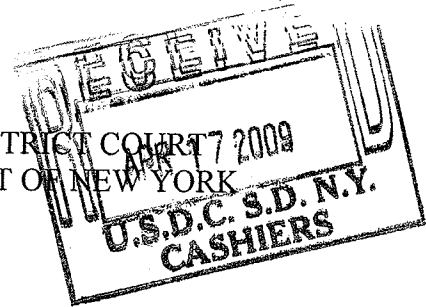


Doreen L. Costa (DC: 2830)
Paul J Reilly (PR: 0317)
BAKER BOTTS LLP
30 Rockefeller Plaza
New York, New York 10112
Tel.: 212.408.2500
Fax: 212.259.2576

JUDGE DANIELS 09 CV 3879



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____	§	
DELL INC.,	§	
	§	
Plaintiff,	§	
v.	§	
	§	NO. _____
TIGER DIRECT, INC.	§	
	§	
Defendant.	§	
_____	§	

COMPLAINT

Plaintiff, Dell Inc. ("Dell"), by its attorneys, Baker Botts L.L.P., for its Complaint against the above-named defendant, Tiger Direct, Inc. ("Defendant"), alleges as follows:

NATURE OF THE ACTION

This is an action for trademark infringement, false advertising, false and misleading representations or descriptions of fact, unfair competition, dilution, breach of contract and related claims under the United States Trademark (Lanham) Act of 1946, 15 U.S.C. §§ 1051 et seq. (as amended), and New York statutory and common law. The Complaint arises from Defendant's repeated and blatant violations of Dell's terms and conditions for the resale of DELL products, and literal false representations that its goods are covered by Dell's warranty, when, in fact, they are not. In truth, the warranties accompanying the refurbished DELL products sold by Defendant are offered by unaffiliated third parties. The Complaint further

alleges that Defendant has made intentional false representations to consumers that products it has offered for sale bearing Dell's trademarks are new, original and obtained directly from Dell when, in fact, they are old, out-of-date, obtained from resellers and not from Dell, used and/or refurbished. The Complaint also seeks redress for Defendant's unauthorized use of Dell's famous name and trademarks and variants thereof in a manner that is likely to confuse the public as to the source, sponsorship, nature or quality of Defendant's products, services and business, and for the creation and use by Defendant of a DELL Logo that mimics and bastardizes Dell's world-famous DELL Logo. Dell has taken every step possible over the course of several years to avoid the need for court intervention and has provided Defendant with repeated detailed notice of its intellectual property and contractual rights and of Defendant's violations of such rights. Nevertheless, Defendant has ignored Dell's notices and demands and has refused to cease its blatant false representations and infringement of Dell's intellectual property rights. In fact, Defendant has established a practice of delaying any reply to Dell's protests for as long as possible, agreeing to correct its violations and revise its representations and advertising only after repeated entreaties from Dell, partially correcting specific violations, only to embark on other acts of infringement and false representations virtually immediately thereafter. It is clear that Defendant will not stop its wrongdoing unless and until ordered to do so by this Court. As a result of Defendant's willful conduct, Dell seeks injunctive relief and the recovery of actual damages, treble damages, profits, costs, attorneys' fees, punitive damages and other relief as more fully set forth herein.

THE PARTIES

1. Plaintiff, Dell Inc. is a Delaware corporation having its principal place of business at One Dell Way, Round Rock, Texas 78682. Dell designs, builds and customizes

computer products and accessories, and sells and renders related and ancillary goods and services.

2. On information and belief, defendant, Tiger Direct, Inc., is a Florida corporation, having a place of business at 7795 W Flagler Street, Suite 35, Miami, Florida 33144-2367.

3. On information and belief, Defendant is engaged in the business of selling new, used and refurbished computer systems and parts and related and ancillary products throughout the United States, including in this jurisdiction.

SUBJECT MATTER JURISDICTION

4. The First Cause through Third Causes of Action arise under the United States Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. §§1051-1127. Subject matter jurisdiction in this Court over these causes of action is proper pursuant to Section 39 of the Lanham Act, 15 U.S.C. §1121, and 28 U.S.C. §§1331 and 1338.

5. The Fourth through Eighth Causes of Action arise under New York common and statutory law and are substantially based upon the same operative facts as the First through Third Causes of Action. Subject matter jurisdiction in this Court over the Fourth through Eighth Causes of Action is proper pursuant to 28 U.S.C. §1338(b) and on the basis of supplemental jurisdiction.

PERSONAL JURISDICTION

6. Personal jurisdiction over the Defendant is proper under §§ 301 and 302 of the State of New York's Civil Practice Law & Rules pursuant to Rule 4 of the Federal Rules of Civil Procedure and under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America. On information and belief, this Court has personal

jurisdiction over the Defendant who regularly conducts business in this district, has engaged in tortious conduct within the state of New York, and/or has engaged in tortious conduct outside the state of New York which has caused injury to Dell within this jurisdiction. On information and belief, Defendant maintains an interactive site on the Internet which is operational twenty-four (24) hours a day, seven days a week, through which it regularly conducts business. On information and belief, Defendant's web site is accessible to and is regularly accessed by residents of New York, who have observed Defendant's false representations of fact and unauthorized and infringing use of Dell's name and marks, and have contracted with Defendant to purchase infringing computer systems, peripherals, accessories and related products.

7. On information and belief, Defendant has, through its interactive web site, repeatedly transacted business with customers throughout the United States, including customers within this jurisdiction, has advertised, promoted, sold and shipped infringing products bearing the mark DELL into New York without Dell's authorization or permission, and has made false representations of material fact concerning the source, sponsorship, nature, and quality of the DELL products it has offered for sale and sold in New York. On information and belief, Defendant expected or reasonably should have expected that its actions would have consequences in New York and impact Dell's business in this state. Further, on information and belief, Defendant derives substantial revenue from interstate commerce. Indeed, on information and belief, Defendant has purchased many computer products bearing Dell's marks and name for resale to consumers throughout this country.

8. On information and belief, Defendant purposefully interjected itself into New York by its operation of a nationwide business through a commercial web site whereby Defendant purposefully and deliberately engaged in trademark infringement, false advertising, false representation, and unfair competitive practices. Finally, the exercise of personal jurisdiction over Defendant is reasonable, consistent with the constitutional principals of due process, and comports with the principles of fair play and substantial justice.

VENUE

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c). On information and belief, Defendant resides in this district or a substantial part of the claims arose in this district.

STATEMENT OF FACTS

DELL'S TRADEMARK RIGHTS AT ISSUE

10. Plaintiff, Dell, is a leading manufacturer and seller of personal computer systems and accessories, including laptop and desktop computer systems, peripherals and related services, through direct marketing channels. Building on the direct business model that it pioneered, Dell receives customer orders via email, telephone, facsimile, and the Internet and ships products directly to customers according to their customized specifications. Dell also sells an extensive selection of computer peripheral hardware and computing software and provides a wide range of computer-related services, including web site hosting, telephone and on-line technical support, on-site product service, system installation and management, and technology transition planning and implementation. In addition, Dell has recently commenced the sale of its products through certain retail outlets, such as BestBuy and Staples.

11. In or about November 1987, Dell created, adopted and commenced use of the trade name, trademark and service mark DELL and variants thereof to identify and distinguish its products and services. Over time, the variants included, for example, the Dell Logo, having a distinctive slanted "E", DELL DIMENSION, DELL FINANCIAL SERVICES, WWW.DELL.COM, DELL PRECISION, DELL AXIM, etc., which marks identify and distinguish Dell's products and services. No entities other than Dell and its affiliated companies are authorized to manufacture and sell computer systems and accessories, computer peripherals, and other computer components or planning, designing, and deployment of technology solutions in the United States under Dell's trademarks.

