



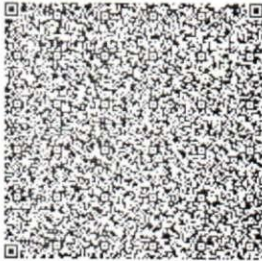
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## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL88380217317467M
Certificate Issued Date	: 04-Aug-2014 02:39 PM
Account Reference	: IMPACC (IV)/ dl776103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL77610374053727290719M
Purchased by	: AMARJIT SINGH ADVOCATE
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AMARJIT SINGH ADVOCATE
Second Party	: Not Applicable
Stamp Duty Paid By	: AMARJIT SINGH ADVOCATE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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**ARBITRATION AWARD  
.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA**

**VONAGE MARKETING LLC  
V/S  
ZHAXIA**

**DISPUTED DOMAIN NAME <vonage.in>**

# ARBITRATION AWARD

.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

## IN THE MATTER OF:

Vonage Marketing LLC ...Complainant  
A limited liability company organized  
and existing under the laws of the  
State of Delaware, USA  
23, Main Street, Holmdel  
NJ 07733  
U.S.A.

Represented through its Attorneys

Remfry & Sagar  
Remfry House at the Millennium Plaza  
Sector-27, Gurgaon-122 009

## VERSUS

Zhaxia ...Respondent  
Pfister Hotel  
Milwaukee, WI 53214  
U.S.A.

Disputed Domain Name: <vonage.in>

### 1. THE PARTIES:

The Complainant in this arbitration proceeding is Vonage Marketing LLC, A limited liability company organized and existing under the laws of the State of Delaware, USA, 23, Main Street, Holmdel, NJ



07733, U.S.A. represented through its attorneys, Remfry & Sagar, Remfry House at the Millennium Plaza, Sector-27, Gurgaon-122 009.

The Respondent in this arbitration proceedings is Zhaxia Pfister Hotel, Milwaukee, WI 53214, U.S.A.

2. **THE DOMAIN NAME AND REGISTRAR**

The disputed domain name <vonage.in> has been registered by the Respondent. The Registrar with whom the disputed domain is registered is IN Registrar d.b.a. inregistrar.com.

3. **PROCEDURAL HISTORY**

The Complaint was filed with the .In Registry, National Internet Exchange of India (NIXI), against Zhaxia Pfister Hotel, Milwaukee, WI 53214, U.S.A. The NIXI verified that the Complaint and the annexures to the Complaint and was satisfied with the formal requirements of the .In Domain Name Dispute Resolution Policy ("The Policy") and the Rules of Procedure ("The Rules") were complied with.

3.1 The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6).

3.2 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI formally notified the Respondent



of the Complaint and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with The Arbitration and Conciliation Act, 1996, Rules framed there under, .In Dispute Resolution Policy and Rules framed thereunder on **24<sup>th</sup> April, 2014**. By e-mail dated **24<sup>th</sup> April, 2014**, the Panel wrote to National Internet Exchange of India to forward the proof of service of Complaint as well as the annexures sent to the respondent for consideration at the earliest.

The Complainant through their attorneys were directed to forward the soft copy of the Complaint as well as of the annexures to the respondent within two days time on the registered e-mail Id as appearing on the WHOIS records of the Disputed Domain Names.

The Centre, National Internet Exchange of India by its e-mail dated 25<sup>th</sup> April, 2014, informed the Panel that they are yet to receive the delivery status of the Complaint and the annexures as has been sent to the respondent and shall intimate the Panel about the same in due course of time.

The Complainant by its e-mail dated 25<sup>th</sup> April, 2014, forwarded the Complaint along with all the annexures to the respondent on the e-mail ID as appearing in the WHOIS records of the Disputed Domain Names.

The panel notified the parties about the appointment of the panel and delivery of



complaint along with all the annexures. The Respondent was given an opportunity to file its response, if any, within 10 days of the communication dated **28<sup>th</sup> April, 2014**.

3.3 In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings on **28<sup>th</sup> April, 2014** and the due date for filing his response. The Respondent did not file any response to the Complaint.

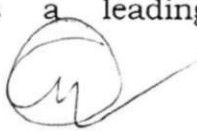
3.4 The Respondent failed and/or neglected and/or omitted to file any response to the Complaint within time as was granted to him by notice dated **28<sup>th</sup> April, 2014**.

Therefore, the Panel had no other option but to proceed with the matter on the basis of the pleadings, documents and material on record.

