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Government of National Capital Territory of Delhi

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Certificate Issued Date	: 07-Apr-2021 04:42 PM
Account Reference	: IMPACC (IV)/ dl925103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL70562573281021T
Purchased by	: SRIDHARAN RAJAN RAMKUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SRIDHARAN RAJAN RAMKUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: SRIDHARAN RAJAN RAMKUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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P. Kulkarni

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

**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY**

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA

[NIXI]

INDRP CASE NO: 1330

ARBITRAL TRIBUNAL CONSISTING OF

SOLE ARBITRATOR

SRIDHARAN RAJAN RAMKUMAR, LLB

ADVOCATE, DELHI HIGH COURT

IN THE MATTER OF:

Dell Inc.

One Dell Way, Round Rock,

Texas 78682, U.S.A

Complainant

Email: akhileshkumar.raai@azbpartners.com

+91 120 4179999

VERSUS

Raja Synergy

Synergy Systems

No. 165, Vallurvar Kottam High Road,

Near Sotc, Nungabakkam, Chennai,

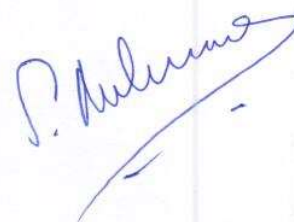
Tamil Nadu, 600034

+91 9841746593

E-mail: magesh.synergy@gmail.com

....Respondent

AWARD



1. **THE PARTIES:**

The Complainant

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. A copy of the Act was enclosed as Annexure A to the Complaint.

The Respondent

Is Mr. Raja Synergy, Synergy Systems having his office at No. 165, Vallurvar Kottam High Road, Near Sotc, Nungabakkam, Chennai, Tamil Nadu, 600034

2. **THE DOMAIN NAME AND REGISTRAR:**

The disputed domain name : www.dellservers.in

Email address: abuse@gooddomainregistry.com

Phone number: +91 9360303099 and +91 (44) 26205355.

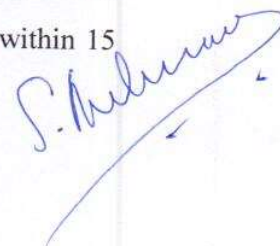
The domain name registered with IN REGISTRY

3. **PROCEDURAL HISTORY:**

16.01.2021: Date of Complaint

17.02.2021: The .IN REGISTRY appointed Sridharan Rajan Ramkumar as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.

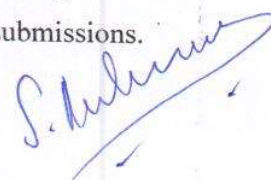
18.02.2021: Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same.




05.03.2021 Respondent failed to file his response within the
15 days time period intimated to all parties

4. **FACTUAL AND LEGAL BACKGROUND :**

1. It has been submitted by the Complainant that it 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.
2. It has been submitted by the Complainant that 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.
3. It has been submitted by the Complainant that 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. The Complainant has attached as **Annexure "1"** documents evidencing the above submissions.



4. It has been submitted by the Complainant that 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, are as follows:

<u>Trade Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Class</u>	<u>Status</u>
DELL	575115	June 5, 1992	9	Registered
<u>www.dell.com</u>	826095	November 5, 1998	9	Registered
DELL	923915	May 10, 2000	9	Registered
DELL	1190375	April 7, 2003	2	Registered
DELL	1190376	April 7, 2003	9	Registered
DELL	1239350	September 24, 2003	37	Registered
DELL	1239349	September 24, 2003	42	Registered
DELL	1335057	January 28, 2005	36	Registered
	3597740	October 06, 2016	41	Registered

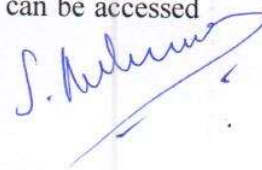
It has been submitted by the Complainant that the aforesaid registrations have been renewed from time to time and are valid and subsisting. The Complainant has attached as **Annexure "2"** copies of legal proceeding certificate/ online status for the aforementioned trademark registrations.

5. It has been submitted by the Complainant that the Complainant's first use of the mark "Dell" can be traced back to 1988. Since then, the Complainant has

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expanded business into various countries and has extensive use of the mark "Dell".

