

दिल्ली DELHI

S 850671

**BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

IN RE:

Dell Inc

One Dell Way

Round Rock, Texas 78682- 2244 USA

(Complainant)

VERSUS

Jack Sun

Domainjet, Inc.,

1800 Amphitheatre parkway, Mountain View,

California- 94043, USA

(Respondent)

Disputed Domain Name: <dellvenue.in>.

The Complainant has been submitted this complaint for decision in accordance with the .IN Domain Dispute Resolution policy (INDRP), and the INDRP Rules (Rules) framed there under (Rule 3 (b) (i). The Respondent herein has registered ten disputed domain names which form the subject matter of a Complaint.

1.

Sanjay Kumar Singh

1. COMPLAINANT INFORMATION:

The Complainant is a Delaware Corporation, having its registered office at one Dell Way, Round Rock, Texas 78682-2244, USA.

The Complainant's contact details are:

Name: Dell Inc

Address: one Dell way, Round Rock, Texas 78682-2244 United States of America. Telephone: + 512.723.2066, Fax: + 512. 283.2627, E-mail: Sanjiv Sarwate@dell.com

The Complainant' authorized representatives in this administrative proceeding are:

a) Name: Pravin Anand

Address: Anand and Anand, First Channel, plot No. 17A, Sector 16A, Film City, Noida Telephone: 91-120- 4059300, Fax: 91-120-4243056.

E-mail : pravin@anandandanand.com

B) Name: Divya Vijan

Address: Anand and Anand, First Channel, plot No. 17A Sector 16A, Film City, Noida, Telephone: 91-120-4059300 Fax: 91-120-4243056, Fax: 91-120-4243056

E- mail : divya@anandandanand.com

The Complainant' preferred method for communications directed to the Complainant in the administrative proceeding is as follows:

Electronic- Only Material

- a. Method: E- mail
- b. Address: pravin@anandandanand.com
- c. Contact: Pravin Anand

Divya Vijan

Material Including Hard Copy

- a. Method Courier
- b. Address Anand and Anand Fist Channel, Plot No . 17A Sector 16A Film City, Noida 201301 (up) India
- c. Fax: 91- 120- 4243056/57/58
- d. Contact: Pravin Anand
Divya Vijan

2.

Sanjiv Sarwate

2. **RESPONDENT /REGISTRANT INFORMATION:**

According to the original whois Database, the Respondent in these administrative proceedings is MR. JACK Sun, Domainjet Inc, 1800 Amphitheatre parkway, Mountain View, California- 94043, US.

The complainant has submitted Computer printouts of the Whois searches conducted on 23rd December, 2011 as regards the disputed domain name with the Consolidated Complaint.

Name: Jack Sun Address: Domainjet, Inc--, 1800 Amphitheatre parkway Mountain View, California- 94043, US Telephone: 6506234000

Fax Not mentioned

E-Mail: domainjet@foxmail.com

3. **DISPUTED DOMAIN NAME& REGISTRAR**

A. The following domain name is the subject of this Complaint Rule3 (b) (vi)

<dellvenue.in>

b. The registry is the National Internet Exchange of India (henceforth referred to as (NIXI)

c. The sponsoring Registrar with whom the domain name is registered is indicated as Directi Internet Solutions PVT. Ltd (Hereinafter referred to as "the Registrar")

Name of Registrar: Directi Internet Solutions Pvt. Ltd 330, link- way ESTATE, Link Road, Mumbai- 400064 Maharashtra

Email- not mentioned

Tel- not mentioned

4. **Trademark/service mark information Rule 3 (b) (v)**

The Complainant has based his complaint on the trade marks "DELL" AND "Dell venue". The trade mark Dell has been registered by the Complainant in countries across the world including United States of America and India. The details whereof has been submitted as under:

U.S. Registered Marks

Trade Mark: DELL (Stylized)

3. *Sanjay Par Singh*

Trade Mark No. 1616571

Goods & Service details (Class: 9) Computers and computer peripherals, namely monitors, key boards, printers, mice, co- processors, modems, hard and floppy drives, tape drives, cards and memory add-ons, memory boards and chips, cables

Trade Mark: DELL (Stylized), Trade Mark No. 1860272

Goods & Service details: (Class: 9) Computers and parts thereof

Trade Mark: DELL, Trade Mark NO. 2, 236, 785

Goods & Service details: (Class: 40) Custom Manufacture of Computers for others

Trade Mark: DELL (Stylized)

Trade Mark No. 1860272

Goods & Service details: Class: 9) Computers and parts thereof Trade Mark: DELL VENUE

Trade Mark No. 85267885

Goods & Service details: (Class: 9) Telephone, cell phone, mobile phones, digital phones, smart phones.

