

दिल्ली DELHI

S 970356

VISHESHWAR SHRIVASTAV

SOLE ARBITRATOR
IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME
"amazonn.co.in"

AMAZON TECHNOLOGIES INC.
AND

HARI KISHORE

...COMPLAINANT

... RESPONDENT

AWARD

1. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued an email to the parties on 04/04/2012. However, while checking the records of the proceedings, this Tribunal found that there

was incomplete postal address of the Respondent provided in the WHO IS, only mobile number was provided in the complaint, because of which no hard copy of the complaint could be sent to the Respondent. This Tribunal contacted the Respondent Mr. Hari Kishore and asked him to provide his latest postal address so that the copy of the complaint can be served on him which was not complied by the Respondent. Again this Tribunal vide the order dated 10/04/2012 called upon the Respondent to cooperate and send his address latest by 13/04/2012 which was complied to so vide order dated 16/04/2012 this Tribunal directed the Complainants to send a copy of their complaint to the Respondents by Courier with a copy of DHL courier receipt to this Tribunal.

2. That compliance of the order was done by the Complainants vide their letter dated 16/04/2012 in which they sent a copy of a courier receipt of M/s Blue Dart Courier waybill No. 13510496414. Hence, this Tribunal vide order dated 16/04/2012 directed the Respondent to send their Response/



Statement of Defense to the Complaint by sending the soft copy by email and a hard copy by Courier so as to reach this Tribunal within 7 days after the receipt of the complaint which was duly received by the Respondent on 18/04/2012.

3. That this Tribunal finds that the Complainants have duly complied with the directions of this Tribunal and have served the Respondents on the address provided. This Tribunal notes that the Respondents have not sent their Statement of Defense or any communication till 30/04/2012 which shows that the Respondent does not want to participate in the present proceedings.
4. In view of the above this Tribunal vide order dated 30/04/2012 reserved the award and also gave liberty to the Respondent to send any communication on any date prior to the publication of the award so that suitable orders can be passed. This Tribunal notes that the Respondent has till date not cared to file any Statement of Defense till the date of signing of Award nor sent any communication and has chosen to remain silent.




5. In view of these peculiar facts and circumstances and in view of INDRP this Tribunal which requires adjudication of a controversy within 60 days, this Tribunal accordingly proceeds in the matter as per the material available before it.

CLAIM

6. The claim as put forward by the complainant is briefly as under:
- A. That the complainant's business was operated by its predecessor-in-interest Amazon.com which was started by Mr. Jeff Bezos, who as per the claimant is regarded as a pioneer in the use of the Internet as a medium of commerce. It is stated that Mr. Bezos devised and developed a plan to market books over the Internet and raised seed capital from his friends, relatives and select investors to get the business off the ground. It is also claimed that at the point of time the company had only two

employees Mr. Bezos and Mr. Sheldon Kaphan and they used to operate out of the garage of Mr. Bezos' rented home in Bellevue, Washington. It is claimed that from its inception, the goal of Amazon.com was to permit persons throughout the country and the world to access an Internet website that offered a wide selection of books and other merchandise and to purchase such goods "on-line." The complainants rely upon copies of a *Wall Street Journal* article dated May 16, 1996 is marked as **Exhibit C-1** and the Amazon.com timeline of growth and launch history marked as **Exhibits C-2** besides a collection of print articles about Amazon.com, respectively, detail the history of the company is marked as **Exhibit C-3**.

- B. It is claimed term "AMAZON.COM" was chosen as the name of the company in 1994 based upon the Amazon River in South America which is the biggest river in the world and one of the company's goals was eventually to offer the largest selection of book titles in the world. It is

stated the arrow in the trademark  implies that the complainant has everything from A to Z and also represents the smile on its customer's face. It is claimed that Amazon.com was one of the first corporations in America to make the name of its business identical to the Internet domain name from which its business operates such that anyone using the Internet to find its website need only remember the name of the company. Amazon.com obtained registration of the Internet domain name <amazon.com> in November of 1994. Reliance is placed upon the record of domain name ownership available on Network Solutions, Inc.'s website is marked **Exhibit C-4**.

