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District : Gurugram

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RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

Dell Inc.

One Dell Way

Round Rock, Texas, 78682

United States of America

....Complainant

Mr. Raj Kumar

Tamil Nadu – 600043

India

Also at: Laptop Store

301 & 302, Sigma Arcade 3rd Floor

Airport Road, Marathahalli

Next to branded Factory, Bangalore

Pincode – 560037

..... Respondent

Disputed Domain Name: www.dellservicecenters.in

AWARD

1) The Parties:

The Complainant in this arbitration proceeding is **Dell Inc.** of One Dell Way, Round Rock, Texas, 78682, United States of America. The Complainant is represented by its Authorized Representative, Akhilesh Kumar Rai c/o AZB & Partners, Plot No. A8, Sector 04, Noida – 201301, Uttar Pradesh, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Mr. Raj Kumar of Tamil Nadu – 600043, India as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar & Registrant:

The disputed domain name www.dellservicecenters.in. The Registrar is GoDaddy.com of 14455 North Hayden Road, Suite 219 Scottsdale, AZ 85260-6993, United States of America.

The Registrant is Mr. Raj Kumar of Tamil Nadu – 600043, India.

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). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

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

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules



framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

1. The complaint was produced before the Arbitrator on April 25, 2017 and the notice was issued to the Respondent on April 26, 2017 at his e-mail address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response.
2. Vide e-mail dated April 20, 2017, I was informed by NIXI that the complaint could not be delivered to the Respondent via courier and returned undelivered as '*the address was incomplete*'. This will be treated as deemed service since the courier was sent at the address appearing on the Respondent's WHOIS details. Further, they have been notified of the present complaint by e-mail.
3. Vide e-mail dated May 8, 2017 the Arbitrator granted further and final opportunity to the Respondent to submit its response on or before May 12, 2017. However, no response was submitted by the Respondent within the stipulated time and thereafter. There was no delivery failure message received from the Respondent's e-mail address.

In the circumstances, the Complaint is being decided based on materials submitted by the Complainant.

Grounds for administrative proceedings:

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

4) Summary of the Complainant's contentions:

The Complainant in support of its case has made the following submissions:

- a) The Complainant submits that Dell Inc., is a company incorporated and existing under the laws of Delaware, United States of America, which is established in the year 1984.
- b) Dell Inc., 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, 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 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.

- c) The Complainant is currently 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 more than 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.
- d) The Complainant's products are widely available in India since 1993. The said products are marketed in India by the subsidiaries of the Complainant in India. The Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. 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 section of the public associates the trademark 'DELL' with the Complainant alone.
- e) The Complainant has a very strong internet presence with the website www.dell.com. The website can be accessed from anywhere in the world including India and provides extensive information on the activities of the Complainant throughout the world, including India. Accordingly, the Complainant also has country specific domain names such as www.dell.co.in for India. In addition to the details of the Complainant, these websites also provides details of products, stores and authorized service centers details.
- f) The Complainant's first use of the mark 'DELL' can be traced back to 1988. Since then the Complainant has expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. Thus, in order to secure rights over the mark 'DELL' the Complainant has registered the said mark in several countries, including in India. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.
- g) The Complainant submits that in view of the above, it is evident that the Complainant has been using the trademark 'DELL' since the last 30 years and has built an enviable reputation in respect of the trademark 'DELL'. By virtue of such use, the mark 'DELL' is well recognized amongst the consuming public and can be termed as a well-known trademark. The Complainant has also initiated several actions against domain name squatters in past several years.



- h) The Complainant submits that according to WhoIs search, the domain name www.dellservicecenters.in is registered in the name of Mr. Raj Kumar. The company in which he is allegedly employed is mentioned as Dell. The address mentioned in WhoIs extract is India Bangalore, Tamil Nadu Pincode-600043, which is incomplete. The Complainant conducted investigation and found the Respondent address as Laptop Store, 301 & 302, Sigma Arcade 3rd Floor, Airport Road, Marathahalli, Next to branded Factory, Bangalore, Pincode-560037.
- i) The Complainant claimed that the Respondent is notoriously known for registering Dell formative domain names. In the past, several orders have been passed against the Respondent for transfer of Dell formative domain names to the Complainant.
- j) The Complainant has also conducted an investigation into the activities of the Respondent. It was disclosed that the Respondent had registered several other domain names for Lenovo, Toshiba, Apple, Acer etc.
- k) The Complainant further submits that from the above submission, it is evident that Dell Inc. has a long and extensive use of the mark 'DELL' and by virtue of such use, the trademark 'DELL' can be termed as a well-known mark. In order to protect status of the mark 'DELL' from third party adoption, the Complainant undertakes various periodical searches. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.dellservicecenters.in.
- l) The search conducted by the Complainant also revealed other domain names, which had been registered by the Respondent either on his name or some other name. The said domain names are:
- www.delllaptopcustomercare.com
 - www.dellshowroomincoimbatore.com
 - www.dellservicecenter.in
 - www.dellshowroomchennai.in
 - www.dellservice.in
 - www.dellservicecenterchennai.in
 - www.dellservicecentre.in

