

ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

SI. No. 7733 Dt. 21/11/14

Sold to Harini Narayan Swamy  
S/o, D/o, W/o B. Narayan Swamy R/o Hyd

To Whom Self

K. Geetha Rani

BH 322735

KODALI GEETHA RANI

Licensed Stamp Vendor

Licence No 16-04-1/2013

# 8-3-191/132 167/C. Behind E-Sev

Vengal Rao Nagar, Hyderabad (South)

Cell: 94920 25252

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD  
INDRP CASE No. 985

In the Matter of

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

Complainant

Versus.

Rajesh T. S

1<sup>st</sup> Respondent

**T/a Computershoppe  
1<sup>st</sup> Floor, 6/3/801 and 803, Elephant House  
Ameerpet, Ranga Reddy Hyderabad  
Telengana 500016**

**And**

**BG Rework Station  
No. 130/165 Valluvar Kottam High Road  
Near SOTC, Opposite Independence Day Park  
Nungambakkam,  
Chennai - 600034**

**2<sup>nd</sup> Respondent**

### **1. The Parties**

The Complainant is Dell Inc. of Texas, United States of America represented in these proceedings by Akhilesh Kumar Rai, of AZB & Partners of Noida India.

The First Respondent is Rajesh T.S of Hyderabad, India and the Second Respondent is BG Rework Station of Chennai, India.

### **2. The Domain name, Registrar and Policy**

The present Arbitration proceeding pertains to a dispute regarding the domain name <dellservicecenterinchennai.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Good Domain Registry Private Limited. The Arbitration proceedings are conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the "INDRP Policy" or "Policy"), and the INDRP Rules of Procedure (the "Rules").

*Hanvi Narayana*

## **2. Procedural History**

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint from the .IN registry on May 4, 2018. On May 7, 2018, the Arbitrator transmitted by email a notification to the parties regarding the commencement of the arbitration proceedings. Copies of the said notification were sent to other interested parties to the dispute.

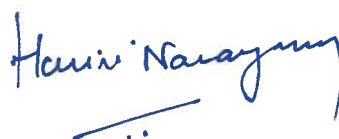
## **Factual Background**

The Complainant is a provider of computer systems, computer peripherals and related products and services around the world. The Complainant owns the DELL trademark and markets its products and services under the said mark.

The Complainant has obtained trademark registrations for the DELL mark and DELL formative marks. Copies of Indian trademark registrations under class 37 covering repair and maintenance services are provided by the Complainant. Details of these trademark registrations are:

- (1) Indian trademark registration for trademark DELL bearing registration No.1239350 under class 37.
- (2) Indian trademark registration for the trademark DELL PREMIUM CARE bearing registration No.1238063 under class 37.

The Respondent registered the disputed domain name <dellservicecenterinchennai.in> on March 11, 2014.

  
Harini Narayanswamy



## **The Parties Contentions**

### **A. Complainant's Submissions**

The Complainant states it was established in 1984 and is one of the largest direct sellers of computer systems and offers a vast array of products and services under the DELL mark including technical support services. The Complainant states that it does business with ninety-eight percent of the Fortune 500 corporations and it sells more than 100,000 systems every day to customers in 180 countries including India. The Complainant further states that it has a team of 100,000 members across the world that caters to more than 5.4 million customers every day. The Complainant states that due to continuous use of the trademark on a world-wide basis, its mark is a well-known mark.

The Complainant states that its products have been widely available in India since 1993 and are marketed by its Indian subsidiaries and its channel partners such as its authorized distributors and resellers. The Complainant adds that its products are sold through a wide network of 'DELL Exclusive Stores' and other stores in 200 cities across India. The Complainant asserts that by virtue of its use, the public associate the DELL trademark with the Complainant.

The Complainant states that it has a strong online presence and its website [www.dell.com](http://www.dell.com) provides extensive information about the Complainant. The Complainant further states that it has other country specific domain names such as <dell.co.in>.

The Complainant refers to one Mr. RajKumar who was a respondent in previous domain name cases filed by the Complainant. The Complainant believes that disputed domain name in the present dispute could be associated with Mr.

*Hanin Narayany*

RajKumar, as he had registered domain names such as <dellservicecenters.com>, <delllaptopprice.com> and <dellbatteryprice.in> which are similar to the disputed domain name in the present case.

The Complainant states that it has initiated various legal actions against registrants of DELL formative domain names and has obtained favorable orders in these cases. The Complainant has provided copies of some awards / judgments / administrative panel decisions, where the Complainant has prevailed. On the basis of the extensive evidence submitted, the Complainant states that its mark is well-known throughout the world.

The Complainant states that the disputed domain name is confusingly similar to its mark which contains the entire DELL mark. The Complainant further asserts that it is in the business of providing maintenance and repair services, therefore the disputed domain name is likely to confuse Internet users to believe that the disputed domain name is associated with the Complainant.

The Complainant argues that the Respondent has no rights and legitimate interests in the disputed domain name, as the Complainant has not permitted the Respondent to use its DELL mark. The Complainant further argues that the disputed domain name has been registered by the Respondent for deriving benefit from the goodwill and reputation associated with its DELL mark.

