

INDIA NON JUDICIAL



सत्यमेव जयते

Certificate No.

Certificate Issued Date

Account Reference

Unique Doc. Reference

Purchased by

Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

: IN-DL29222372888963T

11-Jan-2021 04:37 PM

: IMPACC (IV)/ dl721003/ DELHI/ DL-DLH

: SUBIN-DL72100361874815778933T

: V P PATHAK

: Article 12 Award

: Not Applicable

0

(Zero)

: V P PATHAK

: Not Applicable

: V P PATHAK

100

(One Hundred only)



Please write or type below this line.

BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

Statutory Alert:

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

Mobile App of Stock Holding
it invalid.

DISPUTED DOMAIN NAME: WWW.DELSHOPPING.IN

IN THE MATTER OF INDRP CASE NUMBER 1333/2021

.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

DELL INC.,

ONE DELL WAY, ROUND ROCK,

TEXAS

78682 - USA

....COMPLAINANT

AND

RAM SELAVAM,

NO. 165, VALLUVAR KOTTAM HIGH ROAD,

NUNGAMBAKKAM,

CHENNAI- 600034

TAMIL NADU

And

SYNERGY SYSTEMS & PERIHPERALS

NO. 165, VALLUVAR KOTTAM HIGH ROAD,

NEAR SOTC.

NUNGAMBAKKAM,

CHENNAI- 600034

....RESPONDENT

V.P. Pathak
V. P. PATHAK
H.J.S.
Former Judge
Solo Arbitrator

AWARD

1. The present domain name dispute relates to the registration of the domain name www.dellshopping.in in favor of the Respondent.
2. The Complainant has filed the instant complaint challenging the registration of the domain name "dellshopping.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy {INDRP} and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. The Declaration of impartiality and acceptance was sent by the Tribunal on 17/02/2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the complaint and accordingly as per **Rule 5 of the INDRP Rules**, I issued notice on the same day i.e., on 17.02.2021 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
4. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of complaint. In accordance with this rule, the respondent was sent the complaint on the email shown in the domain name registration data in .IN Registry's WHOIS database, which has not returned so far.
5. On the direction of the Tribunal, Complainant also sent an email and hard copy of the complaint to the Respondent. But, no reply was filed by the Respondent.
6. Since the complainant has been served through one of the modes as specified in Rule 2 (above mentioned), I am of the view that the service of the complaint upon the respondent is complied with.
7. Since, there has been no response from the Respondents to the Complaint, so according to **Rule 12 of INDRP Rules of**

V.P. Pathak
V. P. PATHAK
J.S.
For the
Sole Arbitrator

Procedure which states about default of parties wherein it is clearly mentioned that:

"In the event of 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."

8. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.
9. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.
10. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:

SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT: it was held that the Arbitrator has to inform the parties that he intends to proceed with the reference at a specified time and place , whether that party attends or not. If still a party does not attend, then only the Arbitrator is at the liberty to proceed *ex-parte* against him.

11. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, an order was passed on 07/03/2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial

V.P. Pathak
V. P. PATHAK
 H.J.S.
 Former J.D. 1983
 Sole Arbitrator

and independent therefore, I accordingly proceed to pass the award on merit.

CONTENTIONS

12. Since the Respondent has been proceeded ex-parte, I shall deal with the contention of the Complainant. The complaint has been filed for transfer of the disputed domain name www.dellshopping.in, which was registered by the Respondent No. 1. The Complainant also owns www.dell.co.in which is used for India. After clicking on the said domain the user gets redirected to www.dell.com.
13. Primarily, the assertion of the Complainant in its complaint is that the disputed domain name is identical and similar to the trade mark of DELLSHOPPING. The Complainant in its complaint has stated that they are 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 peripheral, 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 active website on the domain name, www.dellshopping.in is accessible to people across the globe, including in India.
14. Complainant has further stated that it is the proprietor of mark "DELLSHOPPING", having valid and subsisting Trademarks registration. The Complainant has produced on record showing the details of ownership of numerous trademark registrations for DELLSHOPPING in various jurisdictions/ regions.

V.P. Pathak
V. P. PATHAK
H.J.S.
Former Judge
Bench

15. 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. Details are part of **ANNEXURE 1** of this complaint.
16. 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 registrations have been renewed from time to time and are valid and subsisting. Attached as **ANNEXURE 2** are copies of legal proceeding certificate/online statuses for the trademark registrations.
17. The Complainant also uses various formative marks like "DELLPRECISION", "DELL CHAMPS", "DELL PROSUPPORT" , "DELL PREMIUMCARE".
18. It is evident from the complaint that the Complainant has been using the trademark "DELL" since 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 well-known trademark "DELL". The Complainant has also initiated several actions against domain names squatters in past several years. A list of cases, wherein awards have been passed in favour of the Complainant, is attached as **ANNEXURE 3**.
19. Only upon conducting one search for cyber squatter, the Complainant became aware of the registration of the domain name www.dellshopping.in in the name of the Respondent 1.
20. It is pertinent to mention here that until sometime back, the Impugned Domain hosted a website on it ("**Impugned Website**") and the Respondent was representing itself as Dell's authorized showroom which offers different models of Dell Laptops, Dell

V.P. Pathak
V. P. PATHAK
 U.S.
 Foreign
 Sole Agent

Desktops, Dell Monitors, Dell Servers, Dell Workstations, Dell Batteries, Dell Adapters and other Dell accessories. Attached herewith as **Annexure“6”** are documents evidencing the above submissions.