6. It has been submitted by the Complainant that 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".
7. It has been submitted by the Complainant that 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.
8. It has been submitted by the Complainant that 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.
9. It has been submitted by the Complainant that 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.
10. It has been submitted by the Complainant that 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.

11. It has been submitted by the Complainant that 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. A list of cases, wherein awards have been passed in favour of the Complainant, has been filed as **Annexure "3"**.

B. The Respondent

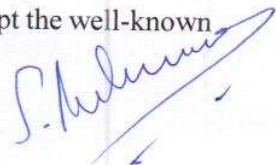
13. The Complainant has submitted WHOIS records. I have gone through the WHOIS records. According to the Whois records, the disputed domain name, www.dellservers.in ("**Offending Domain**") is registered in the name of Raja Synergy of the organization Synergy Systems of the address No. 165, Vallurvar Kottam High Road, Near Sotc, Nungabakkam, Chennai, Tamil Nadu, 600034. Therefore, Raja Synergy has been impleaded as the **Respondent No. 1** in the present proceedings. The extract of the WhoIs search has been filed as **Annexure "4"**.
14. It has been submitted by the Complainant that the Complainant has been dealing with a habitual offender under the name and concern of Synergy Peripheral and Systems. It primarily operates through the websites www.synergysystem.in and www.synergysystem.co.in, ("**Synergy's Websites**"). The Registrant's address, as mentioned in the Whois record is identical to the address given on Synergy's Websites, i.e.: No.165, ValluvarKottam High Road, Near Sotc, Nungambakkam, Chennai- 600034 ("**Impugned Address**"). The Complainant has attached as

Annexure "5", a screen print from Synergy's Websites showing the aforementioned address. It has been submitted that therefore In view of the foregoing, Synergy Peripheral and Systems is impleaded as Respondent No.2. (hereinafter reference to Respondent shall include both Respondent No.1 and Respondent No.2).

15. It has been submitted by the Complainant that in the past, Synergy Peripherals and Systems had registered the domain name www.dellservers.in ("**Previous Domain**"). The Whois lookup for the Previous Domain showed the registrant as Raja Synergy of the address 165 ValluvarKottam High Road, Near Sotc, Nungambakkam, Chennai-600034. As is evident, the registrant's name and address for the Previous Domain and Offending Domain are identical and the Impugned address is also mentioned on Synergy's Websites. Attached herewith as **Annexure "6"**, is the award passed for the Previous Domain, which was in the favor of the Complainant.

Factual and Legal Grounds

16. It has been submitted by the Complainant from the description provided under the head of **A. Complainant**, it is evident that the Complainant has a long and extensive use of the mark 'DELL' and by virtue of such use, the trademark 'DELL' can be termed as a well-known mark. In order to protect the mark 'DELL' from third party adoption, the Complainant undertakes various periodical searches and actions against such adoptions. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.dellservers.in, in the name of the Respondent No. 1.
17. It has been submitted by the Complainant that currently, the Offending Domain does not host a website on it. However, the Respondent has no legitimate reasons for adoption of the 'DELL' in the Offending Domain, irrespective of whether the Respondent hosts a website on it or not. It is to be noted that 'DELL' connotes and denotes the goods and services of the Complainant. It has been submitted by the Complainant that in view of the same, the adoption of the said mark by the Respondent in the Offending Domain only reeks of dishonesty in the first instance. Further, it has been submitted by the Complainant that the Respondent has no right whatsoever to use or adopt the well-known



trademark 'DELL' of the Complainant.

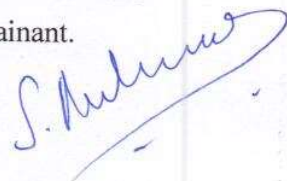
18. It has been submitted by the Complainant that the Respondent is a habitual offender and continues to register new domains which contain DELL in it. The Complainant has taken several actions against the Respondent for registering domains containing DELL in it. However, as soon as one such domain is shut, the Respondent register/activates another such domain. From the modus operandi of the Respondent, it is evident that the Respondent will activate the Offending Domain per its necessity and use it to dupe customers who may be lured into believing that the Respondent is associated with the Complainant in some manner.

It has been submitted by the Complainant that in addition to above, the adoption of the Offending Domain by the Respondent is malafide for the following reasons:

The domain name is identical or confusingly similar to a trademark in which the Complainant has rights;

It has been submitted by the Complainant that the Complainant offers, inter-alia, repair and maintenance services and Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. The Complainant has attached as **Annexure "7"**, screen prints from the website of the Complainant evidencing the products offered by it. 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. The Complainant has attached herewith as **Annexure "8"**, registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant.