#### 4. **FACTUAL BACKGROUND**

4.1 The Complainant in these arbitration proceedings is Vonage Marketing LLC, A limited liability company organized and existing under the laws of the State of Delaware, USA, 23, Main Street, Holmdel, NJ 07733, U.S.A.

4.2 Complainant i.e. Vonage Marketing LLC, is a limited liability company organized and existing under the laws of the State of Delaware, USA of 23 Main Street, Holmdel, NJ 07733, U.S.A. is a leading provider of



communications services, connecting consumers and business through cloud - connected devices worldwide. Complainant provides feature-rich, affordable communication solutions that offer flexibility, portability and ease-of-use for both landline and mobile phones.

- 4.3 Complainant was founded in the year 2001, Complainant officially launched its services first in the USA and later expanded it to Canada in the year 2004, Puerto Rico and the United Kingdom in the year 2005. In the year 2006, Complainant launched virtual phone numbers across Western Europe and by August in the same year, Complainant had over 1.9 Million subscriber lines.
- 4.4 In the year 2007, Complainant along with Motorola Inc. of the USA, co-branded an Internet telephone adapter with wireless router. In the following year, Complainant launched V-Portal, first of its branded products, followed by their first mobile application for iPhone®, Blackberry® and iPod Touch® in the year 2009. Further, Complainant introduced 'Vonage World Plan' in the year 2009 which offers unlimited calling to more than 60 countries with popular features like call waiting, call forwarding and visual voice mail for low monthly rate. In the following two years, Complainant launched its Facebook application and expanded its presence to retail stores such as Facebook application and expanded its presence to retail stores such as Walmart, Best Buy, Kmart and



Sears. Complainant provides its services in more than 60 countries through 2.5 million subscriber lines.

- 4.5 Complainant has over the year received numerous awards and recognition of its products, services and innovations such as 'People's Choice Stevie Award' for the Favourite Customer Service in the Telecommunications category and 'Silver Stevie Award' for Customer Service Department of the year, both in the year 2014 itself (The Stevie Awards for sales and customer service are the world's top sales, contact certain and customer service awards); 'International CES, Innovation Design and Engineering Awards 2007' in the telephone category (The award recognizes the most innovative consumer electronics products in over 31 categories since 1989); 'Top 100 voices in IP communications, 2006' (presented by Internet Telephony, the longest-running publication dedicated to the coverage of IP communications); 'World Class Award 2006' in the Voice Over Internet Protocol category (presented by PC World, the most widely-read computer or business magazine) etc.
- 4.6 Complainant's services under the brand VONAGE command tremendous popularity and have been offered extensively world over and gained significant market share.
- 4.7 The Trade mark VONAGE Vonage / VONAGE formative marks are registered / applied for registration in numerous jurisdictions of the





world including Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Egypt, El Salvador, European Community, Gaza, Ghana, Hong Kong, India, Indonesia, Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Macedonia, Malaysia, Mexico, New Zealand, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Russian Federation, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Turnkey, United Arab Emirates, United States of America, Uruguay, Venezuela, Vietnam etc. The earliest registration dates back to September 3, 2002 in the United States of America under Registration No. 2,614,773. In addition, VONAGE is being used as a part of corporate name/s of Complainant and its various affiliates / subsidiaries.

- 4.8 In India, the trade mark VONAGE is registered / applied for in the name of Complainant, details of the registration are reproduced herein below:

<u>Trade Mark</u>	<u>Registration No.</u>	<u>Date</u>	<u>Class</u>	<u>Goods/ Services</u>	<u>Status</u>
VONAGE	1367263	June 28, 2005	9, 38	(Class 9) Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life saving and	Registered





				teaching apparatus and instruments, apparatus for recording, transmission or reproduction of sound or images, magnetic data carries, recording discs, automatic vending machines and mechanisms for coin operated apparatus, cash registered, calculating machines, data processing equivalent and computers, fire extinguishing apparatus included in class 9. [Class : 38] Telecommunications included in class 38.	
VONAGE THE BROADBAND PHONE COMPANY	1367262	June 28, 2005	9, 38	(Class 9) Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision)	Registered



