



தமிழ்நாடு தமில்நாடு TAMILNADU



1869
2.5.2012

Sridharan

Y 208102

S. Mangalam
S. MANGALAM
STAMP VENDOR,
66: MURTHY STREET,
CHENNAI-600 033
LICENCE No: 9942/89
PHONE No: 2371 0754

BEFORE THE INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR: S. SRIDHARAN

DATED: 29th APRIL 2012

DELL INC

-Vs-

Talk Suoj

--- Complainant

--- Respondent

Sridharan



தமிழ்நாடு தமில்நாடு TAMILNADU

1868
2.5.2012

Sridharan

Y 208101

S. Mangalam
S. MANGALAM
STAMP VENDOR,
66, MURTHY STREET,
CHENNAI-600 033.
LICENCE NO : 9942/89
PHONE NO: 2371 0754

BEFORE THE INTERNET EXCHANGE OF INDIA
ARBITRATION AWARD

ARBITRATOR: S. SRIDHARAN

DATED: 29th APRIL 2012

DELL INC

-vs-

Talk Sng

--- Complainant

--- Respondent

Sridharan

BEFORE THE INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

ARBITRATOR: S.SRIDHARAN

DATED: 29th April 2012

Dell Inc. ... **Complainant**
Versus
Jack Sun ... **Respondent**

1. The Parties

- 1.1 The complainant Dell Inc. is a Delaware Corporation, having its registered office at One Dell Way, Round Rock, Texas 78682-2244, USA represented by Mr.Pravin Anand and Ms.Divya Vijan advocates of Anand and Anand at First Channel, Plot No.17A, Sector 16A, Film City, Noida.
- 1.2 Respondent is Mr. Jack Sun of Domainjet Inc at 1800 Amphitheatre Parkway, Mountain View, California-94043, United States of America.

The Domain Name and Registrar

- 1.3 The disputed domain name **<delcloud.co.in>** is registered with Directi Internet Solutions Pvt. Ltd (R5-AFIN).

2. Procedural History

- 2.1 On 13th January 2012, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 14th January 2012, I informed my

Sridharan

availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.

- 2.2 On 19th January 2012, I received hardcopy of the Complaint.
- 2.3 On 21st January 2012, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 23rd January 2012, I received a soft copy of the Complaint and a part of annexures from the Complainant. On 24th January 2012 I received remaining part of the annexures.
- 2.5 Respondent has not filed any response to the Complaint.
- 2.6 Email is the medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. **Factual Background**

A **Complainant**

- 3.1 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

Sridharan

and technical support services. The Complainant's business is aligned to address the unique needs of large enterprises, public institutions (healthcare, education and government), small and medium businesses. Amongst its many services and facilities, the Complainant also provides cloud computing services with its DELL CLOUD COMPUTING SOLUTIONS™, wherein customers are provided with cloud servers with data storage facilities.

3.2 The Complainant began using the trade mark/name DELL in 1987. Since then it has made extensive and prominent use of its trade mark/name DELL in connection with a wide range of computer related goods and services, including offering its goods and services online through numerous DELL domain names. The Complainant has been using DELL 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 marks, which include DELLPRECISION, DELLVENUE, DELLWARE, DELLZONE, DELLNET, DELLHOST to name a few.

3.3 The Complainant has spent substantial time, effort and money advertising and promoting 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. The trade mark DELL has become a distinctive and famous trade mark throughout the world as a

Indiraans

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.

3.4 The Complainant 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 sells more than 10,000 systems every day to customers in 180 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, computer networks and Internet infrastructure. Information about the Complainant is available on its website, www.dell.com.

3.5 The Complainant began doing business in India in 1993. The Complainant has a highly successful presence in India in respect of its trade mark and trade name DELL not only on account of the extensive use of DELL products in the country initially by way of imports but also subsequently through extensive after-sales service outlets and direct sales of its products through its Indian subsidiary which was incorporated in June 2000 and through its DELL DIRECT stores which were launched in 2002 as a hands-on complement to their website www.dell.com and their increasing phone sales.

