



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

₹100

e-Stamp

Certificate No. : IN-DL59841576780887W
 Certificate Issued Date : 18-Mar-2024 10:52 AM
 Account Reference : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
 Unique Doc. Reference : SUBIN-DL DL-SELF79635486223192W
 Purchased by : PRABODHA AGRAWAL
 Description of Document : Article 12 Award
 Property Description : INDRP CASE NO. 1829 - ARBITRATION AWARD
 Consideration Price (Rs.) : 0
 (Zero)
 First Party : PRABODHA KUMAR AGRAWAL
 Second Party : NOT APPLICABLE
 Stamp Duty Paid By : PRABODHA KUMAR AGRAWAL
 Stamp Duty Amount(Rs.) : 100
 (One Hundred only)

₹100 ₹100 ₹100 ₹100



₹100

SELF PRINTED CERTIFICATE TO BE VERIFIED BY THE RECIPIENT AT WWW.SHCIILESTAMP.COM

IN-DL59841576780887W

Please write or type below this line

NATIONAL INTERNET EXCHANGE OF INDIA
9th Floor, B-Wing, Statesman House
148, Barakhamba Road,
New Delhi – 110 001 India

Dell Inc., USA vs JAGDEV Kumar, Delhi, India
INDRP Case no. 1829
Arbitrator: Mr. P.K.Agrawal

ly 1 | Page

Statutory Alert:

- The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid
- The onus of checking the legitimacy is on the users of the certificate
- In case of any discrepancy please inform the Competent Authority

18-Mar-2024 10:52 AM IN-DL59841576780887W SUBIN-DL DL-SELF79635486223192W PRABODHA KUMAR AGRAWAL

PRABODHA KUMAR AGRAWAL IN-DL59841576780887W SUBIN-DL DL-SELF79635486223192W PRABODHA KUMAR AGRAWAL

AWARD

1. The Parties

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

The Respondent is JAGDEV Kumar, new delhi 83, Delhi-110067, India.

2. The Domain Name and Registrar

The disputed domain name is <dellwaretechnologies.in>. The said domain name is registered with the Registrar – Hostinger, UAB (IANA ID: 1636). The details of registration of the disputed domain name (as per WHOIS details relevant to the Complaint) are as follows:

- a. Domain ROID: D5049CABEB69248449B86D37C1A8A7350-IN
- b. Date of creation: Sept 22, 2023.
- c. Expiry date: Sept 22, 2024.

3. Procedural History

- (a) A Complaint dated 16.02.2024 by the Complainant has been filed with the National Internet Exchange of India (NIXI). The Complainant has made the registrar verification in connection with the domain name at issue. The print outs confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the “Policy”) and the Rules framed thereunder.
- (b) The Exchange appointed the undersigned Mr. P.K.Agrawal, Former Addl. Director General in the Government of India, as the sole Arbitrator in this matter. The Arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (c) In accordance with the Policy and the Rules, the copies of complaint with annexures were sent by the National Internet Exchange of India on 7.03.2024 by email. The Arbitrator served the Notice under Rule 5(C) of



INDRP Rules of procedure along-with copies of complaint and annexures to the parties through email on 7.03.2024. The Complainant was advised to serve copies of the domain complaint along with complete set of documents in soft copies as well as in physical via courier or post to the Respondent Registrant at the address provided in the WHOIS details of the domain. The Respondent was given 14 days' time by the Arbitrator through Notice dated 7.03.2024 for reply. The Notice email was served upon the Respondent email id given in WHOIS details, which was delivered. The Complainant confirmed on 14.3.2024 through email that the complaint with annexures was communicated to the Respondent through email. The Complainant has pointed out through email dated 14.3.2024 that Respondent's address mentioned in the Whois record, as shared by the good office of NIXI, is incomplete. As the address is incomplete, the Complainant will not be in a position to serve the physical copy of the complaint to the Respondent through courier or post. The Respondent was advised through email dated 15.3.2024 to respond to the above submission or submit his updated address with necessary documents. If nothing is heard from him on this issue, it will be presumed that the Complaint & its annexures have been duly served upon the Respondent. Further proceedings will follow as per law. The Respondent has not responded to the Notice. In view of the aforesaid, the Complaint and its annexures may be regarded to have been served to the Respondents as per Arbitration and Conciliation Act, 1996 and INDRP rules. Since the Respondent has not responded and presented any grounds in his defence, the present proceedings have to be conducted *ex parte* as per the Arbitration and Conciliation Act, 1996 and the .IN Domain Name Dispute Resolution Policy and the Rules of Procedures framed there under.