The Complainant states the disputed domain name was registered and is being used in bad faith. The Complainant argues that the Respondent seeks to confuse and mislead the public to into believing that the Respondent is an authorized service center of the Complainant and is diluting its well-known mark. The Complainant further contends that even its authorized service centers do not

*Hanin Narayana*

have the permission to register domain names bearing the DELL mark. The Complainant therefore requests for the transfer of the disputed domain name.

### **3. Discussion and Findings**

Under the INDRP Policy, the Complainant has to establish the following three elements to obtain the remedy of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainants have rights, and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

#### **Identical or Confusingly Similar**

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Arbitrator finds that the Complainant has filed copies of its trademark registrations, which is evidence of its ownership in the DELL trademark. The relevant trademarks are:

- (1) Indian trademark registration for trademark DELL bearing registration No.1239350 under class 37.

*Harini Narayanan*

(2) Indian trademark registration for trademark DELL PREMIUM CARE bearing registration No.1238063 under class 37.

Trademark registration is considered *prima facie* evidence of rights in a mark. On the basis of the evidence submitted by the Complainant, it is found that Complainant has successfully established its rights in the DELL trademark.

The disputed domain name incorporates the Complainant's DELL mark and the words "service", "center", "in" and "Chennai". It has been consistently held in numerous cases that the use of descriptive words or geographic names with a trademark in a disputed domain name need not prevent a finding of confusing similarity. See for instance, *Dell Inc v. Raj Kumar*, INDRP Case No. 878 (May 18, 2017) pertaining to the domain name <dellservicecenters.in>, where it was found that the addition of the words "service" and "centers" with the DELL trademark, did not deter a finding of confusing similarity to the DELL mark. Also see *Disney Enterprises Inc. and Walt Disney Company (India) Pvt. Ltd. v. Registrant ID: DI\_7305075* INDRP Case No. 596 (June 17, 2014), where it was found, that combining the DISNEY trademark with the geographic name "India", in the domain name <disneyindia.in> did not prevent a finding of confusing similarity with the complainant's DISNEY mark. In the present dispute, the Complainant's trademark DELL is found to be the distinctive and dominant part of the disputed domain name. The words "service", "center", "in" and "Chennai" are non-distinctive and do not lessen the confusingly similar with the DELL trademark.

The Arbitrator accordingly finds that the Complainant has successfully established the first requirement under paragraph 4 of the Policy, that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights.

*Hanni Narayana*



## **Rights and Legitimate Interests**

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The onus of proving rights or legitimate interest in the disputed domain name lies squarely on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a *prima facie* case, then the Complainant prevails.

The Complainant has argued that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has no authorization to use its mark. The Respondent has not replied or responded in these proceedings and has not rebutted the allegations made by the Complainant.

The INDRP Policy states that the Respondent can demonstrate legitimate interests in the disputed domain name if there are circumstances that show (i) that before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain. The Arbitrator finds there is no evidence on record that show any rights or legitimate interest in favor of the Respondent. There is no evidence that shows any preparations are made by the Respondent to use the disputed domain name in connection with a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed

*Harini Narayanan*



domain name or makes any legitimate non-commercial fair use of the disputed domain name.

Under these circumstance, it is reasonable to infer that the registration of a domain name incorporating the DELL mark is an indication of the Respondent's intention to ride upon the goodwill and reputation attached to the trademark. Accordingly, on the basis of the evidence and the circumstances discussed, it is found that the Complainant's un rebutted submissions prevail.

The Complainant is found to have successfully made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second requirement under paragraph 4 of the Policy has been met.

#### **Bad Faith**

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

It is well established under the INDRP Policy that registration of a domain name with the intention to create confusion in the mind of Internet users and thereby attract Internet traffic based on the fame associated with a trademark is considered bad faith registration and use under the Policy. See *PepsiCo Inc. v Wang Shuang*. (<pepsi.in>) INDRP Case No. 400 (December 13, 2012) where it was found that attempting to divert Internet users through the misleading use of another's trademark or service mark, was found to be bad faith under the Policy.

The Arbitrator finds that the use of the Complainant's trademark by the Respondent, who has no connection with the Complainant, indicates that the disputed domain name ought to have been registered for the purpose of deriving

*Havin Narayana*

some gain from the association with the trademark. Registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is considered evidence of bad faith under the Policy. See *The Ritz Carlton Hotel Company LLC Brands Inc. v. Nelton! Brands Inc.*, INDRP Case / 250 (December 30, 2011) where bad faith registration and use was found when the respondent had used the trademark RITZ-CARLTON in the disputed domain name <ritzcarlton.in>.

The Arbitrator infers from the circumstances discussed, that there is no conceivable reason for the Respondent to register the disputed domain name except to gain from the association with the Complainant's mark. The Respondent ought to have deliberately registered the disputed domain name with the Complainant's trademark in mind for the purpose of exploiting it in some manner, which is recognized as bad faith under the Policy.

The Arbitrator finds the Complainant has established that the disputed domain name has been registered and used in bad faith. Accordingly, it is found that the requirements under paragraph 4 of the Policy has been satisfied by the Complainant for obtaining the transfer of the disputed domain name.

### **Decision**

It is ordered that the disputed domain name <dellservicecenterinchennai.in> be transferred to the Complainant.



**Harini Narayanswamy**

**(Arbitrator)**

**Date: June 13, 2018**