India Registered Marks Trade Mark DELL

Trade Mark No. 575,115

Goods & Service details: Class: 9) Scientific, natural, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic optical, weighing, measuring, signaling, checking (supervision) , life saving and teaching apparatus and instruments, air or counter feed apparatus, talking machines, cash registers, calculating machines including computer and computer peripherals, namely monitors, keyboards, printers, mouse, co- processors modems, hard and floppy disk drives, cards and memory add-ons, memory boards and chips cables and connectors operating software sold together.

Trade Mark: www.dell.com Trade Mark No. 826,095 Goods & Service details: (Class: 9) Computers and computer peripheral devices and parts and fitting therefore, monitors, keyboards printers, mouse 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.

A, Sanjay K. Singh

Trade Mark : DELL(with the stylized E) Trade Mark No. 923,915 Goods & Service details (Class: 9) Computers and computer peripherals, namely monitors, keyboards, printers, mouse, co-processors, modems, hard and floppy disk drives, tape drivers, CD-ROM drivers, cards and memory add-ons, memory boards and chips, cables and connectors, operating software sold together as a unit

Trade Mark: DELL

Trade Mark No: 1,190,375

Goods & Service Details: Class) Toner cartridges, ink jet cartridges for printers

Trade Mark: DELL

Trade Mark: DELL Trade Mark NO: 1, 190, 376

Goods & Service Details: (Class 9) 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, projectors, and instruction manuals sold therewith as a unit for the aforesaid goods falling in class 9.

Trade Mark: DELL.

Trade Mark NO: 1,239, 350

Goods & Service Details (Class: 37) Maintenance and repair of computer hardware, installation of computer networks and installation of computer systems.

Trade Mark: DELL

Trade Mark No: 1, 239, 349

Goods & Service Details: (Class: 42) 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.

Trade Mark: DELL.

Trade Mark No: 1335, 057

Goods & Service Details: (Class: 36) Financial services relating to the purchase, re-purchase, sale and leasing of computer/ information technology apparatus and equipment, financing services, credit card services.

5.

Sanyam Per Singh

5. FACTUAL AND LEGAL GROUNDS:

a) The Complainant has submitted that the Complainant was founded in 1984 by Mr. Michael Dell, and is one of the world's largest direct seller 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 business

b) The Complainant has submitted that it has begun 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.

c.) The Complainant has submitted that it has also launched smart phones which are available in various models which are sold under different series/ sub- brands such as the DELL VENUE series of smart phones and the DELL STREAK series of phones.

d) The Complainant has submitted that it has spent substantial time, effort and money advertising and promotion the "DELL" trade mark 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.

e.) The Complainant has submitted that it is the number one provider of computer systems to large enterprises around the world, and does business with 98 percent of Fortune 500 corporations. The Complainant itself is in the top 50 of the Fortune 500. The Complainant has submitted that it sells more than 10,000 systems every day to customers in 10 countries and has more than 43,000 services 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, computed networks and Internet infrastructure. The Complainant has submitted that information about the Complainant can be found on its website, www.Dell.com . The Complainant has annexed excerpts from the Complainant's website.

f) The Complainant has submitted that it has begun doing business in 1993. The Complainant has a highly successful presence in India in respect of its trade mark

6. Sanjay Var Singh

and trade name DELL not only on account of the extensive use of DELL products 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 200 as a hands on Complement to their website www.dell.com and their increasing phone sales.

g) The Complainant has submitted that t he 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, 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 As a part of 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. The Complainant has submitted that further information regarding the Complainant's business and operations in India can be found on its website www.dell.co.in , excerpts of which has been annexed to the Consolidated Complaint.

