



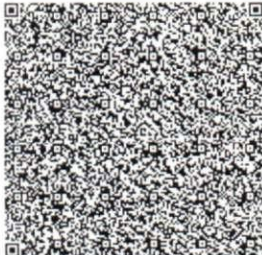
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

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Certificate Issued Date	: 18-Feb-2016 06:12 PM
Account Reference	: IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL835403332804738693200
Purchased by	: ANKUR RAHEJA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ANKUR RAHEJA
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Stamp Duty Paid By	: ANKUR RAHEJA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**INDRP ARBITRATION**  
**THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ADMINISTRATIVE PANEL DECISION**  
**Dell Inc. V Mani (INDRP/758)**  
**SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB**

*A. Rahaj*  
*10-03-16*

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**In the matter of:**

**Dell, Inc**  
One Dell Way,  
Round Rock,  
Texas 78682-2244  
USA

**... Complainant**

**versus**

**Mani**  
Soniya  
Mathaakaavadanur, Dharmapuri,  
Coimbatore, Tamil Nadu 635301  
India

**... Respondent**

**ARBITRATION AWARD**

**Dispute Domain Name: dellservicecenterinbangalore.in**  
**Case No: INDRP/758**

**1. The Parties:**

- 1.1.** The Complainant in this arbitration proceedings is: **Dell, Inc**, a Company having it's office at One Dell Way, Round Rock, Texas 78682-2244 USA represented by Mr Safir Anand and Ms. Madhu Rewari of M/s Anand and Anand having office at First Channel, Plot No 17A, Sector 16A, Film City, Noida, Uttar Pradesh, India.



- 1.2.** The Respondent in this arbitration proceeding is Mani of Soniya having address as Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu 635301, India.

**2. The Domain Name and the Registrar:**

- 2.1.** The Disputed Domain Name is <dellservicecenterinbangalore.in>, created on 7th February 2013.
- 2.2.** Domain Registrar is Good Domain Registry Pvt Ltd, Chennai.

**3. Procedural History:**

- 3.1.** Arbitrator received an email, inquiring if Nixi can avail of its services as an arbitrator for the dispute pertaining to the domain name <dellservicecenterinbangalore.in>. Arbitrator confirmed availability and sent the signed Statement of Acceptance and Declaration of Impartiality and independence as required by rules.

- 3.2. The .IN Registry appointed Ankur Raheja as the sole Arbitrator on 21 January 2016 and Arbitrator received the hard copy of the Complaint along with Annexures on 22 January, 2016.
- 3.3. Arbitral Proceedings were commenced by Arbitrator on 24 January 2016 by issuance of a notice by email to the Respondent directing him to file his response to the Complaint by 08 February 2016.
- 3.4. In the same notice, the Complainant was also asked to provide soft copy of the Complaint to expedite the proceedings, which was complied with. Therefore a new timeline for response was provided as 13 February 2016. But Respondent failed to file any response to the said timeline, therefore a new timeline was provided for filing of the Response, as 20 February, 2016 to the Respondent.
- 3.5. The hard copy of the Notice sent could not be delivered initially, therefore, was dispatched again through a different courier company on 28 January 2016 by Nixi but remained undelivered due to wrong WHOIS address. Though, the soft copy of the Complaint was duly served upon the Respondent on 02 February 2016 by the Complainant in terms of INDRP rules. But the Respondent has failed to file any response to the said INDRP complaint.

3.6. No personal hearing was requested / granted / held.

3.7. The language of these proceedings is in English.

#### **4. Factual Background:**

4.1. The Complainant is one of the world's largest direct sellers of Computer Systems and began using the trade mark/trade name DELL in 1987. The Trademark DELL and the DELL formative marks have been registered by the Complainant in various classes in over 180 countries across the world including United States of America and India under classes 2, 9, 36, 37 and 42. *[Details of which are attached as Annexure by the Complainant]*

4.2. The Complainant is a world leader in computers, computer accessories and other computer related products and services and recently voted as "#15 Most Loved Companies" by ADWeek. Complainant sells its products and services in over 180 countries for several years and as a consequence of those Complainant's marketing and sales success Dell and sales success, DELL and its marks, have been famous in the United States and many other countries including India. Undoubtedly, it

has invested heavily in marketing under its marks, devoting hundreds of millions of dollars to advertising and promoting its products and services through radio, television, magazines and internet as marketing media.

