



**BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD**

In The Matter Between

Dell Inc.

Complainant

Versus.

Jack Sun

Respondent

1. The Parties

The Complainant is Dell Inc. of One Dell Way Round Rock, Texas 78682-2244 of USA represented in these proceedings by M/s Anand and Anand of Delhi, India.

The Respondent is Jack Sun and the address mentioned in the complaint is: Domainjet Inc., 1800 Ampitheatre Parkway, Mountain view, California -94043 USA. The Whois information as verified by the Arbitrator on March 16, 2012 shows the contact details of the Respondent is Namestar Inc. tanggou zhen xibei zu 3 hao, Shuyang , Jiangsu 22361 China.

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2. The Domain name, Registrar and Policy

This Arbitration pertains to a dispute regarding the domain name <dellprecision.co.in>. The registrar for the disputed domain name is Directi Internet Solutions Pvt. Ltd., Mumbai, India.

The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules.

The Arbitrator received the Complaint from the .IN registry on January 21, 2012 and on January 22, 2012 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given twenty-one days time from the date of the notification to file a response. The Respondent did not reply to the notification or file any response in these proceedings. Based on the material on record the Arbitrator now proceeds to determine the case on its merits.

Factual Background

The Complainant is a provider of computer systems to large enterprises around the world. The Complainant uses the trademark DELL to market its products and owns a portfolio of DELL formative marks that include: DELL, DELLPRECISION, DELLVENUE, DELLWARE, DELLZONE DELLNET and DELL HOST.

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The Complainant has provided some details of its U.S trademark registrations:

US trademark registration No.1616571 Under class 9 for DELL (stylized) trademark, US trademark registration No. 1860272 class 9 for DELL (stylized) trademark, US trademark registration No. 2,236,785 for DELL trademark under class 40, US trademark registration No. 1860272 under class 9 for DELL (stylized) trademark and US trademark registration No. 75445276 under class 9 for trademark DELL PRECISION.

The Complainant has also provided the details of its Indian registered trademarks:


Indian trademark registration No. 575,115 for trademark DELL under class 9, Indian trademark registration No 826,095 for trademark www.dell.com in class 9, Indian trademark registration No 923,915 for DELL (with stylized E) under class 2, Indian trademark registration for trademark DELL No 1,190,376 under class 9, Indian trademark registration No.239,349 for Trademark DELL under class 42; Indian trademark registration for trademark No 1,335,057 class 36, Indian trademark No. 805105 for trademark DELL PRECISION trademark goods under class 9.

The Respondent registered the disputed domain name<dellprecision.co.in> on April 21, 2011.

4. Parties contentions

A. Complainant's Submissions

The Complainant states that it commenced its Indian operations in the year 1993 and incorporated its Indian subsidiary in 2000. The Complainant states that it has a large presence in India due to sales of its products and it's after sales services and that it generates nearly half of its entire sales revenue from online Internet sales. The Complainant states that its DELL mark is well known throughout the world and it is a "well-known" mark as understood under Article 6 bis of the Paris Convention. The

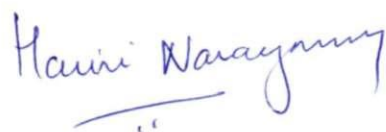


Complainant states that its mark is exclusively identified and recognized by the public with the Complainant's products and services.

The Complainant asserts that it has over 5000 domain names and has prevailed in numerous legal proceedings and obtained the transfer several domain names that include its famous DELL trademark. The Complainant states that it is the proprietor of the DELL and DELL PRECISION marks and has worldwide registrations for the trademarks. The mark DELL PRECISION according to the Complainant is used in connection with its PRECISION series laptop computers. As the mark is used in its entirety in the disputed domain name, the Complainant states that the disputed domain name is identical or confusingly similar to its mark DELL PRECISION.

The Complainant argues that the Respondent has no rights and legitimate interests in the domain name, as the Complainant has not assigned or licensed the use of its mark to the Respondent and there is no relationship between the parties. Further, the Complainant believes the Respondent does not use the disputed domain name in connection with a *bona fide* offering of goods or services, but uses it with a website that contains third party links to mislead Internet users for commercial gain.

The Complainant states the disputed domain name was registered and used in bad faith as the Respondent seeks to exploit its famous mark to attract Internet users to the Respondent's website or other online location by creating a likelihood of confusion with the Complainant's mark. The Complainant asserts that the disputed domain name has been registered by the Respondent to obtain an exorbitant amount by selling it to the Complainant and to generate revenue from pay per click links. The Respondent has been found to have previously registered domain names with famous marks belonging to third parties and the Respondent has a past history of such bad faith registrations in several cases. The Complainant contends the Respondent knew of the mark and therefore registration of a name that is obviously connected with the Complainant shows the Respondent's opportunistic bad faith. The Complainant therefore requests for the transfer of the disputed domain name for the above stated reasons.



Respondent's Submissions

The Respondent did not respond to the notification sent by the Arbitrator and has filed no response in these proceedings.

Discussion and Findings

Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

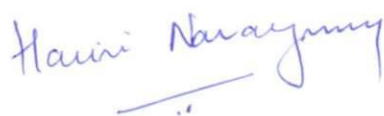
The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

- (i) The domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.

