



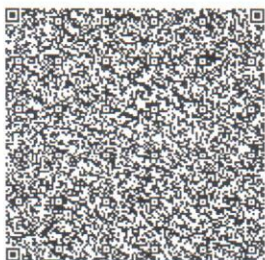
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL50245879773500M
Certificate Issued Date	: 28-Apr-2014 03:03 PM
Account Reference	: SHCIL (FI)/ dl-shcil/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SHCIL97498250368854M
Purchased by	: A K SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: A K SINGH ADVOCATE
Second Party	: NA
Stamp Duty Paid By	: A K SINGH ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

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

(Complainant)

Versus

World Trade Key In
L-2 B/11C Phase-1, Mohan Garden
Uttam Nagar, New Delhi-110059

(Respondent)

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.
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THE PARTIES:

The Complainant in this proceeding is a Delaware Corporation and is an internationally renowned direct seller of computer systems.

The Complainant is represented through their authorized representative:

Name : Divya Vijan and Pravin Anand
Anand and Anand
Address : First Channel, Plot No.17A,
Sector 16A, Film City, Noida
Telephone : 91-120-4059300
Fax : 91-120-4243056
E-mail : divya@anandandanand.com, pravin@anandandanand.com

The Respondent in this proceeding is World Trade Key In, L-2 B/11C, Phase-1, Mohan Garden, Uttam Nagar, New Delhi- 110059, Tel- +91- 9540041043, email- brahm@worldtradekey.in.

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.dellservice.co.in. According to the WhoIs Search utility of .IN Registry, the Registrar of the disputed domain name www.dellservice.co.in, with whom the disputed domain name www.dellservice.co.in is registered is Aust Domains International Pty Ltd. (R132-AFIN).

PROCEDURAL HISTORY:

I was appointed as the Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.dellservice.co.in. .IN Registry has supplied the copy of the Complaint to me.

On 15.03.2014, I sent an email to the parties informing them about my appointment as the Arbitrator, and also directing the Complainant to supply the copy of the Complaint with annexures to the Respondent, and in case if they have already served it, then to provide me with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 15.03.2014 with the instructions to file his say latest by 31.03.2014.



Vide emails dated 18.03.2014, the Complainant confirmed the service of the soft copy of the Complaint along with the annexures to the Respondent by email. It was further mentioned in the mail that the hard copy of the Complaint along with the annexures was being couriered to the Respondent on the same day, that is, 18.03.2014. However, since no proof of service of the hard copy of the Complaint was provided, vide mail dated 03.04.2014 I called upon the Complainant to provide me the same.

On 03.04.2014 itself, I received an email from the Complainant with the proof of service of the hard copy of the Complaint along with the annexures attached. As per the courier receipt the Complaint with annexures could not be delivered as the address of the Respondent could not be found. In the interest of justice and as a last opportunity a further time of seven (7) days was granted to the Respondent to file its reply, but no response was received.

The Respondent failed/neglected to file his say/ reply to the Complaint of the Complainant within the stipulated time despite receipt of soft copy of the Complaint and annexures. It has also not communicated anything on the Complaint till the date of this award.

I feel that enough opportunity has been given to the Respondent and genuine efforts have been made to make it a part of the proceedings. Since the Respondent has failed to join the proceedings, or to file any response, the present *exparte* award is passed.

I have perused the record and annexure/ documents.

FACTUAL BACKGROUND:

The following information is derived from the Complaint and supporting evidence as submitted by the Complainant.

The Complainant in this proceeding is Delaware Corporation, a multinational company engaged in the direct sale of computer systems. It is also the registered proprietor of the trademark "DELL" and its variations in all forms.

The Complainant states that it is the prior adopter of the mark "DELL" and the owner of the trademark/service mark "DELL". The Complainant is well known all around the world by the name DELL, and has made profits under the said name.

Additionally, the Complainant is the owner of more than hundreds of domain names containing the term "DELL" which has helped the company in gaining international repute.

The Complainant's use of the well-known trademark has been extensive, exclusive and continuous all around the world. As a result of the Complainant's marketing and promotion of its goods and services under its trademark "DELL", the mark has gained worldwide recognition and goodwill, and has become very well-known. Moreover, the Complainant's trade mark has firmly been associated with the Complainant.

The Complainant has spent huge sums of money towards advertisement and promotion of its brand "DELL" globally, and has done so even on the internet, *inter alia*, through its website <http://www.dell.com>, accessible anywhere in the world along with country specific websites. The Complainant has a designated website for India which can be reached at <http://www.dell.co.in>.

Respondent in this proceeding is World Trade Key In, who has not filed any response and submissions to the Complaint despite being given an adequate notice and several opportunities by the Arbitrator.

PARTIES CONTENTIONS:

(a) Complainant

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name;
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.



