



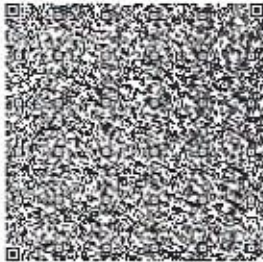
सत्यमेव जयते

INDIA NON JUDICIAL

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e-Stamp

Certificate No.	: IN-DL62774530719079P
Certificate Issued Date	: 25-Mar-2017 04:09 PM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL92130326067796463549P
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
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

Vs.

JACK WORLI
SHOP NO. 14, VICEROY HOUSE,
PITAMBER LANE, MAHIM (WEST),
MUMBAI, MAHARASHTRA 400016, IN

...Respondent

Statutory Alert:

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A. THE PARTIES:

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

The Complainant has authorized M/s. Singh & Singh Lall & Sethi, D-17, South Extension- II, New Delhi- 110049, India, as its authorized representative.

The Respondent in this proceeding is Jack Worli, Shop No. 14, Viceroy House, Pitamber Lane, Mahim (West), Mumbai, Maharashtra- 400016, India, Phone: +91.9999007564, Email: naimwekking@gmail.com.

B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT:

The disputed domain name is **FLASHAMAZONSALE.IN**, and it is registered with GoDaddy.com, LLC (R101-AFIN) as per the WHOIS database.

C. PROCEDURAL HISTORY:

I was appointed as the Arbitrator by the .IN Registry to adjudicate upon the complaint of the Complainant regarding the dispute over the domain name FLASHAMAZONSALE.IN.

.IN Registry has supplied the copy of the complaint and the annexures to me.

The Complainant has filed various documents as annexures in support of their contentions. A copy of the complaint along with the annexures has been served upon the Respondent via email. The hard copy of the complaint was also sent to the respondent but the same could not be served due to wrong address. The respondent was directed to provide correct address, but he did not comply with the directions.

No reply has been filed by the Respondent to the complaint, despite of the fact that several opportunities have been given to him. I have perused the record and annexures/ documents. Apropos of the material on record before me, this award is passed.

D. FACTUAL BACKGROUND:

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

COMPLAINANT:

1. The complainant has submitted various facts in support of its complaint. Some of the important facts are reiterated herein:
 - a) In 1994, the Complainant's Founder Jeff Bezos developed an innovative plan to sell a wide selection of books over the internet via the web site www.amazon.com.
 - b) The Complainant, since 1995, has continuously used the AMAZON and AMAZON.COM trademarks (referred to as the "**earlier well-known trademarks**" in the complaint) in connection with its products and services. According to the Complainant, they are one of the world's largest online retailers, offering products and services to more than 100 countries around the globe. Going forward 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; Audio books; Movies, Music & Games; Electronics & Computers; Home, Garden & Tools; Grocery, Health & Beauty; Toys, Kids & Baby; Clothing; Shoes & Jewellery; Sports & Outdoors; and Automotive & Industrial. It not only offers products and services through www.amazon.com, but also from country specific sites for Australia, Brazil, Canada, France, Germany, India, Italy, Japan, Mexico, the Netherlands, Spain, and the United Kingdom.
 - c) In addition to the above, since 2001, the Complainant has used the earlier well-known trademarks AMAZON and AMAZON.COM for retail services in the field of motor vehicles and parts and accessories thereof, and can be found at the URL's www.amazon.com/auto and www.amazon.com/vehicles.
 - d) To protect its rights in the earlier well-known trademarks, the Complainant has filed trademark applications in various jurisdictions of the world including India, and by virtue of the said valid and subsisting registrations, the Complainant has the exclusive right to use the aforementioned trademarks.
 - e) The Complainant has 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.
 - f) The Complainant also operates country specific websites for certain countries, which include India. In India, the consumer can purchase products from www.amazon.in, which has been operating since the year 2013.

- g) The Complainant's website www.amazon.com is ranked as the 6th most visited website in the world, and 4th in the United States and ranked 21 in India by Alexa. The Complainant further submits that the Complainant's website www.amazon.in is ranked as the 5th most visited site in India.
- h) The Complainant, since 1996, has extensively advertised its earlier well-known trademarks and since then has spent more than \$3.8 billion in 2015 alone.
- i) The Complainant's earlier well-known trademark AMAZON has been advertised extensively, both in print and media, in India and across the world. Further in India, the Complainant has also become famous for its "Apni Dukaan" campaign and "Aur Dikhao" campaign.

