



**BEFORE THE SOLE ARBITRATOR C.A. BRIJESH
.IN REGISTRY
C/o NIXI (NATIONAL INTERNET EXCHANGE OF INDIA)
NEW DELHI, INDIA**

AMAZON TECHNOLOGIES, INC.
410 Terry Ave N, Seattle, WA 98109,
USA

.... Complainant

Versus

AMAZON INDIA
Brigade Dr. Rajkumar Road,
Malleshwaram West
Bengaluru
Karnataka – 560055
Email- amazon@inbox.si

.... Respondent

1. The Parties

The Complainant is Amazon Technologies, Inc. of 410 Terry Ave N, Seattle, WA 98109, United States of America through its authorized representative Lall & Sethi, of the address D-17, South Extension – II, New Delhi – 110049.

The Respondent is Logistics, AMAZON INDIA of Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka – 560055. The Respondent is represented by himself.

2. The Domain Name and Registrar

The disputed domain name is <AMAZON-HR.IN>. The Registrar of the said domain name is Endurance Domains Technology Pvt. Ltd.

3. Procedural Timeline

July 18, 2017 :	The .IN Registry appointed C.A. Brijesh as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
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July 19, 2017 :	Arbitrator accorded his consent for nomination as Arbitrator and submitted Statement of Acceptance and Declaration of Impartiality and Independence to the .INRegistry.
July 19, 2017 :	Copy of the Complaint alongwith all the annexures forwarded by NIXI to the Respondent with a copy of the mail marked to the Arbitral Tribunal.
July 21, 2017 :	Arbitral Tribunal addresses a notice to the Respondent directing the Respondent to file its response, if any, to the Complaint within ten days.
August 3, 2017 :	Absent a response from the Respondent, the pleadings in the arbitration proceedings were closed and the Tribunal proceeded to pass an Award on the basis of the material available on record.

The language of the proceedings shall be English.

4. Factual Background:

4.1 Complainant's Activities

As per the records before this Arbitral Tribunal, in 1994, the Complainant's Founder Jeff Bezos developed an innovative plan to sell a wide selection of books over the Internet. Amazon opened its virtual doors in July 1995, offering online retail store services featuring books via the web site www.amazon.com. On May 16, 1996, less than a year after its website launched, the Complainant was featured on the front page of *The Wall Street Journal*. In recognition of the Complainant's success, in 1999—only five years after its launch—*Time Magazine* named Mr. Bezos "Person of the Year."

The Complainant claims to be continuously using the trade marks AMAZON and AMAZON.COM (hereinafter referred to as 'trade marks') in connection with its products and services since the year 1995. Today, the Complainant is one of the world's largest online retailers, offering products and services to more than 100 countries around the globe. 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; Audiobooks; Movies, Music & Games; Electronics & Computers; Home, Garden & Tools; Grocery, Health & Beauty; Toys, Kids & Baby; Clothing, Shoes & Jewelry; Sports & Outdoors; and Automotive & Industrial. The Complainant not only offers products and services through www.amazon.com, but also *via* country specific sites for Australia, Brazil, Canada, China, France, Germany, India, Italy, Japan, Mexico the Netherlands, Spain, and the United Kingdom.

Significantly, the Complainant, in the year 2015, became the most valuable retailer in The United States, surpassing Wal-Mart. The Complainant is ranked 11th most innovative company worldwide and ranked 12th as the world's most valuable brand by Forbes. The market cap of Amazon.com, Inc., as of today, is USD 466.470 billion.

As the disputed domain name appears to be in connection with HR, it is pertinent to note that the Complainant, through its website www.amazon.jobs provides a portal for aspirants to search for job opportunities with the Complainant, worldwide. The Complainant created the domain name AMAZON.JOBS, on September 14, 2005. Importantly, the domain name AMAZON.IN was created by the Complainant on February 11, 2005.

4.2 Complainant's Trade Marks

To protect rights in its trade marks, the Complainant has filed/secured trade mark applications/registrations in various jurisdictions of the world including India. The said registrations are valid and subsisting and by virtue of the same, the Complainant has the exclusive right to use the trade marks AMAZON and AMAZON.COM. The Complainant has filed a list of trade mark registrations in India (Annexure K) along with copies of certificates of trade mark registrations as per which the earliest in India dates back to the year 1999.