Indira

3.6 The opening of the Complainant's subsidiary in India which undertakes the task of specialized after sales service, marketing and distribution of customized, high technology computer systems and storage devices, 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 its retail initiative to increase its presence in India, the Complainant tied up with several channel partners such as authorized distributors and resellers including 600 systems integrators and launched DELL exclusive stores all over the country. Further information regarding the Complainant's business and operations in India is available on its website www.dell.co.in

3.7 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 the Complainant. The Complainant however refused to do so until he negotiated a payment of \$USD 500 in as consideration for the transfer of the domain name <dellstreak.in> to the Complainant. However, the Complainant subsequently learnt that the Respondent had also registered the disputed domain name <dellcloud.co.in> in further violation of the Complainant's statutory rights. On November 16, 2011, the Complainant's attorneys wrote to the Respondent calling upon him to transfer the disputed domain name <dellcloud.co.in> to the Complainant failing which legal proceedings would

Shankarans

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 of the disputed domain name <dellcloud.co.in> to the Complainant. Hence the present complaint.

3.8 The trade mark DELL has been registered by the Complainant in various classes in over 184 countries across the world including United States of America and India. The first registration in the US under No. 1616571 dates back to 9.10.1990. Registration under No.1498470 is dead. The first registration under No.575115 in India dates back to 15.06.1992.

3.9 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 internet users. The Complainant generates almost half of its revenue from sales over the internet. The information regarding the Complainant's business and operations is available on its websites <dell.com>, <dell.co.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 names 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. www.dellcloud.com, www.delldirect.in, www.dellinspiron.in, www.dellinspiron.com, www.delldirect.com, www.delllatitude.com,

Sudhakarans

[www.dellprecision](http://www.dellprecision.com), www.dellinspiron.com, www.dellcloud.com etc. The Complainant at present owns over 5000 domain names a majority of which contain the trade mark "**DELL**".

3.10 The Respondent in the present dispute has registered the disputed domain name [<dellcloud.co.in>](http://dellcloud.co.in) thereby misappropriating illegally and without authority, the trademark "**DELL**" which is the exclusive property of the Complainant.

B Respondent

3.11 The Respondent has not filed any reply to the Complainant's Compliant in this arbitration.

4. Parties Contentions

A Complainant

4.1 The disputed domain name [<dellcloud.co.in>](http://dellcloud.co.in) registered by the Respondent predominantly comprise of the Complainant's registered trademarks **DELL** and the generic term **CLOUD** which have obvious connections to the Complainant's business and only solidifies confusion among Internet users.

4.2 The Respondent has deliberately purchased the disputed domain name [<dellcloud.co.in>](http://dellcloud.co.in) and is offering it for sale to the highest bidder. Aside from the offer of 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 third party

Indhiraans

commercial websites, 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.

4.3 The disputed domain name <dellcloud.co.in> is clearly being used to capitalize on a Dell customer's attempt to search for the Complainant's products and services, in relation to the Complainant's DELL CLOUD COMPUTING SOLUTIONS which has been wholly incorporated into the disputed domain name <dellcloud.co.in> registered by the Respondent herein.

4.4 The Respondent is using the disputed domain name <dellcloud.co.in> to intentionally attract, for commercial gain, internet users seeking the Complainant's (Dell's) products and services, to its own websites, 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. Furthermore, the Respondent is also offering the domain name <dellcloud.co.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 <dellstreak.in> to the Complainant. The Respondent has, by registering the disputed domain name <dellcloud.co.in> clearly sought to misappropriate the reputation associated with the Complainant's well-known trademarks "DELL" and take

Indhiraans

advantage of the fact that internet users/ customers searching for the Complainant's DELL CLOUD COMPUTING SOLUTIONS would now be offered the products and services of other entities including those in direct competition with the Complainant.

