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INDRP ARBITRATION CASE No.1534
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

DELL, INC.

VERSUS

VIVIN COMPUTERS

Statutory Alert: **DISPUTED DOMAIN NAME: "DELLEXCLUSIVESTORES.CO.IN"**

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**INDRP ARBITRATION CASE No.1534
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)**

**ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA**

Disputed Domain Name : www.dellexclusivestores.co.in

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

...Complainant

VERSUS

VIVIN COMPUTERS,
No.29/3, GST Road,
Kadaperi, Opp. Poorvika
Tamjbaram, Chennai-600045
(TAMIL NADU) – India

... Respondent

AWARD

(1) The Parties :

1.1 The Complainant in this arbitration proceedings is Dell Inc., which is in the business of direct selling of computer systems, computer hardware, software, computer peripherals, computer-oriented products such as phones, tablet computers, etc and its address is Dell Inc., One Dell Way, Round Rock, Texas, 78682, U.S.A. Dell Inc., One Dell Way, Round Rock, Texas, 78682 (USA). The complainant in this proceeding is represented by its authorized representative, Akhilesh Kumar Rai AZB & Partners, Plot No.A8, Sector 04 Noida – 201301 (U.P.) - India.

1.2 The Respondent, in this arbitration proceeding, is, Vivin Computers, No.29/3, GST Road, Kadaperi, Opp. Poorvika, Tambaram, Chennai-600045 (Tamil Nadu) - India, as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).



(2) The Domain Name and Registrar

- 2.1 The disputed domain name is <www.dellexclusivestores.co.in>. The Registrar with which the disputed domain name is registered is GoDaddy, Address: 14455 North Hayden Road, Suite 226 Scottsdale, AZ 85260-6993, United States of America.

(3) Procedural History [Arbitration Proceedings]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP] and INDRP Rules of Procedure [the Rules], adopted by the National Internet Exchange of India (NIXI). 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 according to the IN Dispute Resolution Policy and Rules framed thereunder.

The history of this proceeding is as follows :

- (i) The NIXI on 29.03.2022 formally notified the Respondent of the complaint, and appointed Ajay Gupta as the Sole Arbitrator for adjudicating the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Resolution Policy and the Rules framed thereunder. On 30.03.2022 Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.
- (ii) That commencing the arbitration proceedings an Arbitration Notice Dated 30.03.2022 was mailed to the respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file a reply of the complaint, if any, within 10 days. That as directed by this panel and according to INDRP Rules of the procedure the soft Copy of the complaint was served to the respondents by the complainant, which was confirmed to this panel by the complainant vide their mail dated 31.03.2022.

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- (iii) This panel vide mail dated 04.04.2022 directed the complainant to submit the proof of service of a hard copy of the complaint to the Respondent. The Complainant in compliance with this panel's directions vide their mail dated 06.04.2022 submitted the proof of service of the copy of the complaint by attaching the mail delivery report dated 31.03.2022 along with the article delivery report of the courier, which bears the date of delivery of the shipment to Respondent as 02.04.2022.
- (iv) However, no reply of the notice or complainant was received by this panel from the respondent within the stipulated time of 10 days despite the delivery of a soft as well as the hard copy of the complaint. This panel in the interest of justice on 09.04.2022 granted a further period of 3 more days to the respondent to file the reply of complaint, if any, by 11.04.2022, and the same was communicated to the respondent by this panel through mail dated 09.04.2022.
- (v) Despite the further opportunity given to him, the Respondent failed to file the reply of the Arbitration notice and complaint even within the extended period of 3 days despite the receipt of mail dated 09.04.2022 of this panel. Subsequently, the respondent proceeded ex parte on 12.04.2022.

(4) The Respondent's Default

- 4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "dellexclusivestores.co.in"
- 4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :



"In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."

- 4.3 The Respondent was given notice of this administrative proceeding in accordance with the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.
- 4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint despite repeated opportunities. The 'Rules' paragraph 12 provides that "In the event, any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied and is proceeded ex parte.

