



महाराष्ट्र MAHARASHTRA

2016

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अनु.क्र. ०१७ दि. १७/०१/१७ न.श.रकम. ५००५००५००

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दस्त जोडणी २०१७

मिल्ल्या दि. १७/०१/१७

मुद्रांक दि. १७/०१/१७ शिबीर विलास व नागरी

पत्ता २५०००० शिबिर रोड पुणे ४१

दुसऱ्या पक्षाचा नाव नेशनल इन्व्हेस्ट्मेंट्स प्रा. लि. पुणे

हस्त व्यक्ती नरेश गोपाचंद लुटे

नरेश भाऊरे
मुद्रांक दि. १७/०१/१७
४२१५, शिबिर पेठ, पुणे-४३



AWARD
IN ARBITRATION

'AMAZON-JOB.IN'

INDRP CASE NO.873

Amazon Technologies Inc.
410 Terry Ave N, Seattle,
WA 98109. United States of America

THE COMPLAINANT

AND

Amazon India
Brigade Dr.Rajkumar Road,
Malleswaram West, Bengaluru.
Karnataka. 560055. India

THE RESPONDENT /
THE REGISTRANT

IN THE MATTER OF DISPUTED DOMAIN NAME: - `AMAZON-JOB.IN`

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

DELIVERED ON THIS 18th DAY OF APRIL TWO THOUSAND SEVENTEEN AT PUNE, INDIA.

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

- 01. Names and addresses
Of the Complainant: -** **Amazon Technologies Inc.**
410 Terry Ave N, Seattle
WA 98109. United States of America
- Through its authorized
representatives M/s Singh & Singh Lall & Sethi
D-17, South Extension - II
New Delhi. 110049.
- 02. Name and address of
The Respondent: -** **Amazon India**
Brigade Dr. Rajkumar Road,
Malleshwaram West, Bengaluru.
Karnataka. 560055. India

03. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	22.03.2017
02	Hard copy of complaint received	01.04.2017
03	Notice of Arbitration issued with the instructions to the Respondent to file reply latest by 11.04.2017	01.04.2017
04	No reply filed by the Registrant / Respondent and hence suo-motu extension of time granted by Arbitrator upto 15.04.2017	12.04.2017
05	No reply filed by Registrant / Respondent even within extended period and hence Notice of Closure of Arbitration was issued	17.04.2017
06	Award passed	18.04.2017

I] PARTICULARS OF DISPUTED DOMAIN NAME & REGISTRATION:

1. Disputed domain name is `AMAZON-JOB.IN'.
2. Date of registration is 28.10.2016
3. Registrar is Endurance Domains Technology Pvt. Ltd. (R173-AFIN)
Unit No. 501, 5th Floor & Unit No.402, 4th Floor, IT Building,
NESCO IT Park, NESCO Complex, Western Express Highway,
Goregaon (East), Mumbai. 400063. Maharashtra, India.

II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -

01. Arbitration proceedings were carried out as per .In Domain Name Dispute Resolution Policy (INDRP) read with INDRP Rules of Procedure, Indian Arbitration Act, 1996 and Code of Civil Procedure, wherever necessary.
02. The parties were requested to expedite their submissions so as to enable this panel to pass award within the 60 days time frame prescribed.
03. Copies of all communications were marked to both the parties and NIXI.
04. No personal hearing was requested / granted / held.

III] BRIEF INFORMATION ON THE COMPLAINANT: -

The Complainant in the present arbitration proceedings is Amazon Technologies Inc. United States of America. Mr.Jeff Bezos founded the complainant company in the year 1994 with innovative idea to sell books over the internet. It had been a great success in initial five years only. Since 1995 the Complainant has continuously used the AMAZON AND AMAZON.COM trade marks in connection with its products and services. Today the Complainant is one of the world's largest online retailers offering products and services to more than 100 countries around the globe. Today it offers instant videos, MP3s, cloud players, cloud drive, kindle, appstore for android, digital games and softwares, audio books, movies, music and games, electronics and computers and many more items apart from the books.