4.5 The disputed domain name <dellcloud.co.in> fully incorporates the Complainant's well-known and registered trademark "DELL" in its entirety and is confusingly similar as a whole to the Complainant's domain name www.dellcloud.com.

4.6 The disputed domain name <dellcloud.co.in> registered by the Respondent predominantly comprise of the Complainant's registered trademarks DELL and the generic term CLOUD which have obvious connections to the Complainant's business and only solidifies confusion among internet users. In *Dell Inc. vs. SKZ.com* it was held that the Respondent's domain names <dellcustomersupport.com> and <dellcomputer.com> domain names are confusingly similar to the Complainant's DELL mark in its entirety and add the generic term "customer support" and "computer" which has an obvious connection to the Complainant's business. *Space Imaging LLC v. Brownell*, emphasises 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. The Complainant also places reliance on *Dell Inc. vs. George Dell and Dell Net Solutions*, 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." There are numerous examples of decisions holding a domain name to be confusingly similar to a registered trademark when it consists of the mark plus one or more generic terms.

4.7 Furthermore, the addition of the top-level domains ".co.in" and ".in" is irrelevant in determining whether the domain names registered by the Respondent are confusingly similar to the Complainant's registered trademarks. The Complainant places reliance on *Blue Sky Software Corp. v. Digital Sierra, Inc.* which 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. v. Fitness Outlet Inc.*, it was held that "the addition of 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 gTLDs, and ".com" does not serve to identify a specific service provider as a source of goods and services".

4.8 Since the disputed domain name <dellcloud.co.in> comprises of the well-known and famous trademarks "DELL," and the generic term CLOUD which is used in relation to the Complainant's services, it is evident that the Respondent can have no right or legitimate interest in the said domain name. Further, it is apparent that the Respondent's intention while registering the disputed domain name <dellcloud.co.in> is to misappropriate the reputation associated with the Complainant's famous

Inducement

trademarks "DELL", in an attempt to unfairly benefit from the goodwill attached to the Complainant's aforesaid trademarks and by linking the disputed domain name <delcloud.co.in> to third party commercial web sites, a majority of which market laptops and related products and services in direct competition to the Complainant. Furthermore, the Respondent has obviously registered the domain name <delcloud.co.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.

4.9 There exists no relationship between the Complainant and the Respondent. Further neither has the Complainant authorized nor licensed the Respondent to register or use the disputed domain name <delcloud.co.in> incorporating its trade marks nor has it authorized or licensed the Respondent to register or use the disputed domain name <delcloud.co.in> or any trade mark forming part of it.

4.10 Furthermore, apart from having registered disputed domain name <delcloud.co.in> the Respondent has no obvious connection with it as 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 does exist. The Complainant submits that the Respondent has no obvious connections with the disputed domain name

Indiraans

<dellcloud.co.in> as it neither offers goods or services under the trade marks "DELL" or the generic term "CLOUD" nor does the Respondent trade under the **DELL** name.

4.11 Further, the Respondent's choice of the Complainant's well-known trademarks **DELL** and the generic term "CLOUD" 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 trade mark **DELL** and the generic term "CLOUD" is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.

4.12 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.

4.13 The Complainant 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** and the generic term "CLOUD". Therefore, the Complainant states that the Respondent is not making a legitimate, non-commercial or fair use of the disputed domain name <dellcloud.co.in>. Some notable decisions state that use of a domain name to post parking and landing pages or 'pay-per-

Indiraan

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

4.14 The Respondent's websites are not bona fide since the Respondent is using the disputed domain name <dellcloud.co.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 and related products and services, in direct competition with the Complainant, while the Respondent himself is not engaged in any activity of its own to show that he has any legitimate rights or interest in the disputed domain name <dellcloud.co.in>. It is submitted that Respondent has no bonafide intention to use the disputed 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 and 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 disputed domain name <dellcloud.co.in>. The domain name registered by the Respondent comprises entirely of the Complainant's trademarks **DELL** and the generic term "**CLOUD**" and the Complainant's domain names <dellcloud.com>. WIPO has held that the use of domain name consisting of a misspelling of a mark to divert users to

