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ARBITRATION AWARD

INDRP CASE No. 1331

DELL INC. [Complainant] v JAMES JENI & ANR. [Respondents]

Disputed Domain Name: DELLSERVICEHYDERABAD.IN

BEFORE THE SOLE ARBITRATOR: VAKUL SHARMA

DATED: JUNE 30, 2021



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ARBITRATION AWARD**In the matter of:****DELL INC.**

One Dell way, Round Rock

Texas, 78682

USA

[Complainant]

-v-

Disputed Domain Name:**James Jeni**Of the organization Laptop Shoppe
Opp CSI Mission, Hospital Main Rd.
Marthandam, Kanyakumari
India**www.dellservicehyderabad.in****[Respondent No.1]****Synergy Systems and Peripherals**No. 165, Vallur Kottam High Road,
Near Sotc.
Nungambakkam, Chennai 600034
India**[Respondent No.2]****INDRP CASE No. 1331**

1. The Complainant

Dell Inc. is a company incorporated and existing under the laws of Delaware, United States of America.

2. The Respondent(s)

Respondent in this administrative proceeding is James Jeni The WHOIS details provided by the National Internet Exchange of India [NIXI] is annexed by the Complainant as Annexure 4 in the Complaint.

Complainant has impleaded Synergy Peripheral and Systems as the Respondent No.2

3. The Registrar

The Registrar with which the domain name is registered is: Good Domain Registry Pvt. Ltd.

4. Disputed Domain Name

<DELLSERVICEHYDERABAD.IN>

5. Jurisdiction

The Complainant by filing the Complaint under the aforesaid INDRP Rules of Procedure [Rules] has accepted the subject matter jurisdiction of the .IN Domain Dispute Resolution Policy - .INDRP [Policy].

In view of the above, this domain name dispute is properly within the scope of the Policy. The registration agreement, pursuant to which the disputed domain name was registered, incorporates the Policy. Disputes between Registrants, as they relate to domain name registrations, are governed by the Policy.



6. Procedural History

- (i) This Arbitration Proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By submitting to the Policy and the Rules, the Complainant agreed to the resolution of the disputes pursuant to the Policy and the Rules.
- (ii) The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- (iii) I submitted the statement of acceptance on 09/02/2021 and subsequently appointed by NIXI as an Arbitrator in the above matter [INDRP No. 1331] vide email dated February 17, 2021.
- (iv) Complainant submitted a Copy of the Complaint and Annexures to me as well as to the Respondent vide email dated February 19, 2021 on its email ID in accordance with the Rules.
- (v) Complainant has further placed on record vide email dated February 23, 2021 scanned copies of Courier Receipts (as proof of dispatch) and tracking reports (as proof of receipt). Complainant has further confirmed service by submitting the



delivery report related to delivery of the email 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 NIXI.

- (vi) In view of the completion of procedures related to Service of Complaint as mandated under the Rules, I issued a Notice dated 24/02/2021 to the Respondent No. 1 and 2 to submit their replies to the above said complaint within 15 days from the date of the Notice.
- (vii) I issued another notice dated 18/03/2021 informing the Respondent(s) that since they have failed to submit any reply within the stipulated time period, *"the Respondents right to file Reply stands closed and the Complaint shall now be decided ex-parte on the basis of the merits of the Complaint."*
- (viii) The Arbitration Award is now pronounced on this day, i.e., June 30, 2021 after considering the contentions of the Complainant and the Policy framework under my signatures. This is an *ex-parte* order as the Respondents have failed to file their Replies despite being given adequate opportunity.



7. Contentions of the Complainant

Complainant submits as follows:

- (i) Dell Inc. established in the year 1984 and is incorporated and existing under the laws of Delaware. It is one of the world's largest sellers of computer systems. It sells more than 100,00 systems every day to customers in 180 countries, including India.
- (ii) It has been using the mark DELL since 1998 and is the registered proprietor of the said trademark in various countries, including India. It has annexed copies of legal proceeding certificates/online statuses of the trademark registrations under different classes of registration.
- (iii) Its products are sold through a wide network of DELL exclusive stores, channel partners, authorised distributors and resellers. They all have been granted limited rights to use the trademark and trade name/corporate name DELL in India.
- (iv) It has an interactive websites: www.dell.com, and www.dell.co.in which not only provide product information but also e-shopping to the customers.
- (v) It has relied on Annexures 5 of the complaint to establish business nexus between the Respondent No. 1 and 2.
- (vi) It has given details of registration [Annexures 6 and 7 of the complaint] of several domain names with the name DELL appearing as part of these domain names.