				n), life saving and teaching apparatus and instruments, apparatus for recording, transmission or reproduction of sound or images, magnetic data carries, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equivalent and computers, fire extinguishing apparatus. [Class : 38] Telecommunications included in class 38.	
VONAGE DIGITAL VOICE	1367261	June 28, 2005	9, 38	(Class 9) Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life saving and teaching apparatus and instruments, apparatus for recording, transmission or reproduction of sound or images, magnetic data carries, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equivalent and computers, fire extinguishing apparatus. [Class : 38] Telecommunications included in class 38.	Registered



				n), life saving and teaching apparatus and instrument s, apparatus for recording, transmissio n or reproductio n of sound or images, magnetic data carries, recording discs, automatic vending machines and mechanism s for coin operated apparatus, cash registered, calculating machines, data processing equivalent and computers, fire extinguishi ng apparatus. [Class : 38] Telecommu nications.	
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- 4.9 Complainant / its affiliates have registered several top level domain names comprising the trade mark VONAGE such as 'vonage.com', 'vonageland.com', '4vonage.com', '4vonage.net', '4vonage.org', 'askvonage.net' as well as country code top-level domain (CCTLD) such as 'myvonagecard.co.uk', 'myvonagecard.eu', 'vonageindia.co.in', 'vonageland.com', 'vonage.ag', 'vonage.am', 'vonage.ca'.



Complainant's websites are very popular amongst the internet users and disseminate valuable information and are a source of knowledge of its products / business under the trade mark VONAGE. Further, Complainant offers web based services and its websites play an important role towards the same.

4.10 The complainant objects to the registration of disputed domain name <vonage.in> in the name of the respondent and seek the relief of transfer thereof.

4.11 The present dispute fall within the scope of INDRP and the Constituted Panel appointed by INDRP has the jurisdiction to decide the same. The Registrar of the disputed Domain Name has adopted the INDRP Rules, as per its Registrar Accreditation Agreement.

## 5. **PARTIES CONTENTIONS**

### 5A **COMPLAINANT**

5A(1) The Complainant submits that the trade mark/s VONAGE / Vonage represents important proprietary rights of Complainant. The said trade mark is representative of Complainant, its products, brand identity, business reputation and public identification throughout the globe including India. Complainant submits that he has invested years of time, capital, efforts and resources and attained immense goodwill and reputation in the trade mark/s VONAGE / Vonage.



- 5A(2) The Complainant further submits that he was desirous of extending its rights on the Internet by registering the domain name 'vonage.in' in India. However, when Complainant sought to register the said domain name sometime in December, 2013, he was shocked to learn that the same was already registered in the name of one 'Zhaxia of Pfister Hotel, Milwaukee, WI 53214, U.S.A.' (hereinafter referred to as the Registrant). The email address of the Registrant was mentioned as ymgroup@msn.com and telephone No. as +414.2710840. The Complainant further submits that both the telephone number as well as the postal details appear to be incomplete/bogus. As per the WHOIS records pertaining to the domain 'vonage.in', the same was registered on July 23, 2013.
- 5A(3) The Complainant further submits that while attempting to view the contents of the website 'www.vonage.in', Complainant learnt that the same does not resolve to any particular website but is redirected by the user to randomly selected webpages.
- 5A(4) The Complainant submits that aggrieved by the Registrant's adoption/registration of the domain 'vonage.in' which is identical with and/or confusingly similar to Complainant's trade mark/name/domain name VONAGE, Complainant addressed a 'cease and desist' notice to the Registrant on December 20, 2013 and again on December 23, 2013. Complainant, *vide* its aforementioned notice,



apprised the Registrant of its rights vesting in the trade mark/name/domain name VONAGE and called upon it to cease using VONAGE as a part of its domain name and transfer the same in favour of Complainant. In response, instead of transferring the domain to Complainant, Registrant demanded monetary compensation of USD 1890 for sale of the domain. Complainant, upon learning Registrant's bad faith of registering the domain 'vonage.in' to sell the same, chose not to respond to the said offer of Registrant. Thereafter, Complainant received another email on February 6, 2014 reiterating its demand to transfer the said domain for USD 1890.

