

Statutory Alert:

The Parties:

The Complainant in this proceeding is Delaware Corporation, a company having its registered office at Dell Inc., One Dell Way, Round Rock, Texas 78682-2244, USA. The Complainant is represented through its authorized representative, Anand and Anand.

The Respondent in this proceeding is Jack Sun, Domainjet, Inc., 1800 Amphitheatre Parkway, Mountain View, California- 94043, USA.

The Domain Name, Registrar & Registrant:

The domain name in dispute is dellinspiron.co.in. The registrar with which the domain name is registered is Directi Internet Solutions Pvt. Ltd. The registrant is Jack Sun.

Procedural History:

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complaint, regarding the dispute over the domain name dellinspiron.co.in.

.In Registry has supplied the copy of the Complaint and Annexures to me.

The Respondent failed/ neglected to file his say/ reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award and as such the proceedings were conducted ex-parte

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceeding. Since he has failed to join the proceedings, or to file any response the present exparte award is passed.

That I have perused the record and annexures/ document.

Factual Background:

The following information is derived from the Complaint and supporting evidence is submitted by the Complainant.

The Complainant Company was founded in 1984 by Mr. Michael Dell and is one of the largest direct seller of computer systems worldwide. The company has diversified and expanded its activities since inception; it 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 company's business is also aligned to address the unique



needs of large enterprises, public institutions, small and medium enterprises etc. The company is in the top 50 of the Fortune 500 and does business with 98% of Fortune 500 corporations. The company sells more than 10,000 systems daily to customers in 180 countries and has a wide network of technical support centers and services team members worldwide.

The Complainant began using its trademark/ name DELL in the year 1987 and since then it has made extensive and prominent use of its trademark/name not only in connection with a wide range of computer related goods and services but also as its corporate name. The Complainant also offers its good and services, online through numerous DELL domain names.

The Complainant started doing business in India in the year 1993 and has a highly successful presence in India with reference to the trademark DELL, which arises out of a highly successful trademark presence in the country as well as through extensive after sales services and direct sales of its products through its Indian subsidiary incorporated in June 2000. As a part of its retail initiative to increase its presence in India, the Complainant has tied up with several channel partners to launch exclusive DELL stores all over the country.

The Complainant has launched several models of desktops and laptops encompassing different features and specifications and are sold under different series/ sub- brands. One of such series amongst the numerous variety of laptops and computers sold by the Complainant is the DELL INSPIRON series of laptops.

The trademark DELL has become a distinctive and famous mark throughout the world, symbolizing high quality standards maintained by the Complainant in providing products and related services. Numerous arbitration panels have also decided in favour of the trademark DELL.

The Complainant also has a huge internet presence and websites providing information on their business activities, products and services which are accessed by customers and other internet users. Also, in order to support its online marketing and sales efforts, the company has registered various domain names comprising of the name DELL in conjunction with the trademark associated with the particular product line/service, for e.g. dellinspiron.in, dellinspiron.com, delldirect.com, dellcloud.com etc. The Complainant presently owns over 500 domain names, a majority of which contain the trademark DELL.

Respondent in this proceeding is an individual name Jack Sun who has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Parties Contentions:**(a) Complainant**

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly Similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given adequate notifications and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against, ex-parte and the Arbitration proceeding have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "DELLINSPIRON".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

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

The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The Complainant has submitted that the disputed domain name <dellinspiron.co.in> fully incorporates the Complainant's well-known and registered trademarks DELL and INSPIRON in its entirety and is confusingly similar as a whole to the Complainant's domain name www.dellinspiron.in and www.dellinspiron.com .

The Complainant has further stated in its complaint that the Respondent's domain name <dellinspiron.co.in> is highly identical to its marks DELL and INSPIRON and similar to various other domain names in which the Complainant has rights on account of prior registrations and use. The Respondent's domain name is nothing but a blatant imitation of the Complainant's corporate name and registered trademark given the phonetic, visual and conceptual similarity which could lead the public into believing that the Respondent and their domain name is sponsored by or affiliated to the Complainant.

The Complainant has relied upon a few cases decided in its favour. In *Dell Inc. vs. George and Dell Net Solutions*, wherein it was held that, "It is well established that the addition of a generic term to a trademark does not necessarily eliminate a likelihood of confusion." Similarly in *Dell Inc. vs. SKZ.com*, it was held that the Respondent's domain names <dellcustomersupport.com> and <dellcomputer.com> are confusingly similar to the Complainant's trademark DELL.

The Complainant has further submitted that the Respondent is not the bonafide owner, honest adopter or true user of the disputed domain name and has created it being fully aware of the Complainant's trademark so as to trade and benefit under the Complainant's goodwill.

The Respondent have not rebutted any of the above mentioned contention and therefore they are deemed to be admitted by him.