Indiraans

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 wishes to place reliance on the following decisions i.e. *Diners Club Int'l Ltd. v. Domain Admin*, wherein it was held that the Respondent's domain name <wwwdinersclub.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*, 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", and contends that the Respondent has no right or legitimate interest in the disputed domain name <dellcloud.co.in>. The Respondent has laid bare his intent to commercially exploit the Complainant's trademarks DELL and CLOUD, for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation; resulting in dilution of the Complainant's trademarks. In fact by acquiring the disputed domain name <deUcloud.co.in>, the Respondent has shown crass opportunism in encashing the popularity of the Complainant's reputation.

4.15 Hence the Respondent has no rights or legitimate interest in the disputed domain name <dellcloud.co.in>.

Sudhakarans

4.16 The domain name <dellcloud.co.in> acquired by the Respondent comprises entirely of the Complainant's registered trademarks **DELL** and the generic term **CLOUD**, in which the Complainant has a substantial interest and are used in relation to the Complainant's cloud computing services. The Complainant further alleges that the Respondent registered the disputed domain name <dellcloud.co.in> in order to piggy-back off the commercial value and significance of the Complainant's domain name <dellcloud.com>

4.17 Furthermore, it is evident from the factual background presented herein that the disputed domain name <dellcloud.co.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 web sites, a majority of which market laptops and related products and services in direct competition to the Complainant. Thus, it is submitted that having profited from such a transaction with the Complainant previously, the Respondent has embarked on a similar strategy to register the disputed domain name <dellcloud.co.in> incorporating the Complainant's trade marks DELL and the generic term DIRECT, in an attempt to force the Complainant to purchase the disputed domain name at exorbitant rates. The Respondent is seeking illegal commercial gratification through its opportunistic bad faith registration of the disputed domain name <dellcloud.co.in>.

Sridharan

4.18 The Complainant's trade mark "DELL" is a well-known and famous mark, and the Respondent is presumed to have had knowledge of the Complainant's trade marks at the time it registered the confusingly similar domain name by virtue of the Complainant's prior use and registration of the same. Even otherwise, the Respondent obviously had knowledge of the Complainant's trademarks at the time it registered the domain name **<dellcloud.co.in>** by virtue of the 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.

4.19 Thus, this is prima facie evidence of the Respondent's bad faith, use and registration. Registration of a famous trademark without legitimate commercial interests in the same is prima facie evidence that the Respondent was well aware of the reputation and goodwill attached to the Complainant's trademarks/name. Furthermore, the Respondent's website provides links to various third party commercial web sites, several of which are marketing laptops and related products and providing services in direct competition with the Complainant, thus evidencing that the Respondent had knowledge of the trade mark/ name DELL and associated products and services prior to seeking registration of the disputed domain name **<dellcloud.co.in>**.

Induans

4.20 The general proposition that the registration of a domain name incorporating a well-known trade mark of the Complainant is in bad faith has been upheld by numerous UDRP decisions.

4.21 Moreover, bad faith lies in the Respondent's intentional use of the disputed domain name <dellcloud.co.in> to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant alleges that the Indian consumers searching for the Complainant's websites pertaining to the DELL cloud computing services are inclined to search for websites with domain names comprising of the trade mark DELL alongwith the generic term cloud. The Respondent's primary intent in registering and using the disputed domain name <dellcloud.co.in> which incorporate the DELL trade mark in its entirety alongwith the generic term CLOUD which is affiliated with the Complainant's cloud computing services is to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's trade marks/name and the Respondent's website.

4.22 To reiterate the preceding paragraphs, because the disputed domain name <dellcloud.co.in> registered by the Respondent wholly incorporates the Complainant's well-known and famous trademarks "DELL" and the generic term "CLOUD", it is therefore submitted that the disputed domain name <dellcloud.co.in> has been registered and is being used in bad faith. The Respondent is a known habitual offender and seeks commercial gain by

Indira

wrongfully registering the domain names in an attempt to sell them to the entity having a legitimate right in the same.

