

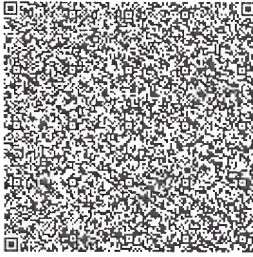
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL40479724960929Q
Certificate Issued Date	: 20-Jun-2018 05:47 PM
Account Reference	: IMPACC (IV)/ dl972303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL97230384919573321087Q
Purchased by	: POOJA DODD
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POOJA DODD
Second Party	: Not Applicable
Stamp Duty Paid By	: POOJA DODD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

Disputed Domain Name <dellservicecenterchennaii.in>

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.

IN THE MATTER OF:

Dell Inc.

One Dell Way, Round Rock,
Texas, 78682, U.S.A.

...COMPLAINANT

Versus

Chevvanthi Rajkumar

301, Unit 1, 3rd Floor,
Marathahalli, Bangalore,
Karnataka - 560037

...RESPONDENT

1. The Parties

The Complainant in this arbitration proceeding is Dell Inc., a company incorporated the laws of Delaware, United States of America with registered office at One Dell Way, Round Rock, Texas – 78682, U.S.A. The Complainant is represented by Akhilesh Kumar Rai of AZB & Partners, its authorised representative.

The Respondent is Chevvanthi Rajkumar with office at 301, Unit 1, 3rd Floor, Marathahalli, Bangalore, Karnataka – 560037.

2. Domain Name, Registrant and Registrar

The Disputed Domain Name is <dellservicecenterchennaii.in>. As per the Who-is Database, the Registrant is Mr. Chevvanthi Rajkumar, with office at Unit 1, 3rd Floor, Marathahalli, Bangalore, Karnataka – 560037. The Email address connected with the Registrant is laptopstorerajkumar@gmail.com.

The accredited registrar with whom the domain name is registered is GoDaddy.com of the address 14455 North Hayden Road, Suite 219 Scottsdale, AZ,85260-6993, United States of America and the Domain ID provided is D10226889-AFIN.

3. Procedural History

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI) and the INDRP Rules of Procedure (the “Rules”), which were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the INDRP and the Rules.

As per the information received from NIXI, the history of the proceedings is as follows:

- 3.1. The Complaint was filed with the .IN Registry, NIXI, against Mr. Chevvanthi Rajkumar. NIXI verified the Complainant and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.2. In accordance with the Rules, Paragraph – 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Pooja Dodd as the Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, the Policy and the Rules.
- 3.3. The Sole Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

3.4. NIXI notified the Parties of the Arbitrator's appointment via email on May 4, 2018 and served an electronic copy of the Complaint on the Respondent. The Parties were notified by the Arbitrator about the commencement of arbitration proceedings on May 4, 2018 and the Respondent was directed to submit a Response within ten days, i.e. by May 14, 2018.

3.5. On May 21, 2018, the Arbitrator notified the Parties that the Respondent did not submit any response within the deadline set, or thereafter. Therefore, the Parties were informed that sufficient opportunity had been granted to the Respondent to file a response and as no formal response had been received from the Respondent, the deadline to file a response or any other documents was closed and that the Award will be passed on merits within the stipulated time. In these circumstances the Complaint is being decided on merits based on materials submitted by the Complainant and contentions put forth by it.

Grounds for Administrative Proceedings:

- A. The Disputed Domain Name is deceptively similar to a trademark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interest in the Disputed Domain Name;
- C. The Disputed Domain Name was registered and is being used in bad faith.

4. Summary of the Complainant's Contentions:

In support of its case, the Complainant, has made the following submissions:

- 4.1. The Complainant is a company incorporated under the laws of Delaware, United States of America and is the world's largest direct seller of computer systems. Since

its establishment in 1984, the Complainant has diversified and expanded its activities which presently include 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.