- C. It is stated that since 1995, the business promoted itself solely under the name "AMAZON.COM" or "AMAZON" and rapidly became known under that name. Reliance is placed on a copy of a press release dated October 4, 1995, which records part of the early history of Amazon.com is marked as **Exhibit C-5**.

- D. It is also claimed that in Amazon.com's first 11 months of operation, sales grew by more than 30% each month and within the same time period, Amazon.com developed one of the largest catalogues of any book retailer in the world, with a total of 1.1 million titles available, which attracted customers from 65 countries outside the United States, and was viewed as one of the Internet's foremost retail sites.
- E. It is also claimed that by March 1997 the number of titles (books, CDs, videotapes, audiotapes and other products) offered by Amazon.com had risen to 2.5 million. In 1997, Amazon.com went public, completing an initial public offering of 3,000,000 shares at \$18 per share, giving it a market capitalization of \$54 million. Reliance is placed on copies of a Press Release dated March 24, 1997, detailing Amazon.com's filing of its registration statement with the SEC and May 14, 1997 announcing Amazon.com's Initial Public Offering, and a Press Release dated March 24, 1997 are marked as **Exhibit C-6 collectively**. It is also



claimed that in 1999, Time magazine named Mr. Bezos as Person of the Year, recognizing the complainant's success in popularizing online shopping. A copy of the cover page of the Time Magazine (1999) is marked as **Exhibit C-7**.

F. It is stated that as the Complainant's business expanded internationally, it began operating websites that use Country Code Top Level Domain Names that are specific to individual countries. For example, the Complainant has registered the following top level country specific domain names:-

Country name	Domain Name
USA	<amazon.com>
Canada	<amazon.ca>
China	<amazon.cn>
France	<amazon.fr>
United Kingdom	<amazon.co.uk>
Japan	<amazon.co.jp>
Germany	<amazon.de>
Italy	<amazon.it>
Spain	<amazon.es>

Reliance is placed on copies of the whois results for the aforesaid websites are marked as **Exhibit C-8**



Collectively. It is stated that on October 31, 2011 Amazon China rebranded their name to Amazon China, and a screenprint of the amazon.cn website is given as **Exhibit C 9.**

G. In addition to the above Indian domain names <amazon.co.in> and <amazon.in> were registered on December 31, 2003 and February 11, 2005 respectively and copies of Indian domain names whois results are marked as **Exhibit C-10 collectively** where it is claimed that the Complainant has also registered the following Indian domain names consisting of the word AMAZON:

Amazonfabrics.co.in	Amazonfabrics.in
Amazonindia.co.in	AmazonIndia.in
Amazonservices.co.in	Amazonservices.in
Amazonwireless.co.in	Amazonwireless.in
Amazonelectronic.co.in	Amazonelectronic.in
Amazonelectronics.co.in	Amazonelectronics.in
Amazonfabric.co.in	Amazonfabric.in
Amazoninternational.co.in	Amazoninternational.in
Amazonbook.co.in	Amazonbook.in
Amazonbooks.co.in	Amazonbooks.in
Amazonmobile.co.in	Amazonmobile.in
Amazonaws.co.in	Amazonaws.in



The whois result for the aforementioned domain names are marked as **Exhibit C-11 collectively**.


H. It is claimed that the Complainant also expanded its operations to include an even broader selection of products, offering a full line of goods ranging from tools and software to home electronics and toys. Some of the expansions for 2007 include Watches & Jewelry in the United Kingdom, Baby in Japan and Health & Personal Care (HPC) in Germany. The Complainant claimed to have used its tremendous growth to obtain other companies and to also create micro sites under the Amazon.com umbrella to better serve our customers based on some of its larger revenue-building categories. Some of Amazon category oriented micro sites include: Abebooks.com, (rare books and text books), Endless.com (shoes and handbags), Shopbop.com (high end apparel and accessories), SmallParts.com (tools for researchers and developers), MyHabit (private fashion designer sales), Audible (download audio books), IMDB (movie and entertainment

database), Zappos (shoes and clothing), Diapers.com (baby products), Soap.com (personal care products) and Fabric.com (sewing and fabric products). The Complainant place reliance on copies of the complainant's annual reports for 2009, 2010 and 2011 are marked as **Exhibit C-12** collectively.

