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30.1.2012

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P.S. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS,
CHENNAI-600 104 (TAMIL NADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
..IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: www.dellvenue.co.in

Dell Inc.
One Dell Way
Round Rock
Texas 78682-2244, USA.
Sanjiv_sarwate@DELL.com
pravin@anandandanand.com

.. Complainant

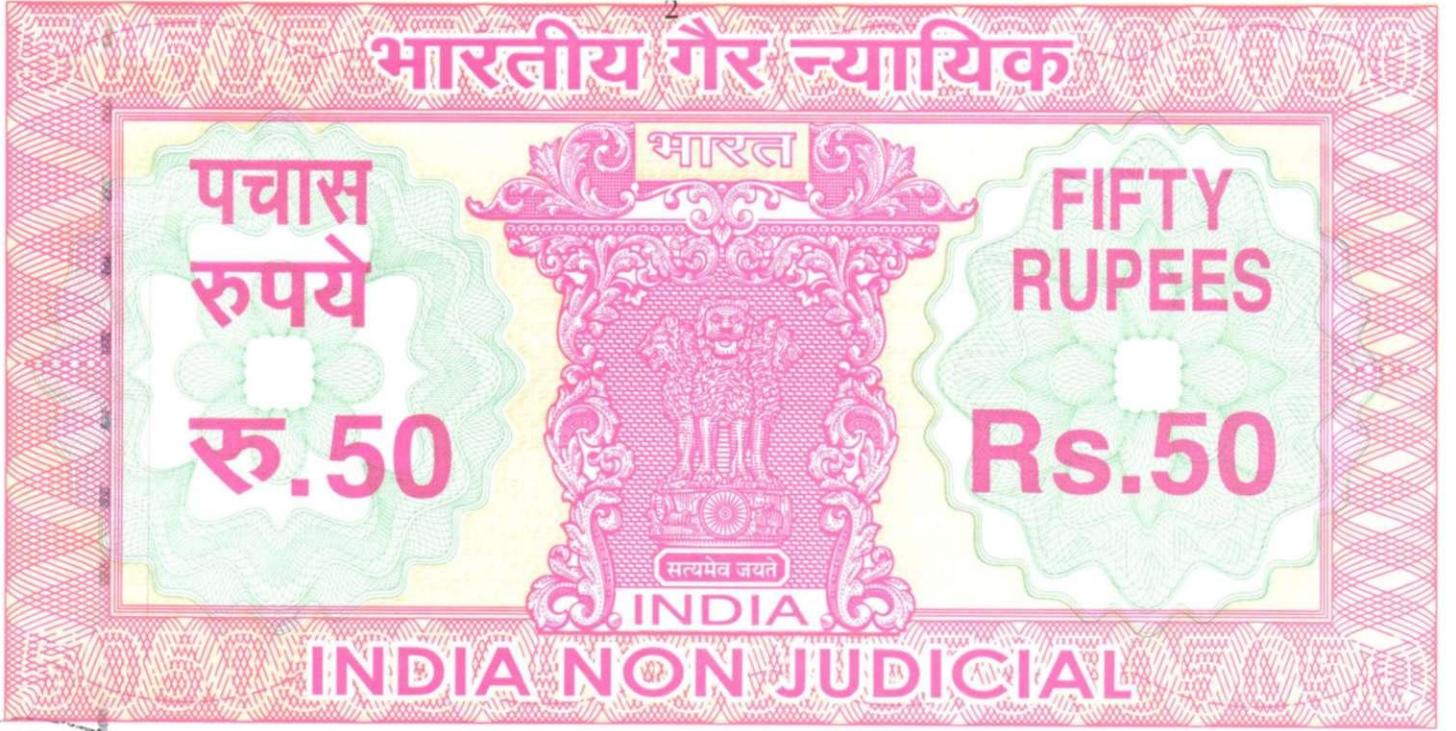
Vs.

Jack Sun
Domainjet, Inc.,
1800 Amphitheatre Parkway
Mountain View
California - 94043, US
domainjet@foxmail.com

.. Respondent

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[Handwritten signature]
SOLE ARBITRATOR



தமிழ்நாடு தமில்நாடு TAMILNADU

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M. SHANMUGA SUNDARAM,
STAMP VENDOR,
L No B4 / 109 / 88
HIGH COURT CAMPUS
CHENNAI - 600 001 (TAMIL NADU)

2

1. The Parties:

The Complainant is Delaware Corporation, having its registered office at One Dell Way, Round Rock, Texas 78682-2244, USA., rep. by its authorized representative Mr. Pravin Anand, Noida, India.

The Respondent is Mr. Jack Sun, Domainjet, Inc., 1800 Amphitheatre Parkway, Mountain View, California - 94043, US. The respondent neither represented himself nor represented by any one.

