



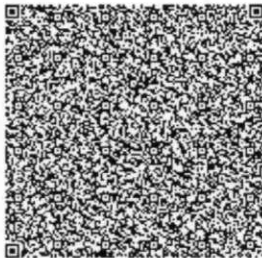
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INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL47435823372158L
Certificate Issued Date	: 08-Aug-2013 10:16 AM
Account Reference	: IMPACC (IV)/ dl791003/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL79100393578469256394L
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award - Movable
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .In DISPUTE RESOLUTION POLICY

IN THE MATTER OF

Dell Inc.
One Dell Way
Round Rock, Texas 78682-224 USA

(Complainant)

v.

Raj Kumar
Intel Computer Solutions,
No.1, 3D, Vantage Plaza,
LB Road, Adayar, Chennai,
Tamil Nadu 600041 India

(Respondent)

The Parties

The Complainant in this proceeding is Dell, Inc., having its office at One Dell Way, Round Rock, Texas 78682-2244, USAL.

The Respondent in this proceeding is Raj Kumar, having his office at Intel Computer Solutions, No.1, 3D, Vantage Plaza, LB Road, Adayar, Chennai, Tamil Nadu 600041 India.

The Domain Name & Registrant

The disputed domain name www.dellchargerprice.in registered with Good Domain Registry Pvt. Ltd. [R141-AFIN]. The Registrant is Raj Kumar of Chennai.

Procedural History

The Arbitrator was appointed by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name www.dellchargerprice.in.

.In Registry had supplied the copy of the Complaint and Annexures to the Arbitrator.

On 11.06.2013, the Tribunal sent an email to the parties informing them about the appointment of an Arbitrator.

In the abovementioned mail itself, the Tribunal requested the Complainant to supply the copy of the complaint with annexures to the Respondent and in case if it has already served it, then to provide the details of service record.

On 12.06.2013 the Tribunal sent the abovementioned mail to Mr. Raunaq of Anand & Anand as he had received an automated reply from the mailbox of Ms. Divya of Anand & Anand the day before, that she was on leave and all relevant mails should be sent to Mr. Raunaq.

On 13.06.2013 Mr. Raunaq wrote to the Tribunal, acknowledging his abovementioned mail and that they were doing the needful to serve the Respondent with a copy of the Complaint, by email and post.

The Complainant served the Respondent with a copy of the Complaint, via email and by post, on 18.06.2013 and it provided the Tribunal with the proof of service of the same.

On 5.07.2013, the Tribunal sent a mail to the parties informing them that 15 days provided to the Respondent to file a reply to the Complainant's Complaint had expired and no reply had been received. The Tribunal, in the interest of justice and fairness, provided the Respondent another 5 days to file its reply and in case the Respondent failed to file its reply within the extended time, the matter would be decided on the basis of documents already on record.

On 13.07.2013, the Tribunal sent another mail to all the parties informing them that the extension of 5 days provided to Respondent has also expired, and as directed earlier matter will be decided on the basis of documents on record.

The Respondent failed / neglected to file his say / reply to the Complaint of the Complainant within the stipulated time. Similarly he has not communicated anything on the Complaint till the date of this award.

Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of the proceedings. Since he has failed to join the proceedings, or to file any response the present ex-parte award is passed.

Tribunal has perused the record and annexures / document.

Factual Background

The following facts are derived from the complaint of the Complainant:

The Complainant was founded in year 1984 by Mr. Michal Dell and is in the business of Direct Selling of Computer Systems. The Complainant begins using the trade mark / name DELL in the year 1987. The Complainant began doing business in India in the year 1993 and established its subsidiary company in the year 2000.

The Complainant does business with 98% of fortune 500 companies and Complainant itself is in the top 50 of the fortune 500 companies.

The trade mark DELL forms integral part of various other trademarks owned by the Complainant like DELLWARE, DELLZONE, DELLNET, DELLHOST to name a few.

The Complainant has also registered its trade mark in India under Trade Mark Act, 1999.

The Complainant at present owns over 5000 domain names some of them are DELL.CO.IN, DELL.IN, DELLCENTER.IN, DELLCOMPUTER.CO.IN, DELLCOMPUTER.IN, etc.

The Complainant generates almost half of its revenue through sales over the internet.

The Respondent in the present matter i.e. Mr. Raj Kumar C/o Itel Computer Solutions has registered various multiple domain names comprising of complainants well known and registered trademarks/names DELL including the disputed domain name herein dellchargerprice.in.

Parties Contentions

(a) Complainant

The Complainant contends as follows:

1. The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has the rights.
2. The Respondents has no rights and legitimate interest in respect of the domain name.
3. The Respondent has registered and is using his domain name in bad faith.

(b) Respondent

The Respondent has not filed any response and submissions to the complaint despite being given an adequate notification and several opportunities by the Arbitrator.

Discussions and Findings:

As previously indicated; the Respondent has failed to file any reply to the Complaint and has not rebutted the submission put forth by the Complainant, and the evidence filed by it.

