



मध्य प्रदेश MADHYA PRADESH

BG 374844

**BEFORE THE ARBITRATOR RAJESH BISARIA
UNDER THE
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
[NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)]**

ARBITRAL AWARD

DATE- 06.04.2021

Disputed domain name : www.delllaptopbatteryinchennai.in

INDRP Case no -1327

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

-----Complainant

Vs.

**James Jeni,
Laptop Shoppe, Opp CSI Mission Hospital Main Road,
Marthandam, Kanyakumari,
India**

----- Respondent No. 1

**&
Synergy Systems and Peripherals,
No. 165, Vallur Kottam High Road, Near Sotc.,
Nungambakkam, Chennai, 600034**

----- Respondent No. 2



Registrant of Domain Name: www.delllaptopbatteryinchennai.in

The Parties

The Complainant is Dell Inc., having its mail address-One Dell Way, Round Rock, Texas 78682, U.S.A.

The Respondent No. 1 is James Jeni, having its mail address -Laptap Shoppe, Opp CSI Mission Hospital Main Road, Marthandam , Kanyakumari, India, E mail-james.jeniservice2020@gmail.com and Phone-+917418345059

The Respondent No. 2 is **Synergy Systems and Peripherals,,** having its mail address -No. 165, Vallur Kottam High Road, Near Sotc., Nungambakkam, Chennai,600034

Procedural history

1.

The .IN REGISTRY appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure.	17.02.2021
Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and .IN REGISTRY.	18.02.2021 & 01.03.2021
Due date for filing Response by Respondent	28.02.2021 & 08.03.2021
Respondent's response by submitting their Statement of Defence	Not submitted
Complainant's response by submitting their Rejoinder.	Not required, as Statement of Defence was not submitted by Respondent.



Intimation for keeping case reserved for publishing the Award on merit.	10.03.2021
The language of the proceedings.	English

Factual Background

2. The Complainant

The Complainant is Dell Inc. , with address as One Dell Way, Round Rock, Texas 78682, U.S.A. The Complainant's authorized representative in this administrative proceeding is: Akhilesh Kumar Rai, AZB & Partners, Plot No. A8, Sector 04 , Noida – 201301, U.P. India,
Phone: +91 120 4179999
e-mail: akhileshkumar.raai@azbpartners.com

3. Domain Name and Registrar

This dispute concerns the domain name www.delllaptopbatteryinchennai.in.

Complainant submitted in their petition/complaint that as per the Whois record, the accredited registrar of the Impugned Domain is Good Domain Registry Private Limited. The details of the Registrar, are -Address:34-A, Main Road, Kennedy Square, Perambur, Chennai, Tamil Nadu 600011, India. , Email address: abuse@gooddomainregistry.com and Phone number: +91 9360303099 and +91 (44) 26205355.

4. Complainant's Activities

- (a) The Complainant in this administrative proceeding is Dell Inc., established in the year 1984. Dell Inc. is a company incorporated and existing under the laws of Delaware, United States of America.
- (b) The Complainant is the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant has diversified and expanded its activities



which presently include, but are not limited to, computer hardware, software, computer peripherals, computer-oriented products such as phones, tablet computers etc., and computer-related consulting, installation, maintenance, leasing, warranty, data computing, cloud computing, information security, virtualization, analytics, data storage, security/compliance 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.

- (c) 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.
- (d) The Complainant has been in global news, owing primarily to Michael Dell taking the Complainant private, for \$ 24.4 billion, in the biggest leveraged buyout since the financial crisis. The other reason for the Complainant to be in news has been the acquisition of EMC Corporation for around \$ 67 billion, which is the largest technology company acquisition ever. Both these happenings have been widely reported by press and electronic media all over the world, including in India.
- (e) The Complainant has been using the mark 'DELL' for several decades now and is also the registered proprietor of the said trademark in various countries, including India. The details of some of the registrations for 'DELL' and 'DELL' formative marks in India, were also submitted.

The aforesaid registrations have been renewed from time to time and are valid and subsisting. Copies of legal proceeding certificates/online statuses for the aforementioned trademark registrations were also attached.



