



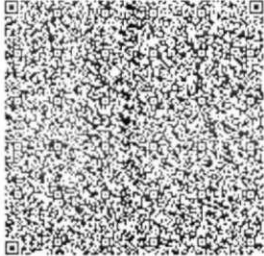
सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No. : IN-DL34662169157531O  
 Certificate Issued Date : 05-Apr-2016 02:52 PM  
 Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL921303683180877613300  
 Purchased by : ASHOK KUMAR SINGH  
 Description of Document : Article 12 Award  
 Property Description : Not Applicable  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : ASHOK KUMAR SINGH  
 Second Party : Not Applicable  
 Stamp Duty Paid By : ASHOK KUMAR SINGH  
 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 78682-2244  
 USA  
 Vs.

Mani, Soniya  
 Mathaakaavadanur, Dharmapuri  
 Coimbatore, Tamil Nadu  
 635301

.....Complainant

..... Respondent

*[Signature]*

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#### Statutory Alert:

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#### **A. THE PARTIES**

The Complainant in this administrative proceeding is Delaware Corporation, having its registered office at One Dell Way, Round Rock, Texas 78682-2244, USA.

The respondent in this proceeding is Mani, Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu, 635301.

#### **B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT**

The disputed domain name is **www.dellservice.in** and it is registered with Good Domain Registry Private Limited, 34-A, Main Road, Kennedy Square, Perambur, Chennai, Tamil Nadu, 600 011 , India .

#### **C. PROCEDURAL HISTORY:**

I was appointed as the Arbitrator by .IN registry, to adjudicate upon the complaint of the Complainant, regarding the dispute over the domain name <**www.dellservice.in**>.

.In Registry has supplied the copy of the Complaint and Annexures to me.

On 25.01.2016, I sent an email to the parties informing them about my appointment as an Arbitrator.

In the above mentioned email itself, the Tribunal requested the complainant to supply the copy of the complaint with annexures to the Respondent and to provide the tribunal with the details of service record.

In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 25.01.2016 with the instructions to file his reply within 15 days from the receipt of the above stated email or the receipt of the copy of the Complaint, whichever is later.

On 03.03.2016, NIXI informed the Tribunal that the soft copy of the complaint along with the annexures have been sent to the respondent.

On 10.03.2016, NIXI informed the Arbitrator vide email dated 10.03.2016 that the courier containing the complaint along with the annexures could not be delivered due to incorrect address.

On 19.03.2016, The Tribunal informed the parties that it has taken cognizance of email dated 03.03.2016 and 10.03.2016 of NIXI. The Tribunal further informed the parties that the soft copy of the complaint and the annexures are duly served upon the respondent and that no reply or response was received from the respondent. The Tribunal further informed the parties that the Tribunal will proceed with the matter on the basis of the pleadings and the documents already on record and will pass its award.



The Respondent has failed to file his say/ reply to the Complaint of the Complainant. The Tribunal feels that enough opportunity has been given to the Respondent and genuine efforts have been made to make him a part of this proceeding. Since he has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and .IN Registry.

On perusal of the entire pleadings and the documents placed on record, the Arbitrator's finding is as under:-

**D. FACTUAL BACKGROUND:**

The following information is derived from the complaint and supporting evidence submitted by the Complainant.

**E. COMPLAINANT:**

The case of the Complainant is that:

1. The Complainant submits that it was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller of computer systems and that since its beginning, the Complainant has diversified and expanded its activities which presently 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 also submits that its business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses.
2. The Complainant submits that it began using the trade mark/name DELL in 1987. Since then it has made extensive and prominent use of its trade mark/name DELL in connection with a wide range of goods and services, including offering its goods and services online through numerous DELL domain names.
3. The Complainant submits that it is a world leader in computers, computer accessories, and other computer-related products and services and that over the years, Dell has invested heavily in marketing under its marks, devoting hundreds of millions of dollars to advertising and promoting its products and services through many media in many countries. The complainant also submits that Dell has used television, radio, magazines, newspapers, and the internet as marketing media and that Dell has been, and continues to be, extremely successful. Dell sells its products and services in over 180 countries. The complainant further submits that for several years, Dell has been the world's largest direct seller of computer systems. As a consequence of Dell's marketing and sales success, Dell and its marks have become famous in the United States and many other countries, including India.
4. The Complainant submits that it has used the famous mark DELL, as well as various other marks that include the word DELL (the "DELL Marks"), for many years for laptops, desktops, computer parts and accessories, computer service and support, and other computer-related products and services. For example, Dell offers technical and repair services for its laptops, desktops, and other products on its website at [www.support.dell.com](http://www.support.dell.com). The complainant also submits that dell has long used the marks INSPIRON, LATITUDE, PROSUPPORT, VOSTRO, and XPS in connection with its products and that the Complainant has also launched phones available in various models