- (vii) It has relied on Annexures 8 – 11 of the complaint wherein it has submitted that the impugned domain name hosts a website representing itself as a service centre providing repair and maintenance services for DELL laptops. Screen-shots/webpages from the said website, i.e., <dellservicehyderabad.in> have been annexed.
- (viii) It has asserted that the Respondent has incorporated the trademark of the complainant in its website misrepresenting the relevant section of the public associated with the complainant, where no such association exists and thus cheating innocent customers. It amounts to dishonesty in the first instance.
- (ix) In this context, the Complainant in its Complaint has made assertions to establish presence of each of the three elements required by paragraph 4 of the Policy.

I. Whether the domain name is identical and/or confusingly similar to the Complainant's mark 'DELL' ?

- (a) The Complainant submits that the mark 'DELL' is associated with the Complainant and no one else. However, the Respondent has adopted the identical mark of the Complainant and is blatantly using the same for identical goods and/or services and hence duping the customers by giving them an impression that the Respondent is associated with the Complainant.



- (b) Adoption of the well-known trademark 'DELL' of the Complainant as part of the offending domain name <dellservicehyderabad.in> is a violation of the Complainant's rights.

II. Whether The Respondent has no rights or legitimate interests in respect of the domain name?

- (a) The Complainant submits that the Respondent has no right to use/register the mark 'DELL' in any manner as it is the sole property of the Complainant. Moreover, the Complainant has statutory and common law rights on the mark 'DELL'.
- (b) The Complainant also submits that the adoption and use of the mark 'DELL' is not licensed/permitted hence use of mark 'DELL' as part of the offending domain name or in any manner whatsoever results in infringement and passing off the rights of the Complainant.
- (c) The Complainant further submits that the Respondent has adopted 'DELL' mark with the sole aim to make illegal benefits from the goodwill and reputation of the mark 'DELL' built by the Complainant.
- (d) The Complainant has also alleged that the Respondent is a habitual offender as is evident from the registration of other domains.



III. Whether The Respondent registered and/or is using the domain name in bad faith?

- (a) The Complainant submits that the mark 'DELL' is a well-known mark and is not commonly used word. Adoption of the said mark by the Respondent is dishonest and in bad faith.
- (b) Further, the offending domain name is worded in such a manner that it appears to be providing DELL service in Hyderabad. The Respondent has registered the offending domain name in bad faith and with dishonest intent to mislead the innocent public. Such as adoption is against the honest commercial practices of the trade and leads to illegal profit.
- (c) Respondent is a habitual offender and registered other domains containing the mark 'DELL' of the Complainant. This alone evidences the bad faith on the part of the Respondent.
- (d) Respondent is eroding the distinct character of the Complainant mark. It could have legal ramifications for the Complainant. Balance of convenience rests entirely in favour of the Complainant.



8. Respondent's Contentions

Despite giving adequate opportunity, Respondents have failed to submit any Reply.

Discussion and Findings

The Respondent has not filed any Reply to the Complaint. However, the Respondent's default does not automatically result in a decision in favour of the complainant. The Complainant has to still establish each of the three elements required by Paragraph 4 of the Policy:

Under the Paragraph 4 clauses (a) – (c) of the Policy, the Complainants must prove that:

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

The Complaint has to be decided on the basis of the provisions of INDRP, pleadings, including documentary evidence presented before me. The Complainant in order to succeed must satisfy the conditions laid down in Paragraph 4, clauses (a) – (c) of the Policy.



I have considered the Complainant's pleadings, documentary evidence and conditions as laid down in the aforesaid Policy. My opinion is as follows:

(a) Whether the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights?

