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Stamp Duty Paid : ₹ 101
(Rs. Only)Penalty : ₹ 0
(Rs. Zero Only)**Deponent**

Name: Rachna Bakhru

H.No/Floor : Na

City/Village : Gurugram

Phone : 0

Sector/Ward : Na

District : Gurugram

Landmark : Na

State : Haryana



Purpose : AFFIDAVIT to be submitted at Other

RACHNA BAKHRU

ARBITRATOR

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

In the matter of:

Dell Inc.
One Dell Way,
Round Rock,
Texas, 78682, USA.

....Complainant

VERSUS

Andaman and Nicobar Islands

.....Respondent No.1

Rookra Laptop Service Center
No.5, 100 feet Tharamani Link Road,
Tansi Nagar (Near Olympic Wedding Cards), Velachery
Chennai, Tamil Nadu 600042
Telephone no.- 044-48510022
Email: info@rookralaptopservice.com

.....Respondent No. 2

Disputed Domain Name: WWW.DELLSERVICECENTERINVELACHERY.IN

AWARD

1) **The Parties:**

The Complainant in this arbitration proceeding is Dell Inc., a Delaware corporation. The Complainant is represented by its authorized representative namely, Akhilesh Kumar Rai, AZB & Partners.

As per the records in the Whois database the Respondent No.1 is based in Andaman and Nicobar Islands. As per the complaint the Respondent No. 2 is Rookra Laptop Service Center of the address No.5, 100 feet Tharamani Link Road, Tansi Nagar (Near Olympic Wedding Cards), Velachery, Chennai, Tamil Nadu 600042. (Hereinafter collectively referred to as the 'Respondent')

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

The disputed domain name is <www.dellservicecenterinvelachery.in>. The Registrar is GoDaddy.com.

As per the records in the Whois database the Respondent No.1 is based in Andaman and Nicobar Islands and Respondent No. 2 is Rookra Laptop Service Center of the address No.5, 100 feet Tharamani Link Road, Tansi Nagar (Near Olympic Wedding Cards), Velachery, Chennai, Tamil Nadu 600042. (Hereinafter collectively referred to as the 'Respondent')

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 28th 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) and (b), NIXI formally forwarded the copy of the Complaint to the Respondent and appointed Rachna Bakhru 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.

- The complaint was produced before the Arbitrator on June 03, 2019 and the notice was issued to the Respondent on June 07, 2019 at the email address outlining that the Complainant had prayed for transfer of the disputed domain name "www.dellservicecenterinvelachery.in" in its favour. The Respondent was called upon to submit their response within ten (10) days of receipt of the Arbitrator's email i.e. until June 17, 2019.



- Since, there was no response from the Respondent, Arbitrator issued a reminder notice to the Respondent on June 18, 2019 at his email address granting a last and final opportunity until June 25, 2019 to submit their response.
- Since no response was received from the Respondent to the Arbitrator's reminder as well, the Arbitrator sent out an email on June 28, 2019 to parties apprising that no communication has been received and that the Arbitrator will now proceed to prepare an award based on the submissions of the Complainant.
- In view of no response/communication from the Respondent, the complaint is being decided *ex-parte* and solely based on materials and evidence submitted by the Complainant and contentions put forth by them.

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

The Complainant in support of its case has made the following submissions:

1. The Complainant is the world's largest direct seller of computer systems established in the year 1984. The Complainant is one of the leading providers of computer systems to large enterprises around the world and does business with 98% of Fortune 500 corporations. The Complainant's first use of the mark 'DELL' dates back to 1988. The Complainant sells more than 100,000 systems every day to customers in 180 countries, including India.
2. The complainant's products are available in India since 1993. The Complainant's products are sold through a wide network of 'DELL' exclusive stores and at other stores in around 200 cities in India. The Complainant has a very strong internet presence with the website www.dell.com and also has country specific domain name for India i.e. www.dell.co.in. The Complainant has registered the 'DELL' trademarks in several countries of the world including India. The Complainant also uses 'DELL' formative marks such as DELLPRECISION, DELLCHAMPS, etc. The Complainant initiates various legal actions against third parties using the 'DELL' mark of the Complainant.
3. Owing to long and extensive use of the mark 'DELL', the complainant contends that the mark 'DELL' can be termed as a well-known mark. With respect to the Respondent, the domain name/website 'www.dellservicecenterinvelachery.in' has displayed the trademark/logo DELL at several places along with the tagline 'Power To Do More'. The Complainant contends that the Respondent has at various places on the website used the taglines:
 - *Dell Laptop Service center is the one of the finest Laptop Service providers in the field of Laptop repair & solutions at your home and office*
 - *Are you in need of Dell service center in Velachery or neighbouring areas in the Chennai? If yes, come to Dell service center, Dell laptop repair specialists having vast experience and talent.*
4. The Complainant contends that the Respondent's website provides a price list, Dell's forum, Dell's computer and accessories and has a list of services it offers for the DELL products. The Complainant contends that the Respondent has registered



other domain names such as www.dellservicecenterinomr.in and www.dellservicechennai.in to defraud the public into believing that it is Dell service center.