4. Factual Background

The Complainant in this arbitration proceedings is Dell Inc., One Dell Way, Round Rock, Texas 78682, USA. Dell Inc. is a company incorporated in the year 1984 and existing under the laws of Delaware, United States of America. The Complainant is the world's largest direct seller of computer systems under the trademark "DELL". 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, to name a few.

According to the Complainant, 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 that caters to more than 5.4 million customers every day.

Further, the Complainant has been using the mark 'DELL' for several decades now and is also the registered proprietor of the said trademark in various countries, including India. The details of some of the registrations for 'DELL' and 'DELL' formative marks in India, are as follows:

| <u>Trade Mark</u> | <u>Registration No.</u> | <u>Registration Date</u> | <u>Class</u> | <u>Status</u> |
|---|-------------------------|--------------------------|--|---------------|
| 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 | 41 | Registered |
| DELL TECHNOLOGIES | 3597886 | October 06, 2016 | 2, 9, 36, 37, 39, 40, 41, 42, | Registered |

The aforesaid registrations have been renewed from time to time and are valid and subsisting.

According to the Complainant, the products of the Complainant are widely available in India since 1993. The said products are marketed in India by the Indian subsidiaries of the Complainant. The Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. Complainant's products are

sold through a wide network of 'DELL' exclusive stores and at other stores in and around 200 cities in India. By virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.

Respondent's Identity and Activities

The identity and activities of the Respondent are not known. The Respondent has neither responded to the Notices served upon him nor submitted any reply to the complaint.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the Policy are applicable to this dispute.

In relation to **element (i)**, the Complainant submits that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant argues that:

- a. The Impugned Domain hosts a website ("**Impugned Website**"), wherein the Respondent offers services Printed Circuit Board (PCB) design, Software Services, GPS Tracking System, CNC Software Solutions and API Development. In addition to the above the Respondent represents its name as DELL WARE TECHNOLOGIES.
- b. The Complainant offers, inter-alia, API services, GPS tracking, sale of software, etc. The Complainant is also the registered proprietor of 'DELL' and 'DELL' marks in classes, 9, 37 and 42 for computers, battery, adapter, computer accessories including print circuit board, computer repair and maintenance services, SAAS, PAAS and many more. Registration of 'DELL' and 'DELL' formative marks in classes, 9, 37 and 42 are in favour of the Complainant.
- c. The Respondent has adopted the identical mark, DELL of the Complainant and is blatantly using the same. Moreover, the Respondent is using the said mark for identical goods and services and duping customers by giving them an impression that the Respondent is associated with the Complainant. Furthermore, the Respondent used the word mark 'DELL' on the Impugned Website without the consent of the Complainant.
- d. The Respondent's adoption of the well-known trademark 'DELL' of the Complainant as part of the Impugned Domain for providing services for similar to the services offered by the Complainant is a violation of the Complainant's rights in and to the mark 'DELL'. Further, the very Website

of the Respondent is only accessed owing use of the trademark 'DELL' of the Complainant

Accordingly, the Complainant contends that the first condition that Respondent's domain name is identical or confusingly similar to a name, trademark, or service mark in which the Complainant has rights, as per Paragraph 4 (a) of the Policy has been satisfied.

In relation to **element (ii)**, the Complainant contends that the Respondent does not have any right or legitimate interest in <dellwaretechnologies.in>.

