

Bond		Indian-Non Judicial Stamp Haryana Government		Date : 07/07/2020	
Certificate No.	G0G2020G1510		Stamp Duty Paid : ₹ 101		
GRN No.	65538165		(Rs. Only)		
			Penalty : ₹ 0		
			(Rs. Zero Only)		
Deponent					
Name :	C A Brijesh				
H.No/Floor :	Na	Sector/Ward :	27	Landmark :	Millennium plaza
City/Village :	Gurugram	District :	Gurugram	State :	Haryana
Phone :	79*****10				
					
Purpose : NIXI AWARD to be submitted at Others					

BEFORE THE SOLE ARITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INFORMATION EXCHANGE OF INDIA)

NEW DELHI, INDIA

Dell Inc.

One Dell Way, Round Rock

Texas – 786 82

USA

...Complainant

Versus

Madugula Karthik

Hyderabad – 500 042

Telangana

INDIA

... Respondent

1. The Parties

The Complainant is Dell Inc., a company duly incorporated and existing under the laws of Delaware, United States of America (USA), having its principal office at One Dell Way, Round Rock, Texas – 500 042, USA through its Authorized Representatives, Akhilesh Kumar Rai, AZB & Partners having office at Plot No. A8, Sector 4, Noida – 201301, Uttar Pradesh, India (hereinafter referred to as **Complainant**).

The Respondent is Madugula Karthik of Hyderabad – 500 042, Telangana, India (hereinafter referred to as **Respondent**).

2. The Domain Name and Registrar

The disputed domain name is <dellcareers.in>. The said domain is registered with ‘GoDaddy.com, LLC’.

3. Procedural Timeline

- May 06, 2020:** The .INRegistry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- May 06, 2020:** Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.
- May 11, 2020:** Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover i.e. May 11, 2020. However, NIXI inadvertently missed forwarding the soft copy of the Complaint by means of the same email.

- May 15, 2020:** The Arbitral Tribunal addressed an email to NIXI informing them that a copy of the Complaint was not forwarded as part of their email dated May 11, 2020.
- May 18, 2020:** Accordingly, NIXI forwarded a soft copy of the Complaint to both the Arbitrator and the Respondent via an email on this date.
- May 19, 2020:** Arbitral Tribunal addressed an email to the Respondent, with a copy marked to the Complainant's Authorized Representative and NIXI, directing the Respondent to file its response, if any, in ten days.
- May 29, 2020:** Absent a response from the Respondent, the pleadings in the Arbitration proceedings were closed and the Tribunal proceeded to pass an Award on the basis of the material available on record.

The language of the proceedings shall be English.

4. Factual Background

4.1. Complainant's Activities

The Complainant states, *inter alia*, that it is a company organized and existing under the laws of Delaware, USA having its headquarters in Texas, USA. The Complainant claims that it is the world's largest direct seller of computer systems. The Complainant states that it was established in the year 1984 and has since diversified into various other products/services such as computer hardware, software, peripherals, computer oriented products such as phones, tablet computers, computer related consulting, installation, maintenance and technical support services, etc. The Complainant states that its business is aligned to address the needs of large enterprises, public institutions (healthcare, education and government included), small and

medium businesses' as well as individuals and that it is one of the leading providers of computers systems to large enterprises worldwide.

The Complainant claims to do business with 98 percent of the Fortune 500 corporations and claims to sell more than 100,000 systems every day to consumers across 180 countries including India. The Complainant states that it has a team of 100,000 members across the world that caters to more than 5.4 million customers on a daily basis. The Complainant states that it has been widely mentioned in the news and electronic media worldwide including in India primarily due to its founder, Michael Dell who took the company private in the biggest leveraged buyout since the financial crisis for \$24.4 billion and also because of its acquisition of EMC Corporation for around \$67 billion which the Complainant claims to be the largest technology company acquisition ever.

The Complainant states that the first use of the mark 'DELL' dates back to the year 1988. The Complainant further states that the most distinctive element of its trade mark 'DELL' is the slanted 'E' which symbolizes the founder, Michael Dell's wish to "*turn the world on its ear*" and the colour blue represents 'loyalty, trustworthiness, confidence and intelligence'. The Complainant claims that the representation of its mark with the slanted 'E' has become one of the most memorable and iconic logos in the technology industry and that in order to secure rights over the mark 'DELL' the Complainant has registered the same in several countries around the world, including in India. The Complainant also states that it uses various 'DELL' formative marks such as 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.

The Complainant states that its products under the mark 'DELL' have been available in India since the year 1993 and that the same are marketed in India through its subsidiaries. The Complainant states that its subsidiaries have tied up with various channel partners, authorized

distributors/resellers and has launched various 'DELL' exclusive stores, multiple brand outlets and solution/service centers all over India such that its products, through a wide network of 'DELL' exclusive stores and other stores, are readily available in around 200 cities across India. The Complainant also states that its subsidiaries, licensee(s) and authorized distributors and resellers alone have the limited right to use the trademark and trade name 'DELL' in India.

