

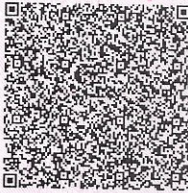


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# INDIA NON JUDICIAL Chandigarh Administration

## e-Stamp

Certificate No. : IN-CH18580502733840R  
Certificate Issued Date : 04-Jul-2019 05:13 PM  
Certificate Issued By : chvandani  
Account Reference : IMPACC (GV)/ chimp07/ E-SMP MANIMAJRA/ CH-CH  
Unique Doc. Reference : SUBIN-CHCHIMPSP0737122292076320R  
Purchased by : A K BANSAL  
Description of Document : Article 12 Award  
Property Description : KOTHI NO 6 SHIVALIK ENCLAVE MANIMAJRA CHD  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : A K BANSAL  
Second Party : Not Applicable  
Stamp Duty Paid By : A K BANSAL  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



-----Please write or type below this line-----

**ARBITRATION AWARD**  
(On Stamp Paper)

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**SR 0001684772**

**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



**INDRP ARBITRATION  
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]**

**ARBITRAL TRIBUNAL CONSISTING OF  
SOLE ARBITRATOR:  
DR. ASHWINIE KUMAR BANSAL, L.L.B; Ph.D.  
Advocate, Punjab & Haryana High Court, Chandigarh**

**In the matter of:**

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

**(Complainant)**

Vs.

1. Rookra  
Tamil Nadu (Through Registrar GoDaddy.com)
2. Prem P  
Rookra Laptop Service Center  
No. 5, 2nd Floor, 100 Feet Tharamani Link Road,  
Tansi Nagar (Near Olympic Wedding Cards), Velachery  
Chennai, Tamil Nadu 600042  
Tel No. - 044-48510022  
email - [info@rookralaptopservice.com](mailto:info@rookralaptopservice.com)

**(Respondent)**

**COMPLAINT REGARDING: DISPUTED DOMAIN NAME:**  
**WWW.DELLSERVICECENTERINOMR.IN**

**1. The Parties:**

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

**Respondent:**

1. Rookra, Tamil Nadu (Through Registrar GoDaddy.com);
2. Prem P, Rookra Laptop Service Center, No. 5, 2nd Floor, 100 Feet Tharamani Link Road, Tansi Nagar (Near Olympic Wedding Cards), Velachery. Chennai, Tamil Nadu 600042, Tel No. - 044-48510022

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2. **The Domain Name and the Registrar:** The disputed domain name <www.dellservicecenterinomr.in> is registered with GoDaddy.com of the address 14455 North Hayden Road, suite 219 Scottsdale, AZ 58260-6993, united States of America and the Domain ID provided is D10226889- AFIN. (the "Registrar").

3. **Procedural History [Arbitration Proceedings]**

NIXI appointed Dr. Ashwinie Kumar Bansal, Advocate, as the sole Arbitrator in this matter. The Arbitrator has submitted his Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.

A Complaint has been filed with the National Internet Exchange of India (NIXI). Name, address and other particulars of the registrant of the domain name i.e. the Respondent have not been given in the Whois details whereby only incomplete information is available. NIXI had sent the Complaint along with annexures by courier which, according to the delivery receipt of the courier company was received by the Respondent on 03.06.2019. NIXI, vide e-mail dated 14.06.2019 provided the complete details of the Respondent as under:

*"Dear All,*

*Please find the registrant details in the captioned matter for your perusal.*

*Prem P*

*Rookra Laptop Service Center*

*No. 5, 2nd Floor, 100 Feet Tharamani Link Road,*

*Tansi Nagar (Near Olympic Wedding Cards), Velachery*

*Chennai, Tamil Nadu 600042*

*Tel No. - 044-48510022*

*email - [info@laptopservice.com](mailto:info@laptopservice.com)"*

Notice of arbitration proceedings under rule 5(c) of INDRP Rules of Procedure of NIXI (the Rules) was sent to the Respondent vide e-mail dated 15.06.2019 on the e-mail address provided by NIXI for the Respondent. However, the e-mail could not be delivered as the e-mail address was incorrect. Thereafter, several attempts were made to e-

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mail the notice of arbitration proceedings at different e-mail addresses of the Respondent. The Complainant had also sent the soft copy of the complaint to the Respondent vide e-mail dated 20.06.2019 on the e-mail provided on the Facebook page of the Respondent which was duly delivered as per the outlook delivery report of the Complainant. Notice of the arbitration proceedings was also sent on this e-mail address vide e-mail dated 21.06.2019.

