

हरियाणा HARYANA

R 890418

RACHNA BAKHRU

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

**Dell Inc.**

One Dell Way,  
Round Rock, Texas 78682-2244  
USA

.....Complainant

Mani, Soniya  
Mathaakaavadanur,  
Dharmapuri, Coimbatore,  
Tamil Nadu 635301

.....Respondent

Disputed Domain Name: [www.delllaptopstore.in](http://www.delllaptopstore.in)

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is Dell Inc. of One Dell Way, Round Rock, Texas 78682-2244, United States of America. The Complainant is represented by its authorized representatives Safir Anand, Madhu Rewari of Anand and Anand, First Channel, Plot no. 17-A, Sector 16-A. Film City, Noida.

The Respondent in this arbitration proceeding is Mani, Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu – 635301 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name [www.delllaptopstore.in](http://www.delllaptopstore.in). The Registrar is Good Domain Registry Private Limited of 34-A, Main Road, Kennedy Square, Perambur, Chennai, Tamil Nadu 600 011

The Registrant is Mani, Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu – 635301

### **3) Procedural History:**

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

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Rachna Bakhru as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.



The complaint was produced before the Arbitrator on January 22, 2016 and the notice was issued to the Respondent on January 25, 2016 at his email address with a deadline of 10 days to submit his reply to the arbitration. The Respondent did not submit any response.

On February 5, 2016 the Arbitrator granted further opportunity to the Respondent to submit its response on or before February 15, 2016. However, no response was submitted by the Respondent within the stipulated time of thereafter. There was no delivery failure message received from the Respondent's email address. In the circumstances the complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The Complainant in support of its case has made the following submissions:**

- a) The Complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer system. Since its beginning, the complainant has diversified and expanded its activities which presently include but are not limited to computer hardware, software, peripherals, computer-oriented products such as phones, tablet computers etc., and computer-related consulting, installation, maintenance, leasing, warranty and technical support services. The Complainant's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses.
- 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 goods and services, including offering its goods and services online through numerous DELL domain names.
- c) The Complainant further submits that they are world leader in computer accessories, and other computer-related products and services. Over the years, Dell has invested heavily in marketing under its marks, devoting hundreds of millions of dollars to advertising and promoting its products and services through many media in many countries. Dell has used television, radio, magazines, newspapers, and the internet as marketing media. Dell has been, and continues to be, extremely successful. Dell sells its products and services in over 180 countries. Dell's marketing and sales success, Dell and its marks have become famous in



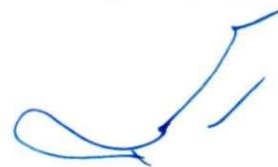
United States and many other countries, including India. Further, Dell was recently named by Adweek as #15 of the "Most Loved Companies" in the world.

- d) The Complainant has used the famous mark Dell, as well as various other marks that include the word Dell (the "Dell Marks"), for many years for laptops, desktops, computer parts and accessories, computer services and support, and other computer-related products and services. Further, Dell has long used the marks INSPIRON, LATITUDE, PROSUPPORT, VOSTRO, and XPS in connection with its products.
- e) The Complainant has also launched phones available in various models which are sold under different series/sub-brands such as DELL VENUE series and the DELL STREAK series. Amongst its many services and facilities, the complainant also provides cloud computing services with its DELL CLOUD COMPUTING SOLUTIONS wherein the customers are provided with cloud servers with data storage facilities.
- f) With specific reference to India, the Complainant has more than 22 percent of the market and Dell is the no. 2 PC maker in India. In fact, Dell has been one of the leaders in India PC market for several years.
- g) The Complainant further stated that it has began doing business in India in 1993. The complainant has a highly successful presence in India in respect of its trade mark and trade name Dell not only on account of the extensive use of Dell products in the country initially by way of imports but also subsequently through extensive after-sales service outlets and direct sales of its products through its Indian subsidiary which was incorporated in June 2000 and through its DELL DIRECT stores which were launched in 2002 as an hands-on complement.
- h) The opening of the Complainant's subsidiary in India which undertakes the task of specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, computer consultancy and solutions, and software promotion has expanded the complainant's presence even more, by allowing it to offer these services directly to customers from its location in India.
- i) The complainant also maintains several pages on the social media platforms such as Twitter, Youtube, LinkedIn, Google+. All the social media platforms spread huge awareness and assist in consumers associating the trademark "Dell" with the complainant only. Even a search conducted on the Google search engine gives about 1,14,00,00,000 results, wherein most of the results relate to the trademark "Dell" being associated with the Complainant.
- j) The Complainant has spent substantial time, effort and money advertising and promoting the "DELL" trade mark and the Dell formative marks throughout the



world. As a result, the "DELL" trade mark has become famous and well-known, and the Complainant has developed enormous goodwill in the mark and widespread consumer recognition from the very beginning.