4.3. Complainant has been one of the leaders in the Indian PC maker in India and began doing business in India since 1993. The Complainant claims that it has a high successful presence in India in respect of its Trademark and trade name DELL because of its extensive use of DELL products and also subsequently through extensive after sale service outlets and direct sales of its products through its Indian Subsidiary incorporated in June 2000. The information regarding Complainant's business and operation in India can be found on the website [www.dell.co.in](http://www.dell.co.in). Complainant also maintains several pages on the social media platforms such as Twitter, YouTube, LinkedIn and Google+, which helps in spreading huge awareness and assist in consumers associating the trademark "DELL" with the Complainant only.

4.4. The Complainant has spent substantial time, effort and money advertising and promoting the "Dell" trade mark and the DELL formative marks throughout the world. As a result, the "Dell" trade mark

has become famous and well-known, and the complainant has developed enormous goodwill in the mark and widespread consumer recognition from the very beginning.

- 4.5. The trade mark "Dell" and the "Dell" formative marks have become distinctive and famous trademarks throughout the world as a symbol of the high quality standards that the Complainant maintains for its products and related services. Numerous arbitration panels have either recognised the fame of the Trade mark / Trade Name in the UDRP matters: DELL Inc. V SZK.com, (National Arbitration Forum Claim No FA0509000555545); Dell Inc. V William Stenzel, (NAF Claim No FA0510000574596, November 23, 2005); DELL Inc. V. Innervision Web Solutions, (NAF Claim No FA0503000445601, May 23, 2005); DELL Inc. V. Radvar Computers LLC (WIPO Case # D2007-1420) and so on. Further, the following INDRP decisions have been Annexed by the Complainant out of the numerous complaints filed under INDRP since 2011:

INDRP/307 Dellprecision.in

INDRP/308 Dellprecision.co.in

INDRP/311 Dellphone.in

INDRP/315 Dellvenue.co.in

INDRP/316 Delllatitude.in

INDRP/317 Delllatitude.co.in

INDRP/318 Dellphone.co.in

- 4.6. The Complainant has a huge internet presence and they generate half of their revenue from sales over the Internet. They have registered numerous other domain names which comprise of the Complainant's famous DELL mark in conjunction with the trade marks/brand name associated with the line of products and services. Information about the Complainant's business can be found on websites such as <dell.com> and <dell.co.in>.
- 4.7. It owns over 5000 domain names, majority of which contains the trade mark DELL including indian ccTLDs such as Dell.co.in, Dell.in, DellDirect.in, DellInspiron.in, DellCenter.in, DellComputer.co.in, DellComputer.in, DellComputers.co.in, DellMobile.co.in, DellMobile.in and many more.
- 4.8. The Respondent in the present dispute has registered several domain names: <delllaptoppricelist.in>, <delllaptopstore.in>, <dellservice.in>, <dellservicecenter.in>, <dellservicecenterchennai.in>, <dellservicecenterinbangalore.in>, <dellservicecenterinchennai.in>, <dellshowrooms.in>. The Complainant claims that the disputed domain



names are clearly being used to capitalize on a Dell customer's attempt to search for Complainant's products and services in relation to various models and range of products and services offered by the Complainant under the **DELL** formative marks, all of which have been incorporated into the Disputed Domain Names registered by the Respondent herein.

**5. Parties Contentions:**

**5.1. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights**

**Complainant:**

5.1.1. The disputed Domain Name fully incorporates the Complainant's well-known and registered Trademark "DELL" in its entirety and are confusingly similar as a whole to the Complainant's Domain Names www.Dell.in and www.Dell.co.in. It is also similar to the various other domain names owned by the complainant such as DellDirect.in, DellInspiron.in, DellCenter.in, DellComputer.co.in, DellComputer.in,

DellComputers.co.in, DellMobile.co.in, DellMobile.in and so on.

The WHOIS records of all the said Domain Names, have been filed with the Complaint.

