



दिल्ली DELHI

AB 871228

**ARBITRATION AWARD**

**.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF  
INDIA**

**.IN domain Name Dispute Resolution Policy**

**INDRP Rules of Procedure**

**IN THE MATTER OF:**

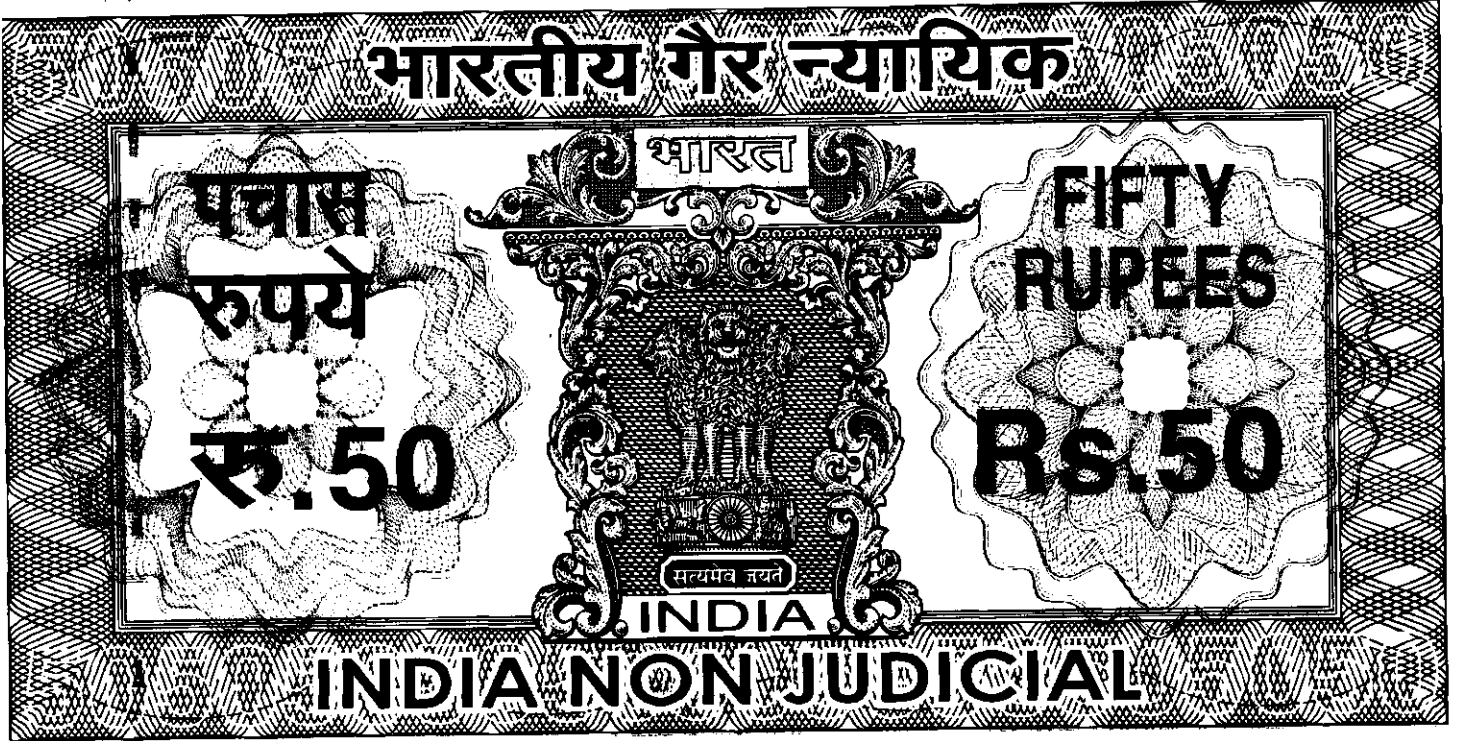
Amazon Technologies Inc,  
PO Box 8102, Reno, Nevada 89507  
U.S.A.

..... Complainant

**VERSUS**

Mr. Harikishore  
Hyderabad,  
Andhra Pradesh  
India

..... Respondent



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AB 871229

1. THE PARTIES:

The Complainant in this administrative proceeding is Amazon Technologies Inc., PO Box 8102, Reno, Nevada 89507, U.S.A.

The Respondent is Mr. Harikishore, Hyderabad, Andhra Pradesh-500085, India.

2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <WWW.AMAZN.CO.IN> has been registered by the Respondent. The Registrar

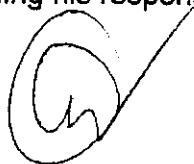
with whom the disputed domain is registered is Directi Web Services Pvt. Ltd. (R118-AFIN)

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Mr. Harikishore, Hyderabad, Andhra Pradesh. The NIXI verified that the Complaint together with the annexures to the Complaint and satisfied the formal requirements of the .in Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed there under on **9<sup>th</sup> April, 2012**. The parties were notified about the appointment of an Arbitrator on **9<sup>th</sup> April, 2012**.