- (f) 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. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.
- (g) The products of the Complainant are widely available in India since 1993. The said products are marketed in India by the Indian subsidiaries of the Complainant. 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 and around 200 cities in India. By virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.
- (h) As a part of its initiative to increase its presence in India, the Complainant's Indian subsidiary has tied up with several channel partners, authorized distributors / resellers and launched Dell exclusive stores, multiple brand outlets and solution/service centers, all over the country. In addition to the exclusive Dell stores, the Complainant operates an interactive website with URL www.dell.com, wherein customers can log in and place orders for laptops and also make payments online.
- (i) The Complainant, its subsidiaries and licensee in India and the subsidiary's authorized distributors and resellers alone have limited rights to use the trademark and trade name/corporate name 'DELL' in India. No one other than those permitted by the Complainant can use 'DELL' as a trademark or part of corporate name or in any manner whatsoever.
- (j) 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 in India. Additionally, the Complainant also has country specific domain names such as www.dell.co.in for India. Upon clicking on www.dell.co.in, the user gets re-directed to



www.dell.com. In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers.

- (k) In view of the above, it is evident that the Complainant has been using the trademark 'DELL' since more than 30 years and has built an enviable reputation in respect of the said mark. By virtue of such use, the mark 'DELL' is well recognized amongst the consuming public and can be termed as a well-known trademark. In order to protect its rights in and to the trademark 'DELL', the Complainant has also initiated several actions against domain name squatters in past several years.

5. **Complainant's Trade Marks And Domain Names**

- (a) 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. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.
- (b) The Complainant, its subsidiaries and licensee in India and the subsidiary's authorized distributors and resellers alone have limited rights to use the trademark and trade name/corporate name 'DELL' in India. No one other than those permitted by the Complainant can use 'DELL' as a trademark or part of corporate name or in any manner whatsoever.
- (c) 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 in India. Additionally, the Complainant also has country specific domain names such as www.dell.co.in for India. Upon clicking on www.dell.co.in the user gets re-directed to www.dell.com. In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers.



(d) 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 said mark. By virtue of such use, the mark 'DELL' is well recognized amongst the consuming public and can be termed as a well-known trademark. In order to protect its rights in and to the trademark 'DELL', the Complainant has also initiated several actions against domain name squatters in past several years. Complainant submitted a list of cases, wherein awards have been passed in favour of the Complainant.

6. **Respondent's Identity and activities**

The Respondent No. 1 is **James Jeni**, having its mail address -Laptop Shoppe, Opp CSI Mission Hospital Main Road, Marthandam, Kanyakumari, Tamil Nadu-629165, E mail-james.jeniservice2020@gmail.com and Phone-+917418345059

The Respondent No. 2 is **Synergy Systems and Peripherals**, having its mail address -No. 165, Vallur Lottam High Road, Near Sotc., Nungambakkam, Chennai, 600034

The identity and other activities of the Respondent No 1 and Respondent No. 2 are not known as, both failed to submit Statement of Defence or any of the documents, within the given time schedule.

Submissions by Complainant

7. Complainant submitted Domain name complaint (without page numbered) and annexure and other documents pages from 1 to 100. As per the INDRP Rules of Procedure, Clause 4(a) – *The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The Complainant submitted the application as per the INDRP Rules of Procedure.

8. Complainant submitted vide their mail dated 24.02.2021 that- This is to update that we have served the Respondents with both soft and hard copies of the Complaint. The details and proof of service are as follows:

9.



01. Service of soft copy of the Complaint via e-mail

The soft copy was served on the Respondent through our e-mail dated February 19, 2021. The said e-mail is attached herewith along with the delivery report. Further, the delivery report clearly states that the said mail was delivered to the Respondent having e-mail id james.jeniservice2020@gmail.com. **The said e-mail id of the Respondent was obtained from the Whois records provided by the NIXL.**

02. Service of hard copy of the Complaint on Respondent No. 1

The hard copy of the Complaint was dispatched to Respondent No. 1 (James Jeni) through courier on February 19, 2021 bearing consignment number 40084961464. The said consignment containing the hard copy of the Complaint was successfully delivered at the address of the Respondent No. 1 on February 22, 2021. The receipt from the courier company and the tracking status of the said consignment showing the successful delivery is attached herewith.

03. Service of hard copy of the Complaint on Respondent No. 2

The hard copy of the Complaint was dispatched to Respondent No. 2 (Synergy Systems & Peripherals) through courier on February 19, 2021 bearing consignment number 40084961663. The said consignment containing the hard copy of the Complaint was successfully delivered at the address of the Respondent No. 2 on February 20, 2021. The receipt from the courier company and the tracking status of the said consignment showing the successful delivery is attached herewith.

The Contentions of the Complainant

10. **The domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights**

- a. As mentioned above, the Complainant offers, inter-alia, repair and maintenance services and Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. Screen prints from the website of the Complainant



evidencing the products offered by it were also submitted and attached. The Complainant is also the registered proprietor of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more. Registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant were also submitted and attached.

