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Account Reference

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Description of Document

Property Description

Consideration Price (Rs.)

First Party

Second Party

Stamp Duty Paid By

Stamp Duty Amount(Rs.)

: IN-DL84757198298575R
: 19-Nov-2019 10:34 AM
: IMPACC (IV)/ dl717303/ DELHI/ DL-DLH
: SUBIN-DL71730378152156081165R
: V K AGARWAL
: Article 12 Award
: Not Applicable
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: (Zero)
: V K AGARWAL
: Not Applicable
: V K AGARWAL
: 100
: (One Hundred only)



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NATIONAL INTERNET EXCHANGE OF INDIA
6C, 6D, 6E, Hansalaya Building,
15, Barakhamba Road,
New Delhi – 110 001

Amazon Technologies Inc., v. Alex Parker

V K Agarwal

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
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AWARD

1. The Parties

The Complainant is Amazon Technologies Inc., 410, Terry Avenue North, Seattle, Washington 98109, United States of America

The Respondent is Mr. Alex Parker, A – 03, Sector 59, NOIDA, Uttar Pradesh – 201301, India

2. The Domain Name and Registrar

The disputed domain name is <WWW.amazonemi.in>. The said domain name is registered with GoDaddy.com LLC, 14455, North Hayden Road, Suite 219, Scottsdale AZ, 85260, United States of America. The details of registration of the disputed domain name, as indicated in WHOIS (Annexure 2 to the Complaint) are as follows:

(a) Domain ID:	D414400000006783886 – IN
(b) Registrar:	GDaddy.com LLC
(c) Date of creation:	October 06, 2018
(d) Expiry date:	October 06, 2019

3. Procedural History

(a) A Complaint dated October 29, 2019 has been filed with the National Internet Exchange of India. The Complainant has made the registrar verification in connection with the domain name at issue. The print outs so received are attached with the Complaint as Annexure 2. It is confirmed that the Respondent is listed as the registrant and provided the contact details for the administrative, billing, and technical contact. The Exchange verified that the Complaint satisfied the formal requirements of the Indian Domain Name Dispute Resolution Policy (INDRP) (the "Policy") and the Rules framed thereunder.

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- (b) The Exchange appointed Dr. Vinod K. Agarwal, Advocate and former Law Secretary to the Government of India as the sole arbitrator in this matter. The arbitrator finds that he has been properly appointed. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Exchange.
- (b) In accordance with the Policy and the Rules, an attempt was made to send a copy of the Complaint to the Respondent on the given address. However, the copy of the Complaint could not be served on the Respondent. Hence, the present proceedings have to be ex parte.

4. Factual Background

From the Complaint and the various Annexure to it, the Arbitrator has found the following facts:

Complainant's activities

According to the Complaint, the Complainant, Amazon Technologies Inc., is an affiliate of Amazon.com, Inc., a multinational e-commerce and cloud computing company based in Seattle, Washington. Founded in 1994 as an online book seller, the Complaint has grown over the years to become the world's largest online retailers, with stand along websites in **India**, the United States of America, Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Mexico, the Netherlands, Spain, Turkey, United Arab Emirates, and the United Kingdom.

The Complainant offers a wide range of products and services, such as, security and surveillance devices, handheld devices, retail store devices, electronic publications, original digital contents, consumer electronics, computer software, kitchenware, clothing, bags, games and toys to cloud computing, e-publishing services, multimedia streaming, online reservation of home services and product fulfillment, both under its own brands as well as through third party sellers in a market place model.

The Complainant has several products and services available under its various brands, such as, Kindle, Amazon Prime, Amazon Web Services, Kindle Direct Publishing, Amazon Fire TV, Echo, Alexa, Amazon Dash, and the Amazon Fulfillment Network, among others. Amazon has also

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introduced an **Amazon Pay EMI** service for its e-commerce users in India that allows selected Amazon users to get instance credit via a completely digital process, for purchases made on the site Amazon.in.

Respondent's Identity and Activities

The Respondent's activities are not known.