The Complainant has placed on record details of its mark 'DELL' under different classes of trade mark registration and the use of word 'DELL' and has established its commercial/business use for the last many years. There is no document on record to suggest that the Respondents have ever been appointed either as channel partner/exclusive retailer/service centre or distributor by the Complainant. In fact, the Complainant has clearly asserted in its complaint that no license has ever been granted to the Respondents to use the mark 'DELL' in any form whatsoever. It is thus evident that the use of impugned/offending domain name <dellservicehyderabad.in> by the Respondents, which is confusingly similar to the Complainant's mark 'DELL' and its interactive websites, namely: <dell.com> and <dell.co.in> is a crude attempt on the part of the Respondents to usurp the Complainant's trademark causing wrongful loss to the Complainant. The *modus operandi* is simple, i.e., register a confusingly similar domain name and subsequently host a website using the said domain name and in the process start duping the Complainant's customers by giving them an impression that the Respondents website is associated with the Complainant. I consider that there is a force in the arguments of the Complainant that the words "DELL" is associated with Complainant's company. Furthermore, the Respondent has failed to observe the legal obligations as laid down in Paragraph 3 [Registrant's Representations] of the INDRP, i.e.



By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

* * * * *

(b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

(c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and

(d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.

In my opinion, the Respondents have knowingly adopted the Complainant's mark and registered the same in the form of a confusingly similar domain name <dellservicehyderabad.in>. In view of the above, the requirement of the Policy as stated in Paragraph 4(a) is satisfied.

(b) Whether the Registrant has no rights or legitimate interests in respect of the domain name?

The Complainant's assertion that the adoption and use of the mark 'DELL' has not been licensed/permitted to the Respondents, hence use of mark 'DELL' as part of the offending domain name results in infringement and passing off the rights of the Complainant has merit as the facts placed before me clearly indicate that the Respondents has adopted 'DELL' mark with the sole aim to make illegal benefits from the goodwill and reputation of the mark 'DELL' built by the Complainant. Moreover, Paragraph 6 of the INDRP provides:



6. Registrant's Rights and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b) :

- (a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

I have evaluated the evidence on record and came to a conclusion that none of the limbs highlighted in the Paragraph 6 above have been present to give the Respondents/Registrants any rights and legitimate interests in the impugned/offending domain name. The screenshots/webpages of the hosted impugned/offending website <dellservicehyderabad.in> as placed on record by the Complainant as Annexures 8 – 11 establishes the fact that the service offerings made by the Respondents are neither *bonafide* nor fall in the category of legitimate non-commercial or fair use of domain name.



(c) Whether the Registrant's domain name has been registered or is being used in bad faith?

Use of the impugned/offending domain name by the Respondents when they have no legal rights to portray/advertise themselves as the service centre by adopting the Complainant's mark 'DELL' in the absence of any legal arrangement between/among them only proves *malafide* intent on the part of the Respondents. As held in *Topcon Positioning Systems, Inc. v. Jason W. Evans* D2015-0708, "*....The Panel cannot read the Respondent's mind, of course, but this behavior is so extreme that it warrants an inference of planned, bad faith conduct in the registration and use of the Domain Names.*"

There is merit in the Complainant's contention that this is a case of bad faith and a clear attempt to take advantage of the Complainant's goodwill and reputation. Para 7(c) of the INDRP provides that "evidence of registration and use of domain name in bad faith" implies that *by using the domain name, the Registrant has intentionally attempted to 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.* In the instant case, this is exactly what the Registrants/Respondents have done, i.e. by registering and hosting the website <dellservicehyderabad.in> they have succeeded in creating a likelihood of confusion with the Complainant's name or mark. The *malafide* intent is clear from the fact that the said impugned/offending domain name gives an impression that it is a *bonafide* website authorised by the Complainant, which is not a legal fact. Accordingly, having regard to the circumstances of this particular case, I hold that the Complainant has been able to prove that



the Registrant's registered the impugned/offending domain name in bad faith. In view of the above, the requirement of the Policy as stated in Paragraph 4(c) is satisfied.

10. Decision

For the foregoing reasons, in accordance with the Policy and Rules, I direct NIXI to transfer the impugned/offending domain name <DELLSERVICEHYDERABAD.IN> to the Complainant.

There is no order as to costs.

Further, I have observed by browsing the archival judgments on NIXI's website that the mark 'DELL' has a history of arbitration decisions behind it. Since 2011, there have been atleast seventy cases involving 'DELL' mark. I am of the view that NIXI and the domain name registrars to take note of this and devise a method/policy intervention enabling mark owners to get respite from unnecessary and repetitive litigation of this nature.

The original copy of the Award is being sent alongwith the records of the proceedings to the National Internet Exchange of India (NIXI) for its record and a copy of the Award are being sent to both the parties for their information and record.

Vakul Sharma
Vakul Sharma

(Sole Arbitrator)



Dated: June 30, 2021