h) The Complainant has submitted that it has on January 20, 2011, the Complainant's US based attorneys sent a Cease and Desist Notice to the Respondent calling upon him to cease and desist from any and all use of the domain name <dellstreak.in> and to transfer the impugned domain name to Complainant, The Complainant however refused to do so until he negotiated a payment of SUSD 500 in consideration for transfer of the domain name <dellstreak.in> to the Complainant. However, the Complainant subsequently learnt that respondent had also registered the domain name <dellvenue>. in further violation of the Complainant's statutory rights. The Complainant has submitted that on November 16, 2011, the Complainant's atomies wrote to the Respondent calling upon him to transfer the aforesaid domain name to the Complainant failing which legal proceedings would be initiated against him. However, instead of complying with the terms elucidated by the Complainant, the Respondent reverted and sought clarification as to the amount of consideration he would receive in exchange for the transfer the disputed domain name to the Complainant. The Complainant has submitted the present complaint in these backgrounds.

COMPLAINANTS' TRADEMARK RIGHTS:

i) The Complainant has submitted that it has adopted and commenced use of trade mark DELL in the year 1987 and has been using it continuously and extensively, not only as a trademark but also as its corporate name. The trade mark DELL also forms an integral part of various other trademarks owned by the Complainant, known as the DELL FORMATIVE

7. Sunjay K R Singh

MARKS, which include DELLVENUE, DELLPRECISION, DELLVENUE, DELLWARE, DELLZONE, DELLNET, DELLHOST to name a few. The trademark "DELL" is a well known trademark in 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.

J) The Complainant has submitted that it is also the registered proprietor of the trademark "DELL" in India. The registration of the trademark "DELL" has been duly renewed from time to time and is valid and subsisting under the Trademarks Act, 1999. The Complainant also has registered its trade mark "DELL" in various other Jurisdictions. The Complainant has submitted a list comprising of said registration. The Complainant has annexed copies of the Certificates of Registration for the above-referenced trademark/ service mark registrations.

k) The Complainant has submitted that aside from the trade mark DELL, the Complainant is also the proprietor of other trademarks including the trade mark "DELL VENUE" by virtue of registration and long, continuous and uninterrupted use of the aforesaid trade mark with respect to the DELL VENUE series of smart phones. The Complainant has submitted the Internet extracts pertaining to the registration of the above-referenced trademark to the Consolidated Complaint.

l) The Complainant has submitted that the trade mark DELL has become a distinctive and famous trade mark throughout the world as a symbol of the high quality standards that the Complainant maintains for its products and related services. Numerous arbitration panels have either recognized the fame of the trade mark/ name DELL or its very distinctiveness which include DELL Inc vs SZK com, Claim No. FA0509000555545 (National Arbitration Forum, Oct. 21, 2005); DELL Inc vs. William Stenzel, Claim No FA0510000574596 (National Arbitration Forum, Nov 23, 2005); DELL Inc vs Innervision WEB Solutions c/o Domain Registrar, Claim No. FA0503000445601, May 23, 2005); DELL Inc vs. Radvar Computers LLC Case No D2007-1420 (WIPO Dec 24, 2007) Dell Inc. vs patch Mbowe, Case No D2004- 0689 (WIPO Oct 20, 2004): Dell Inc. aka Dell Computer Corporation vs Asia Ventures. Inc, Case No. D2004-0452 (WIPO July 30, 2004) and Dell Inc vs. George Dell and Dell Net Solutions, Case No. D2004- 0512 (Wipo Aug 24, 2004). The Complainant has submitted Copies of these decisions to the Consolidated Complaint.