B. Respondent

4.23 Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

5. Discussion and Findings

5.1 Respondent has not filed his response. I have not received any communication from him until the date of this award. Since the Respondent chose not to respond to this Complaint, I am proceeding to determine this Complaint on the basis of the materials available on record.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Indharams

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark DELL. Complainant has been using DELL mark continuously since 1987. Complainant began doing business in India in 1993. The first registration in the US under No. 1616571 dates back to 9.10.1990. The first registration in India under No.575115 dates back to 15.06.1992. The Complainant at present owns over 5000 domain names a majority of which contain the trade mark "DELL". The Complainant registered www.dell.com on 22.11.1988, www.dell.co.in on 31.10.2003 and www.dell.in on 14.02.2005. The disputed domain name **<dellcloud.co.in>** was registered on 28.04.2011. Obviously, the Complainant is the prior adopter and registrant of the mark DELL. The above facts have established that the Complainant has both common law and statutory rights in respect of its trade mark DELL.

5.5 The predominant and distinctive part of the disputed domain name **<dellcloud.co.in>** is DELL. The expression CLOUD only indicates the technology it is dealing with i.e. cloud technology. The Complainant's DELL marks are famous and well known throughout the world including India. It is clearly seen that the disputed domain name **<dellcloud.co.in>** wholly incorporates DELL, the prior registered trade mark of the Complainant. The disputed domain name **<dellcloud.co.in>** is similar to the Complainant's domain names www.dell.com, www.dell.co.in and www.dell.in. In all these domain names, DELL is the distinguishing feature.

Indliarans

5.6 I, therefore, find that:

- (a) The Complaint has both common law and statutory rights in respect of its trade mark DELL.
- (b) The disputed domain name <dellcloud.co.in> is:
 - (i) Identical to the Complainant's prior registered trade mark DELL, and
 - (ii) Similar to the Complainant's domain names www.dell.com, www.dell.co.in and www.dell.in.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:

- (a) The Complainant is the prior adopter and user of the mark DELL. The Complainant's mark DELL is well known in many countries across the globe including India.
- (b) The Complainant's trade mark DELL was adopted in the year 1987. In India, the Complainant began using the mark DELL in 1993. It was registered in India in 1992. The disputed domain name <dellcloud.co.in> was registered by the Respondent only on 28th April 2011.

5.8 Respondent did not register the disputed domain name <dellcloud.co.in> until 2011. As such, chances are slim to none that Respondent was

Indiraans

unaware of the famous DELE marks and Complainant's rights thereto prior to registering the disputed domain name in <dellcloud.co.in> 2011.

5.9 I visited the web site of the Respondent under the disputed domain name <dellcloud.co.in>. The disputed domain name <dellcloud.co.in> led to the web page which was on sale. The expression "This Website is for sale" appeared prominently at the center of the web site under the disputed domain name <dellcloud.co.in> with a link to make offer. The disputed domain name <dellcloud.co.in> also provided links to web sites of the Complainant's competitors. It is obvious that the Respondent never intended to use the disputed domain name <dellcloud.co.in> in connection with a bona fide offering of goods or services.

5.10 In the absence of response from the Respondent, I accept the argument of the Complainant that:

- (a) Respondent has obviously registered the disputed domain name <dellcloud.co.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.
- (b) There exists no relationship between the Complainant and the Respondent. Neither has the Complainant authorized nor licensed the Respondent to register or use the disputed domain name <dellcloud.co.in> incorporating its trade marks nor has it authorized or licensed the Respondent to register or use the disputed domain name <dellcloud.co.in> or any trade mark forming part of it.