5.1.2. The impugned domain name <dellservicecenterinbangalore.in> fully incorporates the Complainant's well-known and registered Trademark "DELL" its entirely and in confusingly similar as a whole to the Complainant's domain names. The dominant part of the impugned domain name is the word "DELL" which is identical to the well-known and registered trade mark DELL. The Respondent's addition of the generic term "SERVICE CENTER IN BANGALORE" only serves to classify amongst the consumers that the Respondent is related to the Complainant.

5.1.3. In DELL Inc. V George Dell and Dell Net Solutions (WIPO D2004-0512), it was held that "it is well established that the addition of a generic term to a trade mark does not necessarily eliminate a likelihood of confusion". There are numerous examples of decisions holding a domain name to be confusingly similar to a registered trademark when it consists of the mark plus one or more generic terms. Various UDRP decisions in support are annexed - WIPO Case no D2001-0727, WIPO

Case No D2001 - 0602, Case No 2000-0651 and WIPO Case  
No 2000-0662.

5.1.4. Complainant also places reliance in the matter of Dell Inc. V. SKZ.com FA0509000555545 (NAF Oct 21, 2005) wherein it was held that the Respondent's domain names <dellcustomersupport.com> and <wwwdellcomputer.com> domain names are confusingly similar to the Complainant's Dell mark in its entirety and addition to the generic term "Customer Support" and "Computer" which has an obvious connection to the Complainant's business. Also in the matter of Space Imaging LLC V Brownell, AF-0298 (eResolution Sept. 2, 2000) emphasising on finding confusing similarity in an instance where the Respondent's domain name combines the Complainant's mark with a generic term which is obviously affiliated to the Complainant's business.

5.1.5. Furthermore, the addition to the domain name extension, ".in" is irrelevant in determining whether the domain names registered by the Respondent are confusingly similar to the Complainant's registered Trademark. [Blue Sky Software Corp. V Digital

Sierra, WIPO Case no D2000-0165; Busy Body, Inc. v Fitness  
Outlet Inc., WIPO Case No D2000-0127].

**Respondent:**

5.1.6. The Respondent did not submit any response.

**5.2. The Respondent has no rights or legitimate interests in respect of  
the disputed domain name**

**Complainant:**

5.2.1. The Disputed Domain Name comprises of the well-known and famous trade mark "DELL" and the DELL formative marks used in relation to the Complainant's wide range of goods and services, it is evident that the Respondent can have no right or legitimate interest in the domain name [HSBC Holdings pic V. Hooman Esmail Zadeh, M-Commcerce Ag, INDRP/032 and NIKE Inc. V. B.B. de boer, WIPO Case No D2000-1397]

5.2.2. There exists no relationship between the Complainant and the Respondent. Further, neither the Complainant has authorized or

licensed the Respondent to register or use the Disputed Domain Name nor any of the trade marks forming part of the same.

5.2.3. The Respondent has not used, nor made any demonstrable preparations to use, the domain names or a name corresponding to the domain names in connection with a bona fide offering of goods or services.

5.2.4. The Respondent is neither commonly known by the Domain Names at issue, nor is making a legitimate non-commercial or fair use of the domain name. Rather, the Respondent's choice of the Complainant's well-known Trademark "DELL" and the DELL formative marks, as its Domain Names is totally unnecessary and the sole purpose of carrying on business through the use of the Disputed Domain Name incorporating the trade marks DELL and the DELL formative marks is to cause confusion as to the source, sponsorship, affiliation, or endorsement.

**Respondent:**

5.2.5. The Respondent did not submit any Response.

**5.3. The disputed Domain Name has been registered or is being used in Bad Faith**

**Complainant:**

5.3.1. The Disputed Domain Names acquired by the Respondent are confusingly similar to the Complainant's registered trade mark/name DELL and the DELL formative marks, in which the Complainant has a substantial interests, as the Disputed Domain Name comprises of the Complainant's registered Trademark DELL in conjunction with the various Trademarks of the Complainant or the generic term strongly affiliated with the goods and services of the Complainant. The Complainant alleges that the Respondent registered the aforesaid Disputed Domain Names in order to piggy-back off the commercial value and significance of the Complainant's domain name.