- b. The Respondent has adopted the identical mark of the Complainant and is blatantly using the same. Moreover, the Respondent is using the said mark for identical goods and/or services and is duping customers by giving them an impression that the Respondent is associated with the Complainant. Furthermore, the Respondent has used the word mark 'DELL' and/or DELL logo mark on the Impugned Website without the consent of the Complainant.
- c. The Respondent's adoption of the well-known trademark 'DELL' of the Complainant as part of the Offending Domain is a violation of the Complainant's rights in and to the mark 'DELL'. Further, the Impugned Website is only accessed owing use of the trademark 'DELL' of the Complainant.

11. **The Respondent has no rights or legitimate interests in respect of the domain name**

- a. The Respondent has no right to use/register the mark 'DELL' of the Complainant in any manner, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the mark 'DELL'. The adoption and use of the mark 'DELL' by the Respondent is not licensed/permitted, thus adoption and use thereof of the mark 'DELL' as part of Offending Domain or in any manner whatsoever, results in infringement and passing off the rights of the Complainant in and to the trademark 'DELL'. Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'.



- b. The Respondent is taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant. Even if the Respondent informs the purchasing customer that it is not related to the Complainant, the same does not bestow any right to use the trademark 'DELL' of the Complainant.
- c. The Respondent has developed the Offending Domain name comprising of the well-known mark 'DELL' of the Complainant with the sole aim to make illegal benefits from the goodwill and reputation of the mark 'DELL' built by the Complainant.
- d. The Respondent is a habitual offender as is evident from the registration of Other Domains and Previous Domain; therefore, they have no legitimate interest in the Offending Domain.

12. **The domain name was registered and is being used in bad faith**

- a. The bad faith is evident from the use of 'DELL' in the Impugned Domain, which is the property of the Complainant and is associated with the Complainant only. The Offending Domain is worded in such a manner that it appears to be selling Dell's Servers.
- b. The mark DELL is a well-known mark and is not a commonly used word. The said mark is only associated with the Complainant and none else. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith.
- c. The use of the mark 'DELL' in the Offending Domain is without due cause and has been done to gain illegal benefit from the goodwill of the same, which has been created by the Complainant. The registration of the Offending Domain has been done in bad faith and with dishonest intention to mislead the innocent public. The adoption and use of the Offending Domain and Impugned Website, wherein the mark DELL is used, is contrary to the honest commercial practices of trade.



- d. The adoption of the trademark of the Complainant is 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 Offending Domain by the Respondent is not for non-commercial purposes and would not fall under the ambit of 'fair use'. The only reason for adoption of the mark 'DELL' is to make illegal profit by duping the relevant public.
- e. The Respondent is a habitual offender and has even registered Other Domains and the Previous Domain containing the mark DELL of the Complainant. This itself evidences the bad faith on the part of the Respondent.

13. **Remedy Sought**

Complainant prayed to grant the following relief:

In accordance with Rule 3 of the INDRP, for reasons described above, the Complainant requests the Administrative Panel appointed in this administrative proceeding to issue a decision that the Impugned Domain, be transferred to the Complainant, who is the legitimate owner of the trademark 'DELL'.

14. **Other Legal Proceedings**

No other legal proceedings have been commenced against the Respondent in relation to the domain name that is the subject of this Complaint.

15. **Certification**

- (a) The Complainant, by submitting the Complaint agrees to the settlement of the dispute, regarding the domain name which is the object of the Complaint by final and binding arbitration in India conducted in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, the .IN Domain Name Dispute Resolution Policy of .IN Registry; Rules of Procedure and any by-laws, rules or guidelines framed there under, as amended from time to time .



- (b) Complainant agrees that its claims and remedies concerning the registration of the domain name, the dispute, or the dispute's resolution shall be solely against the domain-name holder and waives all such claims and remedies against the .IN REGISTRY, as well as their directors, officers, employees, and agents and the arbitrator who will hear the dispute .
- (c) The Complainant by submitting this Complaint agrees that the decision of the Arbitrator to be appointed in this matter may be made public and may be published on the website including without limitation other forms of publication of the .IN REGISTRY.
- (d) Complainant certifies that the information contained in this Complaint is to the best of Complainant's knowledge and is complete and accurate, also that this Complaint is not being presented for any improper purpose, such as to harass the Respondent etc.

Response by the Respondent

- 16. As per my mail dated 18.02.2021 & 01.03.2021, Respondent was directed to submit their Statement of Defence by 28.02.2021 & 08.03.2021 respectively. But Respondent failed to submit the required documents up to 08.03.2021. It is pertinent to mention that Respondent even did not response in submitting request for extension of time limit.

