



தமிழ்நாடு தமில்நாடு TAMILNADU

22 MAR 2019

DR. SUDHIR RAJA RAVINDRAN
V:BEDHARAJAN
Stamp Vendor
L.No: 12144/B1/96
Ekkattuthangal, Ch-32.
Mobile No: 9710019475

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: 21st June, 2019

Dell Inc.,

One Dell Way, Round Rock,

Texas, USA – 78682

COMPLAINANT

VERSUS

1. **Olagappan SP** of the organization Comcare,
Shop No. 7 D.No:110,
Trinity Complex 4th, Avenue Road,
Chennai Tamil Nadu – 600 083

Also at

Comcare India,
Shop No. 6,7,8 Trinity Complex,
110 4th Ave Main Road,
Ashok Nagar, Chennai – 600 083

RESPONDENT(s)/REGISTRANT(s)

DISPUTED DOMAIN NAME: "DELLSTOREASHOKNAGAR.CO.IN"

1. Parties

- 1.1. The Complainant in this arbitration proceeding is represented by Mr. Akhilesh Kumar Rai,
AZB & Partners, Plot No. AS, Sector 04, Noida- 201301, U.P. India.
2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Olagappan S of the organization Comcare.
3. **The Dispute:** The domain name in dispute is "DELLSTOREASHOKNAGAR.CO.IN". According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Net 4 India Limited.

4. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	27/05/2019
2.	Date on which consent was given to act as an Arbitrator	28/05/2019
3.	Date of appointment of Arbitrator	31/05/2019

4.	Date on which the Hard copy of the complaint was received	03/06/2019
5.	Date on which notice was issued to the Respondent	04/06/2019
6.	Due date for filing of Counter Statement by the Respondent	11/06/2019

5. Procedural History

- 5.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 5.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 5.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 5.4. On June 04th, 2019, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before June 11th, 2019.

6. Factual Background:

6.1. The Complainant is the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant has diversified and expanded its activities which presently include, but are not limited to, computer hardware, software, peripherals, computer-oriented products such as phones, tablet computers etc, and computer-related consulting, installation, maintenance, leasing, warranty and technical support services. The products of the Complainant are widely available in India since 1993. The said products are marketed in India by the subsidiaries of the Complainant in India. The Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. Complainant's products are sold through a wide network of 'DELL' exclusive stores and at other stores in around 200 cities in India.

6.2. The Respondent registered the disputed name "DELLSTOREASHOKNAGAR.CO.IN" on August 1st, 2018.

7. Parties Contentions

7.1. Complainant's Submission:

7.1.1. The Complainant claims that it is evident that the Complainant has a long and extensive use of the mark 'DELL' and by virtue of such use, the trademark 'DELL' can be termed as a well-known mark. In order to protect the status of the mark 'DELL' from third party adoption, the Complainant undertakes various periodical searches. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.dellstoreashoknagar.co.in.

7.1.2. The Complainant Claims that the Whois lookup for the domain www.dellstoreashoknagar.co.in, did not disclose much, as the particulars of the registrant had been hidden, in order to avoid detection and ensure the continuity of the

illegal business by the Respondent. Further the Complainant states that the details of the registrant, as shared by the .in Registry, have been mentioned above.

7.1.3.The Complainant Claims that upon perusal of the webpage hosted on the Impugned Domain www.dellstoreashoknagar.co.in, it was observed that the Respondent represents itself to be the exclusive store of the Complainant and mentions the same as Comcare Dell Exclusive store. Further the Complainant claims that the manner of writing the same represents that there is collaboration between the Complainant and the Respondent. The Complainant has provided a screen print from the website of the Impugned Domain (Webpage), evidencing the above averments as per Annexure 5 of the Complaint.

7.1.4.The Complainant claims that the Respondent seems to provide its services both in India and Canada. Further the Complainant claims that the Respondent states that its business in India was so well received that it expanded to Canada as well.

7.1.5.The Complainant claims that on the Respondent's web page, the Respondent appears to be providing repair and maintenance service, as well as the products of the Complaint for sale. Moreover, for inviting queries, the Respondent has also provided the email id- dell@comcare.in. The Complainant has provided a screen print from the Webpage, evidencing the above averments as per Annexure 6 of the Complaint.

7.1.6.The Complainant claims that the Respondent's Webpage also displays various pictures of a Dell store and states that it is pertinent to mention that the pictures depict the exact get up of a Dell store, using the exact same combination of blue and white, used by the Complainant in its stores. Therefore the Complainant claims that the only reason of doing the same, is to dupe the innocent customers into believing that the Respondent is associated with the Complainant. The Complainant further claims that it



is pertinent to mention that the Respondent also displays the Dell logo mark of the Complainant as submitted in Annexure 7 of the Complaint.

7.1.7.The Complainant claims that in India, the Complainant has both registered and pending registration under various Classes with trademark Application numbers 1190375, 1190376, 1239349, 1239350, 1335057, 575115, 2097561, 923915, 2551729, 2551716, 2551736, 3282749, 2554014, 2619362, 2619364, 2096701, 2476964, 805105, 1238063 and 826095.

7.1.8.The Complainant requests for the following relief: "Impugned Domain (www.dellstoreashoknagar.co.in), which is confusingly similar to the Complainant's trademark DELL, be transferred to the Complainant, who is the legitimate owner of the DELL trademark."

7.2. Respondent:

7.2.1.The Respondent did not file any reply to the Complaint.

7.3. Identical or Confusingly Similar

7.3.1.The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

7.3.2.The Complainant has filed documents of its registered trademarks to prove it has rights in over the trademark "DELL" in India which is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "DELL" in India.

7.3.3.The disputed domain name incorporates the variations of trademark "DELL" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark for services identical to that of the Complainant. A domain name that entirely incorporates a Complainant's mark is sufficient to establish



the confusing similarity of the disputed domain name with the mark. This position was upheld in *Hugo boss trademark management GmbH & Co. KG v. Oliver Cunningham [INDRP/1080]* and *Ducati Motor Holding S.p.A. v. Abhishek Chordia [INDRP/ 834]*.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

7.4.3. The Complainant is the registered proprietor for the trademark "DELL" and has not licensed or otherwise permitted the Respondent to use the mark "DELL" or to apply for or use the domain name incorporating the said mark. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent has registered the domain name www.dellstoreashoknagar.co.in with a mala fide intention to show that the domain name is associated with the Complainant.

7.4.4. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no



material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights.

7.4.5. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating a third party's trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* use under the Policy. This view has been upheld in *Starbucks Corporation v. Mr. M.C. Nolten INDRP/439 and Dell Inc. v. Mani, Soniya INDRP/ 765*.

7.4.6. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant have asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "DELL", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose.

7.5.3. The Arbitrator finds the Complainant have established its prior adoption and rights in the trademark "DELL". Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a registered mark to attract unsuspecting

users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

7.5.4. The registration of a domain name that is confusingly similar or identical to a trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name is being operated or endorsed by the Complainant. No doubt, this action of the Respondent clearly constitutes an attempt to free-ride on the Complainant's goodwill and reputation. This view was upheld in the decision in *Mahindra Holidays & Resorts India Ltd V Mahindra Holidays INDRP/1042 and Pentair Inc. v. Bai Xiqing INDRP 827*.

7.5.5. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.

7.5.6. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.



8. Decision

- 8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.
- 8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name "WWW.DELLSTOREASHOKNAGAR.CO.IN" to the Complainant.
- 8.3. The Award is accordingly passed on this the 21st day of June, 2019.

Place: Chennai



Dr. Sudhir Raja Ravindran

Sole Arbitrator