

महाराष्ट्र MAHARASHTRA

2018

AL 305765

अनु.क्र. १०१००१२८ मु.श.रकम. ५०००००

दस्तावा प्रकार डाक्टरांनी किराई

दस्त नोंदणी करणार आहेत का? होय/नाही.

निवासीचे नाव शिबीर चित्तामणी कामदार

मुद्रांक किती देण्यात येऊ शकतो २०० शिबीर चित्तामणी कामदार

पत्ता मिवरी

दस्तावा परवानगीचे तक्रार

हस्तो व्यवहारीचे नाव व सही सविता काने - पिकेगुलपे

मुद्रांक विकत घेणाऱ्याची सही

सौ. जयश्री विजित केसरी

परवाना क्र. २२०१०११

४२५ ब, शम्भुवार पेठ पुणे-३

मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केलापासुन ६ महिन्यात वापरणे बंधनकारक आहे.

## AWARD IN ARBITRATION

DELLSERVICESCENTERS.IN

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

THE COMPLAINANT

V/S

Mr.Raj Kumar  
Trading as Itel Computer Solutions  
1, 3d, Vantage Plaza, LB Road, Adayar  
Chennai. 600041. Tamil Nadu.

THE RESPONDENT /  
THE REGISTRANT

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**IN THE MATTER OF DISPUTED DOMAIN NAME: -  
'DELLSERVICESCENTERS.IN'**  
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**ARBITRATION PANEL: - MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.  
SOLE ARBITRATOR**

**DELIVERED ON THIS 20th DAY OF OCTOBER TWO THOUSAND  
EIGHTEEN AT PUNE, INDIA.**

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**II] SUMMARISED INFORMATION ABOUT THE DISPUTE: -**  
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<b>SR. NO.</b>	<b>PARTY TO THE DISPUTE</b>	<b>NAME</b>	<b>ADDRESS</b>
01	COMPLAINANT	Dell Inc.	One Dell Way, Round Rock, Texas, 78682, U.S.A.
02	AUTHORISED REPRESENTATIVE OF THE COMPLAINANT	Abhishek Kumar Rai AZB & Partners	Plot No.A8, Sector 04, Noida, 201301. U.P. INDIA
03	RESPONDENT / REGISTRANT	Mr.Raj Kumar Trading as Itel Computer Solutions	1, 3d, Vantage Plaza, LB Road, Adayar, Chennai. 600041. Tamil Nadu.
04	DOMAIN NAME REGISTRAR	Good Domain Registry Private Limited	Not furnished

**III] CALENDER OF MAJOR EVENTS:-**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (All communications in electronic mode)</b>
01	Arbitration case referred to me by NIXI	19.09.2018
02	Acceptance given by me	19.09.2018
03	Hard copy of complaint received	28.09.2018
04	Notice of Arbitration issued, with the period to file reply, if any, latest by 09.10.2018	29.09.2018
05	Period to file reply, if any, by the Respondent, extended by Arbitration Panel suo-motu till 13.10.2018	10.10.2018
06	Notice of closure of arbitration issued	15.10.2018
07	Award passed	20.10.2018

**III] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:**

1. Disputed domain name is 'DELLSERVICESCENTERS.IN'.
2. Date of registration of disputed domain name by Respondent is 19.04.2017
3. Registrar is Good Domain Registry Pvt. Ltd. (R141-AFIN)



#### **IV] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

- 1) Arbitration proceedings were carried out as per .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
- 2) The parties were requested to expedite their submissions so as to enable this panel to pass award within the 60 days time frame prescribed.
- 3) Copies of all communications were marked to both the parties and NIXI.
- 4) No personal hearing was requested / granted / held.

#### **VI] BRIEF INFORMATION OF THE COMPLAINANT: -**

Dell Inc., a company based in USA, is the owner of trademarks "DELL" in different forms. According to the Complaint, it was established in 1984. It is the world's largest direct seller of computer systems. It is engaged in computer hardware, software, peripherals, computer-oriented products such as phones, tablet computers etc, computer related consulting, installation, maintenance, leasing, warranty and technical support services. It is one of the leading providers of computer systems to large enterprises around the world and does 98% business with fortune 500 companies. It sells about 1,00,000 systems every day to customers in 180 countries including India.