It has been submitted by the Complainant that the Respondent has adopted the identical mark of the Complainant and may attempt to use the same. Moreover, it appears that the Respondent will be using the Offending Domain for identical goods and/or services and such use will lead to confusion amongst customers and may give them an impression that the Respondent is associated with the Complainant.



It has been further submitted by the Complainant that 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'.

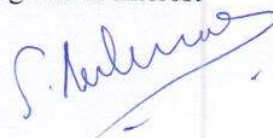
The Respondent has no rights or legitimate interests in the domain name;

It has been submitted by the Complainant that 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/ use of the mark 'DELL' by the Respondent is not licensed/permitted, thus adoption. 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'.

It has been submitted by the Complainant that should the Respondent host a website of on Offending Domain, it will take 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.

It has been submitted by the Complainant that 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 and host a website on the same at a later stage.

It has been submitted by the Complainant that the Respondent is a habitual offender as is evident from the registration of Previous Domain. It registers a new domain containing DELL, as soon as some of its other such domains are cancelled owing to actions filed by the Complainant. Therefore, the Respondent has no legitimate interest



in the Offending Domain.

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

It has been submitted by the Complainant that 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.

It has been submitted by the Complainant that 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. 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 of the Offending Domain is contrary to the honest commercial practices of trade.

It has been submitted by the Complainant that 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 adoption 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.

It has been submitted by the Complainant that the Respondent is a habitual offender and has even registered the Previous Domain containing the mark DELL of the Complainant. This alone evidences the bad faith on the part of the Respondent.

It has been submitted by the Complainant that the Respondent is eroding the distinctive character of the Complainant's mark also and diluting the same. In view of the foregoing, the balance of convenience rests entirely in favor of the Complainant.

S. Sharma

Accordingly, in the interest of justice and as measure of relief in equity, it is requested that the appropriate authorities be instructed by the Learned Tribunal to have the Offending Domain transferred to the Complainant.

Remedies Requested

In accordance with Rule 3 of the INDRP, the Complainant has requested that an Administrative Panel be 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'. Accordingly, I have been appointed as Sole arbitrator in these proceedings. The Complainant has attached as **Annexure "9"** a set of INDRP Rules of Procedure.

DISCUSSION AND FINDINGS:

I hold that The Respondent's domain name is deceptively similar to the trademark/ trade name in which the Complainant has rights.

I have given considerable thought to the totality of the circumstances in this case and considered all relevant factors in applying the passive holding doctrine which include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and (iii) the implausibility of any good faith use to which the domain name may be put. I thereafter have no hesitation to hold that in the present case, all factors are satisfied. I have gone through all the Annexures filed with the Complaint. I hold that the disputed domain name registered by the Respondent incorporates the Complainant's well-known DELL trademarks in their entirety.

That due to the fame of the distinctive and reputation of the trade mark DELL, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.



That, the Respondent at present is not hosting a website on the offending domain. I am in agreement with the contention of the Complainant that the Respondent has no legitimate reasons for adoption of the 'DELL' in the Offending Domain, irrespective of whether the Respondent hosts a website on it or not. Also, it cannot be overlooked that the Respondent is a habitual offender. The Respondent continues to register new domains which contain DELL in it. It is to be noted that the Complainant has taken several actions against the Respondent for registering domains containing DELL in it. Further, as soon as one such domain is shut, the Respondent register/activates another such domain. From the modus operandi of the Respondent, it is evident that the Respondent will activate the Offending Domain per its necessity and use it to dupe customers who may be lured into believing that the Respondent is associated with the Complainant in some manner and for this reason also, the Offending domain needs to be immediately transferred to the Complainant. The registration of Offending domain with the Complainant's registered trademark, "DELL" is unauthorized and unlawful.

