

தமிழ்நாடு தமில்நாடு TAMILNADU

2 APR 2019

D. SARAVANAN

Advocate & Arbitrator
Unit No.208, 2nd Floor, Beta Wing
Reheja Towers, Near LIC
No.113-134, Anna Salai, Chennai 600 002.

BH 942280

P. SAMSON
STAMP VENDOR
C. No. A2/20745/88
HIGH COURT CAMPUS
CHENNAI-104

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

Disputed Domain Name: www.delllaptopservicecentre.co.in

INDRP Case No. 1096

Dell Inc
One Dell Way, Round Rock,
Texas, 78682,
United States of America.

.. **Complainant**

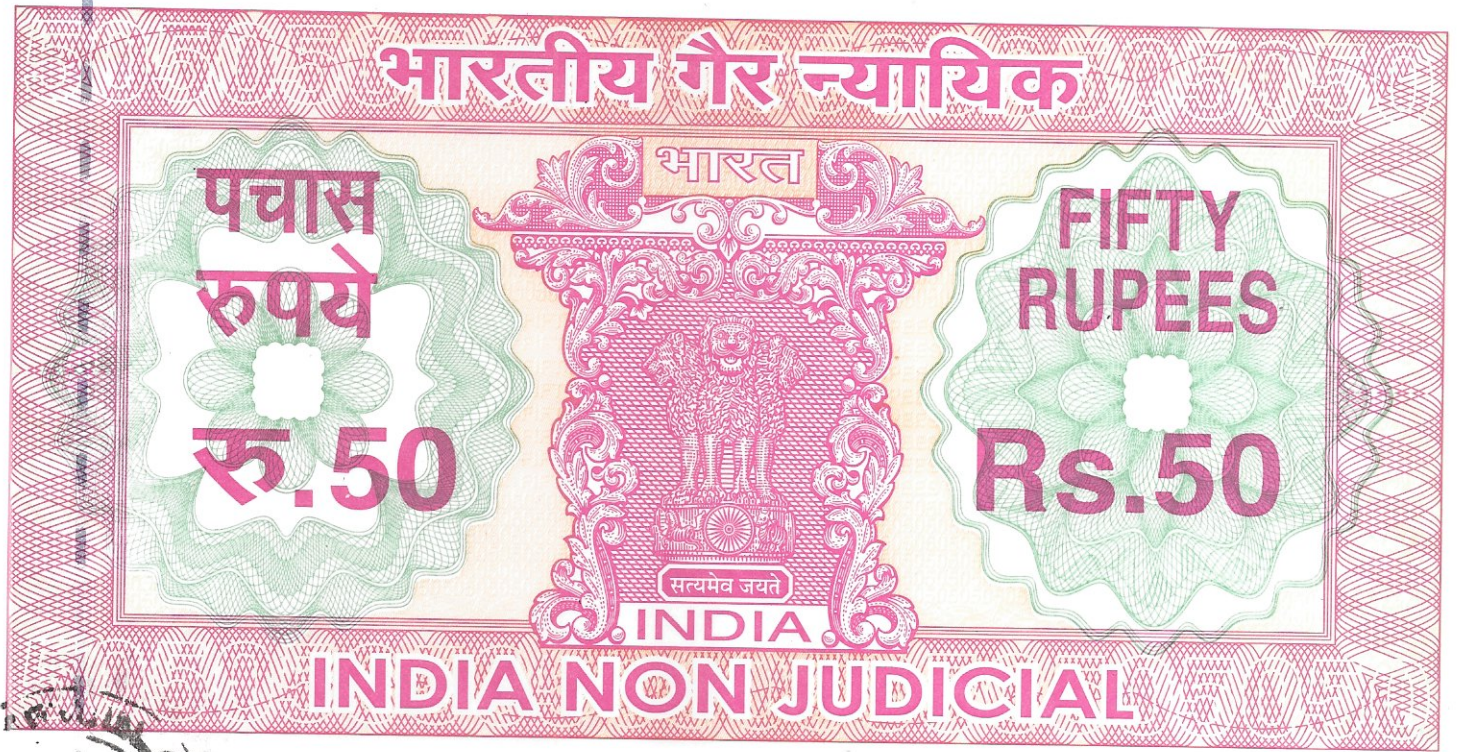
Vs.

Mr.Jitendra Diwakar,
Deputy Ganj Opp Anwar Brass
Moradabad,
Uttar Pradesh – 244 001,
India.
jitendra.diwaker@gmail.com

.. **Respondent**

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AW 688187


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

1. The Parties:

The Complainant is Dell Inc, having address at One Dell Way, Round Rock, Texas, 78682, U.S.A. The Complainant is represented by Mr. Akhilesh Kumar Rai of M/s. AZB Partners, Plot No. A8, Sector 04, Noida - 201 301, Uttar Pradesh, India, e-mail: akhileshkumar.raai@azbpartners.com , Phone: +91 120 4179999.