(5) Background of the Complainant and its statutory and common law rights Adoption :

- 5.1 The Complainant states that Dell Inc. was established in the year 1984 and is a company incorporated under the laws of Delaware, United States of America. The Complainant states that the complainant is the world's largest direct seller of computer systems and since its establishment in 1984, the Complainant has diversified and expanded its activities which presently include, but are not limited to, computer hardware, software, computer peripherals, computer-oriented products such as phones, tablet computers, etc., and computer-related consulting, installation, maintenance, leasing, warranty, data computing, cloud computing, information security, virtualization, analytics, data storage, security/compliance, and technical support services. The Complainant further states that its business is aligned to address



the unique needs of large enterprises, public institutions (healthcare, education, and government), small and medium businesses, and individuals.

- 5.2 The Complainant states that DELL is one of the leading provider of computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations and sells more than 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.
- 5.3 The Complainant states 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 said registrations have been renewed from time to time and are valid and subsisting.
- 5.4 The Complainant submits that its first use of the mark 'DELL' can be traced back to 1988 and 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.
- 5.5 The Complainant submits that in addition, the Complainant is using various other marks in the course of trade, like XPS, ALIENWARE, Latitude, and many more. The Complainant is also the registered proprietor of the mark ALIENWARE.
- 5.6 The Complainant states that its products are widely available in India since 1993. The said products are marketed in India by the subsidiaries of the Complainant in India. 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 around 200 cities in India. By virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.

- 5.7 The Complainant further states that as part of its initiative to increase its presence in India, the Complainant's Indian subsidiary has tied up with several channel partners, authorized distributors/resellers, and launched Dell exclusive stores, multiple brand outlets, and solution/service centers, all over the country. In addition to the exclusive Dell stores, the Complainant operates an interactive website with URL www.dell.com, wherein customers can log in and place orders for laptops and also make payments online.
- 5.8 The Complainant states 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 DELL in India. No one other than those permitted by the Opponent can use 'DELL' as a trademark or part of a corporate name or in any manner whatsoever.
- 5.9 The Complainant submits that it 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.
- 5.10 The Complainant states that the complainant is using the trademark 'DELL' for the last 32 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 a well-known trademark. The Complainant has also initiated several actions against domain name squatters in the past several years.

(6) Submission of the Complainant about the Respondent its use of Disputed Domain Name

- 6.1 The Complainant states 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 states that in order to protect the mark 'DELL' from third-party adoption, the Complainant undertakes various periodical searches. Upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.dellexclusivestores.co.in, in the name of the Respondent. The Impugned Domain hosts a website (Website), wherein the Respondent represents itself as a Dell Exclusive Store in Chennai.
- 6.2 The Complainant states that the Website also claims to provide services like windows repair and installation, virus and malware removal, hard drive repair and replacement, screen repair and replacement, keyboard repair and replacement, and motherboard repair and replacement.
- 6.3 The Complainant states that in addition to the above, the Respondent through the Website claims to offer for sale products of the Complainant under various well-known brands such as ALIENWARE, INSPIRON, and XPS.
- 6.4 It is submitted by the Complainant that the Website also prominently displays the mark ALIENWARE on its website. It is further submitted that the layout and the representation of the Website are similar to the representation and layout of the Complainant's international website.

- 6.5 The Complainant states that the contact section on the Website reveals that the Respondent's number is 8098381000 and on mere Google search for this number reveals the website of the exclusive store of popular IT Company HP with the domain name, hpexclusivestore.com. The Complainant states from this, it is evident that the Respondent registers domain names which incorporate popular trademarks of the computer hardware and software companies, the Respondent hosts a website on such domains, misrepresents to the relevant section of the public that it is associated with the said companies, whereas no such association exists. The Complainant alleges that Respondent cheats innocent consumers in the name of the aforementioned companies by providing maintenance and repair services for the computer hardware products of these companies.
- 6.6 The Complainant states that the modus operandi of the Respondent's business is to defraud and cheat consumers in the name of the Complainant and monetize from the goodwill and reputation of the Complainant. It is further submitted by the complainant that the Respondent's services may be of sub-par quality. This can lead to a compromised product in the hands of the consumer, which upon use can burst or catch fire and cause injury to the individual using the same. Such activities on the part of the Respondent will tarnish the name and reputation of the Complainant which has been built after years of toil by the Complainant.
- 6.7 The Complainant states that the Respondent has no legitimate reasons for adoption of the 'DELL' in the Impugned Domain. It is stated that 'DELL' is not a common word in India and the adoption of the same by the Respondent for a website 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.



