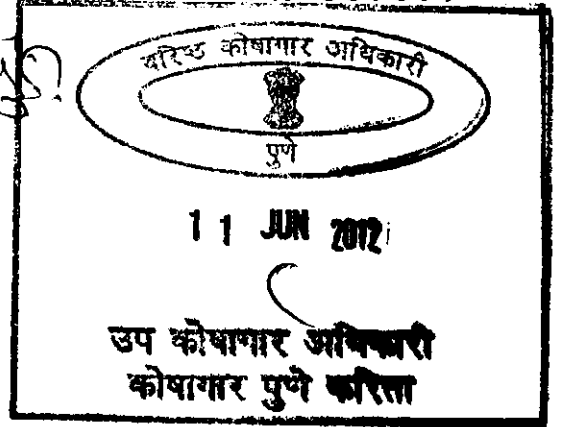


महाराष्ट्र MAHARASHTRA 'सदरचा मुद्रांक लिक्व अॅण्ड लायसेन्ससाठी नाही.

FR 369699

हनुकमांक 2303 दिनांक 9216192 रुपये 90079-900
 मुद्रांक कोणत्या कारणासाठी वापरण्याचा अर्थ कायदा 1930
 हि-ड मुद्रांक अधिनियम 1956 चे अनुच्छेद क्र.
 मुद्रांक वापरणाराचे संपूर्ण नाव श्री. वि. वि. मिश्रा
 पूर्ण पत्ता 2/10/8 श्री. वि. वि. मिश्रा
 जिल्हा व्यक्तीचे संपूर्ण नाव श्री. वि. वि. मिश्रा
 पत्ता 2/10/8 श्री. वि. वि. मिश्रा



मुद्रांक धारक/हस्ता व्यक्तीची सही

स्वाक्षरी (मुद्रांक विक्रेता)
 (श्री. अशोक मि. वेळूकर)
 पुरवठा क्र. 2209099/1999
 मुद्रांकालाई मुदत 30/3/2008
 पत्ता. 2214 4, शनिवार पेठ, पुणे-411004

**AWARD
 IN ARBITRATION**

AMAZON TECHNOLOGIES INC.
 P.O.Box 8102, Reno, Nevada 89507
 U.S.A.

THE COMPLAINANT

AND

MR.KISLAY CHAUDHARY
 Janakpuri
 New Delhi.
 India.

THE RESPONDENT /
 THE REGISTRANT

IN THE MATTER OF DISPUTED DOMAIN NAME: - amazonstore.in

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.
SOLE ARBITRATOR

DELIVERED ON THIS 12TH DAY OF JUNE TWO THOUSAND TWELVE AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -** **Amazon Technologies Inc.**
P.O.Box 8102, Reno,
Nevada. 89507
USA

Through its authorized
representative **S.S.Rana & Co.**
317, Lawyers Chambers
Dehli High Court
New Delhi. 110003.
India

**02. Name and address of
The Respondent: -** **Mr.Kislay Chaudhary**
Janakpuri
New Delhi. India. 110058

**03. Name and address of the
Registrar** **Business Solutions**

04. Calendar of Major events:

| Sr. No. | Particulars | Date (Communications in electronic mode) |
|--------------------|--|---|
| 01 | Arbitration case referred to me | 11/05/2012 |
| 02 | Acceptance given by me | 11/05/2012 |
| 03 | Hard copy of the complaint received | 24/05/2012 |
| 04 | Notice of Arbitration issued | 24/05/2012 |
| 04 | Reminder notice sent to the Respondent | 04/06/2012 |
| 05 | Award passed | 08/06/2012 |

1] PRELIMINARY: -

- 1) M/s Amazon Technologies Inc., P.O.Box 8102, Reno, Nevada, 89507 USA (**The Complainant**) have filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name '**amazonstore.in**' (**the disputed domain name / domain name**), through

its authorised representative M/s S.S.Rana & Co., 317, Lawyers Chambers, Dehli High Court, New Delhi, India. 110003.

