



Registration and Stamp Department  
Madhya Pradesh

Certificate of Stamp Duty

E-Stamp Details

E-Stamp Code 01010527042021000758  
Total E-Stamp Amount 200  
Govt. Stamp Duty (Rs.) 200 Municipality Duty (Rs.) 0  
Janpad Duty (Rs.) 0 Upkar Amount (Rs.) 0  
Exempted Amount(Rs.) 0  
E-Stamp Type NON-JUDICIAL  
Issue Date & Time 27/04/2021 12:19:12  
Service Provider or Issuer Details ANUBHUTI JAIN/SP010541604201700013  
SP/SRO/DRO/HO Details 24 BDA NEAR JAIN MANDIR PANCHSHEEL NAGAR BHOPAL 462003 HUZUR  
BHOPAL

Deed Details

Deed Type Award without Property  
Deed Instrument Award without Property  
Purpose ARBITRATION AWARD (Award without Property)

First Party Details

Organization Name DELL INC  
Address ONE DELL WAY, ROUND ROCK TEXAS 78682 USA BHOPAL Madhya Pradesh INDIA  
Number of Persons 1

Second Party Details

Organization Name YABANI EZE  
Address 4 AKANBI DANMALA STREET OF RIBADU ROAD IKOYI, LAGAS-10123 BHOPAL  
Madhya Pradesh INDIA  
Number of Persons 1

ARBITRATION AWARDNAME OF ARBITRATOR- SHRI RAJESH BISARIA

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

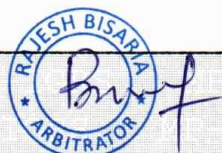
ARBITRAL AWARD

Date-05.05.2021

disputed domain name: www. delloffer.in

INDRP Case no -1367

Digitally signed by  
ANUBHUTI JAIN  
Date: 2021.04.27 12:19:40  
IST



## **THE PARTIES**

The **Complainant** is Dell Inc., One Dell Way, Round Rock, Texas, 78682, U.S.A.

The **Respondent** is YabaniEze, Of the organization Sugarcane Internet Nigeria Limited, 4 AkanbiDanmola Street off Ribadu Road , Ikoyi, Lagos-101233 NG

## **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name: [www.delloffer.in](http://www.delloffer.in) is registered with GoDaddy.com Registrar address-14455 North Hayden Road, Suite 219 Scottsdale, AZ 85260-6993, United States of America and the Domain ID provided is D10226889-AFIN. Email address of the Registrar is [udrp@disputes@godaddy.com](mailto:udrp@disputes@godaddy.com) and the Telephone number is +1 (480) 505-8800.

## **PROCEDURAL HISTORY**

1	The NIXI appointed RAJESH BISARIA as Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of procedure.	30.03.2021
	Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per paragraph 4(c) of INDRP Rules of Procedure, marking a copy of the same to Complainant's authorized representative and .IN REGISTRY.	31.03.2021
	Due date of submission of Statement of Claim by Complainant (instructed by mail dated 31.03.2021)	10.04.2021
	Complainant's response by submitting their Statement of Claim.	07.04.2021
	Hard copy	06.04.2021
	Soft copy	07.04.2021
	Due date of submission of Statement of Defence by Respondent (instructed by mail dated 31.03.2021)	15.04.2021
	Extended due date of submission of Statement of Defence by Respondent (instructed by mail dated 15.04.2021)	26.04.2021
	Lastly extended due date of submission of Statement of Defence by	03.05.2021



Respondent (instructed by mail dated 28.04.2021)	
Respondent's response by submitting their Statement of Defence against the date of submission as 15.04.2021, 26.04.2021 & 03.05.2021	Not submitted
Complainant's response by submitting their Rejoinder. (Statement of Defence not submitted by Respondent)	Not required
Complainant's response by submitting proof of delivery of complaint along with all annexures to Respondent	
Soft copy	07.04.2021
Hard copy	17.04.2021
Intimation that 'once again the Respondent failed to submit the documents in said time limit ie by 03.05.2021 therefore they lose their right to entertain it and the Award will be published on merit.	03.05.2021
The language of the proceedings.	English

## **FACTUAL BACKGROUND**

### **2 The Complainant :**

The Complainant is DELL INC., One Dell Way, Round Rock, Texas, 78682, U.S.A.