12. The name and mark DELL and variants thereof have been extensively used by Dell in United States interstate commerce in connection with advertising and promotion of Dell's products and services on Dell's web site on the Internet at "www.dell.com", in nationwide newspapers, trade and consumer magazines, on television and radio, and through direct mail. Such names and marks are prominently presented on Dell's computer systems, advertisements, product packaging, manuals, and technical and informational literature.

13. Since at least as early as 1994, Dell has operated its website available at the URL www.dell.com where its product line and trademarks are prominently displayed together with a detailed description of the warranties provided by Dell. Dell's website is viewed as an important resource by the general public and receives hundreds of thousands of "hits" or visits each day. Not a minute goes by each day when Dell's website is not being viewed by a member of the public. Dell spends millions of dollars each year operating and maintaining its website. Moreover, Dell spends hundreds of millions of dollars each year promoting and advertising its website.

14. Dell is the owner of the trademark and service mark, DELL, and variants thereof, and has registered such marks in the United States Patent and Trademark Office as follows:

Mark	Registration No.	Issue Date	Goods
DELL	1,616,571	October 9, 1990	Computers and Computer Peripherals, Namely Monitors, Keyboards, Printers, Mice, Co-Processors, Modems, Hard and Floppy Disk Drives, Tape Drives, Cards and Memory Add-Ons, Memory Boards and Chips, Cables and Connectors, Operating Software and Instruction Manuals Sold Together as a Unit (First Use of the mark at least as early as November 1987).
DELL	1,860,272	October 25, 1994	Computers and Parts Thereof (First Use of the mark at least as early as July 1992).

Mark	Registration No.	Issue Date	Goods
DELL	2,527,880	January 8, 2002	Credit Card Services (First Use of the mark at least as early as October 31, 2000).
DELL	2,236,785	April 6, 1999	Custom Manufacture of Computers for Others (First Use of the mark at least as early as November 1, 1987).
DELL FINANCIAL SERVICES	2,333,902	March 21, 2000	Leasing of Computers (First Use of the mark at least as early as November 1, 1987).
DELL PRECISION	2,284,782	October 12, 1999	Computers, Computer Peripheral Devices and Parts and fittings Therefor; Monitors, KeyBoards, Printers, Mouses, Co-Processors, Modems, Hard and Floppy Disk Drives, Tape Drives, CD-Rom Drives, Data Storage Units, And Electronic or Magnetic Cards and Memory Add Ons, Memory Boards and Chips, Cables and Connectors, All for Use with Computers. (First Use of the mark at least as early as April 15, 1998).
DELL AXIM	2,800,354	December 30, 2003	Computer hardware, handheld computers, Personal digital assistant (PDA), electronic organizers, electronic notepads, computer peripherals, namely, modems, memory cards, compact flash cards; blank smart media cards, batteries, battery chargers, digital audio recorders, and digital audio playback units, mp3 players, headphones, handheld computer/PDA carry bags, power adapters, car adapters, handheld computer keyboards, scanners, cradles for recharging and connecting to other devices and peripherals, cables and connectors for the above; and instruction manuals sold therewith as a unit for all the aforesaid goods (FIRST USE: November 18, 2002)

15. Each of the aforementioned registrations is currently valid, subsisting and in full force and effect, and is registered on the Principal Trademark Register of the United States Patent and Trademark Office. U.S. Registration Nos. 1,616,571, 1,860,272 and 2,236,785 for DELL, 2,284,782 for DELL PRECISION, and 2,333,902 for DELL FINANCIAL SERVICES, are incontestable pursuant to 15 U.S.C. § 1065. Hereinafter the foregoing names and marks

owned, used and/or registered by Dell shall be referred to individually and/or collectively as the "DELL Marks." True and accurate copies of the Certificates of Registration referenced in paragraph 14 herein are attached hereto as Exhibit 1.

16. The DELL Marks and variants thereof have been extensively and continually used, advertised and promoted by Dell within the United States and worldwide for approximately the past 16 years. Substantial amounts of time, effort, and money have been expended over the years in ensuring that the purchasing public associates such marks exclusively with Dell.

17. As a result of the time, effort and money invested in its business, and the quality of its goods and services, Dell has achieved a reputation for excellence and enjoys a substantial demand for and consumer sales of its products and services.

18. By virtue of the extensive scope of the consumer sales made, unsolicited press coverage relating to Dell, and the substantial sums spent to advertise and promote products and services under the DELL Marks, such marks have acquired a strong secondary meaning in the minds of the purchasing public and the business community, and are now highly distinctive, famous and serve uniquely to identify Dell's products and services. Through widespread and favorable public acceptance and recognition, these marks enjoy tremendous goodwill and have become assets of incalculable value as symbols of Dell's products and services.

DELL'S VAR AND PARTNER PROGRAMS

19. Dell's strict control over the quality of products offered for sale and sold under its name and marks is a critical component of its success. Dell's business model dictates that it sell directly to consumers and more recently, to retailers, and not through wholesalers or distributors. As such, Dell itself directly and closely controls product quality, distribution and customer service.

20. In certain circumstances, Dell has permitted "Value Added Resellers" ("VARs") and, more recently, "Certified and Registered Partners," ("Partners") to resell its products pursuant to its terms and conditions for resale. Dell's VAR and Partner agreements expressly prohibit, inter alia, (a) the use of Dell's name and trademarks in a manner that is likely to confuse the relevant public as to the nature of the relationship between Dell and the reseller, or as to Dell's approval or sponsorship of the reseller's business operations, and (b) any use of the phrases "authorized reseller" or "legal partner" of Dell.

21. Dell's warranty does not extend to products refurbished by resellers and Dell's terms and conditions require that resellers accurately inform consumers of such fact.

22. Dell's terms and conditions for the sale of products to persons intending to resell are set forth on its website at www.dell.com. Such terms and conditions have remained substantially the same for the past five years and currently provide as follows:

These terms and conditions ("Agreement") apply to your purchase and resale of computer systems, related products, services, and support in the United States or Canada ("Products") by the Dell entity named on your invoice ("Dell") or on other documents provided to you by Dell. This Agreement does not apply to you if you are buying for your own end use. By accepting delivery of the Products, you agree to be bound by and accept the terms and conditions of this Agreement. These terms and conditions are subject to change at any time in Dell's sole discretion without prior written notice. If you do not wish to be bound by this Agreement, you must promptly notify Dell.

... You may resell Products to end-users approved by Dell, in Dell's sole discretion, only after you have added value to the Products through the addition of hardware, software, or services. Approval by Dell shall not be deemed from the sale of Product to you. You may not resell to end-users outside the country or territory covered by the Dell entity from which you purchased your Product. You may not resell to Consumer, Education, Healthcare, Federal, State, Provincial or Local or other Public-sector customers, or to distributors or third-party sales agents, and you may not remarket or resell through retail storefronts or auction-type web sites...

...You may use the "Dell" name and Dell's product names solely for the purpose of accurately identifying the Dell-branded Products you market or sell under this Agreement. You agree to change or correct, at your own expense, any material or activity that Dell decides is inaccurate, objectionable or misleading, or a misuse of

Dell's name, trademarks, service marks, or Dell's logos or copyrighted works. You may not use the Dell name or Dell's product names for any other purpose. You may not use other Dell trademarks or service marks, or Dell's logos or copyrighted works, at any time. You are prohibited from referring to yourself as an authorized reseller of Dell, implying that you and Dell are legal partners, creating the impression that Dell is affiliated with you or has sponsored, authorized, approved or endorsed your business...

...DELL RESERVES THE RIGHT TO DISCONTINUE OR OTHERWISE VOID ANY WARRANTY, SERVICE, MAINTENANCE, OR SUPPORT IT OFFERS IN WHOLE OR IN PART...

