

Ranjan Narula Associates
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RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Dell Inc.

One Dell Way
Round Rock, Texas 78682-2244
USA

.....Complainant

Domain Admin

Bharat DNS Pvt. Ltd.
92 Appan Street
Thiruvai eswarar Nagar
Thirumangalam
Chennai-600040
Tamil Nadu

.....Respondent

Disputed Domain Name: www.dellphone.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Dell Inc.** of One Dell Way, Round Rock, Texas 78682-2244, USA. The Complainant is represented by its authorized representatives Pravin Anand of Anand and Anand, First Channel, Plot No.17A, Sector 16A, Film City, Noida who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Domain Admin of Bharat DNS Pvt. Ltd., 92 Appar Street, Thiruvalluvar Nagar, Thirumangalam, Chennai-600040, Tamil Nadu as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name is www.Dellphone.in. The Registrar is www.inregistrar.com.

3) Procedural History:

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 (the Rules) were approved by NIXI on 28th June, 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.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

The complaint was produced before the Arbitrator on January 19, 2012 and the notice was issued to the Respondent on January 20, 2012 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent replied on the same day vide e-mail through Mr. Sankaran stating that he is ready to transfer the domain for free and this proceeding is unnecessary. On January 23, 2012 the arbitrator called upon the parties to report settlement if any. The Respondent in the correspondence clearly asserted that he has no interest in the domain name and has no objection to the transfer of domain name. Therefore the complaint is being



decided based on materials submitted by the Complainant and contentions put forth by them.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The complainant in support of its case has made the following submissions

1. The Complainant is the world's largest direct seller of computer systems since the year 1984. Further the Complainant has been using the trade mark/name DELL since the year 1987 and has spent substantial time, effort and money advertising and promoting the 'DELL' trademark throughout the world.
2. The Complainant besides computer oriented products and services, has launched its own phones which are sold in various models under different series such as the DELL STREAK series, DELL VENUE series etc.. The complainant operates through a website www.dell.co.in and is the registrant of around 5000 domain names featuring the Dell mark such as www.dell.com and www.dell.in etc.
3. The Complainant is the proprietor of the said trading name and mark Dell registered under the Trade Marks Act, 1999 under Registration Nos. 575115, 923915, 1190376 in relation to products and services falling under classes 9, registration no. 1190375 for class 2, registration no. 1239350 in class 37. Registration no. 1239349 in class 42 and registration no. 1335057 in class 36. Similarly for the mark www.dell.com in class 9 under the registration no. 826095. A copy of the registration has been provided by the Complainant. The Complainant is also the owner of numerous trade marks in USA for the mark DELL under registration nos. 1616571, 1860272 and 2236785. The copies of registration have been provided by the Complainant.
4. The Complainant states that owing to the diverse nature of the company and the wide range of services, the said name and mark has gained tremendous reputation and goodwill and has become well known and has also acquired a secondary meaning connoting and denoting to the members of public, to the Complainant's said business alone. The said name and mark Dell has come to be exclusively associated and identified with the Complainant's business alone. Owing to the aforementioned reasons, the said name and mark Dell has become distinctive with the Complainant and has acquired a formidable and valuable reputation, goodwill and association amongst the members of trade and public. The Complainant contends that by virtue of the registration of name and mark Dell, they are entitled to the exclusive use thereof.
5. The Complainant began doing business in India in 1993 and has successful presence in India through its Indian subsidiary. The Complainant has launched its own phones



which are sold in various models under different series such as the DELL STREAK series, DELL VENUE series etc. and also provide related services on the domains dellphones.co.in and dellphones.com. The said domain name / website of the Complainant attract several potential clients and customers to the Complainant's business and is one of the most valuable business assets of the Complainant. Any use of an identical and / or deceptively similar domain name and / or trade mark is bound to divert internet traffic and cause enormous losses including pecuniary loss to the Complainant.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. The Respondent has shown his inclination to transfer the domain to the complainant via email dated January 20, 2012. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'Dell' leads to the conclusion that the Complainant has superior and prior rights in the mark Dell. Thus it can be said a) the web users associate the word Dell with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the www.dellphone.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claim and agreed to transfer of domain name.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'DELL'. The complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'Dell' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'Dell' trademark. Further, the Respondent has never used the disputed domain name or



any trademark similar to the disputed domain name prior to the registration of the disputed domain name in favour of the complainant.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own right and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. Further, the Respondent is not commonly known by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name 'Dell'

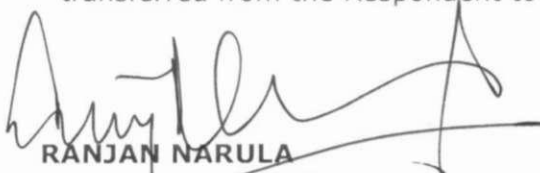
(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further the Respondent is advertising employment services in the same industry that the Complainant deals in, keeping that in mind it can be concluded that the Respondent is taking undue advantage of the mark 'Dell' and hence bad faith in registration of the domain name stands established.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'Dell' is identified with the Complainant's product or services, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

9. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name www.dellphone.in is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name www.dellphone.in be transferred from the Respondent to the Complainant.



RANJAN NARULA
SOLE ARBITRATOR
NIXI
INDIA

14 February, 2012