



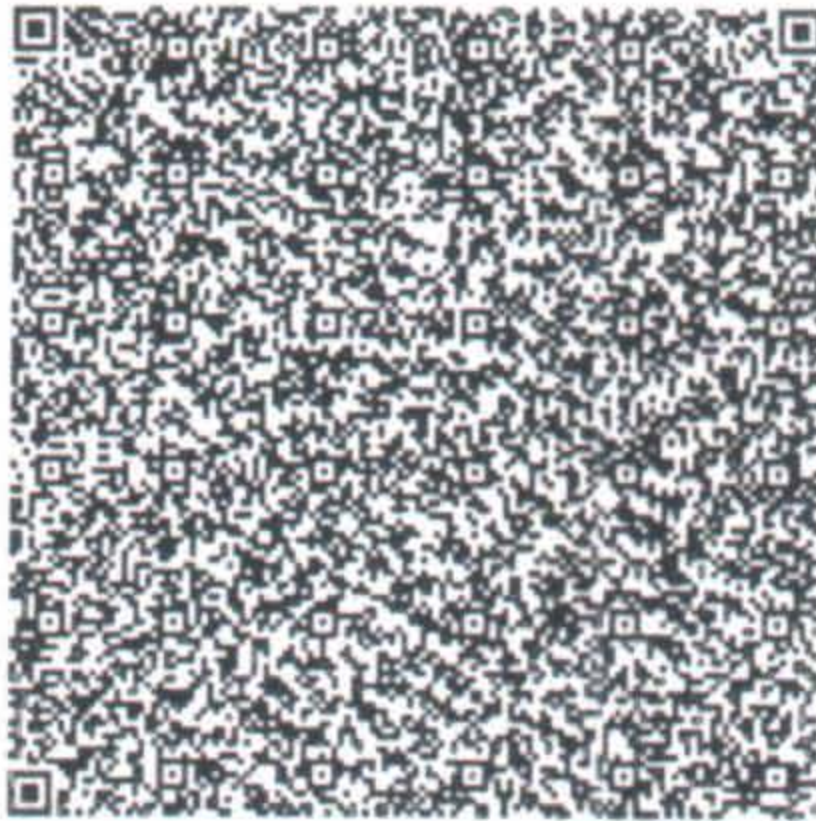
सत्यमेव जयते

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e-Stamp

Certificate No.	: IN-DL62772842578362P
Certificate Issued Date	: 25-Mar-2017 04:07 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130326068968048251P
Purchased by	: ASHCK 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, U.S.A.

...Complainant

Vs.

Mr. Ranjeet Singh Rana
Owner/Proprietor of Laptop service center and
NCR System Solution
L2B/11C, Near Geeta Mandir, Mohan Garden
Uttam NagarDelhi-110059, India

...Respondent

Statutory Alert:

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A. THE PARTIES

The Complainant in this administrative proceeding is Dell Inc., One Dell Way, Round Rock, Texas, 78682, U.S.A.

The respondent in this proceeding is Mr. Ranjeet Singh Rana, Owner/proprietor of Laptop service center and NCR System Solution L2B/11C, Near GeetaMandir, Mohan Garden, Uttam Nagar Delhi-110059, India

THE DOMAIN NAME

The disputed domain name is www.laptopservicecenterdeall.in

B. 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.laptopservicecenterdeall.in>**.

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

Few dates and events which are material to decide the present complaint are as under:

On 15.02.2017, NIXI sent the soft copy of the complaint and annexures to the respondent. NIXI also informed the respondent that the hard copy of the complaint with the annexures has been sent by courier to the respondent at the address as per the WHOIS details.

On 16.02.2017, the respondent informed NIXI and the Arbitrator that he is not interested to own this domain and also communicated his willingness to transfer it.

On 18.02.2017, Tribunal sent an email to the parties informing them about his appointment as an Arbitrator.

In the above mentioned email itself, the Tribunal directed NIXI 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 18.02.2017 with the directions 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 18.02.2017, The Respondent informed the Tribunal its willingness to transfer the domain to the Complainant.

On 20.02.2017, NIXI informed the Tribunal that the courier containing the complaint and annexures has been delivered to the respondent.

On 20.02.2017, The Complainant enquired whether in view of the fact that the respondent does not wish to file any reply to the complaint and has agreed to transfer the offending domain name, the parties are required to submit a settlement agreement or any other documentation to bring this matter to a close.

On 23.02.2017, The Tribunal apprised the parties that if any settlement is arrived at between the parties and is filed before the Tribunal, the same will be considered by it at the time of passing the award.