The Respondent is Mr.Jitendra Diwaker, Deputy Ganj Opp Anwar Brass, Moradabad, Uttar Pradesh - 244 001, India , e-mail: jitendra.diwaker@gmail.com , Phone: +91 8533883658.

..3.



2. The Domain Name and Registrar:

The disputed domain name is www.delllaptopservicecentre.co.in. The domain name has been registered with .IN REGISTRY through its Registrar 'GoDaddy.com', having address at 14455, North Hayden Road, Suite 219 Scottsdale, AZ 85260-6993, United States of America and the Domain ID provided is D10226889-AFIN. The e-mail address of the Registrar is udrp@disputes@godaddy.com and their telephone number is +1 (480) 505-8800.

3. Procedural History:

27 th May, 2019	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
28 th May, 2019	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
31 st May, 2019	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through courier.
3 rd June, 2019	:	Notice was sent to the Respondent by e-mail directing the Respondent to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
8 th June, 2019	:	Respondent sent a written response through e-mail.
10 th June, 2019	:	The minutes of proceedings was sent to all the concerned by e-mail recording the receipt of written response of the Respondent and further recording that the matter is reserved for passing award. Thereafter, the Respondent has sent an e-mail communication reiterating the contents of his e-mail dated 8 th June 2019.



4. Factual Background:

4.1 The Complainant:

The Complainant is Dell Inc, having address at One Dell Way, Round Rock, Texas, 78682, United States of America. The Complainant is Mr. Akhilesh Kumar Rai of M/s. AZB Partners, Plot No. A8, Sector 04, Noida – 201 301, Uttar Pradesh, India, e-mail: akhileshkumar.raai@azbpartners.com, Phone: +91 120 4179999.

4.2 Complainant's Activities:

(i) The Complainant submits that it is a company established in the year 1984 and is incorporated and existing under the laws of Delaware, United States of America. It is the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant 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 and individuals.

(ii) Currently, the Complainant is one of the leading providers of computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations. The Complainant sells more than 100,000 systems everyday to customers in 180 countries, including India. The Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.

(iii) The products of the Complainant are widely available in India since 1993. The said products are marketed in India by the subsidiaries of the Complainant in India. The Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. The Complainant's products are sold through a wide network of 'DELL' exclusive stores and at other stores in and around 200 cities of India.



By virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.

(iv) Moreover, the Complainant has been in global news in the last four years and more, owing primarily to Michael Dell's taking the Complainant private, for \$24.4 billion, in the biggest leveraged buyout since the financial crisis. The other reason for the Complainant to be in news has been the acquisition of EMC Corp for around \$67 billion, which is the largest technology company acquisition ever. Both these happenings have been widely reported by press and electronic media all over the world including in India. Few new articles evidencing the above is annexed and marked by the Complainant as **Annexure-1**.

(v) The Complainant has a very strong internet presence with the website www.dell.com. The website can be accessed from anywhere in the world, including India and provides extensive information on the activities of the Complainant throughout the world, including India. Additionally, the Complainant also has country specific domain names such as www.dell.co.in for India. In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers details.

4.3 Complainant's Trading Name:

(i) The Complainant submits that its first use of the mark 'DELL' can be traced back to 1988. Since then, the Complainant has expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. Thus, in order to secure rights over the mark 'DELL', the Complainant has registered the said mark in several countries, including in India. The list containing the details of registrations secured in India for the mark 'DELL' is marked by the Complainant as **Annexure-2**. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.

(ii) The Complainant submits that in view of the above, it is evident that the Complainant has been using the trademark 'DELL' since the last 30 years and has built an enviable reputation in respect of the trademark 'DELL'. By virtue of such use, the mark 'DELL' is well



recognized among the consuming public and can be termed as a well-known trademark. The Complainant has also initiated several actions against domain name squatters in past several years. A list of case details wherein awards have been passed in favour of the Complainant is marked by the Complainant as **Annexure-3**.

4.4 Respondent's Identity and activities:

(i) From the screenshot of the Whois marked by the Complainant in **Annexure-4**, it is seen that the registrant of the impugned domain name www.delllaptopservicecentre.co.in is one Mr.Jitendra Diwaker having address at Deputy Ganj Opp Anwar Brass, Moradabad, Uttar Pradesh – 244 001. His e-mail address is Jitendra.diwaker@gmail.com and phone number is +91 8533883658. The Complainant submits that the above information has been provided by the .IN Registry, as it is hidden in the Whois database. The Complainant submits that the Complainant accessed the website hosted on the Impugned Domain (the webpage) on March 1, 2019, when the website on the said domain name was active. The screenshot of the website is marked by the Complainant as **Annexure-5**. Further, the Complainant marked **Annexure-6** to show that the impugned website was deactivated in 15 days.