- 2) The Complainant has disputed registration of domain name 'amazonstore.in' in the name of **Mr. Mr.Kislay Chaudhary, Janakpuri, New Delhi. (The Respondent / Registrant).**
- 3) Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 24th May 2012 with the instructions to file his reply / say latest by 4th June 2012.
02. The Respondent did not file any reply to the Complaint within the period stipulated for that purpose.
03. On the principles of natural justice and final opportunity to the Registrant, the period to file say / reply was extended by this Arbitration panel *suo-moto* till 07/06/2012.
04. The Registrant / Respondent failed to file any reply / say even within the extended period.
05. In view of no response from the Registrant / Respondent the arbitration proceedings were closed and notice to that effect was sent to the concerned parties on 11/06/2012.
06. In view of no reply by the Respondent no rejoinders were called for.
07. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
08. No personal hearing was requested / granted / held.

III] SUMMARY OF THE BACKGROUND OF THE COMPLAINANT: -

As per the Complainant the brief background of the Complainant, its history, its rights and interests in the marks and term 'amazon' are as follows: -

- a) The Complainant's business operated by its predecessor-in-interest Amazon.com was started by Mr.Jeff Bezos, a pioneer in the use of internet as a medium of commerce. The object of the company was to

offer books and other merchandise online. The name 'amazon.com; was chosen in the year 1994.

- b) The arrow in the trademark amazon.com implies that the complainant has everything from A to Z and also represents the smile on its customers' face.
- c) After opening its virtual doors in 1995 the business promoted itself solely under the name amazon.com or amazon became well known. By March 1997 the number of articles offered by Amazon.com rose to 2.5M. In 1997 the company went public by offering 3M shares @18\$ per share.
- d) As the business of the company grew internationally, the company began operating websites by using CCTLD in various countries like USA, Canada, China, France, UK, Japan, Germany, Italy and Spain.
- e) In India the domain names amazon.co.in and amazon.in were registered on December 31, 2003 and February 11, 2005 respectively. Apart from these domain names the company also registered 12 other domain names like amazonfabrics.in, amazonIndia.in and so on. The company has also been adding different types of products on its websites.

It also launched auctions website and zShops website in 1999.

- f) 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 Zmazon.com e-commerce platform.
- g) From a startup company the company has emerged to be a giant internet based business in the world. The revenues of the company were 15.7 M US \$ in 1996 which rose to 48 B US \$ in 2011.
- h) The key to the Complainant's success has been its ability to meet and exceed its customers' expectations of excellent service and security for their on-line transactions. It has instituted delivery and return policy and also guarantee of privacy of its customers' personal information.
- i) From its inception the Complainant has used corporate name, address of principal internet website, primary symbol and identifier of the goods and services they offer. The trademarks amazon, amazon.com and other trademarks comprising the word amazon are registered in numerous countries worldwide and used consistently.

The Complainant has provided a list of 125 countries wherein the Complainant or its subsidiaries have registered trademarks containing the term amazon, including India. The Complainant also owns several amazon formative marks including Amazon Instant Video, Amazon Cloud Drive, Amazon Cloud Player and so on.

- j) In India the Complainant owns 53 trademarks which are registered in different classes. These registrations have been assigned from Amazon.com to the Complainant and the recordal of Amazon Technologies Inc. as the subsequent proprietor of the said registrations is pending with the Registry.
- k) The relationship between Amazon.com and the Complainant (Amazon Technologies Inc.) is governed by agreement including license to use and register trademarks comprising Amazon. The Indian Courts have recognised the existence of trans-border reputation and the Trade Marks Act, 1999, provides for the statutory protection of well known and famous trademarks. The Complainant has attached copy of Assignment Deed alongwith Form TM-24 and receipts.

IV] SUMMARY OF THE COMPLAINT: -

- a. The Amazon.com and Amazon marks have become best known trademarks in the world today and certainly one of the best known marks used by internet based business in the world. There are more than 137 M active customer accounts from more than 200 countries. The Complainant's sites are accessible to consumers in every location of the world where internet is available. Thus the public at large are aware of the marks, sites and products of Amazon.
- b. In order to promote its reputation the Complainant has taken numerous steps through the years enhancing its reputation and goodwill in the trademarks. The Complainant has made significant investments to promote its goods and services under the trademark Amazon and its variations. The Complainant has spent millions of US dollars on advertising and other promotional costs for online, television and radio, newspapers and magazines. The said promotional expenditure was US \$ 890 M in 2010, US \$ 593 M in 2009 and so on. It has also established associates network whereby owners of various websites get commissions on sales made through their link to amazon site.
- c. Apart from several articles and business press coverage in various renowned newspapers, magazines, TV etc. the Complainant has also been featured in number of brand equity and management books such as Brand Warfare -2003, The Brand Mindset – 2003, Brand Portfolio Strategy – 2004. Interbrand's study which listed top 100 brands all over the world, ranked amazon at 62nd position with a brand value exceeding US \$ 5.4 B. Currently the brand is positioned at No.26 by Interbrand.
- d. 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.

