



**Vs.**

World Trade Key In  
L-2 B/11C, Phase -1  
Mohan Garden  
Uttam Nagar  
New Delhi: 110059  
Email:brahm@worldtradekey.in

.....Respondent.

## **A W A R D**

### **1. The Parties:**

The complainant in this arbitration proceeding is Dell Inc., One Dell Way, Round Rock, Texas 78682-2244, United States of America filed by its authorized representative attorney Pravin Anand, Anand and Anand, First Channel, Plot No.17A, Sector 16A, Film City, Noida.

Respondent World Trade Key In, L-2 B/11C, Phase -1, Mohan Garden, Uttam Nagar, New Delhi: 110059.

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

The disputed domain name is :< [www.dellspares.co.in](http://www.dellspares.co.in) >

### **3. Procedural History:**

The Complainant, through its authorized representative, filed this complainant to NIXI regarding the disputed domain name [www.dellspares.co.in](http://www.dellspares.co.in) following the clause 4 of the policy of .IN Registry and .IN Registry appointed Dr. Bodhisatva Acharya (The Arbitrator) as Sole Arbitrator under clause 5 of the policy. The Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on March 3<sup>rd</sup>, 2014 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on March 13<sup>th</sup>, 2014, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the May 11<sup>th</sup>, 2014 as Ex-parte.



#### **4. Factual Background:**

- a. The Complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct sellers of computer systems. 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. The Complainant began using the trade mark/name DELL in 1987. Since then it has made extensive and prominent use of its trademark/name DELL in connection with a wide range of computer related goods and services, including offering its goods and services online through numerous DELL domain names.
- b. The Complainant has spent substantial time, effort and money advertising and promoting the "DELL" trade mark 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. The Complainant is the number one provider of computer systems to large enterprises around the world, and does business with 98 percent of Fortune 500 corporations. Complainant itself is in the top 50 of the Fortune 500. The Complainant sells more than 120,000 systems everyday to customers in 180 countries and has, more than 43,000 services team members in approximately 90 countries, 60 technical support centers, and seven global command centers dedicated to helping customers to design, buy and/or construct, operate and maintain personal computers, workstations, computer networks and internet infrastructure
- c. The Complainant 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 the DELL products in the country initially by the way of imports but also subsequently through extensive after-sales outlets and direct sales of its products through its Indian subsidiary which was incorporated in November 2003. 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. As a part of its retail initiative to increase its presence in India, the Complainant tied up with several channel partners such as authorized distributors and resellers including 600 systems integrators and launched DELL exclusive stores all over the country. The registration of the trademark "DELL" has been duly renewed from time to time and is valid and subsisting under the trademarks Act, 1999.



- d. 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 Internet users. The Complainant generates almost half of its revenue from sales over the internet. The information regarding the Complainant's Business and operations can be found on its websites [www.dell.com](http://www.dell.com) and [www.dell.co.in](http://www.dell.co.in) .The Respondent registered the domain name [www.dellspares.co.in](http://www.dellspares.co.in) thereby misappropriating illegally and without authority, the trademark "DELL" which is the exclusive property of the Complainant.
- e. Lastly the complainant filed this complaint for Arbitration proceeding and the Arbitrator submitted his statement of acceptance and declaration of Impartiality and the Independence and the complaint was produced before the Arbitrator on March 3<sup>rd</sup> , 2014 and the Arbitrator sent a notice, to the Respondent through his email for the Arbitration Proceeding on March 13<sup>th</sup>, 2014, to submit his reply but nothing was submitted to Arbitrator till the date of award hence the AWARD is being declared on the May 11<sup>th</sup>, 2014 as Ex-parte.

## **5. Parties Contentions:**

(a) Complainant contends 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 has no rights or legitimate interests in respect of the domain name; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith, and the domain name be transferred to the Complainant.

(b) Respondent contends that

The respondent gave no response.

## **6. Discussion & Findings:**

- (A) The Disputed Domain Name [www.dellspares.co.in](http://www.dellspares.co.in) registered by the Respondent predominantly comprises of the Complainant's registered trademarks DELL and the generic term SPARES which has an obvious connection to the Complainant's business, products and its services and only solidifies



confusion among internet users. In Dell Inc. vs. SKZcomFA0509000555545 (NAF October 21, 2005) it was held that the Respondent's domain names <dellcustomersupport.com> and <wwwdellcomputer.com> are confusingly similar to the Complainant's trademark DELL in its entirety, and addition of the generic terms "customer support" and "computer" which have an obvious connection to the Complainant's business is inconsequential. Space Imaging LIC v. Brownell, AF-0298 (eResolution Sept. 22, 2000) emphasis on finding confusing similarity in an instance where the Respondent's domain name combines the Complainant's mark with a generic term which is obviously affiliated to the Complainant's business.. The Complainant also places reliance on Dell inc. vs. George Dell and Dell Net Solutions, Case No. D2004-0512(WIPO Aug, 2004), wherein it was held that "It is well established that the addition of a generic term to a trademark does not necessarily eliminate a likelihood of confusion." There are numerous examples of decision holding a domain name to be confusingly similar to a registered trademark when it consists of the mark plus one or more generic terms. Minnesota Mining and manufacturing Company vs. Mark Overbey, Wipo Case No.D2001-0727, SBC Communication Inc. vs. Fred Bell a/k/a Bell Internet WIPO Case No. D2001-0602; HangSeng Bank Limited vs. Websen Inc., WIPO Case No. D 2000-0651; Wal Mart Stores Inc. vs. MacLeaod b/d/a For sale, WIPO Case No. D 2000-0662. Furthermore the addition of the top-level domains ".co.in" and ".in" is irrelevant in determining whether the domain names registered by the Respondent are confusingly similar to the Complainant's registered trademarks.