IV] SUMMARY OF THE COMPLAINT: -

The Complainant's Complaint is based on the following points, issues, representations or claims in brief:-

(A) CONTRAVENTION OF THE REGISTERED TRADEMARKS AND DOMAIN NAMES OF THE COMPLAINANT (CONTRAVENTION OF PARA (3), (4) AND (6) OF THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP) :-

1. The Complainant states that the domain name registered by the Respondent AMAZON-JOB.IN is virtually identical to the trademarks registered in India, some of which are as follows: -
 - (a) `AMAZON', which is registered vide No.876620 dated 18.08.2005,
 - (b) AMAZON.COM vide No. 876621 dated 24.11.2003
 - (c) AMAZON vide No.916801 dated 09.12.2005
 - (d) AMAZON vide No.916802 dated 01.03.2006

- (e) AMAZON vide No.916803 dated 27.10.2005
- (f) AMAZON vide No.916804 dated 11.11.2005
- (g) AMAZON vide No.916805 dated 02.02.2006
- (h) AMAZON vide No.916807 dated 14.03.2009
- (i) AMAZON vide No.916808 dated 01.10.2005
- (j) AMAZON vide No.916809 dated 14.01.2006
- (k) AMAZON vide No.916810 dated 29.11.2005
- (l) AMAZON vide No.916811 dated 02.01.2006
- (m) AMAZON vide No.916812 dated 08.01.2006
- (n) AMAZON vide No.916814 dated 31.10.2005
- (o) AMAZON vide No.916815 dated 09.12.2005
- (p) AMAZON vide No.916816 dated 30.05.2006
- (q) AMAZON vide No.916817 dated 22.12.2005
- (r) AMAZON vide No.916818 dated 28.12.2005
- (s) AMAZON vide No.916819 dated 27.10.2005

and many more in various categories. Apart from Indian trademarks, the Complainant also holds various international registered trademarks. Similarly the Complainant also holds various domain names which include the word AMAZON prominently.

The Complainant states that this complies with the condition of Para 4(i) of INDRP.

(B) NO RIGHT OR LEGITIMATE INTEREST IN DISPUTED DOMAIN NAME (PARA 3(b)(vi)(2) OF INDRP RULES READ WITH PARA 7 :-

By adopting virtually identical name, the Respondent is clearly trying to associate himself with the Complainant with mala fide intention to ride upon the immense goodwill and reputation of the Complainant. The Registrant has registered the disputed domain name to mislead the members of trade and public that jobs offered through disputed domain name are being offered by the Complainant. The Respondent has not been affiliated or associated with the Complainant in any way. Therefore the Respondent has no rights, interests, in the disputed domain name which contains the Complainant's earlier well known trademarks in its entirety.

According to the Complainant this complies with the condition of Para 4(ii) of INDRP.

(C) REGISTRATION AND USE IN BAD FAITH: -

The Respondent has designed and created a website with an intention to mislead members of trade and public, to make them think, feel or understand that, the website bearing the disputed domain name is an offshoot of the Complainant. The Complainant has also attached the screen shots of the home page of Complainant's website as well as the Respondent's website. It is clear from both these screen shots that the word AMAZON, style of its lettering, horizontal arrow etc. are quite similar to that of the Complainant. Moreover the words 'Amazon Logistics Delivery Boy job' also appear in the left hand

top corner, leading to the conclusion by the visitor that the site is genuinely owned by the Complainant. The Respondent has very cleverly registered its organization as AMAZON INDIA with Bangaluru address. So, even if anyone checks or tries to check the authenticity, he is surely to get misled thinking that he is visiting official and genuine website of the Complainant.

The Respondent has also registered Amazon Development Centre (India) Private Limited as a private limited company with the Ministry of Corporate Affairs, with Corporate Identity No. (CIN) as U72200KA2004FTC034233. The sub-category is stated as Subsidiary of Foreign Company. In respect of the registered office address stated there, details of plot number and floor, are cleverly removed.

From all above, it can be clearly seen that the Respondent has been well aware of the immense goodwill and reputation of the Complainant worldwide, has chosen :-

- (i) to adopt and use the disputed domain name which contains Complainant's earlier well-known mark AMAZON,
- (ii) to try and pull scams as represented above,

It clearly shows bad faith on part of the Respondent in adopting the disputed domain name.

In support of its contentions the Complainant has referred to the decisions given in Juno Online Servs Inc. V/s Nelson, FA 042000241972, Amazon Technologies Inc. V/s Sounders, FA 1503001610740, VeuveClicquotPonsardin V/s The Polygenix Group Co., WIPO case No.D2000-0163, Playboy Enterprises International Inc. V/s Hector Rodriguez, WIPO Case No.D2000-1016 AND Bennett Coleman & Co. Ltd. V/s Steven S. Lalwani, D-2000-0014. The Complainant has also cited the decision by Hon. Supreme Court in the matter of www.siffynet.net and www.siifynet.com.

The Complainant has stated that there exist circumstances indicating that the Respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration, for valuable consideration in excess of the directly related to the domain name.

(D) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the above background of the Complaint and reasons described therein the Complainant has requested for transfer of the disputed domain name to it as also the costs.