Rejoinder by the Complainant

- 17. Since Respondent failed to file the Statement of Defence , so there is no question of submitting the Rejoinder by the Complainant.

Discussion and findings

- 18. After going through the correspondence, this Tribunal comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the



Complainant. In fact, no parties raised any objection over constitution of Tribunal. Respondent did not participate in this Arbitration proceeding by not submitting any of the stated documents or pleadings.

19. Under Clause 4, of the IN Domain Name Dispute Resolutions Policy (INDRP), the Complainant must prove, each of the following three elements of its case:

- (a) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (b) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (c) The Respondent's domain name has been registered or is being used in bad faith.

20. **The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights**

- a. As mentioned above, the Complainant offers, inter-alia, repair and maintenance services and Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. Screen prints from the website of the Complainant evidencing the products offered by it were also submitted and attached. The Complainant is also the registered proprietor of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more. Registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant were also submitted and attached.
- b. The Respondent has adopted the identical mark of the Complainant and is blatantly using the same. Moreover, the Respondent is using the said mark for identical goods and/or services and is duping customers by giving them an impression that the Respondent is associated with the Complainant. Furthermore, the Respondent has used the word mark 'DELL' and/or



- c. DELL logo mark on the Impugned Website without the consent of the Complainant.
- d. The Respondent's adoption of the well-known trademark 'DELL' of the Complainant as part of the Offending Domain is a violation of the Complainant's rights in and to the mark 'DELL'. Further, the Impugned Website is only accessed owing use of the trademark 'DELL' of the Complainant.
21. **The Respondent has no rights or legitimate interest in respect of the domain name**
- (a) The Respondent has no right to use the mark 'DELL' of the Complainant, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the mark 'DELL'. The adoption and use of the mark 'DELL' by the Respondent is not licensed/permitted, thus adoption and use thereof of the mark 'DELL' as part of offending domain name or in any manner whatsoever, results in infringement and passing off the rights of the Complainant in and to the trademark 'DELL'. Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'.
- (b) The Respondent is taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant. Even if the Respondent informs the purchasing customer that it is not related to the Complainant, the same does not bestow any right to use the trademark 'DELL' of the Complainant.
- (c) The Respondent has developed the offending domain name comprising of the well-known mark 'DELL' of the Complainant with the sole aim to make illegal benefits from the goodwill and reputation of the mark 'DELL' built by the Complainant.



- (d) On the basis of the facts of the submitted documents and judgment, the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and, accordingly satisfies the said Clause of policy.

22. **The Respondent's domain name has been registered or is being used in bad faith**

- (a) The bad faith is evident from the use of 'DELL' in the Impugned Domain, which is the property of the Complainant and is associated with the Complainant only. The Impugned Domain is worded in such a manner that it appears to be the showroom of Dell in Hyderabad, which provides after sale services.
- (b) The use of the mark 'DELL' in the Impugned Domain is without due cause and has been done to gain illegal benefit from the goodwill of the same, which has been created by the Complainant. The registration of the Impugned Domain has been done in bad faith and with dishonest intention to mislead the innocent public. The adoption and use of the Impugned Domain is against the honest commercial practices of trade.
- (c) The adoption of the trademark of the Complainant is 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 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.
- (d) The bad faith is evident from the write ups, which are present on the Website, wherein, the Respondent portraying itself to be the Complainant's authorized showroom and service center.
- (e) On the basis of the facts of the submitted documents and judgment, the Arbitral Tribunal concludes that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and, accordingly satisfies the said Clause of policy.



Arbitral Award

23. Now, I, Rajesh Bisaria , Arbitrator, after examining and considering the Statement of Complainant along with evidence produced before and having applied mind and considering the facts, documents and other evidence with care, do hereby publish award in accordance with Clause 12 & 13 of the INDRP Rules of Procedure and Clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP) , as follows:

Arbitral Tribunal orders that-

The Registrant's (disputed) domain name www.delllaptopbatteryinchennai.in be transferred to the Complainant.

Further AT takes an adverse view on the bad faith registration of impugned domain by the Respondent and to restrict the act for future misuse, fine of Rs 10000/-(Rs Ten thousand only) is being imposed on the Respondent, as per the provision in clause 10 of .IN Domain Name Dispute Resolution Policy (INDRP) to be paid to NIXI for putting the administration unnecessary work.

AT has made and signed this Award at Bhopal (India) on 06.04.2021 (Sixth Day of April , Two Thousand Twenty One).

Place: Bhopal (India)
Date: 06.04.2021


06/04/2021
(RAJESH BISARIA)
Arbitrator

