



सत्यमेव जयते

INDIA NON JUDICIAL Chandigarh Administration

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Unique Doc. Reference	: SUBIN-CHCHIMPSP0763491673567190T
Purchased by	: RAJESH KUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SAJAL KOSER
Second Party	: Not Applicable
Stamp Duty Paid By	: SAJAL KOSER
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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ARBITRATION AWARD

BEFORE SH. SAJAL KOSER, SOLE ARBITRATOR, CHANDIGARH

INDRP CASE NO. 1444 OF 2021

DISPUTED DOMAIN NAME: <www.dellservicecenter.co.in>

KC 0012739414

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Dell Inc. One Dell Way, Round Rock, Texas, 78682, USA. ...Complainant

Versus

Dell Services, 221, Rohini Delhi - 85 ...Respondent

1. **INTRODUCTION:**

The above titled complaint was submitted to the undersigned for Arbitration in accordance with the .IN Domain name Dispute Resolution Policy (the INDRP), adopted by the National Internet Exchange of India (the NIXI), and the INDRP rules and Procedure (the Rules of Procedure).

2. **THE PARTIES:**

A. **Complainant:**

The Complainant in this dispute 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. As per the Complaint, the Complainant's contact details are as follows:-

Name & Address: Dell Inc.
One Dell Way, round Rock,
Texas 78682, USA

B. **Respondent**

According to the Whois records shared by NIXI, the registrant information of the disputed domain name, www.dellservicecenter.co.in ("Offending Domain") is as follows:

1. Registrant Name – Not available

2. Registrant Address – Dell Service, 221 Rohini, Delhi – 110085
3. Phone Number – 7733939003
4. Email address – dellrepaircentre@gmail.com

The extract of the Whols search is attached as Annexure 4 with the complaint.

3. THE REGISTRAR WITH WHICH THE DOMAIN NAME IS REGISTERED:

As per the complaint, the details of the Registrar with which the disputed Domain name is registered are as under:-

Registrar: GoDaddy.com

Address: 14455 North Hayden Road, Suite 219 Scottsdale,
AZ 85260-6993, United States of America

Domain ID: D10226889-AIFN,

Email: udrp@disputes@godaddy.com

Phone: +1(480) 505-8800.

4. PROCEDURAL HISTORY:

- i) Vide mail dated 01.10.2021, the undersigned was appointed as an Arbitrator by National Internet Exchange of India (NIXI) to adjudicate and decide upon the dispute relating to the Domain name www.dellservicecenter.co.in.
- ii) Along with the mandate, undersigned also received copy of the Complaint with Annexures.

- iii) As required, the undersigned vide mail dated 02.10.2021, sent Statement of Acceptance and Declaration of impartiality and independence as an Arbitrator in the present Dispute.
- iv) Subsequently, undersigned received mail dated 06.10.2021 from the Complainant qua service of both hard as well as soft copies of the Complaint with Annexures on the Respondent.
- v) Thereafter, Notice to the Respondent as prescribed in the INDRP Rules of Procedure was issued vide mail dated 08.10.2021, giving 15 days time to the Respondent to file reply to the complaint.
- vi) As the Respondent did not file any response or reply to the complaint within the stipulated period of 15 days from the date of receipt of notice dated 08.10.2021, in the interest of justice, vide mail dated 28.10.2021, 2 more days time was given to the Respondent to file reply, if any, otherwise the matter would be decided ex-parte on the basis of documents on record, in accordance with law. However, no reply has been filed.
- vii) As despite giving sufficient opportunity to the Respondent to file reply/response, since, no reply/response was received from the Respondent, the right of the Respondent to contest the dispute was closed by order/mail dated 01.11.2021 and the case was fixed for passing the Award.

5. PRELIMINARY SUBMISSIONS OF COMPLAINANT AS MADE OUT IN THE COMPLAINT:

- i) It is the case of the Complainant that Dell Inc. is the World's largest direct seller of Computer Systems, since the 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 and the Complainant's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medical businesses, and individuals.
- ii) It is further stated in the Complaint that the Complainant is one of the leading providers of the computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations. The Complainant sells more than 100000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100000 members across the world that caters to more than 5.4 million customers every day.
- iii) It is also the case of the Complainant that it 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. Attached as Annexure 1 are the documents evidencing the above submissions.

