



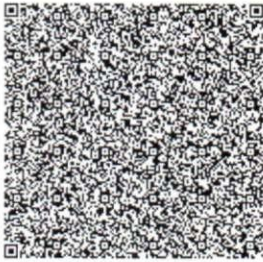
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL19409356911656O
Certificate Issued Date	: 24-Feb-2016 12:06 PM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDLSHIMP17375009670076890
Purchased by	: SUDARSHAN KUMAR BANSAL
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SUDARSHAN KUMAR BANSAL
Second Party	: Not Applicable
Stamp Duty Paid By	: SUDARSHAN KUMAR BANSAL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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IN.Registry
(National Internet Exchange of India)

COMPLAINANT
Dell Inc.

Vs.

RESPONDENT
Mani Soniya

ARBITRATION AWARD

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

S. K. Bansal

INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : SUDARSHAN KUMAR BANSAL

COMPLAINANT

Dell Inc.
One Dell Way
Round Rock, Texas 78682-2244
U.S.A.

Vs.

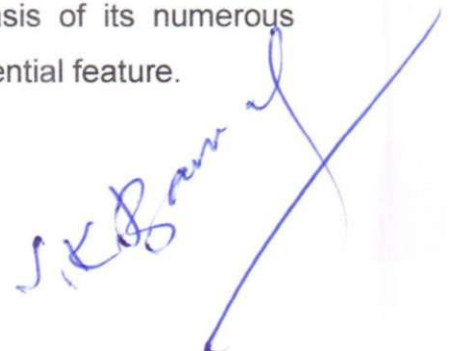
RESPONDENT

Mani Soniya
Mathaakaavadanur, Dharmapuri
Coimbatore, Tamil Nadu – 635301

ARBITRATION AWARD

1. The Complainant is aggrieved by the Respondents registration of the domain name dellservicecenterchennai.in registered through the sponsoring Registrar Good Domain Registry Private Limited, 34-A, Main Road, Kennedy Square, Perambur, Chennai, Tamilnadu – 600011 and has accordingly made this Complaint seeking the relief that the domain name dellservicecenterchennai.in (impugned domain name) be transferred to the Complainant with costs.

2. The Complainant has preferred this Complaint on the basis of its claimed proprietorship and ownership rights in the Trade Mark/Service Mark DELL and DELL formative marks, its trade name bearing the word/mark DELL as its essential feature as well as on the basis of its numerous domain names bearing the word/mark DELL as its essential feature.



3. The Complainant claims to be using its aforesaid Trade Mark/Trade Name DELL in relation to a wide range of its computers, computer accessories and computer related products and services in the global markets since 1987 and in India since the year 1993.

4. The Complainant claims its various DELL and DELL formative Trade Marks to be registered in over 184 countries of the world including in India. In addition to its rights conferred by Trade Mark registrations under the Trade Marks Act, 1999 the Complainant claims to have acquired a valuable trade, goodwill and reputation under its said Trade Mark/Trade Name/Domain Name DELL being used by it in relation to its goods and business. Consequently the Complainant claims to have common law rights in its said Trade Mark/Trade Name/Domain Name DELL.

5. According to the Complainant its said Trade Mark/Trade Name/Domain Name DELL in relation to its said goods and business has been and is being well used, well advertised, is well known, is well established and extremely visible in the market and trade.

6. According to the Complainant its said Trade Mark/Trade Name/Domain Name DELL enjoys a very high level of distinctiveness duly identifying its said goods and services in relation to which it is being used as that of the Complainant and from the Complainant's source and origin. The claimant claims to have been using its said Trade Mark/Trade Name/Domain Name DELL in the physical market in relation to its goods as also in the cyber/internet market.

7. The Complainant claims to have registered over 5000 domain names bearing the word/mark DELL.

J. K. Banerjee

8. The Complainant claims that its rights in the said Trade Mark/Trade Name/Domain Name DELL to have been judicially recognized with it by various Arbitral Tribunals.

