



हरियाणा HARYANA

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**RANJAN NARULA**  
**ARBITRATOR**

**Appointed by the .In Registry - National Internet Exchange of India**

In the matter of:  
**The Whitaker Corporation**  
4550, New Linden Hill Road  
Suite 450, Wilmington  
DE 19808 - 2952  
USA

Through

It's Advocate/Authorised Representative

Mr. Jacob Kurian of M/s. Kurian And Kurian.

**.Complainant**

**Ganesha**

Bangalore - 560001

Karnataka State

India

Email: vinayakvahoo@gmail.com.

**.Respondent**

## AWARD

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

The Complainant is The Whitaker Corporation, 4550, New Linden Hill Road, Suite 450, Wilmington, DE 19808 - 2952, USA.

The Respondent is Ganesha, Bangalore - 560001, Karnataka State, India.

### **2. The Domain Name, Registrar & Registrant:**

The disputed domain name is [www.ampnetconnect.in](http://www.ampnetconnect.in). The Registrar is Sree Jain Infotech dba (R58-AFIN). The registrant is Ganesha (Respondent).

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

The Complainant filed this complaint to the .In Registry and .In Registry appointed "Ranjan Narula" ("The Arbitrator") as Sole Arbitrator under clause 5 of its policy. The Arbitrator submitted his statement of acceptance and declaration of impartiality and independence on 5<sup>th</sup> May 2009 then the complaint was produced before the Arbitrator on 11<sup>th</sup> May 2009. The notice was issued to the Respondent on 12<sup>th</sup> May 2009 on his email address with a deadline of 10 days to submit his reply to the arbitration but no response was filed by the Respondent. On 27<sup>th</sup> May 2009, the Arbitrator therefore sent a notice to the Respondent that matter would be decided based on the documents on record. It may be pertinent to mention that prior to forwarding the complaint to the arbitrator, the NIXI had made attempts to serve the complaint upon the Respondent. However, it appears that the postal address provided by the Respondent at the time of registration was incomplete. No response was received by NIXI (from the Respondent) to the communication forwarded via email.



#### 4. Factual Background:

The Complainant, adopted and started use of the trade mark 'AMP by itself and/or through its Licensees, in the USA, from around the 1940's and in India from around the year 1956. From the year 2000, the Complainant adopted and started use of the trade mark 'AMP NETCONNECT' as a word mark and logo in India and many countries around the world.

The Complainant is the registered proprietor of the following Trade Marks in various forms in India under the Trade Marks Act, 1999:

Trademark	Registration No.	Filing Date	Class
AMP	555039	24-Jul-1991	9
AMP	555037	24-Jul-1991	7
AMP	555038	24-JUL-1991	8
AMP	174037	19-Apr-1956	8
AMP NETCONNECT(D)	917456	11-Apr-2000	9
AMP NETCONNECT(D)	1237419	17-Sep-2003	37 & 42

#### 5. Parties Contention:

##### (1) Complainant

- 1) The complainant has stated that it has licensed to used trade marks 'AMP' and 'AMP NETCONNECT' to Tyco Electronics Corporation India Pvt Ltd., (hereinafter referred to as 'TE India'). TE India has been carrying on in India the business of importing, manufacturing and marketing electrical, electronic and optical connection components and devices and systems used for networking in computers, (which goods are hereinafter collectively referred to as the 'Said Goods') since year 1993, under the Complainant's trade marks 'AMP' and 'AMP NETCONNECT' (hereinafter referred to as said trade marks). The goodwill in the said trade marks vests exclusively in the Complainant. TE India was originally incorporated in India on December 7, 1993 as AMP India Pvt. Ltd. and



thereafter on July 1, 1998 changed its name to AMP India Ltd. and finally on February 25, 2000 changed its name to Tyco Electronics Corporation India Pvt. Limited. The Complainant has filed copies of the certificate of incorporation evidencing the above name change. It has also filed relevant portions of the License Agreement executed in favour of TE India for use of the Complainant's Said Trade Marks, in India.