Rule 8 (b) of the INDRP Rules of Procedure provides that *"In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

As mentioned above enough chances have been provided to Respondent to file the reply but no response was received. Therefore, the proceedings have been proceeded ex-parte and the hence conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *" An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant assertions and evidence and inference drawn from the Respondent's failure to reply.

Having perused and the submissions and documentary evidence placed on record, the Complainant has proved that it has statutory and common law rights in the mark "DELL".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.

- (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.

i) The Domain name is identical or confusingly similar to a name, trade mark or service mark in which Complainant has rights.

The Complainant has stated in its complaint that domain name of Respondent www.dellchargerprice.in (hereinafter "the disputed domain") is confusingly

similar and identical to his name/mark DELL. The Complainant has further submitted that it has the statutory and common law rights in the mark "DELL" by virtue of long and continuous use and being a registered proprietor of the same. Therefore, mere addition of the generic terms "charger" and "price" to the mark of the Complainant creates confusion among the internet users. It has been held in numerous WIPO decisions that addition of a generic term to a trademark does not eliminate the likelihood of confusion.

The Complainant has further submitted that addition of top-level domains ".co.in" and ".in" is not relevant for deciding whether the domain name registered by the Respondent is confusingly similar to the Complainant's registered trade mark.

Moreover, in the matter of DELL Inc. vs. SKZ.com FA0509000555545 (NAF October 21, 2005) it was held that the Respondent's domain names <dellcustomersupport.com> and <wwwdellcmputer.com> domain names are confusingly similar to the Complainant's trade mark 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.

Further, in the matter of Dell Inc. vs. George Dell and Dell Net Solutions, Case No.D2004-0512 (WIPO Aug 24, 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."

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him.

Even otherwise the above facts and annexure establish that the domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.

ii) The Registrant has no rights or legitimate interests in the respect of the domain name

According to the paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain for the purpose of paragraph 4(ii)

- i) *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*
- ii) *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii) *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

The Complainant has submitted that:

1. The Respondent is trying to misappropriate the reputation associated with the Complainant famous trade mark DELL and that the Respondent have registered the domain name dellchargerprice.in under the presumption that the Complainant will purchase the domain name from him at exorbitant prices. It has not authorized or licensed the Respondent to register or use the domain name <dellchargerprice.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 trade mark / name DELL.
2. The Respondent's website is not bonafide 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 s is typically the strategy of such cyber squatters.
3. The Respondent is enjoying the benefits of 'pay-per-click' revenues, generated through the sponsored links on his website, by misusing the complainant's registered trade mark DELL in conjunction with the generic terms "CHARGER" and "PRICE". Therefore, the Complainant states that the Respondent is not making a legitimate, non commercial or fair use of the domain name <dellchargerprice.in>.

4. The Respondent's websites are not bonafide since the Respondent is using the domain name dellchargerprice.in to divert/redirect internet users and consumers seeking the complainant's goods and services to third party websites, a majority of which, market computers, laptops and related products and services, in direct competition with the complainant, while the Respondent himself is not engaged in any activity of his own to show that he has any legitimate rights or interest in the domain name dellchargerprice.in.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures establish that the Respondent has no right or legitimate interest in the disputed domain name.

iii) The Registrant domain name has been registered or is being used in bad faith

The Complainant has submitted in its Complaint that:

1. The disputed domain name comprises in entirety the registered mark of the Complainant and the Respondent has registered it with the sole purpose to *"piggy-back off the commercial value and significance of the Complainant's registered and well known mark DELL"*. The disputed domain name was registered with the sole object of later compelling the Complainant to purchase it at an exorbitant price.
2. The Respondent is benefitting from pay-per click on the links on the disputed domain name, a majority of which are market laptop sellers and provide related products and services.
3. The Respondent is presumed to have had the knowledge of the Complainant's mark DELL due to its prior registration and long term usage. Moreover, the Complainant's mark DELL is famous worldwide and it has numerous domain names registered to in its name, so the Respondent is bound to have had the knowledge about it.
4. The bad faith of the Respondent is demonstrated by the fact that it is a habitual offender and earlier also subject to INDRP proceedings for the

domain name www.dellindia.co.in which was transferred to the Complainant by an INDRP award dated 22nd September, 2011 passed by NIXI.

5. The bad faith, use and registration of famous trademark is evidenced by the fact that it has given links on the disputed domain name that lead to laptop sellers and similar service providers, that are competitors of the Complainant. It has further been submitted that the Indian consumers looking for Dell chargers are bound to search for domain names comprising of the mark DELL along with generic names charger and price. Hence, the Respondent is intentionally trying to attract users, for commercial gain, to its domain name with the intention of creating confusion of its affiliation with the Complainant.

The above submission of the Complainant has not been rebutted by Respondent, as such they are deemed to be admitted by him. Hence, the Tribunal is of the view that the disputed domain name has been registered or is being used in bad faith

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has got registered and used the disputed domain name in bad faith. IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.dellchargerprice.in> to the Complainant. The Award is accordingly passed on this 14th day of August 2013.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 14th August, 2013