



दिल्ली DELHI

S 397451

VISHESHWAR SHRIVASTAV
SOLE ARBITRATOR
IN
ARBITRATION PROCEEDINGS OF DOMAIN NAME
"dellphone.co.in"

DELL INC.

...COMPLAINANT

AND

**DOMAIN ADMIN,
BHARAT DNS PVT. LTD.**

...RESPONDENTS

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued

notice to the parties on 03/02/2012. However, while checking the records of the proceedings, this Tribunal found that there was nothing on record which showed that the copy of the complaint has been supplied to the Respondents and also there was no PoA in favour of M/s Anand & Anand, the Ld. Counsels for the Complainants. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier and also supply a copy of their authority authorizing M/s Anand & Anand to act on behalf of the complainants.

2. That compliance of the order was done by the Complainants vide their letter dated 08/02/2012 in which they sent a copy of a courier receipt of M/s Blue Dart Courier waybill No. 13265560733 and also sought time for filing their POA as their Client/ complainant being in USA. Hence, this Tribunal vide order dated 08/02/2012 directed the Respondent to send their Response/ Statement of Defense to the Complaint by sending



the soft copy by email and a hard copy by Courier so as to reach this Tribunal latest by 17th February 2012.

3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have tried their level best to serve the Respondents on the address provided by him in WHO IS. This Tribunal notes that the tracking records of the courier sent by the complainant showed "Return to origin, Contact Customer Service." And further sees that the track records of the courier sent by this Tribunal says "Return to shipper". Be it that as it may this Tribunal notes that the copy(s) of the order(s) have also been emailed to the Respondent at his notified email id as well hence it cannot be said that the Respondents are unaware of the present Arbitration proceedings.
4. In view of the above this Tribunal vide order dated 18/02/2012 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of

the award so that suitable orders can be passed. This Tribunal notes that the Respondent has not filed any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.

5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
 - a. It is claimed that the Complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer systems and 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. It is also claimed that 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. It is claimed that the Complainant began using the trade mark/name DELL in 1987 and 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 states to have spent substantial time, effort and money in advertising and promoting the "DELL" trade mark throughout the world due to which "DELL"

trade mark has become famous and well-known, and has developed enormous goodwill and widespread consumer recognition.

- d. The Complainant claim itself to be the number one provider of computer systems to large enterprises around the world, and does business with 98 percent of Fortune 500 corporations. The Complainant claims itself to be in the top 50 of the Fortune 500 selling more than 10,000 systems every day to customers in 180 countries and has, more than 43,000 services team members in approximately 90 countries, besides 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.
- e. It is claimed that the Complainant began doing business in India in 1993 and 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 through extensive after-sales service outlets and direct sales of its products through its Indian subsidiary which was incorporated in June 2000 and 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 and has 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. Reliance of the complainants is placed upon **Annexure B & C.**

The Complainant submit that they adopted and commenced use of the trade mark DELL in the year 1987 and have been using it continuously and extensively, not only as a trademark but also as its corporate name and the

said trade mark DELL forms an integral part of various other trademarks owned by the Complainant including DELLSTREAK, DELLVENUE, DELLWARE, DELLZONE, DELLNET, DELLHOST. The Complainants claim that the trademark “**DELL**” is a well-known trademark all 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. Besides it is also claimed that the Complainant is also the registered proprietor of the trade mark “**DELL**” in India and the registration has been duly renewed from time to time and is valid and subsisting under the Trademarks Act, 1999. It is also that claimed the Complainant also has registered its mark “DELL” in various other jurisdictions . The complainants place reliance on **Annexure D & E** in support of their above contention.

- f. The Complainants strongly rely upon some decisions viz *Dell Inc. vs. SZK.com*, Claim No. FA0509000555545

(National Arbitration Forum, Oct. 21, 2005); *Dell Inc. vs. William Stenzel*, Claim No, FA0510000574596 (National Arbitration Forum, Nov 23, 2005); *Dell Inc vs. Innervision Web Solutions c/o Domain Registrar*, Claim No. FA0503000445601, May 23, 2005); *Dell Inc. vs. Radvar Computers LLC*, Case No. D2007-1420 (WIPO Dec 24, 2007) *Dell Inc. vs. Pateh Mbowe*, Case No. D2004-0689 (WIPO Oct 20, 2004); *Dell Inc. aka Dell Computer Corporation vs. Asia Ventures. Inc*, Case No. D2004-0452 (WIPO July 30, 2004) and *Dell Inc. vs. George Dell and Dell Net Solutions*, Case No. D2004-0512 (WIPO Aug 24, 2004).

