



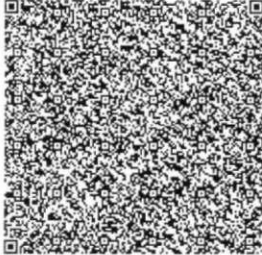
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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA**
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of Procedure

ARBITRATION AWARD

DATED: October 4, 2012

In the matter of:

**Dell Inc.
One Dell Way
Round Rock,
Texas 78682-2244
USA**

Complainant

Vs

**Jack Sun
Domainjet, Inc
1800 Amphitheatre Parkway,
Mountain View
California-94043**

Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is Dell Inc with registered office at One Dell Way, Round Rock, Texas 78682-2244, USA
- (b) Respondent firm is: **Jack Sun, Domainjet, Inc 1800 Amphitheatre Parkway, Mountain View, California.** It has presence on internet with domain name of www.dellprecision.in which is subject of dispute.

2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.dellprecision.in registered with the .IN Registry.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.



3. **BRIEF BACKGROUND:**

FACTUAL AND LEGAL GORUNDS

- (a) The Complainant Dell Inc. was founded in 1984 by Mr. Michael Dell. Dell is one of the world's largest direct seller of computer systems. Its activities 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 addresses the unique needs of large enterprises, public institutions, small and medium businesses.
- (b) The Complainant is using the trade mark/name DELL since 1987. It has extensive and prominent use of its trade mark/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.
- (c) Complainant has several models of laptops and desktops with different features and specifications sold under different series/sub-brands. One such series is the DELL PRECISION.
- (d) Complainant has spent substantial time, efforts and money in advertising and promoting the "DELL" trade mark throughout the world. "DELL" trade mark has become famous and well-known. It has enormous goodwill in the mark and widespread consumer recognition.
- (e) Complainant is the number one provider of computer systems and does business with 98 percent of Fortune 500 corporations. It is in the top 50 of the Fortune 500, sells more than 10,000 systems every day to customer in 180 countries and has, more than 43,000 service 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 network and Internet infrastructure.
- (f) Complainant began doing business in India in 1993, highly successful presence in India by way of imports and after-sales outlets and direct sales of its products through its Indian Subsidiary incorporated in June 2000.
- (g) Complainant's subsidiary in India undertake specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, computer consultancy and solutions, and software promotion. Complainant has tie up with several channel partners such as authorized distributors and resellers including 600 systems integrators and launched DELL exclusive stores all over the country. Information regarding the Complainant's business in India is found on its website www.dell.co.in excerpts annexed.



- (h) On January 20, 2011, Complainant sent notice to the Respondent calling to cease and desist all use of the domain name to the complainant. Complainant refused until he negotiated a payment on \$USD 500 for the transfer. Complainant subsequently learnt that Respondent had also registered domain name <dellprecision.in>. On November 16, 2011, Complainant wrote to Respondent calling upon him to transfer the aforesaid domain name to the Complainant failing which legal proceedings would be initiated. However, Respondent reverted and sought clarification as to the amount of consideration he would receive in exchange for the transfer of the disputed domain name to the Complainant. Copies of Correspondences are annexed to the complaint.

COMPLAINANTS' TRADEMARK RIGHTS

- (i) Complainant adopted and commenced use of the trade mark DELL in the year 1987 and using it continuously and extensively not only as a trademark but also as corporate name. DELL also forms an integral part of other trademarks owned by the Complainant, known as DELL formative marks, include DELLPRECISION, DELLVENUE, DELLWARE DELLZONE, DELLNET, DELLHOST etc. "DELL" is a well known trademark in the world and exclusively recognized by the public as relating to the goods and services of the complainant alone.
- (j) Complainant is registered proprietor of the trademark "DELL". Registration has been duly renewed from time to time and is valid and subsisting under the Trademarks Act, 1999. Complainant also registered its trade mark "DELL" in various jurisdictions list comprising registrations- detail is annexed.
- (k) Complainant is also the proprietor of trade mark "DELLPRECISION" by virtue of registration and long continuous and uninterrupted use of the aforesaid trade mark with respect to the DELL PRECISION series of laptops. Internet extracts pertaining to the registration are annexed.
- (l) Trade mark DELL is distinctive and famous trade mark throughout the world as a symbol of high quality standards, complainant maintains for its product and related services. Numerous arbitration panels recognized the fame of the trade mark/name DELL. Copies of these decisions annexed.