- which are sold under different series/sub-brands such as the DELL VENUE series and the DELL STREAK series. It also submits that amongst its many services and facilities, the Complainant also provides cloud computing services with its DELL CLOUD COMPUTING SOLUTIONS™, wherein customers are provided with cloud servers with data storage facilities.
5. The complainant submits that with specific reference to India, it has more than 22 percent of the market and Dell is the number two PC maker in India. In fact, Dell has been one of the leaders in the India PC market for several years. The complainant also submits that it is evident from the global as well as India specific net sales figures/revenues generated by the Complainant through sale of products/services under the trade mark/name GOODYEAR during the period 2009-2014, that the products of the complainant command tremendous popularity.
  6. The Complainant submits that it began doing business in India in 1993 and that it has a highly successful presence in India in respect of its trade mark and trade name DELL not only on account of the extensive use of DELL products in the country initially by way of imports but also subsequently through extensive after-sales service outlets and direct sales of its products through its Indian subsidiary which was incorporated in June 2000 and through its DELL DIRECT stores which were launched in 2002 as a hands-on complement to their website [www.dell.com](http://www.dell.com) and their increasing phone sales.
  7. The Complainant submits that opening of its subsidiary in India which undertakes the task of specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, computer consultancy and solutions, and software promotion has expanded the Complainant's presence even more, by allowing it to offer these services directly to customers from its location in India. It further submits that as a part of its retail initiative to increase its presence in India, the Complainant tied up with several channel partners such as authorized distributors and resellers including 600 systems integrators and launched DELL exclusive stores all over the country.
  8. The Complainant submits that it also maintains several pages on the social media platforms such as Twitter, YouTube, LinkedIn, Google+. All the social media platforms spread huge awareness and assist in consumers associating the trademark "DELL" with the Complainant only. It further submits that even a search conducted on the Google search engine gives about 1,14,00,00,000 results, wherein most of the results relate to the trademark "DELL" being associated with the Complainant.
  9. The Complainant submits that it has spent substantial time, effort and money advertising and promoting the "DELL" trade mark and the DELL formative marks throughout the world and as a result, the "DELL" trade mark has become famous and well-known, and the Complainant has developed enormous goodwill in the mark and widespread consumer recognition from the very beginning.
  10. The complainant submits that the trade mark "DELL" is a well-known trade mark around the world and is exclusively identified and recognized by the public as relating to the goods and services of the Complainant and no one else.
  11. The complainant submits that the trade mark "DELL" and the "DELL" formative marks have become distinctive and famous trademarks throughout the world as a symbol of the



high quality standards that the Complainant maintains for its products and related services.

12. The Complainant submits that it 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. The Complainant submits that it generates almost half of its revenue from sales over the internet and in order to support its online marketing and sales efforts with respect to its range of products and services, the Complainant has registered numerous other domain names which comprise of the Complainant's famous DELL mark in conjunction with the trade marks/brand name associated with the line of product and services, e.g. delldirect.in, dellinspiron.in, delldirect.com, delllatitude.com, dellprecision, dellinspiron.com, dellcloud.com etc.
13. The complainant submits that at present owns over 5000 domain names a majority of which contain the trade mark "DELL" including dell.co.in, dell.in, delldirect.in, dellinspiron.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputercenter.in, dellcomputers.co.in, dellcomputers.in, dellcustomerstories.co.in, delldatasafe.co.in, , delllaptops.co.in, delllaptops.in, dellmobile.co.in, dellmobile.in, dellpc.in etc.

**F. RESPONDENT:**

1. The respondent in this proceeding is Mani, Soniya, Mathaakaavadanur, Dharmapuri, Coimbatore, Tamil Nadu, 635301.
2. The respondent has failed to file his say/ reply to the Complaint of the Complainant within the stipulated time nor has he communicated anything on the complaint till the date of this award.

**G. PARTIES CONTENTIONS:**

1. Complainant

From the factual background given above, it is evident that in nutshell the contentions of the Complainant are as follows:

- a. The Respondent's domain name is identical and / or confusingly similar to the Complainant's Trade Mark(s).
- b. The Respondent has no rights or legitimate interest in respect of the domain name.
- c. The Domain Name was registered and used in bad faith.

2. Respondent

The Respondent has failed to file any reply to the Complaint and thus has not rebutted the contentions made by the complainant.

**H. DISCUSSIONS AND FINDINGS:**

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"*.