INTERNET PRESENCE OF THE COMPLAINANT:

m) The 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

S. *Sangun per Singh*

Internet users. The Complainant generates almost half of its revenue from sales over the internet. The information regarding the Complainant's business and operations can be found on its websites, <dell.com>, <dell.com.in> and <dell.in>. In order to support its online marketing and sales efforts with respect to its specific product Lines and services, the Complainant has registered numerous other domain name which comprise of the Complainant's famous DELL mark in conjunction with the trade mark/ brand name associated with the product Lines and services, e.g. dellprecision.com, dellinspiron.in, dellinspiron.com, delldirect.in, delldirect.com, delllatitude.com, dellinspiron.com, Dellcloud.com etc

n) The Complainant has submitted that at present it owns over 5000 domain name a majority of which contain the trade mark "DELL" Including dell.co.in, dell.in, dellprecision.com, Dellinspiron.in, delldirect. In, dellcenter.in, dellcomputer.co.in, dellcomputer.in, dflcomputercenter.in dell computers.co in, dellcomputers.in, dellcustomerstories.co.in, delldatasafe.co.in, dellaptops.co.in, dellaptops.in, dellmobile.co.in, dellmobile.in, dellpc.in, dellperotsystems.in dellphone.co.in, dellphone.in, dellprinters.in, dellservices.co.in, dellsmartphone.co.in, dellsmartphone.in, dellsmartphones.co.in, dellsmartphones.in, dellstage.in, dellstore.in, dellstores.in, dellstreak.co.in, dellstreak.in, dellstudio.in, dellstudioone.in, dellsuppliers.co.in, delltablet.co.in, delltablet.in, delltablets.co.in, delltablets.in. The Complainant has contended that the preceding paragraphs clearly demonstrate the exclusivity and reputation associated with the Complainant's trade mark/ trade, and it can be said that the trademark "DELL" is a "well-known" trade mark as understood under Article 6 bis of the Paris Convention.

THE RESPONDENT:

A) The Complainant has submitted that the respondent in the present dispute has registered the present domain name <dellvenue.in> thereby misappropriating illegally and without authority, the trademark "DELL" AND "DELL VENUE" which are the exclusive property of the complainant.

B) The Complainant has submitted that the respondent has deliberately purchased the domain name <dellvenue.in> and is offering it for sale of the domain names, The respondent's web pages are embedded with links which divert/redirect internet users and consumers seeking the complainant's goods and services to the third party commercial website, a majority of which market computers, laptops and related products and services, in direct competition with the complainant, in flagrant defiance of the complainant's stated trademark rights. The Complainant has annexed screenshots/printouts of the respondent's web pages to the consolidated complaint.

9. *Sanjay Singh*

c) The Complainant has submitted that the disputed domain name <dellvenue.in> is clearly being used to capitalize on a Dell Customer's attempt to search for the Complainant's VENUE series of smart phone, which are sold under the trademark "DELL VENUE" which has been wholly incorporated into the domain name, <dellvenue.in.> registered by the Respondent herein

d) The Complainant has submitted that the respondent is using the domain name <dellvenue.in> to intentionally attract, for commercial gain, internet users seeking the Complainant's (Dell's) products and services, to its own websites, whereas where it prominently displays links which divert/redirect the said internet users and consumers to third party commercial websites, a majority of which market computers, laptops and related products and services, in direct competition with the Complainant. The Complainant has further submitted that the Respondent is also offering the domain name, <dell venue.in> for sale, in a transparent attempt to force the Complainant to purchase the said domain names at exorbitant prices, having profited from a similar transaction with the Complainant previously with respect to the transfer of the domain name, <dell streak.In.> to the Complainant. The Complainant has further submitted that the respondent has, by registering the domain name, <dell venue. In >, clearly sought to misappropriate the reputation associated with the Complainant's well-known trademark 'DELL VENUE' and take advantage of the fact that internet users/ customers searching for the Complainant's DELL VENUE series of smart phones would now be offered the products and services of other entities including those in direct competition with the Complainant.