- 5A(5) The Complainant submits that the Registrant is not operating any particular website under the domain 'vonage.in' and the said domain name continues to be redirected to random webpages.
- 5A(6) The Complainant further submits that the Registrant's impugned domain name 'vonage.in' is identical to and comprises in entirety Complainant's trade mark VONAGE, which is registered in numerous countries including India. It is further submitted by Complainant that Registrant has registered the impugned domain name 'vonage.in' with a mala fide intention to trade upon the immense goodwill and reputation enjoyed by Complainant in its well-known trade mark/name/domain name VONAGE and





thereby gaining undue mileage out of it. It is submitted that the objectionable domain has no meaning or significance independent of Complainant's trade mark VONAGE. This is a clear case of infringement and passing off which is violative of the rights enjoyed by Complainant in its well known and registered trade mark/name/domain name VONAGE. Moreover, the Registrant's use of Complainant's coined trade mark VONAGE clearly establishes that the Registrant registered the impugned domain name with full knowledge of Complainant, its business activities and intellectual property.

- 5A(7) The Complainant further submits that the impugned domain name 'vonage.in' is identical to domain names registered in the name of Complainant/its affiliates.

## **B. RESPONDENT**

- 5B(1) The Respondent was given an opportunity to file his/her response to the Complaint by the panel by its notices dated 28<sup>th</sup> April, 2014. However, the respondent failed to file any response within the prescribed time or to seek any extension of time. The case of the complainant, therefore, remained unrebutted.

## **6. DISCUSSIONS AND FINDINGS**

- 6.1 The Complainant, while filing the Complaint, submitted to arbitration proceedings in accordance with the .In Dispute Resolution



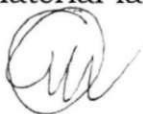
Policy and the Rules framed there under in terms of paragraph (3b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the Policy, while seeking registration of the disputed domain name.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional circumstance, otherwise determines that such a hearing is necessary for deciding the Complaint. I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing. Sub-Section 3 of Section 19 of The Arbitration & Conciliation Act also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

6.3 It is therefore, appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

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- 6.4 In accordance with the principles laid down under Order 8 Rule 10 of the Code of Civil Procedure, the arbitrator is empowered to pronounce judgment against the Respondent or to make such order in relation to the Complaint as it think fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed by the panel.
- 6.5 The award can be pronounced on account of default of Respondent without considering statements or averments made by the Complainant on merit. However, in view of the fact that preliminary onus is on the Complainant to satisfy the existence of all conditions under the policy to obtain the relief's claimed, the panel feels it appropriate to deal with the averments made by the Complainant in its Complaint in detail and to satisfy itself if the conditions under the policy stand satisfied.
- 6.6 The Respondent has not filed its reply or any documentary evidence in response to the averments made in the complaint. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the authenticity of the documents filed by the Complainant.
- 6.7 The onus of proof is on the Complainant. As the proceedings are of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the



Complaint concerning the Complainant's legitimate right, interest and title in the trade mark, trade name and domain name <vonage.in> and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures/Exhibits filed by the Complainant along with the Complaint.

- 6.8 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted.
- 6.9 The decision of Hon'ble Supreme Court of India in the matter of **JahuriSah Vs. Dwarika Prasad** – AIR 1967 SC 109, be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (See Section 58 of the Indian Evidence Act, 1872).
- 6.10 The Panel therefore accepts the case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.
- 6.11 Paragraph 10 of the Policy provides that the remedies available to the Complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the Complainant.



6.12 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

**A. IDENTICAL OR CONFUSINGLY SIMILAR**

- 6A.1 The Complainant contends that the Registrant's Domain Name is identical or confusingly similar to a trade mark in which the Complainant has rights.
- 6A.2 The Respondent registered the Disputed Domain Name on 23<sup>rd</sup> July, 2013.
- 6A.3 The Disputed Domain Name is identical to the Complainant's trademarks, trade name and domain name. The dominated and distinctive feature of the Disputed Domain Name is the incorporation of the Complainant's trademark, trade name and domain name as it is.
- 6A.4 The impugned domain name was registered on July 23, 2013 in the name of the Registrant whereas Complainant's domain 'vonage.com' was created on December 12, 2000. Further, the earliest registration for the trade mark VONAGE was secured on February 17, 2003 in the European Union by Complainant. In India, the trade mark VONAGE was registered on June 28, 2005 in the name of Complainant in Classes 9 and 38. Thus, Complainant's adoption of the trade mark/name/domain



name VONAGE is much prior to Registrant's registration of the impugned domain name 'vonage.in'. The Complainant has filed copies of Certificate of Registrations in India for the trade marks 1367261, 1367262 & 1367263 as as Annexure D to the Complaint. The Complainant has also filed copies of Certificate of Registration in respect of the mark VONAGE and VONAGE formative marks registered in various other countries as Annexure C to the Complaint.