On 09.03.2017, The Tribunal informed the parties that vide email dated 18.02.2017 of the respondent and email dated 20.02.2017 of the complainant, there appears to be some latitude of compromise between the parties, however, nothing to this effect has been filed before the Tribunal. The Tribunal further directed to file the settlement if any, that has been arrived between the parties. The Tribunal further also stated that if no settlement has been arrived at, in the interest of justice another three days time is granted to the respondent to file its reply after which the Tribunal will proceed to pass the award on the basis of the documents already on record.

That neither any settlement has been filed before the Tribunal nor the Respondent has filed 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:-



C. FACTUAL BACKGROUND:

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

D. COMPLAINANT:

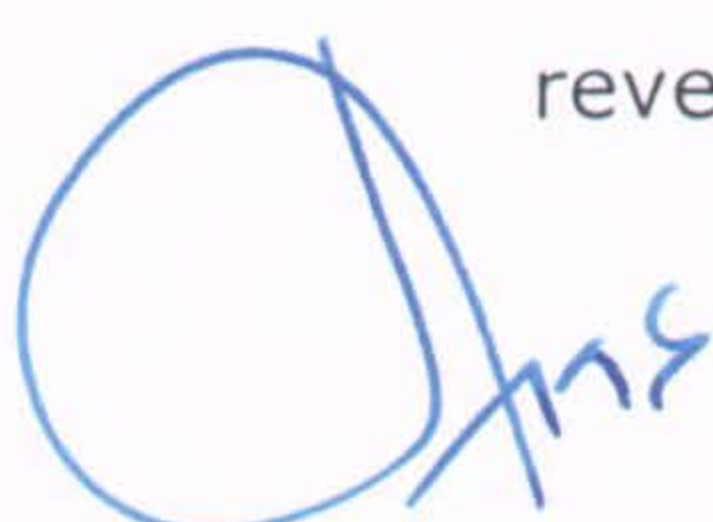
The case of the Complainant is that:

1. The Complainant submits that it is the world's largest direct seller of computer systems and that since its establishment in 1984, 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. It 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 and individuals.
2. The Complainant submits that it is one of the leading providers of computer systems to large enterprises around the world and does business with 98 percent of Fortune 500 corporations and that it sells more than 100,000 systems every day to customers in 180 countries, including India. The Complainant has a team of 100,000 members across the world that caters to more than 5.4 million customers every day.
3. The Complainant submits that its products are widely available in India since 1993 and the said products are marketed in India by the subsidiaries of the Complainant in India. The Complainant's subsidiaries have tied up with various channel partners such as authorized distributors and resellers all over the country. Complainant's products are sold through a wide network of 'DELL' exclusive stores and at other stores in around 200 cities in India. It also submits that by virtue of this use, the relevant section of the public associates the trademark 'DELL' with the Complainant alone.
4. The Complainant submits that it has a very strong internet presence with the website www.dell.com and the website can be accessed from anywhere in the world including India and provides extensive information on the activities of the Complainant throughout the world, including India.



The Complainant also submits that it also has country specific domain names such as www.dell.co.in for India and that in addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers details.

5. The Complainant submits that the first use of the mark 'DELL' can be traced back to 1988 and that since then it has expanded its business into various countries and has extensive use of the mark 'DELL' around the globe. The Complainant also submits that in order to secure rights over the mark 'DELL' the Complainant has registered the said mark in several countries, including in India. The Complainant further submits that it also uses various 'DELL' formative marks like 'DELLPRECISION', 'DELL CHAMPS', 'DELL PROSUPPORT', 'DELL PREMIUMCARE', etc.
6. The Complainant submits that it has been using the trademark 'DELL' since the last 30 years and has built an enviable reputation in respect of the trademark 'DELL' and by virtue of such use, the mark 'DELL' is well recognized amongst the consuming public and can be termed as a well-known trademark. The Complainant also submits that it has also initiated several actions against domain name squatters in past several years and it has submitted the list of case details wherein awards have been passed in its favour.
7. The Complainant submits that it has a long and extensive use of the mark 'DELL' and by virtue of such use, the trademark 'DELL' can be termed as a well-known mark. It also submits that in order to protect the status of the mark 'DELL' from third party adoption, the Complainant undertakes different periodical searches and that upon conducting one such search for cyber squatters, the Complainant became aware of the registration of the domain name www.laptopservicecenterdeall.in.
8. The Complainant submits that the aforementioned search also provided other offending domain names of similar nature such as www.dellservicecentres.in, www.delllaptopservicecentres.in and www.dellservicecenter.net. The Complainant further submits that all the .in domain names had a similar registrant address and therefore, the Complainant thought it prudent to conduct an investigation against the registrants of the aforementioned domain names. The investigation revealed that all the .in domain names were used by NCR System



