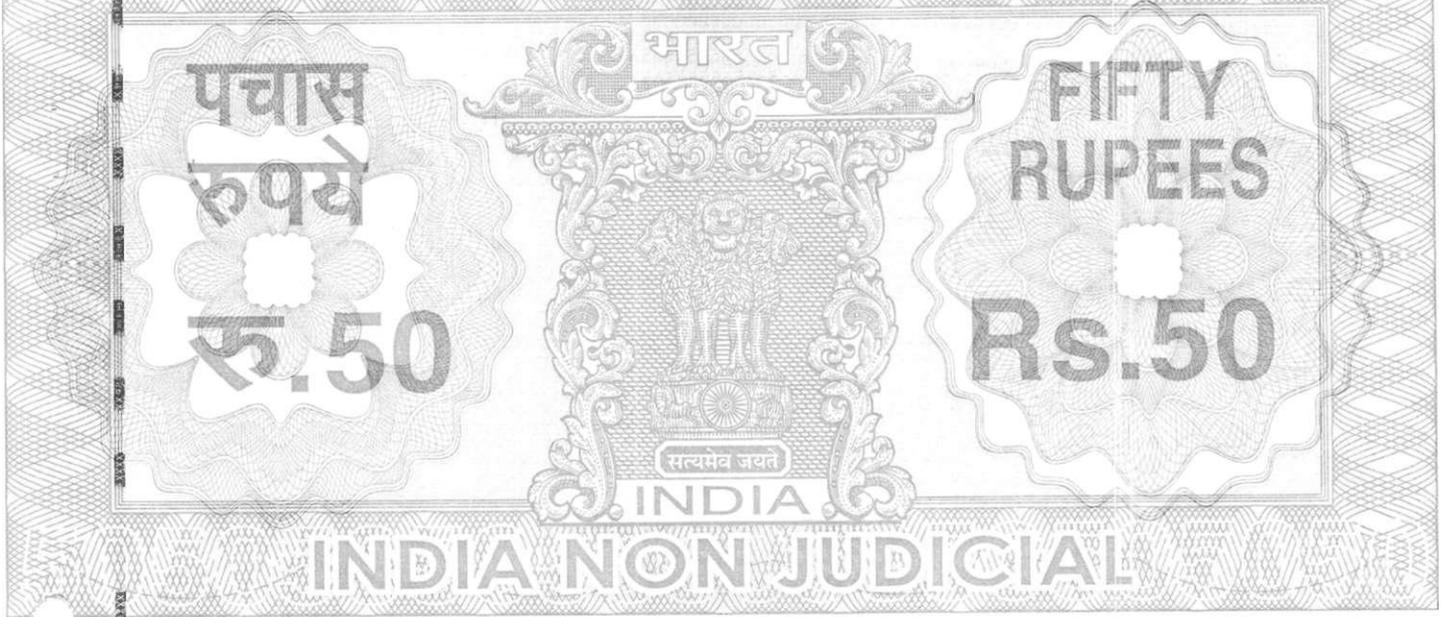


भारतीय गैर न्यायिक



उत्तर प्रदेश UTTAR PRADESH

H 520269

**BODHISATVA ACHARAYA**  
**LL.M**  
**A R B I T R A T O R**

Appointed by the .IN Registry-National Internet Exchange of India.

**In the matter of: -**

**Vodafone group Pic**

Vodafone House  
The connection  
Newbury  
RG14 2FN, England.

Through

It's authorized Representatives: -

**Gunjan Paharia**

Managing Partner  
ZeusIP, Advocates,  
Tel. +11 4182 4331, Fax: +11 4182 4334  
**E-mail-[gpaharia@Zeusip.com](mailto:gpaharia@Zeusip.com)**

And

**Mel Jones**

Solicitor,  
Vodafone Group Services Limited, England.  
Tel +44 7825 452853, Fax+44 1635 580857

**E-mail - [mel.jones@vodafone.com](mailto:mel.jones@vodafone.com).....Complainant.**

**Versus**

**Rohit Bansal**

29, Carlyle Avenue  
Southall  
UB1 2LN  
England.  
Tel: +44 7813 987730, fax +44 7813 987730  
**E-mail: [rohit8282@vahoo.co.uk](mailto:rohit8282@vahoo.co.uk)**

**.Respondent**

Page-1



उत्तर प्रदेश UTTAR PRADESH

35AA 224294

**Award**

**1. The Parties:**

The Complainant is Vodafone Group Plc, ("Complainant") Vodafone House. The Connection, Newbury, RG14 2FN England., Represented by Ms. Gunjan Paherai, Managing Partner, ZeusIP, Advocates and also represented by Mel Jones Solicitor, Vodafone Group Services limited.