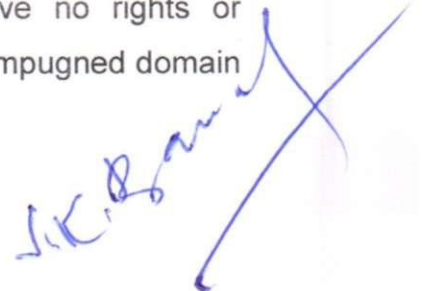
9. In support of its rights and use the Complainant has made numerous pleadings and filed numerous documents which would be dealt with in so far as they are relevant, in the course of this award.

10. According to the Complainant, the Respondent's impugned domain name dellservicecenterchennai.in is identical with and deceptively similar to the Complainant's said Trade Mark/Trade Name/Domain Name DELL, being a pirate thereof and is in violation of the Complainant's rights therein. The adoption of the impugned Domain Name is malafide and the same is allegedly being used by Respondent for making illegal gains to trade upon. The Complainant's goodwill and reputation attached to the Complainant's said Trade Mark/Trade Name/Domain Name DELL resulting in consumer deception and violation and dilution of the Complainant's rights. The Respondent's impugned Domain Name and its alleged adoption, use and registration with the sponsoring Registrar is without the leave and license of the Complainant.

11. According to the Complainant the impugned domain name is being intentionally used by the Respondent to attract internet user seeking the Complainant's products and services to its (Respondent's) website.

12. The Complainant claims the Respondent to have even copied the design and layout of its website as well.

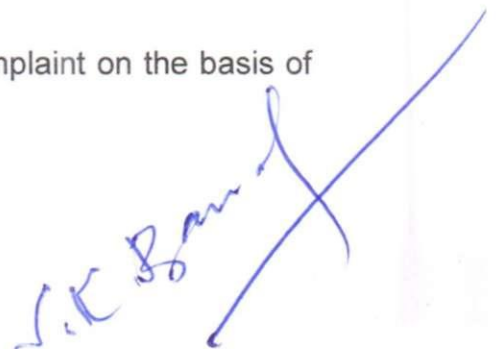
13. The Complainant claims the Respondent to have no rights or legitimate interest in the impugned domain name and the impugned domain name to be registered and/or used in bad faith.



14. The .IN Registry appointed me as an Arbitrator to adjudicate this Complaint in accordance with the Arbitration and Conciliation Act, 1996; .IN Domain Name Dispute Resolution Policy; Rules of Procedure and/or bye-laws, rules and guidelines made therein and notified the factum thereof to the Complainant through its attorneys and authorized representatives, as well as the Respondent vide its email of 21st January, 2016.

15. Thereafter, I issued a notice to the Respondent vide email dated 22nd January, 2016 with a copy of the Complainant wherein the Respondent was also notified of me being appointed as an Arbitrator and wherein the Respondent was given an opportunity to submit his written response to the Complaint stating its reply and defense together with documents supporting its position within ten days thereof. Thereafter .IN Registry vide its E-mail of 29th January, 2016 addressed to me informed that it has handed over the courier containing the Complaint with Annexures to be sent to the Respondent to Professional courier on 28th January, 2016 and attached therewith the scanned copy of courier receipt. The Respondent never replied to the said notice and nor submitted its response and documents within the stipulated time. In the interest of justice another opportunity of ten (10) days to file the response with documents was given to the Respondent vide my notice dated 1st February, 2016, with copy to the authorized representatives of the Complainant, wherein it was stated that in the event of the Respondent not so filing, the Complaint would be decided on the basis of the material on record filed by the Complainant. The Respondent never filed any response.

16. Consequently I proceed to adjudicate this Complaint on the basis of the material available on the record.



17. The Trade Mark DELL and DELL formative trade marks are duly registered in India in the name of the Complainant under the Trade Marks Act, 1999 (the Act for short).