INTEREST PRESENCE OF THE COMPLAINANT

- (m) 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 other internet users. Complainant generates half of its revenue from sales over the internet. The information regarding complainant's business is on websites <dell.com>, <dell.co.in> and <dell.in>. Complainant has registered numerous other domain names which comprise



famous DELL mark in conjunction with the trade mark/ brand name associated with the product lines and services, e.g. dellpercision.com, dellinspiron.in, dellinspiron.com, delldirect.in, delldirect.com, delllatitude.com, dellinspiron.com, dellcloud.com etc...

(n) A list of the domain names is annexed.

Complainant claims that preceding paragraphs clearly demonstrate exclusively and reputation associated Complainant's trade mark name, and trade mark/ trade name, and trademark "DELL" is a "well-known" trade mark as understood under article 6 bis of the paris convention.

4. PARTIES CONTENTIONS:

A. COMPLAINANT'S CONTENTIONS:

A. THE RESPONDENTS'S DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A NAME, TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANTS HAS RIGHTS.

The disputed domain name <dellprecision.in> incorporates Complainant's well known and registered trademarks "DELL" and "DELLPRECISION" entirely and is confusingly similar to the Complainants domain name www.dellprecision.com. <dellprecision.in> registered by the respondents entirely comprises of the Complainants registered trademark **DELLPRECISION** which has obvious connections to the Complainant's business and creates confusion among Internet users.

B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DOMAIN NAME.

Respondent's intention while registering the domain name <dellprecision.in> is to misappropriate the reputation associated with the Complainant's famous trademarks "DELL" and "DELLPRECISION" in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks and by linking the domain name <dellprecision.in> to third party commercial web sites, a majority of which market laptops and related products and services in direct competition to the complainant. Respondent has registered the domain name <dellprecision.in> under the belief that the Complainant will purchase the disputed domain name from him at exorbitant prices, having profited from such a transaction with the Complainant previously.

(a) There exists no relationship between the Complainant and the Respondent. Neither has the Complainant authorized nor licensed the Respondent to register or use the domain name <dellprecision.in>



- (b) Respondent has no connection with the domain name <dellprecision.in> as the links provided on the Respondents web pages redirect to third-party commercial websites and therefore, the mere assertion by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest does exist.
- (c) Respondent's choice of the Complainant's well known trademarks "**DELL**" and "**DELLPRECISION**" as its domain name is totally unnecessary and the sole purpose of carrying on business through the use of the aforesaid domain name incorporating the Complainant's trademarks "**DELL**" and "**DELLPRECISION**" is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.
- (d) The Respondent's website is not *bona fide*. Respondent is trading on the fame and recognition of the Complainant's well-known trademarks to cause initial interest, confusion and bait internet users as is typically the strategy of such cyber quarters.
- (e) Complainant believes Respondent is enjoying the benefits of 'pay-per-click' revenues, generated through the sponsored links on its website, by misusing the Complainant's registered trademarks **DELL** and **DELLPRECISION**. Respondent is not making a legitimate, non-commercial or fair use of the domain name <dellprecision.in>.
- (f) Respondent has no *bona fide* intention to use the aforesaid domain name and has registered the same for the sake of trafficking and subsequent sale of the aforesaid domain names to the highest bidder. Respondent not only diverts/redirects traffic to commercial websites, it directs it to web pages marketing, laptops and related products and services, many of which are in direct competition with the Complainant in a bold attempt to force the Complainant to purchase the domain name <dellprecision.in>
- (g) The domain name <dellprecision.in> comprises entirely of the Complainant's registered trademarks **DELLPRECISION**, in which the Complainant has a substantial interest and are used in relation to the Complainant's PRECISION series of laptops. Respondent registered the domain name <dellprecision.in> in order to piggy-back off the commercial value and significance of the Complainant's domain name <dellprecision.com>
- (h) Domain name <dellprecision.in> has been registered by the Respondent solely in order to force the Complainant's hand in purchasing the said domain name from the Respondent at an exorbitant rate while the Respondent profits from the revenue generated from the 'pay-per-click' links to third party commercial web



sites, a majority of which market laptops and related product and services in direct competition to the Complainant. Complainant alleges that the Respondent is seeking illegal commercial gratification through its opportunistic bad faith registration of the disputed domain names.