The Respondent is Rohit Bansal ("Respondent") with an address. 29, Carlyle Avenue, Southall, UBI 2LN, England & E-mail: [rohit8282@yahoo.co.uk](mailto:rohit8282@yahoo.co.uk)

**2. The Domain Name, Registrar & Registrant:-**

The disputed Domain Name [vodafone.co.in](http://vodafone.co.in) is registered with Direct Information Pvt.Ltd., Dba Public Domain Registry.com ("The Registrar") and the registrant is Rohit Bansal ("Respondent").

**3. Procedural History-**

The Complaint was filed to the .IN Registry, following the Clause 4 of the policy and rules of .IN Registry and .IN Registry appointed "BODHISATVA ACHARAYA" ("The Arbitrator") as sole Arbitrator under Clause 5 of its Policy. The Arbitrator submitted his statement of acceptance and Declaration of Impartiality and Independence then the complaint was produced before "The Arbitrator" on 19th Oct.2007."

A notice was issued to the Respondent on 19 Oct.2007 in his e-mail address with a deadline of 7 days to submit his reply but due to a clerical mistake in the e-mail address of the respondent it was not severed because the e-mail address of Respondent was typewrote as [rohit8282@yahoo.com](mailto:rohit8282@yahoo.com) instead of [rohit8282@yahoo.co.in](mailto:rohit8282@yahoo.co.in).

Once again the same Notice was sent to Respondent on 3<sup>rd</sup> Nov.2007 on his correct e-mail address at [rohit8282@yahoo.co.uk](mailto:rohit8282@yahoo.co.uk) w Respondent did not file any reply regarding the complaint.



उत्तर प्रदेश UTTAR PRADESH

31AA 438526

At last final notice was sent to the Respondent on 6/12/2007 through e-mail with a deadline of 5 days to reply regarding the complaint then on 9.12.2007 Arbitrator received an e-mail from Respondent mentioning that "he had no problem to transfer this website on payment of reasonable amount from Complainant and he further said that he will transfer the ownership of the website if the Complainant withdraw the complaint and for this purpose he was seeking more time to receive the reply of complainant."

Alongwith this e-mail, Arbitrator received an e-mail from the one representative Mel Jones, Solicitor of Complainant mentioning that the Complainant has given many opportunities to transfer the Domain Name and now he see no reason to delay in the Arbitrator's decision.

Hence the Arbitrator has issued the Decision after crossing the deadline on 11/12/2007 that was given to the Respondent in the last e-mail on 9/12/2007 by the Arbitrator.

4. **Factual Background:**

(a) The Complainant, Vodafone, founded in 1982, is the leading mobile telecommunications company in the world and it is operating various companies under the Trade mark of Vodafone in 68 countries worldwide and had 200 million subscribers worldwide too.

(b) On 8<sup>th</sup> may 2007; the Complainant announced the completion of its acquisition of Hutchinson Essar. Limited (Hutch) the leading mobile telecommunications network in India and it will lead to the adoption of the Complainant's branding (including use of its trade marks) by Hutch in India.

(c) The Complainant is the owner of over 600 trademarks registration featuring. VODAFONE, alone or in connection with other words and/or designs through out the world.

(d) In India the trademark "VODAFONE" registered in the name of Complainant in class 9 under the **Trademark No.-10312106** on 30th July 2001, in respect of all the goods, which is mentioned in the certificate of Registration of Trade Mark.

(e) In India again the trademark, "VODAFONE" had been registered in the name of Complainant in, Class 38 under the **Trade Mark No. -1247741** on 4th November 2003 in respect of all the goods which are mentioned in the certificate of Registration of Trade Mark.

The Complainant submitted both the aforementioned Trade Mark Certificate with the Complaint.

(f) Complainant's name. "VODAFONE" and its other trademarks are well known through out the world and a number of domain names has been registered with the Complainant and it shows the word "VODAFONE" as "Vodafone.com.", "vodafone.co.uk" and "vodafone.in." and the Complainant has had totake.steps to prevent the unauthorized uses of its trademark in domain names.



उत्तर प्रदेश UTTAR PRADESH

31AA 437835

- (g) The Complainant submitted the copies of the Decisions of the various cases, decided by WIPO, for the domain names related to the trademark VODAFONE.
- (h) The Respondent registered the domain name vodafone.co.in on 25<sup>th</sup> May 2006.
- (i) After having the knowledge regarding the registration of the domain name, the complainant contacted the respondent by e-mail with a request to transfer the domain name to the complainant in exchange for reimbursement of Respondent's reasonable registration costs.
- (j) The Respondent replied through his various e-mails that he would transfer the domain name in exchange for reimbursement of his costs worth ₹4500 against his expenses on maintaining the website.
- (k) On 21<sup>st</sup> February, 2007 the complainant replied by his e-mail that the requested amount was not a reasonable amount then again 27<sup>th</sup> February, 2007, the Respondent replied that he had spent around ₹6000 on the website and he also mentioned that "**the amount of money both of us are going to waste in the legal procedures.**"

#### 5. Parties Contentions:

(i) **Complainant**

**Complainant contends that-**

- The Respondent's domain name is identical and confusingly similar to a name, trademark or service mark in which the complainant has rights;
- The Respondent has no rights or legitimate interests in respect of domain name;
- The Respondent's domain name has been registered or is being used in bad faith; and
- The domain name be transferred to the complainant.

