



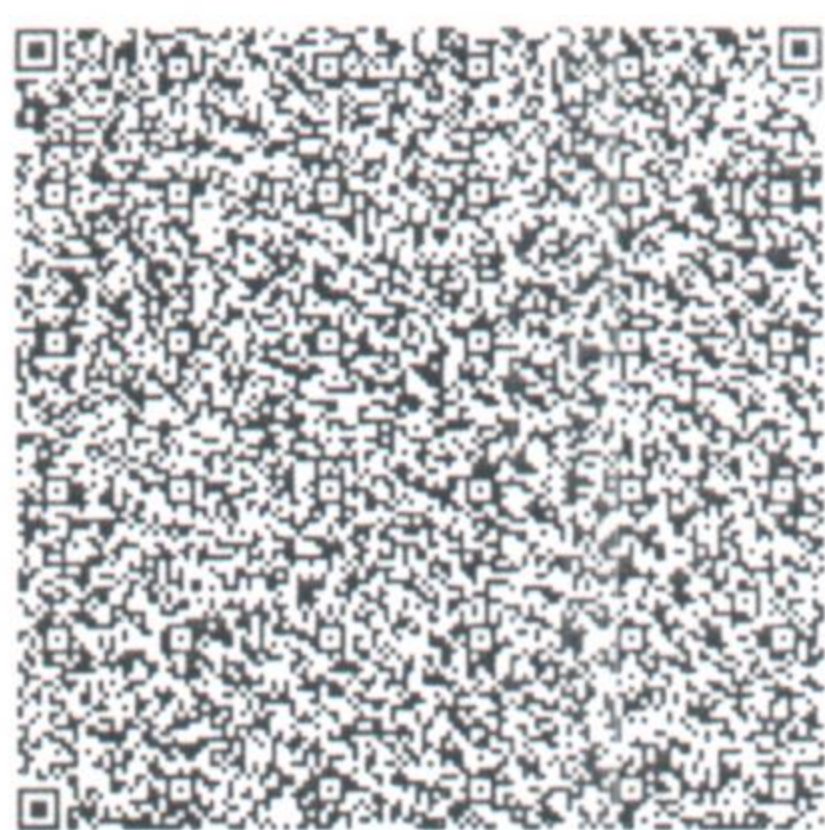
सत्यमेव जयते

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Certificate Issued Date	: 17-Feb-2016 12:19 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130331817039547982O
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
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
United States of America

(Complainant)

Vs.

Mani, Soniya
Mathaakaavadanur, Dharmapuri
Coimbatore, Tamil Nadu-635301
India

(Respondent)

Statutory Alert:

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THE PARTIES:

The Complainant in this proceeding is Delaware Corporation, having its registered office at One Dell Way, Round Rock, Texas 78682-2244, USA. Contact Details- One Dell Way, Round Rock, Texas 78682-2244, U.S.A Phone Number- +512.723.2066, Email Address – sanjiv_sarwate@DELL.com. The Complainant has authorized two representatives for the administrative proceedings.

The Respondent in this proceeding is Miss Mani, Soniya, of Mathaakaavadanur, Dharmapuri Coimbatore, Tamil Nadu-635301, India, Email address - soniya@gmail.com.

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.dellshowrooms.in The Registrar of this domain name is Good Domain Registry Private Limited as per the whois data base.

PROCEDURAL HISTORY:

The Arbitrator was appointed by the .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name www.dellshowrooms.in.

.In Registry had supplied the copy of the Complaint and the Annexures to the Arbitrator.

The Complainant has filed various documents as Annexures in support of their contentions. The copy of the complaint along with the annexures was served upon the Respondent by email. The hard copy of the Complaint could not be served upon the Respondent due to incomplete/wrong address given by the Respondent. Respondent was also directed to provide her complete address but she did not comply with the directions.

No reply has been filed by the Respondent to the complaint, despite of the fact that several opportunities were given to her. The Arbitrator has perused the record and annexures / documents.

FACTUAL BACKGROUND:

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

The complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer systems. The complainant's business is aligned to address the

unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses.

It is submitted that the complainant began using the trademark/ name DELL in 1987. Since then it has made extensive and prominent use of its trademark/name Dell in connection with a wide range of goods and services, including offering its goods and services online through numerous DELL domain names.

The complainant further submitted that, they have used the famous mark DELL, as well and various other marks that include the word DELL (the "DELL Marks"), for many years for laptops, desktops, computer parts and accessories, computer service and support and other computer-related products and services.

Complainant began doing business in India in 1993. The complainant has a highly successful presence in India in respect of its trade mark and trade name DELL. It has also increased its retail presence in India.

