

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

FIRST SOLAR, INC.
28101 Cedar Park Blvd.
Perrysburg, Ohio 43551,

Plaintiff,

v.

TOLEDO SOLAR, INC.
1775 Progress Drive
Toledo, Ohio 43551,

Defendant.

) **Case No.**

) **Judge**

) **VERIFIED COMPLAINT FOR**
) **INJUNCTIVE RELIEF AND**
) **DAMAGES**

For its Verified Complaint for Injunctive Relief and Damages, Plaintiff First Solar, Inc. (“First Solar”) alleges as follows:

Introduction

1. This is an action for violations of the Lanham Act, 15 U.S.C. § 1125, and the Ohio Deceptive Trade Practices Act, ORC § 4165, for false designation of origin and passing off goods of another by Defendant Toledo Solar, Inc. (“Toledo Solar”). Toledo Solar has falsely represented in commerce, promotion and commercial advertising that Toledo Solar manufactured solar modules that in fact were manufactured by First Solar. Toledo Solar’s false and deceptive activities include: (1) falsely claiming it manufactured in Ohio solar modules that Toledo Solar provided for installation at the Ohio Governor’s Mansion in Columbus; (2) falsely representing that solar modules it sold to a distributor were manufactured by Toledo Solar in Ohio; and (3) advertising on social media certain solar modules as being manufactured by Toledo Solar in Ohio.

In fact, in all three of the above instances, the solar modules in question were solar modules manufactured by First Solar at its manufacturing facility in Malaysia.

2. First Solar has been, and, absent injunctive relief will continue to be irreparably harmed by Toledo Solar's conduct which exposes First Solar to significant liability risk, and the entire photovoltaic ("PV") industry to immense reputational risk by raising doubt as to the integrity of its participants, and the supply chains through which their products come to market.

3. Consumers who purchased and or installed solar modules deceptively and falsely marketed by Toledo Solar will likewise be harmed, absent injunctive and other relief, as contrary to their careful planning, reasonable expectations and beliefs, they may not be eligible for the maximum investment tax credit for projects incorporating solar modules manufactured entirely in the United States.

4. Toledo Solar should be immediately and permanently enjoined from marketing, selling and/or installing any mislabeled solar modules, and should be Ordered to notify all purchasers of these mislabeled solar modules of their provenance with all deliberate speed.

Parties

5. Plaintiff First Solar is a Delaware corporation with its principal place of business in Tempe, Arizona. First Solar is a U.S. based, world-leading manufacturer of photovoltaic (PV) modules for solar energy production.

6. Defendant Toledo Solar is Delaware limited liability company with its principal place of business in Perrysburg, Ohio.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331 and 15 U.S.C. 1125. This Court also has jurisdiction over the state law claim as it arises

under the same common nucleus of operative facts, and 28 U.S.C. Section 1367 authorizes the Court to exercise supplemental jurisdiction over such claims.

8. This Court has personal jurisdiction over Defendant because it resides in this District and a number of Defendant's acts giving rise to this action occurred in this District.

9. Venue is proper in this District under 28 USC § 1391 because a number of the facts and events giving rise to this action occurred in this District. In addition, Defendant is present in this District.

Background Facts

10. First Solar is the largest US headquartered solar module manufacturer, with existing manufacturing facilities in Perrysburg, Ohio, Malaysia and Vietnam. First Solar has been manufacturing solar modules at its Perrysburg facilities since 2002. In 2021, First Solar broke ground on a new \$680 million, 3.3 GWDC facility in Lake Township, Ohio. With the new facility, First Solar's Northwest Ohio footprint will have a total annual capacity in excess of 6 GWDC, which is believed to make it the largest fully vertically integrated solar manufacturing complex outside China. In addition, in 2022, First Solar began work on a \$270,000,000 research and development facility in Perrysburg.

11. Toledo Solar was incorporated in 2019. It claims to have commenced manufacturing operations of solar modules in 2021 and that it has a 100 MWDC annual production capacity.

12. In 2004, legacy solar modules manufactured by First Solar in Perrysburg were installed on the carriage house at the Governor's mansion in Columbus. In early 2022, a representative of a non-profit, Green Energy Ohio, contacted First Solar in Perrysburg and

indicated that it was replacing the almost 20-year-old First Solar manufactured solar modules at the Governor's mansion and asked what to do with the legacy modules.