5. Parties Contentions

A. Complainant

The Complainant contends that each of the elements specified in the .IN Domain Name Dispute Resolution Policy is applicable to the present dispute. The said elements are as follows:

- (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (iii) The Registrant's domain name has been registered or is being used in bad faith.

In relation to element (i), the Complainant contends that the Disputed Domain Name is identical with and/or confusingly similar to the Complainant's **AMAZON** Mark. The Disputed Domain Name incorporates the Complainant's trade name and registered trademark **AMAZON** in its entirety along with the descriptive word "emi" as a suffix which is insufficient for differentiation.

Complainant owns the domain name <amazon.com> through which it conducts a significant portion of its business. It was registered on November 01, 1994 and regularly renewed thereafter. The Complainant has also registered several country specific domain names and websites at international and domestic levels incorporating the designation **amazon**, such as. in Australia <amazon.com.au>; in Brazil <amazon.com.br>; in

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Canada <amazon.ca>; in China <amazon.cn>; in France <amazon.fr>; in Germany <amazon.de>; in Italy <amazon.it>; in Japan <amazon.co.jp>; in Netherlands <amazon.nl>; in Singapore <amazon.sg>; in Spain <amazon.es>; in Turkey <amazon.com.tr>; in the United Arab Emirates <amazon.ae>; in the United Kingdom <amazon.co.uk>; etc.

The Complainant is also the owner of India specific domain names <amazon.in> and <amazon.co.in>. The aforesaid domain names have been registered and continuously updated since February 11, 2005 and December 31, 2003 respectively.

The Complainant adopted the trademark **AMAZON** in the USA in the year 1995. It is registered in various countries, such as, Argentina, Brazil, Brunei, Colombia, Canada, Chile, Costa Rica, Cyprus, **India**, Ireland, Japan, Jordan, European Union, France, Malaysia, Mexico, Norway, Peru, Philippines, Sweden, Switzerland, United Kingdom and the United States of America under various classes. Copies of some of the registration certificates are attached to the Complaint as Annexure 6).

The Complainant contends that the disputed domain name contains the entire trademark of the Complainant, that is, **AMAZON**.

The addition of the generic word "emi" in a domain name is insignificant. It does not lead to any distinctiveness or reduce the similarity to the trademark "AMAZON" of the Complainant. It will not be perceived by the relevant public as a different, eligible to distinguish the Respondent or the services offered under the Disputed Domain Name from the Complainant. Further that, it does not help in distinguishing the Disputed Domain Name from the Complainant's trademark. On the contrary, the Disputed Domain Name leads the public to believe that it relates to the services rendered by the Complainant.

Therefore, the disputed domain name is identical and/or confusingly similar to the registered trademark 'AMAZON' of the Complainant.

In relation to element (ii), the Complainant contends that the Respondent (as an individual, business, or other organization) has not been commonly known by the mark "AMAZON". The Respondent does not own any trademark registration as "AMAZON" or a mark that incorporates the expression **AMAZON**. The Respondent has no license or authorization or permission from the Complainant to either use the mark **AMAZON** or to register the disputed domain name.

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Further, the Respondent does not have any rights or legitimate interest in the domain name because the Respondent has not exhibited any preparatory steps for using the domain name in connection with a *bona fide* offering of goods and services. The Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public. The Respondent's use of the Disputed Domain Name is for fraudulent purposes, namely, to imitate a legitimate, well-reputed and trustworthy entity, i.e. the Complainant, so as to deceive e-commerce users into purchasing products through the impugned website that are never provided.

Therefore, the Respondent has no legitimate right, justification or interest in the disputed domain name.

Regarding the element at (iii), the Complainant contends that the Respondent has registered the Disputed Domain Name in bad faith and for its actual use in bad faith. The main object of registering the domain name <www.amazonemi.in> by the Respondent is to mislead the customers of the Complainant and internet users and the general public. The Respondent is ostensibly selling electronic products, the product which the Complainant sells under the trademark "AMAZON".

