



महाराष्ट्र MAHARASHTRA

2017

SR 355558

प्रधान मुद्रांक कार्यालय, मुंबई  
प. मु. वि. क्र. ८००००२०  
15 SEP 2017  
सक्षम अधिकारी

BEFORE THE SOLE ARBITRATOR DIPAK G. PARMAR  
.IN REGISTRY  
(C/o NATIONAL INTERNET EXCHANGE OF INDIA)

श्रीमती. एस. वि. मसुरकर

Dell Inc.

...Complainant

v/s

Rajkumar

...Respondent

In the matter of Disputed Domain Name <DELLSERVICECENTREINCHENNAI.IN>

### 1 The Parties

The Complainant is Dell Inc., One Dell Way, Round Rock, Texas 78682-2244, USA, represented by AZB & Co, India.

The Respondent is Rajkumar, t/a Laptop Store, 5, Velachery, Chennai - 600005.

*D Parmar*

## 2 Procedural History

- 2.1 A Complaint dated April 4, 2018 has been filed with the National Internet Exchange of India (hereinafter referred to as the "Exchange"). The Complainant has made the registrar verification in connection with the domain name at issue. It is confirmed that presently the Respondent is listed as the registrant and provided the contact details for the administrative, billing and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (hereinafter referred to as the "INDRP") and the Rules framed thereunder.
- 2.2 The Exchange appointed Dipak G. Parmar, Advocate as the sole arbitrator in this matter. The Arbitrator finds that he was properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- 2.3 On May 7, 2018, the Arbitrator had directed the Respondent to file his reply to the Complaint on or before May 22, 2018. On May 24, 2018, the Arbitrator had sent the final reminder to the Respondent with direction to file reply on or before May 29, 2018. The Respondent has not filed any reply to the Complaint. Therefore, the matter has to proceed *ex-parte*.
- 2.4 Email is the mode of communication of this arbitration and each email is copied to the Complainant, the Respondent and the Exchange.

## 3 Factual Background

Given the absence of a reply, the Arbitrator has found the following facts are undisputed:

- 3.1 In 1984, the Complainant is a company incorporated under the laws of Delaware. The Complainant is the world's largest direct seller of computer systems. The Complainant sell 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.
- 3.2 The products of the Complainant are widely available in India since 1993. 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.
- 3.3 The Complainant has a very strong internet presence with the website [www.dell.com](http://www.dell.com). Additionally, the Complainant also has country specific domain name such as [www.dell.co.in](http://www.dell.co.in) for India. In addition to the details of the Complainant, these websites also provide details of products, stores and authorized service centers details.

*Dipak G. Parmar*

3.4 The Complainant is the owner of the trademark “Dell” and using it since 1988. The Complainant has registered the trademark “Dell” in several countries, including India.

#### 4 Parties’ Contentions

##### 4.1 Complainant

The Complainant contends that the Disputed Domain Name is identical or confusingly similar to its trademark “Dell”; the Respondent has no rights or legitimate interests in the Disputed Domain Name; and the Disputed Domain Name has been registered or is being used in bad faith.

##### 4.2 Respondent

The Respondent did not file reply to the Complaint.

#### 5. Discussion and Findings

5.1 In view of the default and the absence of any reply to the Complaint by Respondent, the Arbitrator has decided the Complaint on the basis of the statements and documents submitted to him in accordance with the INDRP, the Arbitration and Conciliation Act, 1996, the Rules and other applicable rules and principles of law.

5.2 According to the INDRP, the Complainant must prove that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered or is being used in bad faith.

##### 5.3 Identical or Confusingly Similar

The Complainant’s trademark “Dell” is a registered trademark in India and other countries. The Complainant has provided evidence of its registered trademarks in India, based on which, it is found that the Complainant has established its rights in the trademark “Dell”. It is well accepted, that submitting proof of trademark registration is considered *prima facie* evidence of enforceable rights in a mark.<sup>1</sup> The Disputed Domain Name <DELLSERVICECENTREINCHENNAI.IN> incorporates the Complainant’s trademark “Dell” in its entirety, and mere addition of the generic word “ServiceCentreinChennai” and the generic top-level domain “.in”. It is well-established in various decisions under the Uniform Domain Name Dispute Resolution Policy (UDRP) and INDRP that the presence or absence of spaces, punctuation marks between words or indicators for Top Level Domains, such as .com, .us, .in etc., are irrelevant to the consideration of identity or confusing similarity between a trademark