Further, the Complainant has also secured trade mark registrations in several other jurisdictions of the world including but not limited to Australia, Canada, European Union, Hong Kong, South Africa, Singapore, the United Kingdom and the United States of America. As per the documents on record, the Complainant has secured registration for the trade mark AMAZON in USA under Reg. No. 2857590 on June 29, 2004 with first use in commerce claimed since July 31, 2002.

4.3 Complainant's Reputation

The following facts point towards Complainant's goodwill and reputation:

- The Complainant's website www.amazon.com is ranked as the 11th most visited website in the world and 5th in the United States. The Complainant's website www.amazon.in is ranked as the 6th most visited site in India.
- The Complainant has more than 310 million active customer accounts and revenues for the fiscal year 2016 were around USD 135 billion.
- The Complainant claims that since the year 1996, it has extensively advertised its trade marks and since then has spent more than USD 5.0 billion on advertising in the year 2016 alone.

- The Complainant's trade mark AMAZON has been advertised extensively, both in print and media, in India and abroad.
- As per the Complainant, in light of extensive advertising and continuous use of its trade mark AMAZON, the same has become famous, and are consistently ranked as one of the most well-known and recognizable brands globally. The year wise rankings are given in the table below:

Source	Rankings
2017 Brand Finance Global 500	#3
2016 Brand Finance Global 500	#4
2016 Interbrand Best Global Brands	#8
2016 BrandZ Top 100 Most Valuable Global Brands	#7
2015 Interbrand Best Global Brands	#10
2014 Interbrand Best Global Brands	#15
2013 Interbrand Best Global Brands	#19
2012 Interbrand Best Global Brands	#20
2011 Brand Finance Global 100, September Update	#22

- In Amazon Technologies, Inc. v. Null, FA 1488185, the ICANN panellist held AMAZON to be *"one of the most famous marks and business names in the world"*. In Amazon.com, Inc. v. Digital Systems c/o Daniels, FA 871120, the Panellist held that *"There is no doubt that AMAZON.COM is a very famous mark"*.
- In India, the .INRegistry, in one of its decisions Amazon Technologies, Inc. vs. Jack Worli held that *"It is pertinent to mention that several prior ICANN panellists have recognized AMAZON as a well-known and famous trade mark. The Arbitrator herein agree with the finding"*.

It is clear from the above that the Complainant alone has the exclusive rights in the earlier well-known trade marks and the Complainant alone has the exclusive right to use the earlier well-known trade mark AMAZON as part of its domain name & company name and/or in any other manner whatsoever. The earlier well-known trade marks AMAZON, AMAZON.IN and AMAZON.COM merit protection from a third party's act of cyber piracy and/or cyber squatting including that of the Respondent.

4.4 Respondent's activities and its use of AMAZON

As per the WHOIS records, the Respondent has registered the domain name <AMAZON-HR.IN> on June 1, 2017.

Given that the Respondent has not participated in the present proceedings, no further information is available on record *re* its business activities and/or its use of the domain comprising AMAZON.

5 Contentions of Parties as summarised in the pleadings

5.1 Complainant

a) **The domain name is identical or confusingly similar to a trade mark of the Complainant in which Complainant has the statutory and/or common law rights.**

- i. The Disputed Domain Name, AMAZON-HR.IN, is virtually identical to the Complainant's registered trade mark AMAZON and domain names inasmuch its earlier well-known trade mark AMAZON is subsumed in its entirety in the Disputed Domain Name. The addition of the word 'HR' adds no distinctive value to the Disputed Domain Name and in fact portrays to the visitors that the website bearing the Disputed Domain Name is a Human Resources (HR) platform of the Complainant, through which jobs are being offered to the general public, which is not the case.
- ii. There are numerous cases wherein it has been held by ICANN panelists that mere addition of a generic or a descriptive word to a registered mark does not negate the confusing similarities between the Disputed Domain Name and the trade marks/domain names of the Complainant.
- iii. At the time the Respondent registered the Disputed Domain Name, the Complainant had not only been using its earlier well-known mark as a trade mark/trade name and as part of its domain name but also had trade mark registrations for the same in India/abroad. The Respondent cannot claim or show any rights to the Disputed Domain Name that are superior to Complainant's rights.

