



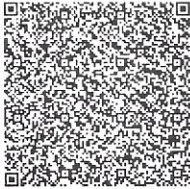
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INDIA NON JUDICIAL

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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]
INDRP CASE NO. : 1203

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : SUDARSHAN KUMAR BANSAL

COMPLAINANT
Dell Inc.

Vs.

RESPONDENT
Deepak Rana

ARBITRATION AWARD

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S. P. Bansal

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ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : SUDARSHAN KUMAR BANSAL

COMPLAINANT

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

Vs.

RESPONDENT

Deepak Rana
Apex Systems
B 13, 3rd Floor, Shankar Garden
Vikaspuri,
New Delhi-110018
INDIA

ARBITRATION AWARD

1. The Complainant is aggrieved by the Respondents registration of the domain name delllaptopservicecenterdelhi.co.in registered through the sponsoring Registrar GoDaddy.com LLC and has accordingly made this Complaint seeking the relief that the domain name delllaptopservicecenterdelhi.co.in (impugned domain name) be transferred to the Complainant with costs.
2. The Complainant has preferred this Complaint on the basis of its claimed proprietorship and ownership rights in the Trade Mark DELL and DELL formative marks, its trade name bearing the word/mark DELL as its

S.K. Bansal

essential feature as well as on the basis of its numerous domain names bearing the word/mark DELL as its essential feature.

3. The Complainant claims to be using its aforesaid Trade Mark/Trade Name DELL in relation to a wide range of its computers systems and activities related thereto including those of computer hardware, software, peripherals, and computed related products and services in the global markets since 1984 and in India since the year 1993.

4. The Complainant claims its various DELL and DELL formative Trade Marks to be registered in numerous countries of the world including in India. In addition to its rights conferred by Trade Mark registrations under the Trade Marks Act, 1999 the Complainant claims to have acquired a valuable trade, goodwill and reputation under its said Trade Mark/Trade Name/Domain Name DELL being used by it in relation to its goods and business. Consequently the Complainant claims to have common law rights in its said Trade Mark/Trade Name/Domain Name DELL.

5. According to the Complainant its said Trade Mark/Trade Name/Domain Name DELL in relation to its said goods and business has been and is being well used, well advertised, is well known, is well established and extremely visible in the market and trade. The Complainant claims itself to be a leading provider of computer systems around the world and doing business with 98% of Fortune 500 Corporations and selling more than 1,00,000 Computer systems to customers in 180 countries including in India.

6. According to the Complainant its said Trade Mark/Trade Name/Domain Name DELL enjoys a very high level of distinctiveness duly identifying its said goods and services in relation to which it is being used as that of the Complainant and from the Complainant's source and origin.

J. K. Banerjee

The claimant claims to have been using its said Trade Mark/Trade Name/Domain Name DELL in the physical market in relation to its goods as also in the cyber/internet market.

7. The Complainant claims that its rights in the said Trade Mark/Trade Name/Domain Name DELL to have been judicially recognized with it by various Arbitral Tribunals.

8. In support of its rights and use the Complainant has made numerous pleadings and filed numerous documents which would be dealt with in so far as they are relevant, in the course of this award.

9. According to the Complainant, the Respondent's impugned domain name delllaptopservicecenterdelhi.co.in is identical with and deceptively similar to the Complainant's said Trade Mark/Trade Name/Domain Name DELL, being a pirate thereof and is in violation of the Complainant's rights therein. The adoption of the impugned Domain Name is malafide and the same is allegedly being used by Respondent for making illegal gains to trade upon the Complainant's goodwill and reputation attached to the Complainant's said Trade Mark/Trade Name/Domain Name DELL resulting in consumer deception and violation and dilution of the Complainant's rights. The Respondent's impugned Domain Name and its alleged adoption, use and registration with the sponsoring Registrar is without the leave and license of the Complainant.

10. According to the Complainant the impugned domain name is being intentionally used by the Respondent to attract internet user seeking the Complainant's products and services to its (Respondent's) website.