17.1 Some such registrations are as under :-

S.No.	Registration No.	Class	Representation	Date of application
1	575115	09	DELL	15.06.1992
2	805105	09	DELL PRECISION	08.06.1998
3	826095	09	www.dell.com	05.11.1998
4	923915	09	DELL	10.05.2000
5	1190375	02	DELL	07.02.2003
6	1190376	09	DELL	07.04.2003
7	1239349	42	DELL	24.09.2003
8	1239350	37	DELL	24.09.2003
9	1190375	02	DELL	07.04.2003
10	1190376	09	DELL	07.04.2003

17.2 The goods/services covered by some such registrations are as under:-

Trade Mark No.	Goods/Services
1190375	Toner cartridges, ink jet cartridges for printers, all being goods falling in class 2
1190376	Printers, personal and handheld computers, computer hardware and computer peripherals, namely modems, computer cables, computer styli, handheld computers, including handheld computers with wireless email and wireless access to electronic communications networks,

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	projectors, and instruction manuals sold therewith as a unit for the aforesaid goods falling in class 9.
1239349	Technical support service namely, troubleshooting of computer hardware and software problems, consulting services in the field of design, selection implementation and use of computer hardware and software systems for others, falling in class 42.
1239350	Maintenance and repair of computer hardware installation of computer networks installation of computer systems all being service falling in class 37.
826095	Computers and computer peripheral devices and parts and fitting therefor, monitors, keyboards printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, cd-rom drives, data storage devices, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, operating software and instruction manuals all sold together.
805105	Computer and computers peripherals, namely monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, cd-rom drives, cards and memory add ons, memory boards and chips, cables and connectors, operating software sold together as a unit.

17.3 The aforesaid registrations, as per the material available on the record, are renewed and subsisting.

S.K. Banerjee

17.4 The goods/services covered by the registrations noticed above cover computers, computer accessories and computer related products and services.

18. The Complainant has placed on record copies of registration certificates and list of registrations and status reports obtained from the online records of the Trade Mark Office of its said DELL and DELL formative trade marks in India under the Trade Marks Act, 1999 as **Annexure – B (Colly)**. Consequently the aforesaid Indian Trade Mark Registrations stand established.

19. These Indian Trade Mark registrations confer valuable rights in the registered Trade Marks upon the Registrant viz Complainant in this case. These registrations have a presumptive validity attached to them as also they are a presumptive evidence of title in favor of the Registrant **[See American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. & Anr. reported in AIR 1986 SC 137; National Bell Co. Vs. Metal Goods Mfg. Co (P) Ltd. & Anr. reported in AIR 1971 SC 898; Section 2(i) (v), 28 and 29 of the Act]**.

20 The Complainant's rights in the DELL Trade Mark/Trade Name/Domain Name including the Complainant's use, acquired goodwill, reputation and well known nature thereof have been recognized and held in favour of the Complainant by various Arbitral Tribunals constituted in India, as well as by accredited overseas institutions. Some such awards/judgements are as under:-

Forum		Title	Date of decision
National Forum	Arbitration	Dell Inc., Vs. SZK.Com	21 st October, 2005
		Claim No.	(Filed as <u>Annexure-</u>

	FA0509000555545	<u>K</u> to the Complaint)
National Arbitration Tribunal	Dell Inc., Vs. William Stenzel Claim No. FA0510000574596	23 rd November, 2005 (Filed as <u>Annexure-K</u> to the Complaint)
WIPO Arbitration and Mediation Center	Dell Inc., Vs. Radvar Computers LLC Case No.D2007-1420	24 th December, 2007 (Filed as <u>Annexure-K</u> to the Complaint)
WIPO Arbitration and Mediation Center	Dell Inc., Vs. Pateh Mbowe Case No.D2004-0689	20 th October, 2004 (Filed as <u>Annexure-K</u> to the Complaint)
National Internet Exchange of India	Dell Inc., Vs. Jack Sun	29 th April, 2012 (Filed as <u>Annexure-L</u> to the Complaint)
National Internet Exchange of India	Dell Inc., Vs. Jack Sun	18 th February, 2012 (Filed as <u>Annexure-L</u> to the Complaint)
WIPO Arbitration and Mediation Center	Dell Inc., Vs. ASTDomains Case No.D2007-1819	23 rd January, 2008 (Filed as <u>Annexure-Y</u> to the Complaint)

21. In my considered view the word/mark DELL is a highly arbitrary and fanciful trade mark in relation to the goods/services of the Complainant viz. computers, computer accessories and computer related products and services as the word/mark DELL has no descriptive, suggestive or generic connotation with these products and as such is an inherently strong trade mark and which can be protected and enforced even without evidence of acquired secondary significance. [See McCarthy on Trademarks and Unfair Competition, 3rd Edition, Vol.1, Chapter 11, Para 11.04].