... Dell is not obligated to provide ... service or support for any product or services that you purchased through a third-party and not from Dell...

DEFENDANTS' WRONGFUL ACTIONS

23. Until about May, 2007, Defendant was an authorized reseller of DELL products and, on information and belief, was fully aware of and bound by Dell's terms and conditions for the resale of DELL products. In or about May, 2007, Defendant's status as an authorized reseller was suspended for numerous and repeated breaches of Dell's terms and conditions for resale as described in detail below.

24. On information and belief, at a time when Defendant was an authorized Dell reseller, it adopted and used without authorization or permission from Dell, the trade names and service marks, "Dell SuperStore" and "Dell Monitor Shop" together with the presentation of a DELL box that would contain a Dell computer, placed the trademark DELL directly below the name TigerDirect.com in such size and prominence so as to dwarf Defendant's company's trade name. In addition, Defendant expressly and falsely represented itself to be "a Dell representative" and falsely described the DELL products it was offering for sale as "Brand New DELL PCs At Blowout Prices!" On information and belief, such description falsely conveyed to consumers that Defendant's products were state of the art DELL computer models when in fact they were old, outdated and no longer sold by Dell, and did not possess the same speed or performance value as newer models or "brand new" DELL computer models. Dell received telephone and email inquiries from customers who indicated that they did not understand how

Defendant could possibly offer DELL computer products at such low prices and requested that their sales representative match such prices. Further, under the caption "Warranty Information" on its website, Defendant falsely represented that Dell would provide "3 months of support" for any product sold by Defendant when, in fact, the warranties for certain of those products had expired and Dell did not offer any support for such products. On information and belief, the foregoing activities violated Defendant's contractual obligation to comply with Dell's terms and conditions for resale and were likely to confuse the relevant public as to the nature, characteristics and quality of the DELL products offered for sale by Defendant and as to an affiliation between the parties.

25. Dell repeatedly protested the activities described in paragraph 24 above and, on information and belief, Defendant partially and temporarily corrected such violations.

26. Thereafter, in or about February, 2006, Dell learned that Defendant was engaged in recidivist wrongdoing. On information and belief, at that time, Defendant represented on its website that the DELL products which it offered for sale had "a limited warranty of 3 months for parts and 3 months for labor. This warranty is provided by Dell." In fact, the products offered for sale on Defendant's website were not covered by any Dell warranty. On information and belief, such representations were literally false. On information and belief, consumers were confused as a result of Defendant's false representations and contacted Dell for service pursuant to warranty when, in fact, the warranty has expired and they were not entitled to service.

27. Dell repeatedly protested the activities described in paragraph 26 above. By telephone, Defendant represented that the noted description of the warranties would be corrected and that a written confirmation to that effect would be provided. On information and belief, Defendant did not provide such written confirmation and, although it revised its warranty description slightly, it did not correct the false representations.

28. On information and belief, Defendant revised the description of the warranty coverage for the DELL products it was offering for sale to read as follows:

Manufactured by: **Dell**
Mfg Part No: **RB-C640-Combo**
UPC No: **Not Available**
Shipping Weight: **10.0 pounds**
Limited Warranty:
3 months parts; 3 months labor
Click here for full warranty and support information

Manufacturer Warranty: A full text version of the manufacturer's warranty may be obtained by mailing a self addressed, stamped envelope to the address below and requesting the warranty for item number: **M975-2038**

29. Defendant's revised warranty representation identified the manufacturer as Dell, indicated below that identification that there is a Limited Warranty and then informed the viewer how to obtain the full text of the Manufacturer Warranty. It is not until the user clicks "for full warranty and support information" and links to another web page that the third party provider of the warranty is identified. On information and belief, such description was and is likely to cause a reasonable reader to conclude falsely that the manufacturer, Dell, offers the warranty. No other source is identified. Dell requested that, in order to avoid initial confusion and continuing confusion in the event the user does not avail himself of the full information, Defendant identify the provider of the warranty in the above initial description. Defendant was advised, "The name of the provider could be included as part of the notation "Limited Warranty" by adding "By Metro Business Systems" or other company as appropriate."

30. In response, Defendant indicted to Dell that it would consider Dell's request and affect necessary revisions.

31. In or around May, 2007, Dell sent further written protests to Defendant after determining that Defendant was again making false representations concerning warranty coverage for the DELL products it was offering for sale and, in addition, failed to identify on its website which of its DELL products were new and which were refurbished. On information and belief, such omissions lead consumers to conclude that all of Defendant's systems were new, which constituted a false representation of fact as Defendant had purchased both new and

refurbished systems from Dell. On information and belief, Defendant corrected its failure to distinguish between new and refurbished Dell products, but did not correct its false representations concerning warranty coverage. Indeed, on information and belief, Defendant now represents that the warranty is provided by “Dell Recertified,” and the consumer must proceed through another link to learn the identity of the actual third party provider of the warranty. On information and belief, Defendant continues to date to represent falsely that the warranties for its products are offered by Dell, when, in fact, the warranties are offered by unaffiliated third parties. As a result of Defendant’s refusal to correct its confusing warranty descriptions, Dell suspended Defendant’s account.

32. In or around December, 2008, Dell again determined that Defendant was continuing to make false warranty representations. In addition, Dell learned that, on information and belief, Defendant had commenced use of an infringing DELL Logo. More specifically, in the bottom left corner of a posting for a DELL product sold by Defendant, Defendant placed the following stylized DELL Logo in the color blue, which revised stylization is reminiscent of the actual Dell Logo without the slanting of the letter “E”:

DELL

Additional uses of that same DELL Logo appeared throughout Defendant’s website. A representative specimen depicting Defendant’s use of the infringing DELL logo and false warranty description is attached hereto as Exhibit 2.

33. On information and belief, the DELL logo used by Defendant is likely to cause consumer confusion and, in addition, bastardizes, dilutes and tarnishes Dell’s famous “Slanted E” Logo presented in the same color blue:

DELL™

34. On information and belief, Defendant’s use of the above-illustrated logo is

likely to confuse, mislead and deceive consumers into believing falsely that Dell sponsors, authorizes or licenses the use of its logo as well as the business conducted, services rendered and website operated thereunder, and blurs, tarnishes and diminishes the immediate recognition value and distinctive quality of Dell's mark.

35. On information and belief, Defendant's prominent and repeated use the DELL Marks on its web site at www.tigerdirect.com, and false representations that the DELL computers and peripherals it has advertised, offered for sale and sold are new, original and obtained directly from Dell, and that its products are covered by warranty provided by Dell are likely to and will inevitably confuse consumers as to the nature, source, sponsorship, quality and characteristics of Defendant's products, services, website and business.

36. On or about December 17, 2008. Dell sent a written protest to Defendant demanding that it cease its ongoing trademark infringement and false representations. Dell subsequently sent five separate reminders demanding a reply to its December 17, 2008 letter. Other than a two sentence email on January 12, 2009 from its in-house lawyer stating, "I'm sorry for the delay in responding. We will review and get back to you shortly," no response to those six communications has been forthcoming.

DEFENDANT'S WILLFULNESS

37. On information and belief, because of Dell's long, extensive and substantially exclusive use and sale of its computer products and accessories under the world-famous name and mark DELL, Dell's significance as a manufacturer and supplier of computer products and services, Defendant's prior and repeated purchase of products from Dell, and Defendant's prior status as a Dell reseller, Defendant was or should have been, at all times, fully aware of Dell's trademark rights. On information and belief, Defendant's use of the DELL Marks was and is conducted with actual knowledge of the reputation and goodwill in Dell's marks, and Dell's ownership of the name and mark DELL.