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2. The Domain Name and Registrar:

The disputed domain name: www.dellvenue.co.in. The domain name registered with National Interest Exchange Of India.

3. Procedural History:

- January 13, 2012 : Email from National Internet Exchange of India to Arbitrator Mr. D. Saravanan asking his consent to act as Sole Arbitrator with respect to dispute in domain name www.dellvenue.co.in
- January 14, 2012 : Email from Sole Arbitrator Mr. D. Saravanan to National Internet Exchange of India consenting to act as Sole Arbitrator with respect to dispute in domain name www.dellvenue.co.in
- January 24, 2012 : Notice to Respondent Mr. Jack Sun stating that Mr. D. Saravanan has been appointed as Sole Arbitrator by .IN REGISTRY to adjudicate upon dispute in domain name www.dellvenue.co.in and directing the Respondent to submit his written response.
- February 03, 2012 : Due date for submitting written response by Respondent Mr. Jack Sun
- February 10, 2012 : Notice of Default was sent to Respondent Mr. Jack Sun stating that since Respondent Mr. Jack Sun did not submit written response, the Arbitrator Tribunal is constrained to proceed further and decide the dispute on merits.
- : The language of the proceedings is in English

4. Factual Background:

4.1 The Complainant:

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



4.2 Complainant's Activities:

The Complainant states that it was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer systems; 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's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses; the Complainant 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 through numerous DELL domain names; the Complainant has also launched smart phones which are available in various models which are sold under different series/sub-brands such as the DELL VENUE series of smart phones and the DELL STREAK series of phones; the Complainant has spent substantial time, effort and money advertising and promoting the "DELL" trade mark through out the world, 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; the Complainant is the number one provider of computer systems to large enterprises around the world, and does business with 98 percent of Fortune 500 corporations; the Complainant itself is in the top 50 of the Fortune 500. The Complainant sells more than 10,000 systems every day to customers in 180 countries and has more than 43,000 services team members in approximately 90 countries, 60 technical support centres, and seven global command centers dedicated to helping customers to design, buy and/or construct, operate and maintain personal computers, workstations, computer networks and Internet infrastructure; the Complainant began doing business in India in 1993; the Complainant 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 the 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 as a hands-on complement to their website www.dell.com and their increasing phone sales; the opening of the Complainant's 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 the Complainant's presence even more, by allowing it to offer these services directly to customers from its location in India; 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 system integrators and launched DELL exclusive stores all over the country; on January 20, 2011, the Complainant's US based attorneys sent a Cease and Desist Notice to the Respondent calling upon to cease and desist from any and all use of the domain name <dellstreak.in> and to transfer the impugned domain name to the Complainant; the Complainant however refused to do so until he negotiated a payment of \$USD500 in as consideration for the transfer of the domain name <dellstreak.in> to the Complainant; however, the Complainant subsequently learnt that the Respondent had also registered the domain name <dellvenue.co.in> in further violation of the Complainant's statutory rights; on November 16, 2011, the Complainant's attorneys wrote to the Respondent calling upon him to transfer the aforesaid domain name to the Complainant failing which legal proceedings would be initiated against him, however, instead of complying with the terms elucidated by the Complainant, the Respondent reverted and sought clarification as to the amount of consideration he would receive in exchange for the transfer of the disputed domain name to the Complainant. Hence the present complaint.

4.3 Complainant's Trade Marks and Domain Names:

The Complainant states that the trade mark DELL has been registered by the Complainant in countries across the world including United States of America and India; the Complainant adopted and commenced use of the trade mark DELL in the year 1987 and has been using it continuously and extensively, not only as a trademark but also its corporate name; the trade mark DELL also forms an integral part of various other trademarks owned by the Complainant, known as the DELL formative marks, which include DELLVENUE, DELLPRECISION, DELLVENUE,



