



Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No. ११८

: IN-DL67772541949275T

Certificate Issued Date

: 31-Mar-2021 05:53 PM

Account Reference

: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH

Unique Doc. Reference

: SUBIN-DL DL-SELF36608545635144T

Purchased by

: KARNIKA, SETH

Description of Document

: Article 12 Award

Property Description

: ARBITRATION AWARD UNDER .IN REGISTRY POLICY

Particulars	Consideration Price (Rs.)
1. Cash	1000
2. Land	2000
3. Building	3000
4. Furniture	500
5. Stock	1500
6. Debtors	1000
7. Creditors	1000
8. Cash in hand	500
9. Cash at bank	500
10. Debtors	1000
11. Creditors	1000
12. Cash in hand	500
13. Cash at bank	500
14. Debtors	1000
15. Creditors	1000
16. Cash in hand	500
17. Cash at bank	500
18. Debtors	1000
19. Creditors	1000
20. Cash in hand	500
21. Cash at bank	500
22. Debtors	1000
23. Creditors	1000
24. Cash in hand	500
25. Cash at bank	500
26. Debtors	1000
27. Creditors	1000
28. Cash in hand	500
29. Cash at bank	500
30. Debtors	1000
31. Creditors	1000
32. Cash in hand	500
33. Cash at bank	500
34. Debtors	1000
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37. Cash at bank	500
38. Debtors	1000
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41. Cash at bank	500
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46. Debtors	1000
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131. Creditors	1000
132. Cash in hand	500
133. Cash at bank	500
134. Debtors	1000
135. Creditors	1000
136. Cash in hand	500
137. Cash at bank	500
138. Debtors	1000
139. Creditors	1000
140. Cash in hand	500
141. Cash at bank	500
142. Debtors	1000
143. Creditors	1000
144. Cash in hand	5

: 0
(Zero)

First Party

: DR KARNIKA SETH

Second Party

: NOT APPLICABLE

Stamp Duty Paid By

: DR KARNIKA SETH

Stamp Duty Amount(Rs.)

: 100
(One Hundred only)



SELF PRINTED CERTIFICATE
TO BE VERIFIED BY THE RECIPIENT

Please write or type below this line.

ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1324

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
4. In case of any discrepancy please inform the Competent Authority.

.IN REGISTRY
(NATIONAL INTERNET EXCHANGE OF INDIA)
.IN Domain Name Dispute Resolution Policy (INDRP)

Disputed Domain Name: www.dell-chennai.in

Dated: 1st April, 2021

IN THE MATTER OF:

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

..... Complainant

Vs.

James Jeni
Laptop Shoppe,
Opp. CSI Mission Hospital Main Road,
Marthandam, Kanyakumari,
Tamil Nadu-629165
India

..... Respondent No.1

&

Synergy Systems and Peripherals
No.165, Vallur Kottam High Road, Near Soto
Nungambakkam, Chennai-600034

..... Respondent No.2



1. Parties

1.1 The Complainant in this arbitration proceeding is Dell Inc., having address at One Dell Way, Round Rock, Texas, 78682, United States. The Complainant is represented by AZB & Partners.

1.2 The Respondent No.1 in this arbitration proceeding as per 'Whois' record is James Jeni having address at Laptap Shoppe, Opp CSI Mission Hospital Main Road, Marthandam, Kanyakumari, Tamil Nadu-629165, India (as per **Annexure 4** of the complaint). The Respondent No.1's email address is james.jeniservice2020@gmail.com. The Complainant has made Respondent no.2 a party as Respondent No.2's website and website using disputed domain name mention the same contact address. The Respondent No.2 is Synergy Systems and Peripherals, having address at No.165, Vallur Kottam High Road, Near Sotc, Nungambakkam, Chennai-600034, India (as per **Annexure 7** of the complaint).

2. **The Dispute-** The domain name in dispute is "www.dell-chennai.in." According to the .IN 'Whois' search, the Registrar of the disputed domain name is Good Domain Registry Private Limited.