(ii) The Complainant submits that the Accredited Registrar with whom the domain name is registered is GoDaddy.com of the address 14455 North Hayden Road, Suite 219 Scottsdale, AZ 852606993, United States of America and the domain ID provided is D10226889-AFIN. The e-mail address of the Registrar is udrp@disputes@godaddy.com and the phone number is +1 (480) 505-8800.

5. Dispute

(i) The Complainant submits that in order to protect the status of the mark 'DELL', from third party adoption, the Complainant undertakes various periodical searches and upon one such search for cyber squatters, the Complainant became aware of the registration of the impugned domain name www.delllaptopservicecentre.co.in.



(ii) The Complainant submits that the screenshot saved by the Complainant clearly shows that the Impugned Domain was active sometime back and the Respondent has deactivated the Webpage fearing detection of its illegal use of the intellectual property of the Complainant and duping the innocent customers by virtue of use of the same.

(iii) The Complainant further submits that the Complainant is recently seeing a surge in registration of Dell formative domain names, which are not connected or associated with the Complainant. These domain names represent themselves to be associated with the Complainant and play fraud on the public by offering them post-sale services or in some cases the products of the Complainant. The consuming public avails services from such websites, believing that such websites are related to the Complainant, which they are not. Although, the Complainant attempts to tackle such website, the customers of the Complainant continue to launch complains with. Moreover, such use of the Complainant's trademark is leading to dilution of its trademark and tarnishing the reputation of the Complainant. The Respondent is passing off its services as that of the Complainant. Hence, the Complainant has preferred the present Complaint before this Tribunal to transfer the Complainant's trademark 'DELL' to the Complainant, who is the legitimate owner of the 'DELL' Trademark.

6. Parties contentions:

A. Complainant:

(i) The domain name www.delllaptopservicecentre.co.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :

(a) The Complainant submits that the Respondent has adopted the well-known trademark 'DELL' of the Complainant to provide services to 'DELL' Laptops. The adoption of the said mark is not only an infringement, but is also being used for services identical to that of the Complainant. The Complainant reiterated that it provides post sale services of maintenance and repair. The Complainant marked **Annexure 7**, which contains the screen prints from the website of the Complainant evidencing the authorized Dell service centers in India. The Complainant has also come up with another website, i.e. www.dellretailstores.in, for the consuming public to find its authorized retailer(s).



(b) The Complainant further submits that it offers repair and maintenance services under the mark 'DELL'. The Complainant has also registered the mark 'DELL' and 'DELL' formative marks in class 37 of the NICE classification, as repair and maintenance falls under the said class. The registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in class 37 in favour of the Complainant is marked by them as **Annexure-8**.

(ii) **The Respondent has no rights or legitimate interest in the domain name www.delllaptopcentre.co.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of .INDRP] :**

(a) The Complainant submits that the Respondent uses the webpage for a duration of time and then deactivates the same to avoid detection and that this intermittent use clearly evidences that the aim of operating the Impugned Domain is illegal and against the law of the land. Moreover, at the time of filing of the application, the Respondent has no website on the Impugned Domain.

(b) The Complainant further submits that by virtue of use of the webpage (whenever it is in use) the Respondent takes advantage of innocent customers who may or may not inquire about the authenticity of the Respondent. Even if the Respondent informs a purchasing customer that they are not related to the Complainant, the same does not bestow any right to use the trademark DELL of the Complainant in its domain name.

(c) The Respondent has no right to use the mark 'DELL' of the Complainant, as it is the sole property of the Complainant. The Complainant uses the mark 'DELL' and has also secured registration for the same. The use of the mark 'DELL' by the Respondent as a part of the Impugned Domain is not licensed, thus it is an infringement of the trade mark 'DELL'.

(d) The Complainant submits that the Respondent has developed the offending domain name only to benefit illegally from the goodwill and reputation of the mark DELL built by the Complainant.