38. In response to Dell's various protests over a significant period of time, on information and belief, Defendants established a practice of delaying any response to Dell's protests, partially and in piecemeal fashion correcting only certain of those specific abuses detailed by Dell, while failing to correct others, and shortly thereafter, commencing new acts of infringement of Dell's trademark rights and other tortious conduct.

39. On information and belief, Defendant's entire course of dealing with Dell has evidenced repeated knowing and willful trademark infringement, unfair competition, false representations of fact and breach of contract for the benefit of Defendant and to the detriment of Dell.

40. On information and belief, Defendants' continued wrongdoing is willful, in bad faith, with complete knowledge and notice and in utter disregard for Dell's intellectual property and contractual rights and will continue absent an order of this Court.

DAMAGE TO DELL

41. On information and belief, the relevant public has been and is likely to be confused, mistaken and deceived as a result of Defendant's false representations and trademark infringement. Such confusion and misappropriation threatens to irreparably injure Dell's goodwill, business reputation and intellectual property.

FIRST CAUSE OF ACTION **(Federal Trademark Infringement - 15 U.S.C. §1114(a))**

42. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 41 of the Complaint as set forth above.

43. Defendant's unauthorized use, advertising, marketing and sale of products under the DELL Marks and/or designations or names confusingly similar the DELL Marks, as alleged herein, is likely to deceive, mislead and confuse the relevant public. Defendant's actions

constitute trademark infringement in violation of section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

44. As a proximate result of the acts of Defendant as alleged herein, Dell has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits, while Defendant profits at Dell's expense. Dell has no adequate remedy at law for Defendant's infringement of the DELL Marks. Unless Defendant is permanently enjoined, Dell will continue to suffer irreparable harm.

SECOND CAUSE OF ACTION

(Federal Unfair Competition and False Representations – 15 U.S.C. §1125(a))

45. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 to 44 of the Complaint as set forth above.

46. The DELL Marks and variants thereof, as used in connection with computers, computer systems, software, peripherals, and related goods and services, are distinctive marks and have become exclusively associated with Dell through its continuous, extensive and widespread use of such marks in advertising, promotion and marketing of its products and services over the past 19 years. As a result, the DELL Marks exclusively identify Dell's business, products, and services.

47. Defendant's false representations of fact that its DELL products are "new," that a Dell warranty accompanies such products, and that it is a "Dell representative," as well as Defendant's unauthorized use of the Dell Marks and marks confusingly similar thereto, constitute false advertising, false representation, unfair competition, passing off and false designation of origin, which is likely to cause confusion, or to cause mistake or to deceive consumers as to the nature, quality and characteristics of Defendant's goods and commercial activities, in and affecting interstate commerce all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

48. As a proximate result of the acts of Defendant as alleged herein, Dell has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits, while Defendant is profiting at Dell's expense. Dell has no adequate remedy at law for this unfair competition and false advertising. Unless Defendant is preliminarily and permanently enjoined by the Court, Dell will continue to suffer irreparable harm.

THIRD CAUSE OF ACTION
(Federal Trademark Dilution - 15 U.S.C. §1125(c))

49. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 48 as set forth above.

50. The DELL Marks are arbitrary, fanciful and/or highly distinctive in connection with computer products, peripherals, accessories, parts and related products/services and are strong and, indeed, famous as a result of Dell's prominence in the marketplace and extensive advertising, promotion and sale of goods and services under those marks.

51. Defendant's wrongful and unauthorized use of the DELL Marks and confusingly similar variants thereof is likely to dilute the distinctive quality of and tarnish Dell's marks in violation of section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

52. As a proximate result of Defendant's actions, Dell has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits. Dell has no adequate remedy at law for Defendant's acts of dilution. Unless Defendant is permanently enjoined, Dell will continue to suffer irreparable harm.

FOURTH CAUSE OF ACTION
(Trademark Infringement — New York Common Law)

53. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 52 of the Complaint as set forth above.

54. With full knowledge of Dell's intellectual property rights in the DELL

Marks and of Dell's reputation in the computer industry, and without Dell's consent or knowledge, Defendant has advertised, promoted, produced, marketed and sold goods and services bearing and under marks virtually identical to and confusingly similar to the DELL Marks.

55. Defendant has deliberately and willfully used the DELL Marks in commerce without any authorization, and has derived unlawful gains, profits and advantages from its infringements.

56. Defendant's infringing use as described above has impaired, is impairing and, unless enjoined by this Court, will continue to impair Dell's reputation as accrued under the DELL Marks and has caused, is causing, and will continue to cause injury and damage to Dell, which is presently indeterminate, but for which Dell is entitled to relief under the common law of the state of New York.

57. Dell has no adequate remedy at law against this trademark infringement. Unless Defendant is enjoined by the Court, Dell will continue to suffer irreparable harm. Defendant's actions were committed intentionally, willfully and wantonly. Dell is therefore entitled to an award of punitive damages as an example and by way of punishing Defendants.

FIFTH CAUSE OF ACTION
(Unfair Competition — New York Common Law)

58. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 57 of the Complaint as set forth above.

59. Defendant's wrongful use of the DELL Marks and willful false representations as alleged herein are likely to deceive the public into believing falsely that Defendant's goods or services are associated therewith, originate from or are sold, sponsored or approved by Dell and that such systems are new and covered by warranty from Dell. Defendant has unfairly competed with Dell in violation of New York common law.

60. On information and belief, such actions were taken by Defendant in a deliberate attempt to misappropriate and trade off of the goodwill and valuable reputation of Dell and the DELL Marks. Such action evidences a willful attempt by Defendant to usurp the goodwill in the DELL Marks owned by Plaintiff, and constitutes unfair competition in violation of New York common law. On further information and belief, Defendant acted with oppression, fraud and malice toward Dell, and has continued with its infringing and unlawful acts after being placed on notice that its use of Dell's marks and false representations were likely to cause confusion, mistake and deception. Dell is therefore entitled to an award of punitive damages for the sake of example and by way of punishing Defendant.

61. Dell has no adequate remedy at law against this unfair competition and injury to its business reputation, such that monetary damages alone cannot fully compensate it for injuries caused by Defendant's misconduct. Such misconduct will continue to cause irreparable harm to Dell unless enjoined by this Court.

SIXTH CAUSE OF ACTION
(Injury to Business Reputation and Dilution —
New York Statutory Law)

62. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 61 of the Complaint as set forth above.

63. As a direct result of Dell's long and extensive experience, care, and skill in manufacturing, marketing, advertising and selling computer systems, peripherals, accessories and parts therefore, as well as related goods and services under the DELL Marks, Dell has acquired a reputation for excellence, and enjoys an extensive demand for its goods and services. In addition, Dell has expended large sums in advertising to create substantial goodwill in the DELL Marks and an image for services and products which are of a very high quality.

64. Defendant, by wrongfully using the DELL Marks, and making blatant express false representations of fact, is misleading the public into believing that its products and

services, and their advertisements, web sites and business are connected with Plaintiff's business, when in fact they are not. Further, Defendant's false representations will inevitably deceive consumers as to the nature, quality and characteristics of the DELL products advertised and sold by Defendant. Such action tarnishes, dilutes and disparages Dell's reputation, goodwill, and the DELL Marks.

65. Defendant's acts are likely to deprive Dell of the benefit of the goodwill attached to the DELL Marks, injure Plaintiff's business reputation, and dilute the distinctive quality of the DELL Marks in violation of the New York General Business Law § 368(d).

66. As a proximate result of the acts of Defendant as alleged herein, Dell has suffered and will continue to suffer damage to its business, goodwill, reputation, and profits. Plaintiff has no adequate remedy at law against this dilution of and injury to its business reputation. Unless Defendant is enjoined by this Court, Dell will continue to suffer irreparable harm.

