महाराष्ट्र MAHARASHTRA

FF 823073

अनुक्रमांक ८०९० दिनांक ३१/१/१२ रुपये १००/-

मुद्रांक कोणत्या कारणासाठी वापरावयाचा आहे डोमेन नेम अॅवार्ड

मुंबई मुद्रांक अधिनियम १९५८ चे अनुच्छेद क्र.

मुद्रांक खरेदीदाराचे संपूर्ण नाव विजय तावडी आणखी

संपूर्ण पत्ता २६४, २१ वि.वा.ह., ३०

हस्ते व्यक्तीचे संपूर्ण नांव

पत्ता ५३/१२ शुक्रवार पे., पिंपळे गुरव

मुद्रांक धारकाची/हस्ते व्यक्तीची सही

स्वाक्षरी
(सौ. उषश्री वि. वेलणकर)
मुद्रांक विक्रेता
परवाना क्र. हवेली १/३६/१९९५
परवान्याची मुदत ३१/३/२०१२
पत्ता- ४२५ ब, शनिवार पेठ, पुणे-३०.

31 JAN 2012

AWARD
IN ARBITRATION

DELL INC.
One Dell Way
Round Rock, Texas 78682-2244
USA

THE COMPLAINANT

AND

JACK SUN
Domainjet Inc.
1800 Amphitheatre Parkway
Mountain View
California 94043
U.S.A.

THE RESPONDENT /
THE REGISTRANT

JACK SUN
Domainjet Inc.
1800 Amphitheatre Parkway
Mountain View
California 94043
U.S.A.

THE RESPONDENT /
THE REGISTRANT

IN THE MATTER OF DISPUTED DOMAIN NAME: - delllatitude.in
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

DELIVERED ON THIS 7TH DAY OF FEBRUARY TWO THOUSAND TWELVE AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

01. **Names and addresses Of the Complainant**: -	**Dell Inc.** One Dell Way Round Rock, Texas 78682-2244 USA
Through its authorized representative	Pravin Anand / Divya Vijan Anand and Anand First Channel, Plot No.17A, Sector 16A, Film City, Noida. India
02. Name and address of The Respondent: -	**Jack Sun** Domainjet, Inc. 1800, Amphitheatre Parkway, Mountain View California. 94043 U.S.A.
03. Name and address of the Registrar	**Directi Internet Solutions P.Ltd.** **330, Link-way Estate** **Link Road, Mumbai. 400064**

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me	13/01/2012
02	Acceptance given by me	13/01/2012
03	Hard copy of the complaint received	19/01/2012

04	Notice of Arbitration issued	20/01/2012
04	Reminder notice sent to the Respondent	01/02/2012
05	Award passed	07/02/2012

I] PRELIMINARY: -

1) M/s Dell Inc. having its office at One Dell Way, Round Rock, Texas 78682-2244, USA (**The Complainant**) have filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name `**delllatitude.in' (the disputed domain name / domain name), through its authorised representative Pravin Anand / Divya Vijan of Anand and Anand, First Channel, Plot No.17A, Noida, India.**

2) The Complainant has disputed registration of domain name `**delllatitude.in'** in the name of **Mr. Jack Sun, Domainjet Inc., 1800 Amphitheatre Parkway, Mountain View, California 94043, U.S.A.** (**The Respondent**).

3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 20th January 2012 with the instructions to file his say latest by 31st January 2012.

02. The Respondent did not file any reply to the Complaint even within the extended period for that purpose.

03. On the principles of natural justice and final opportunity to the Registrant, the period to file say / reply was extended by this Arbitration panel suo-moto till 04/02/2012.

04. In view of no reply by the Respondent no rejoinders were called for.

05. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.

06. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT: -

The Complainant has raised, *inter-alia*, following important objections to registration of disputed domain name in the name of the Respondent and contended as follows in his Complaint: -

a) The Complainant company was founded in 1984 by Mr. Michael Dell and is one the World's largest direct seller of computer systems, computer hardware, software, peripherals, computer oriented products such as phones, tablet computers etc.

b) The Complainant began using trade mark / name Dell in 1987. Since then it has made extensive and prominent use of its trade mark / name Dell in connection with a wide range of computer related goods and services. The Complainant is famous for laptops and computers and among such series is the Dell Latitude.

c) The Complainant has spent substantial time, effort and money advertising and promoting the Dell trade mark throughout the world. This has resulted into Dell becoming famous and well known brand. It does business with 98 percent of Fortune 500 companies, apart from being itself in top 50 of Fortune 500 companies. The Complainant sells more than 10000 systems per day in 180 countries and has 43000 service team members in about 90 countries.

d) The Complainant began doing business in India in 1993. It opened its subsidiary in India which undertakes the task of specialized after sales services, marketing and distribution of customizes, high quality and technology computer systems, storage devices, computer consultancy and solutions, software promotion etc.

e) The Complainant is the owner of a domain name viz. www.dell.com, www.dell.co.in, www.dell.in etc. It also owns in India www.dell.co.in.

f) The Complainant owns several registrations for the words Dell and Latitude all over the world. Apart from registered trademarks in various other countries, the Complainant has Indian registration for Dell No.575,115, for www.dell.com No.826,095, for Dell (stylized) No. 923, 915, for Dell No.1190375, 1239350, 1239349, 1335057 and for Latitude No.624558. The Complainant has attached copies of these registrations.

g) The disputed domain name is identical to the Complainant's registered trademarks. There is a strong likelihood that a web browser in India would mistake the offending website www.delllatitude.in as the Complainant's website. On January 20, 2011 the Complainant's US based attorneys sent a Cease and Desist Notice to the Respondent in respect of domain name dellstreak.in. The Respondent refused to do so and negotiated a payment of US $ 500 as consideration for the transfer

of the said domain name. Subsequently the Complainant learnt that the Respondent had also registered domain name `delllatitutde.in.

h) On November 16, 2011 the Complainant's Attorneys wrote to the Respondent calling upon him to transfer the aforesaid domain name to the Complainant failing which legal proceedings would be initiated against him. However instead of transferring the domain name the Respondent reverted seeking clarification about the amount of consideration that he would receive in exchange of the proposed transfer.

i) Dell is not only is a trademark but also forms and integral part of various other trademarks owned by the Complainant, known as Dell formative marks including DELLPRECISION, DELLVENUE, DELLWARE, DELLZONE, DELLNET, DELLHOST etc. That the disputed domain name is identical to its trademarks `DELL', `LATITUDE' and corporate name.

j) Numerous arbitration panels have either recognised the fame of the trademark/ name DELL or its vary distinctiveness which include Dell Inc. Vs SZK.com, Dell Inc. Vs William Stenzel, Dell Incvs Innervision Web Solutions C/o Domain Registrar, Dell Inc. Vs Radvar Computers LLC, Dell Inc. Vs Pateh Mbowe, Dell Inc. aka Dell Computer Corporation Vs Asia Ventures Inc. etc.

k) The Complainant presently owns over 5000 domain names a majority of which contain the trade mark Dell.

l) The Respondent has registered domain name delllatitude.in for misappropriating illegally and without authority the trademarks Dell and Latitude which are the exclusive property of the Complainant. It has very strong likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its other domain names associated.

m) The disputed domain name has been put up for sale immediately after registration on Domain for Sale' page parked at 4.cn a known market place for buying and selling domain names.

n) The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -

1. The Respondent's domain name is fully identical and confusingly similar to the Complainant's domain names www.dellinspiron.in and www.dellinspiron.com.

2. The Registrant has no rights or legitimate interests in the disputed domain name.

3. The Respondent has registered the domain name for and is being used in bad faith. He has acquired the subject domain purely to make illegal profit there from.

4. The Respondent does not use the domain name for his business purpose, for offering bona fide goods, services etc.

5. The Respondent does not use nor has provided a bona fide offering of goods or services or legitimate use of the domain names.

6. The Respondent has registered domain name merely to profit on worldwide recognition and goodwill of the Complainant by selling the same for unlawful consideration.

7. Paragraph 6 of INDRP provides that circumstances indicating that the Registrant has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to the Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the domain name, are deemed to be in evidence that the Registrant has registered and used domain name in bad faith.

8. On the basis of the Complaint and supporting documents, the Complainant has requested for transfer of disputed domain name in his favour with costs.

IV] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent / Registrant has ***NOT*** filed any say / reply, even within the extended period.

V] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the	**Yes**

	Complainant has rights?	
02	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	**Yes**
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	**No**
04	Whether the Registrant has commonly been known by the domain name?	**No**
05	Whether the Registrant has any legitimate interests in the disputed domain name?	**No**
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	**Yes**
07	Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?	**Yes**
08	Has the Registrant 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?	**Yes**
09	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	**Yes**

VIII] **BASIS OF FINDINGS: -**

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

   The word `dell' is an integral / prominent component of subject domain name and also is an integral / prominent component of the Indian registered Trademark of the Complainant which was registered vide No.805105 dated 8th June 1998, No.624558 dated 07/04/1994 and No.2116406 dated 16/03/2011 among other registered trademarks, world over.

   Against this the Respondent has no registered trade mark or service mark consisting of the word `dell'.

   Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

   Yes. Already discussed in issue (A) above.
   Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

   The Registrant has not filed any say or reply to the complaint and hence it is presumed that he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

   Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

   The name of the Registrant, as available in the records is Jack Sun. As such he is not commonly been known by the domain name `dell' or `latitude'.

   Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

   The Registrant has no registered trademark or service mark which includes the words `dell'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name for bona fide business activities. On the contrary he has offered it for sell to the Complainant for 500 US $. He has made similar suggestion in his reply to the Complainant's lawyers. He has put up the domain name FOR SALE and therefore obviously his intention is to make money by selling the disputed domain name to the Complainant for valuable consideration not matching with documented costs of registration. He has not shown any other nexus of his business with the domain name.

   Similarly the Complainant has cited with documentary proof that the same Respondent was involved in registering and selling another domain name `dellstreak.in' to the Complainant itself, for US $500. The list of domain names which pertain to the Complainant and registered by the Respondent in his name is also furnished by the Complainant, which involves about 9 such domain names.

   The Complainant has also furnished copies of arbitration awards in the matter of following disputed domain names, wherein the present Respondent was a party and all the awards have gone against him: -

   1. www.manulife.in
   2. www.danonino.co.in

3. www.lazard.in
4. www.lazard.co.in
5. www.argiletz.co.in (decided by this panel only)

The present Complainant has also informed me that it has filed simultaneously with this complaint, many other complaints in respect of domain names registered by the present Respondent.

From all above discussion it is beyond doubt that the Respondent is habitual cyber-squatter and it appears to be his main business of registering and selling domain names wherein he does not have any legitimate interests.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The Registrant is yet to commence use of domain name. The site is for sale and relevant ad is posted by the Respondent. There are links to other sites which are not related to the business of the Complainant. The sole object of registering the site appears to gain out of Pay Per Click (PPC) kind business till the party having legitimate interests either buys it from the Respondent or it files the complaint with appropriate forum and the domain name is transferred to the Complainant. The Complainant has not authorised the registration or use of the disputed domain name to the Respondent.

Therefore my finding on this issue is affirmative.

7. Are there circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring it to the Complainant or his competitor for valuable consideration?

Yes. The Registrant has offered to sell the domain name to the Complainant and enquired with its lawyers for the amount of consideration that the Complainant would be willing to pay for the same.

Therefore my finding on this issue is affirmative.

8. Has the Registrant 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?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has cited various cases in confirmation of the fact that the Registrant / Respondent is a habitual cyber squatter.

Therefore my finding on this issue is in affirmative.

9. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

   The registered domain name will definitely create confusion in the minds of internet users about its nexus with the Complainant due to exact reproduction of the registered trademark in its entirety in the domain name.

   Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion I have reached the conclusion that: -

a. The Respondent does not have any registered trade mark / service mark in his name containing the words 'dell' or 'latitude' and hence does not have any legitimate interest in the same.
b. The Registrant has not been commonly known by the disputed domain name.
c. The Registrant is not making fair use of the disputed domain name for his bona fide business purposes.
d. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.
e. On the contrary he has offered to sell the disputed domain to the Complainant. The Complainant has also cited examples establishing that the Registrant / Respondent is habitual cyber-squatter and registers various domain names for the purpose of making money illegally.

From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of either gaining unlawfully or of selling the same to the Complainant or to his competitors for monetary benefits.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – www.delllatitude.in and hence the same be transferred to the Complainant immediately.

02. The Respondent shall pay actual cost of registration and transfer of domain name to the Complainant and fine of Rs.50000/-

Dated: - 07.02.2012
Place: - Pune

(S.C.INAMDAR)
SOLE ARBITRATOR