Therefore, the Complainant claims that the goodwill and reputation associated with the name/mark 'DELL' rests with the Complainant alone and no one else is permitted to use the same as a trade mark, corporate name, or in any manner whatsoever unless so permitted by the Complainant.

4.2. Complainant's Use of 'DELL'

The Complainant states that the mark 'DELL' was first used in the year 1988 and that the Complainant has since secured registrations for the mark 'DELL' in several countries including in India. The Complainant states that it has secured various registrations for the mark 'DELL' in India. In this regard, the Complainant has provided copies of trade mark registration certificates/online status for the said registrations in India marked as **Annexure 1**. A perusal of the list and the corresponding registrations indicates that the earliest registration obtained for the mark/name 'DELL' in India dates back to June 15, 1992 in Class 09 under No. 575115.

Some of the other key registrations obtained by the Complainant are for the mark 

in Class 09 under No. 923915 dating back to May 10, 2000 and for the mark  in Class 41 under No. 3597740 dating back to October 06, 2016 and the same are valid and subsisting in India.

The Complainant also operates an interactive website 'www.dell.com' wherein customers can log in and place orders for laptops by making online payments. The Complainant claims to have a very strong internet presence by virtue of the aforesaid website which can be accessed from anywhere in the world including India and provides extensive information on the activities of the Complainant. Additionally, the Complainant also has various country specific domain names and websites operating therefrom (such as 'www.dell.co.in' for India) wherein in addition to details of the Complainant, details of products, stores and authorized service centers are also provided.

Based on the aforesaid, it is the Complainant's assertion that due to extensive and continuous use of the mark 'DELL' for the last 30 years, the Complainant has built an enviable reputation in respect of the said mark that vests solely in its favour. The Complainant states that by virtue of the said use, the mark 'DELL' has become a well-known mark and several actions in the past against domain name squatters have been successfully adjudicated in favour of the Complainant. In this regard, the Complainant has provided a list of cases adjudicated upon by WIPO and NIXI wherein awards have been passed in favour of the Complainant, marked as **Annexure 2**. Therefore, the Complainant states that it alone has the exclusive right to use the mark 'DELL' as a domain name, company name or in any other manner whatsoever.

4.3. Respondent's activities and its use of 'dellcareers.in' which is deceptively similar to 'DELL'

The Respondent has registered the domain name <dellcareers.in> on November 27, 2018 which has expired on November 27, 2019 as is clearly discernible from the WHOIS records as evidenced through **Annexure 3** forming part of the Complaint filed by the Complainant. However, the said domain name is not available for sale and the website 'www.dellcareers.in'

is not operational as on date and no extracts of the same have been placed on record by the Complainant.

Given that the Respondent has not participated in the present proceedings, no further information is available regarding its business activities and/or its use of the domain name comprising the mark/name 'DELL'.

5. Contentions of Parties as summarized in the pleadings

5.1. Complainant

a) The domain name is identical or confusingly similar to a trade mark or trade/service mark in which the Complainant has rights

- i. The Complainant submits that it is the registered proprietor of the mark 'DELL' in India and the Respondent has adopted the Complainant's well-known trademark as part of the disputed domain name <dellcareers.in>. The Complainant submits that use of the mark 'DELL' as part of the disputed domain name gives the impression that the said domain name is providing information in connection with the Complainant.
- ii. The Complainant submits that the Respondent has no rights in the mark 'DELL' and therefore, the adoption and use thereof by the Respondent as part of the disputed domain name is only intended to create confusion among members of the public. The Complainant states that the Respondent has not been licensed/authorized/permitted in any manner whatsoever to adopt or use the Complainant's distinctive and well-known mark 'DELL'. The Complainant further submits that the Complainant offers job vacancies through its own website 'www.jobs.dell.com' which website is controlled by the Complainant and has not been outsourced to any partner or third party and that the disputed domain name gives the wrong impression that perhaps job vacancies are being

offered by the Complainant through the same thereby resulting in confusion. In this regard, the Complainant has provided screenshots from its website 'www.jobs.dell.com' marked as **Annexure 4**.

b) The Respondent has no rights or legitimate interest in respect of the domain name