b) **The Respondent has no legitimate interest in respect of the domain names**

- i. The Complainant's trade mark AMAZON is a highly distinctive and reputed trade mark and hence there can be no plausible justification for the adoption of the Disputed Domain Name by the Respondent but to ride upon the goodwill and reputation of the Complainant. Such adoption and use of the Disputed Domain Name is likely to confuse the members of the trade and public that the services being rendered, if any, under the Disputed Domain Name, are arising from the Complainant, which is not case. Such adoption and use of the Disputed Domain Name is likely to dilute the brand equity of the mark of the Complainant.

- ii. The adoption and use of the Disputed Domain Name clearly shows that the Respondent has not registered the same with an intention of *bona fide* offering of services. Further, the Respondent has never been recognized as Amazon, which forms part of the Disputed Domain Name. By the virtually identical nature of the Disputed Domain Name, the Respondent is clearly trying to associate himself with the Complainant, with the *mala fide* intention to ride upon the immense goodwill and reputation of the Complainant's earlier well-known trade marks, to gain undue monetary benefit under the garb of the Complainant's reputation. Therefore, the Respondent cannot be permitted to own or even be considered to have any legitimate right or interest in the Disputed Domain Name as the same has been registered to make unlawful monetary gains.
- iii. The Respondent has not made any legitimate or fair use of the Disputed Domain Name. The only interest of the Respondent is to earn undue monetary gains by such illegal adoption and use of the earlier reputed trade mark of the Complainant as a part of the Disputed Domain Name. Such adoption and/or use of the Disputed Domain Name is likely to tarnish the hard earned goodwill and reputation of the Complainant in its reputed trade mark AMAZON. Therefore, the Respondent has no rights or legitimate interest in the Disputed Domain Name.

c) **The domain name was registered and is being used in bad faith**

- i. The Respondent is a habitual infringer of the Complainant's trade marks inasmuch as the Respondent had previously adopted a domain name AMAZON-JOB.IN. Accordingly, an INDRP complaint was filed against the Respondent and *vide* Order dated April 18, 2017, the Learned Arbitrator held the adoption of the domain name AMAZON-JOB.IN in bad faith and ordered the same to be transferred to the Complainant.
- ii. The manner of adoption and use of the Disputed Domain Name is identical to the use of the domain name AMAZON-HR.IN, which is explained herein below:
 - a) The Respondent has created a website with the sole 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. The screen shot of the home page of the Complainant's website as well as the Respondent's website, respectively, are shown below:



Complainant's Website



Respondent's Website



It can be seen from the above that the Respondent has designed the website in a manner so as to misrepresent to the visitors, that the Disputed Domain Name is an offshoot of the Complainant inasmuch as the Respondent has slavishly lifted the Complainant's reputed trade

mark **amazon**

. Even the disclaimer (circled in red) has been

copied with a *mala fide* intent to associate itself with the Complainant, when no such association exists.