DISCUSSIONS AND FINDINGS:

As previously indicated, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by him.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been proceeded against *ex-parte* and the Arbitration proceedings have been conducted in its absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidences placed on record by the Complainant, it is proved that it has statutory and common law rights in the mark "DELL" and its other variations.

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))

The Complainant's trademark "DELL" was adopted in the year 1987 internationally. In India, the Complainant started its business in the year 1993. The Complainant is also the owner of more than hundreds of domain names containing the term "DELL", list of which has been provided to me.

The Respondent registered the disputed domain name on 08.11.2013, according to the available information. The disputed domain name www.dellservice.co.in is identical to the Complainant trademarks and domain name and a very distinctive feature of the disputed domain name is the incorporation of the Complainant trademark except for the generic term "service" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and Complainant trademark as has been held in *Morgan Stanley vs. Bharat Jain*, INDRP Case No. 156 dated 27.09.2010. It is a well established principle that where a domain name incorporates a Complainant's well known and distinctive trademark in its entirety, it is confusingly similar to that mark despite the addition of a descriptive word or words (*Wal Mart Stores, Inc. vs. Kuchora, Kal*, WIPO Case No. D2006-0033).

Further, at the time of registration of the disputed domain name www.dellservice.co.in, the Complainant had already been using the marks "DELL" as its trademark and domain names with firmly established rights in the same. Also, at the time of registration of the disputed domain name by the Respondent, the Complainant trademark had already acquired the status of a well-known mark. The Respondent can neither show any rights superior to that of the Complainant in the trademark "DELL" nor can the Respondent state that it was unaware of the Complainant's mark while registering the disputed domain name. The only logic behind getting an identical mark registered in such a case is in the reason that the Respondent got the disputed domain name registered with the intention to trade upon the fame of the Complainant mark in violation of para 4 (b) of the Policy. Internet users are highly likely to believe that the disputed domain name is related to, associated with or authorized by the Complainant.

It can thus be proved that the registration of the disputed domain name in this case, is nothing but a blatant imitation which can be fairly considered with a *mala fide* intention of earning upon the name and fame of the Complainant.

The Registrant has no rights or legitimate interests in respect of the domain name - (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4(ii)-

- i) *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;*

The Complainant's mark is well known and it has gained rights purely based upon prior use and registration of the mark, that there can be no legitimate use by the Respondent. Therefore, the use of the disputed domain name without any permission from the Complainant is an act done in bad faith, and confers no right or legitimate interest in favour of the Respondent.

Moreover, there exists no relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Disputed Domain Name which is identical to that of the Complainant. The Complainant has alleged that the Respondent is using the disputed domain name to offer services and/or products similar to those of the Complainant, making confusion likely in the minds of the consumers, and this fact has not been rebutted by the Respondent. In *Lilly ICOS LLC vs. Tudor Burden d/b/a BM Marketing/Burden Marketing*, WIPO Case No. D2005-0313, the panel held that the Respondent was making a non-legitimate use of the disputed domain names to divert consumers as the Respondent was using the infringing domain name to sell products similar to that of the Complainant, and thus it could be inferred that the Respondent was opportunistically using Complainant's mark in order to attract internet users to its website. Further, in the present matter the Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any *bonafide* goods or services in the name of the disputed domain name.

The Complainant has thus demonstrated successfully that the registration and use of the disputed domain name by the Respondent was done in bad faith as per paragraph 6 (iii) of the policy, in the sense that its use amounted to an attempt to intentionally attract, for commercial gain, internet users to their websites by creating a likelihood of confusion with the Complainant marks as to

the source, sponsorship, affiliation or endorsement of those websites and the services offered thereon.

The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

Since the Respondent has not responded to the Complaint, it can be safely presumed that he has nothing to say, and the activities of the Respondent to get registered the domain name in dispute rise to the level of a bad faith and usurpation of the Complainant's Mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws.

Given the fame of the Complainant's trademark and domain name, it is not possible to conceive of a use of the same by the Respondent except for attracting internet users to its website. Thus, mere registration of a domain name similar to such a well-known trademark would be an evidence of the Respondent's bad faith. See for instance *Ticketmaster Corp. vs. Spider Web Design, Inc.*, WIPO Case No. 2000-1551.

The facts make it clear that the Respondent was taking advantage of the goodwill and fame of the Complainant's well-known trademark for its own substantial commercial profit and gain, and the use of the disputed domain name is in bad faith as defined under paragraph 6 (iii) of the policy.

Decision

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its Complaint.

The Respondent has got registered and used the disputed domain name in bad faith. IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e., www.dellservice.co.in to the Complainant.

No cost or penalty is imposed upon the Respondent. Parties are directed to bear their own cost. The Award is accordingly passed on this 30th day of April, 2014.



Mr. A.K. Singh
Sole Arbitrator

Date: 30th April, 2014