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ARBITRAL AWARD
.IN REGISTRY
C/O NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

Before The Sole Arbitrator, Divya Balasundaram

In

Dell Inc.

Versus

Kali Prasad Rath

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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 – <dell-emc.co.in>

IN THE MATTER OF:

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

Complainant

Versus

Kali Prasad Rath,
Jobhub,
Pentagon Tower, Magarpatta,
Hadapsar, Pune – 411018
Maharashtra, India

Respondent

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. Respondent is Kali Prasad Rath of Pune, Maharashtra, India.

2. The Domain Name and the Registrar

- 2.1 The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <dell-emc.co.in> on registered on February 9, 2019. The sponsoring Registrar with whom the domain name is registered is GoDaddy.

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 January 6, 2020 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.

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3.3 Arbitrator was appointed vide NIXI's email of January 10, 2020. Arbitrator sent email on January 13, 2020 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 January 31, 2020 informing Respondent of absence of response and the decision to proceed with an ex-parte order.

3.4 The language of these proceedings is English.

4. Background of the Complainant and its rights in DELL EMC as stated in the Complaint

4.1 The Complainant is Dell Inc., a company incorporated and existing under the laws of Delaware, United States of America, established in 1984. The Complainant is the world's largest direct seller of computer systems. Since its establishment, the Complainant has diversified and expanded its activities and its business addresses needs of large enterprises, public institutions, small and medium businesses and individuals.

4.2 The Complainant is now one of the leading providers of computer systems to large enterprises around the world; it sells more than 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members that caters to more than 5.4 million customers every day. The first use of mark 'DELL' by the Complainant can be traced back to 1988. In India, the products of the Complainant are widely available since 1993.

4.3 Complainant's founder Michael Dell privatized his company for \$24.4 billion. The Complainant also acquired EMC Corporation (EMC) for around \$ 67 billion. EMC was established in the year 1979 and started its business in production of memory board and moved towards computer data storage and networked storage platform by 1980s. In 2001, EMC transformed its business to focus on platform, software and service which enables organization to deliver IT as a service through cloud computing. Products of EMC were widely available across the globe and in India, since 2003. News of the privatization and acquisition has been widely reported by press and electronic media all over the world, including in India.

4.4 After the acquisition, the Complainant uses the trade name 'DellEMC' on some of its official websites and social media platforms, which provide details of the services/products offered through its EMC line of business.



- 4.5 The products of the Complainant are marketed in India by the subsidiaries of the Complainant who have tied up with various channel partners all over the country for offering its services/products. The Complainant also operates an interactive website with URL www.dell.com, wherein customers can log in and purchase the products. The said website also provide links to discover other products/services offered by the Complainant, for such products/services, the consumer is re-directed to another website of the Complainant with the URL www.dellemc.com. The Complainant has a very strong internet presence with these websites.
- 4.6 The Complainant is a registered proprietor of 'DELL' and 'DELL' formative marks in various countries. It has also become the owner of 'EMC' and 'EMC' formative marks in various countries as well. The trademarks 'DELL' and 'EMC' have been in use atleast since the last 30 years by the Complainant. The Complainant has built an enviable reputation in respect of the said marks and the marks 'DELL' and/or 'EMC' are well recognized amongst the consuming public and can be termed as well-known. The Complainant has also enforced its rights actively.

5. Contentions about the Respondent

- 5.1 The Complainant became aware of the Impugned Domain when one Ms. Suvarna Bhalekar came to the Complainant's subsidiary office in Pune to start her job with them, although no job offer had been made by them. It transpired that Ms. Bhalekar had received an email from 'yashraj.bagal@dell-emc.co.in and a letter offering her a position of a software engineer with the Complainant's subsidiary. Upon enquiry, it was found that the sender of the email and the person to whom the job applicant was to report to, were previously Complainant's subsidiary's contract workers.
- 5.2 Upon inquiry, Ms. Bhalekar disclosed that the job offer was placed on Facebook by one Flintex Consulting Pvt. Ltd. and one Karan Rath had demanded a large sum for a job placement, however Rs. 5600 only was paid against invoice. Concerned with this fake appointment, the Complainant investigated the matter. The investigation revealed several pieces of information about the Respondent and his business including registration of other domain names such as Kpmgin.com, In-accenture.com, Incapgemini.com incorporating names of well-known companies.
- 5.3 The totality of the investigation revealed that the Respondent is a conman, who has allegedly duped hundreds of people of millions of rupees by portraying to facilitate placements in big companies. He has



also swindled individuals looking to rent/lease/purchase homes. The Respondent has been arrested several times and every time he is out from jail on bail, he continued with his con acts. There are various news articles about the Respondent about these illegal activities.

