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Consideration Price (Rs.)	:	101 (One Hundred And One only)
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Second Party	:	SHEETAL VOHRA
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Sheetal Vohra

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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY

INDRP ARBITRATION

THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

INDRP CASE NO: 1509

ARBITRAL TRIBUNAL CONSISTING OF SOLE ARBITRATOR DR. SHEETAL VOHRA, LLB, LLM, PHD (LAW) ADVOCATE, DELHI HIGH COURT

COMPLAINT UNDER .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN THE MATTER OF:

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

Versus

Hari Kumar, Mendwell
29, Sampige Main Road, Malleshwaram,
Bangalore, Karnataka - 560003 ...Respondent

ARBITRATION AWARD

I. THE PARTIES:

1. COMPLAINANT

The Complainant in this administrative proceeding is Dell Inc., a company incorporated and existing under the laws of Delaware, United States of America, established in the year 1984, which has filed the present complaint under rules framed under the INDRP.

The Complainant's authorized representative / counsel in this administrative proceeding is:

Sheetal Vohra

Mr. Akhilesh Kumar Rai
AZB & Partners
Plot no. A8, Sector 04,
Noida – 201301, U.P. India
Ph.: +91-120 4179999
Email: akhileshkumar.rai@azbpartners.com

2. RESPONDENT

The Respondent/Registrant of the Disputed Domain Name is one Mr. Hari Kumar of an organization viz. Mendwell of the address 29, Sampige Main Road, Malleshwaram, Bangalore, Karnataka-560003. A copy of the complete WHOIS details of the Respondent/Registrant as provided by NIXI was annexed with the amended Complaint and marked as **Annexure "4".**

The Respondent's contact details are:

Mr. Hari Kumar
Organization: Mendwell
Address: 29, Sampige Main Road, Malleshwaram, Bangalore, Karnataka – 560003.
Email: hari.mendwell@gmail.com
Phone; (+91)9972575757

The Respondent did not engage any counsel / advocate in the present administrative proceeding and neither did the Respondent file any reply to the instant domain complaint. Hence, this Complaint has been proceeded *ex-parte*.

II. THE DOMAIN NAME AND REGISTRAR:

The Disputed Domain Name is: www.dellservicebangalore.in
The Disputed Domain Name is registered with IN Registry.
The accredited Registrar of the Disputed Domain Name is Good Domain Registry Private Limited.

The Registrar's contact information is as under:
Good Domain Registry Private Limited

34-A, Main Road, Kennedy Square,
Perambur, Chennai,
Tamil Nadu 600011, India.
Phone: +91 9360303099 and +91 (44) 26205355
Email: abuse@gooddomainregistry.com

III. PROCEDURAL HISTORY:

February 21, 2022	Date of Complaint
February 25, 2022	Sole Arbitrator appointed to adjudicate the dispute
February 25, 2022	Arbitral proceedings were commenced by sending notice to Respondent through email as per Paragraph 4(c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN Registry to file response to the Complaint within 15 days of receipt of the same.
March 01, 2022	Service of soft copy as well as hard copy of the Complaint carried out by the Complainant via email and courier bearing consignment number 16097950816 on the Respondent's email as well as residential address obtained from WhoIs Records of the Respondent provided by NIXI. However, service by courier to the Respondent was unsuccessful on the ground that no such consignee was at the given address.
March 11, 2022	Pleadings completed as Respondent failed and neglected to file its response to the domain complaint within 15 days' time period which commenced on February 25, 2022.

Hence this award is proceeded with on basis of the available pleadings and documents only.