5. The Complainant contends that the disputed domain name <www.dellservicecenterinvelachery.in> is identical and/or confusingly similar to the Complainant's well known trademark DELL. The Complainant contends that the disputed domain name provides post sale service for 'DELL' laptops and offer complainant's products for sale. The element of confusion is further enhanced in view of the fact that the Complainant is the registered owner of the trademark DELL and DELL formative marks in class 37 for repair and maintenance.
6. The Complainant contends that Respondent has no rights or legitimate interest in the disputed domain name <www.dellservicecenterinvelachery.in> and that the Respondent is taking unfair advantage of innocent customers. Further, it is contended that use of the mark DELL by the Respondent is not licensed by the Complainant and is an infringement of the mark DELL. It is further contended that the Respondent has developed the disputed domain name to illegally benefit from the goodwill and reputation of the mark DELL built by the complainant.
7. The Complainant further contends that the Respondent has registered the disputed domain name in bad faith and with a dishonest intention to mislead the public into believing that the Respondent is the service center of the Complainant. The Complainant contends that Respondent has registered the domain name to lure the customers to the website and make illegal profit. The Complainant further contends that bad faith on part of Respondent is demonstrated by use of the mark 'DELL' on website and part of disputed domain name.
8. The Complainant contends that adoption of the trademark DELL is without a license or any authority via-a-vis use of the disputed domain name is not for non-commercial use or not fall under the ambit of 'fair use'. The Complainant further contends that the Respondent is misleading the customers into believing that it is related to the complainant and is making illegal profit by duping the consuming the public by adopting an identical mark 'DELL'.
9. The complainant contends that the Respondent has registered other domain names such as www.dellservicecenterinomr.in and www.dellservicechennai.in to defraud the public into believing that it is Complainant's service center.

5) **Respondent:**

The Respondent has not filed any official response dealing with the contents of the Complaint. Therefore, the complaint had to be decided based on submissions on record and analyzing whether the Complainant has satisfied the conditions laid down in paragraph 4 of the INDRP policy.

6) **Discussion and Findings:**

The submissions and contentions provided by the Complainant shows that the mark 'DELL' was first adopted in the year 1984 with first commercial use since 1988. Further, the



Complainant applied for and secured registration for the DELL mark in India with effect from 1992 as shown in **Annexure 1**. The Arbitrator notes that the complainant has been using the trademark since last 30 years and has filed several domain name actions against third parties as shown in the list annexed as **Annexure 2**. The Arbitrator also notes that the Complainant has an active India specific website www.dell.co.in as shown from **Annexure 10**. The Arbitrator also notes from **Annexures 3, 8** and **12** that the respondent has registered the disputed domain name using the complainant's identical trademark DELL.

The arbitrator also notes that the Respondent represents itself as the Dell's service center as shown in **Annexure 5**. Further, **Annexure 6** and **Annexure 7** show that the Respondent has displayed the Complainant's trademark DELL on its website and provided a price list, Dell's forum, dell's computer, accessories and list of services for the Complainant's products.

The Arbitrator also notes from **Annexure 9** that the Complainant has provided post sale services of maintenance and offers for sale computer and computer related products. The Arbitrator also notes that the complainant has registered the trademark 'DELL' in class 37 for repair and maintenance as shown in **Annexure 11**.

I now deal with the three requisite conditions laid in paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below. Further the Respondent has not contested the claims, therefore deemed to have admitted the contentions of the Complainant.

(i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

Based on submission and evidence filed by the Complainant, it is clear that the Complainant has prior and subsisting rights in the mark DELL with its earliest adoption in the year 1984 and several trademark registrations worldwide including India. In India, the Complainant has evidently proved that it has secured trademark registration for the DELL trademark in classes 9, 37, 38, 41 and 42. Therefore, it is established that the Complainant has statutory trademark rights in the mark DELL worldwide including in India. Further, the Complainant has pleaded that it has been commercially using the DELL trademark since 1988. Therefore, the Complainant also has prior user rights in the DELL trademark. As complaint is filed under INDRP, it has to be now ascertained if the disputed domain name <www.dellservicecenterinvelachery.in> is identical to or confusingly similar with the Complainant's mark.

As per WIPO Jurisprudential Overview 3.0, the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.