5.3.2. The Complainant's Trademark "DELL" and the DELL formative marks are well-known and famous marks, and the Respondent is presumed to have had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain

names by virtue of the Complainant's prior use and/or registration of the same. The Respondent's use of the confusingly similar mark as that of the Complainant is evidence of the bad faith [DELL Inc. V. ASTDomains, WIPO Case No D2007-1819].

5.3.3. Respondent's bad faith is also evidenced by the fact that the Respondent owns no Trademark or other Intellectual property Rights in the Domain Name. Further, the domain name do not consist of a legal name or a name commonly used to identify the Respondent and that the Respondent is not using the domain name in connection with the bona fide offering of goods and services.

5.3.4. Moreover, the bad faith lies in the Respondent's intentional use of the disputed domain name to attract for commercial gain, internet users to its websites by creating likelihood of confusion with the Complainant's Trade Mark DELL as to the source, sponsorship, affiliation and endorsement of the Respondent's website. The Complainant alleges that the Indian consumers searching for the Complainant's websites pertaining to a specific line of products or services are inclined to search for websites

with domain name comprising of the Trademark DELL along with the brand name of the specific product or service in question.

- 5.3.5. The Respondent's primary intent in registering and using the Disputed Domain Names which incorporates the DELL trademark in its entirety along with the specific line of products and services of the Complainant or the countries wherein the Complainant is based is to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's Trademark/name and the Respondent's website.

**Respondent:**

- 5.3.6. The Respondent did not submit any Response.

**6. Discussions and Findings**

- 6.1. The Arbitrator has reviewed the Complaint along with all the documents filed before it by the complainant and the Arbitrator finds that the Arbitral Tribunal has been properly constituted.



- 6.2. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure 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.
- 6.3. Further, in accordance with INDRP Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to 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, evidence and inferences drawn from the Respondent's failure to reply.
- 6.4. Complainant company DELL, Inc. was originally established in the year 1984 in the United States. It is the registered proprietor of the trade/service mark "DELL" and DELL formative mark in over 180 countries across the world including United States of America and India and have provided documents of such Trademark registrations and Company's history as Annexures with the Complaint. And in a short span of time, "DELL" Trademark has been recognized worldwide.

- 6.5. The disputed domain name, <dellservicecenterinbangalore.in> completely incorporates the Trade/service mark DELL of the complainant. It has been previously decided under the INDRP that incorporating a well known trademark in its entirety is sufficient to establish the identical and confusingly similar nature. [Alticor Inc v. Aryanent - INDRP Case # 192 - Nutriliteindia.co.in]
- 6.6. Further, the Domain Name also incorporates the generic term 'Service Center in Bangalore', with which the Complainant has obvious association. It is well established that the addition of a generic term to a trademark does not necessarily eliminate a likelihood of confusion. Indeed, there are many examples of domain dispute decisions holding a domain name to be confusingly similar to a registered trademark when it consists of the mark plus a generic term. [Minnesota Mining and Manufacturing Company v. Mark Overbey (Case No. D2001-0727)]. In DELL Inc. V George Dell and Dell Net Solutions (WIPO D2004-0512), it was held that "it is well established that the addition of a generic term to a trade mark does not necessarily eliminate a likelihood of confusion". Reliance is also [placed upon Dell Inc. V. SKZ.com (NAF Claim No FA0509000555545; Oct 21, 2005) by the Complainant.



- 6.7. The Domain extensions “.in” at the end of a Domain Name has no significance. [Blue Sky Software Corp. V Digital Sierra, WIPO Case no D2000-0165]
- 6.8. Furthermore, in accordance to the Para 3 of the INDRP Policy, it was the responsibility of the Respondent to find out before registration of the Disputed Domain Name that the domain name he is going to register does not violate the rights of any Trademark owner, which he has failed to do so, given the popularity of the Complainant's mark globally.
- 6.9. In support, Complainant has made available many documents evidencing the popularity of the Trademark(s) including the list of thousands of Domain Names registered by the Complainant containing its mark, the social media presence over Twitter, LinkedIn, Google+ and various other recognitions received world over.
- 6.10. In the light of the above and the documents filed by the Complainant, It is concluded that the disputed domain name is identical with or deceptively similar to the Complainant's 'DELL' marks.