- i. It is the Complainant's submission that the disputed domain name was registered back in the year 2018 and yet to date, no website is operational therefrom. The Complainant submits the same indicates that the Respondent is merely domain name squatting and intends to sell the domain name for profit. The Complainant further states that in the event the Respondent successfully does create a website resolving to the disputed domain name, then the same is likely to dupe innocent customers who may not verify the authenticity of the same and simply believe it to emanate from/be related to the Complainant.
- ii. It is the contention of the Complainant that the Respondent has registered the disputed domain name with the sole objective of reaping illegal benefits of the goodwill and reputation vesting in favour of the Complainant by virtue of the mark 'DELL'. The Complainant submits that the Respondent has no right to use the Complainant's trade mark 'DELL' as it is the sole property of the Complainant. As any use of the mark 'DELL' by the Respondent has not been licensed or permitted by the Complainant, the said use and adoption by the Respondent is tantamount to infringement of the Complainant's registered trade mark 'DELL' and is without any legitimate interests in respect thereof.

c) The domain name was registered and is being used in bad faith

- i. The Complainant contends that the bad faith of the Respondent can be established based on the fact that the Respondent knew or should have known of the Complainant's trade

mark rights by virtue of the well-known status of its mark 'DELL' and nevertheless registered a domain name comprising the said mark in which it had no rights or legitimate interest.

- ii. The Complainant submits that the addition of the mark 'DELL' as part of the disputed domain name is without due cause and has been done to usurp the goodwill vesting in the mark 'DELL' in favour of the Complainant, thereby demonstrating that registration of the disputed domain name has been secured in bad faith and with a dishonest intention to mislead innocent members of the public.
- iii. The Complainant further submits that the Respondent has no reason to adopt the trade mark of the Complainant without any authorization and also states that use of the disputed domain name by the Respondent is not for non-commercial purposes and would not qualify as 'fair use'. It is the contention of the Complainant that the mark 'DELL' has been adopted as part of the disputed domain name by the Respondent with the sole objective of making illegal profits.
- iv. The Complainant states that the Respondent is deemed to be well aware of the Complainant's rights vesting in the mark 'DELL' and yet the Respondent registered a 'DELL' formative domain name without the permission or consent of the Complainant, in clear violation of the proprietary rights vesting in favour of the Complainant vis-à-vis the mark 'DELL'. The Complainant submits that the said act on part of the Respondent is clear evidence of dishonesty and bad faith.

5.2. Respondent

As per the INDRP Rules of Procedure, a soft copy of the Complaint alongwith all annexures was forwarded to the Respondent on May 18, 2020 under the directions of this Arbitral Tribunal. This Tribunal issued notice on May 19, 2020 to the Respondent directing it to file a

response within ten days. Absent a response from the Respondent thereto, the matter has proceeded *ex parte*.

6. Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- i. The Registrant's domain name is identical or confusingly similar to the 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;
- iii. The registrant's domain name has been registered or is being used in bad faith.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1. Identical or confusingly similar trade/service mark

As per the WHOIS records, the Respondent registered the disputed domain name <dellcareers.in> on November 27, 2018.

The Complainant is the proprietor of the registered trade mark 'DELL' under several classes *viz.* 9, 36, 37, 41, 42 and has obtained registrations in respect of the same with the earliest registration dating back to the year 1992 in India. In order to substantiate the aforesaid, the Complainant has relied upon registration certificates for the trade mark 'DELL'. It claims to have been substantially and continuously using the mark/name 'DELL' in relation to its business/products/services since the year 1988.

As seen from above, the Complainant has registered trademarks in India since the year 1992 and is doing/operating business/website thereunder whereas the Respondent only registered the domain name <dellcareers.in> much subsequent to the Complainant i.e. on November 27, 2018.

The disputed domain name incorporates the mark 'DELL' in its entirety, with the only variant from the Complainant's mark being the addition of the generic word 'careers'. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed* (INDRP/278) as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha* (INDRP/148) that when a disputed domain name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in the case of *Farouk Systems Inc. vs. Yishi*, WIPO Case No. D2010-006, it has been held that the domain name wholly incorporating a Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

The Complainant has also placed on record various previous decisions of NIXI as well as the WIPO wherein Panels have held in favour of the Complainant when faced with disputed domain names such as 'dellservicecentre.in', 'dellshopping.in', 'dellshowrooms.in', 'dellauctions.com', 'dellvista.com', etc. and have unequivocally recognized the prior proprietary rights of the Complainant in the mark 'DELL'. For instance, it has been held in the case of *Dell Inc. v. George Dell and Dell Net*, WIPO Case No. D2004-0512 (filed by the Complainant against domain name 'dellnetsolutions.com') that addition of a generic term to a trade mark does not eliminate a likelihood of confusion.

In fact, several decisions have held a domain name to be confusingly similar to a registered trade mark when it comprises the registered trade mark *plus* one or more generic terms. In fact, in the present case, addition of the descriptive/generic term 'careers' along with the name/mark

'DELL' further aggravates the probability of confusion since the word 'careers' implies that prospective jobs/career opportunities are perhaps being offered by the Complainant through the domain name <dellcareers.in>.

