

தமிழ்நாடு தமில்நாடு TAMILNADU

BM 807154

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17 JUL 2018

D. SARAVANAN
Advocate & Arbitrator
Orient Chambers", 4th & 5th Flo
No. 90/73, Armenian Street,
Chennai 600 001.

P.S. SHANMUGA SUNDARAM
STAMP VENDOR
L.No. 84 / 109 / 88
HIGH COURT CAMPUS
CHENNAI - 600 104. (TAMIL NADU)

**BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)**

Disputed Domain Name: www.vodafoneidea.in

VODAFONE GROUP PLC
Vodafone House,
The Connection, Newbury,
Berkshire Rg142fn,
United Kingdom.

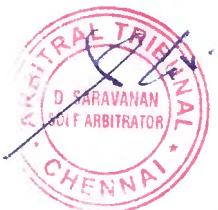
.. Complainant

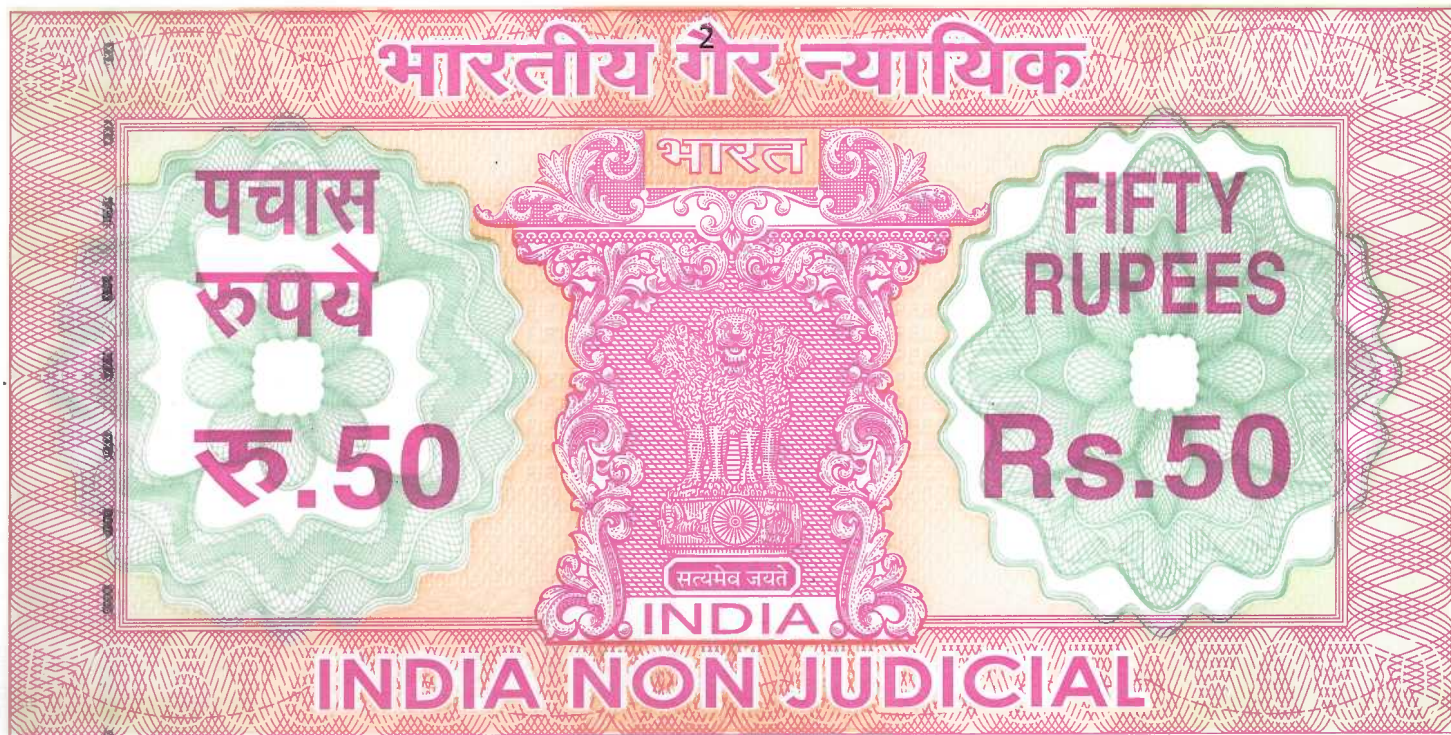
Vs.

