



पश्चिमबङ्ग पश्चिम बंगाल WEST BENGAL

AC 603270

Arbitral Award

Disputed Domain Name: Dellservicecenterinnoida.in

In INDRP case number 1161 of 2019

.IN Registry(National Internet Exchange of India)

Dell Inc.,
One Dell Way, Round Way
Texas
786782
United States of America
(Complainant)

C/O AZB Partners
CyLaw Solutions
805, Kaveri Kaustubh I
Bain Bazar, Sikandra, Agra -282007

Complainant

v

Biswojit Das
Lappytech Solutions,
B-9 Oceana Plaza, Sector-18
Noida- 201301
Uttar Pradesh
India

Respondent

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1. The Complainant is Dell Inc., One Dell Way, Round Rock, Texas, 78682, USA represented by advocate Akhilesh Rai, AZB & Partners, Plot No. A8, Sector 4, Noida – 201301, Uttar Pradesh, India.
2. The Respondent is Biswojit Das, Lappytech Solutions, B-9 Oceana Plaza, Sector 18, Noida – 201301, Uttar Pradesh, India.

Procedural History

3. I am the appointed sole arbitrator by the National Internet Exchange of India on 30 October 2019 under INDRP Rules of Procedure in above matter. The arbitration is deemed commenced on the same day. The seat of Arbitral Tribunal is Kolkata, India.
4. These are mandatory arbitration proceedings 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 ("the Rules") were approved by NIXI on 28th June 2005 in accordance with the Arbitration and Conciliation Act, 1996. By registered the disputed domain with the NIXI accredited Registrar, the Respondent gave its consent to the resolution of the domain name disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder. Similarly, by its complaint dated October 17, 2019, the Complainant gave its consent to the arbitration of this dispute.
5. On 22 August 2019 the domain DELLSERVICECENTERINNOIDA.in was registered by the Respondent. The Complainant by a petition dated 17 October 2019 filed this Complaint. On 30 October 2019 this Tribunal was constituted.
6. The Respondent has declined to participate in these proceedings. Both the parties had opportunity to place evidence in support of their case as chosen by them. The parties have not offered any further evidence, explanations or documents in support of their positions.

7. The documents and evidence placed before the Tribunal has been admitted and considered in the arbitral proceedings in accordance to the Arbitration and Conciliation Act 1996 and other mandatory provisions of law.

Background

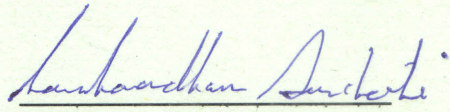
8. The Complainant Dell was founded in 1984 as a limited company in the United States and describes itself as the world's largest direct seller of computer systems. It owns and operates the domain names and www.DELL.co.in and www.DELL.com.
9. The Complainant states that it has registered the trademark DELL and annexes an exhaustive list of its trademarks in India and all across the world.
10. The Complainant contends "that 'DELL' is not a common word in India and the adoption of the same by the Respondent for a website only reeks of dishonesty in the first instance. The Respondent has no right whatsoever to use or adopt the well-known trademark 'DELL' of the Complainant."
11. The Complainant contends that pursuant to INDRP Rule 3(b)(vi) the domain name DELLSERVICEINNOIDA.in is confusingly similar to the trademark DELL in which the Complainant has rights.
12. Complainant further strongly submits that that the Registrant has to demonstrate the use of or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or that the Registrant has been commonly known by the domain name. Respondent can satisfy neither criteria, and on the contrary the Respondent's behaviour demonstrates the existence of bad faith within the meaning of paragraph 6 of the INDRP Policy.

Findings

13. The Tribunal has examined each and every one of the Complainant's contentions but has considered it unnecessary to express a view on each of them. The Tribunal does not necessarily accept the contention that DELLSERVICECENTERINNOIDA could not comprise a fair use of the Dell trademark. There are circumstances where the use of a commonly used trademark, particularly one which is virtually synonymous with laptop computers might qualify as fair use. See, for example, the website 9to5mac.com which uses the word "mac", even though it is an unofficial Apple fan site.
14. However the facts and circumstances of the present case are very different. The Respondent has not participated in these proceedings, and produced no evidence that it was providing any legitimate services relating to Dell computers. As such, the inference is overwhelming that it was simply engaged in cyber-squatting and has decided to abandon the domain name in the face of this action.
15. I note further, for the avoidance of doubt, that even if such inference cannot legitimately be drawn, the Respondent's specific choice of the domain name (DELLSERVICECENTERINNOIDA) would improperly give the impression that it was an authorized or legitimate Dell service center and not merely providing services for Dell laptops. Since the Complainant has led ample and uncontroverted evidence that the Respondent has no connection or authorization with Dell computers, I would hold for this additional ground that the Respondent was in violation of the INDRP Policy.

Decision

16. In the Tribunal's view this is a case in which the registration in the name of the Respondent should be cancelled forthwith. The domain name should be transferred to the Complainant.
17. Costs follow the outcome. The Respondent is ordered to pay the cost of the proceedings at rupees fifty thousand only.



Harshavardhan Sancheti

Sole Arbitrator

19.12.2019