I hold that the Respondent has in registering the Offending domain tried to take advantage of the Complainant's registered trademark in an unauthorized and misleading manner. The mere presence of the descriptive suffix "servers" right after the Complainant's registered trademark, "DELL" will not distinguish the Respondent's disputed domain name as it simply amounts to an assertion that the products available on this domain is either the Complainant's 'brand' or is licensed by the Complainant. Due to the fame and reputation associated with the trademark DELL, the first impression in the minds of the consumers shall be that the products sold on the Respondent's website are sold, authorized, certified, manufactured or procured by the Complainant. It was held in The Complainant in its submission relies upon Lockheed Martin Corporation Vs. Aslam Nadia (INDRP Case No. 947) wherein it was held that when the disputed name contains the entirety of the Complainant's trade mark followed by a generic term, the addition of the top-level domain .in will not distinguish the Respondent's disputed domain name.

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

The above-mentioned facts make it evident that the Respondent has no legitimate interest in the disputed domain name, rather the sole purpose of the registration is to misappropriate the reputation associated with the Complainant's famous trademark DELL. The Complainant has not authorized the Respondent to use its trademark/ trade name/trading style. The Respondent



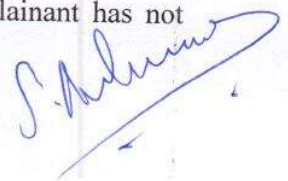
has no rights or legitimate interests in the term DELL. The Respondent's intention seems to be to make commercial use of the offending domain in future and to have unlawful gains. DELL is the Complainant's registered trademark in India since June 05, 1992 as can be seen from registered trademark no. 575115 in class 09. The Complainant first use can be traced back to the year 1988.. The trademark DELL has no other meaning save in relation to the Complainant and their products and / or services, or those of any authorized licensees or franchisees. The Respondent is not a licensee or franchisee of the Complainant and has registered domain name with identical trademark with a view to ride upon the goodwill associated with the Complainant's well-known trademark DELL and pass off their goods/services as that of the Complainant.

That Paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in a disputed domain name. In the circumstances narrated above I hold that none of them are applicable to the Respondents in present case, as elaborated hereunder:

I find that the disputed domain name has not been used in connection with *bona fide* offering of goods or services by the Respondent. That the domain name has instead been registered with a view to offer goods and / or services in violation of the trademark rights of the Complainant. The Respondent has registered the disputed domain name to dupe innocent customers / consumers and thus, mislead them into believing that dellservers.in is in some manner affiliated to the Complainant, by using the word DELL in conjunction with the generic words 'servers'.

The Offending domain has been registered by the Respondent with the sole intention of misleading the consumers and with the intention to ride on the goodwill of the Complainant. Thus, the question of the Respondent being known by the domain does not arise in the first place. The Respondent registered the disputed domain name for commercial gain and with the intention to passing off its products and / or services under the trademark DELL. The Respondent has registered the disputed domain name to an illegitimate commercial purpose or for unfair use by way of attempting to capitalize on the goodwill and reputation of the Complainant. There is a clear intent for commercial gain to misleadingly divert consumers.

I hold that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances. The Complainant has not



authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the DELL trademark. The Complainant has prior rights in the trademark DELL which precedes the registration of the disputed domain name by the Respondent.

That the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.

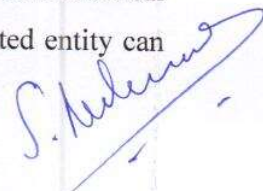
The disputed domain name has been registered in bad faith

Under paragraph 6(iii) of the IN Domain Dispute Resolution Policy (INDRP), if by using the domain name, the Registrant has attempted to intentionally attract 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, it shall be evidence that the Registrant's registration and use of the domain name is in bad faith. The bad faith in the present case is fortified by the fact that the Offending domain is not active and the Respondent is a habitual offender.

I hold that the disputed domain name is deceptively similar to the Complainant's registered trademark DELL, in which the Respondent cannot have any rights or legitimate interest.

It is clear from the fact that Respondent had registered the disputed domain name for sole purpose of designing a website to mislead consumers. By doing so the Respondent has intentionally attempted create a likelihood of confusion with the Complainant's registered trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. I hold that the well-known status of the trademark DELL, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent registered the disputed domain name independently without any knowledge of Complainant's trademark.

That it has been consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can



itself create a presumption of bad faith and so it opined about the Respondent's registration of the impugned domain name.


That I received not received any Response/ Reply to the present Complaint on behalf of the Respondent though proper service was effected to the Respondent's email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit his reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "DELLSERVERS.IN" to the Complainant;

In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 9TH Day of April, 2021.


Sridharan Rajan Ramkumar
Sole Arbitrator
Date: 09/04/2021