



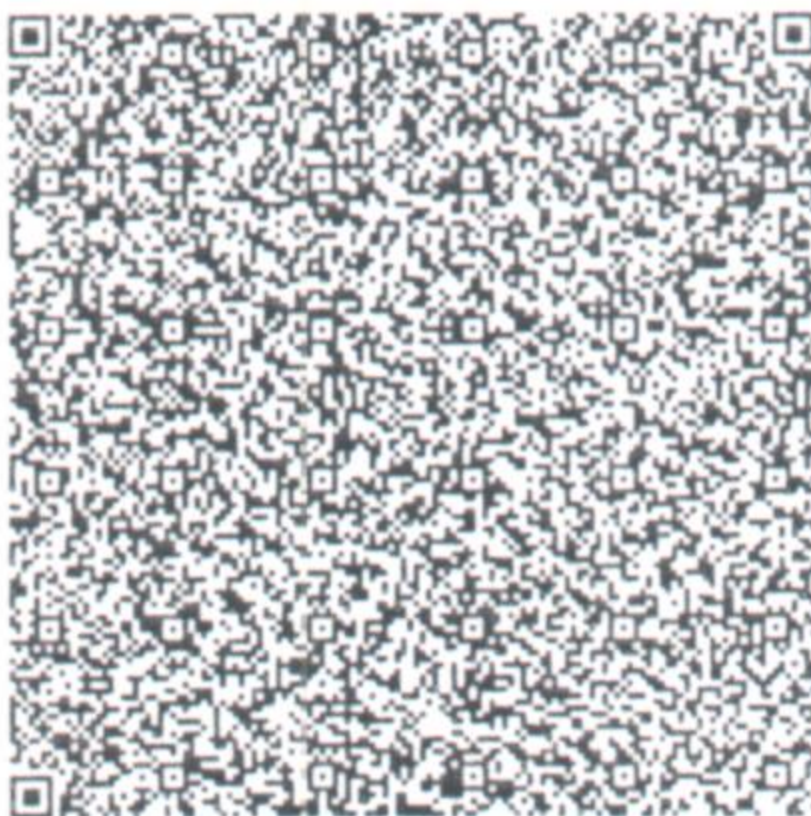
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL29906267460602O
Certificate Issued Date	: 22-Mar-2016 03:10 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL921303585727282962590
Purchased by	: SONAL KUMAR SINGH
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SONAL KUMAR SINGH
Second Party	: Not Applicable
Stamp Duty Paid By	: SONAL KUMAR SINGH
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE THE SOLE ARBITRATOR UNDER THE
.In DOMAIN NAME DISPUTE RESOLUTION POLICY
IN THE MATTER OF:**

Dell Inc.
One Dell Way
Round Rock, Texas 78682-2244
USA

...(Complainant)

v.

Mani Soniya
Mathaakaavanur, Dharmapuri
Coimbatore, Tamil Nadu, 635301

...(Respondent)

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

The Parties

The Complainant in this proceeding is: Delaware Corporation, having its registered office at One Dell Way, Round Rock, Texas 78682-2244, USA.

Respondent in this proceeding is Mani, Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu, 635301.

The Domain Name & Registrant

The disputed domain name **delllaptoppricelist.in** is registered with Good Domain Registry Private Limited, 34-A, Main Road, Kennedy Square, Perambur, Chennai, Tamilnadu 600 011, India

Procedural History

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name delllaptoppricelist.in.

.IN registry had supplied the copy of the Complaint and Annexures to me.

On 27.01.2016, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the abovementioned mail itself, I requested the Complainant to supply the copy of the complaint with annexures to the Respondent and to provide me with the details of the service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 27.01.2016 with the instructions to file his reply within 15 days from the receipt of the stated email or the receipt of the copy of Complaint, whichever is later.

On 02.02.2016, Counsels/Representative of the Complainant sent the soft copy of the Complaint to the Tribunal.

On 15.02.2016, The Good Domain Name Registry informed that the respondent has been notified about the complaint and that if no response is received from the respondent within the time frame provided by the



Arbitrator then the registry will help in transferring the domain name, if needed.