6. Legal submissions

- 6.1. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights:
- 6.2. The Complainant is the registered proprietor of the mark 'DELL' and/or 'EMC' in various countries, including India. The Complainant alone has the right to use the 'DELL' and/or 'EMC' marks, which connote and denote the goods and services of the Complainant alone.
- 6.3. The Impugned Domain is dependent on the trademark 'DellEMC' of the Complainant. The Impugned Mark is identical to the domain name www.dellemc.com, of the Complainant.
- 6.4. The Respondent has no rights or legitimate interests in the domain name.
- 6.5. The Impugned Domain does not host a website. It has been registered with the intent to carry out deceitful and illegal activities and to mislead and cheat innocent customers. Further, any creation of a website on the Impugned Domain will only be to facilitate such unlawful activities.
- 6.6. The Respondent is using the Impugned Domain as a tool to carry out his criminal activities of committing fraud and cheating unsuspecting individuals by offering jobs for money, when in fact no such job offer is in place.
- 6.7. The domain name is registered and being used in bad faith.
- 6.8. The bad faith on the part of the Respondent is evident from the use of 'DellEMC' in the Impugned Domain, which is the property of the Complainant and only associated with it. The Impugned Domain is worded in such a manner that it appears to be the official website of the Complainant. Therefore, any use of the Impugned Domain will create confusion amongst the public and perpetrate the fraudulent activities of the Respondent. The Respondent has already cheated and defrauded the victim with the help of registration of the Impugned Domain. The name and goodwill of the Complainant are being tarnished and tainted.



- 6.9 The Respondent has created fake email address (yashraj.bagal@dell-emc.co.in), which incorporates the trade mark 'DellEMC', and gives an impression that emails originating from the said e-mail ID are originating from an employee of the Complainant or its subsidiaries.
- 6.10 The modus operandi of the Respondent is to register domain names, which incorporate names of well-known companies. Thereafter, the Respondent advertises jobs in the name of such companies and trick individuals to transfer money for placement in such companies.
- 6.11 The impugned domain is also being used to commit crimes punishable under the Indian Penal Code, 1860. Additionally, the use of 'DELL' and 'EMC' in the impugned domain is without due cause, and has been done to illegally benefit from the goodwill of the Complainant by misleading innocent public into believing that the Respondent is associated with the Complainant, when in fact, no such association exists.
- 6.12 The use of the Impugned Domain by the Respondent is not for non-commercial purposes and would not fall under the ambit of 'fair use'. The only reason of adoption of the mark 'DELL' is to make illegal profit by duping the relevant public.

7. Discussion and findings

- 7.1 The Arbitrator has reviewed the Complaint and all the Annexures filed by the Complainant. The Arbitral Tribunal has been properly constituted.
- 7.2 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. The impugned domain name is identical to Complainant's mark. The Complainant has also established lack of right or legitimate interest on part of Respondent and the bad faith adoption and use by him. The various averments in the complaint have been supported by documents filed by the Complainant.
- 7.3 From a perusal of the instant complaint and documents, it is apparent that the Respondent is misleading the innocent job applicants by offering placements using trademarks and domain names of the Complainant. He has registered domain names containing trademarks of other companies as well. He has created a fake mail address using DELLEMC and also swindled individuals looking to rent/lease/purchase homes. Such acts of the Respondent are deplorable to say the least. He has been arrested for his crimes and



continues with his illegal acts whilst out on bail, which makes the situation even worse.

7.4 The Respondent was given sufficient time to reply to the Complaint, however, he has not responded.

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 <dell-emc.co.in> be transferred to the Complainant.



Divya Balasundaram
Sole Arbitrator

Date: February 3, 2020
Place: New Delhi.