SEVENTH CAUSE OF ACTION
(New York General Business Law §§ 349, 350
Deceptive Acts, False Advertising)

67. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 through 66 of the Complaint as set forth above.

68. On information and belief, Defendant has misrepresented the nature, characteristics or qualities of its products and services by representing that it is associated with Dell and that its products are "new" and legitimate Dell products backed by Dell's warranty, when, in fact, they are not.

69. On information and belief, Defendant has engaged in unlawful, unfair and fraudulent business practices and unfair, deceptive, untrue and misleading advertising in violation of New York General Business Law § 349. On information and belief, such actions

were, and continue to be, deliberate attempts to knowingly misappropriate Dell's rights in the DELL Marks.

On information and belief, such actions by Defendant also constitute false and misleading advertising in violation of the New York General Business Law § 350. As a result of such acts as alleged herein, Dell has suffered and will continue to suffer great damage to its business, goodwill, reputation and profits. Dell has no adequate remedy at law against these deceptive acts and practices, such that monetary damages alone cannot fully compensate for the resulting injuries. Defendant's wrongdoing, as set forth above, will continue to cause irreparable harm to Dell unless enjoined by this Court.

EIGHTH CAUSE OF ACTION
(Breach of Contract – New York Common Law)

70. Dell realleges and incorporates herein by reference the allegations of paragraphs 1 to 69 of the Complaint as set forth above.

71. Dell's authorized resellers are contractually bound to comply with Dell's terms and conditions for resale. On information and belief, Defendant was an authorized Dell reseller, and as such, was and is fully aware of Dell's terms and conditions for resale.

72. On information and belief, Defendant breached its contractual obligations to Dell by reselling products bearing the DELL Marks in violation of Dell's terms and conditions for sale. Defendant's breach of its contractual obligations to Dell has caused economic injury and damage to Dell.

73. Such actions by Defendants constitute breach of contract in violation of New York law.

PRAYER FOR RELIEF

Dell prays for judgment against Defendant as follows:

(1) that Defendant, Tiger Direct, Inc., its officers, agents, servants, employees, and attorneys, those persons in active concert or participation with Defendant who receive actual notice of the court's order by personal service or otherwise, be permanently enjoined and restrained from:

(a) using the DELL Marks or any other trade name, trademark, service mark, domain name, designation, logo, symbol or device containing the DELL Marks, or any variant or any colorable imitations thereof, in a manner which is likely to confuse consumers as to the source or sponsorship of Defendant's business, web site, products or services or as to the nature, quality or characteristics of Defendant's products, or which is dilutive of the DELL Marks;

(b) making any false or misleading representation of fact concerning the source, nature, quality or characteristics of its business, products or services, or any computer systems, or parts, or computer related products or services bearing, using, or advertised or sold by Defendant under or in connection with DELL Marks, including, but not limited to, representing falsely that their products are covered by a Dell warranty, or are new, unused systems or contain original DELL parts or accessories, or that Defendant is a Dell representative;

(c) doing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public or the trade, or prospective purchasers of Defendant's products/services, as to the source, nature,

composition or quality of products/services created, developed, produced, distributed, marketed, advertised, promoted, sold or offered for sale by Defendant, or likely to deceive members of the public or the trade, or prospective purchasers, into believing that there is some affiliation or connection between Defendant and Dell, or that Defendant's products/services are being created, developed, manufactured, distributed, marketed, advertised, promoted, sponsored, offered for sale or sold by Dell or with Dell's authorization, consent, approval or permission;

(d) purchasing and/or selling Dell products in violation of Dell's terms and conditions for sale; and

(e) breaching Defendant's contractual obligations to Dell.

(2) that Defendant, pursuant to 15 U.S.C. § 1118, shall be ordered to deliver up for destruction all computer systems, peripherals, accessories, components, parts and/or related products, labels, signs, prints, wrappers, receptacles, articles, advertisements and promotional materials in its possession or control bearing DELL Marks, or any variants thereof or any name or mark confusingly similar thereto; and all computer programs, code and other means of making the same;

(3) that Defendant, in accordance with 15 U.S.C. § 1116(a), be directed to file with this court and serve upon Dell within thirty days after entry of the injunction a report in writing under oath, setting forth in detail the manner and form in which it has complied with the injunction;

(4) that Dell recover its damages sustained as a result of Defendant's wrongful actions;

(5) that Dell recover Defendant's profits made as a result of Defendant's wrongful actions;

(6) that Dell recover three times defendants' profits made as a result of Defendant's wrongful actions or three times Dell's damages, whichever is greater;

(7) that this case be deemed an exceptional case under 15 U.S.C. §§ 1117(a) and (b) and that Defendant be deemed liable for and be ordered to reimburse Dell for its reasonable attorneys' fees;

(8) that Dell be awarded exemplary and punitive damages under New York law for Defendant's willful, intentional acts and tortious acts;

(9) that Dell recover its costs of court; and

(10) that Dell recover such further relief to which it may be entitled.

Respectfully submitted,

BAKER BOTTS LLP



Doreen L. Costa (DC: 2830)

Paul J. Reilly (PR: 0317)

Baker Botts L.L.P.

30 Rockefeller Plaza

New York, New York 10112-4498

212.408.2500

Fax 212.408.2501

Dated: April 17, 2009

Attorneys for Plaintiff, Dell, Inc.

EXHIBIT 1

Int. Cl.: 9

Prior U.S. Cl.: 26

Reg. No. 1,616,571

United States Patent and Trademark Office Registered Oct. 9, 1990

**TRADEMARK
PRINCIPAL REGISTER**

DELL

DELL COMPUTER CORPORATION (DELA-
WARE CORPORATION)
9505 ARBORETUM BOULEVARD
AUSTIN, TX 78759

FOR: COMPUTERS AND COMPUTER PE-
RIPHERALS, NAMELY MONITORS, KEY-
BOARDS, PRINTERS, MICE, CO-PROCESSORS,
MODEMS, HARD AND FLOPPY DISK DRIVES,
TAPE DRIVES, CARDS AND MEMORY ADD-
ONS, MEMORY BOARDS AND CHIPS, CABLES

AND CONNECTORS, OPERATING SOFTWARE
AND INSTRUCTION MANUALS SOLD TO-
GETHER AS A UNIT, IN CLASS 9 (U.S. CL. 26).

FIRST USE 11-0-1987; IN COMMERCE
11-0-1987.

OWNER OF U.S. REG. NOS. 1,529,465, 1,529,468
AND OTHERS.

SER. NO. 74-021,331, FILED 1-19-1990.