Solutions and were registered by either Abhishek Singh or Mr. Ranjeet Singh (Respondent). The investigation also revealed that the Respondent prominently displayed the mark 'DELL' of the Complainant at several places on the website. The Complainant has submitted screen-shots of the website to support his submission. The Complainant further submits that the color blue used on the website with the domain www.laptopservicecenterdeall.in, is similar to the shade of blue used by the Complainant and that the entire look and feel of the website attached to the domain name www.laptopservicecenterdeall.in is confusingly similar to the website of the Complainant. The Complainant has submitted the screen print of the website of the Complainant i.e. www.dell.com and the website of the domain name www.laptopservicecenterdeall.in.

9. The Complainant submits that the investigation also disclosed another website used by the Respondent to provide services for repair and maintenance of Laptops i.e. www.ncrsystemsolution.com. It also submits that on the mentioned website, the Respondent has a separate link for Dell service center. The Complainant further submits that even though the Respondent has a website www.ncrsystemsolution.com, under which they provide repair and maintenance services for laptops, the Respondent has still registered www.laptopservicecenterdeall.in, primarily to mislead the public.
10. The Complainant submits that the offending domain name www.laptopservicecenterdeall.in uses the word 'DEALL' which is deceptively similar to 'DELL' and that the services provided by the Respondent are of repair and maintenance services of Dell laptop, which is identical to the services offered by the Complainant for its Laptop and that the website with the offending domain name prominently displays the words Dell Laptop Service & Support with a logo above it.
11. The Complainant submits that it provides repair and maintenance facilities for Dell laptops and uses the deceptively similar word 'DEALL', which is identical to the mark 'DELL' except for the addition of the letter 'A'. It also submits that by virtue of the Domain name www.laptopservicecenterdeall.in, it appears as if, the Respondent is associated with the Complainant. The Complainant further submits that 'DELL' is a well-known trademark and is associated with the Complainant alone and use of the registered trademark of the Complainant without any

permission from the Complainant is infringement of the rights in the trademark.

12. The Complainant submits that the trademark 'DELL' has secured registration in various countries around the globe including India. It also submits that 'DELL' is not a common word in India, and the adoption of a deceptively similar mark by the Respondent for a website for offering identical services to that of the Complainant, only reeks of dishonest in the first instance and that the Respondent has no right whatsoever to use and adopt the well-known trademark 'DELL' of the Complainant.
13. The Complainant submits that as is apparent from the Whois details, the Domain Name was created in December 2015, almost 30 years after the Complainant's adoption and first use of 'DELL' and after the Complainant had already established a business and goodwill in India and the world over.

E. RESPONDENT:

1. The respondent in this proceeding is Mr. Ranjeet Singh Rana, owner/proprietor of Laptop service center and NCR System Solution, L2B/11C, Near Geeta Mandir, Mohan Garden, Uttam Nagar Delhi-110059, India
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.

F. 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.

G. 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. The Arbitration proceedings thus, 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's submissions as per the complaint in this regard are:

- a. The Respondent has adopted a mark 'DEALL', which is deceptively similar to the well-known trademark 'DELL' of the Complainant to provide services to 'DELL' laptops. Not only is the adoption of the said mark an infringement it is also being used for services identical to that of the Complainant. The Complainant provides post sale services of maintenance and repair.
- b. The Complainant offers repair and maintenance services under the mark 'DELL'. The Complainant has also registered the mark 'DELL' and

'DELL' formative marks in class 37 of the NICE classification, as repair and maintenance falls under the said class.

- c. When a search for Dell laptop service centers is performed on Google search engine, the website bearing the domain name www.laptopservicecenterdeall.in is in the first four result of the said search. It is to be noted that the consuming public relies heavily on such internet results which will confuse the public. Owing to such results, the relevant section of the society will consider the Respondent to be associated with the Complainant.

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 respect of the domain name:

The complainant's submissions as per the complaint in this regard are:

- a. The Respondent is taking advantage of the innocent customers who may or may not inquire about the authenticity of the Respondent. Even if the Respondent informs a purchasing costumer that they are not related to the Complainant, the same does not bestow any right to use the trademark DELL of the Complainant or any other deceptively similar mark.
- b. The Respondent has no right to use the mark 'DELL' or any deceptively similar mark, as the mark 'DELL' is the sole property of the Complainant. The Complainant uses the mark 'DELL' and has also secured registration for the same. The use of a deceptively similar mark 'DEALL' by the Respondent is not licensed, thus it is an infringement of the trademark 'DELL'. Moreover, the trademark 'DELL' is prominently displayed on the website with the domain name www.laptopservicecenterdeall. n.

