

ADMINISTRATIVE PANEL DECISION

Dell Inc. v. Marshall Francis

Case No. D2024-0192

1. The Parties

The Complainant is Dell Inc., United States of America (“United States”), represented by AZB & Partners, India.

The Respondent is Marshall Francis, India.

2. The Domain Name and Registrar

The disputed domain name <dellotytechnologies.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2024. On January 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 17, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 23, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2024.

The Center appointed Ian Lowe as the sole panelist in this matter on February 19, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant was established in 1984 and is one of the world's largest direct sellers of computer systems. It claims to sell more than 100,000 systems every day to customers in 180 countries including India where its products have been widely available since 1993. The Complainant has a team of 100,000 members across the world catering to more than 5.4 million customers every day.

The Complainant is the proprietor of a substantial number of registered trademarks worldwide in respect of both DELL and DELL TECHNOLOGIES including Germany trademark number 1129936 DELL registered on November 2, 1988, India trademark number 575115 DELL registered on June 5, 1992, United States trademark number 5651864 DELL TECHNOLOGIES registered on January 15, 2019 and International trademark number 1357146 DELL TECHNOLOGIES registered on October 6, 2016 designating over 50 territories including India (collectively the "Marks").

The Complainant operates a website at "www.dell.com" promoting its products and providing extensive information on its activities throughout the world.

The Domain Name was registered on October 2, 2023. It resolves to a website at "www.dellotytechnologies.com" headed "DELLOTY TECHNOLOGIES" purporting to offer a range of IT solution services including web development, database analysis, and server security. The "email" link on the Contact Us page generates an email address "[...]@yoursite.com". The Website link on the Contact Us page is to the domain name <dellotytechnologies.us>, which link when clicked produces a warning of an infected website containing malicious code. The Contact Us page gives no information as to the identity of the operator of the website or of the operator's address. The Services page lists a number of "Frequently Asks (sic) Questions" such as "How much does a new website cost?", none of which have answers, save for "How Long Does It Take To Build A Website" and others all of which have a list of nonsensical answers such as "Booksmarkgrove, the headline of Alphabet Village."

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its DELL and DELL TECHNOLOGIES trademarks (the "Marks"), that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has uncontested rights in the Marks, both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through its use of the Marks over many years. Ignoring the generic Top-Level Domain ("gTLD") ".com", the Domain Name comprises the entirety of the DELL mark and of the DELL TECHNOLOGIES mark with the interpolation of the letters "oty". In the Panel's view, the addition of these letters does not prevent a finding of confusing similarity between the Domain Name and the Marks.

Accordingly, the Domain Name is confusingly similar to the Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. Accordingly, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant has made out a prima facie case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent is not authorized by the Complainant to use either of the Marks in the Domain Name, and there is no evidence that the Respondent is commonly known by the Domain Name. The Respondent's website gives no information as to the operator of the website. The Respondent has not used the Domain Name in connection with a bona fide offering of goods or services, but rather has used it for a website purporting to offer IT services by reference to a name that the Panel considers was used with a view to confusing Internet users into believing that it was operated by or authorised by the Complainant. In this regard, the Panel considers that Respondent likely sought to take an unfair advantage from the composition of the Domain Name reproducing the DELL and DELL TECHNOLOGIES Marks in their entirety, with the only difference being the addition of the letters "oty". Furthermore, the Panel considers that technological means, such as Internet search engines, would probably recognize the Marks as being fully reproduced within the Domain Name, irrespective of the added letters "oty".

Having reviewed the available evidence, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name and finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In light of the notoriety of the Complainant's Marks, the use of the Complainant's Marks in the Domain Name, and the nature of the Respondent's website, the Panel considers it most likely on the balance of probabilities that the Respondent had the Complainant and its rights in the DELL and/or DELL TECHNOLOGIES marks in mind when it registered the Domain Name. The Panel considers that the Respondent has registered and used the Domain Name to deceive Internet users into believing that the Domain Name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the Marks, probably for commercial gain.

Panels have also held that the use of a domain name for illegal activity such as distributing malware, as indicated in this case, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the evidence, the Panel finds that the Respondent's registration and use of the Domain Name constitutes bad faith, and that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <dellotytechnologies.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: March 4, 2024