

ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl.No.
Sold to
For whom

9754 Date 04/3/21

Vedula Gopinath s/o. G. V. K. Chennu

AG 691395
POLAGANA RAMA RAO
LICENCED STAMP VENDOR
L.No. 05/11/001-1999 RL.No. 05/11/05/2020
5-4-3/1, Seethammadhara
Visakhapatnam, Cell: 9849243254

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

Dr. Vedula Gopinath, Sole Arbitrator

Arbitration Award No. INDRP/1369, Dated 19th April, 2021

In the matter of Arbitration Between:

Dell Inc.
One Dell Way, Round Rock
Texas, 78682, U.S.A

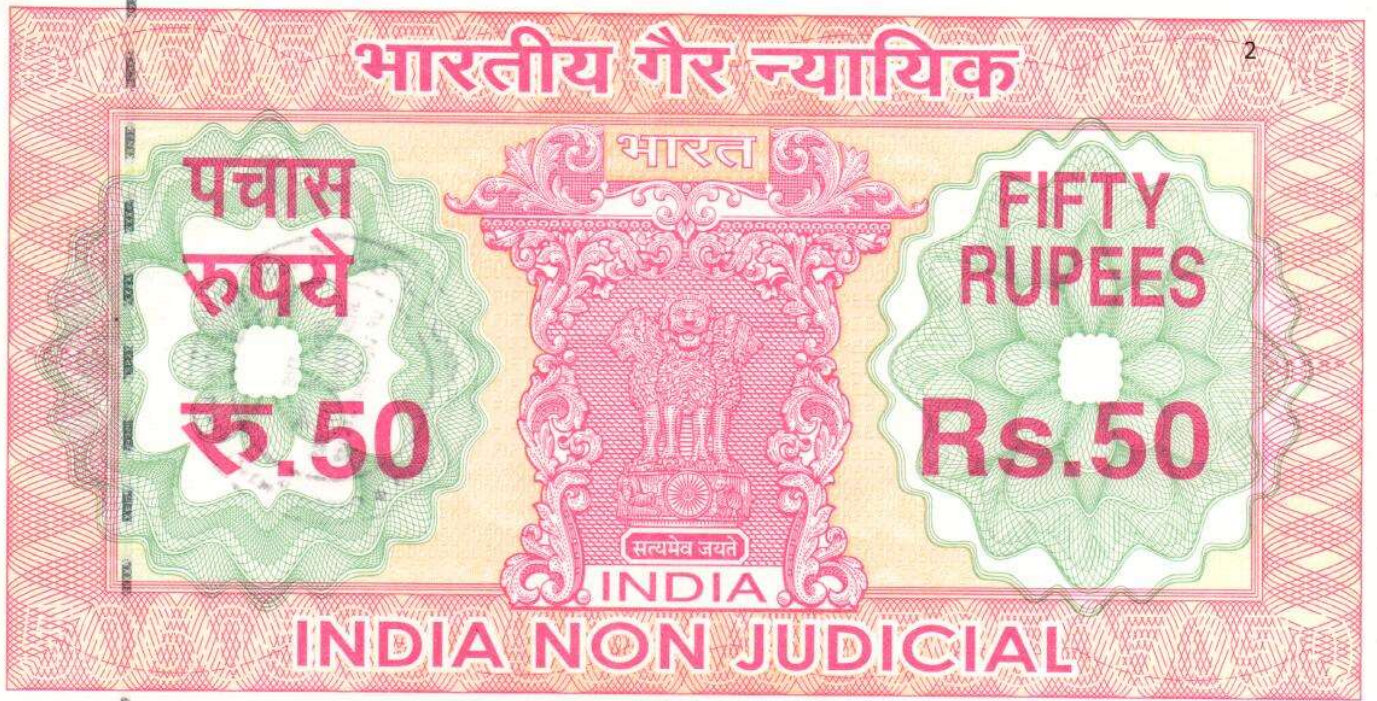
AND

... Complainant

Rahul Sharma,
A-242 Gali No. 13,
Shyam Colony,
Budh Viuhar, Phase-2
Near : Shiv Mandir,
Delhi 110086 India

Respondent





ఆంధ్రప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Sl.No.

9253 Date 04/3/21

Sold to

Vedula Gopinath. S/o. V. R. Chenchu

For whom

KE

AG 691396
BOLAGANA RAMA RAO
LICENCED STAMP VENDOR
03/11/001-1999 RL.No. 03/11/05/2020
51-4-3/1. Seethammadhara
Visakhapatnam, Cell: 9849243254

THE PARTIES:

- a. Complainant M/s. Dell Inc., Authorised representative in this administrative proceedings is:

Mr. Akhilesh Kumar Rai,
AZB & Partners,
Plot No. A8, Sector - 04,
Noida - 201301, U.P. India,
Phone No. +91 120 4179999
E-mail: akhileshkumar.raai@azbpartners.com

Mr. Rahul Sharma,
A-242 Gali No. 13,
Shyam Colony Budh Vihar Phase,
Near : Shiv Mandir,
Delhi - 100086.
Email : rahul9711975483@gmail.com



II. DISPUTED DOMAIN NAME & REGISTRY:

- a) The following Domain name is the subject of this Complaint is
www.dell-serevice-centre.co.in
- b) The Registry is the National Internet Exchange of India (henceforth referred to as NIXI).
- c) The Sponsoring Registrar of the Impugned Domain name is
Endurance **Domains Technology LLP**. The details of the
Registrar are given below :
- **Address:** Unit No. 501, 5th Floor and Unit No. 402, 4th Floor,
IT Building, NESCO IT Park, NESCO Complex, Western
Express Highway, Goregaon (East), Mumbai, Maharashtra –
400063, India.
 - **Email Address :** compliance@publicdomainregistry.com :
compliance.manager@publicdomainregistry.com
 - **Phone Number:** +91 (22) 67209000, +91 2230797738



A handwritten signature in green ink, appearing to be "J. Venkatesh".