The complainant has spent substantial time, effort and money advertising and promoting the "DELL" trade mark and the DELL formative marks throughout the world. As a result, the "DELL" trade mark has become famous and well known, and the complainant has developed enormous goodwill in the mark and widespread consumer recognition from the very beginning.

It is submitted that the trademark "DELL" and the "DELL" formative marks have become distinctive and famous trademarks throughout the world as a symbol of the high quality standards and the complainant maintains for its products and related services.

The complainant submitted that, presently over 500 domain names and majority of them contain the trade mark "DELL" in it are owned by them.

RESPONDENT:

1. The respondent in this proceeding is Ms. Mani, Soniya , Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu, 635301.
2. The respondent has failed to file her say/ reply to the Complaint of the Complainant within the stipulated time nor has she communicated anything on the complaint till the date of this award.

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 Respondents has no rights, claims or legitimate interest in respect of the Disputed Domain Name; and
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

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

DISCUSSION 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 it.

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 opportunities have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been preceded against *ex-parte* and the arbitration proceedings have been conducted in her 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 there under, 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.

Having perused the submissions and documentary evidence placed on record, 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 Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) The Respondent's domain name has been registered or is being used in bad faith.

The present award got delayed beyond 60 days due to the time consumed in making the repeated attempts to serve the hard copy of the Complaint upon the Respondent. However, as mentioned above, the same could not be done due to the incomplete/wrong address given by the Respondent.

BASIS OF FINDINGS

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

The complainant submits that the impugned domain name <dellshowrooms.in> incorporates the complainant's well known and registered trademark "DELL" in its entirety and is confusingly similar as a whole to the complainant's domain names such as www.dell.com and www.dell.co.in.

It further submits that addition of generic name "Showrooms", only serves to solidify confusion amongst the internet users rather than dissipating it, more so as the generic word have an obvious association to the Complainant.

The Complainant further states that the, addition of top level domain ".in" is irrelevant in determining whether the domain name registered by the Respondent are confusingly similar to Complainants registered trademarks.

The various judgments relied upon by the Complainant in support of its contention have been considered and taken note of by the Tribunal.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by her.

Even otherwise the above facts and annexures establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant

It is therefore concluded that the disputed domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

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

The Complainant has made positive assertions and has presented concrete evidences making a prima facie case, showing that the Respondent does not possess rights or legitimate interests in the domain name dellshowrooms.in.

The Complainant has further stated that there exist no relationship between the Complainant and the Respondent and further the Respondent do not have any license or authorization from the Complainant to use its registered trademark and the Respondent is also not commonly known by the domain name at issue.

The Complainant also states that the Respondent is not making any legitimate non-commercial or legitimate fair use of the disputed domain name and that the conduct of the Respondent cannot come under the definition of '*bona fide* use', as the Respondent is using the disputed domain name to divert/redirect the internet users and consumers seeking the Complainant's good to its own website, which offers the Complainant's products and services and also those in direct competition with the Complainant.

The various judgments relied upon by the Complainant in support of its contention has been considered and taken note of by the Tribunal.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by her. Even otherwise the above facts establish that the Respondent has no right or legitimate interest in the domain name dellshowrooms.in as the Respondent is not making a bona fide offering of goods or services and is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii).

In the light of the above facts, it is therefore concluded that the Respondent has no right or legitimate interest in respect of the disputed domain name.

3. 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))

The Complainant alleges that the disputed domain name was registered primarily in order to piggy back off the commercial value and the significance of the Complainant's domain name and further states that the use of disputed domain name,

which is confusingly similar to Complainant's famous Dell mark is evidence of its bad faith.

According to Complainant, bad faith of the Respondent is also demonstrated from the fact that the disputed domain name is being used to deceive customers into thinking that Respondent or Respondent's business is associated with Dell. The registration of various domain names by the Respondent containing the mark of Dell is also a strong evidence of bad faith.

The Complainant further submits that inclusion of inconspicuous disclaimers at the bottom of the pages of the website does not mitigate the element of bad faith.

The various judgments relied upon by the Complainant to prove the bad faith registration has been considered and taken note of by the Tribunal.

As stated in earlier paragraphs also, none of the submissions of the Complainant have been rebutted by Respondent, as such they are deemed to be admitted.

On the basis of the Complainant submissions and the evidence provided in support of it, the Tribunal has come to the conclusion that the disputed domain name was registered in bad faith.

DECISION

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

The Respondent has 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.dellshowrooms.in> to the Complainant. The Award is accordingly passed on this day of 15th April, 2016.



Rajeev Singh Chauhan
Sole Arbitrator
Date: 15th April, 2016