See

22. The Trade Mark DELL stylized is registered in the USA under registration No.1498470 dated 2nd August, 1988 and as per the copy of the registration certificate placed on record by the Complainant as **Annexure-B**. The Complainant has also placed on record as **Annexure-B** a list of its trade mark registrations for the trade mark DELL word, stylized and formative registered in 137 countries starting from Afghanistan and ending with Zimbabwe and stretching across all continents and regions.

23. The Complainant has filed as **Annexure-A** a print out of the search results from the Whois database of the .IN Registry pertaining to the impugned domain name dellservicecenterchennai.in registered in the name of the Respondent with the sponsoring registrar Good Domain Registry Pvt. Ltd., (R141-AFIN) and to be created on 05.06.2013.

24. From the aforesaid registration certificates it can safely be taken that the trade mark DELL and DELL formative trade marks to be in existence at least since the year 1992 in India and since the year 1988 in the USA. In contrast the creation of the impugned domain name as per **Annexure-A** is only in the year 2013. Prior to the year 2013 itself various Arbitral Tribunals had already held the Complainant's to have rights in the Trade Mark/Trade Name/Domain Name DELL and particulars of such awards have been mentioned in Para 20 above. Thus the Complainant's said Trade Mark is clearly a prior and senior mark and pre dates the Respondents registration of the impugned trade name with the sponsoring Registrar.

25. The Complainant has placed on record downloads from the multilingual web-based free-content encyclopedia Wikipedia wherein the Complainant and the said DELL trade marks have been mentioned and written about as also articles on the Complainants business activities downloaded from the internet as **Annexure-C** ; copies of extracts downloaded from the Complainants website www.dell.com and

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www.dell.co.in as **Annexure-E**. These internet downloads from the Complainants website www.dell.com and www.dell.co.in has prominently mentioned the nature of the business activities of the Complainant as well as the trade mark DELL. The Complainant has also filed copies of documents evidencing the Complainant to have been named by Adweek as the # 15 of the "most loved companies in the world as **Annexure-F** ; internet extracts evidencing the Complainant's products as **Annexure-G**; articles and reports downloaded from the internet reporting upon the Complainant's Trade Mark DELL and its growing market and market share as **Annexure-H** ; the Complainant to maintain several pages on the social media platforms such as Twitter, YouTube, LinkedIn and Google+ as **Annexure-J**. The Complainant has also filed copies of Whois extract as **Annexure-M** evidencing the Complainant to own numerous domain names containing the trade mark "DELL". One such domain name is dellcloud.com registered with the sponsoring Registrar Safenames Limited with creation date 05.08.2008 which is prior to the date of creation of the impugned domain name as noticed in para 24 above. The Complainant vide **Annexure-N** has filed a list of numerous domain names many of which contain the word/mark DELL owned by it. Thus it can be safely be held that the Complainant has a presence on the internet.

26. Undoubtedly the Complainant's presence on the internet has worldwide reach and access. The market and trade can be presumed to be well aware of the Complainant and its commercial activity in relation to its computers, computer accessories and computer related products and services under its Trade Mark/Trade Name/Domain Name DELL.

27. The Respondent has not contested the Complainant's aforesaid rights and use including the Complainants claim of its said Trade Mark/Trade Name/Domain Name DELL to be well known, enjoying noticeable distinctiveness goodwill and reputation and presence and

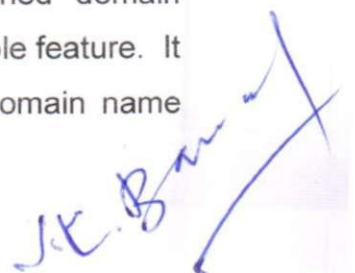
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visibility in the commercial market and to be in extensive well use world over including in India.