Indheanans

- (c) Respondent has no obvious connections with the disputed domain name <dellcloud.co.in>, as it neither offers goods or services under the trade marks "DELL" or the generic term "CLOUD" nor does the Respondent trade under the **DELL** name.
- (d) Respondent's sole purpose of carrying on business through the use of the disputed domain name <dellcloud.co.in> is to cause confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the websites.
- (e) 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.
- (f) Respondent himself is not engaged in any activity of its own to show that he has any legitimate rights or interest in the disputed domain name <dellcloud.co.in>.
- (g) Respondent has no *bonafide* intention to use the disputed domain name <dellcloud.co.in> 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 and related products and services, many of which are in direct

Siddharan

competition with the Complainant in a bold attempt to force the Complainant to purchase the disputed domain name **<delcloud.co.in>**.

- (h) The Respondent has laid bare his intent to commercially exploit the Complainant's trademarks DELL and CLOUD, for the sole purpose of causing irreparable damage and injury to the Complainant's goodwill and reputation; resulting in dilution of the Complainant's trademarks. In fact by acquiring the disputed domain name **<delcloud.co.in>**, the Respondent has shown crass opportunism in encashing the popularity of the Complainant's reputation.

5.11 Therefore, I have no hesitation to hold, for the above reasons that the Respondent has no right or legitimate interest in respect of the disputed domain name **<delcloud.co.in>**.

Respondent's domain name has been registered or is being used in bad faith.

5.12 The Complainant is the proprietor of the mark DELL. Complainant has been using the DELL mark continuously since 1988. Complainant began doing business in India in 1993. The Complainant has registrations for the mark DELL all over the world including India. The first registration in the US under No.1616571 dates back to 9.10.1990. The first registration in India under No.575115 dates back to 15.06.1992. The Complainant registered www.dell.com on 22.11.1988, www.dell.co.in on 31.10.2003 and www.dell.in on 14.02.2005. The disputed domain name

Indians

<dellcloud.co.in> was registered on 28.04.2011. Obviously, Complainant's rights in the DELL trademark pre-dates Respondent's registration of the disputed domain name <dellcloud.co.in>. The Respondent could not have ignored, rather actually influenced by, the well-known trade mark DELL of the Complainant at the time he acquired the disputed domain name <dellcloud.co.in>.

5.13 As seen above, Respondent is currently holding the disputed domain name <dellcloud.co.in> primarily for sale and gives links to other web sites offered by third parties and not for any other purpose. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name <dellcloud.co.in> is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered trade mark DELL.

5.14 Respondent's lack of response to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's trademark DELL.

5.15 Respondent obviously had knowledge of the Complainant's trademarks at the time it registered the domain name <dellcloud.co.in> by virtue of the 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.

Indira

- 5.16 Bad faith lies in the Respondent's intentional use of the disputed domain name <dellcloud.co.in> to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark DELL as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.
- 5.17 Indian consumers searching for the Complainant's websites pertaining to the DELL cloud computing services are inclined to search for websites with domain names comprising of the trade mark DELL along with the generic term cloud. The Respondent's primary intent in registering and using the disputed domain name <dellcloud.co.in> which incorporate the DELL trade mark in its entirety alongwith the generic term CLOUD which is affiliated with the Complainant's cloud computing services is to trade on the Complainant's goodwill and reputation by creating a likelihood of confusion with the Complainant's trade marks/name and the Respondent's website.
- 5.18 Thus it is clearly established that Respondent registered the disputed the disputed domain name <dellcloud.co.in> in bad faith.
- 5.19 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name <dellcloud.co.in> into any fair/useful purpose. Respondent not even considered it worth responding the complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has

Indira

necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

6.1 For all the foregoing reasons, the Complaint is allowed as prayed for in the Complaint.

6.2 It is hereby ordered that the disputed domain name <dellcloud.co.in> be transferred to the Complainant.

6.3 Respondent is ordered to pay the Complainant a sum of Rs. 10,00,000/- (Rupees ten lakhs only) towards costs of the proceedings.



S.Sridharan

Arbitrator