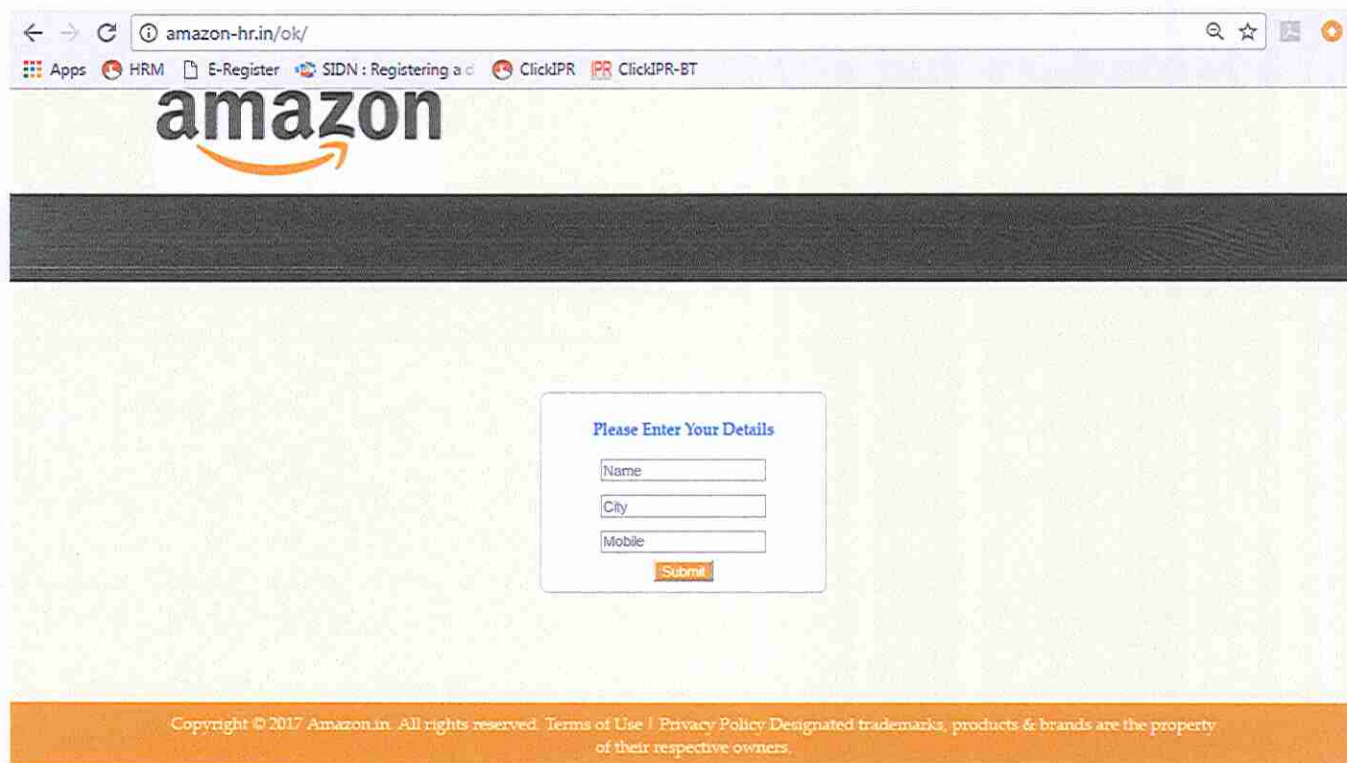
- b) Further and more importantly, on logging into the Respondent's website, the visitors are asked to download the 'Amazon Job Terms & Condition Letter' before a particular time period, as shown below:



The website not only displays the earlier well-known trade mark of the Complainant, but also displays a delivery boy with an Amazon Package, in a bid to make the website look authentic and create an impression that the job offer originates from the Complainant, when such is not the case. Even the tab of the website reads as "*Amazon is Providing a Job of Local Delivery Jobs*", as shown below:



Further, on clicking 'Click Now', the visitors are taken to a page wherein the website asks for Name, City and Mobile Number, as shown below:



The screenshot shows a web browser window with the address bar displaying 'amazon-hr.in/ok/'. The browser's toolbar includes icons for back, forward, and refresh, along with search, star, and extension icons. Below the address bar, there are several extension icons: 'Apps', 'HRM', 'E-Register', 'SIDN : Registering a d', 'ClickdPR', and 'ClickdPR-BT'. The main content area of the browser shows the 'amazon' logo at the top. Below the logo is a dark horizontal bar. Underneath this bar is a light green background. In the center of the green area is a white rectangular box with a blue border. Inside this box, the text 'Please Enter Your Details' is written in blue. Below this text are three input fields: 'Name', 'City', and 'Mobile'. Each field has a small 'x' icon on the right side. Below the input fields is a blue 'Submit' button. At the bottom of the browser window, there is an orange footer bar with white text that reads: 'Copyright © 2017 Amazon.in. All rights reserved. Terms of Use | Privacy Policy Designated trademarks, products & brands are the property of their respective owners.'

Such activities show the bad faith and *mala fide* on the part of the Respondent to cause prejudice not only to the Complainant but the public at large.