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CASE OF THE COMPLAINANT

The Complainant has provided a table of its trademark registrations for 'DELL' and 'DELL' formative marks in India as follows:

Trade Mark	Registration no.	Registration Date	Class	Status
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	2,9, 36, 37, 39, 40, 41, 42	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
ALIENWARE	1424837	February 24, 2006	09	Registered
INSPIRON	2398548	September 18, 2012	09	Registered
LATITUDE	624558	April 07, 1994	09	Registered
XPS	1873441	October 14, 2009	09	Registered

Shrutai Rana

VOSTRO	1529351	February 08, 2007	09	Registered

Copies of the legal proceeding certificates and online statuses of the aforementioned trademark registrations were filed with the Complaint and marked as **Annexure "2".**

IV. FACTUAL AND LEGAL BACKGROUND:

About the Complainant:

1. It was submitted that the Complainant, Dell Inc., a company incorporated and existing under the laws of Delaware, United States of America and established in the year 1984, is the world's largest direct seller of computer systems. It was submitted that since its establishment, 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. It was submitted that 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.

2. The Complainant submitted that it is currently one of the leading providers of computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations. It was submitted that the Complainant sells more than 100,000 systems every day to customers in 180 countries, including India. It was submitted that the Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.

3. It was submitted that 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. It was submitted that the other reason for the Complainant to be in news has been the acquisition of EMC Corporation for around $67

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billion, which is the largest technology company acquisition ever. It was submitted that both these happenings have been widely reported by press and electronic media all over the world, including in India. The documents in support of the above submissions of the Complainant were attached with the Complaint and marked as **Annexure "1"**.

4. It was submitted 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 'DELL' word and formative mark registrations of the Complainant in India were tabulated in the Complaint which have been reproduced above. The Complainant also attached the copies of legal proceeding certificates / online statuses for a number of its trademark registrations with the Complaint which mere marked as Annexure "2" as already stated hereinabove.

5. It was submitted that the Complainant's first use of the mark 'DELL' can be traced back to 1988. It was submitted that since then the Complainant has expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. It was submitted that the Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.

6. It was submitted that in addition to DELL and DELL formative marks, the Complainant also uses other trademarks, including but not limited to Alienware, XPS, Inspiron, Latitude and Vostro.

7. It was submitted that the products of the Complainant are widely available in India since 1993. It was submitted that the said products are marketed in India by the Indian subsidiaries of the Complainant. It was submitted that the Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. It was submitted that the Complainant's products are sold through a wide network of 'DELL' exclusive stores and at other stores in and around 200 cities in India. It was submitted that by virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.

Khetal Vora

8. It was submitted that 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. It was submitted that in addition to the exclusive Dell stores, the Complainant operates an interactive website with URL www.dell.com/en-in, wherein customers can log in and place orders for laptops and also make payments online.

9. It was submitted that the Complainant, its subsidiaries and licensees in India and the subsidiaries' authorized distributors and resellers alone have limited rights to use the trademark and trade name/corporate name 'DELL' in India. It was submitted that 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.

10. It was submitted that in view of the abovesaid submissions of the Complainant, it was evident that the Complainant had been using the trademark 'DELL' since more than 30 years and had built an enviable reputation in respect of the said mark. It was submitted that by virtue of such use, the mark 'DELL' is well recognized amongst the consuming public and can be termed as a well-known trademark. It was submitted that 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, was attached with the Complaint and marked as **Annexure "3"**.

11. It was submitted 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. It was submitted that in order to protect the mark 'DELL' from third party adoption, the Complainant undertakes various periodical searches and takes actions against such adoptions. It was submitted that upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the disputed domain name www.dellservicebangalore.in, in the name of the Respondent.

12. It was submitted that the Offending Domain hosts a website, wherein the products of the Complainant have been prominently displayed. It was submitted that the said

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website also offers services for different laptops of the Complainant, including but not limited to, Alienware, Vostro, Inspiron, Precision, XPS and many more. A screen-print from the website being hosted at the disputed domain name in support of this submission of the Complainant was attached with the Complaint and marked as **Annexure "5".**

13. It was submitted that the Respondent was also offering Dell spare parts like adapters, batteries, motherboard, keyboard, screen, ram, heat disk, hard disk and many more items, the screenshots of which from the website being hosted at the disputed domain name were attached with the Complaint and marked as **Annexure "6".**