A copy of Complaint and Annexures as well as notices issued by the Arbitrator were communicated to the Respondent by E-mail.

All efforts were made to serve the soft copy on the Respondent at his last known address, hence there is deemed service of the soft copy as per the provisions of Section 3 of the Arbitration and Conciliation Act, 1996 which provides as under:

*"3. Receipt of written communications.- (1) Unless otherwise agreed by the parties,-*

*(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and*

*(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.*

*(2) The communication is deemed to have been received on the day it is so delivered.*

*(3) This section does not apply to written communications in respect of proceedings of any judicial authority."*

In view of provisions of section 3 of the Arbitration and Conciliation Act, 1996 regarding receipt of communications, he is deemed to have been duly served.

A hard copy of the notice was also sent to the Respondent at the address provided by NIXI which was duly delivered on 19.06.2019 as per the delivery status report of India Post at

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<https://www.indiapost.gov.in/layouts/15/dop.portal.tracking/trackconsignment.aspx>.

Hence, service of the Respondent is complete.

The Respondent was directed to file the response to the Complaint within 10 days vide notice dated 15.06.2019 which was delivered to the Respondent on 19.06.2019. The Respondent has failed to file any response to the Complaint till date although period for filing of response has already been expired.

As per section 25 of the Act the arbitrator is competent to make the award if Respondent fails to file the reply before him. Section 25 is reproduced below for ready reference:

*25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,----*

*(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;*

*(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant.*

*(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.*

In view of above, arbitrator proceeds to make the award in accordance with provisions of the Rules read with section 25 of the Arbitration and Conciliation Act, 1996.

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

Dell Inc. is a company incorporated and existing under the laws of Delaware, U.S.A established in the year 1984. The Complainant had adopted the Trademark DELL since 1988 and has since expanded its

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business into various countries, having filed applications for registration under various classes in India also.

The Respondent has registered the disputed domain name <www.dellservicecenterinmr.in> on 11.11.2016 incorporating Trademark of the Complainant. Hence, present Complaint has been filed by the Complainant against the Respondent.

## **5. Parties Contentions**

### **A. Complainant**

The Complainant is the world's largest direct seller of computer systems. Since its establishment in 1984, the Complainant has diversified and expanded its activities, which presently include, but are not limited to, 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 business' and individuals.

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.

The products of the Complainant are widely available in India since 1993. The said products are marketed in India by the subsidiaries of the Complainant's in India. 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 around 200 cities in

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India by virtue of this use the relevant section of the public associates the trademark "DELL" with the complainant alone.

The complainant has a very strong internet presence with the website www.dell.com. The website can be accessed from anywhere in the world, including India and provides extensive information on the activities in the world, and provides extensive information of the activities of the complainant throughout the world. Additionally, the Complainant also has country specific domain names such as www.dell.co.in for India. In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers details and retailers.

The Complainant's first use of the mark "DELL" can be traced back to 1988. Since then the Complainant has expanded its business into various countries and has extensive use of the mark "DELL" around the globe. Thus in order to secure rights over the mark "DELL", the Complainant has registered the said mark in several countries including in India. The Complainant also uses various "DELL" formative marks like 'DELLPRECISIOS', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE' etc.

The Trademark 'DELL' was conceived and adopted by the Complainant in the year, 1988 for using in relation to the said Goods and Services. Around the same time, the Complainant created and adopted a unique and distinctive artistic work for the mark 'DELL' namely D E L L. In order to obtain statutory protection, the Complainant has applied for registration/ registered the said Trademark in various classes in various countries including India.

