

## **DISPUTE RESOLUTION SERVICE**

**D00022329**

### **Decision of Independent Expert**

Dell, Inc

and

John O'Brien

#### **1. The Parties:**

Lead Complainant: Dell, Inc  
One Dell Way, RR1-33, Round Rock  
Texas  
TX 78682  
United States

Respondent: John O'Brien  
25 Beckfoot Drive  
Coventry  
Midlands  
CV2 2QD  
United Kingdom

#### **2. The Domain Name(s):**

www.dell.co.uk

### **3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

07 February 2020 14:59 Dispute received  
11 February 2020 11:34 Complaint validated  
11 February 2020 11:39 Notification of complaint sent to parties  
28 February 2020 01:30 Response reminder sent  
04 March 2020 11:37 No Response Received  
04 March 2020 11:37 Notification of no response sent to parties  
16 March 2020 01:30 Summary/full fee reminder sent  
16 March 2020 17:18 Expert decision payment received

### **4. Factual Background**

The Complainant, a Delaware Corporation, is a manufacturer and supplier of desktop PCs, servers and networking products, data storage, mobility products, software and peripherals, and services relating to these products.

The Complainant is the registered proprietor of a number of trade marks worldwide, including registrations for the word and figurative sign DELL, including

European Union trade mark DELL (figurative), registration number 83295, registered on 12 October 1998 for goods in classes 9, 16 and 37; and

United Kingdom registered trade mark DELL, registration number 1430952 registered on 5 June 1992 for goods in class 9.

The Complainant is also the proprietor of a number of domain names incorporating the DELL Trade Marks including <dell.com>, <dellspareparts.com>, <dellmaster.com>, and <dellsupport.com> (the “DELL Domain Names”) (

The disputed domain name was registered on 6 August 2017. There is no information available about the Respondent except for the information provided in the Complaint and on the Registrar’s Whols.

### **5. Parties’ Contentions**

Relying on its ownership of the abovementioned trademark registrations, and claiming rights at common law, the Complainant submits that it has Rights in the

name and mark DELL, which it has continuously used since 1987 on its personal computer systems, computer products and related products and service worldwide.

The Complainant submits that its DELL brand has become one of the most widely known and recognised brands in the world and that Complainant has established enormous goodwill and reputation in the UK and worldwide by the extensive and prominent use of the DELL trademark in connection with the marketing of its goods and services.

The Complainant submits that the disputed domain name is identical or similar to Complainant's DELL name and mark arguing that there is no obvious sensible reading of the disputed domain name other than as a mistyping of <www.dell.co.uk> which is the address of the Complainant's official website.

The Complainant submits that the disputed domain name is an Abusive Registration as it is being, and has been, used in a manner that takes unfair advantage of, and is unfairly detrimental to the Complainant's Rights in the DELL name and mark.

The Complainant alleges that the disputed domain name was clearly registered to cause confusion, so that Internet users who make a simple typographical error *i.e.* mistakenly typing <wwwdell.co.uk> rather than <www.dell.co.uk>, the address of the Complainant's website, will be re-directed to a number of possible websites including a website which contains links to competitors' websites.

The disputed domain name was registered on 6 August 2017 which post-dates the incorporation date of the Complainant; the first date that the Complainant started trading under the DELL name, both in the UK and worldwide; the registration dates of the Complainant's trademarks; and the registration dates of the Internet domain names incorporating the DELL name and mark, owned and used by the Complainant;

The Complainant has adduced uncontested evidence that the disputed domain name currently re-directs to a number of different webpages and Complainant has observed at least 7 different re-directs, screenshots of which have been annexed to the Compliant which include:

(a) a webpage containing a message which states "*Sorry! The product you are looking for is not available. We've got hundreds of similar products, keep looking*" and images of products sold by competing retailers and links to the websites of the competing retailers;

(b) various webpages from Dell's own website (www.dell.com), including webpages displaying Complainant's specific products (e.g. the Dell G5 15 Gaming Laptop, the Dell New XPS 13, and the Dell New Inspiron Laptop); and

(c) a number of random unrelated webpages, including: the website for Medecins Sans Frontieres; an article from the 'Major' entitled "*Student Reveals How He Earns*

*More Than £40,000 Every Month Working From Home*"; and an opinion poll page asking the Internet user's age and gender.

The Complainant notes that the disputed domain name resolves to these addresses in what appears to be a random manner, which it cannot explain, but submits that this is not relevant to the determination of this Complaint.

The Complainant submits that the disputed domain name was registered, and is being used, in a manner which takes unfair advantage of the Complainant's Rights, for the following reasons:

(a) The reputation of the DELL mark is such that the Respondent must have known about the Complainant and its prominence in the marketplace at the time of the domain name registration, some 30 years after the Complainant's initial registration of its DELL trade mark. Asserting that it can be no coincidence that the Respondent registered the disputed domain name that to all intents and purposes replicates the Complainant's trade mark, the Complainant argues that the Respondent clearly sought to take advantage of the Complainant's Rights at the time of registering the disputed domain name.