6A.5 The Complainant has also filed on record list of Domain Names comprising Trade Mark VONAGE purportedly registered by Complainant or its affiliates as Annexure E to the Complaint. However, the Complainant has failed to provide the Registration details and creation details of the domain names so mentioned. Therefore, the Panel shall not put reliance of the said document as placed before me.

6A.6 The Respondent has not disputed any contentions raised by the Complainant in the Complaint. The Panel also finds and holds that the disputed Domain Name <vonage.in> is identical and/or deceptively similar to the earlier registered trademarks/ Trade name of the Complainant. The whole of Complainant's trade mark / name has been incorporated in the disputed domain name and there is bound to be confusion and deception in the course of trade by the use of disputed domain name. Therefore, the Complainant has been





successful in proving that the domain name <vonage.in> is identical and/or confusingly similar to the Trademark of the Complainant.

- 6A.6 For all the above cited reasons, it is established that the Complainant has trademark rights in the VONAGE trademark and that the disputed domain name is identical or confusingly similar to this trademark. Therefore, the condition of Paragraph 4(a)(i) of the IN Policy is fulfilled.

**B. RESPONDENT HAS NO RIGHT OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME**

- 6B.1 The Respondents could not demonstrate any legitimate interest in the Disputed Domain Name. The Respondent registered the Disputed Domain Name after the Complainant's rights in the VONAGE mark were already established through use and registrations.
- 6B.2. The Registrant is not offering any goods/services under the domain name 'vonage.in'. In fact, Registrant is not operating any active website under the impugned domain 'vonage.in' and is redirecting to random webpages. Registrant can demonstrate any use relating to *bona fide* offering of goods or services before any notice of this dispute.
- 6B.3 The Registrant has registered the impugned domain name 'vonage.in' with the sole purpose of selling/transferring the same for excessive



consideration. The said objective is evident from the Registrant's reply dated December 24, 2013 and email dated February 6, 2014 demanding USD 1890 for transferring the domain name to the Complainant.

The Registration of the impugned Domain Name by the respondent is aimed at to real profits through unfair use of the disputed domain name.

6B.4 The respondent has not rebutted the claims of the complainant. The fact that primary purpose of registering the impugned domain name is to reap profit by trading upon goodwill and reputation of the Complainant's mark demonstrate that the Complainant does not have any legitimate interest in the impugned Domain Name.

6B.5 Therefore, this panel is satisfied that the respondent has no rights or legitimate interest in respect of the disputed domain name.

**C Registered and used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found shall be evidence of the registration and use of a domain name in bad faith.



- 6C.3 The Registrant has registered the impugned domain name 'vonage.in' with the sole purpose of selling/transferring the same for excessive consideration. The said objective is evident from the Registrant's reply dated December 24, 2013 and email dated February 6, 2014 demanding USD 1890 for transferring the domain name to the Complainant.
- 6C.4 The Registrant registered the impugned domain name knowing fully well of Complainant's goodwill/reputation as well as its registrations vesting in the trade mark VONAGE worldwide. The fact that VONAGE has been registered under different TLDs and ccTLDs is evident to demonstrate Registrant's bad faith while registering the domain name under .in ccTLD. Further, the mark VONAGE is not a generic or deceptive mark which could have obvious meaning for providing goods & services on the Internet. Registration of the domain name 'vonage.in' by Registrant has resulted in Complainant being prevented from reflecting the trade mark VONAGE in the corresponding domain name with the .INRegistry which is presently in the name of Registrant.
- 6C.5 The Respondents do not dispute any of the contentions raised by the Complainant. The facts and circumstances explained in the complaint coupled with the material on record clearly demonstrate that the domain name **<vonage.in>** was registered by the respondents in bad faith and

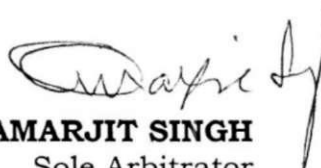


to attract the internet users, through disputed domain, to the website of the competitor.

- 6C.6 The Panel accepts the contentions of the Complainant as have been raised by them and holds that the registration of the domain name on part of the Respondent is in bad faith.

7. **DECISION**

In view of the fact that all the elements of Paragraphs 6 and 7 of the policy have been satisfied and in the facts and circumstances of the case, the panel directs the Transfer of the domain name <**vonage.in**> to the Complainant.

  
**AMARJIT SINGH**  
Sole Arbitrator

Dated: July 29, 2014

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