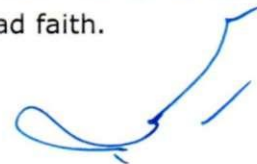
- k) The trade mark "Dell" is a well-known trade mark around the world and is exclusively identified and recognized by the public as relating to the goods and services of the Complainant and no one else. The trade mark "Dell" and "Dell" formative marks have become distinctive and famous trademarks throughout the world as a symbol of high quality standards that the Complainant maintains for its products and related services.
- l) The Complainant has a huge internet presence and numerous websites that provide information on their business activities, products and services and are accessed by shareholders, customers and other Internet users. The Complainant generates almost half of its revenue from sales over the internet. Further, the Complainant has registered numerous domain names which comprise of the Complainant's famous Dell mark in conjunction with the trade marks/brand name associated with the line of the product and services, e.g. delldirect.in, dellinspiron.in, delldirect.com, delllatitude.com, dellprecision, dellinspiron.com, dellcloud.com. etc.
- m) Further the Complainant submits that at present the Complainant owns over 5000 domain names a majority of which contain the trade mark "DELL" including dell.co.in, dell.in, delldirect.in, dellinspiron.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputers.co.in to name a few.
- n) The Respondent in the present dispute has registered several domain names delllaptoppricelist.in, delllaptopstore.in, dellservice.in, dellservicecenter.in, dellservicecenterchennai.in, dellservicecenterinbangalore.in, dellshowroominchennai.in, dellshowrooms.in thereby misappropriating illegally and without authority, the trade mark Dell and Dell formative marks which are the exclusive property of the Complainant. While the instant complaint is being filed against the domain name delllaptopstore.in, the Complainant is also filing separate domain name complaints against each of the impugned domain names.
- o) The disputed Domain Names are clearly being used to capitalize on a Dell customer's attempt to search for the Complainant's products and services in relation to the various models and range of products and services offered by the Complainant under the **DELL** formative marks, all of which have been incorporated into the Disputed Domain Names registered by the Respondent.
- p) The Respondent is using the Disputed Domain Names to internationally attract, for commercial gain, internet users seeking the Complainant's (Dell's) products and services, to its own websites.



- q) The Respondent has, by registering the Disputed Domain Names, clearly sought to misappropriate the reputation associated with the Complainant's well-known trade mark "Dell" and the Dell formative marks and take advantage of the fact that internet users/customers searching for the Complainant's products or services would now be offered the products and services of other entities including those in direct competition with the Complainant.
- r) The disputed domain names delllaptoppricelist.in, delllaptopstore.in, dellservice.in, dellservicecenter.in, dellservicecenterchennai.in, dellservicecenterinbangalore.in, dellshowroominchennai.in, dellshowrooms.in fully incorporate the Complainant's well-known and registered trademarks "Dell" in their entirety and are confusingly similar as a whole to the Complainant's domain names [www.dell.com](http://www.dell.com), [www.dell.co.in](http://www.dell.co.in). The disputed domain names are also similar to the various other domain names owned by the complainant such as delldirect.in, dellinspiron.in, dellcomputer.co.in, dellcomputer.in dellcomputercenter.in, dellcomputers.co.in to name a few.
- s) The Respondent's addition to the generic terms such as LAPTOP PRICE LIST, LAPTOP STORE, SERVICE, SERVICE CENTER, SERVICE CENTER CHENNAI, SERVICE CENTER IN BANGALORE, SHOWROOM IN CHENNAI, SHOWROOMS only serves to solidify confusion among internet users rather than dissipating it, more so as the generic words have an obvious association to the complainant.
- t) The impugned domain name delllaptopstore.in, fully incorporates the complainant's well-known and registered trademark "Dell" in its entirety and is confusingly similar as a whole to the Complainant's domain names. The dominant part of the impugned domain name, <delllaptopstore.in> is the word "Dell" which is identical to the well-known and registered trademark "Dell". The Respondent's addition of the generic term "**Laptop Store**" only serves to classify amongst the consumers that the respondent is related to the complainant. Further, the disputed domain names registered by the Respondent predominantly comprise of the Complainant's registered trade mark DELL in combination with a descriptive term being Laptop Store, which has obvious connections to the Complainant's business, which only solidify confusion among Internet users.
- u) The Complainant submits that since the disputed domain names all comprise of the well-known and famous trade mark "DELL" and the DELL formative marks used in relation to the Complainant's wide range of the goods and services, it is evident that the Respondent can have no right or legitimate interest in the domain name.
- v) The Complainant further submits that there exists no relationship between the Complainant and the Respondent. Further neither has the Complainant authorized nor licensed the Respondent to register or use the disputed domain names or any of the trade marks forming part of the same.