- c) The Respondent has cleverly registered its organization as "AMAZON INDIA" of 'Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka, 560055', which is similar to the address of one of the Indian subsidiaries of the Complainant. The extracts of the details pertaining to Complainant's subsidiary from the website of the Ministry of Corporate Affairs is reproduced hereinbelow:



Company/LLP Master Data

CIN	U72200KA2004FTC034233
Company Name	AMAZON DEVELOPMENT CENTRE (INDIA) PRIVATE LIMITED
ROC Code	RoC-Bangalore
Registration Number	034233
Company Category	Company limited by Shares
Company SubCategory	Subsidiary of Foreign Company
Class of Company	Private
Authorised Capital(Rs)	500000.0
Paid up Capital(Rs)	118990.0
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	29/06/2004
Registered Address	No.26-1, Brigade World Trade Centre, 10th Floor, Dr. Raj Kumar Road, Malleshwaram (W) BANGALORE Bangalore KA 560055 IN
Address other than R/o where all or any books of account and papers are maintained	-
Email Id	kanagalu@amazon.com
Whether Listed or not	Unlisted
Suspended at stock exchange	-
Date of last AGM	30/09/2016
Date of Balance Sheet	31/03/2016
Company Status(for e-filing)	Active

The Respondent has simply removed the reference of the plot and floor number. However, an average person with imperfect recollection may not be able to point out the minute differences in the addresses.

In **Juno Online Servs., Inc. v. Nelson**, FA0402000241972, it was held that '*use of the Disputed Domain Name for fraudulent purposes constituted bad faith*'.

5.2 Respondent

As per the INDRP Rules of Procedure, on July 21, 2017, this Tribunal issued a notice to the Respondent directing it to file a response within ten days. Absent response from the Respondent thereto, the matter was proceeded *ex-parte*.

6 Discussion and Findings

As per paragraph 4 of the .IN Domain Name Dispute Resolution Policy (INDRP), any person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- i) The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;

- ii) The Registrant has no rights or legitimate rights in respect of the domain name;
- iii) The Registrant's domain name has been registered or is being used in bad faith.

Based upon the pleadings, it is required to be examined as to whether the parties have been able to justify/rebut the aforesaid premises:

6.1 Identical or confusingly similar trade/service mark

As per the WHOIS records, the Respondent has registered the Disputed Domain Name 'AMAZON-HR.IN' recently i.e. on June 01, 2017.

The Complainant is the registrant of the domain name amazon.in since February 11, 2005. Further, as per the records, the Complainant has secured registration for the trade mark AMAZON in USA under reg. No. 2857590 on June 29, 2004 with first use in commerce claimed since July 31, 2002. In India, as per records, the trade mark AMAZON stands registered since the year 1999.

The Complainant, in the instant case, is the owner of the registered trade mark AMAZON in India as well as USA and has sufficiently demonstrated its rights in the trade mark AMAZON. As per Section 31 of the Trade Marks Act, 1999, registration is *prima facie* evidence of validity of the trade mark.

Thus, the Complainant's domain name registration and trade mark registrations are much prior to that of the Respondent.

Further, by virtue of continuous and extensive use in India and world over; numerous trade mark registrations; excellent brand recall value and recognition; sales turnover; goodwill and reputation in India and abroad; the mark AMAZON is no doubt a well-known mark and deserves highest protection.

Undoubtedly, the disputed domain name incorporates the mark AMAZON in its entirety. It has been held in *Inter-Continental Hotels Corporation vs. Abdul Hameed (INDRP/278)* as well as in *Indian Hotels Company Limited vs. Mr. Sanjay Jha (INDRP/148)* that when a Disputed Domain Name incorporates a mark in entirety, it is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. Similarly, in case of *Farouk Systems Inc. vs. Yishi, WIPO Case No. D2010-006*, it has been held that the domain name wholly incorporating Complainant's registered mark may be sufficient to establish identity or confusing similarity, despite the additions or deletions of other words to such marks.