A fair opportunity had been given to the Respondent to file the reply but no response has been received from him. Therefore, the Arbitration proceedings have been conducted on the basis of the records made available to the Arbitrator.





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 there under and any law that the Arbitrator deems to be applicable."*

After examining the complaint and the documents placed on record by the complainant and INDRP Rules of Procedure and policy, the Arbitrator's finding on the contentions of the claimant is as follows:

**(i) The Registrant's Domain Name is identical or confusingly similar to a trademark in which the Complaint has rights:**

**The complainant in support of the above contention has stated as under in the complaint:**

- a. The disputed domain name <dellservice.in> fully incorporates the Complainant's well-known and registered trademarks "DELL" in their entirety and are confusingly similar as a whole to the Complainant's domain names www.dell.com and www.dell.co.in.
- b. The Disputed Domain name is also similar to the various other domain names owned by the Complainant such as delldirect.in, dellinspiron.in, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dellcomputercenter.in, dellcomputers.co.in, dellcomputers.in, dellcustomerstories.co.in etc.
- c. The Respondent's addition of the generic terms such as 'SERVICE' only serves to solidify confusion among Internet users rather than dissipating it, more so as the generic words have an obvious association to the Complainant.
- d. The impugned domain name <dellservice.in> fully incorporates the Complainant's well-known and registered trade mark "DELL" in its entirety and is confusingly similar as a whole to the Complainant's domain name.
- e. The Disputed Domain Name registered by the Respondent predominantly comprise of the Complainant's registered trade mark DELL in combination with a descriptive term being SERVICE, which has obvious connections to the Complainant's business, which only solidify confusion among Internet users.
- f. The complainant submits that the addition of the top-level domain ".in" is irrelevant in determining whether the domain name registered by the Respondent is confusingly similar to the Complainant's registered trademarks.
- g. The Complainant placed reliance upon the following case laws:
  - *Blue Sky Software Corp. v. Digital Sierra, Inc.* D2000-0165 (WIPO Apr. 27, 2000)
  - *Busy Body, Inc. v. Fitness Outlet Inc.*, D2000-0127 (WIPO Apr. 22, 2000)
  - *Dell Inc. vs. SKZ.com* FA0509000555545 (NAF October 21, 2005)

Since the above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the above facts and annexures attached



with the complaint establish that the domain name of the Respondent is similar and identical to the well-known trademark of the Complainant and as such this issue is decided in favour of the complainant.

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

**The complainant in support of the above contention has stated as under in the complaint:**

- a. That since the Disputed Domain Name comprise of the well-known and famous trade mark "DELL" and the DELL formative marks used in relation to the Complainant's wide range of the goods and services, it is evident that the Respondent can have no right or legitimate interest in the domain name.
- b. That it is apparent that the Respondent's intention while registering the Disputed Domain Name is to misappropriate the reputation associated with the Complainant's famous trade mark "DELL" and the DELL formative marks, in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks.
- c. That there exists no relationship between the Complainant and the Respondent.
- d. That the Respondent has not used, nor made any 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.
- e. That the Respondent's websites appear to be designed to mislead consumers into believing that Respondent is, or is affiliated with, Complainant.
- f. That after falsely creating an association with Complainant as described above, Respondent is attempting to gather Internet users' personal information through its "Enquiry Form," displayed on many of its pages, which requests the name, email address, and phone number of visitors. Respondent may then commercially benefit by abusing that information and/or by selling that information to third parties.
- g. That the Respondent is not commonly known by the domain names at issue.
- h. That the Respondent is not making a legitimate non-commercial or fair use of the domain names.
- i. That the Respondent's choice of the Complainant's well-known trade mark DELL and the DELL formative marks, as its domain names is totally unnecessary and the sole purpose of carrying on business through the use of the Disputed Domain Name incorporating the trade marks DELL and the DELL formative marks is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.
- j. That the Respondent's websites are not *bona fide* since the Respondent is using the Disputed Domain Name to divert/redirect internet users and consumers seeking the Complainant's goods and services to its own website, which offers the Complainant's products and services and also of those in direct competition with the Complainant.



- k. The Respondent has laid bare his intent to commercially exploit the Complainant's trade mark and formative marks, for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation; resulting in dilution of the Complainant's trademarks. In fact by acquiring the domain names which form the subject matter of the Complaint, the Respondent has shown crass opportunism in encashing the popularity of the Complainant's reputation.
- l. The Complainant also placed reliance upon the following case laws:
- *Blackstone TM L.L.C. v. Mita Ireland Ltd., Case No. FA 1314998 (NAF Apr. 30, 2010)*
  - *Diners Club Int'l Ltd. v. Domain Admin, FA0305000156839 (NAF June 23, 2003)*
  - *Nat'l Ass'n of Prof'l Baseball Leagues v. Zuccarini, D2002-1011 (WIPO Jan 21, 2003)*

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 Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name. The Arbitrator thus, accepts the submissions made by the complainant.