SYED HUSSAIN trading as IBN7 MEDIA GROUP
15, 5th Street,
Closter, New Jersey 07624,
United States of America.

.. Respondent

..2.





தமிழ்நாடு தமில்நாடு TAMILNADU



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11 JUL 2018

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1. The Parties:

The Complainant is VODAFONE GROUP PLC, a company incorporated under the laws of England and Wales and having its registered office at Vodafone House, the Connection, Newbury, Berkshire, RG142FN, United Kingdom.

The Respondent is Syed Hussain, trading as IBN7 Media Group, having address at 15, 5th Street, Closter, New Jersey 07624, United States of America. Neither the Respondent represented himself nor represented by any one.

2. The Domain Name and Registrar:

The disputed domain name is www.vodafoneidea.in. The domain name has been registered with .IN REGISTRY through its Registrar Key-Systems GmbH.

..3.



3. Procedural History:

11.06.2018	:	Date of Complaint.
03.07.2018	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
04.07.2018	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
06.07.2018	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator.
11.07.2018	:	Notice was sent to the Respondent by e-mail directing him to file his response within 10 days, marking a copy of the same to the Complainant's representative and .IN Registry.
21.07.2018	:	Due date for filing response.
23.07.2018	:	Notice of default was sent to the Respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background:

4.1 The Complainant:

The Complainant is Vodafone Group PLC, a company registered under the laws of England and Wales and having its registered office at Vodafone House, The Connection, Newbury, Berkshire RG142FN, United Kingdom, represented by its Advocates and authorized representative, Neolegal Associates, having address at World Trade Centre, 12th Floor-4C, Centre-1 Bldg, Cuffe Parade, Mumbai 400005. The Complainant authorizes Mr.Xerxes Ranina to initiate this proceedings and take all



further action with regard of these proceedings on behalf of the Complainant. The Power of Attorney is attached and marked by the Complainant as **Annexure J**.

4.2 Complainant's Activities:

The Complainant is a mobile communications network operator with its headquarters in Berkshire, England, United Kingdom. It is one of the world's largest mobile communications by revenue, operating across the globe through numerous subsidiaries and providing a wide range of communications services. The Complainant has ordinary shares traded on the London Stock Exchange and American Depository Shares traded on the NASDAQ. The Complainant has a market capitalization of approximately £62.79 billion. The Complainant states that it has approximately £41 billion in revenue and has 462 million customers. In 2014 this was over 404 million mobile customers. The Complainant provides mobile networks in 26 countries and has partnership agreements in a further 57 markets. The Complainant is therefore extremely active and their brand reach is significant. The brand name "Vodafone" created to encompass "voice", "data" and "phone", was first announced to the media by the Complainant on 22 March 1984. In 1985, the Complainant launched one of the first cellular telephone networks in the United Kingdom under the same name. The Vodafone brand has since expanded rapidly across the globe. Through extensive sales, advertising and marketing around the world, the Complainant has acquired a very substantial reputation in both the Vodafone brand and associated brands. The 2014 Brand Finance Global 500, the world's most comprehensive brand value league table, ranked Vodafone as the 16th most valuable brand in the world and the 5th most valuable global telecommunications brand and the same is annexed by the Complainant in **Annexure E**.