DELLWARE, DELLZONE, DELLNET, DELLHOST to name a few; the trademark "DELL" is a well known trademark in 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; the Complainant is also the registered proprietor of the trademark "DELL", in India; the registration of the trademark "DELL" has been duly renewed from time to time and is valid and subsisting under the Trademarks Act, 1999; the Complainant also has registered its trade mark "DELL" in various other jurisdictions; aside from the trade mark DELL, the Complainant is also the proprietor of other trademarks including the trade mark "DELL VENUE" by virtue of registration and long, continuous and uninterrupted use of the aforesaid trade mark with respect to the DELL VENUE series of smart phones; the trade mark DELL has become a distinctive and famous trade mark throughout the world as a symbol of the high quality standards that the Complainant maintains for its products and related services; numerous arbitration panels have either recognized the fame of the trade mark/name DELL or its very distinctiveness; the Complainant 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 generates almost half of its revenue from sales over the internet; in order to support its online marketing and sales efforts with respect to its specific product lines and services, the Complainant has registered numerous other domain names which comprise of the Complainant's famous DELL mark in conjunction with the trade mark/brand name associated with the product lines and services, e.g. dellprecision.com, dellinspiron.in, dellinspiron.com, delldirect.in, delldirect.com, delllatitude.com, dellinspiron.com, dellcloud.com etc.; the Complainant at present owns over 5000 domain names a majority of which contain the trade mark "DELL" including dell.co.in, dell.in, dellprecision.com, dellinspiron.in, delldirect.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputercenter.in, dellcomputers.co.in, dellcomputers.in, dellcustomerstories.co.in, delldatasafe.co.in, delllaptops.co.in, delllaptops.in, dellmobile.co.in, dellmobile.in, dellpc.in, dellperotsystems.in, dellphones.co.in, dellphones.in, dellprinters.in, dellservices.co.in, dellsmartphone.co.in, dellsmartphone.in, dellsmartphones.co.in, dellsmartphones.in, dellstage.in, dellstore.in, dellstores.in, dellstreak.co.in, dellstreak.in, dellstudio.in,



dellstudioone.in, dellsuppliers.co.in, delltablet.co.in, delltablet.in, delltablets.co.in and delltablets.in; and these facts clearly demonstrate the exclusivity and reputation associated with the Complainant's trade mark/trade name, and it can be said that the trademark "DELL" is a "well-known" trade mark as understood under Article 6 bis of the Paris Convention.

4.4 Respondent's Identity and activities:

The Respondent is Mr. Jack Sun, Domainjet, Inc., 1800 Amphitheatre Parkway, Mountain View, California - 94043, US; the Complainant states that the Respondent in the present dispute has registered the domain name <dellvenue.co.in> thereby misappropriating illegally and without authority, the trademarks "DELL" and "DELL VENUE" which are the exclusive property of the Complainant; the Respondent has deliberately purchased the domain name <dellvenue.co.in> and is offering it for sale to the highest bidder; aside from the offer of sale of the domain names, the Respondent's web pages are embedded with links which divert/redirect internet users and consumers seeking the Complainant's goods and services to third party commercial websites, a majority of which market computers, laptops and related products and services, in direct competition with the Complainant, in flagrant defiance of the Complainant's stated trademark rights; the screenshots/print outs of the Respondent's web pages are annexed to the Consolidated Complaint and may kindly be referred to; the disputed domain name <dellvenue.co.in> is clearly being used to capitalize on a Dell customer's attempt to search for the Complainant's products and services, in relation to the Complainant's VENUE series of smart phones which are sold under the trademark DELL VENUE which has been wholly incorporated into the domain name <dellvenue.co.in> registered by the Respondent herein; the Respondent is using the domain name <dellvenue.co.in> to intentionally attract, for commercial gain, internet users seeking the Complainant's (Dell's) products and services, to its own websites, where it prominently displays links which divert/ redirect the said internet users and consumers to third party commercial websites, a majority of which market computers, laptops and related products and services, in direct competition with the Complainant; furthermore, the Respondent is also offering the domain name <dellvenue.co.in> for sale, in a



transparent attempt to force the Complainant to purchase the said domain names at exorbitant prices, having profited from a similar transaction with the Complainant previously with respect to the transfer of the domain name <dellstreak.in> to the Complainant; the Respondent has, by registering the domain name <dellvenue.co.in>, clearly sought to misappropriate the reputation associated with the Complainant's well-known trademark "DELL VENUE" and take advantage of the fact that internet users/ customers searching for the Complainant's DELL VENUE series of smart phones would now be offered the products and services of other entities including those in direct competition with the Complainant.

5. Parties contentions:

A. Complainant:

The Contentions of the Complainant are as follows:

(a) The Domain Name is identical or confusingly similar to a Trademark or service mark of the Complainant has Rights:

The Complainant states that the disputed domain name <dellvenue.co.in> incorporates the Complainant's well-known and registered trademarks "DELL VENUE" in its entirety and is confusingly similar as a whole to the Complainant's domain name www.dellprecision.com. The domain name <dellvenue.co.in> registered by the Respondent entirely comprises of the Complainant's registered trademarks DELL VENUE which has obvious connections to Complainant's business and only solidifies confusion among Internet users. Further more, the addition of the top level domains "co.in" and ".in" to the complainant's registered trade mark DELL VENUE is irrelevant in determining whether the domain names registered by the Respondent are confusingly similar to the Complainant's registered trade marks.