In view of the foregoing discussions, the Complainant has satisfied this Tribunal that:

- i. The domain name in question <dellcareers.in> is confusingly similar to the Complainant's prior registered trade mark 'DELL'; and
- ii. It has both prior statutory and proprietary rights in respect of the mark 'DELL'.

6.2 Rights and legitimate interests

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 7 of the INDRP enumerates three circumstances (in particular but without limitation) and if the Arbitrator finds that the Registrant has proved any of the said circumstances that shall demonstrate its rights to or legitimate interests in the disputed domain name. The said paragraph is reproduced hereinbelow:

“7. Registrant's Rights to and Legitimate Interests in the Domain Name – Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes 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 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.”*

The Respondent has not filed any response in this case. In the absence of a response thereof, there is nothing on record to suggest that the Respondent has used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with *bona fide* offering of goods/services; or is commonly known by the disputed domain name; or has made fair use of the domain name. In fact, no website in connection with a legitimate business interest is functional as on date corresponding to the domain name <dellcareers.in>.

Further, as observed by the panel in the case of *Inter-Continental Hotels v. Abdul Hameed* (INDRP/278), it is well established that trade mark registration is recognized as *prima facie* evidence of rights in a mark. Complainant, in the instant case, is the prior owner of the registered trademark ‘DELL’ in India and has sufficiently demonstrated its rights in the trade mark ‘DELL’. It is a settled position that if the Respondent does not have trade mark rights in the word corresponding to the disputed domain name and in the absence of evidence that the Respondent was commonly known by the disputed domain name, the Respondent can have no rights or legitimate interest therein. [See *Shulton Inc. v. Mr. Bhaskar*, (INDRP/483)]

In the absence of any *bona fide* use on behalf of the Respondent, it appears that the domain name registration was obtained for potential commercial gain and to commercially exploit the deceptive similarity with the Complainant’s registered trade mark ‘DELL’ and to free ride on

the goodwill and reputation of the Complainant by being mistaken to be associated with the Complainant.

In view of the foregoing, it is evident that the Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

“6. Evidence of Registration and use of Domain Name in Bad Faith – For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. Circumstances indicating that the Registrant 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 bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*
- ii. the Registrant 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 the Registrant has engaged in a pattern of such conduct; or*
- iii. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement*

of the Registrant's website or location or of a product or service on the Registrant's website or location."

It appears that by registering the disputed domain name, the Respondent has attempted to attract internet users by creating likelihood of confusion with the Complainant's mark/source of origin. [See *Colgate – Palmolive Company and Colgate Palmolive (India) Ltd. v. Zhaxia*, (INDRP/887)]. Thus, it can be inferred that the Respondent has registered the disputed domain name in bad faith to tarnish the Complainant's trade mark and cause confusion in the minds of the public.

It has also been held in the cases of *LinkedIn Corporation v. David Naranjo, All Play Media*, WIPO Case No. D2019-2784 and *V&V Vin&Sprit AB v. Wallin*, WIPO Case No. D2003-0437 that bad faith can be established where a domain name is so obviously connected with a well-known trade mark that its very use by someone with no connection to the trade mark suggests opportunistic bad faith. It is also evident that the objective of registering the disputed domain name was aimed at preventing the legitimate owner of the trade mark from reflecting the same in a corresponding domain name since to date no website is functional at the website corresponding to the disputed domain name.

Substantial number of precedents establish that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that mark is itself sufficient evidence of bad faith registration and use. [See *Pepperdine University v. BDC Partners, Inc.*, WIPO Case No. D2006-1003; *Veuve Clicquot Ponsardin, Maison Fondee en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163, *Mastercard International Incorporated v. Total Card Inc.*, WIPO Case No. 2000 – 1411].

Considering that the webpage currently resolving to the disputed domain name appears to be hosting third-party weblinks some of which redirect to third party websites for laptops/laptop

accessories and there is no legitimate website operational therefrom, it is evident that no *bona fide* use of the disputed domain name is being made in furtherance of any business interest and the Respondent has made a clear attempt to utilize the mark 'DELL' in a dishonest fashion to make illicit gain. Further, given that the WHOIS records do not indicate the disputed domain name as being available for sale, this would also constitute passive/parked holding of the domain name/website, which further contributes to bad faith. [See: *HSBC Holdings plc v. Hooman Esmail Zadeh* (INDRP/032), *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003].

In view of the foregoing, the Tribunal is of the view that the Respondent has registered the domain name <dellcareers.in> in bad faith.

7. Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the mark 'DELL' which is proprietary to the Complainant, (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the disputed domain name <dellcareers.in> to the Complainant.

The parties shall bear their own cost.

Dated: July 10, 2020

C.A. Brijesh
Sole Arbitrator