- e. Many Indian dailies, TV channels have covered and featured the Complainant on various occasions. There are many websites which have hosted and operated in India have participated in the Complainant's Associate programme, e.g. www.indiaserver.com, babystore.indiaserver.com etc., where link to amazon.com is put up which has created awareness and knowledge of the Amazon marks among people in India.
- f. The Complainant has set up a wholly owned subsidiary Amazon Software Development Centre (ASDC) in Bangalore in 1994.
- g. Because of the extent of business Complainant has done and the length of time it carried on the business, the name and trademark amazon has become associated with the Complainant around the world including India. Amazon and variations thereof have acquired substantial reputation and goodwill and are well known and famous in India within the meaning of Section 2(zg) of the Act.
- h. The Complainant has exclusive statutory rights to use the said trademark Amazon and its variations in respect of goods and services for which they are registered. The Complainant has been actively engaged in pursuing and stopping acts of infringement or misuse which comes to its notice. The Complainant considers Amazon to be its valuable intellectual property and take all necessary steps to protect the same. The Complainant has succeeded in a number of cancellation actions before the WIPO Arbitration and Mediation Centre and the National Arbitration Forum (NAF). Courts in the USA, European Union, Greece, Germany and India have favoured Amazon in such disputes. The Complainant has furnished some such cases where either the applicants withdrawn their applications or injunction was granted against them by Indian courts also.
- i. When the Complainant came to know about the registration of the domain name 'amazonstore.in' in the name of the Registrant he sent an email dated 28/07/2011 to the registrant calling upon him to transfer the domain name. However the Registrant did not reply to the said mail.
- j. The Complainant thereafter sent a reminder through its attorneys dated 25/08/2011 to the Respondent, however there was no reply from the Respondent.
- k. The Complainant sent second reminder on 27th August 2011 with no response from the Respondent.
- l. The information / contact details provided by the Respondent while registering the said domain name was false / incorrect and incomplete which is not only a breach of the Registrant's Registration Agreement but also of the terms and conditions and advisory LA 02. On

23/09/2011 the .IN Registry was notified of this fact of violation and breach of Advisory LA 02.

- m. The .IN Registry suspended the account of the Respondent and transferred the request to the sponsoring registrar – Business Solutions and the said domain name was server locked as NIXI's instructions. While it was suspended the domain name amazonstore.in had expired on November 18, 2011. The Respondent did not restore the status within the stipulated time of 15 days thereafter.
- n. Thereafter on 13h January 2012 the Complainant wrote to the registrar – Business Solutions informing that the current status of the said domain name amazonstore.in is client transfer prohibited, delete prohibited, hold, renew prohibited, transfer prohibited update prohibited. The Registrar replied on 13th January intimated that the domain name is currently suspended by .IN Registry for false whois record and they are about to send delete command the domain will get deleted from registry database soon. The Complainant intimated the registrar that he was interested in registering the subject domain name and was ready to bear administrative charges of the same. However there was no response from the Registrar.
- o. The domain name registered by the Respondent is deceptively, visually, confusingly and phonetically similar to the Complainant's registered world famous domain name and trademarks. This is bound to cause confusion and deception in the minds of the public.
- p. The Respondent has no rights or legitimate interests in the impugned domain name. The Respondent is not making legitimate or fair use of the said domain name for offering goods and services.
- q. The Complainant has never authorised, licensed or otherwise permitted the Respondent to use the name, trademark or domain name consisting amazon.
- r. The Registration of the domain name is malafide and dishonest as the main motive is to benefit from the established goodwill and reputation of the Complainant. The Respondent has registered the domain name in bad faith.
- s. The main object of registering the domain name amazonstore.in by the Respondent is to enrich himself and earn illegal profit and to prevent the Complainant from using it or reflecting its name and mark in a corresponding domain name.



