

हरियाणा HARYANA

M 682653

ARBITRATION AWARD

**BEFORE THE NATIONAL INTERNET EXCHANGE OF
INDIA**

Dell Inc.

One Dell Way

Round Rock, Texas 78682-2244

USA

Complainant

Versus.

Raja Synergy

Synergy Systems

165, Valluvar Kottam High Road

Near Sotc, Nungambakkam

Chennai 600034

Respondent

Hanvi Narayana

1. The Parties

The Complainant is Dell Inc. of Texas USA and is represented in these proceedings by M/s Anand and Anand of New Delhi India. The Respondent is Raja Synergy of Chennai, India.

2. The Domain name, Registrar and Policy

The present Arbitration proceeding pertains to a dispute regarding the domain name <dellservers.in> (hereinafter referred to as disputed domain name). The registrar for the disputed domain name is Good Registry Private Limited (R141-AFIN). 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 May 9, 2013 and on May 10, 2014 transmitted by email a notification of commencement of the arbitration proceedings to the Respondent's email address as provided in the Whois records. Under the INDRP Rules, copies of the said notification were sent to other interested parties to the dispute. The Respondent was given

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twenty-one days time from the date of the notification to file a response and participate in these proceedings. No response was received from the Respondent.

Factual Background

The Complainant is a provider of computer systems, computer peripherals and related services around the world. It uses the DELL trademark / service mark to market its products and services and owns a portfolio of DELL formative marks. The Complainant has provided details of some 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.

The Complainant has also provided the details of its Indian trademark registrations: 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.1,239,350 under class 37, Indian trademark registration No.1,239,349 for Trademark DELL under class 42; Indian trademark registration for trademark No 1,335,057 class 36.

The Respondent registered the disputed domain name <dellservers.in> on June 12, 2013 as per the Whois records.

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The Parties Contentions

A. Complainant's Submissions

The Complainant states it was founded by Mr. Michael Dell in 1984 and is presently one of the world's largest direct sellers of computer systems. It began using the trademark DELL in 1987 and has made continuous and extensive use of the mark in connection with its wide range of computer related goods and services. It supplies computer products to several Fortune 500 companies and is itself among the top fifty of the Fortune 500.

The Complainant states it commenced its Indian operations in the year 1993 and incorporated its Indian subsidiary in 2003. The Complainant states that it has a large presence in India due to sales of its products and the after sales services that it offers to its customers. The Complainant asserts that it has over five thousand domain names and has prevailed in numerous legal proceedings and obtained the transfer several domain names that include its famous DELL trademark. The Complainant has provided copies of the judgments / administrative panel decisions that have found that its DELL mark is well known. On the basis of the extensive evidence submitted, the Complainant states that its mark is well known throughout the world and enjoys the reputation of 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.

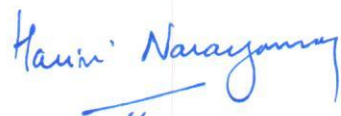
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The Complainant states that the disputed domain name is confusingly similar to its mark as the domain name uses its entire mark along with the word "servers". As the word "servers" has relevance to its business it would confuse Internet users to thinking that it is the Complainant's domain name. The Complainant further 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.

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 contends the Respondent ought to have known of its well-known mark and registered the disputed domain name due to its obviously connection with the Complainant. This shows the Respondent's opportunistic bad faith and the Complainant therefore requests for the transfer of the disputed domain name for the above stated reasons.

Discussion and Findings

Under the INDRP 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 alleging that there has been a violation of Complainant's rights. Paragraph 4 of the INDRP Policy mandates that the



Complainant has to establish the following three elements to succeed in the proceedings:

- (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 trademark or a service mark in which the Complainant has rights.

The Complainant has submitted extensive evidence to show that it has rights in the DELL trademarks and service marks. Such evidence *inter alia* includes copies of its international trademark registrations and its Indian trademark registration under several classes. Trademark registration is considered *prima facie* evidence of rights in a mark. The Arbitrator finds, based on the evidence on record, the Complainant has established its rights in the trademark DELL.

The Arbitrator finds that the disputed domain name incorporates the DELL mark in its entirety; this is adequate to prove that the disputed domain name

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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). Given that the DELL mark is widely used and is well known, the Arbitrator concurs with the Complainant's submission that the disputed domain name that consists of the DELL trademark in its entirety with the word "servers" which has an obvious connection with the complainant's business makes the domain name confusingly similar to its mark. The country code top-level domain (cc TLD) suffix does not lessen the confusing similarity of the disputed domain name with the trademark. See *Morgan Stanley v. Bharat Jain*, INDRP Case No. 156 dated October 27, 2010. (Where it was held that the ccTLD ".in" or ".co.in" does not prevent the finding of confusing similarity of the disputed domain name with the trademark).

Accordingly, for the reasons discussed, the Arbitrator finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights. 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 lacks rights and legitimate interests in the disputed domain name. It is sufficient for the Complainant to put forward a *prima facie* case regarding the Respondent's lack of rights and legitimate interests.

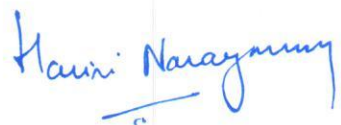
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The burden of proving rights or legitimate interests in the disputed domain name rests with the Respondent. Paragraph 7 of the Policy, provides a non-exhaustive set of circumstances that a respondent could rely on to establish rights in the domain name. These briefly are: (i) if before notice of the dispute, the respondent 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 respondent (as an individual, business organization) has been commonly known by the domain name, or (iii) The respondent is making legitimate, non commercial or fair use of the domain name without intent for commercial gain.

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name as the Complainant has not licensed or otherwise permitted the Respondent to use its mark. Further, given the international popularity of the DELL trademark the Respondent ought to have registered the domain name for purposes of exploiting the mark and therefore has no legitimate rights to the disputed domain name.

The Arbitrator finds that there is no evidence on record to show that the Respondent has made preparations to use the disputed domain name for a *bona fide* offering of goods or services or that the Respondent has been commonly known by the disputed domain name or makes any legitimate non-commercial fair use of the disputed domain name.

The Respondent has not filed any response rebutting the Complainant's submissions or filed any material in these proceedings that demonstrates the

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Respondent's rights in the disputed domain name. In the absence of any material from the Respondent, and other material on record to indicate the Respondent has rights, it is found that the Respondent has not established any rights or legitimate interests in the disputed domain name.

Accordingly, for the reasons discussed, the Arbitrator finds the Complainant has made a *prima facie* case that the Respondent lacks 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. The Complainant has urged that the Respondent has intentionally registered the disputed domain name to exploit its well-known DELL trademark. The Complainant has provided evidence of having obtained trademark registration in India from November 2006, whereas the disputed domain name was registered in the year 2012 . As discussed earlier it is found that the Complainant has adopted and used the mark DELL extensively in several jurisdictions and its numerous registered marks bear testimony to this fact.

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

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faith. The Arbitrator finds the circumstances here suggest that the Respondent seeks to use the Complainant's mark in the manner mentioned under Paragraph 6 of the Policy, namely to attract Internet traffic to the Respondent's website, by incorporating the trademark in the disputed domain name which is considered bad faith registration and use of the disputed domain name under the INDRP Policy.

Based on all the facts and circumstances of the case the Arbitrator finds that the disputed domain name was registered in bad faith and has been used in bad faith. The Arbitrator finds the Complainant has satisfied the third element under paragraph 4 of the Policy.

Decision

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



Harini Narayanswamy

(Arbitrator)

Date: July 10, 2014