

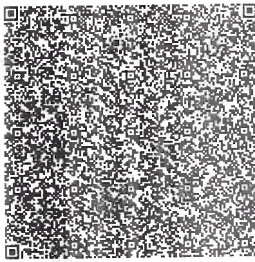
सत्यमेव जयते

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BEFORE THE SOLE ARBITRATOR: DIVYA BALASUNDARAM
C/O NIXI (National Internet Exchange of India)

In the matter of :

Dell Inc.

Versus

Complainant

Prem P & Another

Respondents

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ARBITRAL AWARD
.IN REGISTRY
C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
Before The Sole Arbitrator, Divya Balasundaram

Disputed domain name - <dellservicevelachery.in>

IN THE MATTER OF:

Dell Inc.
One Dell Way
Round Rock, Texas 78682
United States of America

Complainant

Versus

Prem P
Valasaravakkam, Chennai
Tamil Nadu, 600087, India

Respondent No.1

Also at
No.5, 100 Feet, Tharamani Link Road
Tansi Nagar (Near Olympic Wedding Cards)
Velachery, Chennai - 600042

And

Rookra Laptop Service
No.5, 100 Feet, Tharamani Link Road
Tansi Nagar (Near Olympic Wedding Cards)
Velachery, Chennai- 600042

Respondent No.2

1. The Parties

- 1.1 The Complainant in this arbitration proceeding is Dell Inc., One Dell Way, Round Rock, Texas 78682, United States of America, represented by Akhilesh Kumar Rai of AZB & Partners, Plot No.A8, Sector 04 Noida - 201301, U.P. India. Respondent No. 1 is Prem P of Valasaravakkam, Chennai, Tamil Nadu, 600087, India, also at No.5, 100 Feet, Tharamani Link Road, Tansi Nagar (Near Olympic Wedding Cards), Velachery, Chennai - 600042. Respondent No. 2 is Rookra Laptop Service, No.5, 100 Feet, Tharamani Link Road, Tansi Nagar (Near Olympic Wedding Cards), Velachery, Chennai- 600042.

2. The Domain Name and the Registrar

- 2.1 The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <dellservicevelachery.in>. The sponsoring Registrar with whom the domain name is registered is GoDaddy.com of the address 14455 North Hayden Road, Suit 219 Scottsdale, AZ 85260-6993, United States of America.

3. Procedural History

- 3.1 The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (.INDRP), adopted by the National Internet Exchange of India (NIXI).
- 3.2 NIXI vide its email dated April 18, 2018 requested availability of Ms. Divya Balasundaram to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure on same day.
- 3.3 Arbitrator was appointed vide NIXI's email of May 04, 2016.
- 3.4 Arbitrator sent email on May 6, 2018 serving formal notice of the Complaint upon the Respondents and calling for a response within 15 days. No response has been received by the Respondents in the given time. Hence, Arbitrator sent email of May 29, 2018 informing the Respondents of absence of response from them and the decision to proceed with an ex-parte order.
- 3.5 The language of these proceedings is English.

4. Factual Background of the Complainant

- 4.1 The Complainant is a company incorporated and existing under the laws of Delaware, United States of America, established in the year 1984.
- 4.2 The Complainant is the world's largest direct seller of computer systems. Since its establishment, 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.

- 4.3 Currently, the Complainant is 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.
- 4.4 The products of the Complainant 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.
- 4.5 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. Additionally, 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 provide details of products, stores and authorized service centers details.
- 4.6 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. Attached with the Complaint is a list of details of registrations in India for the mark 'DELL'. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.
- 4.7 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 for different Dell formative domain names. A list of case details wherein awards have been passed in favour of the Complainant is attached to the Complaint.



5. Contentions about the Respondent

5.1 Complainant undertakes periodical searches to check for misuse of its domain names. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the impugned domain name in the name of Mr. Prem P. The name server 1 is mentioned as Rookra.com. Upon checking the said domain name, Complainant found another domain name www.rookralaptopservice.in, which belongs to an entity named Rookra Laptop service which deals in repairing laptops and retail of some part of the same. The addresses mentioned on the websites with the domain name www.rookralaptopservice.in and the impugned domain name are identical.

5.2 Upon perusal of the webpage of the impugned domain name, the Respondent has displayed the trademark Dell of the Complainant at several places. Moreover, the Respondent has also used the same blue color as that of the Complainant. The offending website displays addresses of many Dell service centers in various locations. The Respondent also retails the products of the Complainant and its accessories, provides the drivers released by the Complainant for its products and provides a list of the service centers of Dell which are managed and controlled by the Respondent. The Respondent has a separate link for retail of Dell batteries on its website with the impugned domain name. Once the battery product is selected, the customer is re-directed to www.delllaptopbattery.co.uk.