V. P. Bawa

11. The Complainant claims the Respondent to have no rights or legitimate interest in the impugned domain name and the impugned domain name to be registered and/or used in bad faith.
12. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 11th February, 2020.
13. Thereafter, I issued a notice to the Respondent vide emails dated 12th February, 2020 and 13th February, 2020 with a copy of the Complaint wherein the Respondent was also notified of me being appointed as an Arbitrator and wherein the Respondent was given an opportunity to submit his written response to the Complaint stating its reply and defense together with documents supporting its position within ten days thereof. The Respondent never replied to the said notice and nor submitted its response and documents within the stipulated time. In the interest of justice another opportunity of ten (10) days to file the response with documents was given to the Respondent vide my notice dated 26th February, 2020, with copy to the authorized representatives of the Complainant, wherein it was stated that in the event of the Respondent not so filing, the Complaint would be decided on the basis of the material on record filed by the Complainant.
14. The Respondent issued a response vide its E-mail dated 26th February, 2020 wherein he stated as under:-

J.K. Bann

"We are not much aware about domains, vendor persons booked for us this domain. If any discrepancy you may take back these domains not required"

15. Consequently I now proceed to adjudicate this Complaint on the basis of the pleadings and materials on record.

16. The trademark DELL and DELL formative trademarks are duly registered in India in the name of the Complainant under the Trade Marks Act, 1999 (the Act for short). Some such registrations are as under:-

| S.No. | Registration No. | Class | Representation | Date of application |
|-------|------------------|-------|----------------|---------------------|
| 1 | 575115 | 09 | DELL | 15.06.1992 |
| 2 | 826095 | 09 | www.dell.com | 05.11.1998 |
| 3 | 923915 | 09 | DELL | 10.05.2000 |
| 4 | 1190375 | 02 | DELL | 07.02.2003 |
| 5 | 1190376 | 09 | DELL | 07.04.2003 |
| 6 | 1239349 | 42 | DELL | 24.09.2003 |
| 7 | 1239350 | 37 | DELL | 24.09.2003 |
| 8. | 1335057 | 05 | DELL | 28.01.2005 |

17. The goods/services covered by some such registrations are as under:-

| Trade Mark No. | Goods/Services |
|----------------|--|
| 1239349 | Technical support service namely, troubleshooting of computer hardware and software problems, consulting services in the field of design, selection implementation and use of computer hardware and software systems |

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| | |
|---------|--|
| | for others, falling in class 42. |
| 1239350 | Maintenance and repair of computer hardware installation of computer networks installation of computer systems all being service falling in class 37. |
| 826095 | Computers and computer peripheral devices and parts and fitting therefor, monitors, keyboards printers, mouses, co-processors, modems, hard and floppy disk drives, tape drives, cd-rom drives, data storage devices, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, operating software and instruction manuals all sold together. |

18. The Complainant has placed on record copies of the Registration Certificates and/or the Certificate for Use in Legal Proceedings/ Online status obtained from the e-records of the Trade Mark Registry in respect of the aforementioned registrations as part of **Annexure-2 (colly)**. Consequently the aforesaid Indian trademark registrations stand established.

19. The goods/services covered by these registrations as noticed above cover the nature of the Complainant's goods and business which include Computers, Computer accessories and computer related products and services.

20. These Indian Trade Mark registrations confer valuable rights in the registered Trade Marks upon the Registrant viz Complainant in this case. These registrations have a presumptive validity attached to them as also they are a presumptive evidence of title in favor of the Registrant **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. & Anr. reported in AIR 1986 SC 137; National Bell Co. Vs. Metal Goods**

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Mfg. Co (P) Ltd. & Anr. reported in AIR 1971 SC 898; Section 2(i) (v), 28 and 29 of the Act].

21. The Complainant has placed on record as **Annexure-I** a news report downloaded from the website <http://techcrunch.com/2016/09/07/67-billion-del...> highlighting the Complainant's acquisition of EMC Corporation for around US\$ 67 Billion. This news report is dated 9th June, 2016. This report establishes the Complainant's visibility and presence in the commercial markets as well as on the internet which has a worldwide reach and access. The Complainant has filed on record as **Annexure-10** screen shots/prints obtained from its website www.dell.com evidencing its authorized service centers in India. These screen shots also display the various services being offered by the Complainant and also convey information on the activities of the Complainant. The aforesaid web-links/websites have worldwide reach and access including in India. As such the market and trade can be presumed to be well aware of the Complainant and its commercial activity in relation to its computers, computer accessories and computer related products and services under its Trade Mark/Trade Name/Domain Name DELL.

22. In my considered view the word/mark DELL is a highly arbitrary and fanciful trade mark in relation to the goods/services of the Complainant viz. computers, computer accessories and computer related products and services as the word/mark DELL has no descriptive, suggestive or generic connotation with these products and as such is an inherently strong trade mark and which can be protected and enforced even without evidence of acquired secondary significance. [See McCarthy on Trademarks and Unfair Competition, 3rd Edition, Vol.1, Chapter 11, Para 11.04].

