



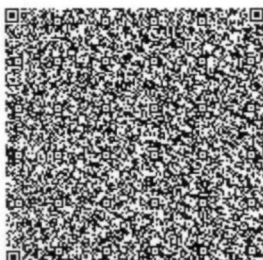
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL39022655714550M
Certificate Issued Date	: 28-Mar-2014 01:53 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130375317046759472M
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line.....

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

www.dellindia.in

between

DELL INC.

...COMPLAINANT

AND

WORLD TRADE KEY IN

...RESPONDENT

AWARD

1

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 12/03/2014. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier.

2. That vide email dated 14/03/2014 sent by NIXI to this Tribunal showed to the satisfaction of this Tribunal that they had dispatched hard copies of the Complaint to the Respondents at their last known address(s) as given in WHO IS by Bluedart courier No. 14141916762 which shows *"NO SUCH CO./CNEE AT GIVEN ADDRESS"* and *"CNEE SHIFTED FROM THE GIVEN ADDRESS"*. This Tribunal noted that the complainant

vide their email dated 13/03/2014 had sent a soft copy of the complaint to the Respondent at their notified email id. This Tribunal also noticed that this Tribunal has also sent emails to the Respondents at the notified email id. However, neither had the emails bounced back nor had any response come from their side. Hence, this Tribunal vide order dated 19/03/2014 directed the Respondent to send their Reply / Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 26th March 2014.

3. Be it that as it may this Tribunal notes that the copy(s) of the order(s) have also been emailed to the Respondent at his notified email id as well hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings.
4. In view of the above this Tribunal vide order dated 28/03/2014 reserved the award and also gave liberty to the Respondent to

send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
 - A. It is claimed the Complainant was founded in 1984 by Mr. Michael Dell, and is claimed to be one of the world's largest direct seller of computer systems besides 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.

- B. It is claimed that the Complainant began using the trade mark/name DELL in 1987 and since then it has made extensive and prominent use of its trade mark/name DELL in connection with a wide range of computer related goods and services, including offering its goods and services online through numerous DELL domain names and further claiming that it has spent substantial time, effort and money advertising and promoting the “DELL” trade mark throughout the world result of which the “DELL” trade mark has become famous and well-known, and has an enormous goodwill.
- C. It is claimed that 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. Complainant itself is in the top 50 of the Fortune 500. It is further claimed that the Complainant sells

more than 120,000 systems every day to customers in 180 countries and has, more than 43,000 services team members in approximately 90 countries, 60 technical support centers, 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. Reliance is placed on excerpts from the Complainant's website "**Annexure-B**".

- D. It is claimed that the Complainant began doing business in India in 1993 and 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 but also subsequently through extensive after-sales service outlets and direct sales of its products.
- E. Besides the Complainants claim that their Indian subsidiary gives after sales service and does marketing and distribution of customized, high technology computer

systems and storage devices including computer consultancy and solutions, and software promotion. Reliance is placed on **“Annexure-C”**.

F. It is claimed that 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 as its corporate name. It is further stated that the trade mark DELL also forms an integral part of various other trademarks owned by the Complainant including DELLWARE, DELLZONE, DELLNET, DELLHOST to name a few. It is emphasized that 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. Reliance is placed on **“Annexure-D” & “Annexure-E”**.

- G. To buttress their claim the claimants have given a list of decisions rendered by various Arbitral Tribunals and the same is given as **“Annexure-F (colly)”**.
- H. It is claimed that 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. It is further claimed that the Complainant generates almost half of its revenue from sales over the internet. Reliance is placed on **“Annexure-G”**
- I. It is alleged by the Complainants that the Respondent in the present dispute has registered the domain <dellindia.in>, thereby illegally and without authority and has thus violated the trademark **“DELL”** which is the exclusive property of the Complainant. It is further alleged that the Respondent is using the domain <dellindia.in> to intentionally attract, for commercial gain, internet users seeking the Complainant's (Dell's) services and products to

its website at <dellindia. in>, where it offers the same or similar products and services as those offered by the Complainant including computer related hardware and software, computer-related consulting, installation and technical support services etc., in flagrant defiance of the Complainant's stated trademark rights. Reliance is placed on “**Annexure - H**”.

J. It is alleged that the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights. For this reliance has been placed on “**Annexure - I**” and “**Annexure – J**”.

K. It is alleged that the Respondent has no rights or legitimate interest in the domain name and has no connection / link with the complainants and its website use is not *bona fide* since the Respondent is trading on the fame and recognition of the Complainant's well-known trademark in order to cause initial interest, confusion and bait internet

users to accessing its website and force the Complainant to buy the Respondent out in order to avoid said confusion as is typically the strategy of cyber squatters.

- L. It is again alleged that the domain name was registered or is being used in bad faith. The Complainant alleges that the Respondent registered the domain name <dellindia.in> in order to piggy-back off the commercial value and significance of the Complainant's domain names <dell.co.in>, <dell.com>, <dellindia.com> and <dell.in> and thus it is a bad faith registration and bad faith use of the domain name <dellindia.in>

ORDER

7. This Tribunal has considered the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to send his Reply/ Statement of Defence and take further steps in the present proceedings chose not to

give any and hence the allegations of the complainants remain un rebutted/ admitted.

8. In view of the undisputed evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <dellindia.in> hence this Tribunal directs the Registry to transfer the domain name <dellindia.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 4th day of April, 2014.

NEW DELHI
04/04/2014



V. SHRIVASTAV
ARBITRATOR