- I. The Complainant claims to have continued to subsequently expand its selection to include many more products through its Marketplace listings on the Amazon.com Sites. Reliance is placed on copies of two Press Releases dated March 30, 1999 and September 30, 1999, announcing the launches of Amazon.com's Auctions Web site and its zSHOPS Web site are marked as **Exhibit C-13**.
- J. It is claimed that today, hundreds of thousands of world-class retail brands and individual sellers increase their sales and reach new customers by leveraging the power of the Amazon.com e-commerce platform.



K. It is also claimed that software developers derive value from Amazon.com through the Complainant's Amazon Web Services (AWS) business where the Complainant's developer customers are provided with access to in-the-cloud infrastructure services based on its own back-end technology platform, which developers can use to enable virtually any type of business. It is further claimed that some of the services offered by Amazon Web Services are Amazon Elastic Compute Cloud (Amazon EC2), Amazon Simple Storage Service (Amazon S3), Amazon SimpleDB, Amazon Simple Queue Service (Amazon SQS), Amazon Flexible Payments Service (Amazon FPS), and Amazon Mechanical Turk. It is also claimed that the AWS platform of infrastructure technology services has grown rapidly since the first service launched in March 2006, and it is now used by organizations around the world, from start-ups, to enterprises, to government agencies and as on date AWS has hundreds of thousands of customers in virtually every industry in over 190 countries.



L. It is claimed that the Complainant has been transformed from a small start-up company to one of the most successful Internet-based businesses in the world which can be evinced from the follow:

Year	Revenue(in US \$)
1996	15.7 million
1997	147.8 million
1998	610 million
1999	1.64 billion
2000	2.76 billion
2001	3.12 billion
2002	3.93 billion
2003	5.26 billion
2004	6.92 billion
2005	8.5 billion
2006	10.7 billion
2007	14.8 billion
2008	19.2 billion
2009	24.5 billion
2010	34.2 billion
2011	48 billion

It is further claimed that the Complainant reported net sales of \$9.86 billion in the first quarter of 2011 as compared with \$7.13 billion in the first quarter of 2010 and on September 16, 2011, it was reported that the Complainant became the Northwest's second \$100 billion dollar company. It is stated that over the years, the complainant has experienced similar substantial growth in its customer base and in the

number of persons it employs. It is claimed that in 1996, the Complainant had 180,000 customer accounts which increased to 1.5 million by the end of 1997, **and today stands at over 137 million active customer accounts.** The Complainant state that they began with two employees in 1995, and the number has grown to over 56,200 people worldwide. Reliance is placed on **Exhibit C-15 collectively** respectively.

M. It is claimed that from its inception in 1995, the Complainant has been used as the corporate name and the address of the principal Internet Web site, and the primary symbol and identifier of the goods and services that they offer and over the same period of time, the Complainant also has used the name and mark "AMAZON" and "AMAZON.COM" as a trademark to identify its goods and services. The trade marks **AMAZON, AMAZON.COM** and other trademarks comprising the word **AMAZON** are used and registered in numerous countries worldwide and

are well known and famous. Further, the Complainant's have obtained several registrations in various countries of the world including India and have, thus, secured its proprietary rights therein due to which the Complainant or its subsidiaries have also obtained registration of marks containing the term "AMAZON" in over 125 countries worldwide (including India), and they have given a long list which is as under:




Albania	Algeria	Angola
Antigua and Barbuda	Argentina	Armenia
Aruba	Australia	Austria
Azerbaijan	Bahamas	Bahrain
Barbados	Belarus	Belize.
Benelux	Bermuda	Bhutan
Bolivia	Bosnia and Herzegovina	Brazil
Brunei Darussalam	Bulgaria	Canada
Chile	China (People's Republic of China)	Colombia
Costa Rica	Croatia	Cyprus
Cuba	Czech Republic	Denmark
Dominican Republic	Ecuador	Egypt
El Salvador	Estonia	Ethiopia
European Union	Fiji	Finland
France	Georgia	Germany
Ghana	Gibraltar	Greece
Guatemala	Guernsey	Honduras
Hong Kong	Hungary	Iceland
India	Indonesia	Ireland
Israel	Italy	Jamaica
Japan	Jersey	Jordan
Kazakhstan	Kenya	Kuwait
Kyrgyz Republic	Laos	Latvia





Lebanon	Lesotho	Liberia
Liechtenstein	Lithuania	Macau
Macedonia	Malawi	Malaysia
Malta	Mauritius	Mexico
Moldova	Monaco	Mongolia
Montenegro	Morocco	Mozambique
Namibia	Netherlands Antilles	New Zealand
Nicaragua	Nigeria	North Korea
Norway	Oman	Pakistan
Panama	Papua New Guinea	Paraguay
Peru	Philippines	Poland
Portugal	Qatar	Romania
Russian Federation	Rwanda	Saint Kitts and Nevis
San Marino	Saudi Arabia	Serbia and Montenegro
Seychelles	Sierra Leone	Singapore
Slovak Republic	Slovenia	South Africa
South Korea	Spain	Sri Lanka
Sudan	Swaziland	Sweden
Switzerland	Taiwan	Tajikistan
Tanganyika (Tanzania Republic)	Tangier Zone	Trinidad And Tobago
Tunisia	Turkey	Turkmenistan
Uganda	Ukraine	United Arab Emirates
United Kingdom	United States	Uruguay
Uzbekistan	Venezuela	Vietnam
WIPO	Zambia	Zanzibar (Tanzania Republic)
Zimbabwe		

To buttress the above reliance is placed upon **Exhibit C-20**. It is further stated that the Complainant also owns several Amazon formative marks including Amazon Instant

Video (video streaming), Amazon Cloud Drive (cloud storage), Amazon Cloud Player (music downloading and storage), Amazon Basics (electronics accessories), Amazon Web Services (infrastructure web services), Amazon Prime (customer membership program), Amazon Shorts (short literary works delivered digitally), AmazonConnect (artist blogs posted next to that artist's product), Amazonmp3 (music downloads), and AmazonFresh (fresh groceries) which are given as under:

S. No.	Trademark		Registration No.	Dated	Published in TMJ No.
1	AMAZON.COM	9	876620	September 15, 1999	Mega – 3
2	AMAZON.COM	16	876621	September 15, 1999	1291
3	AMAZON.COM	28	876622	September 15, 1999	Mega – 3
4	AMAZON	1	916801	April 10, 2000	1327(S-I)
5	AMAZON	2	916802	April 10, 2000	1327(S-I)
6	AMAZON	3	916803	April 10, 2000	1327(S-I)
7	AMAZON	4	916804	April 10, 2000	1327(S-I)
8	AMAZON	5	916805	April 10, 2000	1327(S-I)
9	AMAZON	6	916806	April 10, 2000	1326 (S-I)
10	AMAZON	7	916807	April 10, 2000	1399
11	AMAZON	8	916808	April 10, 2000	1325(S-I)
12	AMAZON	9	916809	April 10, 2000	1327(S-4)
13	AMAZON	10	916810	April 10, 2000	1324(S-I)
14	AMAZON	11	916811	April 10, 2000	1324(S-I)
15	AMAZON	12	916812	April 10, 2000	1327(S-I)