THOMAS V. SHAW, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:06:31 ET

Serial Number: 74021331 Assignment Information Trademark Document Retrieval

Registration Number: 1616571

Mark (words only): DELL

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2001-02-23

Filing Date: 1990-01-19

Transformed into a National Application: No

Registration Date: 1990-10-09

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-10-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Computer Corporation

Address:

Dell Computer Corporation
Mail Stop 8033 One Dell Way
Round Rock, TX 786822244
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

computers and computer peripherals, namely monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, cards and memory add-ons, memory boards and chips, cables and connectors, operating software and instruction manuals sold together as a unit

Basis: 1(a)

First Use Date: 1987-11-00

First Use in Commerce Date: 1987-11-00

ADDITIONAL INFORMATION

Prior Registration Number(s):

1529465

1529468

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-03-30 - Notice Of Suit

2008-06-03 - Notice Of Suit

2008-05-27 - Notice Of Suit

2008-02-03 - Notice Of Suit

2007-10-03 - Case File In TICRS

2001-02-23 - First renewal 10 year

2001-02-23 - Section 8 (10-year) accepted/ Section 9 granted

2000-09-12 - Combined Section 8 (10-year)/Section 9 filed

1996-05-20 - Section 8 (6-year) accepted & Section 15 acknowledged

1995-10-11 - Section 8 (6-year) and Section 15 Filed

1990-10-09 - Registered - Principal Register

1990-07-17 - Published for opposition

1990-06-16 - Notice of publication

1990-04-18 - Approved for Pub - Principal Register (Initial exam)

1990-04-11 - Examiner's amendment mailed

1990-04-06 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

DANIEL J. NOONAN
DELL LEGAL DEPARTMENT - BOX 8033
ONE DELL WAY
ROUND ROCK, TEXAS 78682-2244

Int. Cl.: 9

Prior U.S. Cl.: 26

United States Patent and Trademark Office **Reg. No. 1,860,272**
Registered Oct. 25, 1994

**TRADEMARK
PRINCIPAL REGISTER**

The logo consists of the word "DELL" in a bold, sans-serif font. The letter 'D' is significantly larger than the other letters. The 'E' is stylized with a horizontal bar that extends to the right, overlapping the 'L'. The 'L' is also stylized with a horizontal bar that extends to the right, overlapping the second 'L'. The overall appearance is a thick, blocky, and slightly irregular font.

DELL COMPUTER CORPORATION (DELA-
WARE CORPORATION)
9505 ARBORETUM BLVD.
AUSTIN, TX 787597299

FIRST USE 7-0-1992; IN COMMERCE
7-0-1992.

OWNER OF U.S. REG. NOS. 1,498,470,
1,650,042, AND OTHERS.

FOR: COMPUTERS AND PARTS THEREFOR,
IN CLASS 9 (U.S. CL. 26).

SN 74-250,269, FILED 2-27-1992.

ALAN ATCHISON, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:07:36 ET

Serial Number: 74250269 Assignment Information Trademark Document Retrieval

Registration Number: 1860272

Mark

The logo for DELL, featuring the word "DELL" in a bold, black, sans-serif font. The letter 'D' is significantly larger than the other letters and has a stylized, three-dimensional appearance with a shadow effect.

(words only): DELL

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2004-07-01

Filing Date: 1992-02-27

Transformed into a National Application: No

Registration Date: 1994-10-25

Register: Principal

Law Office Assigned: LAW OFFICE 4

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-07-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. DELL INC.

Address:

DELL INC.

ONE DELL WAY MS #8033

ROUND ROCK, TX 78682
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009
Class Status: Active
computers and parts therefor
Basis: 1(a)
First Use Date: 1992-07-00
First Use in Commerce Date: 1992-07-00

ADDITIONAL INFORMATION

Prior Registration Number(s):
1498470
1529465
1529468
1616571
1650042

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-03-30 - Notice Of Suit
2008-06-03 - Notice Of Suit
2008-05-27 - Notice Of Suit
2008-02-03 - Notice Of Suit
2007-07-16 - Case File In TICRS
2004-07-01 - First renewal 10 year
2004-07-01 - Section 8 (10-year) accepted/ Section 9 granted
2004-04-28 - Combined Section 8 (10-year)/Section 9 filed

2004-04-28 - TEAS Section 8 & 9 Received
2000-04-13 - Section 8 (6-year) accepted & Section 15 acknowledged
1999-12-27 - Section 8 (6-year) and Section 15 Filed
1994-10-25 - Registered - Principal Register
1994-06-27 - Allowed for Registration - Principal Register (SOU accepted)
1994-06-21 - Assigned To Examiner
1994-06-17 - Statement of use processing complete
1994-05-05 - Amendment to Use filed
1994-01-18 - Extension 1 granted
1993-11-10 - Extension 1 filed
1993-05-11 - Noa Mailed - SOU Required From Applicant
1993-02-16 - Published for opposition
1993-01-15 - Notice of publication
1992-09-21 - Communication received from applicant
1992-09-23 - Approved for Pub - Principal Register (Initial exam)
1992-09-18 - Examiner's amendment mailed
1992-06-08 - Non-final action mailed
1992-05-04 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Daniel J. Noonan

Correspondent

DANIEL J. NOONAN
DELL COMPUTER CORPORATION
DELL LEGAL DEPT BOX 8033
ONE DELL WAY
ROUND ROCK TX 78682-2244

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,527,880

Registered Jan. 8, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

DELL

**DELL COMPUTER CORPORATION (DELAWARE
CORPORATION)
ONE DELL WAY
ROUND ROCK, TX 786822244**

**OWNER OF U.S. REG. NOS. 1,616,571, 1,860,272,
AND OTHERS.**

**FOR: CREDIT CARD SERVICES, IN CLASS 36
(U.S. CLS. 100, 101 AND 102).**

SN 75-554,499, FILED 9-17-1998.

FIRST USE 10-31-2000; IN COMMERCE 10-31-2000.

LANA PHAM, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:08:31 ET

Serial Number: 75554499 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2527880

Mark (words only): DELL

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2008-07-18

Filing Date: 1998-09-17

Transformed into a National Application: No

Registration Date: 2002-01-08

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-07-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Computer Corporation

Address:

Dell Computer Corporation
One Dell Way
Round Rock, TX 786822244
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 036

Class Status: Active

credit card services

Basis: 1(a)

First Use Date: 2000-10-31

First Use in Commerce Date: 2000-10-31

ADDITIONAL INFORMATION

Prior Registration Number(s):

1616571

1860272

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-07-18 - Section 8 (6-year) accepted & Section 15 acknowledged

2008-06-25 - Assigned To Paralegal

2008-06-11 - TEAS Section 8 & 15 Received

2008-05-27 - Notice Of Suit

2007-04-24 - Case File In TICRS

2002-01-08 - Registered - Principal Register

2001-09-14 - Allowed for Registration - Principal Register (SOU accepted)

2001-08-28 - Assigned To Examiner

2001-08-17 - Statement of use processing complete

2000-02-25 - Amendment to Use filed

2001-05-18 - Reinstated

2000-09-11 - Petition To Revive-Received

2000-08-24 - Abandonment - No use statement filed

1999-12-14 - Noa Mailed - SOU Required From Applicant

1999-09-21 - Published for opposition

1999-08-20 - Notice of publication

1999-04-26 - Approved for Pub - Principal Register (Initial exam)

1999-04-20 - Examiner's amendment mailed

1999-03-31 - Assigned To Examiner

1999-03-22 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Daniel J. Noonan

Correspondent

Daniel J. Noonan

Dell Inc.

RR1-33

ONE DELL WAY

ROUND ROCK TX 78682

Phone Number: 512-723-6483

Fax Number: 512-283-6483

Int. Cl.: 40

Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,236,785

United States Patent and Trademark Office

Registered Apr. 6, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

DELL

DELL COMPUTER CORPORATION (DELA-
WARE CORPORATION)
ONE DELL WAY
ROUND ROCK, TX 786822244

FOR: CUSTOM MANUFACTURE OF COM-
PUTERS FOR OTHERS, IN CLASS 40 (U.S. CLS.
100, 103 AND 106).

FIRST USE 11-1-1987; IN COMMERCE
11-1-1987.

OWNER OF U.S. REG. NOS. 1,616,571 AND
1,860,272.

SER. NO. 75-453,373, FILED 3-19-1998.

RICHARD KIM, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:09:09 ET

Serial Number: 75453373 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2236785

Mark (words only): DELL

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2004-11-01

Filing Date: 1998-03-19

Transformed into a National Application: No

Registration Date: 1999-04-06

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2009-04-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Inc.