(7) The issues involved in the dispute

- 7.1 The complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"TYPES OF DISPUTES

Any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:-

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered or is/are being used in bad faith.

The Respondent is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this policy and Rules thereunder."

- 7.2 According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute, which are being discussed hereunder in the light of the facts and circumstances of this case.

(8) Parties' Contentions

- 8.1 The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Complainant

- 8.2 The complainant submits that the Complainant offers, inter-alia, repair, and maintenance services under the mark 'DELL'. The Complainant submits that it 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

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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.

- 8.3 The Complainant submits that the Respondent's adoption of the well-known trademark 'DELL' of the Complainant to provide services for 'DELL' laptops is an infringement of the Complainant's rights in and to the mark 'DELL'. Moreover, the Respondent is using the mark DELL for services identical to that of the Complainant.
- 8.4 The Complainant further submitted that the Respondent has not been licensed/authorized/permitted in any manner whatsoever to adopt or use the Complainant's distinctive and well-known mark DELL.

Respondent

- 8.5 The respondent has not replied to the complainant's contentions.

Panel Observations

- 8.6 This Panel on pursuing the documents and records submitted by Complainant observe that Complainant's mark "DELL" is being used for sale, services, repair, and maintenance, etc. of its computer-related products in India and other countries for several years. This panel observes that the Complainant has registered the said trademark in various countries, including India. It is also observed by this panel that the complainant has an internet presence with the website www.dell.com and for India, there is a specific website with the domain name www.dell.co.in which not only provide details of the complainant but also provide details of products, stores, and authorized service centers. The adoption, use, and registration of the mark by the Complainant is also predated the registration of the disputed domain.



8.7 It is observed by this panel that the Respondent is using the mark DELL for services identical to that of the Complainant. The suffix "in" and the word "exclusivestores.co" are not sufficient to distinguish the Domain Name from trade Mark DELL, hence there is a confusing similarity between the disputed domain name and Complainant's trademark DELL.

8.8 This panel observes that the Complainant who is the owner of the domain name "DELL" has a significant reputation and goodwill and any customer searching for Dell Exclusive Stores would believe that there is a real connection between the disputed domain name and its business. The disputed domain name "dellexclusivestores.co.in" will cause the user to mistakenly believe that it originates from, is associated with or is sponsored by the complainant, and further the addition of "in" is not sufficient to escape the finding that the domain is confusingly similar to complainant's trademark.

8.9 Therefore, the panel is of opinion that the disputed domain name "dellexclusivestores.co.in" being identical/confusingly similar to the trademark of the complainant will mislead the public and will cause an unfair advantage to the respondent. The Panel is of the view that there is a likelihood of confusion between the disputed domain name and the Complainant, its trademark, and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "DELL" of the Complainant.

8.10 It has to be noted that the paragraph no.4 of the INDRP policy starts with the following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file a complaint to the registry on the following premises."

This is a positive assertion and sentence. Further paragraph 4(a) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(a) is upon the complainant. To succeed he must prove them."



8.11 It has been proved by the Complainant that it has trademark rights and other rights in the mark "DELL" by submitting substantial documents in support of it. This panel while following the rule of law thinks that while considering the trademark "DELL" in its entirety, the disputed domain name "dellcustomerservices.co.in" is confusingly similar to the trademark of the complainant.

8.12 Paragraph 3 of the INDRP states that it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

8.13 Paragraph 3 of the INDRP is reproduced below :

"The Respondent's Representations :

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Respondent represents and warrants that :

- 1. the statements that the Respondent made in the Respondent's Application form for Registration of Domain Name are complete and accurate;***
- 2. to the Respondent's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;***
- 3. the respondent is not registering the domain name for an unlawful purpose; and***
- 4. the Respondent will not knowingly use the domain name in violation of any applicable laws or regulations.***

It is the Respondent's responsibility to determine whether the Respondent's domain name registration infringes or violates someone else's rights".

8.14 The respondent has not replied to the Complainant's contentions despite the repeated opportunity given for the same.