- g. The Complainant claim that they have 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 urge that they generate almost half of their revenue from sales over the internet as the

information regarding the Complainant's Business and operations can be found on its websites <dell.com>, <dell.co.in> and <dell.in> besides <dellphone.com>, <dellphones.co.in>, <dellphones.in> and dell.co.in, dell.in, dellphone.com, dellphones.co.in, dellphones.in, dellstreak.co.in, dellstreak.in, delldirect.in, dellinspiron.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputercenter.in, dellcomputers.co.in, dellcomputers.in, dellcustomerstories.co.in, delldatasafe.co.in, delllaptops.co.in, delllaptops.in, dellmobile.co.in, dellmobile.in, dellpc.in, dellperotsystems.in, dellprinters.in, dellservices.co.in, dellsmartphone.co.in, dellsmartphone.in, dellsmartphones.co.in, dellsmartphones.in, dellstage.in, dellstore.in, dellstores.in, dellstudio.in, dellstudioone.in, dellsuppliers.co.in, delltablet.co.in, delltablet.in, delltablets.co.in and delltablets.in. Reliance is placed on

Annexure G.



- h. It is alleged that the Respondent in the present dispute has registered the domain name <dellphone.co.in> illegally and without authority and the trademark "**DELL**" is the exclusive property of the Complainant.
- i. The complainants allege that the Respondent is a typical cyber squatter as it is not using the domain name <dellphone.co.in> but has simply registered the same with *malafide* intent to profit from the goodwill of a trademark that rightfully belongs to the Complainant. The complainants verily believe that the Respondent has acquired the disputed domain names primarily for the purpose of selling, renting or otherwise transferring the registration of the said domain names to the Complainant or a competitor of the Complainant herein at exorbitant rates and unjustly gain profit from the said transaction.



- j. It is also alleged that the Respondent's domain name is identical or confusingly similar to the name/ trademark of the Complainant.
- k. It is alleged that the dominant part of the disputed domain name <dellphone.co.in> registered by the Respondent predominantly comprises of the Complainant's registered trademark **DELL** in combination with the generic term **PHONE** which has obvious connections to the Complainant's business and only aims to create confusion among Internet users. The complainants further rely upon decision viz *Dell Inc. vs. George Dell and Dell Net Solutions*, Case No. D2004-0512 (WIPO Aug 24, 2004), *Minnesota Mining and Manufacturing Company vs. Mark Overbey*, WIPO Case No. D2001-0727; *SBC Communications 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.



D2000-0662, *Dell Inc. vs. SKZ.com* FA0509000555545
(NAF October 21, 2005), *Space Imaging LLC v. Brownell*,
AF-0298 (eResolution Sept. 22, 2000) to fortify their stand.

- I. The complainants allege that the Respondent has no right or legitimate interest in the domain name as 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 domain name <dellphone.co.in> incorporating its trade marks or any mark forming part of it.

- m. It is also alleged that the Respondent's websites are not *bona fide* since the Respondent himself is not engaged in any activity of its own to show that he has any legitimate rights or interest in the disputed domain name. It is also alleged that the Respondent's intent is to commercially exploit the Complainant's trademark 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 and in fact by acquiring the domain name which form the subject matter of the Complaint, the Respondent has shown crass opportunism in encashing the popularity of the Complainant's reputation in its attempt to force the Complainant to buy out the same and that the domain name was registered by the Respondent in bad faith.

ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.



8. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <dellphone.co.in> hence this Tribunal directs the Registry to transfer the domain name <dellphone.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 20th day of February 2012.

NEW DELHI
20/02/2012



V. SHRIVASTAV
ARBITRATOR