On 18.02.2016, the Tribunal informed the parties that no response has been received from the respondent and that in the interest of justice, the respondent was directed to file his response to the complaint within five (5) days from the date of receipt of the email. It was further informed to the parties that on the failure of the respondent to file his reply within such period, the arbitrator will proceed with the matter on the basis of the pleadings and the documents already on record and will pass the award.

On 26.02.2016, The Tribunal informed the parties that vide email dated 18.02.2016, the respondent was given another opportunity to file its reply within five days but it failed to comply with the directions. The Tribunal also informed that it has taken note of the e-mail dated 24.02.2016 from the Good Domain Name Registry wherein the registry informed the Tribunal that they have received the confirmation from the respondent to transfer the domain name to the complainant.

On 26.02.2016, The Tribunal directed NIXI to provide the tribunal with a report of the courier agency showing that the hard copy of the complaint and the annexures have been duly served on the respondent on the postal address as provided in the WHOIS database within two days from the email of the Ld. Tribunal.

On 29.02.2016, NIXI informed the Tribunal that the courier containing the complaint and the annexures has returned back to NIXI's office undelivered.

On 02.03.2016, the Tribunal informed the parties that it has also taken note of email dated 02.02.2016 of the complainant where the soft copy of the complaint has been sent to the respondent, therefore, the complaint has been duly served upon the respondent. The Tribunal also stated that it has also given sufficient opportunity to the respondent to file its reply to the complaint but the respondent however, failed to file his reply. Therefore, the Tribunal will pass its award on the basis of the documents on record.



Apropos of the material on record before the Tribunal, this award is passed.

I have perused the entire record and all the annexures / documents.

Factual Background

The following information is derived from the Complaint and supporting evidence submitted by the Complainant.

COMPLAINANT:

The submissions of the complainant are briefly summarized as under:

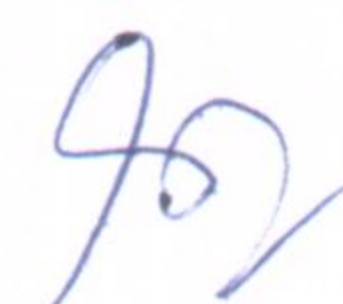
1. The Complainant submits that the complainant company was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer systems. And that since its beginning, the Complainant has diversified and expanded its activities which presently include but are not limited to 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 Complainant submits that its business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses.
2. The Complainant submits that it began using the trade mark/name DELL in 1987. Since then it has made extensive and prominent use of its trade mark/name DELL in connection with a wide range of goods and services, including offering its goods and services online through numerous DELL domain names.
3. The Complainant submits that it is a world leader in computers, computer accessories, and other computer-related products and services. He also submits that over the years, Dell has invested heavily in marketing under its marks, devoting hundreds of millions

of dollars to advertising and promoting its products and services through many media in many countries and that it has used television, radio, magazines, newspapers, and the internet as marketing media. The complainant further submits that it has been, and continues to be, extremely successful and it sells its products and services in over 180 countries. He further submits that for several years, Dell has been the world's largest direct seller of computer systems and as a consequence of Dell's marketing and sales success, Dell and its marks have become famous in the United States and many other countries, including India. The complainant also submits that Dell was recently named by Adweek as #15 of the "Most Loved Companies" in the world.

4. The Complainant submits that it has used the famous mark DELL, as well as various other marks that include the word, for many years for laptops, desktops, computer parts and accessories, computer service and support, and other computer-related products and services for example, Dell offers technical and repair services for its laptops, desktops, and other products on its website at www.support.dell.com. The Complainant further submits that, Dell has long used the marks INSPIRON, LATITUDE, PROSUPPORT, VOSTRO, and XPS in connection with its products. The Complainant submits that it has also launched phones available in various models which are sold under different series/sub-brands such as the DELL VENUE series and the DELL STREAK series and that it also provides cloud computing services with its DELL CLOUD COMPUTING SOLUTIONS TM, wherein customers are provided with cloud servers with data storage facilities.
5. The complainant submits that with specific reference to India, it has more than 22 percent of the market and Dell is the number two PC maker in India. The complainant submits that Dell has been one of the leaders in the India PC market for several years.
6. The Complainant submits that it began doing business in India in 1993 and has a highly successful presence in India in respect of its

trade mark and trade name DELL not only on account of the extensive use of DELL products in the country initially by way of imports but also subsequently through extensive after-sales service outlets and direct sales of its products through its Indian subsidiary which was incorporated in June 2000 and through its Dell Direct stores which were launched in 2002 as a hands-on complement to their website www.dell.com and their increasing phone sales.