The Complainant submits that:

- a. The Respondent has no right to use/register the mark 'DELL' of the Complainant in any manner, as it is the sole property of the Complainant. The Complainant has statutory and common law rights on the mark 'DELL'. The adoption and use of the mark 'DELL' by the Respondent is not licensed/permitted, thus adoption and use thereof of the mark 'DELL' as part of Impugned Domain name or in any manner whatsoever, results in infringement and passing off the rights of the Complainant in and to the trademark 'DELL'. Owing this reason alone, the Respondent cannot claim to have any legitimate rights in the trademark 'DELL'.
- b. 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. 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.
- c. The Respondent has developed the Impugned Domain name 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.
- d. The Respondent is a habitual offender, therefore there is no legitimate interest in the Impugned Domain

Based on the above-mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as per Paragraph 4 (b) of the Policy.

Regarding the **element (iii)**, the Complainant contends that the Domain Name has been registered and used in bad faith for the following reasons:

- (i) 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 the DELL products of technologies. Moreover, the Impugned Domain is also similar to the corporate name of the Complainant DELL TECHNOLOGIES.

- (ii) The use of the mark 'DELL' in the Impugned Domain is without due cause and has been done to gain illegal benefit from the goodwill of the same, which has been created by the Complainant. The registration of the Impugned Domain has been done in bad faith and with dishonest intention to mislead the innocent public.
- (iii) The adoption of the trademark of the Complainant is without a license or other authority is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The use of the Impugned Domain by the Respondent is not for non-commercial purposes and would not fall under the ambit of 'fair use'. The only reason of adoption of the mark 'DELL' is to make illegal profit by duping the relevant public.
- (iv) The Respondent's Website is accessed by Complainant's mark DELL, as used in the Impugned Domain.

In view of the aforesaid, the Complainant submits that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(c) of the INDRP is satisfied.

B. Respondent

The Respondent has neither responded to the Notice nor submitted his reply.

6. Discussion and Findings

The Rules instruct this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (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's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and

- (iii) The Registrant's domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <dellwaretechnologies.in> was registered by the Respondent on Sept 22, 2023.

The Complainant is an owner of the registered trademark DELL for the last many years. The Complainant is also the owner of the similar domains as referred to in the Complaint. These domain names and the trademarks have been created by the Complainant much before the date of creation of the disputed domain name by the Respondent. In the present case the disputed domain name is <dellwaretechnologies.in>. Thus, the disputed domain name is very much similar to the name, activities and the trademark of the Complainant.

The Hon'ble Supreme Court of India has held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for DELL products would mistake the disputed domain name as of the Complainant.

In the case of *Wal Mart Stores, Inc. v. Richard MacLeod*, (WIPO Case No. D2000-0662) it has been held that "When the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" it is identical or confusingly similar for purposes of the Policy.

Therefore, I hold that the domain name <dellwaretechnologies.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) 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; or
- (ii) 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

- (iii) 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.

In Case No. INDRP/776, *Amundi v. GaoGou*, the arbitration panel found that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

There is no evidence to suggest that the Respondent has been known by the disputed domain name anywhere in the world. The name of the Registrant / Respondent is not DELL as per WHOIS details. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

Further, the Complainant has not consented, licensed, or otherwise permitted the Respondent to use its name or trademark DELL or to apply for or use the domain name incorporating said trademark. The domain name bears no relationship with the Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

As has been contended by the Complainant, the Respondent is not making a legitimate, fair or bona fide use of the said domain name for offering goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name <dellwaretechnologies.in> under INDRP Policy, Para-4(ii).

C. Registered and Used in Bad Faith

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or 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 Registrant's documented out of pocket costs directly related to the domain name; or

- (ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (iv) by using the domain name, the Registrant has intentionally attempted to attract the internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

In WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe - "Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use."

The circumstances as evident from the foregoing paragraphs lead to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

7. **Decision**

In light of the foregoing findings, namely, that the domain name is confusingly similar to the trademark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the domain name was registered in bad faith

and is being used in bad faith, it is clear beyond doubt that the Respondent has violated the provisions of Rule-3 of the Policy. Therefore, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <dellwaretechnologies.in> be transferred to the Complainant.

No order to the costs.



Prabodha K. Agrawal

Sole Arbitrator

Dated: 21st March, 2024