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Account Reference	: IMPACC (IV)/ dl859003/ DELHI/ DL-DLH
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Purchased by	: PANKAJ GARG
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: PANKAJ GARG
Second Party	: Not Applicable
Stamp Duty Paid By	: PANKAJ GARG
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**BEFORE SHRI PANKAJ GARG, SOLE ARBITRATOR,
AT NEW DELHI**



**COMPLAINT NO. INDRP
CASE NO. 1370/2021**

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AMAZON TECHNOLOGIES INC.

...COMPLAINANT

VERSUS

AMAZON FIRE

.....RESPONDENT

CORAM:

HON'BLE MR. PANKAJ GARG

AWARD

16.06.2021

The matter is taken up today by this Tribunal for passing an award on merits in terms of the notice issued by this Tribunal on 09.06.2021.

The service of the hard copy as well as the soft copy of the Complaint and the Notice of this Tribunal upon the Respondent has already been completed.

The Respondent filed a reply/counter dated 12.04.2021 on the Complaint, thereafter the Complainant filed its rejoinder dated 29.04.2021.



On 9.06.2021, the matter was listed for 16.06.2021 for passing an Award.

Considering the circumstances that the award has to be passed in time bound manner, within 60 days from the date of initiation of the Arbitral Proceedings, an award on merits is passed today on 16.06.2021.

CONCLUSION FOR AWARD

As per the material placed on record and the averments made in the complaint and also in the annexed evidences and documents, which have been proved in evidence, it is evident that the domain name www.amazonfire.co.in is a well known domain name. The same is known to most of the people of the entire world. No one is entitled and can be authorized to use the same either as a domain name or as a trademark in relation to the similar or dissimilar business, as the said domain name/trade mark has got a unique goodwill and reputation.

In nutshell the case of the Complainant is that the impugned domain name is being illegally used by the Respondent giving an injury to the Complainant. It is also stated by the Complainant that various Trade Marks in the name of “AMAZON”/ “AMAZON FIRE” have already been registered in India as well, since 1999 and being continuously used by the Complainant.



Contrary to this the case of the Respondent is that the impugned domain name is being used by the Respondent since 2013. It is claimed by the Respondent that the name “AMAZON” was chosen out of fascination and choice rather than with the intention to create any confusion or any vested interests. It is also submitted by the Respondent that the Respondent is not *online trader* and do not have any product to offer to the general public – “*Online Customer*”. Respondent further submitted that till date not a single rupee is generated by *online trading*. It is also claimed by the Respondent that they are the system integrators and undertake contracts for fire protection systems.

After considering the rival submissions this Tribunal reaches to a conclusion that the dispute before this Tribunal is *qua* the impugned domain name for its present use.

It is an undisputed fact that the Complainant is the legitimate owner of the Trade mark “AMAZON” / “AMAZON FIRE” and has acquired ownership rights in terms of the provisions of Section 17 of Trade Marks Act, 1999, even if it is considered that the Respondent is using the impugned domain name which includes the word “AMAZON”, since 2013, then also the Respondent cannot have a better title over the names “AMAZON” / “AMAZON FIRE”. This Tribunal is jurisdictionally bound to consider only the dispute of present domain name. And in the present circumstances under the

impugned domain name word “AMAZON” is already a



registered Trade Mark under the ownership of the Complainant and one particular fact can also not be ignored that Respondent since 2013 when the Domain name “AMAZON FIRE” was registered for Respondent, the Respondent has not taken any steps against Complainant, thus Respondent can be said to be estopped.

This Tribunal also doesn't concur with the other submission of the Respondent that the “AMAZON” is a fascinating word and prompted the Respondent to use it.

On this issue, this Tribunal is of a view that the question whether the “AMAZON” is a generic word or not is not within the jurisdiction of this Tribunal since, the impugned domain name consists of a word “AMAZON” which is already under the legitimate ownership of Complainant in terms of the provisions of Trade Marks Act, 1999. The “AMAZON” is now even for the Complainant is no more a generic word and has gained the worldwide business existence, whenever word “AMAZON” is used in business world it means it is of Complainant. Although “AMAZON” as a generic word, be a typically *Green Parrot found in Central and South America, a member of legendary race of female warriors believed by the ancient Greeks or a River in UK*, may be for person not using it in the business activities, but here if it is used by anyone in the business world, it carries with a specific significance with the Complainant only, thus, in the opinion of this Tribunal



“AMAZON” is not a generic word in the entire business world. The Respondent has also in its reply admitted to rename the impugned Domain name by adopting a new name and for this prayed for a period of 3 Calendar months from 12.04.2021 i.e. 31.07.2021.

This Tribunal after considering all the facts and circumstances consider that already more than 2 months from 12.04.2021 has been gained by the Respondent for renaming the impugned Domain name, but till today, the Respondent failed to rename it, therefore, the request of the Respondent for allowing the time for renaming the impugned name is hereby declined.

In the opinion of this Tribunal, the impugned domain name is a trademark backed domain name and it not only violates the provisions of the Trade Marks Act, 1999 but also violates Clause 4 of the INDRP policy issued by the NIXI. The impugned domain name conflicts with the legitimate rights and interests of the Complainant on the following premises:-

- a) The impugned domain name is identical and confusingly similar to a named trademark as well as a service mark, in which the Complainant has a right;



- b) Respondent has no right or legitimate interest in respect of the impugned domain name;

- c) The Respondent impugned domain name has been registered and is being used in bad faith by using the registered trademark of the Complainant and giving a pecuniary loss to the Complainant by using the name and trademark of the Complainant.

The evidences filed by the Complainant have been proved by the Complainant, therefore, the statements and documents filed by the Complainant are accepted as correct deposition. In view of the facts and settled law, with the deposition and documents of the Complainant placed before this Tribunal, the Complaint deserves to be allowed for an Award on merits in favour of the Complainant, as prayed in the Complaint by the Complainant.

DECISION

- a) In view thereof, it is directed that the domain name www.amazonfire.co.in be transferred in favour of the Complainant by the Registry. As a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name www.amazonfire.co.in or any other deceptively similar trademark, which may amount to infringement of Complainant registered trademark and also from doing any



other thing, which is likely to create confusion and deception with the goods/services of the Respondent for any connection with the Complainant.

- b) The Complaint is allowed in the above terms.
- c) National Internet Exchange of India (NIXI) is advised to take incidental or ancillary action involved in the transfer of the domain name, as directed.
- d) A cost of Rs. 75,000/- is imposed upon Respondent to be paid to Complainant for inordinate delay in renaming/surrendering the impugned Domain name.




(PANKAJ GARG)
SOLE ARBITRATOR

Place: New Delhi

Date: 16th June, 2021