16	AMAZON	13	916813	April 10, 2000	1327(S-I)
17	AMAZON	14	916814	April 10, 2000	1327(S-I)
18	AMAZON	15	916815	April 10, 2000	1324(S-I)
19	AMAZON	16	916816	April 10, 2000	1329(S-I)
20	AMAZON	17	916817	April 10, 2000	1327(S-I)
21	AMAZON	18	916818	April 10, 2000	1327(S-V)
22	AMAZON	19	916819	April 10, 2000	1327(S-I)
23	AMAZON	20	916820	April 10, 2000	1324(S-I)
24	AMAZON	21	916821	April 10, 2000	1324(S-I)
25	AMAZON	22	916822	April 10, 2000	1324(S-I)
26	AMAZON	23	916823	April 10, 2000	1324(S-I)
27	AMAZON	24	916824	April 10, 2000	1324(S-I)
28	AMAZON	25	916825	April 10, 2000	
29	AMAZON	26	916826	April 10, 2000	
30	AMAZON	27	916827	June 29, 2000	1327(S-V)
31	AMAZON	28	916828	April 10, 2000	1326(S-I)
32	AMAZON	29	916829	April 10, 2000	1326(S-I)
33	AMAZON	30	916830	April 10, 2000	1326(S-I)
34	AMAZON	31	916831	April 10, 2000	1383(S-I)
35	AMAZON	32	916832	April 10, 2000	1325(S-I)
36	AMAZON	33	916833	April 10, 2000	1326(S-I)
37	AMAZON	34	916834	April 10, 2000	1326(S-I)
38		16	936031	June 30, 2000	1302(S-II)
39		28	936032	June 30, 2000	Mega – 5
40	EAMAZON	16	947351	August11, 2000	1329-(S-I)
41	EAMAZON	9	947352	August11, 2000	1328 -(S-III)
42		27	947353	August 11, 2000	Mega – 5
43	AMAZON	35, 36, 37, 38, 39, 40, 41, 42	1238450	September 19, 2003	1327 (S-IV)
44	AMAZONDC	09, 42	1294982	July 8, 2004	1328
45	AMAZON VINE	35	1540045	March 14, 2007	1409

46	AMAZON LINKS	41	1544807	March 29, 2007	1409
47	AMAZONCONNECT	38, 41, 42	1547140	April 5, 2007	1410
48		41	1556619	May 8, 2007	1403
49	AMAZON ECS	9, 42	1562615	May 28, 2007	1404
50		41	1546332	April 3, 2007	1409
51		35	1546333	April 3, 2007	1409
52		35, 39	1622639	November 20, 2007	1426
53	AMAZONFRESH	35, 39	1622640	November 20, 2007	1425

Reliance is placed upon the copy of the Assignment Deed alongwith Form TM-24 and receipts are marked as **Exhibit C-21 collectively** and copies of registration certificates pertaining to the above registrations are marked as **Exhibit C-22 to C-74 respectively**.

N. It is stated that the Complainant's Sites are accessible to consumers in every location of the world that offers access to the Internet and each and every page of all of its Sites prominently displays the AMAZON.COM® or AMAZON® mark and for example some web pages are marked as **Exhibit C-75 collectively**.



O. It is also stated that the Complainant's reputation and valuable goodwill in the trade mark **AMAZON** and variations thereof have not come from sales alone and they have in order to promote its reputation, have taken numerous steps through the years including wide promoted, publicized and advertised in print and electronic media, including newspapers, magazines and its corresponding websites. It is stated that the expenditures on paid advertising totaled \$890 million in 2010; \$593 million in 2009; \$420 million in 2008; \$306 million in 2007; \$226 million in 2006; \$168 million in 2005; \$141 million in 2004; \$122 million in 2003; \$125 million in 2002; \$138 million in 2001; \$35.2 million in 2000; \$55.8 million in 1999; \$28.7 million in 1998; \$3.4 million in 1997 and \$723,000 in 1996. All of this advertising made prominent use of the **AMAZON.COM®** or **AMAZON®** marks. Besides Amazon.com has run print ads in over 100 publications, including internationally available publications such as *Newsweek, The New York Times, Forbes, The Wall Street*