6. The Respondent's domain name is identical or confusingly similar to a name trademark or service mark in which the Complainant has rights.

a) The Complainant has submitted that the disputed domain name, <dell venue.in> fully incorporates the Complainant's well-known and registered trademarks "DELL VENUE" in its entirety and is confusingly similar as a whole to the complainant's aforesaid trademarks.

b) The Complainant has submitted that the domain name, <dellvenue.in> registered by the Respondent entirely comprises of the Complainant's registered trademarks DELL VENUE which has obvious connections to the Complainant's business and only solidifies confusion among Internet users. The Complainant has referred "Dell Inc. vs. SKZ.com FA0509000555545 (NAF October 21, 2005) it was held that the Respondent's domain names, <dellcustomersupport.Com> and <wwwdellcomputer.com> domain names are confusingly similar to the Complainant's DELL mark in its entirety and

10. Sanjay var Singh

add the generic term "customer support" and "computer" which has an obvious connection to the Complainant's business. The Complainant has referred "Space Imaging LLC V. Brownell, AF-0298" (e Resolution Sept 22, 2000) which emphasizes on finding confusing similarity in an instance where the Respondent's domain name combines the Complainant's mark with a generic term which is obviously affiliated to the Complainant's business.

- c) The Complainant has also places reliance on "Dell Inc. vs George Dell and Dell Net Solutions", Case No D2004-0512 (WIPO Aug 24,2004) wherein it was held that "It is well established that the addition of a generic term to a trademark does not necessarily eliminate a likelihood of confusion". The Complainant has also places reliance on WIPO cases holding domain name to be confusingly similar to a registered trademark when it consists of the mark plus one or more generic terms, Minnesota Mining and Manufacturing Company vs Mark Overbey, WIPO Case No. D2001- 0727; "SBC Communications Inc. vs. Fred Bell a k/a Bell Internet" WIPO Case No. D2001- 0602; "Hang Seng Bank Limited vs. Websen Inc", WIPO Case No. D 2000- 0651; Wal-Mart Stores Inc. vs. Macleod b/d/a For Sale, WIPO Case No. D2000- 0662.
- d) The Complainant has submitted that the addition of the top- level domains "co. in" and ".in" to the complainant's registered trade mark DELL VENUE, is irrelevant in determining whether the domain names registered by the respondent are confusingly similar to the Complainant's registered trade marks. The Complainant has placed reliance on "Blue Sky Software Corp. v. Digital Sierra, Inc. D2000-0165 (WIPO Apr. 27, 2000) which has held that the domain name ,<robohelp.com> is identical to the Complainant's registered ROBOHELP trade mark, and that the " addition of .com is not a distinguishing difference". In Busy Body, Inc. vs. Fitness Outlet Inc" D2000- 0127 (WIPO Apr. 22, 2000) It was held that" the addition on the generic top- level domain (gTLD) name ".com" is likewise without legal significance since use of a gTLD is required of domain name registrants, ".com" is only one of several such gTLD, and ".com" does not serve to identify a specific service provider as a source of goods and services". The complainant has annexed copies of these decisions to the Consolidated Complaint.

The Respondent has no rights or legitimate interest in the domain name

11' Sangam var Singh

- e) The Complainant has submitted that the domain name < dellvenue. In> comprises entirely of the well- known and famous trademark DELL, VENUE" which are used in relation to the Complainant's goods, as such it is evident that the Respondent can have no right or legitimate interest in the said domain name. The Complainant has placed reliance on HSBC Holdings pic -vs- Hooman Esmail Zadeh, M-Commerce Ag, INDRP/032; Nike Inc v. B. Boer, Case No. D2000-1397. (WIPO Dec. 21, 2000); Victoria' Secret, et al. V. Atchinson investments LTD, FA O96496 (Nat. Arb. Forum Feb. 2001). The Complainant has also submitted that the Respondent's intention while registering the domain name <dellvenue.in> is to misappropriate the reputation associated with the Complainant's Famous trademark" DELL VENUE' in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks and by linking the domain name <dellvenue.in> to third party commercial web sites. The Complainant has further submitted that, the Respondent has obviously registered the domain name <dellvenue.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.
- f) The Complainant has submitted that there exists no relationship between the Complainant and the Respondent. The Complainant has further submitted that neither has the Complainant authorized nor licensed the Respondent to register or use the domain name <dellvenue.in> incorporating its trade marks nor has it authorized or licensed the Respond to register or use the domain name <dellvenue.in> or any trade mark forming part of it.
- g) The Complainant has submitted that apart from having registered domain name, <dellvenue.in>, the respondent has no obvious connection with it as the links provided on 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 dost dose exist. The Complainant has placed reliance on "Clerical Medical Investment Group Limited vs. Clericalmedical.com (Clerical & Medical Services Agency). Case No D2000-1228. (WIPO Nov. 28, 2000). The Complainant has submitted that the Respondent has no obvious connections with the domain name <dellvenue.in> as it neither offers goods or services under the trade mark "DELL" OR "DELL VENUE" nor does the Respondent trade under the "DELL" name.