13. First Solar explained to Green Energy Ohio that First Solar provides recycling for its modules that are taken out of service and First Solar would retrieve and recycle the modules from the roof of the Governor's mansion.

14. In the summer of 2022, a First Solar employee went to the Governor's mansion to retrieve the legacy First Solar modules. While on the site, First Solar observed that the new modules being installed were in boxes labeled as being "Made in the USA" and manufactured by Toledo Solar as Model Number TS1. A picture of the shipping label on the crates is attached hereto as Exhibit A.

15. The First Solar employee looked at the solar modules in the shipping crates that Toledo Solar was representing it manufactured in the U.S.A. These modules were in fact First Solar Series 4 modules manufactured by First Solar at its facilities in Malaysia.

16. First Solar imprints a serial number showing the date and location of manufacture on the inside of the top glass panel of each solar module it manufactures. This serial number also is used by First Solar to track sale and warranty information for solar modules it manufactures.

17. The solar modules that were labeled as manufactured by Toledo Solar at the Governor's mansion included the First Solar serial number imprint on the inside of the top glass panel. On the outside of the top glass panel of these solar modules, Toledo Solar had etched a new imprint. A picture showing the imprints on these solar modules in the crates for installation at the Governor's mansion is attached hereto as Exhibit B.

18. The First Solar serial number from the solar modules shipped by Toledo Solar to the Governor's mansion identify that these solar modules were First Solar Series 4 modules manufactured by First Solar at its Malaysia facility in 2018.

19. The First Solar serial numbers on the solar modules Toledo Solar represented it manufactured show that they were sold by First Solar to a purchaser in Maumee, Ohio in July 2019.

20. The quantity of the Purchase Order to the purchaser in Maumee represented about 13,000 individual First Solar Series 4 Modules (rated at 115W) and about 80 individual First Solar Series 6 Modules (rated at 390W).

21. In 2019, First Solar manufactured Series 4 modules at its Malaysia manufacturing facility. The label for these Series 4 modules shows that they were "Made in Malaysia" by First Solar at its facility in Kedah, Darul Aman, Malaysia. Likewise, the label included with the Purchase Order shows that the newer Series 6 modules were manufactured in Ohio.

22. First Solar also observed that the First Solar Series 4 modules in the shipping crates at the Governor's mansion and marked as being manufactured in the U.S.A. by Toledo Solar had been altered in two ways. First, Toledo Solar had etched a new serial number on the outside of the top glass panel. Second, Toledo Solar had removed the First Solar junction box at the back of the module and installed a new junction box.

23. The etching of the new serial number on the outside of the module is not a proper practice, can damage the modules, and nullifies First Solar's warranty on the module.

24. In addition, Toledo Solar attached new junction boxes in an improper and potentially dangerous manner that could lead to electrical arcing. A picture of the junction box on

the back of a module provided by Toledo Solar at the Governor's mansion is attached as Exhibit C.

25. There currently are about 48 modules on the Governor's mansion that are incorrectly designated as being manufactured by Toledo Solar in the USA, while in fact they were manufactured by First Solar in Malaysia.

26. In addition, each of these modules was improperly altered by Toledo Solar as described above.

27. In January 2023, First Solar ordered for testing 200 Toledo Solar 115w modules from a retail distributor of solar modules.

28. The modules were delivered to First Solar in February 2023. The modules included a label indicating that they were manufactured by Toledo Solar and Made in the USA.

29. Toledo Solar provided a notarized certificate of origin verifying that the modules it consigned to the distributor for sale were "the products of the United States of America." A copy of the certificate of origin is attached as Exhibit D. This certificate was forwarded by the distributor to First Solar as the purchaser of the modules.

30. Like the modules provided by Toledo Solar for the Governor's mansion, the modules consigned by Toledo Solar for sale included First Solar's manufacturing serial numbers showing they were manufactured by First Solar in Malaysia.

31. The solar modules consigned by Toledo Solar for sale included First Solar's junction boxes.

32. Recently, Toledo Solar has been falsely passing off First Solar modules as being manufactured by Toledo Solar through social media.