4.3 Complainant's Trading Name:

The Complainant is the registered proprietor and/or the applicant of the trademark "VODAFONE" in India. The table enumerating the applications/registrations as well as the status page of the Indian trademark Registry reflecting the status of each mark is annexed by the Complainant as **Annexure C**. The Complainant states that it is the registered proprietor and/or the applicant of the trademark "VODAFONE" in a



number of countries. The table enumerating the said applications/registrations is annexed by the Complainant as **Annexure D**. Some of the Complainant's domain name registrations are set out below:

DOMAIN NAME	REGISTRATION DATE
vodafone.com	December 04, 1997
vodafone.org	January 15, 2002
vodafone.net	January 03, 1996
vodafone.info	July 25, 2001
vodafone.co.uk	Before August 1996
vodafonebusiness.com	December 03, 2003
Vodafonebusinessstore.com	March 09, 2006
vodafonecontact.co.uk	September 19, 2003
vodafoneincentives.com	November 10, 2005
vodafonemessenger.com	August 02, 2002
vodafonemobileoffice.com	February 25, 2004
vodafonemobileemailsolutions.com	October 11, 2004
vodafonemobileapplications.com	October 31, 2007
vodafonemusic.com	December 21, 2005
vodafonerental.com	September 06, 2006
vodafone-retail.com	August 05, 2011
vodafonerewards.com	February 23, 2005

The Complainant states that the VODAFONE mark is inherently distinctive, being an invented word. Globally, the Complainant holds more than 1500 registered and pending trade marks for and including the word VODAFONE. The Complainant's trademarks confer upon them the exclusive right to ensure that third parties do not use the mark VODAFONE (or any similar marks) in relation to the goods and services covered by the Complainant's trademarks in the territories covered by the registrations. The Complainant takes action against, and does not consent to, any unauthorized attempts by third parties to use their trademarks in relation to such goods or services. They also enjoy both registered and unregistered rights in the mark VODAFONE in the telecommunications industry, and do not authorise third parties to pass off or otherwise attempt to benefit from the substantial reputation



they have built up in these marks. The Complainant states that it owns over 200 domain names consisting exclusively of the mark VODAFONE as well as more than 400 domain names in which VODAFONE is used in combination with other words and/or numbers. The Complainant's domain names were all registered long before the Disputed Domain name. The Complainant states that previous WIPO panelists for the UDRP have clearly stated that the mark VODAFONE without any doubt a well-known trademark, e.g. *The Vodafone Group Plc v. Brendan Conlon* WIPO Case No.D2002-0822 decision states: "The Panel agrees with the Complainant that by virtue of the Complainant's many trademark registrations and extensive use, the trademark VODAFONE is well known and distinctive". In *Vodafone Group Public Limited Company v. Akio Nagata* WIPO case No.D2005-0077 in paragraph 6(c): "The word 'vodafone' is a coined word adopted by the Complainant as its trademark". The Panel found it was hardly conceivable that the Respondent would have adopted the disputed domain name without having knowledge of the Complainant's well-known trademark "VODAFONE". More recently in *Vodafone Group Public Limited Company v. Domain Privacy*, WIPO case No.D2007-1684, the Panel stated "Given the notoriety of the complainant's trademark, the coined nature of the word 'Vodafone', and the extensive promotion of the trademark, it is inconceivable to the Panel that the Respondent registered the domain name without prior knowledge of the Complainant and the Complainant's mark." Direct reference is made here by the complainant to *the vodacom-europe.com* Decision (WIPO case No.D2014-0710) and the recent decision in *Vodafone-worldwide.com* (WIPO case No.D2015-0436). The Complainant states that these recent decisions confirm the previous decisions that the mark VODAFONE enjoys a significant reputation. Page 5 section B of *Vodacom-europe.com* states "UDRP panels have held that VODAFONE is entitled to recognition as a well-known mark and the record before this Panel does not suggest otherwise." The Complainant further states that there have been no material change in the situation after the said decisions. In WIPO case No.D2014-0504 *Vodafone Group Plc V TurnCommerce, Inc. DBA NameBright.com/ Zhenhua Bin* (Vodafonewallet.com decision), it was taken as a fact that the Complainant "constitute(s) one of the most recognized brands in the world". The Complainant states that as a result of the Complainant's extensive use of the VODAFONE mark, it has become well known in many countries worldwide. The Complainant had also developed an enormous



amount of goodwill in the VODAFONE mark, making it an extremely valuable asset. Indeed it is noted that the domain name was registered on 30 January 2017 which is the same day when an announcement was made relating to the merger of Vodafone and Idea in India. The BBC Press release dated 30 January 2017 reflecting the announcement along with other news articles is annexed and marked by the Complainant as **Annexure G**.