(V) REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

In reply to the complaint or to the Notice of Arbitration, the Registrant / Respondent has **NOT** filed any reply / say. This arbitration panel suo-motu extended the period to file his say / reply, if any. However, the Respondent has failed / neglected to file any say / reply, even within the extended period.

VI] REJOINDERS OF THE PARTIES: -

Since the Registrant / Respondent has failed / neglected to file any reply / say, no rejoinder was called for.

VII] MERITS OF THE COMPLAINT: -

The Registrant / Respondent has not filed any say / reply to the complaint or Notice of Arbitration, even within the extended period. Presumably, he agrees to what has been stated in the Complaint and he has accepted the contents / allegations of the Complaint, because logically no person having lawful rights in the domain name, would keep mum and leave his case undefended. It is felt that he has nothing to say because he knows that he has played foul intentionally, by registering the disputed domain name.

The well known legal maxim 'silence tantamount to acceptance' is applicable to this case. Based on this premise and on the basis of the Complaint and attachments to it, this Arbitration panel records the following observations: -

(a) The Complainant has registered trademarks and websites which include the word 'AMAZON'. All of them have been in use for many years and much before the registration of disputed domain name by the Respondent.

Against this the Registrant does not have any registered trademark, other similar prior website or any business mark / identity containing the word 'AMAZON' or part thereof. He is also not commonly known by these words or any part thereof.

(b) The Respondent's domain name contains the word AMAZON. The Complainant, not only has several Indian as well as international trademarks but also various domain names of which AMAZON is the prominent part.

It is a well settled legal position in many decided cases so far that, the mere addition and difference in top level domain name of the words like JOB or '.in' does not differentiate the domain name from the registered trademarks or websites of the Complainant. The Respondent has not been using the registered domain name for any legitimate or charitable purpose. On the contrary it appears that he is earning unlawfully out of the registration of disputed domain name, by taking disadvantage of similarity of disputed domain name with the Complainant's name, fame, goodwill and global recognition.

Further, the Respondent has provided insufficient details of address while registering the disputed domain name. He has also registered private limited company in India by using the word AMAZON prominently and with sub-category as Subsidiary of Foreign company, making it extremely difficult to find out as to who the real owner is of the disputed domain name. It appears that the Respondent has planned to gain unlawfully from the registration of

disputed domain name with every minute detail, and at the same time to hide his correct identity and whereabouts.

(c) It is the duty cast by INDRP read with INDRP Rules, on every person aspiring to register any domain name,

(i) to verify before registration of proposed domain name, whether any similar domain name exists,

(ii) whether any registered trademark exists similar to the proposed domain name,

(iii) whether said domain name or registered trademark, has been in prior use by others

If he fails or neglects to check on above points, he is registering domain name with the risks of infringing other's rights, interests and claims. In the case of such infringement having proved, his domain name is likely to be transferred to genuine owner / stakeholder. Further he may be liable for other civil and / or criminal consequences including monetary losses. In the present case, it appears that the Registrant / Respondent had made up his mind to register the disputed domain name with full knowledge of above risks and consequences. Further he has planned and managed the things in such a way, that his exact identity and whereabouts should not be easily identifiable.

(d) The disputed domain name is identical or confusingly similar to registered trademarks, registered in India as well as various parts of the globe and with also the websites in which the Complainant has rights according to the requirement of Para 4(a)(i) of the INDRP Rules

(g) The Registrant / Respondent has no rights or legitimate interests in respect of the domain name as required by Para 4(a)(ii) of the Rules.

(h) If use of disputed domain name by the Registrant / Respondent is allowed to continue, the same would be offered for sale at unreasonable consideration to any other party including the competitors of the Complainant. Otherwise the Respondent would continue to gain illegally and immorally, by misusing the reputation of the Complainant. This would also lead to loss of business as well reputation of the Complainant.

Importantly, the Respondent has failed / neglected to establish his bona fides, legitimacy, legal rights, prior use of the domain name for lawful purpose or any type of nexus between him and the registered domain name. All this leads to only one conclusion that the Registrant has registered domain name with mala fides and with the ulterior motive of making profits at the disadvantage to the Complainant.

From all above findings, it can be concluded that the Complainant has proved its case for the entitlement to the disputed domain name.

VIII] AWARD: -

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

[1] **The Complainant is entitled to the disputed domain name – 'AMAZON-JOB.IN' and hence the same be transferred to the Complainant.**

[2] **The Respondent will pay the cost of this arbitration to the Complainant.**

Dated: - 18.04.2017
Place: - Pune


**(S.C.INAMDAR)
SOLE ARBITRATOR**