1) The Complaint is based on the INDRP Rules and Policies on the following main contentions of the Complainant: -

1. The Respondent's domain name is fully identical and confusingly similar to the Complainant's domain names www.amazon.com and registered trademarks consisting the word amazon or its variations.

2. The Respondent has no rights or legitimate interests in the disputed domain name.

3. The Respondent has registered the domain name for and is being used in bad faith. He has acquired the subject domain purely to make illegal profit there from.

4. The Respondent does not use the domain name for his business purpose, for offering bona fide goods, services etc.

5. The Respondent does not use nor has provided a bona fide offering of goods or services or legitimate use of the domain names.

7. Paragraph 6 of INDRP provides that circumstances indicating that the Registrant has registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name to the Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the domain name, are deemed to be in evidence that the Registrant has registered and used domain name in bad faith.

8. On the basis of the Complaint and supporting documents, the Complainant has requested for cancellation and / or transfer of disputed domain name in his favour with costs.

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In response to the contentions of the Complainant, the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period.

VII] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

| SR. NO. | ISSUE | FINDING |
|------------|--|---------|
| 01 | Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights? | Yes |
| 02 | Does the Complainant have trade mark or service mark directly related to the disputed domain name? | Yes |
| 03 | Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name? | No |
| 04 | Whether the Registrant has commonly been known by the domain name? | No |
| 05 | Whether the Registrant has any legitimate interests in the disputed domain name? | No |
| 06 | Whether the Registrant's domain name has been registered or is being used in bad faith? | Yes |
| 07 | Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name? | Yes |
| 08 | Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark? | Yes |

VIII] BASIS OF FINDINGS: -

1. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'amazon' is an integral / prominent component of subject domain name and also is an integral / prominent component of the Indian registered Trademarks of the Complainant. In India the Complainant has over 53 registered trademarks consisting the word 'amazon' or its variations.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'amazon'.

Therefore my finding on the first issue is affirmative.

2. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

Yes. Already discussed in issue (A) above.

Therefore my finding on this issue is in affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has been commonly known by the domain name?

The name of the Registrant, as available in the records is Kislay Chaudhary. As such he is not commonly been known by the domain name 'amazon' or 'any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interests in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'amazon'. He is not commonly known by that name. He has not established that he has taken all reasonable steps to use the registered domain name for bona fide business activities. He has not shown any other nexus of his business with the disputed domain name.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The validity of disputed domain name has expired on 18th November 2011. Till then the domain was temporarily parked. The Complainant has provided a screenshot of the same. Thereafter The Registrant has not bothered to renew the same. The Complainant has not authorised the registration or use of the disputed domain name to the Respondent.

Therefore my finding on this issue is affirmative.

7. Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?

The Registrant has failed to establish his bona fides and nexus with the disputed domain name. The Complainant has brought out various aspects of malafide registration of the disputed domain name, registration of domain name without any authority and any bona fide business on the part of the Respondent.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

At present the disputed domain name has expired and not renewed by the Respondent. If the same is renewed by the Respondent the registered domain name will definitely create confusion in the minds of internet users about its nexus with the Complainant due to exact reproduction of the registered trademark in its entirety in the domain name.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

From above discussion I have reached the conclusion that: -

- a. The Respondent does not have any registered trade mark / service mark in his name containing the words 'amazon' and hence does not have any legitimate interest in the same.
- b. The Registrant has not been commonly known by the disputed domain name.
- c. The Registrant is not making fair use of the disputed domain name for his bona fide business purposes, nor has he bothered to renew the expired domain name in his own name.
- d. The Respondent / Registrant has completely failed to establish his nexus with the disputed domain name in any way.


From all findings on the issues framed, it can be concluded that the Registrant has registered domain name in bad faith, without any legitimate interests in it, and with the purpose of making illegal profits.'



On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. **The Complainant is entitled to the disputed domain name – www.amazonstore.in and hence the same be allowed to be registered in the name of the Complainant.**
02. The Respondent shall pay actual cost of registration of domain name to the Complainant and fine of Rs.50000/-

Dated: - 12.06.2012
Place: - Pune


(S.C.INAMDAR)
SOLE ARBITRATOR