4.4 Respondent's Identity and activities:

The Complainant states that the Respondent is Syed Hussain. A printout of the WHOIS record associated with the disputed domain name is marked by the Complainant as **Annexure B**. As per the WHOIS record, the Respondent is based in Closter, New Jersey, United States of America.

5. Dispute

The Complainant states that it enjoy both registered and unregistered rights in the mark VODAFONE in the telecommunications industry, and do not authorize third parties to pass off or otherwise attempt to benefit from the substantial reputation they have built up in these marks. The Complainant owns over 200 domain names consisting exclusively of the mark VODAFONE as well as more than 400 domain names in which VODAFONE is used in combination with other words and/or numbers. The Complainant states that in and around April, 2018, the Complainant became aware of the Respondents disputed domain www.vodafoneidea.in, containing their registered mark "VODAFONE". The Complainant's domain names were all registered long before the Disputed Domain name and hence this dispute.

6. Parties contentions:

A. Complainant:

(i) **The domain name www.vodafoneidea.in is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights [Para 3(b)(vi)(1) INDRP Rules of Procedure to be read with para 3 of INDRP] :**



The Complainant submits that the domain name in question www.vodafoneidea.in contains the Complainant's complete trademark/trade name registered in India and other countries. The disputed domain name is visually and phonetically identical and/or confusingly similar to the trademark and trade name of the Complainant. Such registration by the Respondent amounts to a violation of paragraph 3 of the INDRP which states that Registrant is solely responsible to ensure before the registration of the disputed domain name that such domain name registration does not violate the rights of any proprietor/brand owner. The Complainant submits that it is a company founded in the year 1985 in the UK. The Complainant has reinforced its international presence with locations and additional offices in the US, Europe, Middle East, Africa, Asia Pacific and Asia. Since the year 1992, the Complainant has been carrying on its business/operations in India through its Indian subsidiary Vodafone India Limited having its registered office at Peninsula Corporate Park, Ganpat Rao Kadam Marg, Lower Parel, Mumbai. The extract from the website of Ministry and Corporate Affairs indicating the presence of the Indian subsidiary of the Complainant is annexed by the Complainant as **Annexure F**. The Complainant states that the disputed domain name reproduces the VODAFONE element in its entirety. This comprises the dominant element of the disputed domain name and would be given the greatest prominence in the mind of the consumer. The "idea" element refers back to and is subservient to the dominant VODAFONE element. It refers to the Vodafone word. The Complainant have submitted that numerous ICANN UDRP decisions have recognized that incorporating a trademark in its entirety in a domain name can be sufficient to establish identity or confusing similarity (*Pepsi Co, Inc V PEPSI, SRL and EMS COMUTER INDUSTRY* WIPO Case No.2003-0696). The Complainant further stated that previous UDRP panels have asserted that the mere addition of a gTLD or a ccTLD to a disputed domain name does not avoid confusing similarity (*Missoni S.p.A. v. Colin Zhao* WIPO Case No.DCC2010-0004, *F.Hoffmann-La Roche AG v.Macalve e-dominios S.A.* WIPO case No.D2006-0451 and *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No.D2000 0003. The Complainant states that as a result of the identical VODAFONE element, a mark entirely distinctive of the Complainant, the disputed domain name must be considered identical/confusingly similar with the Complainant's earlier rights listed above. The additional "idea" element does nothing to detract from the similarities