14. It was further submitted that the website hosted on the Disputed Domain Name 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 were reproduced in paragraph no. 23 of the Complaint which are as follows:

    a. *"We welcome you to Dell Laptop Service Center in Bangalore, We are providing best repair service of all model dell post warranty laptop with the blessings of our customers. Any kind of problem which occurs in your dell laptop, can be serviced immediately by the experts in our service center. We specialize in Dell products and ensure that only the most advanced technology is implemented to repair your products. So if you have a Dell Laptops Model, be it a inspiron, latitude, xps, vostro, alienware Dell laptop, bring it to our conveniently located service centers and we will ensure that we give it back to you in pristine condition and a guaranteed smile on your face! If your Dell laptop warranty has been expired and your laptop is not working properly and In your laptop have Charging issue, Screen replacement, keyboard replacement, motherboard repair, hard disk issue. just make a call or visit our dell service center in bangalore, Our dell experts technicians can able to repair your laptop and give perfect solution.*

    b. *We Dell Service Center in Bangalore, can diagnose the problem well and issues such as malfunctioning keyboard, power surges, failed power jack, booting problems, and a dim or flickering LCD screen, Blue Screen.*

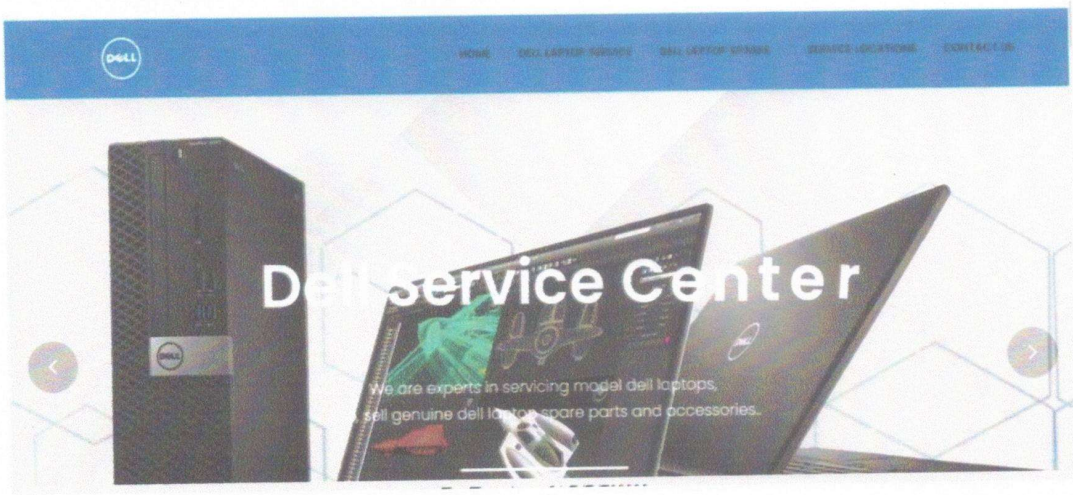
Chetan Arora

c. *Dell Service Center in Bangalore, offer specialist, affordable and quick laptop repairs for both residential and business users. We also offer world class dell laptop repair solution for our customers depending on their requirements and budget.*

d. *When your Dell laptops faces on issues , our technical team takes a good look at the problem and comes up with an assessment. We will diagonised your laptops problems we will inform you within 10 to 15 minituts to let you know of the issues of your laptop,and how you would like to proceed with the repairs."*

The screen-prints from the website hosted on the disputed domain name were attached with the Complaint and marked as **Annexure "7"**.

15. It was further submitted that the website hosted on the Disputed Domain Name uses the DELL logo mark, as well as the word mark. The screen shot from the said website were attached in the Complaint as below:



16. It was submitted that the Complainant is renowned for its services and quality of products. It was submitted that the services offered by the Respondent may be subpar and will lead to quality issues. Moreover, it was also submitted that the Respondent also offers DELL product accessories which may not be genuine. It was submitted that the use of such subpar products can be harmful for the customer, where the product may catch fire or burst upon use. Therefore, the Complainant submitted, that the activities of

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the Respondent will lead to diminishing and damaging of the reputation and goodwill of the Complainant and its brand DELL.