28. The Respondent, is using the impugned domain name to attract to it (the Respondent) internet users who are searching for the products and services being dealt in by the Complainant and offering to such internet users/customers' products and services of the Complainant as well as of other legal entities including those in direct competition with the Complainant. This is apparent from the screen shot/printouts taken from the Respondent's website under the impugned domain name and filed as **Annexures T & U** of the Complaint.

29. On such screen shots the Respondent has displayed the pictures of the Complainant's products and services as also a version of the Complainant's DELL Logo [covered by trade mark Registration No.923915] and has combined with it generic terms like "Lap Lop Store"; service centre. This establishes that the Respondent himself had knowledge and had endorsed the Complainant's trade marks and the Complainant's goods and products. Obviously the Complainant must have had some business standing, goodwill and reputation for the Respondent to deem it fit to direct its customers to the Complainant from its (Respondent) own website in the course of its (Respondents) own business. The Respondent would not like to loose business by directing traffic/customers to an unmeritorious business.

30. In my considered view there is a complete identity- phonetic, visual, structural and conceptual between the Complainant's Trade Mark/Trade Name/Domain Name DELL and the impugned domain name dellservicecenterchennai.in of the Respondent. The impugned domain name bears the word/mark DELL as its essential and memorable feature. It is with respect to the word/mark DELL that the impugned domain name



would be remembered and with reference to which the internet user(s) would access the internet services being offered by the Respondent. It is with reference to the word/mark DELL that an average consumer exercising average caution would remember the Complainant or the Respondent or would do business with them. The suffix "Service Centre Chennai" to the word/mark DELL is a mere generic expression and does not out-weigh the effect of the word/mark DELL which despite the same stands out prominently. The said suffix at the most gives an impression that the "Service Centre Chennai" is that of DELL or related to DELL or that the nature of goods and services being offered are of DELL. The aforesaid suffix only enhances the effect of the word/mark DELL as signifying that the service centre is of DELL. By itself, the said suffix serves no trademark function. DELL as noted above is the Trade Mark/Trade Name/Domain Name of the Complainant and in which the Complainant has undisputed proprietary rights. [K.R. Chinna Krishna Chettiar Vs. Sri Ambal and Co and Anr. AIR 1970 SC 146 ; Ruston & Hornby Ltd., Vs. Zamindara Engineering Co., 1970 (2) SCR 222 ; (B.K. Engineering Company v/s U.B.H.I. Enterprises (Regd). Reported in AIR 1985 Delhi 210 (DB) ; Kirorimal Kashiram Marketing & Agencies Pvt. Ltd., Vs. Shree Sita Chawal Udyog Mill Tolly Vill 2010 (44) PTC 293 (Del.) (DB)].

31. In my considered view the nature/services being dealt in by the Respondent under the impugned domain name are the same/similar to those of the Complainant. The Complainant is conducting its business over the internet and the Respondent is also offering the same goods and products as that of the Complainant on its website under the impugned domain name by directing customers seeking the products being dealt in by the Complainant to the Complainant itself or to the Complainant rivals in business. A trade connection exists between the Complainant and the Respondent under the respective goods/services. [Corn Products Refining Co. Vs Shangrila Food Products Ltd., AIR 1960 SC 142].

32. Having regard to the complete similarity/identity between the Complainant's Trade Mark/Trade Name/Domain Name DELL and the impugned domain name dellservicecenterchennai.in of the Respondent, and the nature of the rival and competing goods/services an average consumer with imperfect memory would be led into believing that some nexus association or connection exists between the Complainant and the Respondent or of the impugned domain name to be in fact of the Complainant or sponsored, licensed or affiliated with the Complainant or an extension of the Complainant's business, while in fact it is not so. This would invariably give rise to consumer deception. [Montari Overseas Ltd., Vs. Montari Industries Ltd., 1996 PTC (16) 142 Del (DB) ; (McCarthy on Trademarks and Unfair Competition, 3rd Edition, Volume 3, Chapter 24, Para-24.03).

