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NATIONAL INTERNET EXCHANGE OF INDIA
Incube Business Centre, 5th Floor,
18, Nehru Place,
NEW DELHI - 110 019

Dell Inc. USA v. Jack Sun, USA

AWARD

1. The Parties

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

The Respondent is Mr. Jack Sun, Domainjet Inc., 1800 Amphitheatre Parkway, Mountain View, California - 94043, USA.

2. The Domain Name and Registrar

The disputed domain name is <www.delllatitude.co.in>.

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The said domain name is registered with Directi Internet Solutions Pvt. Limited., India.

3. Procedural History

- (a) A Complaint dated January 06, 2012 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.
- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter on January 10, 2012. The arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Rules the Sole Arbitrator formally notified the Respondent of the Complaint on e mail address domainjet@foxmail.com. The Respondent was required to submit his defence within 15 days. The Respondent was informed that if his response was not received he would be considered in default and the matter will proceed ex-parte. No response has been received from the Respondent.

4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

Complainant's activities

In these proceedings the Complainant is Dell Inc., of USA. It was founded in the year 1984. The Complainant is the direct seller of computer systems. Presently, the Complainant's activities include



computer hardware, software, peripherals, and computer oriented products such as, phones, tablet computers, etc. The Complainant also undertakes computed related installation, maintenance, leasing, and technical support services. The Complainants cater to the needs of large and medium enterprises and public institutions (health care, education, government, etc.).

The Complainants have been doing business in India since 1993. The Complainant's subsidiary in India (incorporated in June 2000) undertakes the work of marketing and distribution of customized high technology computer systems and storage devices, computer consultancy and solutions, after sales service of computers, etc.

Respondent's Identity and Activities

Respondent did not file any reply. Hence, the Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that its name is Dell Inc. It was founded in 1984. The word "Dell" is registered as trademark/service mark of the Complainant in many countries. Similarly, the word "Latitude" is also registered as a trademark of the Complainant.

The Complainant contends that it has several domain names containing its trademark DELL, such as, <www.dell.co.in>, <www.dell.in>, <www.delllatitude.com>, <www.dell.com>, <www.dellcenter.in>, <www.dellcomputer.co.in>, <www.dellcomputercenter.in>, <www.dellcomputers.in>, <www.dellstage.in> <www.delldatasafe.in>, <www.dellcustomerstories.co.in>, <www.delllaptops.co.in>, etc.

The disputed domain name is <www.delllatitude.co.in>. Thus, the disputed domain name contains the name and marks of the

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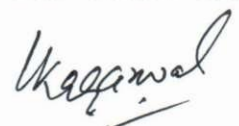
Complainant. The addition of the words “co” or “in” is insignificant. Therefore, the Complainant is well known to its customers as well as in business circles as Dell all around the world.

In support of its contentions the Complainant has relied on the following decisions:

- (a) *Dell Inc. vs. SKZ.com* FA050900055555 (NAF October 21, 2005);
- (b) *Space Imaging LLC vs. Brownell*, AF-0298 (eResolution Sept. 22, 2000);
- (c) *Dell Inc. vs. George Dell and Dell Net Solutions*, WIPO Case No. D2004-0512;
- (d) *Minnesota Mining and Manufacturing Company vs. Mark Overbey*, WIPO Case No. D2001-0727;
- (e) *SBC Communications Inc. vs. Fred Bell a/k/a Bell Internet*, WIPO Case No. D2001-0602;
- (f) *HangSeng Bank Limited vs. Websen Inc.* WIPO Case No. D2000-0651;
- (g) *Wal-Mart Stores Inc. vs. MacLeaod b/d/a For Sale*, WIPO Case No. D2000-0662;
- (h) *Blue Sky Software Copr. Vs. Digital Sierra Inc.*, WIPO Case No. D2000-0165;
- (i) *Busy Body, Inc. vs. Fitness Outlet Inc.*, WIPO Case No. D2000-0127.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark “Dell” or “Latitude”. Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

In support of its contentions the Complainant has relied on the following decisions:



- (a) *HSBC Holdings plc vs. Hooman Esmail Zadeh, M-Commerce Ag*, INDRP/032;
- (b) *Nike Inc. vs. B. B. de Boer*, WIPO Case No. D2000-1397;
- (c) *Victoria's Secret et. al. vs. Atchinson Investments Ltd.*, FA096496 (NAF Feb. 27, 2001);
- (d) *Clerical Medical Investment Group Limited vs. Claricalmedical.com (Clerical and Medical Services Agency)* WIPO Case No. D2000-1228;
- (e) *Lardi Ltd., vs. Belize Domain WHOIS Service Limited*, WIPO Case No. D2010-1437;
- (f) *Compart AG vs. Compart.com /Vertical Axis, Inc.*, WIPO Case No. D2009-0462;
- (g) *MBTI Trust Inc. vs. Glenn Gasner*, WIPO Case No. D2009-1428;
- (h) *Express Scripts Inc. vs. Windgather Investments Limited/ Mr. Cartwright*, WIPO Case No. D2007-0267;
- (i) *Sigikid H. Scharrer & Koch GmbH & Co. vs. KG MyBear Marketing-and-Vertriebs GmbH, r. Thomas Dufner vs. Bestinfo*, WIPO Case No. D2004-0990.
- (j) *Diners Club International Ltd., vs. Domain Admin*, FA0305000156839 (NAF< June 23, 2003);
- (k) *National Association of Professional Baseball Leagues vs. Zuccarini*, WIPO Case No. D2002-1011;

Regarding the element at (iii), the Complainant contends that the main object of registering the domain name <www.delllatitude.co.in> by the Respondent is to mislead the general public and the customers of the Complainant. The Complainant has stated that the use of a domain name that appropriates a well known trademark or service mark to promote competing or infringing products cannot be considered a “*bona fide offering of goods and services*”. Further, the Respondent has also offered to sell the domain name at an exorbitant price.

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- (a) *HSBC Holdings plc vs. Hooman Esmail Zadeh, M-Commerce Ag*, INDRP/032;
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(a) *MSNBC Cable, LLC vs. Tsysys.com*, WIPO Case No. D2000-1204;

(b) *Veuve Clicquot Ponsardin, Maison Fondée en 1772 vs. The Polygenix Group Co.*, WIPO Case No. D2000-0163.

B. Respondent

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.delll.co.in> or any trademark right, domain name right or contractual right. Therefore, the Respondent has no legal right or interest in the disputed domain name.

6. Discussion and Findings

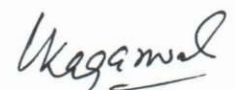
The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, “a panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable”.

According to the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The domain name in question has been registered and is being used in bad faith and for the purposes of trafficking;

A. Identical or Confusingly Similar

The Complainant’s trademark “DELL” is registered in many countries of the world such as, Algeria, Argentina, Austria, Australia, Bolivia, Brazil, Canada, Chile, China, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hong Kong, India, Iran, Italy, Japan, Malaysia, Mongolia, Morocco, Mexico, Netherlands, Nigeria,



name, even if the Respondent has acquired no trademark or service mark rights; or

- (iii) The Respondent 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.

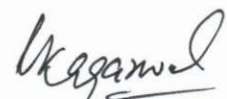
The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. Dell and Latitude are the name and marks of the Complainant. The trade mark "Dell" has acquired unique importance and is associated with the Complainant. A mention of the said trademark/service mark establishes an identity and connection with the Complainant. The Respondent is known by the name of Mr. Jack Sun. It is evident that the Respondent can have no legitimate interest in the domain name. Further, the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name.

The WIPO decisions relied upon by the Complainant support its contentions that the use of domain name consisting of a misspelling of a trademark to divert users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interests upon the Respondent.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain names.

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:



- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out of pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website 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 the Respondent's website or location or of a product or service on its website or location.

The contention of the Complainant is that the present case is covered by the above circumstances. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to another web page. by creating a likelihood of confusion with the Complainant's mark. The Respondent's registration of the domain name <www. delllatitude.co.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement and/or originates from the Complainant.

The Complainant has stated that on November 16, 2011 the Complainant's attorney sent to the Respondent a Cease and desist notice. However, the Respondent sought clarification as to the amount of consideration he would receive in exchange for the transfer of disputed domain name to the Complainant. Thus, the Respondent has

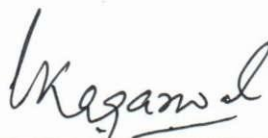


offered the said domain name for sale.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith. Therefore, I conclude that the domain name was registered and used by the Respondent in bad faith.

7. Decision

In the light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <www.delllatitude.co,in> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: February 6, 2012