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e-Stamp

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Certificate Issued Date	: 31-Mar-2021 06:03 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDEL-SELF36626932112405T
Purchased by	: KARNIKA SETH
Description of Document	: Article 12 Award
Property Description	: ARBITRATION AWARD UNDER .IN REGISTRY POLICY
Consideration Price (Rs.)	: 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)

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ARBITRATION AWARD

Before the Sole Arbitrator, Dr. Karnika Seth

IN INDRP Case No. 1328

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

Disputed Domain Name: www.dellrepaircenterchennai.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 Sotc
Nungambakkam, Chennai-600034

..... Respondent No.2



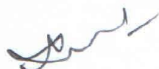
1. Parties

- 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 in the present arbitration as Respondent no.2's website shows same contact address as the website hosted on disputed domain name. Respondent No.2 is Synergy Systems and Peripherals, having address 165, Vallur Kottam High Road, Near Sotc, Nungambakkam, Chennai-600034, India (as per **Annexure 5** of the complaint).

2. **The Dispute-** The domain name in dispute is "www.dellrepaircenterchennai.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 11, 2021
2.	Date on which consent was given to act as an Arbitrator in the case	Feb 11, 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 17th Feb, 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 both 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 19th Feb 2021). However, the Respondent failed to submit any response.
- 4.5 Since 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 all parties herein.

5. **Factual Background**

- 5.1 The Complainant trading as Dell Inc. is 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 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 sells more than 100,000 systems every day to customers in 180 countries including in India and caters 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 including authorized distributors and resellers. The Complainant 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 formatives in India are filed by the Complainant (as per **Annexure 2** of the complaint).

5.6 The Respondent No. 1 in this administrative proceeding 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 Synergy Peripheral and Systems Respondent No.2 in present arbitration as the contact address mentioned on disputed domain 's website is same as mentioned on Respondent no.2's website (as in **Annexure 5** of the Complaint.) The Complainant further states that Synergy Peripheral and Systems has registered the domain name <www.dellservers.in> in the past in respect of which complainant has received an Arbitral Award in its favour. (as per **Annexure 6** of complaint). 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. The Complainant claims it has statutory and common law rights in the trademark DELL which it has been using continuously for its products and services, not only in India but across various other counties. 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 also offers inter-alia, repair and maintenance services (as per **Annexure 8** of complaint) and 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.

6.1.3 The Complainant claims the first use of the DELL trademark can be traced back to 1988 and since then the complainant has expanded its business into various countries and has extensively used 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 lodged domain name complaint actions and several awards passed in its favor (as per **Annexure 3** of complaint).

6.1.4 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 products and services are those of Complainant. The Respondent has no legitimate interest or right in the



domain name and has registered it to mislead consumers. Complainant submits it as granted neither any authorization nor consent to register the disputed domain name nor use any of its trademarks. The Respondent is neither authorized distributor nor licensed reseller. By such illegal registration and use of the domain name and its trademark, Respondent has infringed the 'DELL' trademark and such use is likely to deceive consumers as to affiliation, connection or association of the disputed domain name with the Complainant, which directly injures the Complainant's interests.

6.1.5 The Complainant further states that the Respondent's impugned domain name falsely represents Respondent as the authorized service center of DELL providing repair and maintenance services for DELL products. The Respondent also claims to provide DELL products on the impugned website whereas neither Respondent is authorized distributors nor licensed reseller of complainant (as per **Annexure 7** of complaint). The Complainant further states that Respondent's impugned website states "We Providing Excellent Services for Dell Laptops and Desktops" with view to mislead the consumers that it has an association with complainant. The Respondent also displays an image of DELL servers and workstations. The Complainant has provided the snapshot of the image in the complaint (**para 2.4 of factual and legal backgrounds in the complaint**).

6.1.6 Further, the impugned website mentions various writeups like "Dell Laptop Service Center is one of the eliciting admiration laptop services providers. We repairing every kind of issues on the dell laptop and desktops with care. Providing required service at right time to the customers, which is also our one of the quality", "We providing dell



laptop service for near by your location like Anna Nagar, Tambaram, Velachery, Nungambakkam, Porur, Kodambakkam, Adyar and etc”, “Dell Repair Center in Chennai”, “Dell Accessories List in Chennai”, “Dell service center Chennai| Laptop Repair| Authorized Service Center” (as per **Annexure 7** of complaint).

- 6.1.7 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. (Ref. para 18 of the complaint & Arbitral award in favour of Complainant pertaining to domain name www.dellservers.in as per Annexure 6.)

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 submitted 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 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 and related services (as per **Annexure 8** of complaint).

The Arbitrator finds that the disputed name www.dellrepaircenterchennai.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 <dellrepaircenterchennai.in> makes it obvious that the disputed domain name is identical/ 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 along with 'repair' 'center' 'chennai' 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).

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 represents itself as the service center providing repair and maintenance services for DELL products. Thus, there is a likelihood that consumers will be confused as to the origin of both the services and products it provides.

As the Respondent's disputed domain name is exactly same as 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 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 8** of complaint) and registration of trademark in India and other jurisdictions (annexed as **Annexure 2** and **9** 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(s) 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 have not produced any documents or submissions to show its legitimate interest or right in the disputed domain name.

The Complainant submitted that the Respondent is engaging in unfair commercial use of the mark DELL and disputed domain name with the sole aim to make illegal benefits from unauthorised use of 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 (Ref. annexure 6 of the complaint). 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 or may not enquire about the authenticity of the Respondent or its relation with the Complainant. Complainant contends that Respondent has registered the 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 for business shows Respondent holds no legitimate rights or interest in the disputed domain name pursuant to ICANN Policy 4(b).

Further, the Arbitrator finds that the nature of the disputed domain name consisting of the trademark DELL and the additional words 'repair', 'center' and '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 15.5.2014 (as per **Annexure 4** of the 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 it 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 submitted in this regard 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. The Respondent has produced no evidence or justification for registering the disputed domain name. Infact, Complainant has filed evidence to show bad faith registration by filing screen shot of the web page of disputed domain showing its unfair use by Respondent who falsely claims to be its authorised dealer/service center of DELL. This is evident from (**Annexure 7** 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 or association. Use of a domain name to impersonate the trademark owner is not legitimate and cannot establish legitimate rights



as per WIPO Overview 3.0, Section 2.5.1. (*Ford Motor Company v. Myke Towers*, WIPO Case No. D2021-0081)

Complainant 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 evidence filed with the complaint that Respondent has no connection with trademark "DELL" and his sole aim is to gain illegal benefit from the goodwill and reputation of DELL by misleading 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.

It is also a settled principle that registration of a domain name with the intention to create confusion in the mind of internet users and attract internet traffic based on the goodwill associated with trademark is considered bad faith registration and use. (*PepsiCo Inc vs. Wang Shaung*, INDRP case no.400)

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.dellrepaircenterchennai.in” to the Complainant.

The Award is passed on this 1st April, 2021

Place: Noida



Dr. Karnika Seth