It is well established, that trademark registration is *prima facie* evidence of rights in a mark. The Complainant has provided details of its registered trademarks and has



demonstrated its rights in the DELL trademark and the DELL PRECISION trademarks in India and in the US. The Complainant has also established that it has used the mark for a considerable period. Evidence of use of the mark for several years by the Complainant also undoubtedly shows its rights in the mark. See *Starbucks Corporation v. Mohan Raj* INDRP Case 118 <starbucks.co.in>, November 26, 2009. (Use of a mark for several years by a complainant establishes its rights in the mark).

The disputed domain name incorporates the DELL PRECISION mark in its entirety; this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. See *Indian Hotels Company Limited v. Mr. Sanjay Jha*, INDRP case 148 Sept 27, 2010 <gingerhotels.co.in>. (A domain name that entirely incorporates a complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark.) The country code top-level domain (cc TLD) suffix does not lessen the confusing similarity of the domain name with the trademark. See *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010.

For the reasons discussed, the Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

Rights and Legitimate Interests

The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent has not been given any authorization to use the Complainant's mark. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) The registrant is

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making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Respondent has not responded in these proceedings and has not provided any material to show rights in the disputed domain name. The Arbitrator finds the material on record does not show the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. See *Starbucks Corporation v. Mohan Raj* INDRP case 118, (<starbucks.co.in> November 26, 2009). Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate noncommercial fair use purposes.

The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating others trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* offering of goods and services under the Policy, particularly if the Respondent uses the disputed domain name with links to other sites that compete with the Complainant's business. Such use of a domain name that contains a famous mark to redirect customers is termed as "bait and switch", where Internet users are baited by the well-known mark and are then directed to other sites, by a respondent who typically lacks rights and legitimate interests to use the name or the mark.

The Arbitrator finds the Complainant has made a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

Bad Faith

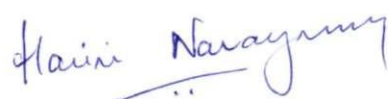
Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith.

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The Complainant has asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons: that the Complainant has well-established rights in the trademarks DELL and DELL PRECISION. The Respondent has intentionally attempted to attract users by creating a likelihood of confusion with the Complainant's mark as to source of endorsement and affiliation; The Respondent has attempted to sell the disputed domain name for an amount in excess of documented out of pocket expenses. The Complainant's marks have considerable worldwide reputation, and the registration of a name that is obviously connected with the Complainant indicates the Respondent's opportunistic bad faith.

The Arbitrator finds the Complainant has establish its extensive use of the DELL PRECISION mark. Further, the Complainant's trademark applications were made much before the disputed domain name was registered. The evidence on record clearly shows the Complainant's trademark is undoubtedly well known and it is unlikely that the Respondent was unaware of the Complainant's prior rights in the mark when he registered the disputed domain name. The domain name registered therefore seems to be a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's site. Registration of a domain name, based on awareness of a complainant's trademark rights is indicative of bad faith registration under the Policy. See *Lego Juris v. Robert Martin*, INDRP / 125, February 14, 2010.

The Registration of a domain name that is confusingly similar or identical to a famous mark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. See *The Ritz-Carlton Hotel Company LLC v. Netlon*, INDRP Case 250, Dec 30 2011, <ritzcarlton.in>. (Where the domain name is so obviously connected to the complainant, the registration and use by the respondent suggests opportunistic bad faith, citing *Pavillion Agency v. Greenhouse Agency Ltd.* WIPO Case 2000-1221). Internet users may falsely believe that the Respondent's domain name and website are being operated or endorsed by the Complainant. See *Bharati Airtel Limited v. Rajeev Garg* INDRP 285 <airtelworld.net.in> January 12, 2012, (where respondent's bad faith



was found from intentionally attempting to attract for gain Internet users to the respondent's website or other online location by creating a likelihood of confusion with the complainant's mark).

Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no reasonable explanations for the registration and use of the disputed domain name except that the Respondent seeks to exploit the reputation and goodwill associated with the Complainant's mark in the manner mentioned under Paragraph 6 (iii) of the Policy.

The Arbitrator finds that the Respondent is a habitual cyber squatter and has been involved in a pattern of registering domain names using famous trademarks, See *Dell Inc. v. Jack Sun* INDRP Case 136 <dellattitude.in> (where the Arbitrator in that case noted the Respondent's reputation as a cyber squatter, referring to several cases where the Respondent was found to have registered and used domain names in bad faith). The registration and use of a domain name that exploits the goodwill of another's trademark is evidence of bad faith . See *Karnataka Bank v. ELI/ Shoval* , INDRP case 210 April 15 2011 <karnatakabank.in> . The Respondent in the present case is found to have registered the disputed domain name to get undue advantage of the goodwill associated with the Complainant's trademark, and as such is found to have registered and used of the disputed domain name in bad faith, as understood under the INDRP Policy.

For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.



Decision

The Complainant has established the disputed domain name is identical or confusingly similar to a mark in which it has rights, the Respondent has no rights or legitimate interests in the disputed domain name and the disputed domain name has been registered or is being used in bad faith. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

For the reasons discussed, it is ordered that the disputed domain name:
<dellprecision.co.in> be transferred to the Complainant.



Harini Narayanswamy

(Arbitrator)

Date: March 16, 2012