According to the paragraph 7 of the .INDRP, 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 circumstances as required under paragraph 7 of the INDRP exists in his favour. The Respondent is also not engaged in or demonstrably prepared to engage in offering any bonafide goods or services in the name of the disputed domain name, this is also evident from the email dated 18.02.2017 of the respondent showing his willingness to transfer the 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.laptopservicecenterdeall.in> as the Respondent 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. The registration and operation of the domain name www.laptopservicecenterdeall.in has been done in bad faith and dishonest intentions to mislead the public into believing that the



Respondent is authorized service center of the Complainant. The adoption of the trademark of the Complainant is only to confuse the public as the relevant section of the public are bound to be deceived into thinking that the Domain Name www.laptopservicecenterdeall.in is a website of the Complainant, which is not the case. The Domain Name has been registered to create initial interest confusion amongst internet users thereby luring them to the website used in connection with the Domain Name and in turn to make illegal profit out of such representation.

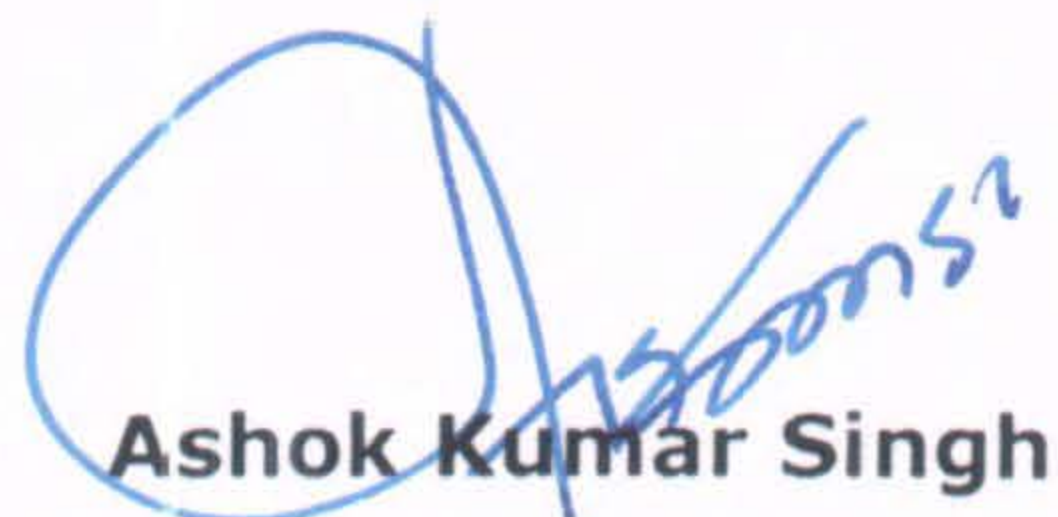
- b. The bad faith on the part of the Respondent is demonstrated by the use of the trademark of 'DELL' on the website with the domain name www.laptopservicecenterdeall.in. Bad faith also be seen from the look and feel of the website with domain name www.laptopservicecenterdeall.in which is deceptively similar to the website of the Complainant.
- c. Bad faith on the part of the Respondent is further evidenced by the registration of other domain name using the trademark 'DELL' of the Complainant which are www.dellservicecentres.in, www.delllaptopservicecentres.in. That all the aforementioned domain names including the domain name which is the subject of this complaint, have the same address.
- d. The adoption of the trademark of the Complainant without a license or other authority is evidence of bad faith in itself. The Respondent has no reason to adopt the trademark of the Complainant. The use of the Domain Name by the Respondent is not for non-commercial use and would not fall under the ambit of 'fair use'. Upon a mere perusal of the website associated with the domain name www.laptopservicecenterdeall.in, it frequently appears to be related to the Complainant and misleads the relevant public. The only reason of adoption of the mark 'DEALL', which is identical to 'DELL' except for the addition of the letter 'A', for services identical to that of the Complainant is to make illegal profit by duping the consuming public. The entire modus operandi of the Respondent, whose website is accessed only through trademark 'DEALL', which is deceptively similar to the mark 'DELL' of the Complainant except for the addition of the letter 'A', is dishonest and illegal.

- e. The Respondent was very well aware of the trademark of the Complainant when it procured the registration of the Domain Name in December 2015.

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

H. DECISION:

In 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.laptopservicecenterdeall.in> to the Complainant. The parties are left to bear their own cost. The Award is accordingly passed on this day of 23rd March, 2017.



Ashok Kumar Singh

Sole Arbitrator

Date: 23rd March, 2017