33. Not only that any consumer or internet user seeking access to the Complainant or its products with reference to the Trade Mark DELL online, would be misled to the Respondent's website, in case they erroneously or inadvertently suffix the "second level" domain name viz DELL with the cc TLD (country code top-level domain) .in instead of gTLD (generic top-level domain) .com. The user/consumer would be deceived by being led to somewhere else or in not reaching the Complainant.

34. The Complainant would have no control over the Respondent or over the standard or quality of the goods/services being offered by it under the impugned domain name. Any inferior services offered by the Respondent would invariably adversely affect the Complainant's business under the said word/mark DELL. Not only that any internet user who may erroneously access the Respondent while intending to access the Complainant can be led by the Respondent to a competitor/rival of the Complainant which would invariably cause business and clientele loss to

38. A right in the Trade Mark and especially in the registered Trade Mark has to be protected even if it is being used as a material part of a rival domain name. [See Bharti Airtel Limited Vs. Rajiv Kumar-2013 (53) PTC 568(Del); Tata Sons Limited Vs. D. Sharma & Anr.-2011 (47) PTC 65(Del.); Dr. Reddy's Laboratories Limited Vs. Manu Kosuri & Anr.-2001 PTC 859 (Del); Mars Incorporated Vs. Kumar Krishna Mukherjee & Ors.- 2003 (26) PTC 60 (Del)]

39. In my considered view, the Respondent's very adoption of the impugned domain name and its registration is in bad faith actuated by malafide and fraud. There is no element of good faith, good intention or honesty involved. The Respondents are guilty of cyber piracy which in itself is a facet of bad faith and that the Respondent has no legitimate right or interest in the impugned domain name. This is for the following reasons :-

(a) The Respondent has not furnished any explanation or reason on its adoption of an identical prior Trade Mark/Trade Name/Domain Name DELL of the Complainant.

(b) The Trade Mark/Trade Name/Domain Name DELL is an extremely, arbitrary, fanciful, trademark in relation to the nature of the goods/services being offered by the Complainant there under. The said Trade Mark/Trade Name/Domain Name is consequently a highly strong and inherently distinctive trademark.

(c) The Respondent was well aware of or ought to have been aware of or could have become aware of the Complainant's said Trade Mark/Trade Name/Domain Name. The Respondent who has registered the impugned Domain Name must be an internet user or having knowledge and interest in the internet and awareness of the concepts of E-commerce and online

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markets actuated through the internet medium triggered through domain names.

(d) The word/mark DELL is neither a dictionary word and nor forms part of the ordinary language usage in India. The word/mark DELL has no connection or association with characteristics or attributes of the goods/services related to the computers, computer accessories and computer related products and services. The adoption of the impugned domain name could not have been made randomly or by mere chance. The Respondent never even cared to file a response to the present Complaint.

(e) The Respondent's impugned conduct speaks for itself (*res ipsa loquitur*) and falls short of the standards of acceptable commercial behavior. Obviously the motive of the Respondent was to derive some benefit from the Complainant's Trade Mark/Trade Name/Domain Name DELL.

(f) The Respondent's prior knowledge of the Complainant's DELL Trade Mark/Trade Name/Domain Name also stand established by the fact that on its website under the impugned domain name, the Respondent has also copied the Complainant's logo, [covered by trade mark registration No.923915] look and feel of the official website and has displayed therein the pictures of the Complainant's products and services and has also represented itself as DELL. The Respondent has prominently displayed a version of the Complainant's DELL logo [covered by trade mark registration No.923915] and has combined with it generic terms like "Lap Lop Store"; Service Centre. The aforesaid is apparent from the documents attached by the Complainant as Annexures T & U being printouts of the disputed domain name.