(b) Repeating that there is no obvious sensible reading of the disputed domain name other than as a mistyping of the Internet address <www.dell.co.uk> which is the address of the Complainant's official website, the Complainant alleges that the registration and use of the disputed domain name is clearly intended such that Internet users who make a simple typographical error will be misdirected to third party websites including websites offering competing products. The Complainant argues that this type of 'typosquatting' is condemned by DRS Experts and has frequently been found to constitute sufficient evidence of an abusive registration under para 5.1.2 of the Nominet DRS Policy. In this regard Complainant refers to the DRS Expert Overview, para 3.3) and the decision in *The Royal Bank of Scotland Group plc & Ors. v. Laurent Girault* DRS 03806 (privilege.co.uk) and *Capital One Financial Corporation v. Rainmaker Investments GmbH* im Kundenauftrag DRS 21885 (capitakone.co.uk).

(c) Referring to the websites to which the disputed domain name has resolved, the Complainant submits that the Respondent is using the disputed domain name to promote the sales of products which are competitive with Complainant's own products and Complainant submits that such activity has frequently led previous Experts to find that unfair advantage has been taken by the Respondent. In this regard the Complainant refers to the decision of the Appeal Panel in *EPSON Europe v Cybercorp Enterprises* DRS03027.

(d) Finally, Complainant states that as far as it is aware, the Respondent has no rights or legitimate interests in the disputed domain name. Further, the Complainant has in no way authorised or consented to the Respondent's registration or use of the disputed domain name, or the use of the Complainant's Rights in the DELL trademark.

Complainant concludes that the disputed domain name is therefore an Abusive Registration which is defined at paragraph 1 of the Nominet DRS Policy a domain name that “ *i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or ii. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights*”; and In particular, at paragraph 5.1.2 the Policy states that evidence of abusive registration may be use of a domain name "*in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant*".

## **6. Discussions and Findings**

In order to recover a domain name under the Dispute Resolution Service Policy, the Complainant must establish, on the balance of probabilities, that it has rights in respect of a name or mark which is identical or similar to the disputed domain name, and the disputed domain name, in the hands of the registrant, is an Abusive Registration.

The Complainant has adduced clear and convincing, uncontested evidence that it has Rights in the DELL name and mark acquired through its ownership of the abovementioned trade mark registrations and extensive use of the mark in its well-known computer business.

This Expert accepts the Complainant' submission that the disputed domain name is almost identical to the address of its website and is confusingly similar to the DELL mark in which the Complainant has rights. The disputed domain name consists of the Complainant' DELL mark in its entirety, along with the letters “www” and the <co.uk> ccTLD extension.

The Complainant's DELL mark is the dominant and only distinctive element of the disputed domain name. The letters “www” in context is recognised as the acronym for the World Wide Web and incorporated in website addresses. Additionally, in the present case, the <co.uk> ccTLD extension is recognized as a technical necessity for a domain name and serves no other purpose or meaning in the context.

This Expert finds therefore that the Complainant has rights in respect of the name and mark DELL which is identical or similar to the disputed domain name, and the disputed domain name < wwwdell.co.uk>.

The Complainant has made out an uncontested prima facie case that the disputed domain name is an Abusive Registration which is defined in paragraph 1 of the Nominet Dispute Resolution Policy as “ a Domain Name which either:  
i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly

detrimental to the Complainant's Rights; or ii. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights..."

Given the extensive reputation and goodwill of the Complainant, its name and mark, and given that the disputed domain name is a misleading combination of the letters "www" and DELL, this Expert finds that there is no plausible explanation as to why this combination would be chosen other than to reference and take predatory advantage of Complainant's reputation and goodwill. This Expert finds therefore that on the balance of probabilities, at the time when the registration of the disputed domain name took place, the registrant took unfair advantage of Complainant's Rights and the registration was unfairly detrimental to the Complainant's Rights.

Since its registration, the disputed domain name has been used to divert Internet traffic to third party websites, including websites that offer products that compete with the Complainant's offering. This Expert must therefore conclude that the disputed domain name is being and has been used in a manner which has taken unfair advantage of and has been unfairly detrimental to the Complainant's Rights in the DELL name and mark.

This Expert therefore finds that the disputed domain name in the hands of the Respondent, is an Abusive Registration.

## **7. Decision**

This Expert directs that, in accordance with DRS Policy, the disputed domain name <wwwdell.co.uk> be forthwith transferred to the Complainant.

**Signed** .....  
James Bridgeman SC  
Expert

**Dated:** 23 March 2020