23. As per the search results obtained from the Whois database of the .IN Registry pertaining to the impugned domain name and filed on record as

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part of **Annexure-4 & 5** the rival domain has been registered with the sponsoring Registrar GoDaddy.com LLC with creation date of 21st May, 2015 and another same domain with same sponsoring Registrar dated 14th July, 2017. These dates of creations of the impugned domain is much subsequent to the Complainant's trademark registration under No.575115 in class 09 which is dated 15th June, 1992.

24. In my considered view there is a complete identity- phonetic, visual, structural and conceptual between the Complainant's Trade Mark/Trade Name/Domain Name DELL and the impugned domain name delllaptopservicecenterdelhi.co.in of the Respondent. The impugned domain name bears the word/mark DELL as its essential and memorable feature. It is with respect to the word/mark DELL that the impugned domain name would be remembered and with reference to which the internet user(s) would access the internet services being offered by the Respondent. It is with reference to the word/mark DELL that an average consumer exercising average caution would remember the Complainant or the Respondent or would do business with them. The suffix "laptopservicecenterdelhi" to the word/mark DELL is a mere generic expression and does not out-weigh the effect of the word/mark DELL which despite the same stands out prominently. The said suffix at the most gives an impression that the "Service Centre" is that of DELL or related to DELL or that the nature of goods and services being offered are of DELL. The aforesaid suffix only enhances the effect of the word/mark DELL as signifying that the service centre is of DELL. By itself, the said suffix serves no trademark function. DELL as noted above is the Trade Mark/Trade Name/Domain Name of the Complainant and in which the Complainant has undisputed proprietary rights. [K.R. Chinna Krishna Chettiar Vs. Sri Ambal and Co and Anr. AIR 1970 SC 146 ; Ruston & Hornby Ltd., Vs. Zamindara Engineering Co., 1970 (2) SCR 222 ; (B.K. Engineering Company v/s U.B.H.I. Enterprises (Regd). Reported in AIR 1985 Delhi

J. V. D. [Signature]

210 (DB) ; Kirorimal Kashiram Marketing & Agencies Pvt. Ltd., Vs. Shree Sita Chawal Udyog Mill Tolly Vill 2010 (44) PTC 293 (Del.) (DB).

25. From a perusal of the screen shots/screen prints obtained from the Respondent's website accessible from the impugned domain and filed on record as **Annexure-6, 7, 8 & 9** of the Complaint the following are clearly apparent :-

- (a) The Respondent represents itself as a Dell's service center;
- (b) The Respondent's impugned website prominently displays the trademark DELL at several places.
- (c) Some such write-up on the Respondent's website accessible under the impugned domain are as under:-
 - *"Encountering uncertain issues and irritating issues with dell Laptop? Dell Laptop Fix Solution required? Our Support has a specialist gathering to deal with your tablet issues. Dell constructs their portable workstation so totally that any non encounter client may affect tablets condition. In any case, we have gifted masters to deal with your Laptop."*
 - *"Dell Service Support offers drivers, technical support and other resources online. Dell Service support is customized to meet your needs. Dell Service Specialists With vast practical experience in motherboard repair, fan replacement, LCD screen repair, Power DC jack connectors, keyboards, Touch Pads, Display hinges and bezels, RAM, Hard Drive and Processor upgrades."*

J. V. Bhandari

- *"We are the best Dell Laptop Repair in India."*
- *"We are the predefined choice for dell Laptop Repair in Noida for all your dell contraptions"*

(d) The impugned website provides costs for the various parts and accessories of the Complainant's products. For example as under:-

| Product Name | Price |
|---------------------------------------|-------------------------|
| dell Laptop Led/Lcd Screen | Price : 2500 To 4200 RS |
| dell Laptop Screen Panel (Top Covers) | Price : 1800 To 2900 RS |
| dell Laptop Keyboard | Price : 1000 To 1600 RS |

26. From the Respondent's impugned website and its contents it is apparent that the Respondent is offering thereon a wide range of services pertaining to computers and laptops including support and technical services in relation thereto. These services are of the same/similar nature to the goods and business of the Complainant viz computers, computer accessories and computer related products and services. Not only that the write-ups on the Respondent's website and as noticed above have been portrayed in a manner to show an association with the Complainant. Clearly a trade connection exists between the goods/services of the Complainant and those of the Respondent **[Corn Products Refining Co. Vs Shangrila Food Products Ltd., AIR 1960 SC 142].**

27. Having regard to the complete similarity/identity between the Complainant's Trade Mark/Trade Name/Domain Name DELL and the impugned domain name delllaptopservicecenterdelhi.co.in of the Respondent, and the nature of the rival and competing goods/services an

J. K. Datta

average consumer with imperfect memory would be led into believing that some nexus association or connection exists between the Complainant and the Respondent or of the impugned domain name to be in fact of the Complainant or sponsored, licensed or affiliated with the Complainant or an extension of the Complainant's business, while in fact it is not so. This would invariably give rise to consumer deception. [Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 PTC (16) 142 Del (DB) ; (McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03).