- 4.2. 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 over 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members around the world and caters to 5.4 million customers every day.
- 4.3. The products of the Complainant have been widely available in India since 1993. Its products are marketed in India by its subsidiaries 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 around 200 cities in India. By virtue of this use, the relevant public associates the DELL trademark with the Complainant alone.
- 4.4. The Complainant has a very strong web presence with the website www.dell.com. The website can be accessed from anywhere in the world 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

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.

- 4.5. The Complainant's first use of the DELL trademark can be traced back to 1998. Since then the Complainant has expanded its business into various countries, and since extensive use of the DELL mark around the globe. Thus, in order to secure its rights over the DELL mark, the Complainant has registered it in several countries, including in India.
- 4.6. The Complainant alleges that the Respondent is notoriously known for registering DELL formative domain names, and that in the past several orders have been passed against the Respondent for transfer of DELL formative domain names to the Complainant. In addition, the Complainant alleges that upon perusal of the website that resolves Disputed Domain Name it can be seen that the Respondent has displayed the DELL trademark of the Complainant at several places. The Complainant also alleges that the Respondent has also a similar shade of blue, as is used by the Complainant, to confuse customers. Additionally, the Complainant alleges that the Respondent also uses catchy phrases to lure the customer into believing the Respondent is affiliated with the Complainant like "Our Dell team will show up on time and do what we promise on the site computer...", "This Dell service centers one of the most successful Dell laptop repair service centers in India", "This Dell service center takes utmost effort to make you satisfied" and "...Please email your questions to us at info@dellservicecenterchennai.in."
- 4.7. The Complainant submits that the Respondent has a pattern of bad faith conduct and is a repeat offender. The Complainant alleges that this can be evidenced and duly



substantiated by the below mentioned INDRP Disputes decided against the Respondent-

4.7.1. In *Dell Inc. VS Raj Kumar (INDRP/499-2013)* it was held that the Respondent's domain name i.e. <dellchargerprice.in> was registered or was being used in bad faith and directed the .IN Registry to transfer the domain name of the Respondent to the Complainant.

4.7.2. In *Dell Inc. VS Raj Kumar. (INDRP/500- 2013)* it was held that the Respondent's registration and use of the domain name. <dellbatteryprice.in> was in bad faith and that the Respondent has no rights or legitimate interests in respect to the domain name and directed the Disputed Domain Name to be transferred to the Complainant.

4.8. In support of the contention the Complainant has furnished copies of the following documentation:

S.No.	Particulars	Page No.
1.	<u>Annexure 1</u> Details of the registration secured by Dell.	1
2.	<u>Annexure 2</u> List of Domain Name Disputes awarded in favour of the Complainant.	2
3.	<u>Annexure 3</u> WhoIs extract of www.dellservicecenters.in	3-7
4.	<u>Annexure 4</u> List of Domain Names registered by the Respondent	8-9
5.	<u>Annexure 5</u> Orders directing transfer of domain names	10-25
6.	<u>Annexure 6</u> Screen print from the website of the offending domain name	26-27
7.	<u>Annexure 7</u> Screen prints from the websites www.dellservicecenterchennai.in , www.laptopstoreindia.com and www.laptopstore.in	28-37
8.	<u>Annexure 8</u> Screen-prints from the said websites showing the similar addresses	38-49

9.	<u>Annexure 9</u> Screen print outs of complains about the Respondent	50-53
10.	<u>Annexure 10</u> Screen prints from the website of the Complainant evidencing the authorized Dell service centers in India.	54-57
11.	<u>Annexure 11</u> Registrations secured by Dell in class 37.	58-59

5. The Respondent and his default

The Respondent has not filed any response to the Complaint. The INDRP Rules of Procedure require under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to present its case.

Rule 11(a) empowers the Arbitrator to proceed with an *ex parte* decision in case any party does not comply with the time limits or fails to submit a response against the Complaint.