S.K. Bhatnagar

40. The Courts have repeatedly held that the basic principles of Trade Mark law as also the laws of passing off to apply to disputes in respect of internet domain names [See Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd., 2004 (28) PTC 566 (SC)] as also an infringement of registered trade marks to be caused by the rival un authorized use thereof in a rival domain name. [See Lt Foods Limited (Supra)].

41. "Cyber-piracy" has been defined as "the act of registering a well known name or mark" (or one that is confusingly similar) as a website's domain name, usually for the purpose of deriving revenue" [See The BLACKS LAW DICTIONARY 444 (9th ed. 2009)].

42. While considering the concept of malafide the Hon'ble Supreme Court in its celebrated case of Parbodh Sagar v/s The Punjab State Electricity Board and Ors reported in 2000 (5) JT 378 has held – ".....that the expression "malafide" is not a meaningless Jargon and it has its proper connotation. Malice or malafide can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set of guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances." In light of the aforesaid pronouncement it can be safely held that the concept of or what amounts to bad faith, malafide or dishonesty is not one that lends itself to a exhaustive definition and for the determination of which there can be no rigid strait jacket formula and nor prescribed hard and fast rules or set guidelines. They have to be judged with reference to the facts and circumstances of each case. The Oxford dictionary of law 6th Edition 2006 defines malafide as - [Latin: bad faith] Describing an act performed fraudulently or dishonestly. In Gramax Plasticulture Limited V/s Don & Low Nonwovens Limited 1999 RPC 367 at page 379 bad faith has been defined to include dishonesty and dealings which fall short of the standards of acceptable commercial behavior observed by reasonable and

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experienced men in the particular area being examined. In Road Tech Computer Systems Limited v/s Unison Software (UK) reported in 1996 FSR 805 at page 817 bad faith has been defined to mean dishonest, lack of good faith : not necessarily for a financial motive but still dishonesty.

43. The Hon'ble Delhi High Court in its celebrated decision of M/s Hindustan Pencils Pvt. Ltd. v/s M/s India Stationary Products Company & Anr. Reported in 1989 PTC 61 affirmed the observation of Romer J, in the matter of an application brought by J.R. Parkington and Coy. Ltd., 63 R.P.C. 171 at page 181 that "in my judgment, the circumstances which attend the adoption of a trademark in the first instance are of considerable importance when one comes to consider whether the use of that mark has or has not been a honest user. If the user in its inception was tainted it would be difficult in most cases to purify it subsequently". In the same judgment the Hon'ble High Court has held that if a party for no apparent or valid reason adopts the mark of another business it can be assumed that such an adoption was not honest and the Court would be justified in concluding that the defendant/Respondent by such an act wanted to cash upon the name and reputation of the Complainant and that was the sole primary and real motive of the defendant/Respondent in so adopting such a mark. In the same judgment the Hon'ble Court further held that the violator business who uses or adopts someone else marks must be aware of the consequence which must follow. The Respondent cannot derive any benefit from its own wrongs.

44. Even otherwise lack of fraudulent intent or bonafide good faith on the part of the Respondent [Ruston Case, supra and Laxmikanth V. Patel case, supra] is immaterial and that the respondent can be held liable despite it.

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45. In my considered view the Complainant has discharged its onus/burden of proof and has established its proprietary and enforceable rights in its Trade Mark/Trade Name/Domain Name DELL. The wrongs of the Respondents are also apparent from the fact that it has not traversed nor challenged the Complaint facts against him. Such a non-traverse has to be taken against the Respondent (**Uttam Singh Dugal & Company Limited V/s Union Bank of India & Ors – reported in AIR 2000 SC 2740).**

46. Trade Marks/trade name/domain names have been accepted to be valuable business assets to be protected against their wrongful use even as part of a rival domain name and such violations have to be removed in the interest of the right holder as also of the consumers.

In the aforesaid view of the matter I am of the confirmed view that the Complaint must be allowed.

Accordingly it is decided that the disputed domain name **dellservicecenterchennai.in** be transferred to the Complainant.

Signed at New Delhi, India on this 24th day of February, 2016.


Sudarshan Kumar Bansal
Sole Arbitrator