



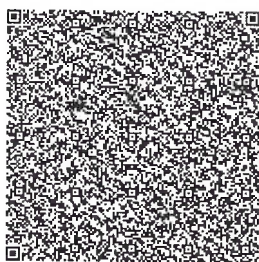
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No.	: IN-DL88428707015131Q
Certificate Issued Date	: 09-Oct-2018 02:47 PM
Account Reference	: IMPACC (IV)/ dl889403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL88940381323250818448Q
Purchased by	: V K AGARWAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V K AGARWAL
Second Party	: Not Applicable
Stamp Duty Paid By	: V K AGARWAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA  
6C, 6D, 6E, Hansalaya Building,  
15, Barakhamba Road,  
New Delhi – 110 001

Dell Inc., v. Dell Support India

*V K Agarwal*

#### 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.
3. In case of any discrepancy please inform the Competent Authority.

## AWARD

### 1. The Parties

The Complainant is M/s Dell Inc., One Dell Way, Round Rock, Texas – 78682, United States of America.

The Respondents are as follows:

Dell Support India, Bangalore.  
Also Shop No. 5 (UGF),  
Saharawat Market, Near Hanuman Mandir,  
Road, Sector 17, Sukhrali,  
Gurugram – 122 001, India.

Respondent No. 1

NCR System Solutions  
Also Shop No. 5 (UGF),  
Saharawat Market, Near Hanuman Mandir,  
Road, Sector 17, Sukhrali,  
Gurugram – 122 001, India.

Respondent No. 2

### 2. The Domain Name and Registrar

The disputed domain name is <www.indiadellsupport.in>. According to WHOIS record at Annexure 3 to the Complaint, the details of registration of the disputed domain name are as follows:

- |                       |  |
|-----------------------|--|
| (a) Domain ID:        | D9865347 – AFIN                            |
| (b) Registrar:        | The Endurance Domains Technology Pvt. Ltd. |
| (c) Date of creation: | September 22, 2015                         |
| (d) Expiry date:      | September 22, 2018                         |

### 3. Procedural History

- (a) A Complaint dated September 06, 2018 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 3. It is confirmed that the Respondent No. 1 is listed as the registrant and provided the contact details for the administrative, billing, and technical

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contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (b) In accordance with the Policy and the Rules, an attempt was made to notify the Respondent about the Complaint on the given addresses, including the incomplete address of Bangaluru. However, the Complaint could not be served due to incomplete address. Thus, no response has been received from the Respondents. Hence, the present proceedings have to be ex parte.

#### 4. Factual Background

From the Complaint and the various annexure to it, the Arbitrator has found the following facts:

##### **Complainant's activities**

The Complainant is a company incorporated and existing under the laws of Delaware, United States of America and was established in the year 1984.

The Complainant is mainly the seller of computer systems, including computer hardware, software, peripherals, computer oriented products, such as, phones, tablet computers, etc. The Complainant also provides computer related consultations, installation, maintenance, leasing, warranty and technical services. The Complainant satisfies the needs of large enterprises, public institutions (health care, education and government), small and medium business and individuals.

The Complainant also offers repair and maintenance services of computers and their parts under the mark "DELL"

##### **Respondent's Identity and Activities**

Respondent has not provided the response. Hence, the Respondent's activities are not known.

*K. Agarwal*

## 5. Parties Contentions

### A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the disputed domain name is <www.indiadellsupport.in>.

The Complainant is the owner of several trademark registrations of the word "DELL" in numerous jurisdictions around the world. However, the names of such "numerous jurisdictions" are not mentioned in the Complaint.

The trademark "DELL" is also registered in India vide eight registration certificates, the first registration certificate being numbered at 575115 dated June 05, 1992 issued by the Registrar of Trademarks, Government of India. The said trademark "DELL" is registered in Classes 2, 9, 36, 37 and 42. According to the Complaint, the said eight registrations have been renewed from time to time and are valid and subsisting. Copies of the said Registration Certificates are available at Annexure 8 to the Complaint.