III. PROCEDURAL HISTORY / BACK GROUND:

| | |
|-----------------------------|---|
| 5 th April, 2021 | The .1N REGISTRY appointed Dr. Vedula Gopinath as Sole Arbitrator from its panel as per paragraph 5 of INDRP Rules of Procedure. |
| 2 nd April, 2021 | Consent of the Sole Arbitrator along with declaration was given to the .1N REGISTRY according to the INDRP Rules of Procedure. |
| 5 th April, 2021 | .1N REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to Respondent. |
| 6 th April, 2021 | Notice of Arbitration was sent to all concerned by the Sole Arbitrator. |
| 7 th April, 2021 | Notice was sent by Arbitrator to the Respondent by-mail directing him to file his response within 7 days, marking a copy of the same to the Complainant's representative and .1N Registry. |

IV. COMPLAINANT'S DETAILS:

- 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. The Complainant's contact details are as follows:

Name & Address:

Dell Inc.
One Dell Way,
Round Rock,



Texas 78682, U.S.A.

- b) The Complainant is claimed to be 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 and storage, security/compliance and technical support services.
- 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.
- d) 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:

| Trade Mark | Registration | Registration Date | Class | Status |
|---------------------|--------------|-------------------|-------|------------|
| DELL | 575115 | June 5, 1992 | 9 | Registered |
| <u>www.dell.com</u> | 826095 | November 5, 1998 | 9 | Registered |
| <u>DELL</u> | 923915 | May 10, 2000 | 9 | Registered |
| DELL | 1190375 | April 7, 2003 | 2 | Registered |



| | | | | |
|------|---------|------------------|----|------------|
| DELL | 1190376 | April 7, 2003 | 9 | Registered |
| DELL | 1239350 | September 24, | 37 | Registered |
| DELL | 1239349 | September 24, | 42 | Registered |
| DELL | 1335057 | January 28, 2005 | 36 | Registered |
| DELL | 3597740 | October 06, 2016 | 41 | Registered |

Copies of the Certificates / Status are given as per **Annexure-2 of the Complainant.**

- e) 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.
- f) 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.
- g) 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



[Handwritten signature in green ink]

trademark or part of corporate name or in any manner whatsoever.

- h) 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.
- i) 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. List of cases, wherein awards have been passed in favor of Complainant.

V. PARTIES CONTENTIONS:

A. COMPLAINANT :

- (a) (i) The Complainant has alleged that domain name



of the Respondents are identical and confusingly similar to their trademark DEL in which it has rights.

- (ii) The complainant has alleged that respondents does not have rights or legitimate interest in respect of domain name and also the respondents have no registered trade mark rights of the said domain name. The complainant has alleged that respondents clearly intend to mislead potential customers of the complainant to its website.
 - (iii) The Complainant has further alleged that the domain name is registered by the respondents and is used by them in bad faith.
 - (iv) The complainant has submitted that its trademarks are well known in India. The complainant has further alleged that the respondent's intention is not to act in good faith but has got registered the disputed Domain name is bad faith.
- b) The Complainant (DELL) doesn't have any business relationship with Respondent.

B. RESPONDENT:

The Respondent in-spite of Notices dated 07-04-2021 didn't submit any response. The Complainant made effective service of Complaint to the Respondent. As it appears the Respondent did not opt to reply at all.



VI DISCUSSION & FINDS / REASONING:

(I) .IN Domain Name Dispute Resolution Policy (INDRP).

The Arbitral Tribunal after examination of the matter in details arrived the following conclusion of Complainant's Compliance of INDRP Policy. In order to obtain the transfer of the Disputed Domain Name, Complainant should, according, prove all the following three elements to paragraph 4 of the Policy.

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.
- (iv) Further pursuant to paragraph 6 & 7 of INDRP Policy, the Respondent have no legitimate interest and the same have been used in bad faith.

- (II)** It has been contended that Respondent is only using the Disputed Domain Name in a way of create a likelihood of confusion in the minds of the public as to the source of the products and services offered on its website, and thus to misleadingly attract users to its website at Complainant's detriment and to benefit from the DELL trademark's goodwill.



A handwritten signature in green ink, appearing to be "V. Vedula Gopinath", written to the right of the stamp.

(III) The Complainant made a valid service of complaint to the Respondent. In case of failure or default of Respondent in sending response or reply to the complaint, the Arbitrator is empowered to announce the judgment as he thinks proper and appropriate as per applicable laws.

(v) The allegations levelled by Complainant against Respondent appears to be proved basing on the evidential value of the documents submitted.

VII. In view of the foregoing discussion, the Arbitral Tribunal arrives at a Logical conclusion of accepting the prayer of the Complainant.


VIII.DECISION:

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "DELL" and also the disputed Domain Name i.e., www.dell-serevice-centre.co.in be transferred to the Complainant.

National Internet Exchange of India (NIXI) are advised to take incidental or ancillary action involved in the transfer of the Domain Name as directed.

Visakhapatnam
Dated 19th April, 2021




Dr. Vedula Gopinath
Sole Arbitrator

ARBITRAL TRIBUNAL
Dr. VEDULA GOPINATH
SOLE ARIBITRATOR

Dr. Vedula Gopinath
B.L., F.C.S., F.I.C.A., Ph.D
Advocate(High Court) & Corporate Advisor
HIG-15, D.No.58-14-91,
Vuda Layout, N.A.D. Post,
Visakhapatnam - 530 009, A.P. India
+91 98660 13121, 98482 27926