (including subsections) of the WIPO 3.0 Overview.

In sum, based on the facts and analysis above, in addition to the Respondent's failure to come forward with evidence showing rights or legitimate interests in the Disputed Domain Name, the Panel finds that the Complainant has established that the Respondent lacks any rights or legitimate interests in the Disputed Domain Name under paragraph 4(a)(ii) of the Policy.

#### **D) Bad Faith**

As per the record and evidence, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the Disputed Domain Name. This conclusion is reinforced by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the dominant element of the trademark. Additionally, the Respondent displayed on the website associated with the Disputed Domain Name what could be characterized as competing products to those of the Complainant without specifying the nature of the relationship with the Complainant. As per declarations of the Complainant, there is no business relationship with the Respondent, and although the Panel cannot determine if the products being sold by the Respondent are counterfeit, it is apparent that the Respondent deliberately targeted the Complainant to benefit from the association to the Complainant and confuse Internet users as to the source of sponsorship of the Disputed Domain Name.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the Disputed Domain Name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

## **6. Decision**



For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the Disputed Domain Name to the Complainant.



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Rodolfo Carlos Rivas Rea  
Panelist

Dated: 30 May, 2022