3.2 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on **9<sup>th</sup> April, 2012**. In accordance with the rules, paragraph 5(c). The Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

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- 3.4 The Respondent(s) failed and/or neglected and/or omitted to file formal response to the Complaint within 10 days as was granted to him by the notice dated 9<sup>th</sup> April, 2012.
- 3.5 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English. In the facts and circumstances, in-person hearing was not considered necessary for deciding the Complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

#### 4. FACTUAL BACKGROUND

- 4.1 The Complainant in these administrative proceedings is Amazon Technologies Inc., PO Box 8102, Reno, Nevada 89507, U.S.A.
- 4.2 The complainant claims that his business was started and was being operated by its predecessor in interest Amazon.Com by Mr. Bezos. The term Amazon.Com was adopted by the company in the year 1994. The company started its virtual activities in the year 1995 in the name Amazon through their portal Amazon.Com.

#### 5. PARTIES CONTENTIONS

##### 5A COMPLAINANT

- 5A(1)The complainant submits that he is the owner of trade/service mark Amazon and has also registered various countries specific domain names under different GTLDs AND CCTLDs since its inception of



business activities in 1994. The complainant has also submitted WHOIS records of various domain names incorporating complainant's Trade/Service mark Amazon with the complaint.

5A(2)The Complainant registered Amazon.co.in and Amazon.in on December 31, 2003 and Feb. 11, 2005 respectively.

5A(3)The Complainant has submitted the revenue figures for the period 1996 to 2011 in its complaint.

**B. RESPONDENT**

5B(1)The Respondent has been given opportunity to file his/her response to the Complaint by the panel by its notice dated April 9, 2012. However, the respondent has failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remain unrebutted.

**6. DISCUSSIONS AND FINDINGS**

6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy, while seeking registration of the disputed domain name.

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6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

6.4 In accordance with the principles laid down under order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.

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- 6.5. The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.
- 6.6. The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.
- 6.7. The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <WWW.AMAZN.CO.IN> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.



6.8. Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.

6.9. The decision of Hon'ble Supreme Court of India in the matter of **Jahuri Sah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).

6.10. The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.

6.11. Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.

6.12. Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

**A. IDENTICAL OR CONFUSINGLY SIMILAR**

6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.

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6A.2 The Respondent registered the Disputed Domain Name on August 8, 2011.

6A.3 The dominant and distinctive feature of the Disputed Domain Name is the incorporation of the Complainant's trade/service mark, as it is.

6A.4 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.

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. In order to secure statutory rights in the trade mark AMAZON, the Complainant's have obtained several registrations in various countries of the world including India and have, thus, secured its proprietary rights therein. The Complainant or its subsidiaries have also obtained registration of marks containing the term "AMAZON" in over 125 countries worldwide (including India).

6A.5 The complainant also own 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), Amazon Connect (artist blogs posted next to that artist's product), Amazonmp3 (music downloads), and AmazonFresh (fresh groceries).

6A.6 The Complainant's trademarks AMAZON and AMAZON.COM are registered in India. The complainant has also provided details of various registration as has been held by them for its trade/service mark Amazon in India.

6A.7 The Complainant's Sites are accessible to consumers in every location of the world that offers access to the Internet. Each and every page of all of its Sites prominently displays the AMAZON.COM<sub>(R)</sub> or AMAZON<sub>(R)</sub> mark.

6A.8 More than 137 million active customer accounts and customers from more than 200 countries have made purchases through the Amazon.com Sites. When these orders are shipped, each customer receives an email message that contains the AMAZON.COM<sub>(R)</sub> or AMAZON<sub>(R)</sub> mark, which confirms the order.

6A.9 The Complainant's reputation and valuable goodwill in the trade mark AMAZON and variations thereof have not come from sales alone. In order to promote its reputation, the Complainant has taken numerous steps through the years. The Complainant has made significant investments to



promote its goods and services under the trademarks AMAZON and its variations. The commercial activities of AMAZON have been widely promoted, publicized and advertised in print and electronic media, including newspapers, magazines and its corresponding websites. Millions have come to know the AMAZON marks through extensive advertising in a variety of media. Since 1996, the complainant has spent in millions of US\$ on advertising and other promotional costs, all of which make prominent use of the AMAZON marks online, on television and radio, and in newspapers and magazines. The Complainant has made substantial investments to promote its goods and services.

6A.10 The Complainant also derives substantial advertising benefits through its successful "Associates Program", whereby Amazon.com allows certain individuals and companies to place a direct link to the Amazon.com Sites on its own Web sites (in the form of a "banner" advertisement containing the AMAZON.COM or AMAZON mark and logo, accompanied by the modifying phrase, "in association with"). In return for placing a link to the Amazon.com Site on one's own Web Sites, a Web site owner receives a percentage of any sale made by the Amazon.com Site as a result of the use of that link by a customer.