3. Important Dates

S. No	Particulars	Date (All communications in electronic mode)
1.	Date on which NIXI's email was received for appointment as Arbitrator	Feb 8, 2021
2.	Date on which consent was given to act as an Arbitrator in the case	Feb 8, 2021

3.	Date of appointment as Arbitrator	Feb 17, 2021
4.	Soft copy of complaint and annexures were received from NIXI through email	Feb 17, 2021
5.	Date on which notice was issued to the Respondent	Feb 17, 2021
6.	Date on which Complainant filed proof of completed service of complaint on Respondent	Feb 23, 2021
7.	Date on which Award passed	April 1 st , 2021

4. Procedural History

- 4.1 This is a mandatory arbitration proceeding in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. The updated rules are available on <https://www.registry.in/INDRP%20Rules%20of%20Procedure>. By registering the disputed domain name accredited Registrar of NIXI, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2 In accordance with the Rules 2(a) and 4(a) of INDRP Rules, NIXI formally notified the Respondent of the complaint and appointed Dr. Karnika Seth as the sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996 and the rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.



- 4.3 The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy.
- 4.4 The Arbitrator issued notice to the Respondent on Feb 17, 2021 at email address james.jeniservice2020@gmail.com calling upon the Respondent to submit his reply to the Complaint within fifteen (15) days of receipt of the Arbitrator's email. The Complainant also filed proof of completed service of the complaint upon Respondent on 23rd Feb, 2021 (completed service both in hard copy on Respondent no.1 on 22nd Feb, 2021 and Respondent no.2 on 20th Feb., 2021 and electronically on 18th Feb, 2021). However, the Respondent failed to submit any response.
- 4.5 Despite notice, the Respondent failed to file any reply. Therefore, in accordance with the Rule 12 of INDRP Rules, the Arbitration proceedings were conducted ex-parte and the Award is passed which is binding on both parties herein.

5. Factual Background

- 5.1 The Complainant trading as Dell Inc. is one of the world's largest direct seller of computer systems incorporated under the laws of Delaware. Founded in 1984, the Complainant since its establishment has expanded its activities/ services including such as computer hardware, software, computer peripherals, computer-oriented products such as phones, tablet computers etc.
- 5.2 The Complainant is headquartered in United States of America and through its trademark it not only directly sells the products and services as claimed by it but has also been rendering computer-related consulting, installation, maintenance, leasing, warranty, data computing, cloud computing, information security, virtualization,

analytics, data storage, security/ compliance and technical support services.

- 5.3 The Complainant is one of the leading providers of computer systems and its business is aligned to address to large enterprises around the world, public institutions (healthcare, education and government), small and medium businesses and individuals. The Complainant claims to do business with 98 percent of Fortune 500 corporations and sell more than 100,000 systems every day to customers in 180 countries including in India and claims to cater to more than 5.4 million customers on daily basis.
- 5.4 The Complainant has been selling and marketing its products using its trademark "DELL" since 1988, including through its website www.dell.com. The Complainant's products are available in India since 1993 and are being marketed in India by the Indian subsidiaries and various channel partners. The Complainant's products are sold through its exclusive stores in around 200 cities in India. The Complainant owns the trademark "DELL" and by virtue of its long and continuous use, it has earned significant goodwill and international recognition. The Complainant has a strong online presence with the website www.dell.com. The Complainant also has other country specific domain names such as <www.dell.co.in> in India.
- 5.5 The Complainant owns numerous trademark registrations and exclusive rights in the 'DELL' trademark in many countries around the world including India. In India, the Complainant has secured various registrations for the mark "DELL" in class 2, 9, 36, 37, 41 and 42 and in www.dell.com in class 9. Copies of registration certificates for the mark DELL and its formative marks in India are filed by the Complainant (as per **Annexure 2** of the complaint).

5.6 The Respondent no.1 in this administrative proceeding, as per WHOIS database is James Jeni having address at Laptap Shoppe, Opp CSI Mission Hospital Main Road, Marthandam, Kanyakumari, Tamil Nadu-629165, India. The Respondent's email address is james.jeniservice2020@gmail.com.

5.7 The Complainant has made Respondent no. 2, Synergy Peripheral and Systems a party in the present proceedings as its website synergysystem.in and synergysystem.co.in and that of disputed domain name bear a common contact address (as per **Annexure 7** of the complaint). The Complainant alleges Respondent No.2 has been a habitual offender cybersquatting other domain in the past. For sake of clarity, hereinafter reference to Respondent shall include both Respondent no.1 and 2 in the Award.

6. Parties Contentions

6.1 Complainant's submissions-

6.1.1 The Complainant operating as DELL is a leading direct seller of computer systems and computer-oriented products based in United States of America and in relation to its business adopted the trading name DELL. The Complainant claims it has statutory and common law rights in the trademark has been using the mark continuously for its products and services, not only in India but across various other countries. Due to its established reputation across various countries and in India, the word 'DELL' has been exclusively associated with the Complainant and no one else.