7. The Complainant submits that opening of its subsidiary in India which undertakes the task of specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, computer consultancy and solutions, and software promotion has expanded its presence even more, by allowing it to offer these services directly to customers from its location in India. The Complainant further submits that as a part of its retail initiative to increase its presence in India, the Complainant tied up with several channel partners such as authorized distributors and resellers including 600 systems integrators and launched DELL exclusive stores all over the country.
8. The Complainant submits that it also maintains several pages on the social media platforms such as Twitter, YouTube, LinkedIn, Google+ and all the social media platforms spread huge awareness and assist in consumers associating the trademark "DELL" with the Complainant only. The complainant further submits that even a search conducted on the Google search engine gives about 1,14,00,00,000 results, wherein most of the results relate to the trademark "DELL" being associated with the Complainant.
9. The Complainant submits that it has spent substantial time, effort and money advertising and promoting the "DELL" trade mark and the DELL formative marks throughout the world and as a result, the "DELL" trade mark has become famous and well-known, and the Complainant has developed enormous goodwill in the mark and widespread consumer recognition from the very beginning.



10. The complainant submits that the trade mark "DELL" is a well-known trade mark around the world and is exclusively identified and recognized by the public as relating to the goods and services of the Complainant and no one else.
11. The Complainant submits that the trade mark "DELL" and the "DELL" formative marks have become distinctive and famous trademarks throughout the world as a symbol of the high quality standards that the Complainant maintains for its products and related services.
12. The Complainant submits that it has a huge Internet presence and numerous websites that provide information on their business activities, products and services and are accessed by shareholders, customers and other Internet users. The Complainant also submits that it generates almost half of its revenue from sales over the internet. The Complainant further submits that in order to support its online marketing and sales efforts with respect to its range of products and services, the Complainant has registered numerous other domain names which comprise of the Complainant's famous DELL mark in conjunction with the trade marks/brand name associated with the line of product and services, e.g. delldirect.in, dellinspiron.in, delldirect.com, delllatitude.com, dellprecision, dellinspiron.com, dellcloud.com etc.

RESPONDENT

1. The Respondent in the present proceeding is Mani Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu, 635301.
2. The respondent has failed to file his say / reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

Parties Contentions

- i) Complainant



The Complainant contends as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

ii) Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

Discussions and Findings:

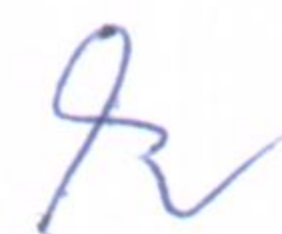
Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the act.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the statements and documents submitted before the Tribunal.

Having perused the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "delllaptoppricelist.in".



Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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

i. The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

- a) The Complainant submits that the disputed domain name **<delllaptoppricelist.in>**, fully incorporate the Complainant's well-known and registered trademarks "DELL" in their entirety and are confusingly similar as a whole to the Complainant's domain names www.dell.com and www.dell.co.in. The Complainant also submits that the Disputed Domain names are also similar to the various other domain names owned by the Complainant such as delldirect.in, dellinspiron.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputercenter.in etc.
- b) The Complainant submits that the Respondent's addition of the generic terms such LAPTOP PRICE LIST only serves to solidify confusion among Internet users rather than dissipating it, more so as the generic words have an obvious association to the Complainant.
- c) The Complainant submits that the Disputed Domain Names registered by the Respondent predominantly comprise of the Complainant's registered trade mark DELL in combination with a



descriptive term being Laptop Price List, which has obvious connections to the Complainant's business, which only solidify confusion among Internet users.

- d) The Complainant submits that the addition of the top-level domain ".in" is irrelevant in determining whether the domain names registered by the Respondent are confusingly similar to the Complainant's registered trademarks.

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him.

