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DEEPALI GUPTA
SOLE ARBITRATOR
.IN Registry - National Internet Exchange of India
INDRP Case No: 1518

In the matter of Arbitration Between:

Dell Inc.

.....Complainant

Versus

Hari Kumar Mendwell

.....Respondent

Disputed Domain Name: < DELLLAPTOPSERVICECENTERBANGALORE.IN >

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**DEEPALI GUPTA
SOLE ARBITRATOR**

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1518

In the matter of:

In the matter of:

Dell Inc,
One Dell Way, Round Rock,
Texas. 78682, U.S.A.
Through its Authorized Representative:
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

.....Complainant

VERSUS

Hari Kumar Mendwell,
29, Sampige Main Road,
Malleshwaram, Bangalore,
Karnataka-560003
India.
(+91). 9972575757
hari.mendwell@gmail.com
(Registrant)

.....Respondent

Disputed Domain Name: < DELLLAPTOPSERVICECENTERBANGALORE.IN >

ARBITRATION AWARD

DATED MAY 19, 2022.



1) The Parties:

The Complainant in the present arbitration proceedings is Dell Inc, One Dell Way, Round Rock, Texas. 78682, U.S.A. The Complainant is represented by its Authorised Representative Mr. Akhilesh Kumar Rai, AZB & Partners, Plot No. A8, Sector 04, Noida – 201301, U.P. India.

The Respondent in the present case is Mr. Hari Kumar Mendwell, 29, Sampige Main Road, Malleshwaram, Bangalore, Karnataka-560003, India, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is :

< DELLLAPTOPSERVICECENTERBANGALORE.IN >

The Registrar is Good Domain Registry Private Limited.

The Registrant is Hari Kumar Mendwell, 29, Sampige Main Road, Malleshwaram, Bangalore, Karnataka-560003, India,

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder,



.IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 16th March, 2022.

- The notice was issued to the Respondent on 21st March 2022 at his e.mail address hari.mendwell@gmail.com communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <DELLAPTOPSERVICECENTERBANGALORE.IN> in its favour. The Respondent was called upon to submit their response within twelve (12) days of the receipt of the Arbitrators email i.e. on or before 2nd of April, 2022.

- The Arbitrator received no response from the respondent within the said timeline or even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, 'hari.mendwell@gmail.com', therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) **FACTUAL BACKGROUND:**

That the Complainant Dell Inc. established in the year 1984, is a company incorporated and existing under the laws of Delaware, USA. The Complainant is the owner of the Mark 'DELL' and has been using the Mark 'DELL' for several decades and is also the registered proprietor of the said trademark in various countries, including India. That the Complainant has several registrations for the Mark 'DELL' and 'DELL' formative marks in India. The Complainant is the worlds largest seller of computer systems. 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', 'DELLPROSUPPORT', 'DELL PREMIUMCARE', etc. The products of the Complainant are widely available in India since 1993. 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. 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. The Complainant has been using the trademark 'DELL' since more than 30 years and by virtue of such use, the mark 'DELL' is well recognized as a well-known trademark.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- (a) The Complainant states that Complainant herein 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 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 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.

- (b) The Complainant submits that 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. The Complainant has been using the mark 'DELL' for several decades and is also the registered proprietor of the said trademark in various countries, including India. The Complainant being a registered proprietor of the trademark 'DELL' and Dell formative marks in India has provided a list of trademark registrations for the said mark in India since the year 1992. It is further submitted that all the said registrations are valid and subsisting.
- (c) It is submitted that since 1988 the Complainant is using the mark 'DELL' and the Complainant has expanded its business and the use of its trademark 'DELL' around the globe. The Complainant also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc. That the products of the Complainant are widely available in India. 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) It is further submitted by the complainant 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 centres, 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.

- (e) It is submitted that 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) It is submitted that 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.
- (g) The Complainant submits that, 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
- (h) It is thus stated by the Complainant that the Offending Domain hosts a website, wherein the products of the Complainant have been prominently displayed. The said website also offers service for different laptops of the Complainant, including but not limited to, Alienware, Vostro, Inspiron, Precision, XPS and many more.
- (i) The complainant further states that the Respondent also offers Dell spare parts, like Adapters, Batteries, motherboard, keyboard, screen, ram, heat disk, hard disk and many more items. The 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 e.g. it is stated in one of the write ups that:

"Dell Service Center in Bangalore, we service and repair all Dell Laptop after out of warranty. We



*repair and service all models of **Dell laptops** such as Dell Inspiron, Dell Latitude, Dell Vostro, Dell XPS, Dell Alienware etc., We can repair the laptop parts and components such as Dell laptop AC adapters, Dell laptop LCD/LED Screen panels, Dell laptop keyboards, Dell laptop batteries, Dell laptop small circuit boards, Dell laptop motherboards, Dell inverters, and other accessories."*

- (j) The Complainant submits that it is renowned for its services and quality of products. The services offered by the Respondent are subpar. Moreover, the Respondent also offers DELL product accessories which may not be genuine. The use of such subpar products can be harmful for the customer, where the product may catch fire or burst upon use. Therefore, the activities of the Respondent will lead to diminishing and damaging of the reputation and goodwill of the Complainant and its brand DELL. That the Respondent has no legitimate reasons for adoption of the mark 'DELL' in the Offending Domain. It is further submitted by the complainant 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 is dishonesty in the first instance. The complainant states that the Respondent has no right whatsoever to use or adopt the well-known trademark 'DELL' of the Complainant. 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.