In the view of the foregoing discussions, the Complainant has satisfied this Tribunal that:



- (i) The domain name in question “AMAZON-HR.IN” is phonetically as well as visually identical/similar to the Complainant’s prior registered trade mark AMAZON; and
- (ii) It has both prior statutory and proprietary rights in respect of the mark AMAZON;

6.2 Rights and legitimate interests

The Complainant has asserted that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Paragraph 7 of the INDRP enumerates three circumstances (*in particular but without limitation*) and if the Arbitrator finds that the Registrant has proved any of the said circumstances, shall demonstrate its rights to or legitimate interest in the Disputed Domain Name. The said paragraph is reproduced herein under:

“Registrant’s Rights to and Legitimate Interest in the Domain Name- Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant’s rights to or legitimate interest in the domain name for the purposes of Paragraph 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 with a bona fide offering of goods or services;*
- ii) The Registrant (as an individual, business, or other organisation) 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 misleading divert consumers or to tarnish the trademark or service mark at issue.”*

The Respondent has not filed any response in this case. There is nothing on record to suggest that the Respondent has used or made demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with *bonafide* offering of goods/services; or is commonly known by the Disputed Domain Name; or has made fair use of the domain name. The use of the Respondent is dishonest and smacks malafide inasmuch as the webpage reflects blatant copy of the Complainant’s mark/logo and the attempt to draw users under the garb of a false association/affiliation is evident. Such infringing use cannot be termed as ‘use’ or ‘*demonstrable preparation of use*’ and also cannot under the purview of ‘*legitimate non-commercial or fair use of the domain name*’ as envisaged by the Policy. As explained hereinabove, the Respondent has even made an attempt to imitate the address of the Complainant thereby misleading the potential customers.

At any rate, in such circumstances, *since the adoption itself is dishonest, 'use', if any is void ab initio.*

In view of the foregoing, it is evident that Respondent has no rights or legitimate interests in the disputed domain name.

6.3 Bad faith

Paragraph 6 of the INDRP enumerates the circumstances evidencing registration and use of domain name in bad faith. The said paragraph is reproduced herein under:

“Evidence of Registration and use of Domain Name in Bad Faith: For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:


(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has 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, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.”

Re bad faith adoption/use/conduct of the Respondent, the following factors merit attention:

1. Screenshots of both the websites reproduced hereinabove clearly indicates that the Respondent created the website with the sole intention of misleading the members of trade and public to attract the genuine users to it. In fact, the Respondent has

slavishly copied the Complainant's well-known trade mark . Even the disclaimer (circled in red) has been copied with a *mala fide* intent to associate itself with the Complainant, when no such association exists.

2. The latest screenshot of the Respondent's website is reproduced herein below:



It clearly reflects the malafide of the Respondent inasmuch as it is using the mark **amazon** but also AMAZON PRIME NOW which is proprietary to the Complainant.

3. In addition to the trade mark **amazon**, the impugned website also displays a delivery boy with an Amazon Package, in a bid to make the website look authentic and create an impression that the job offer originates from the Complainant, when it is not the case. Interestingly, the tab of the website reads as "*Amazon is Providing a Job of Local Delivery Jobs*".
4. The Respondent has cleverly registered its organization as "AMAZON INDIA" of Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka, 560055, which is similar to the address of one of the Indian subsidiaries of the Complainant.
5. The Respondent is a habitual infringer of the Complainant's trade marks inasmuch as the Respondent had previously adopted a domain name AMAZON-JOB.IN. Pursuant to a finding on bad faith, the Learned Arbitrator *vide* order dated April 18, 2017, had ordered the same to be transferred to the Complainant.

Thus, it is crystal clear that the Respondent has registered the Dispute Domain Name in bad faith for obtaining illegal monetary/commercial gain. From the facts above, it is also evident that the objective of registering the domain name is aimed at attracting Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's registered mark/name as to the source, sponsorship and affiliation.

In view of the foregoing, the panel is of the view that the Respondent has registered the domain name <AMAZON-HR.IN> in bad faith.

7 Award

From the foregoing findings, it is established beyond doubt that (1) the domain name is confusingly similar to the mark AMAZON which is proprietary to the Complainant, (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and (3) the domain name is registered in bad faith.

Thus, in accordance with the Policy and Rules, this Arbitral Tribunal directs the Respondent to immediately transfer the Disputed Domain Name <AMAZON-HR.IN> to the Complainant.

The parties shall bear their own cost.

Dated: 20/09/17



C.A. Brijesh
Sole Arbitrator