28. In my considered opinion the very adoption of the rival and disputed domain name at inception is tainted, is in bad faith and actuated by malafide and fraud and that the Respondent averment in its reply dated 26th February, 2020 to the effect that he is not aware of domains and a vendor person booked for him the impugned domain lacks credibility, does not inspire confidence and instead is a sham and cover up. There is no element of good faith, good intention or honesty involved and that the Respondent has no legitimate rights or interests in the impugned domain. This is apparent from the facts and circumstances noted above including from the following clearly apparent from the record :-

- (a) The Respondent was well aware of the Complainant and the Complainant's prior and senior DELL trademark, trade name and domain and the rights and goodwill attached thereto at the time of its impugned adoption and use of the impugned domain. This is apparent from the contents of the Respondent's website (screen shots as per **Annexure 6, 7, 8 & 9**) itself activated from the impugned domain whereon the Respondent itself has represented himself of offering services in relation to the Complainant's products.

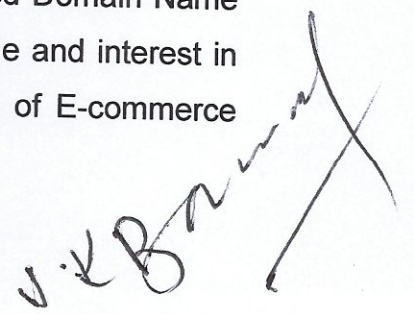
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- (b) The Respondent in addition to the impugned domain has also obtained other domains like delllaptopsevicecentergurugram.in, delllaptopservicesurat.in and apparent from the documents placed on record as part of the **Annexure-5** of the Complaint. These registrations have been made in the year 2017 and 2019 and have been regularly updated.
- (c) The screen shots/prints obtained from the Respondent's website being part of **Annexure-6 to 9** reveal the Respondent to be extremely active on the internet under the impugned domain and whereunder it is offering wide range of services like onsite support, door step supports, addressing and fixing laptop issues and the Respondent also claims therein to operate from a number of premises in Delhi with support centers in over 80 towns in Delhi as also claims to have offices in Gurugram and Noida. The Respondent is even offering discounts to students on its website and even boasts of his reputation and well established business pertaining to the DELL products. This is apparent from the following write-ups prominently displayed and highlighted -
- We are the best dell Laptop Repair in India.
 - We are the predefined choice for dell Laptop Repair in Noida for all your dell contraptions.
- (d) It is impossible to believe that the Respondent who has been so active on the internet and has repeatedly updated his details pertaining to his various domains could have been so ignorant about domains or would have permitted any vendor

J. K. Bann

to so have booked or obtained the same for and on his behalf. Registrations of the domains, designing, maintenance and use of websites entail time, money, skill and effort on a continuous basis and they cannot be as a matter of chance or borne out of ignorance. The Respondent is using the impugned domain viz website triggered thereby in the course of trade and to make business and profits for himself. The Respondent is guilty of cyber piracy which has been defined as "the act of registering a well known name or mark" (or one that is confusingly similar) as a website's domain name, usually for the purpose of deriving revenue" [See The BLACKS LAW DICTIONARY 444 (9th ed. 2009)].

- (e) The Respondent has not furnished any explanation or reason on its adoption of an identical prior Trade Mark/Trade Name/Domain Name DELL of the Complainant.
- (f) The Trade Mark/Trade Name/Domain Name DELL is an extremely, arbitrary, fanciful, trademark in relation to the nature of the goods/services being offered by the Complainant there under. The said Trade Mark/Trade Name/Domain Name is consequently a highly strong and inherently distinctive trademark.
- (g) The Respondent was well aware of or ought to have been aware of or could have become aware of the Complainant's said Trade Mark/Trade Name/Domain Name. The Respondent who has registered the impugned Domain Name must be an internet user or having knowledge and interest in the internet and awareness of the concepts of E-commerce

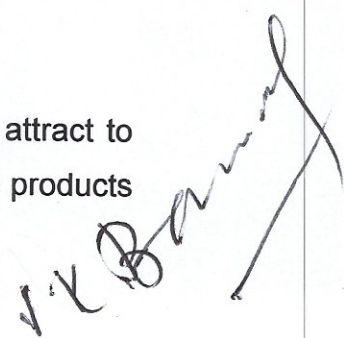
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and online markets actuated through the internet medium triggered through domain names.