The aforementioned domain names are in the process of being transferred to the Complainant.

- m) The Complainant also had the Respondent investigated. The investigation revealed that the Respondent operates through Laptop Store and has branches of the said store in many places in Chennai and Bangalore. For the sake of brevity



all the addresses are not being mentioned in the petition. The e-mail id of the store is www.laptopstoreindia.com. The Respondent has registered various domain names which are Lenovo, Acer and Apple formative etc.

- n) The Complainant further claims that the Respondent in the past has also registered Dell formative domain names such as www.dellservicecenters.com, www.delllaptopprice.com, www.dellbatteryprice.com, www.dellchargeprice.com, www.dellbatteryprice.in and www.dellchargeprice.in. The aforementioned domain names have been transferred to the Complainant.
- o) The Complainant had also taken steps to serve the Respondent with the notices. On April 29, 2016 the Complainant sent a notice mentioning that the Respondent has registered Dell formative domain names only to encash upon the goodwill of the Complainant. The Respondent did not respond to the said letter, therefore a reminder was sent on June 7, 2016. The Respondent replied to the said letter through their email dated June 11, 2016 agreeing to transfer the offending domain names. The Complainant, through their counsels followed up with the Respondent on numerous occasions through written and telephonic communication. Some of these calls were answered by the Respondent and the others were not. The Respondent kept assuring the counsels of the Complainant that he will transfer the domain names, however this was just a dilly dallying tactic adopted by the Respondent. On the last telephonic conversation with the counsel of the Complainant, the Respondent curtly stated that the Complainant should go ahead and initiate legal proceedings against the Respondent.
- p) Further, upon perusal of the webpage of the domain name www.dellservicecenters.in, it can be seen that the Respondent has displayed the trademark Dell of the Complainant at several places in the webpage. Moreover, the Respondent has also used the colour blue of similar shade as used by the Complainant on their website. The Respondent also sells Dell spare parts on the offending website.
- q) Additionally, the Respondent uses catchy phrases like
- *'.....our Dell team will show up on time and do what we promise on site computer...'*
 - *'This Dell service center is one of the most successful Dell laptop repair service centers in India.'* *'This dell service center takes utmost effort to make you satisfied.'*

The above lines are used only to lure the customer into believing that the Respondent is affiliated with the Complainant. The offending website displays



addresses of many Dell service centers in various locations and provides different links for Dell LCD Repair, Motherboard Repair, Accessories, etc. All these links redirect the user to a different website i.e., www.lapstore.in. It is reiterated that the aforementioned investigation has confirmed that the Respondent is the proprietor of Laptop Store. Thus, it is evident that the Respondent is passing off its services as that of the Complainant.

- r) The Complainant submits that the Respondent has adopted the well-known trademark 'DELL' of the Complainant to provide services to 'DELL' laptops. Not only is the adoption of the said mark an infringement, it is also being used for services identical to that of the Complainant. It is reiterated here that the Complainant provides post sale services of maintenance and repair.
- s) As mentioned above, the Complainant offers repair and maintenance services under the mark 'DELL'. The Complainant has also registered the mark 'DELL' and 'DELL' formative marks in class 37 of the NICE classification, as repair and maintenance falls under the said class.
- t) The Complainant claims that the Respondent is taking advantage of innocent customers who may or may not inquire about the authenticity of the Respondent. Even if the Respondent informs a purchasing customer that they are not related to the Complainant, the same does not bestow any right to use the trademark DELL of the Complainant.
- u) The Complainant submits that the Respondent does not have right to use the mark 'DELL' of the Complainant, as it is the sole property of the Complainant. The Complainant uses the mark 'DELL' and has also secured registration for the same. The use of the mark 'DELL' by the Respondent is not licensed, thus it is an infringement of the trademark 'DELL'.
- v) The Complainant states that the Respondent already has a website i.e., www.laptopstore.in, but the Respondent has still developed the offending domain name only to illegal benefit from the goodwill and reputation of the mark Dell built by the Complainant.
- w) The Complainant submits that the registration and operation of the domain name www.dellservicecenters.in has been done in bad faith and dishonest intentions to mislead the public into believing that the Respondent is authorized service center of the Complainant. The Complainant does not allow even its authorized service centers to register domains using the trade mark 'DELL'. The adoption of the trademark of the Complainant is only to confuse the public as the relevant section of the public are bound to be deceived into thinking that the Domain Name www.dellservicecenters.in is a website of the Complainant, which is not the