The registrations of the Trademark DELL are valid and subsisting. The registrations are prima itself evidence that the said Trademark is distinctive.

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The Complainant is the owner of the top level domain name "www.dell.com" registered on 22 November 1988. The domain name "www.dell.com" leads to an active website containing detailed information on the various products and services available with Dell, stores of the Complainant.

The Trademark has been openly, continuously, extensively and uninterruptedly used and advertised since about three decades. Over the years, the Complainant has generated substantial revenues in relation to the said Goods and Services provided under the said Trademark.

The Complainant has been spending substantial time, effort, skill and money in promoting the said Trademark and the said Goods and Services provided under the said Trademark. The said Goods and Services and the said Trademark have been promoted through various media such as newspapers, magazines and also through social and digital media.

The Complainant has been widely reported in various newspapers and magazines with wide circulation in India. As a result of continuous, extensive and uninterrupted use of the said Trademark in relation to the said Goods and Service of the Complainant, the mark "DELL" has acquired tremendous goodwill and reputation in India and is associated only with the Complainant and one else.

The Respondent in the present instance has registered the domain name <www.dellservicecenterinomr.in> which incorporated the well-known and registered Trademark DELL of the Complainant.

The Respondent has adopted the well-known trademark 'DELL' of the complainant to provide post sale service for 'DELL' laptops and to offer Complainant's products for sale. Not only is the adoption of the said mark an infringement, it is also being used for services and/or goods identical

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to that of the Complainant's. It is reiterated here, that the Complainant provides post sale services of maintenance and offers for sale computer and computer related products.

As mentioned above, the Complainant offers repair and maintenance services under the mark 'DELL'. The Complainant has also registered "DELL" and "DELL" formative mark in class 37 of the NICE classification, as repair and maintenance falls under the said class. It is reiterated that the Complainant also manufactures and offers for sale, inter-alia, computer and computer related products. The complainant has also secured registration for manufacturing and selling computer and computer related goods, which fall primarily in class 9.

The Respondent is taking advantage of innocent customers who may or may not enquire about the authenticity of the Respondent. The Respondent provided disclaimer at end of the website in small font, which only states that the trademarks/product or images belong to the respective owners. However, the entire website states that it is the service center of Dell. Moreover, the purchasing public may not read the fine print disclaimer. In any event, the same does not bestow any right to use the trademark DELL of the Complainant, as part of the impugned domain name and on the Website.

The Respondent has no right use the mark "DELL" of the Complainant as it is the sole property of the Complainant. The Complainant use the mark "DELL" by the Respondent is not licensed thus it is an infringement of the trademark "DELL".

The Respondent has developed the offending domain name only to illegally benefit from the goodwill and reputation of the mark Dell built by the complainant.

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The registration and operation of the domain name <www.dellservicecenterinmr.in> has been done in bad faith and with dishonest intention to mislead the public not believing that the Respondent is the authorized service center of the Complainant. The complainant does not allow even its authorized service centers to register domains using the trademark "DELL". The adoption of the trademark of the Complainant is only to confuse the relevant section of the public, who are bound to be deceived into thinking that the domain name <www.dellservicecenterinmr.in> is the website of the Complainant, which is not the case. The offending domain name has been registered to create interest and thereafter confusion amongst the internet users thereby luring them to the Website and in turn to make illegal profit out of such representation.

The bad faith on the part of the Respondent demonstrated by the use of the trademark of "DELL" on the Website and as part of the domain name <www.dellservicecenterinmr.in>. The adoption of the trademark of the Complainant without a license or any authority, which is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the complainant. The use of the domain name by the Respondent is not for non-commercial use and would not fall under the ambit of "fair use". Upon a mere perusal of the website, it appears to be misleading the customers into believing that the Respondent is related to the complainant. The only reason of adoption of the mark "DELL" for services and/ or goods which are identical to that of the Complainant is to make illegal profit by duping the consuming public. The entire modus operandi of the Respondent, whose website is accessed only through the trademark of the Complainant, is dishonest and illegal.