21.It is pertinent to mention here 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 address of Respondent No. 1, as mentioned on the Whois records, matches the address given on Synergy’s Websites.

22.Attached herewith as **ANNEXURE 8**, is a screen print from the Synergy’s Websites showing the address. In view of the foregoing, Synergy Peripheral and Systems is impleaded as Respondent No.2. (hereinafter both, Respondent No. 1 and Respondent No. 2, shall be collectively referred to as Respondent)

23.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 address is identical to the address mentioned on the Whois Record of the impugned domain and Synergy’s websites. Attached herewith as **ANNEXURE 9**, is the award passed for the Previous Domain, which was in the favour of the Complainant.

24.The Respondent No.1 has also registered the domain www.delllaptopshowroominchennai.in (**“Second Domain”**). The Complainant has filed an action against this domain as well. Attached herewith as **Annexure “10”** is the Whois Lookup for the Second Domain.

25.In view of the above, it is evident that the Respondent has registered the Impugned Domain which incorporates trademark of the Complainant, hosted a website on the same to misrepresent to

V. B. PATHAK
Former
Sole Arbitrator

the relevant section of the public that it is associated with the Complainant, whereas no such association exists. Owing to the above, the Respondent cheats innocent consumer in the name of the Complainant and may be providing below par products/ services which may not be genuine and the Respondent may re-activate the Impugned Website.

26. In the complaint, it is also contended that the Complainant owns the Trademark DELLSHOPPING, which would create confusion and the Respondent has no legitimate right or interest in respect of disputed domain name, and that the disputed domain name is being used maliciously.

27. The Complainant's products, that the Respondent offers, may be of inferior quality, which upon use can burst or catch fire and cause injury to the individual using the same. Such activities will tarnish the name and reputation of the Complainant which has been built after years of toil by the Complainant and may even have legal ramification for the Complainant.

28. The Respondent has no legitimate reasons for adoption of the 'DELL' in the Impugned Domain. It is to be noted that 'DELL' connotes and denotes the goods and services of the Complainant. In view of the same, the adoption of the said mark by the Respondent in the Impugned Domain only reeks of dishonesty in the first instance. The Respondent has no right whatsoever to use or adopt the well-known trademark 'DELL' of the Complainant.

29. 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 services and duping customers by giving them an impression that the Respondent is associated with the Complainant. Furthermore, the Respondent used the word mark 'DELL' on the Impugned Website without the consent of the Complainant and the Respondent may activate the said website again.

V.P. Patil
V. P. PATIL
H.O.B.
Former Judge
and Arbitrator

30. 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 Respondent may/was taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant if the Impugned Website is activated and even while the said website was active. 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.
31. The Respondent had registered the Previous Domain and it also holds the active registration of the Second Domain and the Impugned Domain. The Respondent is a habitual offender and this alone is evidence of bad faith.

ANALYSIS

32. Since the domain www.dellshopping.in is registered by Respondent No. 1, so the main party is Respondent No. 1 and they have not turned up even after service of summons.
33. As the proceedings are set ex-parte the Respondent, I shall deal with the complaint on its prayer for transfer of the disputed domain name. The disputed domain name www.dellshopping.in consist the mark 'DELLSHOPPING', which is the registered trademark of the Complainant. "DELLSHOPPING" is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainants right over the name 'DELLSHOPPING". Therefore, the Complainants claim that it has a right over the disputed name stands proved.

V.P. Pathak
 V. P. PATHAK
 H.J.S.
 Joint Judge
 Sole Arbitrator

34. Secondly, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant well known mark "DELLSHOPPING" and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark "DELLSHOPPING" by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

CONCLUSION:

35. Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the Complainant has proprietary right over the mark "DELLSHOPPING" followed by the Complainant's registered Trademark "DELLSHOPPING" will not distinguish the Respondent's disputed domain name. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.dellshopping.in in favor of the Complainant.

36. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration Act, 1996 has been fully followed by the Tribunal.

V. P. Pathak
V. P. PATHAK
H.O.D.
Former Judge
Sole Arbitrator

ORDER

37. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.dellshopping.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.

38. This award is passed today at New Delhi on 22/03/2021.

V.P. Pathak
22/03/2021
V.P. PATHAK

V. P. PATHAK
H.J.S.
Former Judge
Arbitrator

SOLE ARBITRATOR

DATE: 22/03/2021