12. Sanjey var Singh

h) The Complainant has submitted that the Respondent's choice of the Complainant's well-known trademark 'DELL VENUE' 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 trademark 'DELL VENUE' is to cause confusion as to the source, Sponsorship, affiliation, or endorsement of the activity being carried on through the websites.

I) The Complainant has submitted that the Respondent's website is not bona fide since the Respondent is trading on the fame and recognition of the Complainant's well-known trademarks in order to cause initial interest, confusion and bait internet users into accessing its websites and force the complainant to buy out the Respondent in order to avoid said confusion as is typically the strategy of such cyber squatters.

j) The Complainant has submitted that it verily believes that the Respondent is enjoying the benefits of pay-per-click' revenues, generated through the sponsored links on its website, by misusing the Complainant's registered trade mark DELL VENUE. The Complainant has stated that the Respondent is not making a legitimate, non commercial or fair use of the domain name <dellvenue.in>. The complainant has relied on some notable decisions stating that use of a domain name to post parking and landing pages or pay-per-click' links would not of itself confer rights or legitimate interests arising from a 'bona fide offering of goods or services' or from "legitimate non commercial or fair use "of the domain name, especially where it results in a connection to the goods or services in competition with the Rights Holder. The complainant has placed reliance on Lardi Ltd vs. Belize Domain WHOIS Service Lt, WIPO Case No, D2010-1437; Compart AG vs. Comport.com /Vertical Axis, Inc, WIPO Case No D2009-0462; MBTI Trust Inc. V Glenn Gasner, WIPO Case No D2009- 1428, Express Scripts Inc v. Windgather Investments Ltd/ Mr. Cartwright, WIPO Case No. D2007-0267; Sigikid H. Scharrer & Koch GmbH & Co. KG, MyBear Marketing-und Vertriebs GmbH, Mr.Thomas Dufner vs. Bestinfo, WIPO Case No. D2004-0990.

k) The Complainant has submitted that the respondent's websites are not bona fide since the Respondent is using the domain name <dellvenue.in> to divert/ redirect internet users and consumers seeking the Complainant's goods and services to third party websites a majority of which market computers, laptops, phones and related products and services, in direct competition with the Complainant, while the respondent himself is not

13. Sangam San Singh

engaged in any activity of its own to show that he has any legitimate rights or interest in the domain name < dellvenue.in>. It has submitted that Respondent has no bonafide 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. In fact, the respondent not only diverts/ redirects traffic to commercial websites, it directs it to web pages marketing laptops, phones and other 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 <dellvenue.in>. The Complainant has submitted that the domain name registered by the respondent comprises entirely of the Complainant's trademarks "DELL VENUE". The Complainant has also submitted that WIPO has held that the use of domain name consisting of a misspelling of a mark to divert users to another commercial websites is not a bona fide offering of goods or services and cannot confer any rights or legitimate interests upon the Respondent. The Complainant has placed reliance on decisions "Diners club Int'l Ltd vs. Domain Admin, FA0305000156839 (NAF June 23, 2003) wherein it was held that the Respondent's domain name, <www.dinersclub.com>, a misspelling of <www.Dinersclub.com. and a typo squatted version of the Complainant's DINERS CLUB mark, was evidence in and of itself that the respondent lacked rights or legitimate interest in the disputed domain name ; Nat'l Ass'n of prof'l Baseball Leagues v Zuccarini, D2002- 1011 (WIPO Jan 21, 2003 wherein it was held that "Typosquatting as a means of redirecting consumers against their will to another site, does not qualify as a bonafide offering of goods or services, whatever may be the goods or services offered at that site". The complainant contends that the respondent has no right or legitimate interest in the disputed domain name. The Respondent has laid bare his intent to commercially exploit the Complainant's trademarks DELL and DELL VENUE, for the sole purpose of causing irreparable damage and injury to the complainant's goodwill and reputation; resulting in dilution of complainant's trademarks. The complainant has contended that respondent has shown crass opportunism in encashing the popularity of the complainant's reputation. The complainant has also annexed the copies of judgment with the complaint. The complainant has contended that respondent has no rights or legitimate interest in the domain name <dellvenue.in>.