Further that, absence of use and passive holding of a domain name constitutes bad faith. The Complainant has stated that the use of a domain name that appropriates a well-known trademark to promote competing or infringing products cannot be considered a "*bona fide offering of goods and services*".

The Complainant has further stated that the Respondent is using the Disputed Domain Name <www.amazonemi.in> for offering electronic products such as, laptops, computers, smart phones, tablets, video games & consoles, television & audio, etc. According to the Complaint, the Complainant's research revealed several consumer complaints. Thus, the disputed domain name is being used for the purpose of conning innocent consumers into paying money towards electronic products without actually shipping such products to them. (Annexure 13)

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Further that, the Respondent is apparently using the Disputed Domain Name for the purpose of illegitimately extracting money from innocent consumers, who are highly likely to assume the Respondent to be the Complainant or at least affiliated with it, and thus in good faith pay money to the Respondent to buy its products through the EMI payment scheme.

In support of its contentions, the Complainant has relied on a number of decisions by different entities. They have been duly considered. However, it has not been considered necessary to make their references during the aforesaid discussion.

B. Respondent

The Respondent did not submit any response.

6. Discussion and Findings

The Rules instructs this arbitrator as to the principles to be used in rendering its decision. It says that, "a panel shall decide a complaint on the basis of the statements and documents submitted by the parties in accordance with the Policy, the Arbitration and Conciliation Act, 1996, the Rules and any rules and principles of law that it deems applicable".

According to the Policy, the Complainant must prove that:

- (ii) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (iv) The Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of Complaint; and
- (v) The Registrant's domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <AMAZONEMI.IN> was registered by the Respondent on October 06, 2018. The registration of the said disputed

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domain name has already expired on October 06, 2019.

The Complainant is an owner of the registered trademark "AMAZON". The Complainant is also the owner of a large number of domains with the trademark AMAZON as stated above and referred to in the Complaint. Most of these domain names and the trademarks have been created by the Complainant much before the date of creation of the Disputed Domain Name by the Respondent. The disputed domain name is <www.amazonemi.in>. Thus, the disputed domain name is very much similar to the name and the trademark of the Complainant.

The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that, there is a strong likelihood that a web browser looking for products of the Complainant in India or elsewhere would mistake the disputed domain name as of the Complainant.

Therefore, I hold that the domain name <www.amazonemi.in> is phonetically, visually and conceptually identical or confusingly similar to the trademark of the Complainant.

B. Rights or Legitimate Interests

The Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (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; or
- (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

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the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent's response is not available in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the world. The name of the Registrant/Respondent is Mr. Alex Parker. Based on the evidence adduced by the Complainant, it is concluded that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not consented, licensed or otherwise permitted the Respondent to use its name or trademark "AMAZON" or to apply for or use the domain name incorporating said mark. The domain name bears no relationship with the Respondent/ Registrant. Further that, the Registrant has nothing to do remotely with the business of the Complainant.

I, therefore, find that the Respondent has no rights or legitimate interests in the domain name as per INDRP Policy, Paragraph 4(ii).

C. *Registered and Used in Bad Faith*

Any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the 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's 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

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- (iv) by using the domain name, the Registrant has intentionally attempted to attract the 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.

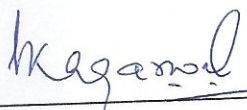
The contention of the Complainant is that the present case is covered by the circumstances mentioned herein above. There are circumstances indicating that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its web site, by creating a likelihood of confusion with the Complainant's mark. It may also lead to deceiving and confusing the trade and the public.

The Respondent's registration of the domain name <www.amazonemi.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant.

The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith.

7. Decision

In light of the foregoing findings, namely, that the domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name, and that the domain name was registered in bad faith and is being used in bad faith, in accordance with the Policy and the Rules, the Arbitrator orders that the domain name <WWW.AMAZONEMI.IN> be transferred to the Complainant.



Vinod K. Agarwal
Sole Arbitrator

Date: November 25, 2019