

Bond



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Haryana Government**



Date : 26/10/2017

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Penalty : ₹ 0

(Rs. Zero Only)

**Deponent**

Name : Rna Ip Attorneys

H.No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurgaon

District : Gurgaon

State : Haryana

Phone : 0



Purpose : ALL PURPOSE to be submitted at All place

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RANJAN NARULA

ARBITRATOR

Appointed by the .In Registry – National Internet Exchange of India

In the matter of:

**Dell Inc, USA**

One Dell Way  
Round Roak, Texas 78682-2244  
USA

....Complainant

**Ram Selvam**

No. 165, Valluvar Kottam High, Road  
Nungambakkam,  
Chennai, Tamil Nadu-600034

..... Respondent

Disputed Domain Name: DELLSHOPPING.IN

## **AWARD**

### **1) The Parties:**

The Complainant in this arbitration proceeding is of **Dell Inc, USA**. The Complainant is represented by its Authorized Representatives, Mr. Safir Anand (email-[safir@anandandanand.com](mailto:safir@anandandanand.com) ) and Ms. Madhu Rewari (email-[madhu@anandandanand.com](mailto:madhu@anandandanand.com) ), Anand and Anand, First Channel, Plot No. 17A, Sector 16A, Film City, Noida, India who have submitted the present Complaint.

The Respondent in this arbitration proceeding is Ram Selvam, No. 165, Valluvar Kottam High Road, Nungambakkam, Chennai, Tamil Nadu- 600034 as per the details available in the whois database maintained by National Internet Exchange of India (NIXI).

### **2) The Domain Name, Registrar & Registrant:**

The disputed domain name **www.dellshopping.in** The Registrar is Good Domain Registry Private Limited, 34-A, Main road, Kennedy Square, Perambur, Chennai, Tamil Nadu-600011

The Registrant is Ram Selvam, No. 165, Valluvar Kottam High Road, Nungambakkam, Chennai, Tamil Nadu- 600034

### **3) Procedural History:**

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28<sup>th</sup> June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

As per the information received from NIXI, the history of the proceedings is as follows.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent on September 12, 2017 of the Complaint and appointed Ranjan Narula as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the



Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

1. The complaint was produced before the Arbitrator on September 25, 2017 and the notice was issued to the Respondent on the same day i.e September 25, 2017 at his e-mail address with a deadline of 10 days, before October 5, 2017 to submit his reply to the arbitration. The Respondent did not submit any response.
2. Vide e-mail dated October 10, 2017 the Arbitrator granted further and final opportunity to the Respondent to submit its response on or before October 18, 2017. However, no response was submitted by the Respondent within the stipulated time of thereafter. There was no delivery failure message received from the Respondent's email address as well.

In the circumstances, the Complaint is being decided based on materials submitted by the Complainant and contentions put forth by them.

**Grounds for administrative proceedings:**

- A. The disputed domain name is identical with or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- B. The Respondent has no rights or legitimate interests in respect of the impugned domain name;
- C. The impugned domain name was registered and is being used in bad faith.

**4) Summary of the Complainant's contentions:**

**The complainant (also referred as "Dell") in support of its case has made the following submissions and filed extensive evidence in support.**

- a) The Complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct sellers of computer systems. 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's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses.
- b) The Complainant 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. The Complainant has submitted the documentary evidence establishing the above along with an



affidavit of the IT Personnel verifying the documents downloaded from the internet.

- c) The complainant claims to be a world leader in computers, computer accessories, and other computer-related products and services. 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. Dell has used television, radio, magazines, newspapers, and the internet as marketing media. Dell has been, and continues to be, extremely successful. Dell sells its products and services in over 180 countries. 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. More information about Dell can be found at [www.dell.com](http://www.dell.com) and [www.dell.co.in](http://www.dell.co.in), Dell's official website for India. The Complainant was recently named by Adweek as #15 of the "Most Loved Companies" in the world.
- d) The Complainant 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). Further, Dell has long used the marks INSPIRON, LATITUDE, PROSUPPORT, VOSTRO, and XPS in connection with its products. 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. 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.
- e) With specific reference to India, the Complainant 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 India PC market for several years. See, e.g., Anurag Prasad's article, India's top 5 PC makers by market share, Rediff Business (2011), <http://www.rediff.com/business/slide-show/slide-show-1-tech-largest-pc-makers-in-india/20111111.htm>.
- f) The Complainant began doing business in India in 1993. The Complainant 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.
- g) The opening of the Complainant's subsidiary in India which undertakes the task of specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, the Complainant's presence





even more, by allowing it to offer these services directly to customers from its locations in India. 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.