- 6.11. There is no showing that 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 in connection with a bona fide offering of goods or services. Rather, the website associated with the disputed domain name does not resolve to a website, that is, it has not being put to any use at all. And it has been held that merely registering the domain name is not sufficient to establish right or legitimate interests. [Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244].
- 6.12. Further, neither the Respondent is commonly known by the Domain Name/ Trademark nor the Complainant has authorized or licensed the Respondent to register or use the Disputed Domain Name or any of the trade marks forming part of the same.
- 6.13. There is no evidence on record or otherwise from the WHOIS, therefore, it cannot be concluded the Respondent or his company are commonly known by the Disputed Domain name. In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as

one factor in determining that Policy paragraph, does not apply to the Respondent either.

- 6.14. The Disputed Domain Name comprises of the well-known and famous trade mark "DELL" and the DELL formative marks used in relation to the Complainant's wide range of goods and services, it is evident that the Respondent can have no right or legitimate interest in the domain name. [HSBC Holdings pic V. Hooman Esmail Zadeh, M-Commerce Ag - INDRP/032 - HSBC.in]
- 6.15. In the WIPO matter of Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill."
- 6.16. It is well established principle 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. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's un rebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

6.17. Therefore, it can be concluded that the Respondent has no rights or legitimate interests in respect of the domain name.

6.18. The Complainant's Trademark "DELL" and the DELL formative marks are well-known and famous marks, and the Respondent is presumed to have had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain names by virtue of the Complainant's prior use and/or registration of the same. The Respondent's use of the confusingly similar mark as that of the Complainant is evidence of the bad faith [DELL Inc. V. ASTDomains, WIPO Case No D2007-1819].

6.19. Moreover, Complainant's trademark in the disputed Domain Name is combined with the term "Service Center in Bangalore", it is obvious

that Respondent was aware of the Complainant at the time of registration, since the generic term is related to Complainant products. In the matter of Space Imaging LLC V Brownell, AF-0298 (eResolution Sept. 2, 2000) emphasising on finding confusing similarity in an instance where the Respondent's domain name combines the Complainant's mark with a generic term which is obviously affiliated to the Complainant's business.

- 6.20. The Respondent has been party to more domain disputes proceedings against the Complainant simultaneously. [INDRP proceedings also filed for <delllaptoppricelist.in>, <delllaptopstore.in>, <dellservice.in>, <dellservicecenter.in>, <dellservicecenterchennai.in>, <dellshowroominchennai.in>, <dellshowrooms.in>]. Obviously, the Registrant has registered the disputed domain name and more similar names in the year 2012 and 2013, in order to prevent the Complainant from reflecting the mark in a corresponding domain name, and Respondent has infact engaged in a pattern of such conduct. Further, the said registration of various Domain Names again evidences the fact that the Respondent had the knowledge of Complainant's Trademark at the time of registration of Disputed Domain Name as well.

6.21. By using the disputed domain name and similar domains, the Respondent has intentionally attempted to attract Internet users, by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the said website and of a product or service on the Respondent's website, as some of these Domain Names were indeed put to use and were using Complainant's Trademark as well. It has been held that "where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration". [Lego Juris V Robert Martin, INDRP/125 - lego.co.in]

6.22. Therefore, the Arbitrator concludes that the Complainant has established all the three essential elements to maintain its complaint being that the disputed domain name is identical or confusingly similar to its Trademark DELL; the Respondent has no rights or legitimate interests in respect of the disputed domain name; the Disputed Domain Name was registered or is being used in bad faith.

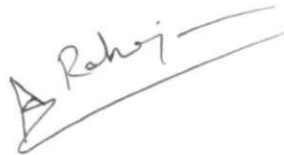
## **7. Decision**

7.1. For all foregoing reasons, the Complaint is allowed.



7.2. It is hereby ordered in accordance with INDRP policy that the disputed domain name <dellservicecenterinbangalore.in> be transferred to the Complainant.

7.3. The parties shall bear their own costs.



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Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 10th March 2016

Place: New Delhi