(iii) **The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of .INDRP:]**



- (a) The Complainant submits that the registration and operation of the domain name www.delllaptopservicecentre.co.in has been done in bad faith and with dishonest intentions to mislead the public into believing that the Respondent is the authorized service centre/exclusive store of the Complainant. The Complainant does not allow even its authorized service centers to register domains using the trademark 'DELL'. The adoption of the trademark of the Complainant is only to confuse the public as the relevant section of the public are bound to be deceived into thinking that the domain name www.delllaptopservicecentre.co.in is a website of the Complainant, which is not the case. The offending domain name has been registered to create initial interest and thereafter confusion amongst internet users thereby luring them to the website used in connection with the domain name and in turn to make illegal profit out of such representation.
- (b) The Complainant submits that the bad faith on the part of the Respondent is visible from the intermittent use of the Impugned Domain and the deactivation of the webpage and the fact that the registrant details have been hidden.
- (c) The adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The use of the Domain Name by the Respondent is for commercial use and would not fall under the ambit of 'fair use'. The only reason of adoption of the mark 'DELL' for services identical to that offered by the Complainant is to make illegal profit by duping the consuming public. The entire modus operandi of the Respondent, whose website is accessed only through the trademark of the Complainant, is dishonest and illegal.
- (d) The Complainant further submits that the nature of the Impugned Domain is such that it gives an impression that it is the website of DELL service centre in India.
- (e) Since the Respondent is duping the consuming public and eroding the distinctive character of the Complainant's mark and also diluting the well-known mark of the Complainant, the balance of convenience rests entirely towards the Complainant.



B. Respondent:

(a) The Respondent by their e-mail dated 8th June, 2019 and 10th June, 2019, submits that he has a small business in NCR where he repairs laptops like Dell, Lenovo, HP which is out of warranty. He wanted to create a website for his business and that by mistake he has wrongly registered the impugned domain name.

(b) He further submitted that his impugned domain was not created to fool the customers that the Respondents are authorized service centers of Dell Company.

(c) The Respondent further apologized for registering the impugned domain name and to forgive him and assured that it will not be repeated again.

7. Discussion and Findings:

Now, 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 an irresistible conclusion that the Arbitral Tribunal was properly constituted and that the Respondent has been notified of the complaint of the Complainant and the Respondent submitted his written response on 8th June, 2019.

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

- (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 are being used in bad faith.

(a) Identical or confusing similarity:

(i) The Arbitral Tribunal observes from the combined perusal of **Annexure 2** and **Annexure 8** marked by the Complainant that they have registered the trademark 'DELL' in India in 2005 and is continuously using the same in relation to their computer hardware, software, peripherals, computer-oriented products such as phones, tablet computers, laptops. etc., and computer-related consulting, installation, maintenance, leasing, warranty and technical support services. The Complainant has also registered 'DELL' formative marks in class 37 of the NICE classification as repair and maintenance falls under the said class.

(ii) The Complainant also provides post sale services of maintenance and repair through its website which inter alia includes contact information and region wise service locators. The same is evident from the screen shots of the Complainant's website marked by them as **Annexure 7**.

(iii) *Per contra*, the Respondent has created the impugned domain name, www.delllaptopservicecentre.co.in much later to Complainant's registration of the mark, in July 2018. The same is evident from the Whois database of the Respondent marked as **Annexure 4** by the Complainant. The impugned domain name also contains the mark of the Complainant in its entirety.

(iv) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.

(v) The Arbitral Tribunal therefore 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 name.



- (ii) As observed *supra*, the Complainant is the prior and authorized user of the mark 'DELL' which relates to the impugned domain name and as such, the Respondent has no right or legitimate interest in the usage of the impugned domain name.
- (iii) Undisputedly, the Respondent has agreed that the impugned domain name was wrongly created by him for his laptop services in the name of the Complainant's mark 'DELL'.
- (iv) In light of the above, this Tribunal finds that the Respondent does not have any rights or legitimate interest in the domain name.
- (v) Hence, 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) The Respondent has registered the Disputed Domain Name by adopting the Complainant's earlier well-known trade mark 'DELL'.
- (ii) From the perusal of **Annexure-1** marked by the Complainant, this Tribunal acknowledges the Complainant as the world's largest direct seller of computer systems since its establishment in 1984 including but not limited to their laptop product and their fast growing market in India in relation to its DELL products.
- (iii) The fact that the Respondent used the well-Known mark of the Complainant in relation to his laptop services in which the Complainant is having global market will *prima facie* establish that the use of the Complainant's mark by the Respondent is registration and use in bad faith. The Complainant has also not authorized the Respondent to use their mark 'DELL'.
- (iv) Such adoption of well-known trademark by the Respondent is more likely to create confusion among the general public and internet users that the Respondent's domain name is the domain name that is created by the Complainant for their laptop services.



(v) The intermittent use of the impugned domain name by the Respondent as observed from **Annexure-6**, corroborates to the fact that the impugned domain name is registered and used in bad faith by the Respondent.

(vi) From the above, this Tribunal finds that the registration of the impugned domain name by the Respondent is registration and use in bad faith. Hence, the Arbitral Tribunal is satisfied that the Respondent used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.

8. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "DELL" and also the disputed domain name www.delllaptopservicecentre.co.in be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator

14th June, 2019
Chennai, INDIA