One of the most distinctive elements of the Plaintiff's DELL trademark is the slanted 'E', which symbolizes the founder Michael Dell's wish to 'turn the world on its ear'.

The Complainant is the registered owner of the trade mark DELL in India as follows:

Trade Mark	Registration No.	Date of registration	Class	Status
DELL	575115	05.06.1992	9	Registered
www.dell.com	826095	05.11.1998	9	Registered
DELL	923915	10.05.2000	9	Registered
DELL	1190375	07.04.2003	2	Registered
DELL	1190376	07.04.2003	9	Registered
DELL	1239350	24.09.2003	37	Registered
DELL	1239349	24.09.2003	42	Registered
DELL	1335057	28.01.2005	36	Registered

#### **IV] SUMMARY OF THE COMPLAINT: -**

*The Complaint is based on the following points, issues, representations or claims in brief:-*

#### **(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF POLICY PARA 4(i) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY) (INDRP) :-**

- i. The Complainant has furnished a list of registered marks in India comprising the word and marks 'DELL'. There are about 8 marks registered in India.

ii. The Respondent's registration of the disputed domain on 19.04.2017 (as per *whois* data base) is quite subsequent to the Complainant's use of its well known, registered and internationally reputed DELL marks. According to the Complainant, the Respondent has registered domain names including the word DELL. There are several domain name related disputes which have been in existence. The Respondent is notoriously known for registering DELL formative domain names. Several orders have been passed against the Respondent for transfer of DELL formative domain names in favour of the Complainant. The Complainant has attached copies of those orders. Thus the Respondent is a habitual cyber squatter.

iii. **The Respondent has also had signed and provided a written undertaking dated 30.05.2018 to the Complainant mentioning the list of DELL formative domains registered in favour of the Respondent, which he had undertaken to transfer to the Complainant within five days of the date of said undertaking.** Vide the said undertaking the Respondent has also categorically confirmed that there are no other DELL formative domain registrations in its favour except those mentioned in the said undertaking. However disputed domain name was not disclosed in the said undertaking.

The Complainant further states that upon investigation it has come to know that the Respondent is still involved in applying and seeking registration of various DELL formative domain names either in its own name or through its several trading entities.

iv. The Respondent has adopted the well known trademark DELL of the Complainant in the disputed domain name in its entirety. Further, the disputed domain name is also being used for the business of rendering the services identical to that of the Complainant.

**(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 4(ii) OF INDRP): -**

i. The Respondent is taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant. The Complainant has not licensed / permitted the Respondent to use the said trademark or formative domain name including the word DELL.

II. Though the Respondent has various other websites like [www.laptopstore.in](http://www.laptopstore.in), [www.laptopstoreindia.in](http://www.laptopstoreindia.in), [www.laptopservicecenters.in](http://www.laptopservicecenters.in) and [www.laptopstoreindia.com](http://www.laptopstoreindia.com), which are sufficient to serve the purpose of his business. However he has been still offending disputed website by using the well known DELL mark in its entirety. In any case the Respondent does not have any right to use the trademark DELL which is a registered trademark of the Complainant.

**(C) REGISTRATION AND USE IN BAD FAITH (PARA 4(iii)) OF INDRP: -**

i. The registration and operation of the disputed domain name has been done in bad faith and with dishonest intention to mislead the innocent public to believe that the Respondent is authorised service center of the Complainant. It causes confusion

among the internet users as they are being lured to the disputed website, which is being used in to make illegal profit out of Complainant's reputation.

ii. The bad faith is also demonstrated by the use of the trademark of DELL on the disputed domain name. Adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself.

iii. The Respondent is not making non-commercial use of the disputed domain name.

iv. The Respondent, by using the disputed domain name is rendering identical services which the Complainant itself is providing. The entire modus operandi of the Respondent, whose website is accessed only through the Complainant's trademark, is dishonest and illegal.

v. Despite having furnished written undertaking to transfer already registered DELL formative domain names as also NOT TO REGISTER in future any DELL formative domain name, the Respondent has registered and continued to used disputed domain name. This is clear indication of his bad faith.