17. It was submitted that the Respondent has no legitimate reasons for adoption of 'DELL' in the Disputed Domain Name. It was submitted that 'DELL' connotes and denotes the goods and services of the Complainant. It was submitted that in view of the same, the adoption of the said mark by the Respondent in the Disputed 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.

18. It was submitted that the use of the mark DELL in the Offending Domain will create a false impression of association with the Complainant herein, whereas no such association exists. It was submitted that the Respondent is creating confusion amongst the consuming public by using the mark DELL in the Offending Domain.

The Complainant relied upon the following grounds in support of the Complaint and its claim that the disputed domain name has been adopted in *malafide* manner:

A. <u>The domain name is identical or confusingly similar to a trademark in which the Complainant has rights;</u>

a. It was submitted that the Complainant offers, inter-alia, repair and maintenance services for Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. Screen-prints from the Complainant's website evidencing the products offered by it were attached with the Complaint and marked as **Annexure "8"**. It was submitted that the Complainant is also the registered proprietor of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more. The registration certificates, evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant were attached with the Complaint and marked as **Annexure "9"**.

b. It was submitted that the Respondent has adopted the identical mark of the Complainant and is using the same. It was submitted that the Respondent is using the Disputed 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.

c. It was submitted that 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. <u>The Respondent has no rights or legitimate interests in the domain name;</u>

a. It was submitted 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. It was submitted that the Complainant has statutory and common law rights on the mark 'DELL'. It was submitted that the adoption/ use of the mark 'DELL' by the Respondent is not licensed/permitted, thus adoption thereof of the mark 'DELL' as part of Disputed Domain Name or in any manner whatsoever, results in infringement and passing off the rights of the Complainant in and to the trademark 'DELL'. It was submitted that due to this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'.

b. It was submitted that 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. It was submitted that 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. It was submitted that 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.

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

a. It was submitted 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. It was submitted that the Offending Domain is worded in such a manner that it appears to offers by Dell's services in Bangalore.

b. It was submitted the offending website hosted at the Disputed Domain Name also uses other trademarks of the Complainant, like XPS, Inspiron, Alienware and Latitude. The Complainant submitted that this showed that the services being offered at the Disputed Domain Name for specific products of the Complainant.

c. It was submitted that the mark DELL is a well-known mark and is not a commonly used word. It was submitted that the said mark is only associated with the Complainant and none else. Therefore, the Complainant submitted that the adoption of the said mark by the Respondent is dishonest and in bad faith.

d. It was submitted that the use of the mark 'DELL' in the Disputed Domain Name 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. It was submitted that the registration of the Disputed Domain Name has been done in bad faith and with dishonest intention to mislead the innocent public. It was submitted that the adoption of the Disputed Domain Name is contrary to the honest commercial practices of trade.

e. It was submitted that the adoption of the trademark of the Complainant is without a license or other authority, is evidence of bad faith in itself. It was submitted that the Respondent has no reason to adopt the trademark of the Complainant. It was submitted that 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'. It was submitted that the only reason for adoption of the mark 'DELL' is to make illegal profit by duping the relevant public.

The Complainant finally submitted that the Respondent is eroding the distinctive character of the Complainant's mark also and diluting the same. In view of the foregoing, the Complainant submitted that the balance of convenience rests entirely in its favor. The Complainant prayed that in the interest of justice and as measure of relief in equity, the present arbitral tribunal instruct the appropriate authorities to have the Disputed Domain Name transferred to the Complainant, who is the legitimate owner of 'DELL' trademark, in accordance with Rule 3 of the INDRP on the above-mentioned grounds. A set of INDRP Rules of Procedure was attached with the Complaint and marked as **Annexure "10"**.