RESPONDENT

1. The Respondent in this proceeding is Jack Worli, Shop No. 14, Viceroy House, Pitamber Lane, Mahim (West), Mumbai, Maharashtra- 400016, India, Phone: +91.9999007564, Email: naimwekking@gmail.com.
2. As per the information and belief based upon the WHOIS search database available on the INDRP website, the Respondent is the Registrant of the Disputed Domain Name, FLASHAMAZONSALE.IN.
3. The Respondent has neither filed its reply to the complaint of the Complainant within the stipulated time nor communicated anything on the complaint till the date of this award.

E. PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondents has no rights, claims or legitimate interest in respect of the Disputed Domain Name; and
3. The Disputed Domain Name was registered and is being used in bad faith.

RESPONDENT

As stated above also, the Respondent has not filed any response/submissions to the Complaint despite being given an adequate notice and several opportunities by the Arbitrator, and thus has not rebutted the contentions of the Complainant.

F. DISCUSSIONS AND FINDINGS:

Rule 8 (b) of the INDRP Rules of Procedure provides 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"*.

Therefore, the proceedings have been proceeded with in accordance with the aforementioned provision of the INDRP Rules of Procedure.

As mentioned above, enough opportunities have been provided to the Respondent to file a reply but no response has been received. Therefore, the Respondent has been proceeded against *ex-parte* and the arbitration proceedings have been conducted in the Respondent's absence.

Rule 12 (a) of the INDRP Rules of Procedure provided 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 there under, and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence submitted before the Tribunal and inferences drawn from the Respondent's failure to reply.

Having perused the submissions and documentary evidence placed on record, the Tribunal is of the view that the Complainant has satisfied all the three conditions outlined in paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.:

- i) the Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) the Respondent's domain name has been registered or is being used in bad faith.

G. BASIS OF FINDINGS:

1. The Disputed Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights:

The Complainant submits that the Disputed Domain Name is virtually identical to the Complainant's registered trade mark and domain name inasmuch as the earlier well-known trademark AMAZON of the Complainant is subsumed in its entirety in the Disputed Domain Name FLASHAMAZONSALE.IN. In addition of the words 'FLASH' and 'SALES' portrays to the visitors of the website that the website under the Disputed Domain Name is an offshoot of the Complainant, exclusively for selling goods which are on sale for a short period of time, which is not the case.

The complainant has relied upon the cases of Abott Laboratories, American Express, Hewlett Packards, Volkswagen under ICANN policy to show that mere addition of a descriptive word to a registered mark or addition of a word which relate to the business of the Complainant are not sufficient and/or do not negate the similarities between the Disputed Domain Name and the trademarks of the Complainant. The note of the same has been taken by the Tribunal.

The Complainant further submits that at the time the Respondent registered the Disputed Domain Name, the Complainant had not only been using its earlier well-known mark as a trademark/ trade name and as part of its domain name, but also had trademark registrations in respect of the earlier well-known mark. Furthermore, at the time the Respondent registered the Disputed Domain Name, the Complainant's earlier trademark had already acquired the status of a well-known mark.

The Complainant further states that the Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to Complainant's rights, goodwill and reputation as established by way of documentary evidence, which has been filed with the complaint.

Looking into the facts of the case, the Tribunal agrees with the submission of complainant that mere addition of a descriptive word to a registered trademark or addition of a word, which relate to business of complainant are not sufficient and/or do not negate the similarities between the disputed domain name and Trademark of the complainant.

The above submissions of the Complainant have not been rebutted by Respondent, as such they are deemed to be admitted by him.

It is therefore concluded that the disputed domain name of the Respondent is confusingly similar and identical to the mark of the Complainant.