- iv) The Complaint further mentions 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 given in the tabular form in para 6 of the complaint and the Complainant has also attached copies of legal proceeding certificates/online statutes for various trademarks registrations which have been renewed time to time, as mentioned in the complaint by way of Annexure 2 annexed with the complaint.
- v) It is further case of the Complainant that 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.

- vi) It is also submitted in the Complaint 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.
- vii) It is also submitted by complainant in the Complaint that as a part of its initiative to increase its presence of 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.
- viii) The Complainant also submits that 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.

- ix) As per the Complainant, it has 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 the products, stores and authorized service centers.
- x) Further, in the preliminary submissions, as made out in the complaint, the complainant states that in view of the above contents of the Complaint, it is evident that the complainant has been using the trademark "DELL" since more than 20 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.
- xi) The complainant has also stated that in order to protect its rights in and to the trade mark "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 attached as Annexure 3 with the complaint.

6. BRIEF HISTORY OF DISPUTE:

- i) The Complainant has submitted that from the description provided in the preliminary submissions above, 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.
- ii) Complainant states that in order to protect the mark "DELL" from third party adoption, the Complainant undertakes various periodically searches and actions against such adoptions. Upon conducting one such search for cyber squatter, the Complainant became aware of the registration of the domain name www.dellservicecenter.co.in in the name of the Respondent.
- iii) According to Complainant, the Offending Domain hosts a website, wherein it claims to be offering myriad services for different Dell laptops. The Respondent also offers services wherein the technical provides home visit to customers. In addition, the Respondent also uses the Dell mark of the Complainant at several places on the website. The Complainant attached various documents as Annexure 5 in support of his above submissions.
- iv) It is further case of the Complainant that Respondent is associated to an entity known as Parakh Consumer Services.

This owing to the reason that few mobile number displayed on the Website are also displayed on the website of Parakh consumer Services with the domain name, www.parakhconsumerservices.com. The common mobile numbers which are displayed on the website and the website with domain name www.parakhconsumerservices.com are 8559940369 and 9828351620.

- v) The Complainant has also mentioned in the Complaint that website hosted on the offending Domain also uses various write ups to lure the customers into believing that it is in fact associated to the complainant. Some of the said write ups mentioned by the Complainant in the Complaint are:-
- a) Dell Repair Service Centre in India (9828351602, 9983916013) provides Repairs Service and Repair for All Kinds of Dell products like Dell Laptop, Dell Desktops, Dell Monitors, Dell Keyboard, Dell Adaptors, Dell Battery Etc. All types of Laptop Repairing in India and Maintenance, Spare Parts are available.
 - b) It is very necessary to understand that whether the Dell laptop service center in India is providing the satisfactory service to the clients or not. You can gain information about the service center by searching through the name of the center in keyword.
 - c) It may be possible that the Dell laptop service center in India will not overcome all laptop issues.

- d) Dell offers certificate course for its technicians to make them enhance their skills and upgrade their skills.
- e) If you are facing a trouble with your Dell laptop and want to contact out of warranty & private service center then call (9828541640, 9828541652).
- f) Repair Services for Dell laptops in India offered by Us for Deferent Types of Problems which occur in Laptops in Everyday use due to various Reasons attached herewith as Annexure 6 are screening prints from the website hosted on the offending Domain.
- vi) The complainant further submits that it is renowned for its services and quality of products. The services offered by the Respondent may be subpar and this will lead to tarnishing and damaging the reputation and goodwill of the complainant.
- vii) It is the case of the Complainant that the Respondent has no legitimate reasons for adoption of the DELL in the offending Domain and that 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 offending Domain only reeks of dishonesty in the first instance, also, the respondent has no right whatsoever to use or adopt the well known trademark DELL of the Complainant.
- viii) The Complainant further submits in the Complaint that the use of the mark DELL in the offending Domain and on the Website will create a false impression of association with the

Complainant herein, whereas no such association exists and that the Respondent is creating confusion amongst the consuming public by using the mark DELL in the Offending Domain.

ix) It is also the case of the Complainant that the use of the Offending Domain will lead to taking undue advantage of the goodwill and reputation of the Complainant, which has been built over years of toil and that the Respondent cannot be allowed to usurp the property of another and reap the benefits of its goodwill.

x) That on the basis of the above submissions made out in the Complaint which have gone unrebutted as the Respondent did not appear or file any reply/response to the above submissions, the complainant has further submitted that the adoption of the offending Domain by the Respondent is malafide for the following reasons:-

A. The domain name is identical or confusingly similar to a trademark in which the Complainant has rights:-

a) The Complainant submits that as mentioned above, the Complainant offers, inter-alia repair and maintenance services for Dell products like laptops, tablets, servers, mouse, battery, adapters etc. as per the details attached with the Complaint as Annexure 7 which are the 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 class 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more as per the documents i.e. registration certificates, evidencing registration of DELL and DELL formative marks in classes 9, 37, 42 in favour of the complainant and attached as Annexure 8 with the Complaint. The Complainant submits that the Respondent has adopted the identical mark of the Complainant and is using the same. Moreover, it appears that the Respondent is 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.