V. PARTIES CONTENTIONS:

A. COMPLAINANT

(a) The Disputed Domain Name www.dellservicebangalore.in is identical and/or confusingly similar to the well-known 'DELL' word and formative marks and the "  " trademarks of the Complainant as well as the Complainant's websites at its prior registered domain names viz. www.dell.com/en-in.

(b) Respondent is using the Disputed Domain Name www.dellservicebangalore.in for identical goods/services which will lead to confusion amongst consumers.

(c) The Disputed Domain Name www.dellservicebangalore.in will give to the consumers an impression that the Respondent is associated with the Complainant in some form or the other.

(d) Respondent has no legitimate interest in the Disputed Domain Name www.dellservicebangalore.in;

Bhutal Vohra

(e) The adoption / use of the Complainant's well-known registered mark 'DELL' as part of the Disputed Domain Name or in any manner whatsoever results in the infringement and passing off of the rights of the Complainant in its 'DELL' trademarks.

(f) The Respondent is taking advantage of innocent customers by hosting the impugned website on the Disputed Domain Name www.dellservicebangalore.in who may be unwary about the authenticity of the Respondent.

(g) The Respondent has incorporated the well-known mark 'DELL' of the Complainant in the Disputed Domain Name www.dellservicebangalore.in only with the aim of making illegal gains from the goodwill and reputation of the Complainant.

(h) Respondent had registered the domain name with dishonest intention and in bad faith.

(i) The 'DELL' trademark is a well-known mark and is associated with the Complainant alone and none else.

(j) The use of 'DELL' trademark in the Disputed Domain Name is without due cause and has been done to gain illegal benefit from the goodwill of the same.

(k) The Disputed Domain Name www.dellservicebangalore.in has been registered in bad faith with dishonest intention only to mislead the innocent public.

(l) The adoption of the Disputed Domain Name is not for non-commercial purposes and does not fall within the ambit of 'fair use'.

B. RESPONDENT

The Respondent did not file its reply to contest the claims of the Complainant and thus this award is based on pleadings and documents filed by the Complainant only.

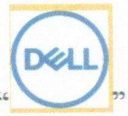
Shukla Vohra

VI. DISCUSSION AND FINDINGS:

The INDRP (.IN Domain Name Dispute Resolution Policy), adopted by NIXI, provides that a domain name owner must transfer its domain name registration to a complainant/trademark owner if:

i. The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
ii. The Registrant has no rights or legitimate interests in respect of the domain name; and
iii. The Registrant's domain name has been registered or is being used in bad faith.

I have gone through the pleadings i.e., the Complaint filed by Complainant. I have also gone through documents filed by the Complainant with the Complaint. After giving due consideration to pleadings, documents, facts and legally settled principles, I hold that in the present case all three requirements for transfer of the disputed domain name have been met. I further hold that the disputed domain name of the Respondent is visually, phonetically, structurally and conceptually deceptively similar to the trademark and domain name of the Complainant over which the Complainant, who is prior adopter, prior user and registered proprietor of the well-known 'DELL' word and formative trademarks and the domain names with the word DELL, has absolute and sole rights. Consequently, I hold that the Respondent does not have any rights or legitimate interest over the Disputed Domain Name www.dellservicebangalore.in and hence the same needs to be transferred to the Complainant. I hold that the company name / trade name / trade mark / house mark / domain name DELL and the logo  has exclusively and solely become associated and recognized with the Complainant. I hold that due to such exclusive association of the DELL word and formative marks as well as the "  " device marks and the variations thereof with the Complainant, and also considering the numerous prior registered domain names of the Complainant containing the DELL marks, the Complainant alone has the right to utilize the DELL trademark as a domain name registered with the .IN Registry. I hold that the Respondent is not entitled to register the disputed domain name as the Respondent has failed to establish any right over the

DELL word and formative marks and the "  " device mark and its variations mark and the same is associated only with the Complainant.