The Complainant has come across other domain name(s) containing the Complainant's mark, Dell, which have been registered by the Respondent to defraud the public into believing that it is Dell's service center. The other dell domain names registered by the Respondent are

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<www.dellservicecenterinmr.in> and <www.dellservicechennai.in>. The nature of the impugned domain name is such that it gives an impression that it is the website of Dell service centre in OMR, which is the Old Mahabalipuram Road in Chennai.

## **Respondent**

The Respondent has not filed the Response to the Complaint in spite of opportunity given to him.

## **6. Discussion and Findings:-**

As per Paragraph 11 of the INDRP Rules of Procedure where a Respondent does not submit a response, in the absence of exceptional circumstances, the Arbitrator may decide the Complaint in accordance with law. The Arbitrator does not find any exceptional circumstances in this case preventing him from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response.

It remains incumbent on the Complainant to make out its case in all respects under Paragraph 4 of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

### *"4. Types of Disputes*

*Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:*

*(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.*

*The Registrant is required to submit to a mandatory Arbitration*

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*proceeding in the event that a Complainant files a Complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."*

The Arbitrator has examined the Complaint and documents filed by the Complainant and he will address the three aspects of the Policy listed above.

#### **A. Identical or Confusingly Similar**

The Complainant owns the intellectual property rights in the Trademark DELL and he has secured trademark registrations from the authorities. The Complainant has produced copy of a few Certificates of Registration regarding Trademark DELL issued by Registrar of Trade Marks, Mumbai in the year 2005. Few other certificates of registration in different classes for registration of Trademark DELL have also been produced by the Complainant along with the Complaint. The Trademark of the Complainant has become associated by the general public exclusively with the Complainant. The Complainant also has domain name registration of domain name <www.dell.co.in> which leads to an active website containing detailed information on the various products and services available at Dell, stores of the Complainant.

The disputed domain name was registered by the Respondent on 11.11.2016, which wholly incorporates Trademark DELL of the Complainant. The Respondent has registered the disputed domain name, which is a combination of the Complainant's Trademark DELL and a suffix servicecenterinmr. The relevant Trademark "DELL" is recognizable in the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant Trademark is recognizable in the domain name, the domain name will normally be

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considered confusingly similar to that Trademark for purposes of UDRP standing<sup>1</sup>.

The Arbitrator finds that the registration of the Trademark is *prima facie* evidence of the Complainant's Trademark rights for the purposes of the Policy<sup>2</sup>. Internet users who enter the disputed domain name <www.dellservicecenterinmr.in> being aware of the reputation of the Complainant may be confused about its association or affiliation with the Complainant.

The Respondent has registered the disputed domain name <www.dellservicecenterinmr.in> incorporating the Trademark DELL of the Complainant, which the Arbitrator finds is sufficient to establish confusing similarity for the purpose of the Policy.

The Arbitrator finds that the disputed domain name <www.dellservicecenterinmr.in> is confusingly similar to the Trademark DELL of the Complainant.

## **B. Rights or Legitimate Interests**

The Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant needs only to make out a *prima facie* case, after which the burden of proof shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or

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<sup>1</sup> The WIPO Overview 3.0 section 1.7 provides the consensus view of panelists.

<sup>2</sup> See *State Farm Mutual Automobile Insurance Company v. Periasami Malain*, NAF Claim No. 0705262 ("Complainant's registrations with the United States Patent and Trademark Office of the trademark STATE FARM establishes its rights in the STATE FARM mark pursuant to Policy, paragraph 4(a)(i)."); see also *Mothers Against Drunk Driving v. phix*, NAF Claim No. 0174052 (finding that the Complainant's registration of the MADD mark with the United States Patent and Trademark Office establishes the Complainant's rights in the mark for purposes of Policy, paragraph 4(a)(i)).

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legitimate interests in the domain name<sup>3</sup>. The Respondent has registered the disputed domain name wholly incorporating the Trademark DELL owned by the Complainant. The Complainant has been using the Trademark DELL since very long. The Complainant has not authorized or permitted the Respondent to use the Trademark DELL.