8.15 This Panel, therefore, in light of the contentions raised by the Complainant concludes that the disputed domain name is

confusingly similar to the Complainant's marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(a) of the INDR Policy.

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

Complainant

- 9.1 The Complainant submits that the Respondent is taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent or its relation with the Complainant. It is further submitted that even if the Respondent informs the purchasing customer that they are not related to the Complainant, the same does not bestow any right to use the trademark DELL of the Complainant.
- 9.2 The Complainant submits that the Respondent has no right to use the mark 'DELL' of the Complainant, as it is the sole property of the Complainant. The Complainant uses the mark 'DELL' and has also secured registration for the same. The use of the mark 'DELL' by the Respondent is not licensed/ permitted, thus adoption and use thereof of the mark DELL as part of the domain name or in any manner whatsoever, results in infringement of the trademark 'DELL' of the Complainant.
- 9.3 The Complainant submits that the Respondent has developed the Impugned Domain comprising of the well-known mark DELL with the sole aim to make illegal benefits from the goodwill and reputation of the mark DELL built by the Complainant. It is submitted by the complainant that Owing to the Complainant's rights in and to the trademark DELL, the Respondent cannot have any legitimate interest in the said mark.

Respondent

- 9.4 The respondent has not replied to the complainant's contentions.

Any

Panel Observations

- 9.5 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.
- 9.6 It is submitted by the complainant that Owing to the Complainant's rights in and to the trademark DELL, the Respondent cannot have any legitimate interest in the said mark.
- 9.7 It is observed by this panel that the respondent failed to rebut the contention of the Complainant that the Respondent has no right to use the mark 'DELL' of the Complainant, as it is the sole property of the Complainant and the Complainant uses the mark 'DELL' and has also secured registration for the same. The respondent failed to rebut the contention of the complainant that use of the mark 'DELL' by the Respondent is not licensed/ permitted, thus adoption and use thereof of the mark DELL as part of the domain name or in any manner whatsoever, results in infringement of the trademark 'DELL' of the Complainant.
- 9.8 The respondent also failed to rebut the Complainant's submission that the Respondent has developed the Impugned Domain comprising of the well-known mark DELL with the sole aim to make illegal benefits from the goodwill and reputation of the mark DELL built by the Complainant.
- 9.9 The respondent further failed to rebut the contention of the complainant that owing to the Complainant's rights in and to the trademark 'DELL', the Respondent cannot have any legitimate interest in the said mark.
- 9.10 Once the Complainant makes a prima facie case showing that the respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the

Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. It is observed by this panel that the respondent failed to put on record any evidence to rebut any of the contentions of the complainant.

9.11 It is further observed by this panel that para 6 of the .IN Domain Name Dispute Resolution Policy (INDRP) states :

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for Clause 4 (b) :

(a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

9.12 This panel observes that the respondent also failed to full fill any of the requirements as mentioned in para 6 of INDRP Policy which demonstrates the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4 (b).

9.13 For these reasons, the Panel holds that the Complainant has proved that the respondent does not have any rights or legitimate interests in the disputed domain name.

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



Complainant

- 10.1 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 Impugned Domain is worded in such a manner that it appears to be Complainant's specific website for its exclusive stores.
- 10.2 The Complainant submits that the Respondent appears to be a habitual offender and has registered domain-containing marks, like HP and Lenovo. Given the above, the bad faith on the part of the Respondent is clear.
- 10.3 The Complainant further submits that the use of the mark 'DELL' in the Impugned Domain is without due cause and has been done to illegal benefit from the goodwill of the same, which has been created by the Complainant. The registration of the Impugned Domain has been done in bad faith and with dishonest intention to mislead the innocent public. It is further submitted by the complainant that the Bad faith is also visible from the layout of the Website, which is similar to the older layout of the Complainant's website. Moreover, the Respondent also uses marks like ALIENWARE, INSPIRON, and XPS on the Website.
- 10.4 The Complainant submits that the adoption of the Complainant's trademark 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 Respondent's use of the Impugned Domain is not for non-commercial purposes and would not fall under the ambit of 'fair use. The only reason for the adoption of the mark 'DELL' is to make an illegal profit by duping the relevant public.
- 10.5 The Complainant submits that the bad faith is evident from the write-ups and trademarks of the Complainant, which are present on the Website, wherein, the Respondent portrays itself to be the Complainant's authorized exclusive store.