#### **(D) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the above background of the Complaint and reasons described therein the Complainant has requested for TRANSFER OF DISPUTED DOMAIN to the Complainant, which is registered in the name of the Respondent.

#### **VI] RESPONDENT'S DEFENSE: -**

The Respondent has failed / neglected to file any reply / say / statement in response to the Complaint or Notice of Arbitration, even within the period extended suo-motu by this panel.

Hard copies of the Complaint and annexures to it were delivered to the Registrant, on registered postal address. Similarly the emails sent to the Respondent on the email id available on whois details, have not bounced back. Therefore it can be safely presumed that the Respondent is aware of the complaint, Notice of Arbitration and also of the opportunities provided to him to put forth his case, submit say / reply to the Complaint / Notice of arbitration. Despite this the Respondent has failed / neglected to file any say / reply to the complaint / Notice of Arbitration.

#### **VII] REJOINDERS OF THE PARTIES: -**

In view of non-filing of any say / reply by the Respondent, no rejoinder was called for.

#### **VIII] EVIDENCE RELIED UPON: -**

This panel has, *inter-alia*, placed reliance upon the following evidences / details thereof, submitted by the Complainant: -

1. Copies of trademarks registered in India and in other countries in the name of the



Complainant

2. Copy of printout of the *whois* details
3. Copy of the Undertaking furnished by the Respondent dated 30.05.2018

### **VIII] FINDINGS: -**

Based on the complaint, contentions and annexures attached to it, this panel has made following findings: -

1. The Complainant has registered trade / service marks incorporating the word DELL and registrations of these marks is much prior to the registration of the disputed domain name.

2. The Complainant has not authorised / licensed to the Registrant to use the said word 'DELL' and thus such use by the Registrant in his registered / disputed domain name is illegal and unauthorised.

3. The Registrant / Respondent has not made any effort to come out with his case or to defend his case by submitting any say / reply to the complaint or to the Notice of Arbitration. Several courts have held in numerous cases that '*silence tantamounts to acceptance*'. This panel therefore holds that the Respondent has accepted the contents, statements, allegations, data and details of the Complaint, to be true and correct.

3. On perusal of the screenshots of disputed domain, furnished by the Complainant, it is evident that the Respondent has designed it in such a way that it would appear to be official website of the Complainant. It is an overt act of the Respondent to attract innocent internet users to disputed domain, to make them to believe it to be official or affiliated website of the Complainant, for the purpose of making illegal profit by encashing the Complainant's reputation.

4. *Very importantly the Respondent has furnished a written and notarised Undertaking to transfer all existing registered domain names which are DELL formative as also not to register any such DELL formative domain name in future. This undertaking establishes beyond doubt that the Registrant has been aware of the registered trademarks of the Complainant, violation of the legitimate interests in those trademarks by him by registering the disputed domain name. Despite this, he has not disclosed disputed domain name in the said undertaking and has continued to use the same to his advantage. This clearly establishes his bad faith.*

5. The history of the Respondent confirms that he had registered similar DELL formative domain names, which he had to transfer to the Complainant by order of appropriate authorities. Thus the Respondent is a habitual cyber squatter.

6. The Respondent is not known by the word DELL or any resembling word to it.

7. The Respondent is not making use of disputed domain name for non-commercial or charitable purposes.

### **IX] CONCLUSION: -**

On the basis of the averments in the Complaint, citations, documentary evidence and other substantiating points, this Arbitration Panel has come to the following conclusions: -

*a. the registered domain name is identical or confusingly similar to a name, trademark in which the Complainant has legitimate rights and interests.*

*b. the Respondent has no rights or legitimate interests in respect of the domain name, nor he has been licensed / permitted to use the said domain name.*

*c. the disputed domain name is registered and is being used in bad faith by the Registrant / Respondent.*

### **X] AWARD: -**


On the basis of above findings on issues, foregoing discussion, conclusion and as per the remedies requested by the Complainant, this panel passes the following award: -

**a. The disputed domain name 'DELLSERVICECENTERS.IN' be transferred to the Complainant.**

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Date: - 20.10.2018

Place: - Pune, India

  
**(S.C.INAMDAR)  
SOLE ARBITRATOR  
NATIONAL INTERNET  
EXCHANGE OF INDIA**