



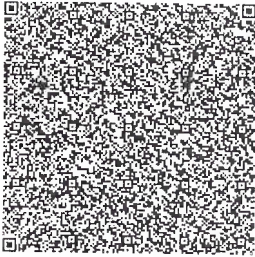
सत्यमेव जयते

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| Certificate No. | : IN-DL81790045804153Q |
| Certificate Issued Date | : 30-Jan-2018 11:40 AM |
| Account Reference | : IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH |
| Unique Doc. Reference | : SUBIN-DLDSLHIMP1766846319075832Q |
| Purchased by | : SONAL KUMAR SINGH |
| Description of Document | : Article 12 Award |
| Property Description | : Not Applicable |
| Consideration Price (Rs.) | : 0 (Zero) |
| First Party | : SONAL KUMAR SINGH |
| Second Party | : Not Applicable |
| Stamp Duty Paid By | : SONAL KUMAR SINGH |
| Stamp Duty Amount(Rs.) | : 100 (One Hundred only) |



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

Amazon Technologies, Inc
410 Terry Ave N, Seattle, WA 98109,
United States of America

...Complainant

/s.

Logistics

Brigade Dr. Rajkumar Road,
Malleshwaram West, Bengaluru, Karnataka-560010

...Respondent

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.sholestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
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A. The Parties

The Complainant in this arbitration proceeding is Amazon Technologies, Inc, a corporation organized and existing under the laws of State of Nevada, having its registered office at 410 Terry Ave N, Seattle, WA 98109, United States of America.

The Respondent in this arbitration proceeding is Logistics with the following contact details:

- Registrant Organization – AMAZON INDIA
- Address- Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka- 560055
- Email- amazon@inbox.si

B. The Disputed Domain Name

The disputed domain name is **AMAZONCAREER.IN**, registered on **June 10th 2017**.

C. Procedural History

I was appointed as Arbitrator by .IN Registry, to adjudicate upon the complaint of the Complainant, regarding the disputed domain name **AMAZONCAREER.IN**

On 18.12.2017, NIXI vide its email sent a soft copy of the complaint along with the annexures to the respondent with a copy marked to the Tribunal. In the said email it was also informed to the Tribunal that a hard copy of the complaint with annexures was duly sent to the available address of the Respondent on 18.12.2017 itself.

On 26.12.2017, the Tribunal vide its email informed the parties about its appointment in the subject matter. The Tribunal in the said email directed NIXI to inform the Tribunal about the service of the hard copy of the Complaint to the Respondent. Further, the Respondent was directed to file its reply to the Complaint within 15 days from the receipt of the said email or the receipt of the hard copy of Complaint, whichever is later.

On 26.12.2017, NIXI informed the Tribunal that it has contacted the courier agency and will soon provide an update of the status of the service of the hard copy of the Complaint to the Respondent.

On 10.01.2018, NIXI vide its email informed the Tribunal that with regards to the status of the consignment from the courier agency, the courier agency has replied that "The above



shipment return [RTO] to delhi due to **Office Reason: 014 - CONSIGNEE REFUSED TO ACCEPT**".

On 11.01.2018, the Tribunal acknowledged that the complaint along with the annexures have been duly served upon the respondent vide email dated 18.12.2017 of NIXI. Also vide email dated 26.12.2017, the Tribunal directed the Respondent to file its reply to the Complaint within 15 days from the receipt of the said email or the receipt of the hard copy of Complaint, whichever is later. Considering, despite best efforts of NIXI, the hard copy of the complaint could not be served upon the Respondent, the 15 days time period of the Respondent to file its reply to the complaint shall be calculated from 26.12.2027 (date of email of the Tribunal). In the said email Tribunal informed the parties that since the Respondent has failed to file its reply to the complaint within 15 days, the Tribunal will pass its award accordingly in due course.

On 17.01.2018, NIXI informed the Tribunal that the courier agency has returned the consignment containing the complaint and the annexures as the Consignee refused to accept the consignment.

The Tribunal feels that enough opportunities have been given to the Respondent and genuine efforts have been made to make it a part of this proceeding. Since it has failed to join the proceedings, or to file any response, the present award is passed on the basis of the pleadings and the documents, placed on record by the complainant and .IN Registry.