- (B) Since the domain name <dellspares.co.in> comprises of the well known and famous trademark "DELL" in conjunction with the generic term SPARES which is commonly used in relation to the Complainant's business, products and services, it is evident that the Respondent can have no right or legitimate interest in the disputed domain name. HSBC Holding pic vs. Hooman Esmail Zadeh, M-Commerce Ag. INDRP/032; Nike Inc. vs. B.B. de Boer, case no. D2000-1397.(WIPO December 21, 2000); Victoria's Seceret, et.al vs. Atchinson Investment Ltd. , FA 096496 (Nat. Arb. Forum Feb. 27, 2001). Further, it is apparent that the Respondent has registered the disputed domain name with a view to attracting internet user to its website where it offers the same or similar services and products as those offered by the Complainant, and to unfairly benefit from the goodwill attached to the complainant's famous trade mark/name "DELL". Additionally, the Respondent has registered the disputed domain name <dellspares.co.in> under the presumptions that the Complainant will purchase the disputed domain name from it at exorbitant prices. There exists no relationship between the Complainant and the Respondent. The Complainant has not authorized or licensed the Respondent to register or use the disputed domain name <dellspares.co.in> incorporating the trade mark "DELL" nor has it ever authorized the Respondent to deal in products and / or services under the complainant's registered and well-known trademark - name DELL. Additionally, the Respondent's adoption of the Complainant's well-known trademark "DELL", in conjunction with the generic term "SPARES" in the disputed domain name is totally unwarranted and the sole purpose of carrying on business through the use of the disputed domain name incorporating the Complainant's trademark "DELL" in conjunction with the generic term "SPARES" is cause to confusion as



to the source, sponsorship, affiliation or endorsement of the activity being carried on through the website. The Respondent's website is not bona fide since the Respondent is trading on the fame and recognition of the Complainant's well-known trademark in order to cause initial interest, confusion and bait internet users into accessing its websites and compel the Complainant to buy out the Respondent in order to avoid said confusion as is typically the strategy of such cyber squatters.

- (C) The domain name <dellspares.co.in> acquired by the Respondent comprises of the Complainant's registered trade mark **DELL** in its entirety, in which the Complainant has a substantial interest and rights. The Complainant further alleges that the Respondent registered the domain name <dellspares.co.in> in order to piggy-back off the commercial value and significance of the Complainant's registered and well known trade mark/name **DELL**. Complainant's registered trade mark and or service mark. The Complainant alleges that the Respondent registered the domain name <dellspares.co.in> in order to piggy-back off the commercial value and significance of the Complainant's domain names <dell.co.in>, <dell.com>, <dellspares.com> and <dellsparespart.com>. The Complainant alleges that the Respondent is seeking illegal commercial gratification through its opportunistic bad faith registration of the disputed domain name. The Complainant states that in the light of aforesaid submissions, the bad faith registration and bad faith use of the domain name <dellspares.co.in> on the part of the Respondent is thus proved. In *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group co.* (Wipo Case No. D2000-0163), it was held by the administrative Panel that <veuvecliquot.org> was so obviously connected with such a well-known product that its very use by someone with no connection with the product suggest opportunistic bad faith. The Administrative panel should likewise reach a similar result in this case. The general proposition that the registration of a domain name incorporating a well known trade mark of the complainant is in bad faith has been upheld by numerous UDRP decisions. Some notable cases which have upheld this proposition are *Marie Claire Album v. Marie Claire Apparel, Inc.* (case No D 2003 0767), and *Adidas-Salomon AG v. Domain Locations* (case No D 2003 0489), wherein it has been held that the registration of well-known trademark of which the Respondent must reasonably have been aware is in itself sufficient to amount to bad faith. Moreover, bad faith lies in the Respondent's international use of the domain name <dellspares.co.in> to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trademark **DELL** as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.


- (D) The Complainant thus has satisfied the Arbitrator on all the parameters as mentioned in the Paragraph 4 of the Policy (INDRP).

Handwritten signature or initials in black ink, appearing to be 'BL' or similar, located in the bottom right corner of the page.

## **7. Decision:**

Hence the Arbitrator decides the Disputed Domain Name www.dellspares.co.in is identical or confusingly similar to registered trademark of the Complainant and Respondent has no right to use the disputed domain name and the Respondent domain name has been registered in bad faith.

The Arbitrator further decides and orders that the domain name www.dellspares.co.in shall be transferred to the Complainant with immediate effect.

  
Dr. BODHISATVA ACHARYA  
SOLE ARBITRATOR  
NIXI

DATED: May 11<sup>th</sup>, 2014,  
PLACE: NEW DELHI,  
INDIA