The Complainant's authorized representative in this administrative proceeding is:  
Akhilesh Kumar Rai, AZB & Partners, Plot No. A8, Sector 04, Noida – 201301, U.P. India, Phone: +91 120 4179999, e-mail: [akhileshkumar.raai@azbpartners.com](mailto:akhileshkumar.raai@azbpartners.com)

### **3 The Respondent:**

The Respondent is YabaniEze, Of the organization Sugarcane Internet Nigeria Limited, 4 AkanbiDanmola Street off Ribadu Road , Ikoyi, Lagos-101233 NG  
Contact Number: 234.7060648 and E-mail: [sugarcane@mm.st](mailto:sugarcane@mm.st)






#### 4 Complainant's Activities:

- (a) The Complainant in this administrative proceeding is Dell Inc., established in the year 1984. Dell Inc. is a company incorporated and existing under the laws of Delaware, United States of America.
- (b) The Complainant is the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant has diversified and expanded its activities which presently include, but are not limited to, computer hardware, software, computer peripherals, computer-oriented products such as phones, tablet computers etc., and computer-related consulting, installation, maintenance, leasing, warranty, data computing, cloud computing, information security, virtualization, analytics, data storage, security/compliance and technical support services. The Complainant's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses' and individuals.
- (c) Currently, the Complainant is one of the leading providers of computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations. The Complainant sells more than 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.
- (d) The Complainant has been in global news, owing primarily to Michael Dell taking the Complainant private, for \$ 24.4 billion, in the biggest leveraged buyout since the financial crisis. The other reason for the Complainant to be in news has been the acquisition of EMC Corporation for around \$ 67 billion, which is the largest technology company acquisition ever. Both these happenings have been widely reported by press and electronic media all over the world, including in India. The documents evidencing the above submissions was submitted by Annexure 1.



## 5 Complainant's Trade Marks And Domain Names :

- (a) 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
www.dell.com	826095	November 5, 1998	9	Registered
	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
	4144373	April 11, 2019	2, 9, 25, 35, 36, 37, 41, 42, 45	Registered
DELL EMC	3777983	March 14, 2018	2, 9, 25, 35, 36, 37, 41, 42, 45	Registered

The aforesaid registrations have been renewed from time to time and are valid and subsisting. Copies of legal proceeding certificates/online statuses for the aforementioned trademark registrations was submitted by Annexure 2.

(b) The Complainant's first use of the mark 'DELL' can be traced back to 1988.

Since then the Complainant has expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.

(c) 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.

(d) 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](http://www.dell.com), wherein customers can log in and place orders for laptops and also make payments online.

(e) 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.

(f) The Complainant has a very strong internet presence with the website [www.dell.com](http://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](http://www.dell.co.in) for India. Upon clicking on [www.dell.co.in](http://www.dell.co.in) the user gets re-directed to [www.dell.com](http://www.dell.com). In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers.

- (g) 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, is submitted by Annexure 3.

#### **6 Respondent's Identity and activities :**

- (a) The Respondent is YabaniEze, Of the organization Sugarcane Internet Nigeria Limited, 4 AkanbiDanmola Street off Ribadu Road , Ikoyi, Lagos-101233 NG Contact Number: 234.7060648 and E-mail: [sugarcane@mm.st](mailto:sugarcane@mm.st)
- (b) The identity and other activities of the Respondent is not known as, they failed to submit Statement of Defence or any of the documents, within the given time schedule.

#### **SUBMISSIONS BY COMPLAINANT**

- 7 Complainant submitted Domain name complaint with pages 1 to 15 and annexure from pages from 01 to 76. As per the INDRP Rules of Procedure, Clause 4(a) – *The (maximum) word limit shall be 5000 words for all pleadings individually (excluding annexure). Annexure shall not be more than 100 pages in total. Parties shall observe this rule strictly subject to Arbitrator's discretion.*

The application is submitted as per INDRP Rules of Procedure.



## **THE CONTENTIONS OF THE COMPLAINANT**

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

- a. As mentioned above, the Complainant uses the domain name [www.delloffers.in](http://www.delloffers.in) which is deceptively similar to the Offending Domain. Not only is the Respondent copying the Complainant's Domain which is use, but is also using the mark DELL of the Complainant. Screen-prints from the website hosted on Complainant's Domain were submitted by Annexure 5.
- b. The incentive offers for consumers falls under class 35 of the NICE classification. The Complainant already has a registration for the mark 'DELL' under the said class. Registration certificates for the said registrations were submitted by Annexure 6.
- c. The Respondent has adopted the identical mark of the Complainant and the Complainant's Domain, 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.
- d. The Respondent's adoption of the well-known trademark 'DELL' of the Complainant as part of the Offending Domain is a violation of the Complainant's rights in and to the mark 'DELL'.