The Registrant has no rights or legitimate interests in the respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

The Complainant have submitted that since the domain name <dellinspiron.co.in> comprises of the well-known and famous trademarks of the Complainant, DELL and INSPIRON, which are used in relation to its goods and services and it is evident that the Respondent can have no right or legitimate interest in the said domain name.



The Complainant has further submitted that it is apparent from the Respondent's intention while registering the disputed domain name is to misappropriate with the reputation associated with the Complainant's trademarks and is an attempt to unfairly benefit from the goodwill attached to the same. It is stated by the Complainant that there exists no relationship between their company and the Respondent. The Respondent has not been authorized or licensed by the Complainant to register or use the disputed domain name incorporating its trademarks or any trademark forming part of it. Apart from having registered the disputed domain name, there is no obvious connection with it, therefore the mere assertion by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest does exist.

The Complainant has further submitted that the Respondent's choice of the Complainant's well-known trademarks DELL and INSPIRON as its domain name is totally unnecessary and the sole purpose of it is carrying on business by causing confusion as to the source, sponsorship, affiliation or endorsement of the activity being carried on through the websites. The website is also not *bonafide* since the Respondent is trading on the fame and recognition of the Complainant's well-known trademarks in order to cause initial interest, confusion and bait internet users into accessing its website and force the Complainant to buy out the Respondent in order to avoid the confusion as is typically the strategy of Cyber Squatting. The Complainant has further submitted that it also believes that the Respondent is enjoying the benefits of 'pay-per-click' revenues which also shows that the Respondent is not making a legitimate and fair use of the disputed domain name.

The above mentioned contention of Complainant have not been rebutted by Respondent and therefore they are deemed to be admitted by him.

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

It has been stated by the Complainant that at the time of creation and registration of the disputed domain name by the Respondent, the Complainant had already a well established business presence globally. The Respondent is presumed to have knowledge of the Complainant's trademarks at the time of registration of the confusingly similar domain name. Even otherwise, the Respondent obviously had knowledge of the Complainant's trademarks by virtue of the numerous correspondences exchanged between the parties with respect to the Complainant's proprietorship in the trademark DELL and the malafide registration and



subsequent transfer of the domain name <dellstreak.com> from the Respondent to the Complainant.

The Complainant has further stated that disputed domain name acquired by the Respondent comprises entirely of the Complainant's registered trademarks, in which the Complainant has a substantial interest and are used in relation to the INSPIRON series of laptops.

The Complainant has further submitted that this is prima facie evidence of the Respondent's bad faith, use and registration of the disputed domain name. The intentional use by the Respondent of the disputed domain name is to attract commercial gain by causing confusion as to the source, sponsorship, affiliation or endorsement with the Complainant in the minds of the public.

The above mentioned contentions of the Complainant have not been rebutted by the Respondent and therefore they are deemed to be admitted by him.

Decision

The Complainant has relied upon a number of cases to prove their contentions against the use of the disputed domain name. In *Dell Inc. vs. SKZ.com*, it was held that the Respondent's domain names <dellcustomersupport.com> and <dellcomputer.com> are confusingly similar to the Complainant's trademark DELL. In the cases of *HSBC Holdings pic -v- Hooman Zadeh* and *Nike Inc. v. B.B. de Boer*, it was held that the use of a domain name comprising of well-known and famous trademarks, is sufficient evidence to prove that the Respondent can have no right or legitimate interest in the said disputed domain name.

Some notable decisions have been referred to, stating that "use of a domain name comprising of 'pay-per-click' links would not of itself confer rights or legitimate interests arising from a "bonafide offering of goods or services" or from "legitimate non-commercial or fair use" of the domain name, especially where it results in a connection to the goods or services in competition with the Rights Holder"- *Lardi Ltd v. Belize Domain WHOIS Service Lt, MBTI Trust Inc. v, Glenn Gasner etc.* The Complainant also cited the decision in *MSNBC Cable, LLC v. Tsysys.com*, wherein it was held that "choosing such confusingly similar domain names can have no other obvious reason other than a future expectancy of holding this particular name for sale to the holder of the trademark for a sum well in excess of the costs of registration." Finally, by citing the judgment in *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, wherein it was held that "the disputed domain name was so obviously connected with a well-known product that its very use by someone with no



connection with the product suggests opportunistic bad faith.” The Complainant clearly proves its points.

In view of the above facts and circumstances, it is clear that Complainant has succeeded in his complaint. In these circumstances it can be presumed that only reason for the registration of the disputed domain name by the Respondent was to capitalize on the fame and reputation of Complainant and to make monetary benefits.

Therefore the Respondent registration and use of the disputed domain name is done in bad faith and .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. dellinspiron.co.in to Complainant. The Award is accordingly passed on this day of 29th December, 2012.



Rajeev Singh Chauhan

Sole Arbitrator

Dated: 29.12.2012