case. The offending domain name has been registered to create initial interest confusion amongst internet users thereby luring them to the website used in connection with the domain name and in turn to make illegal profit out of such representation.

- x) The Complainant claims that the bad faith on part of the Respondent is demonstrated by use of the trademark 'DELL' on the website with the domain name www.dellservicecenters.in. Bad faith is also evident from the fact that in the WhoIs extract the registrant organization has been mentioned as Dell, thereby showing affiliation with the Complainant. Bad faith is further demonstrated by the Respondent as he misled the Counsel of the Complainants to believe that they will amicably transfer the offending domain name and despite repeated follow ups, the Respondent did not transfer the said domain name.
- y) The Complainant further submits that the Respondent is a habituated offender for registering Dell formative domain names. In the past, the Complainant has filed several NIXI complaints against the Respondent. However, the Respondent still continues to adopt Dell formative domain names.
- z) The Complainant contends that the adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The use of the domain name by the Respondent is not for non-commercial and would not fall under the ambit of 'fair use'. Upon a mere perusal of the website associated with the domain name www.dellservicecenters.in, it appears to be related to the Complainant and misleads the relevant public. The only reason of adoption of the mark 'DELL' for services identical to that the Complainant is to make illegal profit by duping the consuming public. The entire modus operandi of the Respondent, whose website is accessed only through the trademark of the Complainant, is dishonest and illegal.

5) Respondent

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy. The attempt to serve them hard copy of complaint by NIXI via courier was also not successful due to incomplete address.

6) Discussion and Findings:

The submissions and documents provided by Complainant in support of use and registration of the mark 'DELL' leads to the conclusion that the Complainant has



superior and prior rights in the mark 'DELL'. Thus it can be said a) the web users associate the word 'DELL' with the goods and services of the Complainant b) the web users would reasonably expect to find the Complainant's products and services at the www.dellservicecenters.in and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further, the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been successfully established by the Complainant that it has statutory as well as common law rights in well recognized trademark 'DELL'. The Complainant holds numerous registrations for the trademarks 'DELL' and 'DELL' formative all over the world including India. Further, the Complainant has been using the mark 'DELL' in India since 1993. The Complainant has in support submitted substantial documents. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market. In the domain name www.dellservicecenters.in, the Respondent has merely inserted the generic words '**service centers**' to the Complainant's mark 'DELL' that would cause confusion amongst trade and public as they are likely to associate the domain name www.dellservicecenters.in with the Complainant.

Thus, I hold the disputed domain name www.dellservicecenters.in contains and is confusingly similar to the Complainant's mark 'DELL'.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the mark 'DELL'. The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his rights and interest in the domain name.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.dellservicecenters.in'.

- (3) the domain name has been registered in bad faith.



It may be mentioned that since the Respondent did not file any response and rebut contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Further, the registration of a domain name incorporating a well-recognized mark is clearly with the intention to ride upon the goodwill and reputation attached to the mark DELL and gain profit.

Moreover, there are several orders which have been passed against the Respondent for transfer of Dell formative domain names to the Complainant. The Respondent is habitual offender of registering domain names containing client's mark DELL as well as other well known marks such as Lenovo, Toshiba, Apple, Acer etc. Thus, the adoption of the domain name 'www.dellservicecenters.in' is in bad faith.

Based on the above and documents submitted by the Complainant, it can be concluded that the domain name 'www.dellservicecenters.in' is identified with the Complainant's products/services, therefore its adoption by the Respondent shows 'opportunistic bad faith'.

7. Decision:

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name 'www.dellservicecenters.in' is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name 'www.dellservicecenters.in' be transferred from the Respondent to the Complainant.



**RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA**

May 18, 2017