6A.11 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name WWW.AMAZN.CO.IN is identical and/or deceptively similar to the earlier

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registered trade marks and Domain names of the Complainant. The whole of Complainant's trade mark/domain name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been successful in proving that the domain name WWW.AMAZN.CO.IN is identical and/or confusingly similar to the trademark AMAZON of the Complainant.

**6B. The Respondents have no interest or legitimate right with respect to the Disputed Domain Name.**

6B.1 The domain name Amazn.co.in was earlier registered in the name of Mr. Kalyan Deepak (hereinafter referred to as "former owner/registrant") on August 8, 2011.

6B.2 The Complainant after learning about the registration of the domain name in the name of the former owner/registrant, 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 amazn.co.in to the Complainant. However, 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 whole have been malafidely changed while the registrant Id (DI\_17338386) remains the same.

6B.3 The Complainant, through its attorneys sent a demand letter dated September 28, 2011 to the



Respondent at the email id harikishore594@gmail.com. However, there was no response to the demand letter from the Respondent.

6B.4 The Complainant through its Attorneys sent a reminder email dated October 12, 2011. It was requested that in order to resolve the matter amicably, the Respondent voluntarily transfer the said top level Indian domain name within three days from the date of receipt of the email dated October 12, 2011. However no response has been received to date.

6B.5 The Complainant through its Attorneys sent another reminder email dated November 16, 2011. It was again requested that in order to resolve the matter amicably, the Respondent voluntarily transfer the said top level Indian domain name within three days from the date of receipt of the email dated November 16, 2011. However no response has been received to date.

6B.6 The domain name Amazn.co.in registered by the Respondent/Registrant, is deceptively, visually, confusingly and phonetically similar to the complainant's registered and world famous name/domain name AMAZON.COM and trademarks AMAZON and AMAZON.COM. The Respondent's domain name Amazn.co.in is bound to cause confusion and deception in the minds of the public and the trade due to its phonetic and visual similarity. The Complainant has intentionally removed the letter O in the name to make



AMAZN/AMAZN.CO.IN, which is visually and phonetically similar to AMAZON/AMAZON.COM/AMAZON.CO.IN.

6B.7 The Respondent/Registrant has no right or legitimate interest in the impugned domain name. The Respondent is not making a legitimate or fair use of the said domain name for offering goods and services. The Respondent (as an individual, business or other organization) has not been commonly known by the name or mark AMAZN. No website is hosted on [www.amazn.co.in](http://www.amazn.co.in).

6B.8 The Complainant has never authorized, licensed or otherwise permitted the Respondent to use the name, trademark or domain name consisting of Amazn or to use "amazn.co.in" as domain name.

6B.9 The registration of the domain name amazn.co.in is visually and phonetically similar to the name and trademark of the Complainant and is malafide and dishonest as there is no bonafide reason for adoption of the said domain name other than to benefit from the Complainant's established goodwill and reputation. The Respondent/Registrant's domain name has been registered in bad faith.

6B.9 The registration of the domain name amazn.co.in is visually and phonetically similar to the name and trademark of the Complainant and is malafide and dishonest as there is no bonafide reason for adoption of the said domain name other than to benefit from the Complainant's established goodwill

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and reputation. The Respondent/Registrant's domain name has been registered in bad faith.

6B.10 The main object of registering the domain name AMAZN.CO.IN by the Respondent/Registrant is to enrich himself and earn illegal profit and to mislead the general public and trade, as well as prevent the Complainant from using it or reflecting its name and mark in a corresponding domain name.

6B.11 The Respondent did not dispute any of the contentions raised by the Complainant in its Complaint. The case set up by the Complainant is deemed to be admitted as not disputed by the Respondent. The Panel also finds, on the basis of the material available on record, that the respondent has no legitimate right or interest in the disputed domain name. The respondent has failed to show any justification for the adoption, use or registration of disputed domain name.

6B.12 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Complainant in the domain name <WWW.AMAZN.CO.IN> and holds that Respondent has infringed the rights of the Complainant by registering the Domain Name and has no legitimate right or interest therein.



C. **Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith:

6C.3 The bad faith intent of the respondent is apparent from the fact that he has chosen not to respond to the e-mails and/or cease and desist letter issued by the counsel of the complainant from time to time. The respondent has also chosen not to file and/or respond to the complainant's case in the present matter.

6C.4 The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name **<WWW.AMAZN.CO.IN>** was registered by the respondents in bad faith.

6C.7 The panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the

A. Transfer of the domain name **WWW.AMAZN.CO.IN** to the Complainant.

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B. Respondent to pay to the Complainant cost of Rs.25,000/- in the above proceedings.



**AMARJIT SINGH**  
Sole Arbitrator

**Dated:** 23 July 2012