As previously indicated; the Arbitrator gave the Respondent 10 days to respond to the Complaint, and the Respondent failed to file any reply to the Complaint and has sought not to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present its case.

The Rules in paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint.

In the circumstances, the Arbitrator's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply despite having been given an opportunity to submit a response.

6. Discussions and Findings

The submissions and documents provided by Complainant lead to the conclusion that Complainant has prior rights in and to the DELL mark and that the Respondent does not have any relationship with the business of the Complainant or any legitimate interest in the DELL mark. Moreover, the Complainant has not authorized the Respondent to use the DELL mark.

It is a well-established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.

6.1. The issues involved in the dispute

The Complainant invokes Rule 3 of the INDRP in its Complaint which determines the elements for a domain name dispute, which are,

- 1) whether the domain name in question is identical or confusingly similar to a trademark,
- 2) why the Respondent cannot claim any legitimate interest in the trademark and
- 3) why it must be considered that the domain name in question is registered in bad faith.



These elements are discussed below in tandem with the facts and circumstances of this case:

Element 1- The Respondent's domain name is identical / confusingly similar to a name, trademark or service mark in which the Complainant has rights: The Arbitrator is of the view that the Complainant has submitted enough documentary evidence to prove its rights in and to the ownership of the DELL and DELL formative marks. The DELL and DELL formative marks have been extensively used by the Complainant to identify its goods, services and business.

Paragraph 3 of the INDRP confers the burden on the Respondent to determine whether the Respondent's domain name registration infringes or violates someone else's rights before applying for registration of the domain name, and the Respondent has failed this responsibility. A cursory glance at the Disputed Domain Name <dellservicecenterchennaii.in> makes it obvious that the Disputed Domain Name is deceptively similar to the Complainant's DELL and DELL formative marks, because the Disputed Domain Name contains the Complainant's DELL mark. In addition, the Respondent offers services that can be termed as "after sales services" which are being offered by the Complainant for its DELL branded products. The Disputed Domain Name actively perpetuates falsehood by using a phrase which will, in all likelihood, confuse consumers into believing that the Respondent's services are being offered by the Complainant i.e. that the Respondent is the DELL after sales service center in Chennai. Thus, consumers will be confused as to the origin of the services and will be led into believing that the website that resolves at the Disputed Domain Name is affiliated with the Complainant. Hence the first element is satisfied.

Element 2 - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name: The Complainant has, in its submissions established that it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its DELL marks. The burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent, and by not responding to the Complaint, the Respondent has failed to establish this burden.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Element 3 - The Disputed Domain Name has been registered or is being used in bad faith: Paragraph 6 of the INDRP determines what constitutes bad faith. It includes circumstances where a respondent is using a domain name intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's marks.

The Complainant has failed to prove that the Respondent is a habitual offender because it failed to establish the nexus between the Respondent in this Complaint and the Respondent in the cases annexed. Thus, the element of a bad faith registration in relation to the Disputed Domain Name are being assessed only on the merits of evidence attached that is pertinent to the Disputed Domain Name.

Internet users will reasonably expect to find Complainant's services at <dellservicecenterchennaii.in>; and such Internet users may believe that the website that resolves at the Disputed Domain Name is the official website of the Complainant catering specifically to the Chennai region.

It appears beyond doubt that the Respondent adopted a deceptively similar domain name illegally for commercial gain and therefore allowing the Disputed Domain Name to continue to operate would cause significant harm to the public and to the Complainant.

The above leads to the conclusion that adoption by the Respondent of the Disputed Domain Name shows opportunistic bad faith.

7. Decision:

In view of the foregoing, I am convinced that the Complainant has a legitimate right to the Disputed Domain Name; the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and the Respondent's registration and use of the Disputed Domain Name is in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant.

Dated: June 21, 2018

A handwritten signature in black ink, appearing to read 'Pooja Dodd', with a long horizontal line extending to the right.

Pooja Dodd

Sole Arbitrator