Even otherwise also the above facts establish that the Respondent has no right or legitimate interest in the domain name < **www.dellservice.in** > as the Respondent is not making a bona fide offering of goods or services, is not commonly known by the disputed domain name and is not making a non-commercial or fair use of the domain name under INDRP paragraph 4(ii). Therefore this issue is also decided in favour of the complainant.





**(iii) The Respondent has registered and is using his domain name in bad faith:**

**The complainant in support of the above contention has stated as under in the complaint:**

- a. That the Complainant alleges that the Respondent registered the aforesaid Disputed Domain Name in order to piggy-back off the commercial value and significance of the Complainant's domain names.
- b. That the Respondent is presumed to have had 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/or registration of the same. Even otherwise, the Respondent obviously had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain names by virtue of the fact that the Respondent sells several of the Complainant's products and services through infringing Disputed Domain Names.
- c. That the use of domain name confusingly similar to Complainant's famous DELL Marks is evidence of bad faith.
- d. That not only are the disputed domain names highly likely to cause confusion, but Respondent's bad faith is clearly demonstrated by the evidence explained earlier, which shows that the domain names are being used for websites which attempt to deceive consumers into thinking that Respondent or Respondent's business is associated with Dell. The Respondent is attempting to gather Internet users' personal information after falsely creating an association with Complainant. Such facts support a finding of bad faith registration and use of the domain names at issue.
- e. That the fact that Respondent has registered various domain names that contain the DELL marks is also evidence of bad faith.
- f. That the Respondent's inclusion of inconspicuous disclaimers at the bottom of the pages of a few of its websites does not mitigate against a finding of bad faith.
- g. That the Respondent's bad faith is also evidenced by the fact that Respondent owns no trademark or other intellectual property rights in the domain names; the domain names do not consist of the legal name of or a name commonly used to identify Respondent; Respondent has not used the domain names in connection with the bona fide offering of any goods or services; Respondent has made no bona fide non-commercial or fair use of the DELL Marks in a site accessible under the domain names; and Respondent's domain names incorporate exactly the famous mark DELL.
- h. The general proposition that the registration of a domain name incorporating a well-known trade mark of the Complainant is in bad faith has been upheld by numerous UDRP decisions.
- i. That the bad faith lies in the Respondent's intentional use of the Disputed Domain Name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant alleges that the



Indian consumers searching for the Complainant's websites pertaining to a specific line of products or services are inclined to search for websites with domain names comprising of the trade mark DELL alongwith the brand name of the specific product or service in question or the territory in question. The Respondent's primary intent in registering and using the Disputed Domain Names which incorporate the DELL trade mark in its entirety along with the specific line of products and services of the Complainant or the countries wherein the Complainant is based is to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's trademarks/name and the Respondent's website.

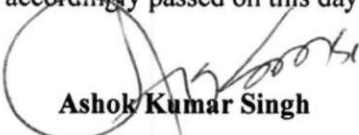
j. The Complainant also placed reliance upon the following case laws:

- *Dell Inc. v. ASTDomains, Case No. D2007-1819 (WIPO 2007)*
- *j2 Global, Inc. dba j2 Global Communications, Inc. v. LCI / Omid Larijani, Case No. FA1509635 (NAF August 16, 2013)*
- *Schwab v. Stanley, Case No. FA95038 (NAF July 15, 2000)*
- *Citigroup Inc. v. Domain MANAGER / Domain Brokers, Case No. FA 1621817 (NAF July 13, 2015)*
- *Auxilium Pharm., Inc. v. Patel, Case No. FA 0642141 (NAF Apr. 6, 2006)*
- *Marie Claire Album v. Marie-Claire Apparel, Inc. (Case No D 2003 0767)*
- *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co. (Case No D 2000 0776)*
- *Adidas-Salomon AG v. Domain Locations (Case No D 2003 0489),*

All above submissions made by the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him. Even otherwise the unrebutted facts and annexures give no reason to doubt that the respondent has registered and used the domain name < **www.dellservice.in** > in bad faith. This issue is decided accordingly.

#### **I. DECISION:**

In the view of the above facts and circumstances and finding of the Arbitrator, the Complainant has succeeded in his complaint. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. < **www.dellservice.in** > to the Complainant. The parties are left to bear their own cost. The Award is accordingly passed on this day of 05 April 2016.

  
**Ashok Kumar Singh**

**Sole Arbitrator**

**Date: 05.04.2016**