33. For example, in November 2022, Toledo Solar advertised on its LinkedIn page a photograph of a solar module with the statement that: “These are 115W. They basically are the same as First Solar Series 4 panels.” The pictures on the Toledo Solar LinkedIn post show modules with First Solar’s serial numbers under the glass panels with new Toledo Solar serial numbers etched over on the outside of the glass panel.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(A) – FALSE DESIGNATION OF ORIGIN AND PASSING OFF GOODS OF ANOTHER

34. First Solar incorporates by reference each and every allegation in the preceding paragraphs as if fully restated herein.

35. Toledo Solar has made and continues to make in commerce misleading and false designation of origin and false designations of fact in advertising, promoting and marketing solar modules in this District and throughout the United States.

36. Toledo Solar’s misleading and false designations of origin and false designations of fact fall generally into the following categories:

- a. False claims that it manufactured in Ohio solar modules that were installed at the Ohio Governor’s mansion in Columbus;
- b. False representations that solar modules it sold to a distributor were manufactured by Toledo Solar in Ohio; and
- c. Falsely advertising that certain solar modules were manufactured by Toledo Solar in Ohio.

37. Toledo Solar’s false designations of origin and false designations of fact were made and are being made in interstate commerce in this District and elsewhere, and the effects of Toledo Solar’s acts were intended to and do fall upon First Solar and others in this District and elsewhere.

38. Toledo Solar's conduct, as described herein, violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

39. As a result of the foregoing, First Solar has been damaged in an amount to be determined at trial.

40. Because Toledo Solar has made and continues to make misleading and false designations of origin and fact in intentional disregard of their falsity and misleading nature, First Solar is entitled to an award of enhanced damages under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a). Moreover, this is an exceptional case for which the Court should award First Solar its reasonable attorney's fees.

41. Toledo Solar's violations of the Lanham Act, as described herein, have caused and will cause irreparable harm to First Solar for which it has no adequate remedy at law. The public interest will be served by preventing Toledo Solar from making false claims of origin and passing off First Solar modules as its own, and Toledo Solar will not be harmed by the requested injunctive relief.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES ACT, ORC § 4165

42. First Solar incorporates by reference each and every allegation in the preceding paragraphs as if fully restated herein.

43. Toledo Solar's conduct, as described herein, violates Ohio's Deceptive Trade Practices Act, including but not limited to, ORC §§ 4165.02(A)(1) (passing off goods or services as those of another); (2) (causing likelihood of confusion or misunderstanding as to the source of goods); and (4) (use of deceptive designation of geographic origin).

44. Because Toledo Solar's violations of the Ohio Deceptive Trade Practices Act, as described herein, were willful, First Solar is entitled to its reasonable attorney's fees pursuant to ORC § 4165.03(B).

45. Toledo Solar's violations of the Ohio Deceptive Trade Practices Act, as described herein, have caused and will cause irreparable harm to First Solar for which it has no adequate remedy at law. The public interest will be served by preventing Toledo Solar from making false claims of origin and passing off First Solar modules as its own, and Toledo Solar will not be harmed by the requested injunctive relief.

Remedies

Wherefore, First Solar requests the following relief from the Court:

- a. A preliminary and permanent injunction prohibiting Toledo Solar from continuing to falsely represent in commerce, promotion and commercial advertising that Toledo Solar manufactured solar modules that in fact were manufactured by First Solar;
- b. An injunction requiring Toledo Solar to notify every customer who purchased First Solar manufactured solar modules from Toledo Solar of the actual origin of the solar modules and of any alterations made by Toledo Solar to the modules;
- c. The disgorgement of any profits made by Toledo Solar from the sale of solar modules it falsely represented it manufactured, but in fact were manufactured by First Solar;
- d. The recovery of First Solar's reasonable attorney fees and costs pursuing this action;
- e. Such other and further relief as this Court deems just and proper.

Date: May 24, 2023

Respectfully submitted,

s/ Steven A. Friedman

Steven A. Friedman (0060001)

Roger M. Gold (0055905)

SQUIRE PATTON BOGGS (US) LLP

1000 Key Tower

127 Public Square

Cleveland, OH 44114

Telephone: +1.216.479.8500

Facsimile: +1.216.479.8780

E-mail: steven.friedman@squirepb.com

E-mail: roger.gold@squirepb.com

COUNSEL FOR PLAINTIFF
FIRST SOLAR, INC.