- h) The Complainant 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. Even a search conducted on the Google search engine about 1,14,00,00,000 results, wherein most of the results relate to the trademark "DELL" being associated with the Complainant.
- i) The Complainant has spent substantial time, effort and money advertising and promoting the "DELL" trade mark and the DELL formative marks throughout the world. 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.
- j) The trade mark "DELL" is as well-known trade mark around the world and it's exclusively identified and recognized by the public as relating to the goods and services of the Complainant and no one else. The Complainant has provided details of its registrations in India and overseas with first registration in India dating back to 15<sup>th</sup> June, 1992.
- k) It is pertinent to mention here that the Complainant 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, dellparotsystems.in, dellphones.co.in, dellphones.in, dellprinters.in, dellservices.co.in, dellsmartphone.co.in, dellsmartphone.in, dellsmartphones.co.in, dellsmartphones.in, dellstage.in, dellstore.in, dellstores.in, dellstreak.in, dellstudio.in, dellstudioone.in, dellsuppliers.co.in, delltablet.co.in, delltablet.in, delltablets.co.in, and delltablets.in.
- l) The Respondent's addition of the generic term as **SHOPPING** 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.

The impugned domain name <dellshopping.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 names. The dominant part of the impugned domain name <dellshopping.in> is the word "Dell" which is identical to the well-known and registered trade mark DELL. The respondent's addition of the generic term "**SHOPPING**" only serves to classify amongst the consumers that the Respondent is related to the Complainant.



## **5) Respondent**

The Respondent has not filed any response to the Complaint though they were given an opportunity to do so. Thus the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 3 of the policy.

## **6) Discussion and Findings:**

The submissions and documents provided by Complainant in support of use and registration of the mark 'Dell' leads to the conclusion that the Complainant has superior and prior rights in the mark Dell. Thus it can be said a) the web users associate the word Dell with the goods and services of the Complainant b) the web users would reasonably expect to find Complainant's products and services at the [www.dellshopping.in](http://www.dellshopping.in) and c) they may believe it is an official website of the Complainant and the goods being offered/ advertised are from an authorized reseller or a website operated by the Complainant.

Based on the elaborate submission and documents, I'm satisfied that the complainant has established the three conditions as per paragraph 4 of the policy which is listed below. Further the Respondent has not contested the claim and agreed to transfer of domain name.

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;

It has been established by the Complainant that it has trademark rights, and rights on account of prior and longstanding use of the mark 'DELL'. The complainant has in support submitted substantial documents. The disputed domain name contains or is identical to Complainant's 'Dell' trademark in its entirety. The mark is being used by the Complainant to identify its business. The mark has been highly publicized by the Complainant and has earned a considerable reputation in the market.

- (2) the Respondent has no rights or legitimate interests in respect of the domain name;

The Complainant has not authorised the Respondent to register or use 'Dell' as part of its domain name. Further, the Respondent has never used the disputed domain name or any trademark similar to the disputed domain name prior to the registration of the Dell trademark and/or domain name in favour of the complainant.

The Respondent has not rebutted the contentions of the Complainant and has not produced any documents or submissions to show interest in protecting his own right and interest in the domain name. Further, the Respondent has not used the domain name or a name corresponding to the disputed domain name in connection with a bonafide offer of goods or services. Further, the Respondent is not commonly known



by the disputed domain name and has not made any legitimate non-commercial or fair use of the disputed domain name.

The above leads to the conclusion that Respondent has no right or legitimate interest in respect of the disputed domain name '<Dellshopping.in>' of which Dell is the most prominent and key element. The addition of the word SHOPPING only signifies that the website sells Dell products and is related to the Complainant.

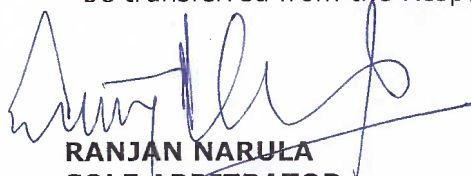
(3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions contained in the Complaint. As, the Respondent has not established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of domain name has to be drawn. Further the Respondent is using the domain to sell laptop computers. Thus it can be concluded that the Respondent is taking undue advantage of the mark 'Dell' to make monetary gains. Thus bad faith in registration of the domain name stands established.

Based on the documents filed by the Complainant, it can be concluded that the domain name/mark 'Dell' is identified with the Complainant's product or services, therefore its adoption by the Respondent and its use to promote its business of selling laptops shows 'opportunistic bad faith'.

**7) Decision:**

In view of the foregoing, I am convinced that the Respondent's registration and use of the domain name [www.dellshopping.in](http://www.dellshopping.in) is in bad faith. The Respondent has no rights or legitimate interests in respect of the domain name. In accordance with the Policy and Rules, the arbitrator directs that the disputed domain name [www.dellshopping.in](http://www.dellshopping.in) be transferred from the Respondent to the Complainant.

  
**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**

**October 26, 2017**