On perusal of the entire pleadings and the documents placed on record, the Arbitrator's finding is as under:-

D. Background of Complainant:

The following information is derived from the Complaint and supporting evidence submitted by the Complainant:

1. In 1994, the Complainant's Founder Jeff Bezos developed an innovative plan to sell a wide selection of books over the Internet. Amazon opened its virtual doors in July 1995, offering online retail store services featuring books via the web site www.amazon.com. In its first four weeks of operation, the company shipped products to its customers in all 50 states and in more than 45 other countries. On May 16, 1996, less than a year after its website launched, the Complainant was featured on the front page of *The Wall Street Journal*.



2. Since 1995, the Complainant has continuously used the AMAZON trade mark in connection with its products and services. Today, the Complainant is one of the world's largest online retailers, offering products and services to more than 100 countries around the globe.
3. The Complainant has expanded its retail offerings beyond books to a broad range of other products and services, including: Unlimited Instant Videos; MP3s & Cloud Players; Amazon Cloud Drive; Kindle; Appstore for Android; Digital; Games & Software; Audiobooks; Movies & Games; Electronics & Computers; Home, Garden & Tools; Grocery, Health & Beauty; Toys, Kids & Baby; Clothing, Shoes & Jewelry; Sports & Outdoors; and Automotive & Industrial.
4. The Complainant, through its website www.amazon.jobs provides a portal for aspirants to search for job opportunities with the Complainant, worldwide. The Complainant created the domain name AMAZON.JOBS on September 15, 2005.
5. The Complainant in the year 2015, became the most valuable retailer in The United States, surpassing Wal-Mart. The Complainant is ranked 11th most innovative company worldwide and ranked 12th as the World's most valuable brand by Forbes. The market cap of Amazon.com, Inc., as to today, is USD 475.4374 Billion.
6. To protect its right in the earlier well-known trade marks, the Complainant has filed trade mark applications in various jurisdictions of the world including India and also attained registrations in several jurisdictions of the world including but not limited to Australia, Canada, European Union, Hong Kong, South Africa, Singapore, United Kingdom and United States of America.
7. The Complainant also operates country specific websites for certain countries, which include India. In India, consumers can purchase products from www.amazon.in, which has been operating since the year 2013.
8. The Complainant's website www.amazon.com is ranked as the 11th most visited website in the world and 5th in the United States. The Complainant's website www.amazon.in is ranked as the 5th most visited site in India.
9. The Complainant has more than 310 million active customer accounts.
10. The revenues for the fiscal year 2016 were around \$135 billion, and the Complainant, since 1996 has extensively advertised its earlier well-known trade marks and since then have spent more than \$5. Billion on advertising alone, in the year 2016.



E. Background of Respondent:

Respondent in this proceeding is Logistics with the following contact details:

- Registrant Organization – AMAZON INDIA
- Address- Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka- 560055

Even after repeated opportunities, the Respondent has failed or neglected to file any reply to the Complaint within the given/stipulated time.

It is pointed out that the Respondent has provided insufficient and/or wrong details of address while registering the disputed domain name.

F. Parties' Contentions:

I. Complainant

The Complaint contends as follows:

a. The Respondent's domain name is identical to a name, trade mark or service mark in which the Complainant has rights:

- The disputed domain name is virtually identical to the earlier well-known trade mark AMAZON of the complainant inas much as the earlier well-known trade mark AMAZON is subsumed in its entirety in the disputed domain name. AMAZON is enriched in the minds of the members of trade and public and is also the prominent part of the Disputed Domain Name.
- The addition of the word 'CAREER' will not obviate the likelihood of confusion in the minds of the members of trade and public.
- In the addition, at the time that the Respondent registered the Diputed Domain Name, the earlier well-known trade mark AMAZON had already acquired the status of a well-known mark. The Respondent cannot claim or show any rights to Disputed Domain Name that are superior to AMAZON's rights, goodwill and reputation as established by way of documentary evidence which is being filed with the present Complaint.



b. The Respondent has no rights or legitimate interest in respect of the disputed domain name:

- The Complainant's trade mark AMAZON is a highly distinctive and well-known trade mark and hence there can be no plausible justification for the adoption of the disputed domain name by the Respondent but to ride upon the goodwill and reputation of the Complainant.
- Such adoption and use of the Disputed Domain Name is likely to confuse the members of the trade and public that the services being rendered, if any, under the Disputed Domain Name, are arising from the Complainant, which is not the case. Such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the earlier well-known trade mark of the Complainant.
- Further, the Respondent had never been legitimately recognized as AMAZON, which forms an imperative part of the Disputed Domain Name.
- It is difficult to conceive that Respondent did not know of the Complainant's earlier well-known trade mark and its services when Respondent registered the disputed domain name.
- The manner of illegal adoption and misuse of the Complainant's earlier well-known trade mark, the Respondent is knowingly, with intent of commercial gain, trying to mislead and divert the consumers of the Complainant to its website. Such adoption and use of the Disputed Domain Name is likely to tarnish the earlier well-known trade mark of the Complainant. Therefore, the Respondent does not have and /or cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered to make unlawful monetary gains.

c. The disputed domain name was registered and used in bad faith:

- The bad faith of the Respondent in registering the Disputed Domain Name can be simply established from the fact that the Respondent has registered the Disputed Domain Name by adopting the earlier well-known trade mark AMAZON.



- In addition to the above and more importantly, the Respondent is a habitual infringer of the Complainant's earlier well-known trade marks inasmuch as the Respondent has previously, in two occasions, adopted domain names AMAZON-JOBS.IN and AMAZON-HR.IN. Accordingly, INDRP complaints were filed against the Respondent for such adoption and vide order dated April 18, 2017 & September 26, 2017, respectively which were decided in favor of the complainant.
- The Respondent has created a website with the sole intention of misleading the members of trade and public that the website under the Disputed Domain Name belongs to or is created by the Complainant. The screen shot of the home page of the Complainant's website as well as the Respondent's website were attached.
- That an average person in India with an average knowledge about domain names may not be able to check the authenticity of the Respondent's website bearing the Disputed Domain Name. In any case, even if someone checks into the authenticity of the Respondent and its registration of the Disputed Domain Name, the Respondent has very cleverly registered its organization as AMAZON INDIA of the address Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka, 560055, which is similar to the address of one of the Indian subsidiaries of the Complaint. The extracts of the Complainant's subsidiary from the Ministry of Corporate Affairs were attached.
- That at time of filing the present complaint, a message "*account has been suspended*" is displayed when the Complainant logs on the website www.amazoncareer.in. However, on clicking on any part of the website, the Complainant is directed to the webpage attached within the complaint.
- That the Respondent is deliberately infringing the earlier well-known trade marks of the Complainant only with a view to tarnish and dilute the goodwill and reputation of the Complainant's earlier well-known trade marks A. Such acts of the Respondent are not only prejudicial to the rights of the Complainant but also to the members of trade and public at large.
- The activities of Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's Mark to improperly benefit the



Respondent financially, in violation of applicable trademark and unfair competition laws.

II. Respondent

Even after enough opportunities, the Respondent has failed to file any reply to the Complaint within the given time by the Arbitrator and therefore the matter is proceeded exparte.

G. Discussions and Findings:

The present proceedings have been conducted in accordance with Rule 8 (b) of the INDRP Rules of Procedure which states that *"In all cases the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case"*.

Rule 12 (a) of the INDRP Rules of Procedure provides that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed thereunder and any law that the Arbitrator deems to be applicable"*.

In the present proceedings, considering the fact that the Respondent has failed or neglected to file any reply to the complaint even after sufficient opportunities, the decision of the Arbitrator is based upon the statements and documents submitted by the Complainant. Also, the conduct of the Respondent for not filing any reply infers that it has accepted the contentions of the Complainant and intentionally has chosen not to rebut the same by filing any reply.

Having perused the submissions and documentary evidence placed on record, the Complainants have proved that they have statutory and common law rights in the mark "AMAZON" per se and in conjunction with others .

a. The Respondent's domain name is identical to a name, trade mark or service mark in which the Complainant has rights:

Upon perusing the submissions and substantial evidence placed on record by the Complainant, the Tribunal observes that:



- i. The Complainant has statutory and common law rights in the trade mark "AMAZON".
- ii. The Complainant holds registration of the trade mark "AMAZON" per se and also its formative marks with logo all over the world including in India.
- iii. The trade mark "AMAZON" has been used by the Complainant as its trade name and also to identify its services.
- iv. The Complainant is also the owner of various domain names incorporating the trade mark "AMAZON".
- v. The trade mark "AMAZON" has been extensively used and promoted in public by the Complainant and thus has gained considerable reputation and goodwill in the market.
- vi. The disputed domain name incorporates the registered trade mark of the Complainant in its entirety and has merely suffixed the term 'CAREER' after it.