The Complainant also uses various "DELL" formative marks like "DELLPRECISION", "DELL CHAMPS", "DELL PROSUPPORT", "DELLPREMIUMARE", etc.

The Complainant has registered a number of domain names containing its trademark "DELL", such as <www.dell.com>; <www.dell.co.in>.

The Complainant contends that the disputed domain name contains the trademark of the Complainant, that is, DELL. The addition of the generic words "india" or "support" in a domain name is insignificant. They will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the goods and services offered under the disputed domain name from the Complainant. Further that, they do not help in distinguishing the disputed domain name from the Complainant's trademark. On the contrary, the disputed domain name leads the public to believe that it relates to the Complainant's products.

Therefore, the disputed domain name is confusingly similar or identical to the registered trademark of the Complainant.

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In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "DELL". The Respondent does not own any trademark registration as DELL or a mark that incorporates the expression DELL. The Respondent has no license or authorization or permission from the Complainant to either use the trademark "DELL" or to register the disputed domain name.

Further, the Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent have developed the domain name comprising of the well-known DELL mark of the Complainant with the sole aim to make illegal benefits from the goodwill and reputation of the mark DELL built by the Complainant.

Therefore, the Respondent has no legitimate justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the disputed domain name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.indiadellsupport.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent has not demonstrated any preparations to use the domain name or a name corresponding to the domain name in connection with any bona fide offering of goods or services. The Respondent is not commonly known by the domain name or is engaged in any business activity associated with the mark DELL.

The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

## **B. Respondent**

The Respondent did not submit any evidence or argument indicating his relation with the disputed domain name <www.indiadellsupport.in> or any trademark right, domain name right or contractual right.

## **6. Discussion and Findings**

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The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

#### A. *Identical or Confusingly Similar*

The disputed domain name <indiadellsupport.in> was registered by the Respondent on September 22, 2015. The Complainant is an owner of the registered trademark "DELL". The Complainant is also the owner of a large number of domains with the trademark DELL as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. The disputed domain name is <indiadellsupport.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recent held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for DELL products in India or elsewhere would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

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Therefore, I hold that the domain name <www.indiadellsupport.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

*B. Rights or Legitimate Interests*

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (ii) the Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (iii) The Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name or the trademark "DELL" anywhere in the world. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "DELL" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Registrant/Respondent. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name under INDRP Policy, Paragraph 4(ii).

*C. Registered and Used in Bad Faith*

*Kaganwal*

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- (ii) the Registrant's has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.indiadellsupport.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

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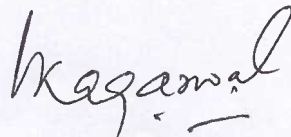
## Respondent No. 2

In the Complaint, M/s NCR System Solutions has been impleaded as Respondent No. 2. It is stated in paragraph 23 of the Complaint that as per investigation conducted by the Complainant, the Respondent No. 1 is related to Respondent No. 2 and both entities are owned by Mr. Ranjeet Singh Rana. "The connection between the Respondents is corroborated by the fact that the emergency telephone number i.e. +91-9717150098 specified on the active website of the Respondent No. 2 at [www.ncrsystemsolutions.com](http://www.ncrsystemsolutions.com) are same." (Annexure 4 to the Complaint). It was also revealed that service letter and invoices raised by Respondent No. 1 in connection with services offered by them are in the name of Respondent No. 2. Therefore, it is evident that the Respondents No. 1 and 2 are related entities operating the disputed domain name for their benefit.

As per the WHOIS record at Annexure 3 to the Complaint, the recorded registrant of the disputed domain name is Dell Support India, Respondent No. 1 herein. According to the said WHOIS record, NCR System Solutions, Respondent No. 2 is neither the recorded registrant of the disputed domain name nor his name appears in the WHOIS record. Therefore, there is no substance in the contentions raised by the Complainant. Hence, the case cannot proceed against Respondent No. 2.

## 7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <[www.indiadellsupport.in](http://www.indiadellsupport.in)> be transferred to the Complainant.



Vinod K. Agarwal  
Sole Arbitrator

Date: 15<sup>th</sup> October 2018