6.1.2 The Complainant states that it has been in global news for the biggest leveraged buyout for \$24.4 billion since the financial crisis and for the acquisition of EMC Corporation for \$ 67 billion (as per **Annexure 1** of the complaint). The Complainant also states that it offers inter-alia, repair and maintenance services (as per **Annexure 9** of complaint)

and also uses various DELL formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE' etc. for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS (as per **Annexure 10** of complaint).

6.1.3 The Complainant submits that it has been providing services through its website www.dell.com all over the world and through www.dell.co.in in India which when clicked gets redirected to www.dell.com. The Complainant has been marketing its 'DELL' products and services through continuous use of its trademark which has gained huge popularity worldwide.

6.1.4 The Complainant's first use of the DELL trademark can be traced back to 1988 and since then the complainant states to have expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. The Complainant states it is the owner and proprietor of www.dell.com which contains all its products under the DELL mark where customers can log in and place orders of laptops and also make payment online. The Complainant has a very strong internet presence with the website www.dell.com worldwide and it has also registered other domain names incorporating 'DELL' and operates www.dell.co.in for India. The Complainant owns the trademark 'DELL' and submits that by virtue of its long and continuous use, it has earned significant goodwill and international recognition. In order to protect its rights in trademark 'DELL', the Complainant has initiated domain name complaints and awards have been granted in its favor for several other domain name dispute actions (as per **Annexure 3** of complaint).

6.1.5 The Complainant submits that the disputed domain name is identical to and is a clear imitation of the 'DELL' trademark and has been used

with an intention to pass off as its own. The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers, infringe the 'DELL' trademark and thereby deceive consumers as to affiliation, connection or association of the disputed domain name with the Complainant, which is incorrect and injures the Complainant's interests. The Complainant also submits that Respondent may be selling inferior quality products and diluting the goodwill and reputation of Complainant's marks.

- 6.1.6 In addition, the Complainant submits that the Respondent has a pattern of bad faith conduct and has presently and also previously indulged in registering DELL formative domain names. The Respondent has no legitimate interest in the domain name or the mark except to mislead consumers and thereby infringe the 'DELL' trademark and deceive consumers as to affiliation, connection or association of the disputed domain name with the Complainant, which is incorrect and injures the Complainant's interests.
- 6.1.7 The Complainant further contends that the Respondent's impugned domain represents Respondent as the reseller of DELL whereby he is offering all kinds of Dell products. The Respondent also claims on the impugned website that he provides after sale services (as per **Annexure 5** of complaint). The Complainant further states that Respondent is using other well-known trademarks of Complainant like ALIENWARE, VOSTRO and INSPIRON and also uses the tagline "Power to Do More". The Respondent also at several places on the said impugned website displays himself as "DELL Exclusive Agent" whereas Complainant has neither authorized nor permitted Respondents to register and use the disputed domain name or its trademarks. (as per **Annexure 6** of complaint)



6.1.8 In addition, the Complainant submits that the Respondent has in bad faith registered several domain names which contain the trademark of the Complainant, DELL such as www.dellshowroomchennai.com and www.delllaptopsinchennai.in (as per **Annexure 8** of complaint).

6.2 Respondent's Defence

6.2.1 Despite the service of notice by email, the Respondent failed to reply to the notice within the stipulated time.

6.2.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present the case. Rule 8(b) reads as follows:

"The Arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case."

6.2.3 Further the INDRP Rules of Procedure empowers the Arbitrator to proceed with arbitration proceedings ex-parte and decide the arbitration in case any party does not comply with the stipulated time limit to file its response. Rule 12 reads as follows:

"In the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law."

6.2.4 In present arbitration, the Respondent has failed to file any reply to the Complaint and has not sought any further time to answer the Complainant's assertions, contentions or evidences in any manner. The Arbitrator thus finds that the Respondent has been given a fair chance to present its case. Since the Respondent has failed to reply to Notice to submit its response, Arbitration has been conducted ex-parte



in accordance with Rule 12 of the INDRP rules and decided on merits ex-parte.

7. Discussion & Findings

7.1 The .IN Domain Name Dispute Resolution Policy (“.IN Policy”), in para 4 requires Complainant, to establish the following three requisite conditions –

- (a) The disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights,
- (b) The Respondent has no rights or legitimate interest in the domain name and
- (c) The Respondent’s domain name has been registered or is being used in bad faith.