It is also noted from **Annexure 1** and **Annexure 11** that the Complainant is the registered proprietor of the trademark DELL which is entirely contained in the disputed domain name of the Respondent. It is evident in the present case that the disputed domain name <www.dellservicecenterinvelachery.in> is identical and confusingly similar to the Complainant's registered trademark DELL and domain name www.dell.co.in. In my opinion, owing to the worldwide presence of the Complainant's business, the disputed domain name could make Internet users to believe that such domain name and the contents originating therefrom belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(i) is satisfied.

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

In order to satisfy requirement of INDRP Policy paragraph 4(ii), the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. On making such prima facie case, the burden of proof shifts to the Respondent to provide appropriate allegations or evidence to demonstrate rights or legitimate interests in the domain name.

In the present case, no response was received from the Respondent and none of the contentions put forth by the Complainant against the Respondent were denied or rebutted.

Paragraph 7 of INDRP Policy deals with the 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 purposes 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.

Keeping in mind instances covered in Paragraph 7 of INDRP Policy, the Arbitrator notes that the disputed domain name directs the visitors to a website wherein the Respondent represents itself as a Dell's service center as shown in **Annexure 5**. Therefore, the disputed domain name is not being used in connection with a bona fide offering of goods or services.

The Complainant has provided documentary evidence as shown in **Annexure 6** and **Annexure 7** which shows Respondent has been targeting the potential customers of the



Complainant to lure them into believing that the Respondent is affiliated with the Complainant and thereby make commercial gains by deceiving them. Therefore, it is established that the Registrant is not making a legitimate non-commercial or fair use of the domain name. Further, the disputed domain name is being used by the Respondent with clear intention of making commercial gain. It is held that use of a domain name for illegal activity including fraud, illicit gain can never confer any legitimate rights or interests in favour of the Respondent.

Since there exists no business relationship or authorization or license between the Respondent and the Complainant, I find the requirement of the INDRP Policy paragraph 4(ii) also satisfied.

(iii) The Registrant's domain name has been registered or is being used in bad faith.

Paragraph 6 of the INDRP policy states Evidence of Registration and use of Domain Name in Bad Faith:

For the purposes of Paragraph 4(iii), 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 mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line 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.

Based on prior adoption, worldwide use, several trademarks and domain names registrations of trademark DELL by the Complainant; it is believed that the Respondent was well aware of the Complainant's business and services while registering the disputed domain name constituting the mark DELL. Further, the Complainant had commenced use of the trademark DELL since 1988 for its business and has also registered the trademark DELL in various countries of the world including India. Therefore, based on constructive knowledge of the Respondent and no legitimate business on the disputed domain name/website, it is presumed that the Respondent registered the disputed domain name in bad faith and with dishonest intention to mislead the public into believing that the Respondent is the service center of the Complainant.



Further, the Complainant has furnished documentary evidences marked as **Annexures 5, 6, 7 and 8** wherein it is clear that the Respondent has devised the disputed email address www.dellservicecenterinvelachery.in and other domain names (associated with disputed domain name) such as www.dellservicecenterinomr.in and www.dellservicechennai.in to deceive the public into believing that it is Dell's service center and make illicit gains by committing fraud. Further, the Respondent goes on to impersonate itself as the authorized service center of the Complainant and is actively using the Complainant's trademark DELL in its disputed domain name and its website for the purpose of providing post sale services and to offer Complainant's products for sale to innocent and unsuspecting customers. All these actions show that the disputed domain name is being used by the Respondent in bad faith. It is observed that use of the disputed domain name constitutes bad faith if it effectively impersonates and/or suggests sponsorship or endorsement by the trademark owner.

The Respondent is using the disputed domain name in relation to same business and services as those of the Complainant i.e. repair and maintenance services for laptops and computers. It is clear that the Respondent has registered and is using the disputed domain name with an obvious intention to illegally benefit from the goodwill and reputation of the complainant's mark DELL. It is also evident that the Respondent is creating a likelihood of confusion with the Complainant's DELL name and mark and is actively associating itself with the Complainant's company and business.

Based on the above and the documents filed by the Complainant, it can be concluded that the domain name/mark DELL is identified with the Complainant's name, mark and services, therefore the adoption, registration and use of the disputed domain name by the Respondent shows 'opportunistic bad faith'. Thus, the present case squarely falls within the premises of bad faith registration and use, thus fulfilling condition laid down under paragraph 4(iii) of INDRP Policy.

7) **Decision:**

The Complainant has satisfied all the three requisite conditions laid down in paragraph 4 of the INDRP policy. In accordance with the Policy and Rules, it is directed that the disputed domain name <WWW.DELLSERVICECENTERINVELACHERY.IN> be transferred to the Complainant.



RACHNA BAKHRU
SOLE ARBITRATOR
NIXI
INDIA
July 30, 2019