with the Complainant's earlier marks. The Disputed domain name is identical or highly similar to the domains owned by the Complainant that consist of the mark VODAFONE. The disputed domain name therefore fits in with an established pattern of domain name owned by the Complainant. This further increases the risk and likelihood of confusion as the Disputed domain name fits neatly into this pattern and would be understood to be under the same ownership by consumers. Due to the identity of the VODAFONE element, a mark in which the Complainant has clear rights and indeed is well known by, the disputed domain name must be considered to be confusingly similar. The Complainant submits that there is nothing then on the website to dispel this confusion and indeed the use of the "signal strength" device, a clear reference to mobile phones and telecommunications, would only serve to further enhance the confusion being created. The fact that the domain name coincides as to the name of two entities involved in merger discussions, Vodafone and Idea. This only furthers the risk of confusion and demonstrates the confusing similarity with the Complainant's earlier rights. The Complainant refers to and relies on the case of *Puneet Vatsayan v. Prajakt Raut* [INDRP/512], where it was held that where no disputed domain name contains a trademark in its entirety, the domain name is identical and confusingly similar.

(ii) The Respondent has no rights or legitimate interest in the domain name www.vodafoneidea.in [Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of INDRP] :

The Complainant submits that it has legitimate interest in the "VODAFONE" trademark in India as it has registered the said mark in 2001 and has been openly, continuously and extensively using it for more than seventeen years. By virtue of long and extensive use and advertising, the "VODAFONE" trademark has become well-known. Through its subsidiary, the opponent is very well-known throughout India and has over 150 million customers across India alone. By virtue of prior adoption, use and registration, coupled with the extensive advertisement and promotional activities in the mass media which includes print, electronic and social media and the high quality of goods and services offered thereunder, the trademark "VODAFONE" and its variants have acquired the status of a well-known trademark in accordance with the provisions of Section 2(z)(g) of the Trade Marks Act, 1999 and



thus entitled to the highest protection in all classes of goods and services. Further, various decisions passed by the WIPO Arbitration and Mediation Centre has held "VODAFONE" to be a "well-known" trademark. As a well-known mark, unparalleled goodwill and invaluable reputation has accrued to the opponent for its mark "VODAFONE". As a result, the Opponent's mark is solely and exclusively associated by the members of trade and purchasing public, with the Opponent alone and none else. Such is the reputation of the well-known trademark VODAFONE that it travels beyond any clarification of goods and services. The Complainant avers that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has no connection with or affiliation to the Complainant and has not received any express or implied license or authorization to use the VODAFONE trade marks in a domain name or in any other manner. The Complainant states that as far as it is aware, the Respondent does not hold any trade mark registrations for the word mark VODAFONE anywhere in the world and that the Respondent is also not known by the name Vodafone. The Complainant's registered trademark rights and domain name predate the disputed domain name. A simple search on the internet prior to registering the Disputed Domain Name would also have disclosed to the Respondent the significant presence and recognition enjoyed by the Complainant under the VODAFONE mark. The Complainant refers the Panel to *Gallup v. Amish Country Store NAF* case No. FA 96209 dated 23 January 2001 in which it was held that a Respondent will not acquire rights in a domain name incorporating another's trade mark when the Respondent is not known by that mark; analogous with the present case. The Complainant states that, given the extremely well known status of the Complainant's VODAFONE mark, as has been previously recognized, there is no conceivable use which could be made of the Disputed Domain Name which would not infringe the Complainant's earlier rights. The Complainant states that the Respondent must be aware of the Complainant, otherwise the domain name would not have been chosen. VODAFONE is not a word with any generic meaning and can refer only to the Complainant. The Complainant submits that in the decision *Vodafone Group Plc v. Jad Corporation* WIPO Case No.DPH 2010-0001 dated 4 June 2010 (the "*Jad Decision*"), the sole panelist found that "[i]n view of the notoriety enjoyed by the Complainant in its VODAFONE trademark, it is difficult to imagine what evidence the Respondent could produce to establish that it does have rights or