- (i) Respondent is presumed to have bad knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain name by virtue of the Complainant's prior use and registration of the same. Even otherwise, bad knowledge by virtue of the numerous correspondence exchanged between the parties with respect to the Complainant's proprietorship of the trade mark DELL and the *malafide* registration and subsequent transfer of the domain name <dellstreak.com> from the Respondent to the Complainant.
- (j) Registration of a famous trademark without legitimate commercial interests in the same is the prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademarks/name.
- (k) Registration of a domain name incorporating a well-known trade mark of the Complainant is in bad faith has been upheld by the numerous UDRP decisions.
- (l) Bad faith lies in the Respondent's intentional use of the domain name <dellprecision.in> to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL.
- (m) Domain name <dellprecision.in> wholly incorporates the Complainant's well-known trade mark "DELL" and "DELLPRECISION", it is therefore submitted that domain name has been registered and is being used in bad faith. Respondent is a known habitual offender and seeks commercial gain by wrongfully registering the domain names in an attempt to sell them to the entity having a legitimate right in the same.

REMEDY SOUGHT

A decision that the domain name registration be transferred to the Complainant and heavy costs be imposed on the Respondent as a deterrent to future bad faith registration.

B. Respondents Contentions

Not responded at all.



5. OPINION:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant has origination since Year 1984 and is using the mark DELL PRECISION since year 1984 and has made massive efforts to promote the brand name 'DELL' by consuming various resources available at his end and word 'DELL' has certainly acquired a popular Brand name in the process and is a popular brand across the length and breadth of the India and the World and a prominent place in internet electronic media also.

On the basis of the records submitted by the complainant it's proved that the domain name 'dellprecision.in' is related to the business of Complainant and is being used for purpose and related to his work.

It is confirmed that Complainant is user of name 'DELL'.

That trade mark 'DELL' alone and with other symbol or Figure or other injunctions has been registered effectively in different places in the world as well as India as attached in the Annexures submitted. Respondent's registration of the infringing Domain with knowledge of the fame and public recognition of the mark Dell and Dell Computer Corporation in India and throughout the world establishes that Respondent has registered the Infringing Domain Name to prevent Dell Computer Corporation from using its Dell and Dell precision marks as a domain name in India.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.



The respondent does not have clear intentions and has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing fully well of the pre existence of the domain name wishing to be registered and even without understanding whether he has rights to register such a name or not and whether similar domain names were legally registered at the various registries of internet by the Complainant much before the respondent started the process of registration, still respondent went in for the registration of the domain name in question, and was purportedly using the name for business purposes through indirectly and directly putting it up for sale and also asking money to return back the domain name. Not only this the respondent has registered many dell associated domain names and put them on sale.

Cementing its bad faith registration of the Infringing Domain Name, Respondent has offered to sell the Infringing Domain Name through the marketplace dellprecision.in., Respondent has used the Infringing Domain Name to intentionally trade on Dell Computer Corporation's reputation, goodwill and trademarks; It profusely empowers Complainant with the First right to the domain name dellprecision.in and therefore any rights of the Respondent in this regard stand defeated in favor of Complainant.

This tribunal holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

Complainant has amply demonstrated that he has been in the business of Computers, its allied products and services etc. since the year 1984. That complainant Dell Inc. offers a wide range of services over the length and breadth of the World. That the complainant Dell Inc. has service marks registered with the Trade Mark Offices at different registries all over the world including India.

That the Respondent has not been commonly known by the domain name. That Respondent has no relationship with or permission from the complainant for use of its marks. That Respondent cannot have ignored the fact that Dell is a registered and protected trademark of the Complainant and that dell.com is registered domain name of the Complainant.

Complainant is well-known with its trademark .The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

Respondent's aim is to make a illegitimate, commercial gain, unfair use of the <dellprecision.in> domain name, with intent to misleadingly divert consumers or to tarnish the Dell trade/service mark. Respondent has offered to sell the Infringing Domain Name and it is not possible to conceive of any plausible or contemplated use of the Infringing Domain Name by Respondent that would be legitimate or lawful, establish that Respondent's registration and use of the Infringing Domain Name were in bad faith in accordance with paragraph 6 of the policy. Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with Dell Computer Corporation products, reputation and services to third party links on a portal site constitute bad faith



use under the policy. It is very clear that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. Parking of such domain names to obtain revenue through sale, web traffic and sponsored results constitutes bad faith.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and its dummy parking for sale through direct or indirect but related vendors. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.

III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name dellprecision.in be and is hereby transferred to Complainant with immediate effect.

Further the arbitration court takes an adverse view on the bad faith registration by the respondent and to act as a deterrent to future misuse it further imposes a fine of Rs. 50000/- (US \$1000 Approx.) on the respondent to be given to NIXI for putting the administration to unnecessary work and wrongful registration by respondent.

Given under my hand and seal on this day of 4th day of October 2012.


 **Deepa Gupta**
Arbitrator