The Respondent has not filed a Response to rebut the Complainant's *prima facie* case and the Respondent has thus failed to demonstrate any rights or legitimate interests in the disputed domain name <www.dellservicecenterinmr.in> as per Paragraph 7 of the Policy.

The Respondent has no right to and legitimate interest in the disputed domain name. The Respondent illegally and wrongfully adopted the Trademark DELL of the Complainant with the intention to create an impression of an association with the Complainant. The Arbitrator finds that the Complainant has made out a *prima facie* case. Based on the facts as stated above, the Arbitrator finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name <www.dellservicecenterinmr.in>.

### **C. Registered and Used in Bad Faith**

Paragraph 6 of the Policy identifies, in particular but without limitation, three circumstances which, if found by the Arbitrator to be present, shall be evidence of the registration and use of the Domain Name in bad faith. Paragraph 6 of the Policy is reproduced below:

#### ***"6. Evidence of Registration and use of Domain Name in Bad Faith***

*For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:*

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<sup>3</sup> See *Hanna-Barbera Productions, Inc. v. Entertainment Commentaries*, NAF Claim No. 0741828; *AOL LLC v. Jordan Gerberg*, NAF Claim No. 0780200.

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*(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*

*(iii) by using the domain name, the Registrant has intentionally attempted to attract 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."*

Each of the three circumstances in Paragraph 6 of the Policy (which are non-exclusive), if found, is evidence of "registration and use of a domain name in bad faith". Circumstances (i) and (ii) are concerned with the intention or purpose of the registration of the domain name, and circumstance (iii) is concerned with an act of use of the domain name. The Complainant is required to prove that the registration was undertaken in bad faith and that the circumstances of the case are such that the Respondent is continuing to act in bad faith.

The Respondent has registered disputed domain name <www.dellservicecenterinmr.in> with the .IN Registry wholly incorporating the Complainant's well-known, prior used and registered Trademark DELL. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known Trademark DELL in any manner. The disputed domain name clearly incorporates the Complainant's Trademark DELL in its entirety. Such

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unauthorized registration of the domain name by the Respondent incorporating the Trademark of the Complainant suggests opportunistic bad faith. The Respondent's true intention and purpose of the registration of the disputed domain name <www.dellservicecenterinmr.in> which incorporates the Trademark DELL of the Complainant is, in this Arbitrator's view, to capitalize on the reputation of the Trademark of the Complainant.

The Arbitrator therefore finds that the disputed domain name <www.dellservicecenterinmr.in> has been registered by the Respondent in bad faith.

The Trademark DELL has been a well-known name. The disputed domain name <www.dellservicecenterinmr.in> is confusingly similar to the Complainant's Trademark DELL, and the Respondent has no rights or legitimate interests in respect of the domain name, and he has registered and used the domain name <www.dellservicecenterinmr.in> in bad faith. These facts entitle the Complainant to an award transferring the domain name www.dellservicecenterinmr.in to him from the Respondent.

The Arbitrator allows the Complaint and directs that the Respondent's domain name <www.dellservicecenterinmr.in> be transferred in favour of the Complainant.

## **7. Decision**

Keeping in view all the facts and circumstances of the matter this Complaint is allowed. The disputed domain name <www.dellservicecenterinmr.in> is similar to the Trademark DELL in which the Complainant has rights. The Arbitrator orders in accordance with the Policy and the Rules, that the domain name <www.dellservicecenterinmr.in> be transferred to the Complainant.

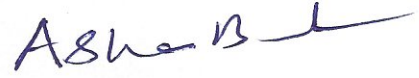
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The award has been made and signed at Chandigarh on the date given below.

Place: Chandigarh

Dated: 11.07.2019



**Dr. Ashwinie Kumar Bansal**

**Sole Arbitrator**

Advocate, Punjab and Haryana High Court  
Arbitration House 6, Shivalik Enclave, NAC,

Near Housing Board Chowk,

Chandigarh, India-160101

Mobile: 9915004500

Email: [akbansaladvocate@gmail.com](mailto:akbansaladvocate@gmail.com)