(ii) **Respondent-**

Respondent has not submitted any proper response however various deadlines were given to him to file his reply at last he had replied to the Arbitrator that he wants more time to discuss the amount of reimbursement with the complainant but no more time was granted to him after 11/12/2007.



उत्तर प्रदेश UTTAR PRADESH

31AA 437836

**6. Discussion & Findings; -**

Under the Paragraph 4 of the Policy (INDRP) it is stated, any person who considers that a registered domain name conflicts with his legitimate rights or interests then he may file a complaint to the .INRegistry and the complainant must prove the following premises:

- (i) The Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which 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 with bad faith.

**IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME TO A NAME, TRADE MARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS: POLICY 4(i): -**

The disputed domain name is **vodafone.co.in**. The Complainant is the holder and the owner of the registered Trade Mark "VODAFONE" and the Complainant submitted two certificates of Registration of Trade Mark issued by the Registrar of the Trademark on behalf of Govt. of India and the complainant has provided statements to support the conjecture that the disputed domain name and the name, trademark and service mark of the complainant are confusingly similar on the other hand the respondent has not filed any reply for the same.

Therefore the Arbitrator agrees with the Complainant that the mark **VODAFONE** is key word for its Trade Name and Trade Mark in doing business in the mobile Telecommunication service throughout the world and it is also proved by the Complainant that the disputed name is **only** to make a confusion to the consumers while the Complainant has rights with the Trade Mark and Disputed name.

Hence the Complainant has established the element (i) of the paragraph 4 of Policy.

**RESPONDENT'S RIGHTS OR LEGITIMATE INTERESTS IN DOMAIN NAME: POLICY-4 (ii):**

As per the records produced by the complainant before the Arbitrator, it is clear that the Respondent has neither been affiliated nor authorized by the complainant to use any mark including the word VODAFONE. Moreover **the Respondent** has not supplied any material evidence to prove his rights or Legitimate interests in the dispute domain name.

Hence the arbitrator finds that the complainant satisfies the element (ii) of the Paragraph 4 of the Policy.



उत्तर प्रदेश UTTAR PRADESH

35AA 223995

**THE RESPONDENT'S DOMAIN NAME REGISTERED OR USED IN BAD FAITH: POLICY -4 (iii):-**

Lastly the Arbitrator has to contemplate the point that the domain name has been registered and is being used in bad faith by the Respondent. It is clear from the facts and the records, produced by the Complainant, that the Complainant's trademark "VODAFONE" is well known to the whole world and the Respondent was fully aware not only Complainant's Trade Mark importance but also fully aware about the registration of the Complainant's trade mark in India because the real story was fabricated after the registration of the Complainant's trade mark herein India.

Upon becoming aware of the Domain Name registration to the Respondent, on, 12<sup>th</sup> February 2007, the Complainant contacted to the Respondent by e-mails. On 20<sup>th</sup> February, 2007 in his reply to the Complainant, the Respondent demanded a sum of ₹4500 on behalf of his expenses and in the e-mail sent by the Respondent on 27<sup>th</sup> February 2007 the Respondent had increased the amount up to ₹6000. In addition to this, when the last notice was sent to Respondent by the Arbitrator, Respondent replied that, "A discussion is going on in between Respondent and Complainant to decide the money in transferring the domain name." It is also an important point to contemplate that the Respondent has not filed any sufficient and appropriate answer why lie registered the domain name identical to the Complainant's Trademarks.

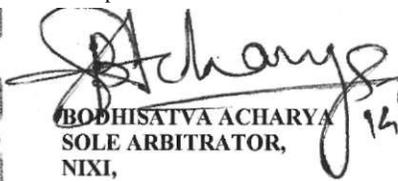
Now It is the view of the Arbitrator that the disputed Domain Name has been registered intentionally only for the sole purpose of selling it to Complainant and only for making money from the Complainant. **These circumstances have established the element (i) of paragraph 6 of the policy. Thus the Arbitrator finds that the Respondent's performance was *ab initio* in bad faith.**

Hence the Complainant has established the element (iii) of paragraph 4 of the policy.

**7- Decision**

In the light of the circumstances and facts discussed above, Arbitrator decides, "The Disputed Domain Name is identical and confusingly similar to the registered trademark of Complainant in which the Complainant has rights and the Respondent has no right or legitimate interests in respect of the Domain Names and the Respondent's Domain Name has been registered or is being used in bad faith."

Consequently the Arbitrator decides that the Domain Name "vodafone.co.in" shall be transferred to the Complainant.

  
BODHISATVA ACHARYA  
SOLE ARBITRATOR,  
NIXI,  
INDIA  
14/12/2007

Date : 14<sup>th</sup> December -2007  
Place – New Delhi  
India