In view of above, the Tribunal finds that disputed domain name of the Respondent is confusingly similar and identical to the mark of the Complainant since it is a settled law enunciated in various decisions under UDRP and INDRP that the addition of a generic term that is descriptive of the goods or services increases the confusing similarity of the domain name. Also if the disputed domain name contains Complainants' mark in entirety then mere addition of any specific top level domain, such as "in" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

b. The Respondent has no rights or legitimate interest in respect of the disputed domain name:

According to paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show Registrants rights or legitimate interest in the domain name for the purpose of paragraph 4 (ii)

- i. *before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;*



- ii. *the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*
- iii. *the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.*

In light of the above submissions of the Complainant and the documents produced on record by the Complainant, the Tribunal finds that the Respondent by adopting an identical domain name, is trying to associate itself with the Complainant with the mala fide intention to ride upon the goodwill of the Complainant. In line of various INDRP and UDRP cases, the Arbitrator concludes that the Complainant has made out a prima facie case that Respondent does not have legitimate rights or legitimate interest in the disputed domain name and thus the burden of proof shifts on the Respondent. The fact that the Respondent has not filed any response to rebut any of the contentions of the Complainant and there is no evidence to support any fact contrary to the submissions of the Complainant, it is clear that the Respondent is not carrying on any legitimate business under the disputed domain name and has never been commonly identified with the disputed domain name or any variation thereof prior to Respondent's registration of the disputed domain name.

Thus, the above facts and evidence establish that the Respondent has no right or legitimate interests in the disputed domain name under INDRP paragraph 4 (ii).

c. The disputed domain name was registered and used in bad faith:

After perusing the contentions of the Complainant and the evidence filed by it, the Tribunal finds the arguments of the Complainant persuasive. The tribunal would again like to point out that the above submissions of the Complainant have not been specifically rebutted by the Respondent, as such they are deemed to be admitted by it.

The Tribunal further finds that the Respondent has created a website on the disputed domain name with the intention to mislead and confuse the people at large. A bare perusal of the screenshots of the website of the Complainant and the Respondent, shows that the website of the Respondent is created to misguide the public and trade and make them feel that the said website is an offshoot of the Complainant. The fact that the said website contains the trade mark of the Complainant prominently displayed on the website clearly shows the mala fide

intentions of the Respondent. Further it is pertinent to mention that the said website also has a disclaimer regarding the Intellectual Property Rights vesting with the Complainant which clearly shows the *mala fide* intent of the Respondent to associate itself with the Complainant, when no such association exists.

Also the fact that the Respondent has registered its organization as AMAZON INDIA of the address Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka, 560055, which is similar to the address of one of the Indian subsidiaries of the Complainant indicate that the disputed domain name is registered and used in bad faith and only to mislead public at large and the Respondent has intentionally attempted to attract the public for commercial gain.

The tribunal further finds that the Respondent has no reasonable explanation for the registration and use of the disputed domain name except that it seeks to exploit the complainant's business to attract internet traffic to the respondent's website and to mislead customers to believe that the complainant and the respondent are associated with each other.

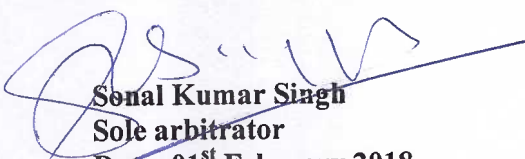
The Tribunal also finds that since the trade mark of the Complainants is registered worldwide and in India also from a very long time, it is not possible that the Respondent who purports to be in the same business would not have been aware of the Complainant and its business. The Tribunal on the basis of the evidence placed before it, also finds that the Respondent is a person who habitually registers domain names incorporating the trade marks of the Complainant without having any bona fide use or adoption.

For the reasons discussed above the Tribunal finds the disputed domain name has been registered and used in bad faith under paragraph 6 of INDRP Policy.

DECISION:

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

NIXI is hereby directed to transfer the domain name of the Respondent i.e. AMAZONCAREER.IN to the Complainant. In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this day of 01st February 2018.


Sonal Kumar Singh
Sole arbitrator
Date: 01st February 2018