6) RESPONDENT:

The Respondent did not respond in these proceedings although notices have been sent to and served on the Respondent under the INDRP Rules.



7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The Complainant being the registered proprietor of 'DELL' and 'DELL' formative marks in classes 9, 37, 42 for computers and computer accessories, computer repair and maintenance services and many more has submitted evidence (*Annexure-9*) of its trademark registrations for the "DELL" and Dell formative mark in India as also many other countries and has accordingly established its rights in the mark not only in India but globally. The Complainant has also provided evidence by way of *Annexure -5* that is a screen print of the respondent's website offering services for the different laptops of the complainant and *Annexure -6* being the screen print of the offending website offering numerous 'Dell' spare parts. The complainant has submitted that the Respondent has adopted the identical mark of the complainant and is using the same. Further that the Respondent is using the offending Domain for identical goods and services and such use will lead to confusion amongst customers giving the impression that the Respondent is associated with the complainant. It is further submitted that the Respondents adoption and use of the well-known trademark 'DELL' owned by the complainant as part of the offending domain is a violation of the complainant's rights in the said mark.



The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use. The disputed domain name < DELLLAPTOPSERVICECENTERBANGALORE.IN > incorporates the Claimants 'DELL' trademark in its entirety. It is well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark. The inclusion of the words 'laptopservicecenter bangalore' in the disputed domain name appears to suggest an association between the complainant and respondent wherein none exists.

The disputed domain name is accordingly found to be confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. (*The Vanguard Group, Inc. Lorna Kang, WIPO Case No.D2002-1064, Ronaldo de Assis Moreira v. Goldmark-cd Webb, WIPO Case No.D2004-0827*)



The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name. That the Complainant is the registered owner of these 'DELL' marks and related domain names in various jurisdictions. That 'DELL' marks are well known and associated with the Complainant only.

The Complainant states that it has not authorized, licensed or permitted the Registrants of the disputed domain name to use any of the 'DELL' Marks or any similar or identical marks.

The evidence on record depicts that the disputed domain name directs to a website which is clearly used to infringe and pass off the Complainant's business and create confusion amongst the public. The respondents use of identical or confusingly similar domain name to the registered trademark of Complainant and its conduct of offering for sale goods and services similar to those of Complainant's is clearly aimed to take unfair advantage of the goodwill and reputation of Complainant's 'DELL' Marks and to divert customers by creating initial internet confusion and thereby commercially gain profit dishonestly.

The respondent is indulging in unfair use of the disputed domain name and tarnishing the goodwill and reputation of the Complainant.

The Registrant's use of the Domain Name to supply identical services as those of the Claimants which are protected by the Claimant's Indian trade mark rights constitutes an infringement of those rights. That use of the Domain Name to provide competing services to those in which the Claimant enjoys a global reputation, cannot constitute a legitimate non-commercial interest in the Domain Name. Thus, prima facie, the Registrant has no rights or legitimate interests in respect of the disputed Domain Name.

< DELLLAPTOPSERVICECENTERBANGALORE.IN > . That the disputed domain name is not being used bonafidely and neither is the respondent generally known or recognized by the distinctive sign that contains the name 'DELL'.



The Complainant has argued that due to extensive use of the 'DELL' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the "DELL" mark through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the respondent's use of the "DELL" mark which is distinctive of the Complainant and its products, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has submitted that there is no relationship between the parties commercial or otherwise and the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainants submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of the said trademark "DELL" by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial gains by such use is recognized as infringing use under INDRP Policy. The use of the Complainants "DELL" mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.



Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the "DELL" mark. The disputed domain name has been registered on 28th November 2019 whereas the trademark registration of "DELL" mark was obtained by the Claimant much prior. The Complainant has annexed evidence of "DELL" being registered trademark in various countries specifically from the year 1992 onwards. These facts establish that the Complainant's prior adoption of the "DELL" mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark in commerce for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The complainant has identified itself as a company whose branded products with the Mark 'DELL' are well known and renowned in the field of technology specifically in the field of computers and computer accessories /peripherals.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts, circumstances and the evidence indicate that the Respondent has used the "DELL" Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Refer to *Patagonia Inc v Doublelist Ltd*, INDRP Case No. 1185 <Patagonia.co.in>, where it was found that the use of complainant's mark in the domain name is likely to mislead the public and it was found to be registration and use of the domain name in bad faith under the Policy. Or refer to *Colgate Palmolive Company and Colgate Palmolive (India) Ltd v*



Zhaxia, INDRP Case No. 887, where bad faith was found when the respondent had registered the disputed domain name to cause confusion with the complainants mark. Similarly in the present case it is found that the use of the “DELL” mark by the Respondent is likely to attract customers based on the Complainant’s mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name < DELLLAPTOPSERVICECENTERBANGALORE.IN > be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator
Date: 19th May, 2022.