Journal International, The International Herald Review, and Time Magazine. Reliance is placed on **Exhibit as C-78 collectively and Exhibit C-79 collectively.**

- P. It is emphatically stated that the Complainant has the honor of holding the world records for having the largest online store and has been listed in the Guinness Book of World Records, details thereof as under: -

S.No.	Year	Page No	Particulars
1	2001	125	Biggest Online Shop - Amazon.com is the world's premier online music service provider, hosting 208,000 songs by over 35,000 artists available for download.
2	2002	174	One For the Books - Amazon.com, founded in 1994 by Jeff Bezos (USA), opened its virtual in July 1995 and has now sold products to more than 13 million customers in over 160 countries, making it the largest online bookshop. It has a catalog of 4.7 million books. CD's and videos, including titles currently out of print. Although there are three million books actively in print, no one could build a bookstore large enough to hold them. The largest known

			conventional bookstore large enough to hold them. The largest known conventional bookstores carry 170,000 titles. when Bezos started this business, he worked out of an office from his garage in Seattle, Washington - wrapping book orders himself and delivering them to the post office in the family car.
3	2007	146	Amazon.com, founded in 1994 by Jeff Bezos (USA), opened its virtual doors in July 1995 - principally as an online bookstore - and has now sold products to more than 13 million customers in over over 160 countries. Its catalog of 4.7 million books, CDs, videos, and more makes it the largest online store in the world.

Reliance is placed on **Exhibit C-84 collectively**.

Q. It is alleged that the domain name Amazonn.co.in was earlier registered in the name of Mr. Kalyan Deepak (hereinafter referred to as "former owner/registrant) on August 8, 2011. The whois details of the same at that time are as under:-



Domain ID:D5221449-AFIN
Domain Name:AMAZONN.CO.IN
Created On:08-Aug-2011 21:20:41 UTC
Last Updated On:08-Aug-2011 21:20:42 UTC
Expiration Date:08-Aug-2012 21:20:41 UTC
Sponsoring Registrar:Directi Internet Solutions Pvt. Ltd. dba
PublicDomainRegistry.com (R5-AFIN)
Status:CLIENT TRANSFER PROHIBITED
Status:TRANSFER PROHIBITED
Registrant ID:DI_17338386
Registrant Name:kalyan deepak
Registrant Organization:directi
Registrant Street1:mumbai

There was no corresponding website at that time and the message displayed is copied as under:-

Google Oops! Google Chrome could not find
www.amazonn.co.in

Did you mean: www.amazon.com

Additional suggestions:

- Go to www.amazonn.biz
- Search on Google: amazon co

Google Search

[Google Chrome Help - Why am I seeing this page?](#)

©2012 Google - [Google Home](#)

R. It is stated that the Complainant after learning about the registration of the domain name in the name of the former owner/registant, through its attorneys sent an email dated

September 14, 2011 to the former owner/registrant at the email id kalyan1337@gmail.com calling upon him to transfer the domain name amazonn.co.in to the Complainant. Reliance is placed on **Annexure: C-91**. It is also alleged that after the service of the demand notice instead of transferring the said domain name in the name of the Complainant, the personal details of the whois have been malafidely changed while the registrant Id (DI_17338386) remains the same.

ORDER

7. This Tribunal has given an anxious consideration to the allegations of the complainants and has seen that the Respondent despite being aware of the present proceedings and despite being called upon by this Tribunal to give his Statement of Defense chose not to give any and hence the allegations of the complainants remain un rebutted.



8. In view of the undisputed weighty evidence of the Complainants this Tribunal holds that the respondents did not have any claim on the domain name <amazonn.co.in> hence this Tribunal directs the Registry to transfer the domain name <amazonn.co.in> to the complainants. The Complainants too are free to approach the Registry and get the same transferred in their name. The original copy of the Award is being sent along with the records of this proceedings to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records .

Signed this 4th day of May 2012.

NEW DELHI
04/05/2012



V. SHRIVASTAV
ARBITRATOR