- (h) The word/mark DELL is neither a dictionary word and nor forms part of the ordinary language usage in India. The word/mark DELL has no connection or association with characteristics or attributes of the goods/services related to the computers, computer accessories and computer related products and services. The adoption of the impugned domain name could not have been made randomly or by mere chance. The Respondent never even cared to file a response to the present Complaint.
- (i) Obviously the motive of the Respondent is to derive benefit from the Complainant's trademark, trade name, domain name DELL and the Complainant's well established business thereunder or why else would the Respondent so adopt and use the impugned domain and invest time, money, efforts and skills thereon. The Respondent's impugned conduct speaks for itself (*res ipsa loquitur*) and falls short of the standards of acceptable commercial behavior.

29. The Respondent has not contested the Complainant's aforesaid rights and use including the Complainant's claim of its said Trade Mark/Trade Name/Domain Name DELL to be well known, enjoying noticeable distinctiveness goodwill and reputation and presence and visibility in the commercial market and to be in extensive well use world over including in India.

30. The Respondent, is using the impugned domain name to attract to himself (the Respondent) internet users who are searching for the products

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and services being dealt in by the Complainant and offering to such internet users/customers' products and services of the Complainant.

31. The Complainant would have no control over the Respondent or over the standard or quality of the goods/services being offered by it under the impugned domain name. Any inferior services offered by the Respondent would invariably adversely affect the Complainant's business under the said word/mark DELL. Not only that any internet user who may erroneously access the Respondent while intending to access the Complainant can be misled to the Respondent which would invariably cause business and clientele loss to the Complainant. All these activities would invariably and irreparably tarnish the goodwill, reputation and standing of the Complainant and its business; diminish the capacity of the Complainant's said Trade Mark/Trade Name/Domain Name DELL to identify and distinguish the Complainant's goods/services and would considerably dilute, eclipse and tarnish the strength and value of the Complainant's said Trade Mark/Trade Name/Domain Name. Not only that even the consumers would suffer as they would not get what they expected and instead would be deceived. Consumer deception and loss and injury being caused to the Complainant as well as to the consuming public is inevitable.

32. Even a close similarity of the domain names can lead to the presumption of association between the two competing entities by the public and qualifies as deception or why else would the Respondent choose such a deceptively similar domain name **[Marks & Spencer Vs. One-In-A Million reported in 1998 FSR 265]**.

33. A right in the Trade Mark/Trade Name/Domain Name can be violated even by the use of the Trade Mark/Trade Name/Domain Name as a part of a rival domain name and that a probability/likelihood of consumer deception is the test and not actual consumer deception. **[See Ruston (Supra) :**

J. V. Bandy

Laxmikant V. Patel Vs. Chetanbhat Shah and Another AIR 2002 SC 275].

34. A right in the Trade Mark and especially in the registered Trade Mark has to be protected even if it is being used as a material part of a rival domain name. **[See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & Anr.-2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited Vs. Manu Kosuri & Anr.- 2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee & Ors.- 2003 (26) PTC 60 (Del)].**

35. The Courts have repeatedly held that the basic principles of Trade Mark law as also the laws of passing off to apply to disputes in respect of internet domain names **[See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)]** as also an infringement of registered trade marks to be caused by the rival un authorized use thereof in a rival domain name. **[See Lt Foods Limited (Supra)].**

36. In my considered view the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its Trade Mark/Trade Name/Domain Name DELL. The wrongs of the Respondents are also apparent from the fact that it has not traversed nor challenged the Complaint facts against him. Such a non-traverse has to be taken against the Respondent **(Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740).**

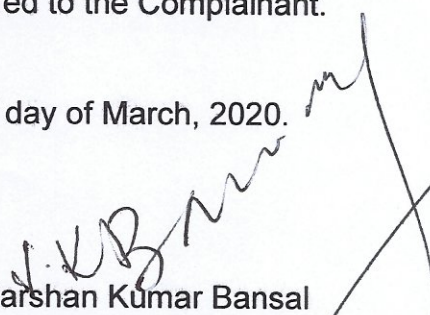
37. Trade Marks/trade name/domain names have been accepted to be valuable business assets to be protected against their wrongful use even as part of a rival domain name and such violations have to be removed in the interest of the right holder as also of the consumers.

J. V. Bannu

38. In the aforesaid view of the matter I am of the confirmed view that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name delllaptopservicecenterdelhi.co.in be transferred to the Complainant.

Signed at New Delhi, India on this 21st day of March, 2020.


Sudarshan Kumar Bansal
Sole Arbitrator