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

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Disputed Domain Name www.dellservicebangalore.in is identical and / or confusingly similar to the 'DELL' word and 'DELL' formative marks in which the Complainant has unquestionable rights for the following reasons:

a. I find that the Complainant offers, inter-alia, repair and maintenance services for Dell products like laptops, tablets, servers, mouse, battery, adapters, etc. Copy of screenshots from the Complainant's website evidencing the products offered by it were attached with the Complaint and marked as Annexure "8". I find that the Complainant is also the registered proprietor of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories, computer repair and maintenance services, SAAS, PAAS and many more. The registration certificates evidencing registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 in favor of the Complainant were attached with the Complaint and marked as Annexure "9". I have perused the information and documents filed by the Complainant to denote its trademark rights and reputation attached to the DELL trademarks in jurisdictions over the world, including India viz. online news reports featuring the Complainant, legal proceeding certificates in favour of the Complainant with respect to the Complainant's Indian registrations, list of INDRP disputes decided in favour of the Complainant, screen-prints from the website at the disputed domain name, screen prints from the Complainant's own website, registration certificates in favour of the Complainant for the Complainant's 'DELL' and 'DELL' formative marks, etc. I note that the Complainant has a long and extensive use of the mark 'DELL' by virtue of which the trademark 'DELL' can be termed as a well-known mark and is well recognized amongst the consuming public. In view of

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the same, I find that the Complainant has unquestionable prior and superior rights over the DELL word and formative marks as well as the "  " device mark and the various iterations thereof.

b. I find that the Respondent has deliberately adopted and using the mark to the well-known mark of the Complainant. I also find that the Respondent is using the Disputed Domain Name for identical goods and/or services and such use is bound to create widespread confusion amongst the customers and may give them an impression that the Respondent is associated with the Complainant.

c. I find that 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 well-known mark 'DELL'.

d. I hold that merely adding "bangalore" which is the name of the city, does not impart any distinctiveness and / or is not a differentiating factor. On the contrary, it gives an impression to unwary customers that the website is Complainant's website exclusively for the city of Bangalore. In view of the above, I hold that the disputed domain <www.dellservicebangalore.in> is identical and / or confusingly similar to the Complainant's trade mark 'DELL' and 'DELL' formative marks and the "  " device mark.

e. Therefore, in view of the abovesaid findings, I hold that the conditions under Paragraph 4(a) of the INDRP stand suitably established.

B. <u>The Respondent has no rights or legitimate interests in the domain name;</u>

I hold that the Complainant has successfully demonstrated by way of its Complaint that the Respondent has no right or legitimate interest in the disputed domain name <www.dellservicebangalore.in> for the following reasons:

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a. I find 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. I find that the Complainant has statutory and common law rights on the mark 'DELL'. I find that the adoption / use of the mark 'DELL' by the Respondent is not licensed or permitted, thus, the adoption thereof of the mark 'DELL' as part of Disputed Domain Name or in any manner whatsoever, results in infringement and passing off the rights of the Complainant in and to the trademark 'DELL'. In view of the same, I hold that the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'.

b. I find that the Respondent hosts a website on the Disputed Domain Name to take advantage of unwary and innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant or the lack of such relations with the Complainant.

c. I find that the Respondent has developed the website at the Disputed 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.

d. Therefore, in view of the abovesaid findings, I hold that the Respondent has no rights or legitimate interests in respect of the disputed domain name under the provisions of Paragraph 4(b) and Paragraph 6 of .IN Policy.