7.2 The Registrant’s domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights (Paragraph 4(a))

The Complainant submits that it owns numerous trademark registrations for ‘DELL’ in many jurisdictions throughout the world, including in India and has filed documents of its registered trademarks in India to prove its rights in the trademark DELL (as per **Annexure 2** of complaint). The Complainant has submitted that DELL is a trademark well recognized amongst the public worldwide, including in India and is extensively used with regard to DELL computer systems, laptops, tablets, servers, mouse, battery, adapters, phones and other computer-oriented products (as per **Annexure 9** of complaint). The Complainant claims its “DELL” mark, company name and website at www.dell.com are globally famous and has worldwide reputation selling more than 100,000 systems every day.

The Arbitrator finds that the disputed name www.dell-chennai.in is clearly identical and deceptively similar to the Complainant's trademark in which the Complainant has exclusive trademark rights and the Complainant has submitted enough documentary evidence to prove its rights and ownership in DELL and DELL formative marks. A cursory glance at the disputed domain name <dell-chennai.in> makes it obvious that the disputed domain name is deceptively similar to the Complainant's mark.

As per WIPO Synopsis 3.0, while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to the mark for purposes of UDRP standing.

The disputed domain name consists of "DELL", the Complainant's trademark in entirety and 'Chennai' separated by a hyphen and the ccTLD ".in" which is likely to deceive and confuse consumers. It is well recognized that incorporating a trademark in its entirety, particularly if the mark is an internationally well-known mark, is sufficient to establish that the domain name is identical or confusingly similar to the Complainant's registered mark. (*LEGO Juris A/S v. Robert Martin*, INDRP/125 (2010); *Viacom International Inc. v. MTV ALBUMS- Mega Top Video Albums Peter Miadshi*, WIPO Case No. D2002-0196; *Wal Mart Stores Inc v. Kuchora, Kal*, WIPO no. D2006-0033).



Apart from the ccTLD, the disputed domain name differs from the Complainant's trademark only by the addition of the descriptive term "-Chennai". The Complainant's mark is clearly visible within the disputed domain name. It has been consistently held in numerous cases that the use of descriptive words or geographic names with a trademark in a disputed domain name need not prevent a finding of confusing similarity (*Disney Enterprises Inc. and Walt Disney Company (India) Pvt Ltd v. Registrant Id: DI_7305075, INDRP/ 596*). In addition, the Respondent offers 'after sale services' projecting themselves as the 'Dell Showroom/ Re-seller' which are being offered by the Complainant for its DELL branded products. Thus, there is a likelihood that consumers who visit the disputed domain name are likely to be confused as to the origin of the services and products to be that of the complainant.

As the Respondent's disputed domain name is identical/deceptively similar to the Complainant's registered trademark and the Respondent failed to file any reply to rebut the contentions of the Complainant, the Arbitrator finds that the Respondent's domain name is identical/deceptively similar to Complainant's registered trademark and is likely to deceive the customers.

7.3 The Registrant has no rights or legitimate interests in respect of the domain name (Paragraph 4(b))

Under paragraph 6 of the policy, a Respondent or a Registrant can prove rights or legitimate interest in the domain name. The Complainant has filed sufficient evidence to prove disputed domain name is identical to the 'DELL' trademark, in which Complainant enjoys substantial reputation and goodwill including web shots of its


website (annexed as **Annexure 9** of complaint) and registration of trademark in India and other jurisdictions (annexed as **Annexure 2** and **10** of complaint). The Respondent has failed to submit its reply to prove any rights or legitimate interests in the disputed domain name/trademark 'DELL.' Thus, Respondent has failed to establish legitimate interest and/or rights in the disputed domain name. Complainant has also submitted that it has not authorized Respondent to use its DELL mark and Respondent has failed to rebut the same. The burden of proof thus shifts to Respondent to demonstrate the rights or legitimate interests it holds in the mark as per WIPO Overview 3.0, section 2.1. Despite notice, the Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show its interest or right in the disputed domain name.