Address:

Dell Inc.
MS#8033 One Dell Way
Round Rock, TX 78682
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 040

Class Status: Active

custom manufacture of computers for others

Basis: 1(a)

First Use Date: 1987-11-01

First Use in Commerce Date: 1987-11-01

ADDITIONAL INFORMATION

Prior Registration Number(s):

1616571

1860272

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-13 - Assigned To Paralegal

2009-04-09 - TEAS Section 8 & 9 Received

2008-06-03 - Notice Of Suit

2008-05-27 - Notice Of Suit

2008-02-03 - Notice Of Suit

2004-11-01 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-08-23 - Section 8 (6-year) and Section 15 Filed

2004-08-23 - TEAS Section 8 & 15 Received

1999-04-06 - Registered - Principal Register

1999-01-12 - Published for opposition

1998-12-11 - Notice of publication

1998-10-25 - Approved for Pub - Principal Register (Initial exam)

1998-10-25 - Assigned To Examiner

1998-10-23 - Assigned To Examiner

1998-10-01 - Assigned To Examiner

1998-09-25 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Daniel Noonan

Correspondent

Daniel Noonan

Dell Legal Department

RR1-33

One Dell Way

ROUND ROCK TX 78682

Phone Number: 512-723-6483

Fax Number: 512-283-6844

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,333,902

United States Patent and Trademark Office

Registered Mar. 21, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

DELL FINANCIAL SERVICES

DELL COMPUTER CORPORATION (DELA-
WARE CORPORATION)
ONE DELL WAY
ROUND ROCK, TX 786822244

FOR: LEASING OF COMPUTERS, IN CLASS
42 (U.S. CLS. 100 AND 101).
FIRST USE 11-1-1997; IN COMMERCE
11-1-1997.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "FINANCIAL SERVICES",
APART FROM THE MARK AS SHOWN.

SN 75-978,993, FILED 8-13-1997.

M. E. BODSON, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:09:53 ET

Serial Number: 75978993 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2333902

Mark (words only): DELL FINANCIAL SERVICES

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-09-08

Filing Date: 1997-08-13

Transformed into a National Application: No

Registration Date: 2000-03-21

Register: Principal

Law Office Assigned: LAW OFFICE 110

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-04-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Inc.

Address:

Dell Inc.
One Dell Way
Round Rock, TX
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 042

Class Status: Active

leasing of computers
No Filing Basis Claimed

First Use Date: 1997-11-01
First Use in Commerce Date: 1997-11-01

ADDITIONAL INFORMATION

Disclaimer: "FINANCIAL SERVICES"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-04-26 - Case File In TICRS
2005-09-08 - Section 8 (6-year) accepted & Section 15 acknowledged
2005-07-14 - Section 8 (6-year) and Section 15 Filed
2005-07-14 - TEAS Section 8 & 15 Received
2000-03-21 - Registered - Principal Register
2000-01-05 - Allowed for Registration - Principal Register (SOU accepted)
2000-01-05 - Assigned To Examiner
1999-12-28 - Statement of use processing complete
1999-12-28 - Extension 1 granted
1999-09-09 - Amendment to Use filed
1999-09-09 - Extension 1 filed
1999-12-23 - Divisional processing completed
1999-03-09 - Noa Mailed - SOU Required From Applicant
1998-12-15 - Published for opposition
1998-11-13 - Notice of publication

1998-10-15 - Approved for Pub - Principal Register (Initial exam)

1998-10-07 - Examiner's amendment mailed

1998-05-08 - Non-final action mailed

1998-04-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Max Helen Millican
Dell Inc.
One Dell Way
Round Rock tx 78682

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,284,782

United States Patent and Trademark Office

Registered Oct. 12, 1999

**TRADEMARK
PRINCIPAL REGISTER**

DELL PRECISION

DELL COMPUTER CORPORATION (DELA-
WARE CORPORATION)
ONE DELL WAY
ROUND ROCK, TX 78682

FOR: COMPUTERS, COMPUTER PERIPHER-
AL DEVICES AND PARTS AND FITTINGS
THEREFOR; MONITORS, KEYBOARDS,
PRINTERS, MICE, CO-PROCESSORS,
MODEMS, HARD AND FLOPPY DISK DRIVES,
TAPE DRIVES, CD-ROM DRIVES, DATA
STORAGE UNITS, AND ELECTRONIC OR
MAGNETIC CARDS AND MEMORY ADD ONS,

MEMORY BOARDS AND CHIPS, CABLES AND
CONNECTORS, ALL FOR USE WITH COMPUT-
ERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND
38).

FIRST USE 4-15-1998; IN COMMERCE
4-15-1998.

OWNER OF U.S. REG. NOS. 1,616,571,
2,030,084, AND 2,187,970.

SER. NO. 75-445,276, FILED 3-5-1998.

GLENN CLARK, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-04-16 17:10:36 ET

Serial Number: 75445276 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2284782

Mark (words only): DELL PRECISION

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-05-19

Filing Date: 1998-03-05

Transformed into a National Application: No

Registration Date: 1999-10-12

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2009-04-06

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Inc.

Address:

Dell Inc.
MS#8033 One Dell Way
ROUND ROCK, TX 78682
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, printers, mice, co-processors, modems, hard and floppy disk drives, tape drives, CD-ROM drives, data storage units, and electronic or magnetic cards and memory add ons, memory boards and chips, cables and connectors, all for use with computers

Basis: 1(a)

First Use Date: 1998-04-15

First Use in Commerce Date: 1998-04-15

ADDITIONAL INFORMATION

Prior Registration Number(s):

1616571

2030084

2187970

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-06 - Assigned To Paralegal

2009-04-02 - TEAS Section 8 & 9 Received

2008-05-27 - Notice Of Suit

2005-05-19 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-12-02 - Section 8 (6-year) and Section 15 Filed

2004-12-02 - TEAS Section 8 & 15 Received

1999-10-12 - Registered - Principal Register

1999-07-20 - Published for opposition

1999-06-18 - Notice of publication

1999-04-15 - Approved for Pub - Principal Register (Initial exam)

1999-04-15 - Amendment to Use approved

1999-01-26 - Communication received from applicant

1999-03-03 - Amendment to use held informal - letter mailed

1999-01-26 - Amendment to Use filed

1998-11-25 - Non-final action mailed

1998-11-18 - Assigned To Examiner

1998-11-09 - Assigned To Examiner

1998-10-23 - Assigned To Examiner

1998-06-15 - Communication received from applicant

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Daniel Noonan

Correspondent

Daniel Noonan

Dell Legal Department

RR1-33

One Dell Way

Round Rock TX 78682

Phone Number: 512-723-6483

Fax Number: 512-283-6844

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,800,354

United States Patent and Trademark Office

Registered Dec. 30, 2003

**TRADEMARK
PRINCIPAL REGISTER**

DELL AXIM

DELL COMPUTER CORPORATION (DELAWARE CORPORATION)
ONE DELL WAY MS#8033
ROUND ROCK, TX 786822244

FOR: COMPUTER HARDWARE, HANDHELD COMPUTERS, PERSONAL DIGITAL ASSISTANT (PDA), ELECTRONIC ORGANIZERS, ELECTRONIC NOTEPADS, COMPUTER PERIPHERALS, NAME-
LY, MODEMS, MEMORY CARDS, COMPACT FLASH CARDS; BLANK SMART MEDIA CARDS, BATTERIES, BATTERY CHARGERS, DIGITAL AUDIO RECORDERS, AND DIGITAL AUDIO PLAYBACK UNITS, MP3 PLAYERS, HEADPHONES, HANDHELD COMPUTER/PDA CARRY BAGS, POWER ADAPTERS, CAR ADAPTERS, HAND-
HELD COMPUTER KEYBOARDS, SCANNERS,

CRADLES FOR RECHARGING AND CONNECT-
ING TO OTHER DEVICES AND PERIPHERALS,
CABLES AND CONNECTORS FOR THE ABOVE;
AND INSTRUCTION MANUALS SOLD THERE-
WITH AS A UNIT FOR ALL THE AFORESAID
GOODS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-18-2002; IN COMMERCE 11-18-2002.