<sup>1</sup> In the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER WIPO Case No. D2010-0858 it was held that trademark registration constitutes *prima facie* evidence of the validity of trademark rights. See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case no. D2001-0654.



and a disputed domain name. The “.in” suffixes should not be taken into account while comparing the Complainant’s trademark and the Disputed Domain Name. Similarly, the addition of merely generic word “ServiceCentreinChennai” would be insufficient to avoid a finding of confusing similarity<sup>2</sup>. Therefore, the Arbitrator finds that the Disputed Domain Name <DELLSERVICECENTREINCHENNAI.IN> is confusingly similar to the Complainant’s trademark “Dell”.

#### 5.4. Rights or Legitimate Interests

The Respondent is not commonly known by the Disputed Domain Name nor conducted legitimate business under such name. The Complainant asserts that the Complainant has not authorized or licensed the Respondent to use the trademark “Dell”. The use of a domain name that is identical or confusingly similar to a trademark that applies to products or services provided by a Respondent is not a bona fide use if the domain name serves as a “bait” to attract customer to Respondent’s website, rather than merely as descriptor of the Respondent’s products or services.<sup>3</sup> The Disputed Domain Name is primarily descriptive of Complainant’s services as it incorporates the Complainant’s trademark “Dell”. The Respondent’s use of the Disputed Domain Name is merely intended to divert customers to Respondent’s website, which dishonestly projects the Respondent as authorized Dell service center in Chennai. Hence, it cannot be considered a bona fide offering of goods and services. The Complainant has made out a *prima facie* case that the Respondent has no right or legitimate interest in the Disputed Domain Name, and as such the burden of proof shifts to the Respondent<sup>4</sup>. The Respondent chosen not to challenge the Complainant’s allegations.<sup>5</sup> There is no evidence before the Arbitrator to support any position contrary to these allegations, and therefore the Arbitrator accepts these arguments. Consequently, the Arbitrator concludes that the Respondent has no rights or legitimate interests in the Disputed Domain Name <DELLSERVICECENTREINCHENNAI.IN>.

#### 5.5 Registered and Used in Bad Faith

At the time of registration of the Disputed Domain Name, the Complainant’s trademark “Dell” was famous trademark internationally and the Respondent was aware of the same. In fact, the respondent in the past has also registered dell formative domain names such as <dellservicescenters.com>, <delllaptopprice.com>, <dellbatteryprice.in>, <dellchargeprice.in>, <dellbatteryprice.com>, <dellchargeprice.com>. These domain names have been transferred to the Complainant. The Respondent is a habitual cyber squatter. The Respondent has in fact knowingly incorporated the Complainant’s trademark to attract Internet users to the Disputed Domain Name by creating a likelihood of confusion with the Complainant’s trademark with the intent of commercial gain.<sup>6</sup> These facts supports the inference that the Respondent deliberately registered and using the Disputed Domain Name using the Complainant’s trademark with the

2 See 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (WIPO Overview 2.0). Also see Dell v. George Dell and Dell Net Solutions, Case no. D2004-0512

3 See Adobe Systems Incorporated v. Domain OZ WIP case no. D2000-057 <adobeacrobat.com> and <acrobatreader.com>

4 See Altria Group, Inc. v. Steven Company, WIPO Case No. D2010-1762

5 In the matter of Pavillion Agency, Inc., Cliff Greenhouse and Keith Greenhouse v. Greenhouse Agency Ltd., and Glenn Greenhouse, WIPO Case No. D2000-1221, it was held that Respondents' failure to respond can be construed as an admission that they have no legitimate interest in the Domain Names.

6 See Weny's LLC v. Apex Limited, INDRP Case no. 737. In this case the domain name <wendys.co.in> was found to be registered with the intention of trading on the goodwill and reputation associated with Wendy's trademark and was held to be registered and use of domain name in bad faith.

intention to exploit it. Accordingly, the Arbitrator finds on balance that the Disputed Domain Name has been registered and is being used in bad faith.

6. **Decision**

In light of the foregoing reasons, the Arbitrator orders that the Disputed Domain Name <DELLSERVICECENTREINCHENNAI.IN> be transferred to the Complainant.



Dipak G. Parmar  
Sole Arbitrator

Date: June 19, 2018