The Complainant has submitted that the Respondent is engaging in unfair commercial use of the disputed mark and disputed domain name with the sole aim to make illegal benefits from the goodwill and reputation of the Complainant's mark 'DELL'. Further, the Complainant submitted that the Respondent does not have any rights or legitimate interest in the disputed domain name and it intends to make unjust commercial profits. The Complainant further claims that the Respondent is a habitual cyber squatter engaged in practice of registering and using domain names in bad faith. Further, the Complainant submitted that the Respondent has no rights or legitimate interests in the disputed domain name and by registering the disputed domain name the Respondent is taking advantage of innocent customers who may be misled by the disputed domain name to assume Respondent is authorised by or is associated with complainant with

Respondent where there is no such authorisation or association. Complainant contends that Respondent has registered the disputed domain name only to take unfair advantage of Complainant's global reputation and goodwill. The fact that the disputed domain name has not been put to legitimate non-commercial fair use but to the contrary it is being used for commercial/business use shows Respondent holds no legitimate rights or interest in the disputed domain name (under ICANN Policy 4(b)).

Further, the Arbitrator finds that the nature of the disputed domain name consisting of the trademark DELL and the additional term '-chennai' may carry a risk of implied affiliation, sponsorship or endorsement. (WIPO Overview 3.0, Section 2.5) (*Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union*, WIPO Case No. D2013-1304)

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights. Since the Complainant's said website and trademarks were in existence and extensively used when disputed domain was registered by the Respondent on 13.09.2014 (as per **Annexure 8** of Complaint), the Respondent has to prove whether he discharged this responsibility at the time of purchase of disputed domain name. However, despite notice Respondent failed to reply and also failed to discharge this onus.



The Respondent also failed to file any reply to show that he is making any legitimate, non-commercial or fair use of domain name without intent for commercial gains nor is likely to divert consumers or tarnish

trademark by registering the disputed domain name. The Arbitrator finds that the Respondent has no rights and/or legitimate interests in the disputed domain name.

7.4 The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4 (c))

For the purposes of Paragraph 4 (c) of .IN Policy, under paragraph 7 of the policy, the Complainant is required to establish that the domain name was registered or is being used in bad faith.

The Complainant has submitted that DELL trademark is famous and recognized worldwide and has acquired considerable goodwill worldwide including in India in respect of computer systems, laptops, tablets, servers, mouse, battery, adapters, phones and other computer-oriented products. However, the Respondent has produced no evidence or justification for registering the disputed name. Infact, Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain name showing its unauthorized and illegal registration and use of the disputed domain name by Respondent. This is evident from (**Annexure 5 and 6** of complaint).

Further, it is evident from the evidence filed by Complainant that Respondent has used the disputed domain name to intentionally attract the customers to its website by creating a likelihood of confusion with the Complainant's 'DELL' trademark as to source, sponsorship, affiliation. Use of a domain name to impersonate the trademark owner is not legitimate and cannot establish legitimate



rights nor interests as per WIPO Overview 3.0, Section 2.5.1. (*Ford Motor Company v. Myke Towers*, WIPO Case No. D2021-0081)

The Complainant has provided sufficient evidence showing widespread use, goodwill and trademark registrations of the 'DELL' mark in various countries which long predates Respondent's registration of the disputed domain name which incorporates completely the registered trademark DELL of the Complainant. (WIPO overview 3.0 notes in section 3.14 "*Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith*". The same principle is relied on in *Adobe Inc. v. Amin Mohammadsalehi, Uranos*, case No. DIR2020-0006 wherein bad faith registration was also found.

The Arbitrator finds that the Respondent has registered the disputed domain name to prevent Complainant from registering or using the mark. It is evident from the aforestated facts that Respondent has no connection with trademark "DELL" and his sole aim to gain illegal benefit from the goodwill and mislead the public which amounts to bad faith registration under .IN policy.

Moreover, it is settled principle that the incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith. (*Microsoft Corporation vs. Montrose Corporation*, WIPO Case

No. D2000-1568). In present case, the Respondent failed to file any response to the contentions and submissions of the Complainant.

For the aforesaid reasons, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the .IN Policy

8. Decision

On the basis of the abovesaid findings the Sole Arbitrator finds that:

- (a) The Complainant has successfully established three grounds required under the policy to succeed in these proceedings.
- (b) Respondent has failed to rebut averments, contentions and submissions of the Complainant.

The Arbitrator directs the .IN Registry of NIXI to transfer the domain name “www.dell-chennai.in” to the Complainant.

The Award is passed on this 1st April, 2021

Place: Noida



Dr. Karnika Seth

Sole Arbitrator