2. The Respondent has no rights or legitimate interests in the respect of the Disputed Domain Name:

According to paragraph 7 of the .IN Dispute Resolution Policy, the following circumstances show the Registrant's rights or legitimate interest in the domain name for the purpose of para 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.*

The Complainant contends that the Complainant's trade mark AMAZON being a highly distinctive and well-known trade mark, there can be no plausible justification for the adoption of the Disputed Domain Name. It further contends that such adoption and use of the domain is likely to confuse the members of trade and public that services under the Disputed Domain Name are arising from the Complainant, which is not the case, and such adoption and use is likely to dilute the brand equity of the earlier well-known trademarks of the Complainant.

The Complainant submits that the Respondent is not commonly known by the Disputed Domain Name and by the manner of adoption and the Respondent is clearly trying to associate himself with the Complainant with the *malafide* intention to ride upon the immense goodwill and reputation of the Complainant's earlier well-known trade marks to gain undue monetary benefit. It further submits that such adoption is against the INDRP, and therefore, the Respondent does not have and / or cannot be permitted to own or even be considered to have any legitimate rights or interest in the Disputed Domain Name as the same has been registered only to make unlawful gains.

The Complainant further submits that it is clear that the Respondent has not made any legitimate or fair use of the Disputed Domain Name.

The above submissions of the Complainant have not been rebutted by the Respondent, as such they are deemed to be admitted by him. Even otherwise the facts presented by the complainant establish that the Respondent has no right or legitimate interest in the Disputed

Domain Name FLASHAMAZONSALE.IN as the Respondent is not making a *bona fide* offering of goods or services, and is not commonly known by the Disputed Domain Name, and is not making a legitimate or fair use of the domain name under INDRP paragraph 4(ii).

In the light of the above, it is therefore concluded that the Respondent has no right or legitimate interest in respect of the disputed domain name.

3. The Registrant domain name has been registered or is being used in bad faith:

The Complainant submits that 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 Complainant's earlier well-known trademark AMAZON.

The Complainant further submits that the Complainant has created a website with an 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 inasmuch as, on logging on to the Respondent's website www.flashamazonsale.in, the visitors are re-directed to the URL <http://whatsapp.official-spin.com/?name=giftcardtoday.com>. The visitors are then required to spin a wheel to win an iPhone, which is part of an offer which originates from complainant. The screenshot shooting abovementioned redirection has been annexed by the complainant and the note of the same has been taken by the Tribunal.

The Complainant further submits that the Respondent has not only adopted the Disputed Domain Name but is also using the Complainant's well-known trademark AMAZON. The said adoption and misuse of the Complainant's well-known trademark AMAZON amounts to trademark infringement. It is submitted that the Respondent was well aware of the immense goodwill and reputation of the Complainant worldwide and the fact that the Respondent has chosen to adopt and use the Disputed Domain Name which contains Complainant's earlier well-known trademark AMAZON to try and pull scams shows bad faith on part of the Respondent. The complainant has relied upon **June Online Servs., Inc. v. Nelson**, FA0402000241972, wherein it was held that the use of the disputed domain name for fraudulent purposes constituted bad faith.

The Complainant has further relied upon **Amazon Technologies, Inc. v. Souders**, FA 1503001610740, **Veuve Clicquot Ponsardin v. The Polygenix Group Co.**, WIPO Case No. D2000-0163, **Playboy Enterprises International, Inc. v. Hector Rodriguez**, WIPO Case No. D2000-1016, **Bennett Coleman & Co. Ltd. v. Steven S. Lalwani** (Case no. D 2000-



0014) and **Bennett Coleman & Co Ltd v. Long Distance Telephone Company** (Case no. D 2000-0015) decided by WIPO in support of its submission.

The Complainant has also relied upon the case of **Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.** [2004 Supp (2) SCR 465]. The Tribunal has taken note of all the cases submitted by the complainant. Tribunal agrees with the submission of the complainant that the activities of the respondent in the present case, not only cause prejudice to the complainant, but also to the members of the trade and public at large.

On the basis of the Complainant's submissions, evidence provided in support of it and in absence of any reply by the respondent, the Tribunal has come to the conclusion that the disputed domain name was registered in bad faith.

H. DECISION:

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

The Respondent has registered and used the disputed domain name in bad faith. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <FLASHAMAZONSALE.IN> to the Complainant. The Award is accordingly passed on this day of 3rd April, 2017.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 3rd April, 2017