Respondent

10.6 The respondent has not replied to the complainant's contentions.

Panel Observation

10.7 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"(a) Circumstances indicating that the Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrar's documented out of pocket costs directly related to the domain name; or

(b) the Respondent has registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or

(c) by using the domain name, the Respondent has intentionally attempted to attract internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its Website or location or a product or services on its website or location."

10.8 The panel is of the view that the documents/records and evidence put before it by the Complainant have established that the Respondent has no previous connection with the disputed domain name and any use of the disputed domain name by the Respondent, would result in confusion and deception of trade, consumers and public, who would assume a connection or association between the Complainant and the Respondent. The complainant also by submitting the evidence on record has been able to establish that the Impugned Domain is worded in such a manner that it appears to be Complainant's specific website for its exclusive stores, and an element of bad faith is also visible



from the layout of the Website, which is similar to the older layout of Complainant's website. The Complainant further, has been able to prove that the Respondent also uses marks like ALIENWARE, INSPIRON, and XPS of the complainant on the Website.

- 10.9 It is very unlikely that Respondent before registering the domain name dellexclusivestores.co.in had no knowledge of Complainant's rights in the trademark DELL, which evidences bad faith.
- 10.10 It is also a well-settled principle that the registration of a domain name that incorporates a well-known mark by an entity that has no relationship to the mark is evidence of bad faith. [Relevant Decision: The Ritz Carlton Hotel Company LLC vs. Nelton Brands Inc., INDRP/250, December 30, 2011]
- 10.11 By registering the disputed domain name with actual knowledge of the Complainant's trademark "DELL", the Respondent acted in bad faith by breaching its service agreement with the registrar because the Respondent registered a domain name that infringes upon the Intellectual Property rights of another entity, which in the present case is the Complainant DELL, INC.
- 10.12 The respondent has not replied to the Complainant's contentions despite the opportunity given for the same.
- 10.13 The Respondent's registration of the domain name meets the bad faith elements outlined in Para 7(c) of the INDRP. Therefore the Panel concludes that the registration by Respondent is in bad faith. Consequently, it is established that the disputed domain name was registered in bad faith or used in bad faith.

(11) Remedies Requested

- 11.1 The Complainant requests this Administrative Panel that the disputed domain <www.dellexclusivestores.co.in> be transferred to the Complainant.

(12) Decision

The following circumstances are material to the issue in the present case :

- 12.1 The complainant through its contentions based on documents /records and evidence has been able to establish that the complainant has been carrying on their business activities exclusively under the well-known trademark/ name DELL and it has a presence not only in India but many other countries. The Complainant has also been able to establish that apart from significant common law rights in the mark DELL, the complainant has statutory rights in the mark DELL through registration of the Mark DELL in India and other countries. The Respondent, however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name, and the Respondent is related in any way to the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the Disputed Domain Name.
- 12.2 Taking into account the nature of the disputed domain name and in particular, the “.in” extension alongside the Complainant’s mark which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant’s group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.
- 12.3 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else’s rights. The Respondent should have exercised reasonable efforts to ensure there was no encroachment on any third-party rights. {Relevant Decisions: Graco Children’s

Products Inc. V. Oakwood Services Inc. WIPO Case No.2009-0813: Ville de Paris V. Jeff Walter, WIPO Case No.D2009-1278}.

12.4 The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name. Whereas, the Respondent's adoption and registration of the disputed domain name are dishonest and done in bad faith.

This panel is of the view that it is for the Complainant to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name and the Respondent has failed to prove it. Thus it is clear that the Respondent has registered the disputed name and is using it in bad faith.

This panel holds that the Respondent's registration and use of the domain name [dellexclusivestores.co.in] are in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name and also the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

RELIEF

In accordance with INDRP Policy and Rules, this Panel directs that the disputed domain name [dellexclusivestores.co.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India.
Dated : 13 April, 2022


[AJAY GUPTA]
Sole Arbitrator