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



- a. The Respondent has no right to use/register the mark 'DELL' of the Complainant in any manner, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the mark 'DELL'. The adoption/ 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'.
- b. The Respondent has registered the Offending Domain recently only because the Complainant is using the domain [www.delloffers.in](http://www.delloffers.in) and has built a reputation and goodwill for the said domain.
- c. Should the Respondent host a website on the 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.
- d. 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.

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

- a. The bad faith is evident from the use of 'DELL' in the Impugned Domain, which is the property of the Complainant and is associated with the Complainant only. The Offending Domain is worded in such a manner that it appears to be offers by Dell Inc., the Complainant.



- b. The mark DELL is a well-known mark and is not a commonly used word. The said mark is only associated with the Complainant and none else. Therefore, adoption of the said mark by the Respondent is dishonest and in bad faith.
- c. The use of the mark 'DELL' in the Offending Domain is without due cause and has been done to gain illegal benefit from the goodwill of the same, which has been created by the Complainant. The registration of the Offending Domain has been done in bad faith and with dishonest intention to mislead the innocent public. The adoption of the Offending Domain is contrary to the honest commercial practices of trade.
- d. The adoption of the trademark of the Complainant is without a license or other authority, is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The 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.
- e. The Respondent's creation of the Offending Domain is February 23, 2021, which is very recent. The Respondent noticed that the Complainant is using the Complainant's Domain and the Respondent, adopted and registered a deceptively similar domain to make illegal riches for itself by using the reputation of the Complainant.

#### **11. Remedy Sought:**

In accordance with Rule 3 of the INDRP, the Complainant requests the 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'.

#### **12. Other Legal Proceedings:**



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

### **RESPONSE BY THE RESPONDENT**

13. As per my mail dated 31.03.2021, 15.04.2021 & 28.04.2021 , Respondent was directed to submit their Statement of Defence by 15.04.2021, 26.04.2021 & 03.05.2021 respectively. Respondent was given sufficient time to submit required documents but Respondent failed to submit their 'Statement of Defence along with all annexure' within mentioned time limit.
14. Received mail dated 15.04.2021 , 3.57 PM from the Respondent's mail ID- sugarcane@mm.st with contents as- '*Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us*'. This mail was only sent to me. Respondent was directed to send all evidences /documents to all concerning vide my mail dated 28.04.2021 and given further time up to 03.05.2021 to submit said documents , but once again Respondent failed to submit the same.
15. It was intimated to all concerning by my mail dated 03.05.2021 that 'once again the Respondent failed to submit the documents in said time limit ie by 03.05.2021 therefore they lose their right to entertain it and the Award will be published on merit.'
16. Received mail dated 03.05.2021(9.07 PM) wherein it was mentioned that- '*Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us.*' This seems to be auto generated reply. This was again sent to me alone. Since the Respondent lost their right to submit the said documents , was intimated to all concerning along with Respondent, by my mail dated 03.05.2021((9.06PM), so Respondents mail dated 03.05.2021(9.07PM) does not have any significance.

### **REJOINDER BY THE COMPLAINANT**

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



## **DISCUSSION AND FINDINGS**

18. After going through the correspondence, this AT comes to the conclusion that the Arbitral Tribunal was properly constituted and appointed as per Clause 5 of the INDRP Rules of Procedure and Respondent has been notified of the complaint of the Complainant. In fact, no parties raised any objection over constitution Tribunal.
19. Under Clause 4, of the .IN Domain Name Dispute Resolutions policy (INDRP), the Complainant must prove each of the following three elements of its case:
- (a) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
  - (b) The Respondent has no rights or legitimate interest in respect of the domain name; and
  - (c) The Respondent's domain name has been registered or is being used in bad faith.
20. **The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

### **Facts & Findings**

- (i) On the basis of the facts and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established 4(a) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.
21. **The Respondent has no rights or legitimate interest in respect of the domain name:**

### **Facts & Findings**

- (i) On the basis of the facts and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(b) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.



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

**Facts & Findings**

- (i) On the basis of the facts and due to non submission of Statement of Defence or any other document by Respondent, the Arbitral Tribunal concludes that the Complainant has established Clause 4(c) of the .IN Domain Name Dispute Resolution Policy (INDRP) and accordingly satisfies the said Clause of policy.

**ARBITRAL AWARD**

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

*Arbitral Tribunal orders that the Respondent disputed domain name www.delloffer.in be transferred to the Complainant.*

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

AT has made and signed this Award at Bhopal (India) on 05.05.2021 (Fifth Day of May, Two Thousand Twenty One).

Place: Bhopal (India)

Date: 05.05.2021

  
05/05/2021  
(RAJESH BISARIA)

Arbitrator