OWNER OF U.S. REG. NOS. 1,616,571, 1,860,272,
AND 2,236,785.

SER. NO. 78-179,255, FILED 10-28-2002.

CIMMERIAN COLEMAN, EXAMINING ATTOR-
NEY

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Serial Number: 78179255 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2800354

Mark (words only): DELL AXIM

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-12-30

Filing Date: 2002-10-28

Transformed into a National Application: No

Registration Date: 2003-12-30

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

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LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Dell Computer Corporation

Address:

Dell Computer Corporation
One Dell Way MS#8033
Round Rock, TX 786822244
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

Phone Number: 512-728-7835

Fax Number: 512-728-6843

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

Computer hardware, handheld computers, Personal digital assistant (PDA), electronic organizers, electronic notepads, computer peripherals, namely, modems, memory cards, compact flash cards; blank smart media cards, batteries, battery chargers, digital audio recorders, and digital audio playback units, mp3 players, headphones, handheld computer/PDA carry bags, power adapters, car adapters, handheld computer keyboards, scanners, cradles for recharging and connecting to other devices and peripherals, cables and connectors for the above; and instruction manuals sold therewith as a unit for all the aforesaid goods

Basis: 1(a)

First Use Date: 2002-11-18

First Use in Commerce Date: 2002-11-18

ADDITIONAL INFORMATION

Prior Registration Number(s):

1616571

1860272

2236785

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2003-12-30 - Registered - Principal Register

2003-10-07 - Published for opposition

2003-09-17 - Notice of publication

2003-08-14 - Approved for Pub - Principal Register (Initial exam)

2003-08-14 - Amendment to Use approved

2003-07-23 - Communication received from applicant

2003-08-01 - Case File In TICRS

2003-07-23 - TEAS Response to Office Action Received

2003-05-07 - Non-final action e-mailed

2003-03-27 - Communication received from applicant

2003-04-23 - Amendment to use processing complete

2003-03-27 - Amendment to Use filed

2003-03-28 - Communication received from applicant

2003-03-27 - TEAS Amendment of Use Received

2003-03-24 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Anna C. Kuhn

Correspondent

Anna C. Kuhn

Dell Legal Department

One Dell Way MS#8033

Round Rock TX 78682-2244

Phone Number: 512-723-9277

Fax Number: 512-728-6843

EXHIBIT 2

... Pentium M 1.86GHz, genuine Windows XP Professional, 512MB DDR2, ... Page 1 of 20

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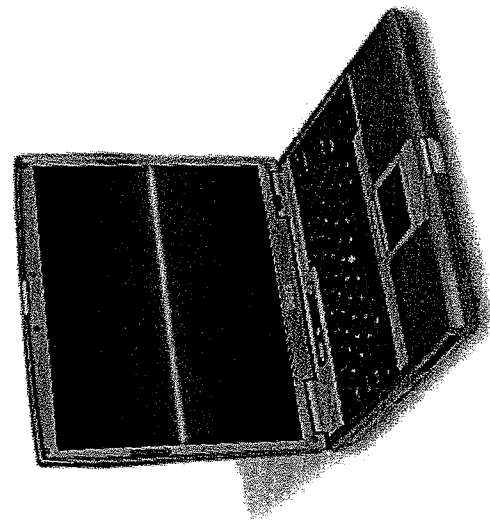
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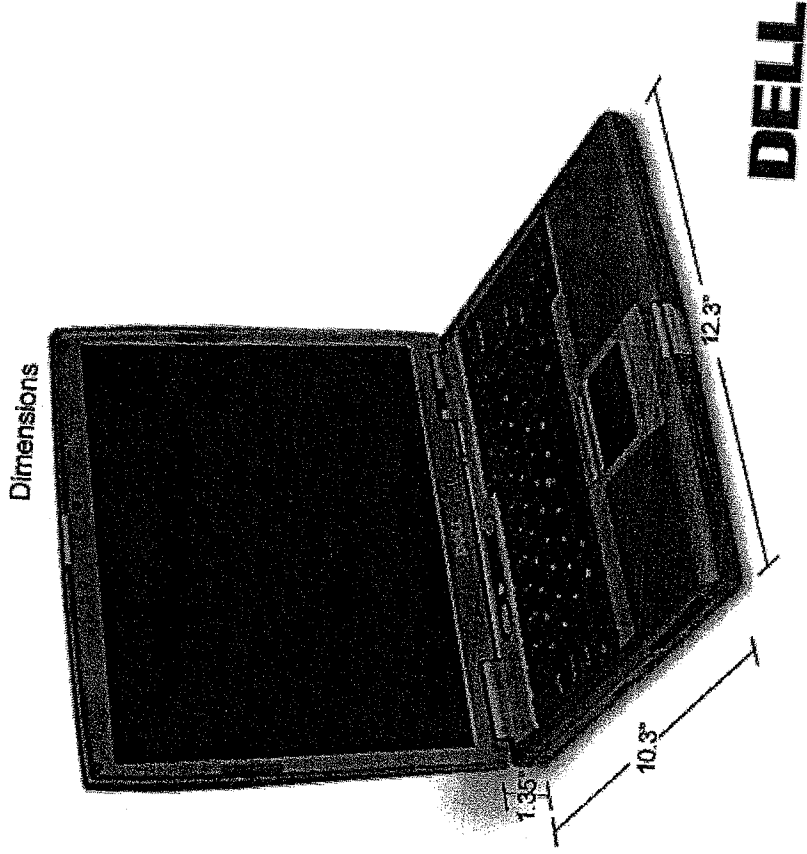
Product Information	Detailed Specs	Product Reviews	Questions & Answers	Knowledge & Information	Warranty Terms
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Initial Warranty
This Item's Warranty is:
3 Months Parts
3 Months Labor
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Dell Retail

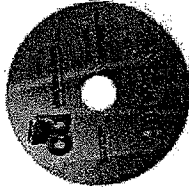
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Dell Latitude D610 Notebook PC (Off-Lease) - Intel Pentium M 1.86GHz, genuine Windows XP Professional, 3.14GB RAM



NOTE REGARDING RECOVERY MEDIA

Most computer systems no longer include "Recovery Media" (Disks or CDs). If you need to restore your computer system to its factory shipped state, you will need to purchase recovery media from one company, but not standard products. Recovery media is not specific to systems purchased from one company, but is standard throughout the entire industry. Click here to read more about creating your own Recovery Media »

Limited Warranty

This Item's Warranty is:

- 3 Months Parts
- 3 Months Labor

Warranty provided by

- **Dell Recertified**
- View Warranty Info

Dell Latitude D610 Notebook PC (Off-Lease) - Intel Pentium M 1.86GHz, genuine Windows XP Professional, 512MB DDR2, 40GB HDD, DVD/CD RW Combo, 802.11b/g Wireless, 14" XGA

\$369.96



Tags

Dell Latitude, Dell Notebook

Manufactured by: **Dell With 3rd Party Support**

Mfg Part No: **R804741**

UPC No: **890552619436**

Box Size: (Length: 19, Width: 17, Depth: 6)

Shipping Weight: **10.0000 pound(s)**

Limited Warranty:

3 months parts; 3 months labor

Click here for full warranty and support information

Limited Warranty: A full text version of the limited warranty may be obtained by mailing a self addressed, stamped envelope to the address below and requesting the warranty for item number: **SYX-R804741**

TigerDirect.com
Warranty Information
7795 W. Flagler St. Suite 35