

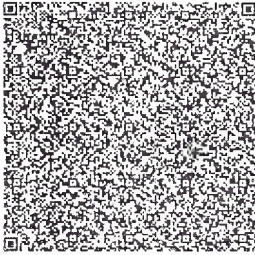
सत्यमेव जयते

INDIA NON JUDICIAL

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Certificate No. : IN-DL01105516400035P
Certificate Issued Date : 05-Jul-2017 05:15 PM
Account Reference : IMPACC (FR)/ dl759714/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL75971403312270415480P
Purchased by : RAJEEV CHAUHAN
Description of Document : Article 12 Award
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : RAJEEV CHAUHAN
Second Party : Not Applicable
Stamp Duty Paid By : RAJEEV 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.

LOGISTICS
BRIGADE DR. RAJKUMAR ROAD,
MALLESHWARAM WEST,
BENGALURU, KARNATAKA- 560055

...Respondent

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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 Counsels Tia Malik and Karan Bajaj of Lall & Sethi, D-17, South Extension- II, New Delhi- 110049, India, as its authorized representatives.

The Respondent in this proceeding is Logistics, Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka- 560055, India, Phone: +91.33857358, Email: amazon@inbox.si.

B. THE DOMAIN NAME, REGISTRAR AND REGISTRANT:

The disputed domain name is **AMAZONLOGISTIC.IN**, and the sponsoring Registrar of the Domain name is Endurance Domains Technology Pvt. Ltd. (R173-AFIN) as per the complaint.

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 AMAZONLOGISTIC.IN.

.IN Registry has supplied the copy of the complaint and the annexures to me and also supplied the same to the Respondent by email.

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 it 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 it. 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, the Complainant also offers business opportunities to members of the public to provide logistic services for Amazon and consumers of Amazon in various jurisdictions of the world including India, through its website <https://logistics.amazon.com/>. Printout from said website is annexed as Annexure-I.
 - 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 11th most visited website in the world, and 5th in the United States and ranked 21st in India by Alexa. The Complainant further submits that the Complainant's website www.amazon.in is ranked as the 6th 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 \$5.0 billion in 2016 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 Dikhaao" campaign.

RESPONDENT

1. The Respondent in this proceeding is Logistics, having its address at, Brigade Dr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka- 560055, India, Phone: +91.33857358, Email: amazon@inbox.si.
2. 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 virtually to a name identical trademark or service mark in which the Complainant has rights;
2. The Respondent 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 Tribunal, 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 virtually identical 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 AMAZONLOGISTIC.IN. It further submits that it also offers business opportunities to



members of public to provide logistic services through its website <https://logistics.amazon.com/> . The Complainant also states that the addition of the word “LOGISTIC” is likely to portray to the members of trade and public that the website bearing the Disputed Domain Name is an offshoot of the Complainant, which is not the case.

The Complainant relies upon various awards passed by ICANN panelist, wherein it is held 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 domain name LOGISTICS.AMAZON.COM and 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 in India and various other jurisdictions of the world. Furthermore, at the time the Respondent registered the Disputed Domain Name, the Complainant’s earlier trademark domain name LOGISTICS.AMAZON.COM was not only in use but the earlier well-known trademark AMAZON had already acquired the status of a well-known mark.

It is also contended 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.

The above submissions of the Complainant have not been rebutted by Respondent.

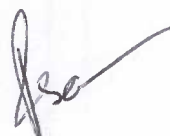
Looking into the facts of the case, the Tribunal agrees with the submission of complainant that mere addition of a descriptive word to a earlier well known mark are not sufficient and/or do not negate the similarities between the disputed domain name and earlier well known mark / Trademark of the Complainant.

The above submissions of the Complainant have not been rebutted by Respondent.

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 Respondent has not come forward to show that it was either using the disputed domain name for bonafide offering of goods or services, neither that he is commonly known by the domain name. Further the Respondent has not shown that it was making legitimate non commercial or fair use of the domain name.

On the other hand 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 by the Respondent. 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 further submits that the manner of adoption and use of the Disputed Domain Name clearly shows that the Registrant has not registered the same with an intention of *bona fide* offering of services, but to misrepresent members of trade and public that the Respondent is affiliated with the Complainant, which is not the case. It submits that the Respondent has never been recognized as AMAZON, which forms the imperative part of the Disputed Domain Name, 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 under the garb of the Complainant's reputation.

The Complainant further submits that such adoption of the Disputed Domain Name is likely to tarnish the hard earned goodwill and reputation of the Complainant in the earlier well-known trademarks, and therefore the Respondent has no rights or legitimate interest in the Disputed Domain Name which contains the Complainant's earlier well-known trademark in its entirety.

The facts presented by the Complainant establish that the Respondent has no right or legitimate interest in the Disputed Domain Name AMAZONLOGISTIC.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.

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 has submitted the following to show that the disputed domain name has been registered or is being used in bad faith:

- a) The Respondent's act of registering the Disputed Domain Name by adopting the Complainant's earlier well-known trademark AMAZON, simply establish the element of bad faith.
- b) The Respondent has also adopted a domain name, AMAZON-JOB.IN, and through the said domain name, designed its website in a manner which is deliberately similar to the get up, design and look of the Complainant's website. Further, the Complainant submits that the Respondent, through the said website is offering Amazon delivery jobs to the public.
- c) The Respondent has cleverly registered its organization as AMAZON INDIA with the address Brigade Mr. Rajkumar Road, Malleshwaram West, Bengaluru, Karnataka, 560055, which is similar to the address of one of the Indian subsidiaries of the Complainant and has simply removed the reference of the plot number and the floor, and such acts of the Respondent fall within the ambit of Clause 6(i) and 6(ii) of .IN Domain Name Dispute Resolution Policy (INDRP).

The Complainant has also relied upon various awards which are annexed as Annexure-Y and the note of the same has been taken by the Tribunal.

The Complainant has further also relied upon the case of **Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.** [2004 Supp (2) SCR 465].

The Complainant further submits that the activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of the Complainant's mark to improperly benefit the Respondent financially, in violation of applicable trademark and unfair competition laws.

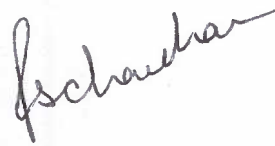
The Tribunal has taken note of all the submission made by the Complainant. The Tribunal agrees with the submissions of the Complainant that the activities of the Respondent in the present case, not only cause prejudice to the Complainant, but also to the members of the trade and public at large.

The act of the Respondent to register its organization with the name of Amazon India and with the address almost similar to that of Complainant's subsidiary shows that the disputed domain name was registered and is being used 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. <AMAZONLOGISTIC.IN> to the Complainant. The Award is accordingly passed on this day of 24th July, 2017.



Rajeev Singh Chauhan

Sole Arbitrator

Date: 24th July, 2017