C. <u>The domain name is registered and being used in bad faith.</u>

I hold that the Respondent has registered the impugned domain name in bad faith as per Paragraph7(c) of the INDRP for the following reasons:

a. I find that the bad faith of the Respondent is evident from the use of 'DELL' in the Disputed Domain Name, which is the property of the Complainant and is associated with the Complainant only. I find that the Disputed Domain Name is

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worded in such a manner that it appears that the Respondent is offering Dell's services in Bangalore.

b. I find that the offending website hosted at the Disputed Domain Name also uses other trademarks of the Complainant, like XPS, Inspiron, Alienware and Latitude. I find that the website shows services being offered for specific products of the Complainant.

c. I find that the mark DELL is a well-known mark and is not a commonly used word. I find that the said mark is only associated with the Complainant and none else. I hold that the adoption of the said mark by the Respondent is dishonest and in bad faith.

d. I find that the use of the mark 'DELL' in the Disputed Domain Name is without due cause and has been done solely to gain illegal benefit from the goodwill of the same, which has been created by the Complainant. I hold that the registration of the Offending Domain has been done in bad faith and with dishonest intention to mislead the innocent public. I find that the adoption of the Disputed Domain Name is contrary to the honest commercial practices of trade.

e. I find it opportune at this juncture to place reliance on the WIPO Case no. D2017-2232 titled *Yahoo Holdings, Inc. v. Harry G* wherein it has been held that where a domain name incorporates a sufficiently well-known trade mark, and the Respondent knew, or ought to have known, of the trade mark's existence, and the Respondent has no legitimate rights or interests in it, the domain name is considered to have been registered in bad faith. I find that the Respondent, in the case at hand, is well-aware of the immense goodwill and reputation of the Complainant's well-known trade mark "DELL" and "DELL" formative marks.

f. I also find that the adoption of the trademark of the Complainant is without a license or other authority, is evidence of bad faith in itself. I do not find any reason for the Respondent to incorporate the trademark of the Complainant in the Disputed Domain Name. I find that the adoption of the Disputed Domain

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Name by the Respondent is not for non-commercial purposes and would not fall under the ambit of 'fair use'. I find that the only reason for adoption of the mark 'DELL' is to make illegal profit by duping the relevant public.

g. Finally, in light of the above submissions, I hold that it is overwhelmingly clear that the Respondent's registration of the disputed domain name <www.dellservicebangalore.in> is in bad faith, without sufficient cause and is intended to take advantage of the Complainant's immense reputation and prominent presence on the internet in order to confuse the public to the detriment of the Complainant.

In view of all the above facts and well-known legal precedents, I find and hold as under:

- That the disputed domain name of the Respondent is identical and confusingly similar to the Complainant's 'DELL' word and 'DELL' formative marks.
- That the use of the disputed domain name <www.dellservicebangalore.in> is likely to lead to enormous confusion *qua* its origin due to the use of the Complainant's trade mark "DELL" as a whole in the disputed domain name being phonetically, visually and structurally identical to the Complainant's trade mark DELL.
- That the disputed domain name was registered in bad faith by the Respondent.
- That the disputed domain name is strictly identical to the Complainant's distinctive mark, consumers would certainly mistakenly assume that a website / disputed domain name www.dellservicebangalore.in is operated or endorsed by the Complainant, when such would not be the case.
- That the Respondent has deliberately attempted to create a false impression in the minds of the consumers that the Respondent is somehow associated with or endorsed by the Complainant to ride on the goodwill and reputation associated with the Complainant and to unjustly enrich from the same.
- That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- That there is also an imminent likelihood of damage which may be caused to the public at large and also cause irreparable damage to the Complainant's reputation and goodwill through the disputed domain name.
- That the Respondent does not have any affiliation or connection with the Complainant

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and/or its goods / services under the name/mark DELL and consequently it is inconceivable that the Respondent's adoption of the name <www.dellservicebangalore.in> which is identical to the Complainant's 'DELL' and 'DELL' formative marks amongst other trademarks and domain names with DELL can be seen as merely coincidental.

VII. DECISION

a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent **<DELLSERVICEBANGALORE.IN>** to the Complainant;

c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 24th day of March, 2022.

Sheetal Vohra

Dr. Sheetal Vohra

Sole Arbitrator

Date: 24/03/2022