5.3 Additionally, the Respondent uses catchy phrases like:

- 'Dell Laptop service center is one of the finest Laptop service center. . .'
- 'Our Dell laptop Service Center highly qualified professionals can repair all the Dell laptop parts and components at your home and office.'
- 'Dell service center technicians are completed well-qualified to diagnose the problems of your laptop, troubleshoot and repair almost all Dell laptop issues including a malfunctioning. Our Dell Laptop Engineer are specialists in treating Dell laptop issues caused due to power supply issues, accidental spillage of liquids, software issues, physical cosmetic damage, and overheating'

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

5.4 From the above, it is evident that the Respondent is passing off its services as that of the Complainant. Since the Respondent is duping the consuming public and eroding the distinctive character of the Complainant's mark and also diluting the well-known mark of the Complainant, the balance of convenience rests entirely towards the Complainant.



6. Legal contentions

- 6.1 The domain name(s) is (are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights.
- 6.2 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 in 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.
- 6.3 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.
- 6.4 The Respondent(s) have no rights or legitimate interests in respect of the domain name(s).
- 6.5 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 in their domain name and displaying its logo on the website with the impugned domain name.
- 6.6 The Respondent has no 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'.
- 6.7 The Respondent has developed the offending domain name only to illegal benefit from the goodwill and reputation of the mark Dell built by the Complainant.
- 6.8 The domain name(s) was/were registered and is/are being used in bad faith.
- 6.9 The registration and operation of the domain name www.dellservicevelachery.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.dellservicevelachery.in is a website of the Complainant, which is not the case. The offending domain name has been registered to create initial interest and thereafter 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.

- 6.10 The bad faith on the part of the Respondent is demonstrated by the use of the trademark of 'DELL' on the website with the domain name www.dellservicevelachery.in.
- 6.11 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.dellservicevelachery.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 of 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.
- 6.12 The nature of the impugned domain name is such that it gives an impression that it is the website of Dell service center in Velachery.

7. Discussion and findings

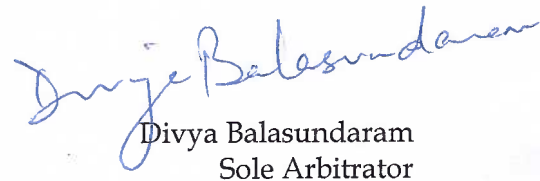
- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant.
- 7.2 The Arbitrator finds that the Arbitral Tribunal has been properly constituted.
- 7.3 The Arbitrator finds that the Complainant has been able to establish its prior rights and interests in the trademark DELL through various means including prior adoption, use and registrations internationally and in India.
- 7.4 The Arbitrator also finds that the Complainant has established all the 3 elements essential to maintain its complaint, being that the disputed domain name is identical or confusingly similar to Complainant's trademark; the Respondents have no rights claims, or legitimate interests in respect of the disputed domain name; and the disputed domain name was registered and is being used in bad faith on account of various averments in the complaint and supported by the annexures.
- 7.5 The Respondents are not named DELL nor commonly known by this name.



- 7.6 The Respondents have no statutory or common law rights in the disputed domain name nor are they authorized or licensed by the Complainant to use the mark or domain name DELL.
- 7.7 The Respondents have used DELL in several places on their website and also the blue colour of Complainant. The Respondents website is designed in such a way and with such information and catch phrases that a user will believe the Respondents are affiliated with the Complainant when they are not.
- 7.8 The Respondents have not only adopted the Complainant's trademark 'DELL', it is also being used for services identical to that of the Complainant. The very nature of the impugned domain name is such that it is the website of DELL service center in the location Velachery. It is clear that Respondents are passing off their services as that of the Complainant.
- 7.9 The Respondents were given sufficient time to reply to the Complaint, however, they have chosen not to respond.

8. Decision

- 8.1 For all the foregoing reasons, the Complaint is allowed.
- 8.2 It is hereby ordered in accordance with paragraph 10 of the INDRP that the disputed domain name <dellservicevelachery.in> be transferred to the Complainant.
- 8.3 The Parties shall bear their own costs.


Divya Balasundaram
Sole Arbitrator

Date: June 5, 2018
Place: New Delhi.