- b) Also, 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.

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

- a) Under this ground of challenge, the Complainant further submits 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 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) Also, the Respondent hosts a Website on the offending domain and takes 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.
- c) Further, 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 good will and reputation of the mark DELL built by the Complainant.

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

- a) Finally, the Complainant submits 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 Dell's service center in India.

- 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.

xi) In the end, it is 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 forgoing, the balance of convenience rests entirely in favour of the Complainant. Accordingly, in the interest of justice and as measure of relief in equity, it is requested that the appropriate authorities be instructed by the Leaned Tribunal to have the Offending Domain transferred to the Complainant.

7. FINDING:

Since, the case of the Complainant as made out in the Complaint has gone uncontroverted as the Respondent did not file any Response/Reply and was proceeded against ex-parte, the present complaint is to be decided on the basis of the pleadings and documents on record which are unchallenged and as such undisputed. From the contents of the Complaint and the documents annexed, it is evident that the disputed domain name www.dellservicecenter.co.in consist of the mark Dell, which is the registered trademark of the complainant. DELL is a mark registered which has been established by the Complainant over a period of time by its use. The Complainant has used it world over and owns registered trademark, "DELL", in support of which, the Complainant has placed on record the registration certificates, in India as well as world over. Also the Complainant has placed on record the domain name, which has been registered the mark DELL. All these support the Complainant's right over the name DELL. Therefore, the

Complainant's claim that it has a right over the disputed name stands proved.

Also, from above, it is proved that as the Respondent's action to register the said domain name is not bonafide, therefore, the said registration is done in bad faith. From the averments of the Complaint and the documents annexed, it is evident that neither the Respondent is associated as an individual, business nor has organization with the name "DELL" not the complainant authorized in anyway the use of trademark "DELL". It is also proved on record that the Complainant has no relation with Respondent commercially or otherwise. So therefore, the use of trademark "DELL" by the Respondent is not legal as the Respondent has no legitimate right over the said domain name.

Also the Complainant has registered website consisting the word "DELL", for which it has ownership having strong internet presence and can be accessed from anywhere in the world and the Complainant also owns countries specific domain names, therefore, this in itself becomes a good ground for the Complainant to claim transfer of the disputed domain name in its favour. The Complainant has relied upon and placed on record as annexure 3 a list of various decisions where the Complainant has raised dispute qua the use of trade mark, "DELL" by several persons and the decisions awarded in his favour. From this it is evident that the Complainant has been diligent in protecting its right against unscrupulous infringers and users.

8. **CONCLUSION:**

In view of the above discussion, based upon the pleadings and documents on record, it is that the Complainant has undisputed proprietary right over the mark "DELL" and the Respondent's domain name is identical and confusingly similar to the trademark in which Complainant has rights and further the Respondent has no rights or legitimate interests in respect of the domain name and also Respondent's domain name has been registered a bad faith to be used to attract internet users to the Respondent's website or other online/offline location by creating a likelihood of confusion with the Complainant's name or trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Therefore, the complainant has proprietary right over the mark, "DELL" and is legally entitled to get the transfer of said domain name i.e. <www.dellservicecenter.co.in> in its favour. Also, the Respondent is legally barred from using the disputed domain name. The Complaint is allowed on these terms.

9. **AWARD:**


In view of above, it is awarded that the disputed domain name <www.dellservicecenter.co.in> be transferred to the complainant. Accordingly, the Registry is directed to transfer the said domain name in favour of the Complainant. It is further ordered that the Respondent is barred from using the mark


<www.dellservicecenter.co.in> and therefore shall immediately cease to use the said domain name.

10. **COST:**

In view of the facts and circumstances of the case as the Complainant has been uncalled for an unnecessarily dragged into the present dispute, therefore, the costs of the proceedings as provided in INDRP Rules of Procedure is also awarded in favour of the Complainant and against the Respondent.

Signed on this 08th December 2021.



(Sajal Koser) 
Arbitrator