- w) Further, the Respondent has not used, nor made any demonstrable preparations to use, the domain names or a name corresponding to the domain names in connection with a bona fide offering of goods or services. Rather, Respondent's domain names are being used for websites that attempt to deceive consumers into thinking that Respondent or Respondent's business is affiliated or connected with, or authorized by, Complainant. Specifically, Respondent employs several different website designs at the domain name, each utilizing the DELL Marks to promote Respondent's services.
- x) The Respondent's websites also prominently feature a number of Complainant's other trademarks, such as INSPIRON, LATITUDE, VOSTRO, and XPS. Further, the Respondent has also copied the look and feel of Complainant's official [www.dell.com](http://www.dell.com) and [www.dell.co.in](http://www.dell.co.in) website, utilizing colours and fonts to those used by Complainant on its official website, as well as features such as blue navigation bars across the top of the pages, large rotating product and service features, and blue footers. Further, nearly all of Respondent's websites prominently display pictures of DELL products.
- y) In addition, Respondent's websites appear to be designed to mislead consumers into believing that Respondent is, or is affiliated with, Complainant. For instance, Respondent's websites use phrases such as "Contract Dell Services", and "Call Timings", "At Dell, we understand your needs for robust Technical Support Services that will support your Home or Small Business computers".
- z) Further, the Respondent's choice of the Complainant's well-known trade mark DELL and the DELL formative marks, as its domain names is totally unnecessary and the sole purpose of carrying on business through the use of the Disputed Domain Names incorporating the trademarks DELL and the DELL formative marks is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.
- aa) The Respondent's websites are not *bona fide* since the Respondent is using the disputed domain names to divert /redirect internet users and consumers seeking the Complainant's goods and services to its own websites, which offers the Complainant's products and services and also of those in direct competition with the Complainant. The disputed domain names registered by the Respondent comprise entirely of the Complainant's trademarks and are variations of the Complainant's domain names.
- bb) The Respondent has laid bare his intent to commercially exploit the Complainant's trade mark and formative marks, for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation; resulting in dilution of the Complainant's trademarks. The use of the domain names confusingly similar to Complainant's famous Dell Marks is evidence of bad faith.



- cc) Not only are the disputed domain names highly likely to cause confusion, but Respondent's bad faith is clearly demonstrated by the evidence explained earlier, which shows that the domain names are being used for websites which attempt to deceive consumers into thinking that Respondent or Respondent's business is associated with Dell.
- dd) Moreover, bad faith lies in the Respondent's intentional use of the Disputed Domain Names to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL as to the source sponsorship, affiliation, or endorsement of the Respondent's website.
- ee) The Complainant alleges that the Indian consumers searching for the Complainant's websites pertaining to a specific line of products or services are inclined to search for websites with domain names comprising of the trade mark DELL alongwith the brand name of the specific product or service in question or the territory in question. The Respondent's primary intent in registering and using the disputed domain names which incorporate the DELL trade mark in its entirety along with the specific line of products and services of the Complainant or the countries wherein the Complainant is based to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's trademarks/name and the Respondent's website.

5. **The Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

**5) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'DELL' leads to the conclusion that the Complainant has superior and prior rights in the mark 'DELL. Thus it can be said a) the web users associate the word 'DELL' with the goods and services of the Complainant b) the web users would reasonably expect to find the Complainant's products and services at the [www.delllaptopstore.in](http://www.delllaptopstore.in) and c) they may believe it is an official website of the Complainant and the services being offered/ advertised are associated or licensed by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the Complainant has established the three conditions as per paragraph 4 of the policy which are listed below. Further the Respondent has not contested the claims therefore deemed to have admitted the contentions of the Complainant.





- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has common law rights, and rights on account of prior and longstanding use of the mark 'DELL'. The Complainant has in support submitted substantial documents. The disputed domain name contains or is identical to the Complainant's 'DELL' mark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use the 'DELL' domain name. Further, the Respondent has never used the disputed domain name for legitimate business services.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show his interest in protecting his own rights and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services.

The above leads to the conclusion that Respondent has no rights or legitimate interest in respect of the disputed domain name 'www.delllaptopstore.in'.

- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'DELL' is identified with the Complainant's products, therefore its adoption by the Respondent shows 'opportunistic bad faith'.



**7. Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name 'www.delllaptopstore.in' is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name "www.delllaptopstore.in' be transferred from the Respondent to the Complainant.



**RACHNA BAKHRU  
SOLE ARBITRATOR  
NIXI  
INDIA**

**February 29, 2016**