The domain name was registered or is being used in bad faith:

- 1) The complainant has contended that domain name <dellvenue.in> acquired by the respondent comprises entirely of the Complainant's registered trade

[4. Sangam K. Singh

mark "**DELL VENUE**" in which the complainant has substantial interest and is used in relation to the Complainant's **DELL VENUE** series of smart phones. The complainant further alleges that the respondent registered the domain name <dellvenue.in> in order to piggy-back off the commercial value and significance of the Complainant's registered trade mark **DELL VENUE**.

- m) The complainant has contended that the domain name <dellvenue.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 revenues generated from the "pay-per-click" links to third party commercial websites, a majority of which market laptops, phones and related products and services in direct competition to the complaint. The complainant as such has contended that having profited from such a transaction with the complainant previously, the respondent has embarked on a similar strategy to register the domain name <dellvenue.in>, incorporating the Complainant's registered trade mark **DELL VENUE**, in an attempt to force the Complainant to purchase the same at exorbitant rates. The complainant has also placed reliance on *MSNBC' Cable, LLC vs. Tsysys.com*, case no. D2000-1204(WIPO Dec. 8, 2000), wherein it was held that " The panel is not persuaded that the respondent chose 'mnsbc.org' which contains Complainant's registered trade mark 'MSNBC', for any other reason other than a future expectancy of holding this particular name for sale to MSNBC' (or others) for a sum well in excess of the Respondent's cost of registration. If this was not the case, then one could very well ask why would the respondent offer this domain name for sale, through its website, on a site accessible by that domain name, if its only motive was to recover its cost of registration". The complainant has also referred to other decisions and has annexed the copies of the same along with this complaint.
- n) The complainant has contended that the Complainant's trademarks **DELL** and **DELL VENUE** are well known and famous marks, and the respondent is presumed to have had knowledge of the Complainant's trademarks at the time it registered the confusingly similar domain name by virtue of the Complainant's prior use and registration of the same. The complainant has also contended that the respondent obviously had knowledge of Complainant's trademarks at the time it registered the domain name <dellvenue.in> by virtue of numerous correspondences 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.

15. Sanjay Ar Singh.

- o) The complainant has contended that there are prima facie evidence of the respondent's bad faith, use and registration. Registration of a famous trademark without legitimate commercial interests in the same are prima facie evidence that respondent was well aware of the reputation and goodwill attached to complainant's trademarks/ name. The complainant has also contended that respondent's website provides links to various third party commercial websites, several of which are marketing laptops and related products and services in direct competition with the complainant and further the respondent had knowledge of the trademarks DELL and DELL VENUE and the associated products and services prior to seeking registration of the domain name <dellstreak.com>.
- p) The complainant has contended that the general proposition that the registration of a domain name incorporating a well known trademark of the complainant is in bad faith has been held by numerous UDRP decisions. Some notable cases which have upheld this proposition are Marie Clare Album vs. Marie-Clare Apparel, Inc (case No. D 2003 0767). The complainant has also referred to other decisions and has annexed the copies of the same along with this complaint. The decisions have held that registration of a well known trademark of which the respondent must reasonably have been aware is in itself sufficient to amount to bad faith.
- q) The complainant has contended that the bad faith lies in respondent's intentional use the domain name <dellvenue.in> to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the complainant's trademark DELL as to the source, sponsorship, affiliation, or endorsement of the respondent's website. The complainant has also contended that the Indian consumers searching for the complainant's website pertaining to the DELL VENUE series of smart phones are inclined in search for websites with domain names comprising of the trademark DELL along with the trademark VENUE. The complainant has further contended that the respondent's primary intent in registering and using the domain name <dellvenue.in> entirely comprises of the Complainant's trademarks DELL VENUE 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.