(b) Respondent has no rights or legitimate interests in the domain name:

The Complainant further states that since the domain name <dellvenue.co.in> comprises entirely of the well known and famous trade mark "DELL VENUE" which



are used in relation to the Complainant's goods, it is evident that the Respondent can have no right or legitimate interest in the said domain name; further, it is apparent that the Respondent's intention while registering the domain name <dellvenue.co.in> is to misappropriate the reputation associated with the Complainant's famous trade mark "DELL VENUE", in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks; there exists no relationship between the Complainant and the Respondent; neither has the Complainant authorized nor licensed the Respondent to register or use the domain name <dellvenue.co.in> incorporating its trade marks nor has it authorized or licensed the Respondent to register or use the domain name <dellvenue.co.in> or any trade mark forming part of it; the Respondent's choice of the Complainant's well known trade mark "DELL VENUE" is to cause confusion as to source, sponsorship, affiliation or endorsement of the activity being carried on through the websites; the Complainant believes that the Respondent is enjoying the benefits of 'pay- per- click' revenues, generated through sponsored links on its website, by misusing the Complainant's registered trade mark "DELL VENUE"; therefore, the Respondent is not making a legitimate, non- commercial or fair use of the domain name <dellvenue.co.in>; the Respondent not only diverts/ redirects traffic to commercial websites; it directs it to web pages marketing laptops, phones and other related products and services, many of which are in direct competition with the Complainant in a bold attempt to force the Complainant to purchase the domain name <dellvenue.co.in>; the domain name registered by the respondent comprises entirely of the Complainant's trade marks "DELL VENUE"; hence, the Respondent has no rights or legitimate interest in the domain name <dellvenue.co.in>.

(c) Respondent has registered and is using the domain name in bad faith:

The Complainant states that the domain name <dellvenue.co.in> has been registered by the Respondent solely in order to force the Complainant's hand in purchasing the said domain name from the Respondent at an exorbitant rate while the Respondent profits from the revenues generated from the 'pay- per- click' links to the third party commercial web sites, a majority of which market laptops, phones and related products and services in direct competition to the complainant; thus, having profited from such transaction with the complainant previously, the Respondent has



embarked on a similar strategy to register the domain name <dellvenue.co.in>, incorporating the Complainant's trade mark DELL VENUE in an attempt to force the Complainant to purchase the same at exorbitant rates; the Complainant's trade marks "DELL" and "DELL VENUE" 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 Complainant's prior use and registration of the same; even otherwise, the respondent obviously had knowledge of Complainant's trademarks at the time it registered the domain name <dellvenue.co.in> by virtue of numerous correspondences exchanged between the parties with respect to the Complainant's proprietorship of the trade mark DELL and the mala fide registration and subsequent transfer of the domain name <dellstreak.com> from the Respondent to the Complainant; registration of famous trade mark without legitimate commercial interests in the same is prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trade marks/ name; further more, the Respondent's website provides links to various third party commercial web sites, several of which are marketing laptops and related products and services in direct competition with the Complainant, evidencing that the Respondent had knowledge of the trade marks DELL and DELL VENUE and the associated products and services prior to seeking registration of the domain name <dellvenue.co.in>; moreover, the bad faith lies in the Respondent's intentional use of the domain name <dellvenue.co.in> to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with 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 the DELL VENUE series of Smart Phones are inclined to search for websites with domain names comprising of the trade mark DELL along with trade mark VENUE; the Respondent's primary intent in registering and using the domain name <dellvenue.co.in> which entirely comprises of the Complainant's trade mark DELL VENUE is to trade on the complainant's good will and reputation by creating a livelihood of confusion with Complainant's trade marks/ name and the Respondent's website.



B. Respondent:

The Respondent did not submit any response on the merits of dispute.

6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? And Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response on merits of the complaint and that non-submission of the Response by the Respondent had also been notified to the Respondent.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's 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 interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered Trade / Service Marks "DELL" and "DELL VENUE" Etc., in various countries throughout the world including India and also possesses registered domain names consisting "dell" etc., in various ccTLDs throughout the world. The Respondent's domain name, <dellvenue.co.in>, consists of entirely Complainant's trademark, except ccTLD. Thus,



this Arbitral Tribunal comes to the irresistible conclusion that the disputed domain name <dellvenue.co.in> is confusingly similar or identical to the Complainant's marks.

ii) The Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response on merits of the complaint to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii) Considering the above, and based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.



(c) Registration and Use in Bad faith:

i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, 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 the Respondent's web site or location.

ii) The Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical or confusingly similar to registered trademarks and trade names of the Complainant. The Respondent has no affiliation with the Complainant. Registration of a domain name that is confusingly similar or identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was no real purpose for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to reap unfair rewards through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names. In fact, the undersigned Arbitrator had an occasion to decide against the very same respondent's "bad faith registration and use" in another case in INDRP 167. The fact establishes that the respondent is engaged in same pattern of trade in registering and using the domain names in bad faith.

In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.



7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <dellvenue.co.in> be transferred to the Complainant.

Dated at Chennai (India) on this 13th day of March, 2012.


(D.SARAVANAN)
Sole Arbitrator