- 2) The Complainant claims to have acquired considerable goodwill and reputation in the said trade marks, through use in India and in many countries all over the world. It has filed sample copies of invoices for sale of goods under the trade marks.
- 3) The Complainant also claims to be the registered proprietor of the trade marks 'AMP' and 'AMP NETCONNECT' in many countries around the world. Copies of the registration certificates have been filed by the Complainant.
- 4) The Complainant claims to be the sole and exclusive proprietor of the said trade marks, including the trade mark "AMP NETCONNECT" in India and around the world.
- 5) The Complainant has submitted that it enjoys immense reputation and goodwill that it has built up and acquired over the years, among the business circles and public in connection with the high quality products sold under the said trade marks. The superior and consistent quality of the said goods sold under aforementioned trade marks have created an ever-increasing popularity and demand for the Said Goods bearing the Said Trade Marks. The Complainant submits that sales in India have increased from 28 crores in the year 2000 to 2600 crores in the year 2008 with a steady and substantial increase each year. The Complainant has further submitted that owing to the quality goods sold under the said trade marks, the marks have become distinctive and exclusively associated with the Complainant's business and products.
- 6) The Complainant has submitted that it was shocked to find that the Registrant has registered the domain name 'ampnetconnect.in' with the National Internet Exchange of India (.IN REGISTRY). Further, the Disputed Domain Name in full or part, has not been used by the Registrant prior to the date of registration of the Disputed Domain Name and thereafter also the Registrant has never used the Disputed Domain Name as a trade mark in connection with any goods or services. The Respondent's adoption of the mark is in 'bad faith' and has prayed for transfer of the domain name and the cost of proceedings.



(2) Respondent

The Respondent did not reply to the Complainant's contentions. It was therefore proceeded ex-parte. It may be apt to mention that the Respondent had provided the wrong address at the time of domain registration which itself contravenes the terms and conditions for registrants laid down by NIXI. It has been specifically provided that "A Registrant's wilful or grossly negligent provision of inaccurate, false or unreliable information, and in the event the registrant wilfully or grossly neglects to promptly update information provided to Registrar shall constitute a material breach of the Registrant's Registration Agreement with the Registrar and be a basis for cancellation of the Registered Name, and any other action under the relevant laws of India".

**Discussion and Findings:**

In view of the above submissions and voluminous documents provided in support of use and reputation of the mark AMP NETCONNECT, I am inclined to agree that the Complainant has established better and prior rights in the domain 'ampnetconnect'. The Complainant has also satisfied the three conditions as per paragraph 4 of the policy:

- (1) the Respondent's domain name is identical or confusingly similar to the trademark in which he has rights;
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered in bad faith.

It may be mentioned that since the Respondent did not file any response and rebut the contentions of the Complainant, it is deemed to have admitted the contentions of the Complaint. Thus prima facie case has been made out by the Complainant in its favor. Further it has established prior rights in the Trade Mark AMP NETCONNECT. As, the Respondent has neither used the domain name nor established its legitimate rights or interests in the domain name, an adverse inference as to their adoption of an identical domain name has to be drawn. The domain name 'ampnetconnect' is so obviously



identified with the Complainant's product or services that its adoption by the Respondent suggest 'opportunistic bad faith'. The Respondent's bad faith is further exemplified by him providing incomplete and wrong contact details at the time of domain registration which constitutes material breach of Registrant's/Respondent's Registration agreement with the Registrar and can itself form basis for cancellation the domain name.

**7. Decision:**

For all the reasons discussed above, the Arbitrator orders that the domain name <[www.ampnetconnect.in](http://www.ampnetconnect.in)> be transferred to the Complainant.



**RANJAN NARULA**  
**SOLE ARBITRATOR**  
**NIXI**  
**INDIA**  
**15 June, 2009**