A copy of complaint has already been sent to the respondent by the .In Registry through e-mail. Upon receipt of the complaint, the Arbitrator sent a notice dated 27-01-2012 vide email on 29-01-2012 to respondent whereby the respondent was directed to submit counter affidavit/reply to the

16. Sangay K. Singh

complaint of the complainant with supportive documents/evidence to the undersigned within **ten** days positively from the receipt of notice.

8. Despite the above notice the respondent neither filed counter affidavit/reply to the complaint of the complainant nor any supportive documents/evidence in his support.
9. On 18-02-2012, the Arbitrator further directed the respondent to send his defence / counter to the complaint along with supportive documents / evidence at the e-mail address within further **Five** days positively from the receipt of the notice. But the respondent has not filed/submitted his defence / counter to the complaint till date despite the aforesaid notices.
10. On the 24-04-2012 the Arbitrator further directed the respondent to send his defence / counter to the complaint along with supportive documents / evidence at the e-mail address within further **two** days positively from the receipt of the notice with further direction that complaint would be decided ex-parte on the merits of the complaint.
11. The respondent despite of earlier notices and reminders failed to send his defence / counter to the complaint though the notices were duly served on E-mail ID of the respondent.
12. Therefore, this matter is being decided ex-parte and on the merits of the complaint and as per law of the land.

13. OPINION/FINDING:

The Para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES

It must be noted that the para no.4 of the INDRP policy starts with following words, "Any person who considers that a registered domain name conflicts with his legitimate rights or interest may files complaint to the in registry on follow premises." This is a positive assertion and sentence.

17. Sangam K. Singh

Further paragraph 4(i) also constitutes a positive assertion and sentence. Paragraph 4(iii) and para no.6, which is supplementary/explanation to it, also have positive assertions/sentences.

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

- i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

The Para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

14. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH :

The following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- "i) Circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the Registrant's documented out of pocket costs directly related to the domain name; or
- ii) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the

18. Sanjay Kumar Singh

mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

The Para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

15. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME:

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstratable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (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."

19. Sangam (or Singh)

16. OPINION AND FINDINGS ON MERITS:

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision M/s Satyam Infoway Ltd. Vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, 'Sify' & 'Sify' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar.

It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

The other fact, which is to be dealt with, is, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

The conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere, can still be confusingly similar or identical.

Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many Indian cases referred herein above. The complainant has made submission that he has legitimate trademark.

20. Sanjay Ar Singh

Thus the conclusion is that the domain name 'dellvenue.in' is identical and confusingly similar to the trademark of complainant 'dellvenue.in' and the complainant has established that the complainant has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras are prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not filed any reply / counter or to provide any positive, cogent and specific evidence in spite of repeated notices. The respondent has failed to show that it is known or recognized by the impugned domain name in the present complaint. The respondent has neither put forth the reply/counter to the complaint nor has provided any evidence in its support.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

21. Langley Kar Singh

C. Whether the respondent's domain name has been registered or is being used in bad faith:

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated; the onus is primarily upon complainant.

Keeping in view the above facts and circumstances and Indian cases referred herein above it is thus clear that the respondent has registered the disputed domain name and in spite of repeated notices, he has neither come forward and nor provided any substantial evidence in his support.

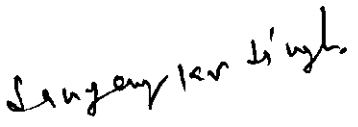
Thus, the conclusion is that the respondent has got registered his domain name "dellvenue.in" in bad faith.

RELIEF

In view of the above facts and circumstances, it is clear that the respondent has no right and legitimate interest in the domain name 'dellvenue.in' and that the registration of the disputed domain name 'dellvenue.in' by the respondent was with the sole intention to create an impression of an association with the complainant. The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled for transfer of domain name "dellvenue.in" to him, as he has established his bonafide rights in trademark in view of facts of the case and as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry on payment of requisite fee to the registry.

No order as to costs.

Date: 09-06-2012.


(Sanjay Kumar Singh)
Arbitrator