



हरियाणा HARYANA

R 895784

BEFORE THE SOLE ARBITRATOR C.A. BRIJESH

.IN REGISTRY

C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)

NEW DELHI, INDIA

**DELL INC.**

One Dell Way

Round Rock, Texas 78682-2244

**UNITED STATES OF AMERICA**

.... Complainant

Versus

**Mr. Nagendran Kathirvel**

GBS Systems & Services Pvt. Ltd

No. 1070-A, Munuswamy Salai

K.K. Nagar, Chennai – 600 078

**TAMIL NADU**

.... Respondent

### 1. The Parties

The Complainant is Dell, Inc. of One Dell Way, Round Rock, Texas 78682-2244, USA through its Authorised Representatives, Mr. Safir Anand and Ms. Madhu Rewari of Anand and Anand, First Channel, Plot No. 17A, Sector 16A, Film City, Noida, Uttar Pradesh.

The Respondent is Mr. Nagendran Kathirvel of GBS Systems & Services Pvt. Ltd, No. 1070-A, Munuswamy Salai, K.K. Nagar, Chennai – 600 078, Tamil Nadu. The Respondent is represented by himself.

## **2. The Domain Name and Registrar**

The disputed domain name is <DELL-INDIA.IN>. The said domain name is registered with 'Good Domain Name Registry Private Limited'.

## **3. Procedural Timeline**

- January 14, 2016 :** The .INRegistry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
- January 14, 2016 :** Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .IN Registry.
- January 21, 2016 :** Parties to the dispute are informed of the constitution of the Arbitration panel and the effective date of handover.
- January 22, 2016 :** An email was received from the Respondent stating his willingness to surrender the domain pertaining to <DELL-INDIA.IN> and further enquiring on the procedure to enable him to transfer the disputed domain name.
- January 27, 2016 :** The Tribunal addressed a notice to the parties through e-mail, with a copy marked to NIXI, directing the Complainant's Authorised Representatives to forward a soft copy of the Complaint alongwith the annexures to the Respondent within two days. Further, this Tribunal, in the email, intimated the parties that the Respondent's email of January 22, 2016 has been taken on record and that an appropriate award would be passed on the basis of the Respondent's email and material available on record, on receipt of the Complaint and the annexures by the



Respondent.

**February 02, 2016 :** Complainant's Authorised Representatives forwarded a soft copy of the Complaint alongwith the annexures to the Respondent.

**February 05, 2016** The Tribunal addressed an email to the parties intimating that an award shall be passed on the basis of Respondent's emails and the material available on record.

The language of the proceedings shall be English.

#### **4. Contentions of Parties as summarised in the pleadings**

##### **4.1 Complainant**

**a) The domain name is identical or confusingly similar to a trade mark of the Complainant in which Complainant has the statutory and/or common law rights.**

- i. Complainant submits that the disputed domain fully incorporates the mark DELL in its entirety which is identical/confusingly similar to Complainant's registered and well-known trade mark DELL and its domain name 'dell.com'; 'dell.co.in'; as well as various other domain names comprising 'dell';
- ii. The dominant part of the impugned domain name 'DELL-INDIA.IN' is the word DELL which is identical to the registered mark DELL. Complainant has relied on



precedents holding a domain name to be confusingly similar to a registered trade mark when it consists of the mark plus one or more generic terms.

- iii. Further, addition of top level domain '.in' is irrelevant in determining whether domain names registered by the Respondent are confusingly similar to the Complainant's registered trade mark.

**b) The Respondent has no legitimate interest in respect of the domain names**

- i. It is the contention of the Complainant since the disputed domain name comprises the well-known trade mark DELL used in its wide range of goods and services, it is evident that the Respondent has registered the domain name <DELL-INDIA.IN> with the intention of obtaining unjust benefit from the goodwill attached to the Complainant's trade mark.
- ii. Respondent is not commonly known by the domain name at issue.
- iii. Further, the Complainant has asserted that the Respondent's website prominently features a number of Complainant's other trade mark such as INSPIRON, LATITUDE, VOSTRO and XPS and has further copied the look and feel of the Complainant's official websites 'www.dell.com' and 'www.dell.co.in' utilizing similar colours and fonts as those used by the Complainant which clearly shows malafide on part of the Respondent to create association with the Complainant and thereby mislead internet users and general public.



c) **The domain name was registered and is being used in bad faith**

- i. It is asserted by the Complainant that the Respondent has engaged in a pattern of bad faith registration and use of Complainant's and others' trade marks as domain names which is evidenced by the fact that the Respondent has also registered the domain names such as 'acerlaptopsparesindia.com', 'compaqlaptopservicechennai.com', 'hplaptopadapterprice.com', 'lenevolaptopadapterprice.com' and 'sonylaptopadapterprice.com' used for similar websites offering brand specific products and services. Complainant has further asserted that the Respondent is attempting to gather internet users' personal information after falsely creating an association with the Complainant. Further, the Respondent has registered various domain names comprising DELL which also evidences bad faith. Numerous decisions have been relied upon by the Complainant to buttress the aforesaid submissions. Thus, the Complainant asserts that the domain name <DELL-INDIA.IN> has been registered for obtaining monetary benefits and/or commercial gain and that the Respondent has no proprietary rights or legitimate interests in and to the said domain. Based on the said presumption, the Complainant states that such a registration of the domain is *prima facie* evidence of Respondent's bad faith.

**4.2 Respondent**

On January 22, 2016, the Respondent stated his willingness to surrender the disputed domain name pertaining to <DELL-INDIA.IN>. Thereafter, on February 02, 2016, an