Thus, the above facts and annexures establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

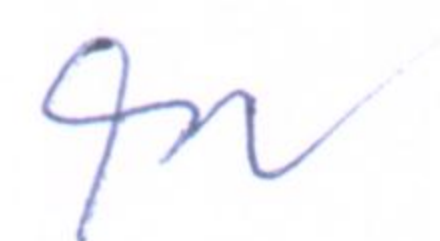
ii. The Registrant has no rights or legitimate interests in respect of the domain name.

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)

- i. *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant is making a 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.*



- a) The Complainant submits that the Disputed Domain Name comprise of the well-known and famous trade mark "DELL" and the DELL formative marks used in relation to the Complainant's wide range of the goods and services, it is evident that the Respondent can have no right or legitimate interest in the domain name. The Complainant further submits that it is apparent that the Respondent's intention while registering the Disputed Domain Name is to misappropriate the reputation associated with the Complainant's famous trade mark "DELL" and the DELL formative marks, in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks.
- b) The Complaint submits that there exists no relationship between the Complainant and the Respondent. And that neither has the Complainant authorized nor licensed the Respondent to register or use the Disputed Domain Names nor any of the trade marks forming part of the same.
- c) The Complainant further submits that the respondent has not used, nor made any demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services and that the respondent's domain names are being used for websites that attempt to deceive consumers into thinking that Respondent or Respondent's business is affiliated or connected with, or authorized by the Complainant. The Complainant also submits that the respondent employs several different website designs at the domain names, each utilizing the DELL Marks to promote Respondent's services.
- d) The Complainant submits that the respondent's website also prominently feature a number of Complainant's other trademarks, such as INSPIRON, LATITUDE, VOSTRO, and XPS. The Complainant further submits that it is also evident from the snapshot of the Complainant's website and the Respondent's websites that the



Respondent has also copied the look and feel of Complainant's official www.dell.com and www.dell.co.in website, utilizing similar colors and fonts to those used by Complainant on its official website

- e) The Complainant submits that the respondent's website appear to be designed to mislead consumers into believing that Respondent is, or is affiliated with, Complainant. The Complainant also submits that the respondent is attempting to gather Internet users' personal information through its "Enquiry Form," displayed on many of its pages, which requests the name, email address, and phone number of visitors. Respondent may then commercially benefit by abusing that information and/or by selling that information to third parties.
- f) The Complainant submits that the respondent is not commonly known by the domain names at issue. The Complainant further submits that the respondent is not making a legitimate non-commercial or fair use of the domain names. Respondent's inclusion of DELL in the domain names is not a nominative fair use.
- g) The Complainant submits that the Respondent's choice of the Complainant's well-known trade mark DELL and the DELL formative marks, as its domain name is totally unnecessary and the sole purpose of carrying on business through the use of the Disputed Domain Name incorporating the trade marks DELL and the DELL formative marks is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.
- h) The Complainant submits that the Respondent's websites are not *bona fide* since the Respondent is using the Disputed Domain Names to divert/redirect internet users and consumers seeking the Complainant's goods and services to its own website, which offers the Complainant's products and services and also of those in direct competition with the Complainant. The Complainant also submits that the Disputed Domain Names registered by the Respondent



comprise entirely of the Complainant's trademarks and are variations of the Complainant's domain names.

The above submission of the Complainant has not been specifically rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached with the Complaint establish that the Respondent has no right or legitimate interest in the disputed domain name under INDRP paragraph 4(ii).

iii. The Registrant domain name has been registered or is being used in bad faith

- a) The Complainant alleges that the Respondent registered the aforesaid Disputed Domain Names in order to piggy-back off the commercial value and significance of the Complainant's domain names.
- b) The Complainant submits that its trade mark "DELL" and the DELL formative marks are well-known and famous marks, and the Respondent is presumed to have had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain name by virtue of the Complainant's prior use and/or registration of the same. The Complainant also submits that the Respondent obviously had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain names by virtue of the fact that the Respondent sells several of the Complainant's products and services through infringing Disputed Domain Names.
- c) The Complainant submits that the use of domain names confusingly similar to Complainant's famous DELL Marks is evidence of bad faith. The Complainant also submits that the Respondent knew of Complainant's famous DELL Marks and rights based on Respondent's use of the disputed domain names to host websites which copy Complainant's logo, copy the look and feel of



Complainant's official website, display pictures of complainant's products, offer Complainant's products, and offers services for Complainant's products.

- d) The Complainant submits that the fact that the Respondent has registered various domain names that contain the DELL marks is also evidence of bad faith. The Complainant also submits that the Respondent's inclusion of inconspicuous disclaimers at the bottom of the pages of a few of its websites does not mitigate against a finding of bad faith.
- e) The Complainant submits that the respondent's bad faith is also evidenced by the fact that Respondent owns no trademark or other intellectual property rights in the domain names; the domain names do not consist of the legal name of or a name commonly used to identify Respondent. The Complainant further submits that the respondent has not used the domain names in connection with the bona fide offering of any goods or services and has made no bona fide non-commercial or fair use of the DELL Marks in a site accessible under the domain name; and Respondent's domain names incorporate exactly the famous mark DELL.
- f) The Complainant submits that the bad faith lies in the Respondent's intentional use of the Disputed Domain Name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant alleges that the Indian consumers searching for the Complainant's websites pertaining to a specific line of products or services are inclined to search for websites with domain names comprising of the trade mark DELL alongwith the brand name of the specific product or service in question or the territory in question. The Complainant further submits that the Respondent's primary intent in registering and using the Disputed Domain Name which incorporate the DELL trade mark in its entirety along with the specific line of products and



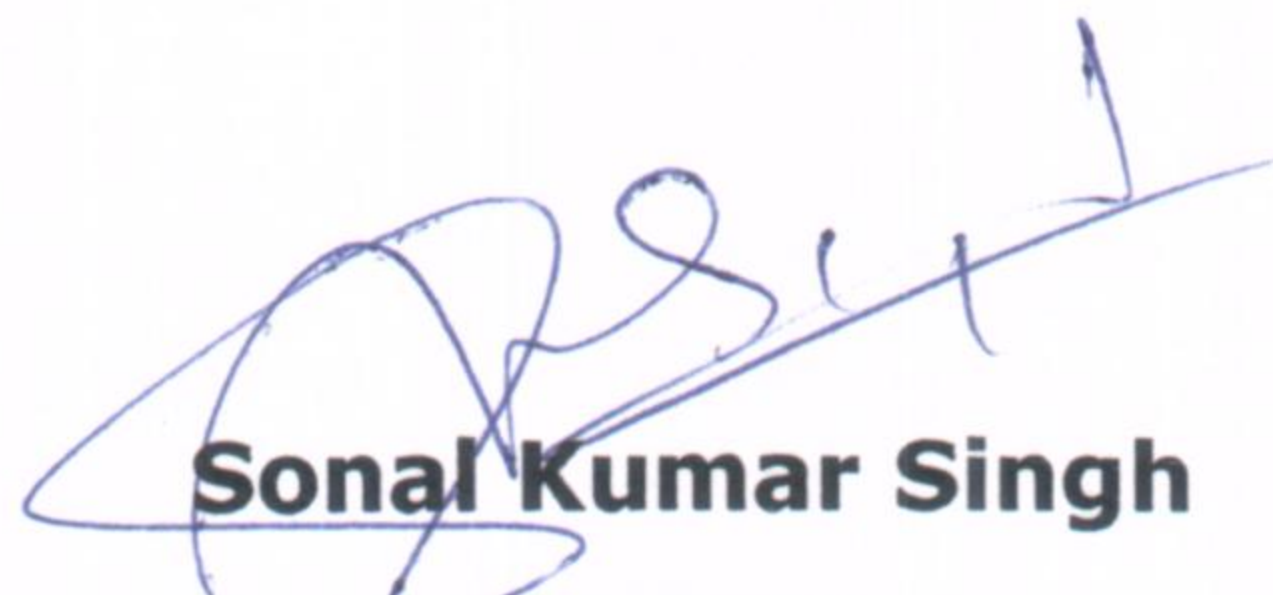
services of the Complainant or the countries wherein the Complainant is based, is to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's trademarks/name and the Respondent's website.

All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name www.delllaptoppricelist.in in bad faith. This issue is decided accordingly.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.delllaptoppricelist.in> to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 22nd March, 2016.


Sonal Kumar Singh
Sole Arbitrator
Date: 22.03.2016