legitimate interests in the disputed domain name.” In *Vodafonewallet.com* decision, it was noted that “it is difficult to imagine what legitimate use might be made of a domain name entailing such a very strong likelihood of confusion with a well-known brand”. The Complainant states that this reasoning should be applied in the present dispute. The Complainant submits that the Respondent is seeking to hijack the Complainant’s well-known brand name and use this as a domain name. This was confirmed by their inclusion of the Complainant’s name as the dominant element of the disputed domain name. The Complainant states that although the site is not yet in use it appears to be intended to be use in telecommunications, the Complainant’s field. The Complainant draws this conclusion from the use of the well-known “signal strength” device seen prominently in the website and which is well known to refer to mobile signal strength-a clear reference to the Complainant’s field. The Complainant submits that from the above circumstances, it is apparently clear that the Respondent has failed to comply with paragraph 7 of INDRP wherein the onus is on the Registrant to prove that he has a right and legitimate interest in the domain name. The Complainant refers to the case *Amazon Technologies Inc v. Mr. Harikishore* [INDRP/349] wherein it was observed that the use of a domain name consisting of a trademark to divert the users to another, shall website is not a bona fide offering of goods or services and cannot confer any rights or legitimate interest upon the Respondent.

(iii) The domain name was registered and is being used by the Respondent in bad faith [Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with para 6 of INDRP:

The Complainant submits that given the fame of its marks, as established in the forgoing paragraphs, it is inconceivable that the Respondent was not aware of the Complainant or their activities when the Disputed Domain name was registered. Indeed it is noted that the domain name was registered on 30 January 2017 which is the same day when an announcement was made relating to the merger of Vodafone and Idea in India. The BBC Press release dated 30 January 2017 reflecting the announcement along with other news articles is annexed and marked by the Complainant as **Annexure G**. The Press release received widespread press attention especially in UK and India-where the merger would have had effect. The



Complainant submits that on the same day as the announcement was made, a domain name which matches the names of the two entities subject of the merger talks, cannot be a coincidence. Instead it should be seen as a typical example of cybersquatting with the Respondent seeking to take advantage of a news story with the aim of later using the domain name to their advantage and taking advantage of the confusion that it has caused. The Complainant submits that typically this type of domain name is secured by a cybersquatter in order to later, and once the merger has confirmed, sell it to the Complainant at a highly inflated price. Alternatively it is used to disrupt the business of the new entity who are prevented from accessing a domain name which can only, and directly, refer to them. On this basis the Complainant submit that this is a clear instance of bad faith registration. Not only are the Complainant is so well-known under the Vodafone mark that the Respondent must have been aware of them, it can be demonstrated that the Respondent is seeking to take advantage of a possible merger and cynically registered the domain name which appeared to be relevant on the same day as the announcement of the merger was made. Such speculative domain name registration and cybersquatting, especially where the Complainant is already extremely well-known under part of the domain name can point only towards a bad faith registration. The Complainant submits that in this case-a product launch (in this case a possible merger) was announced and immediately following that the disputed domain name was registered, coinciding as to the two names of the parties involved in the merger discussions. The Complainant submits that it is nothing but be a bad faith registration seeking to take advantage of the announcement of the merger. The Complainant further submits that it is also noted that the domain name references that VodafoneIdea "is coming soon" again a reference to the fact that the merger is not finalised and which would serve to reaffirm the visitor's belief that this was being used as a holding page for a possible new website of the Complainant. The use of the phrase "it's almost ready" also references back to the Complainant who has recently been using a prominent "ready" based campaign and branding. The Complainant submits that all this serves to tie in the disputed domain name to the Complainant and the expectations of visitors that it would be associated with the Complainant for the reasons given above. The Complainant submits that this is further reinforced by the fact that the domain name directs to a page which features



the use of what can be termed a "signal strength" device. This is a well-known device used on mobile phones and telecommunication services to reference signal strength. Its use in connection with the domain name containing VODAFONE can only be a reference to telecommunication service and serves to link the domain name to the Complainant. It also helps to reinforce the message that this could relate to the proposed merger discussed above. In addition to the reasons above, the Respondent must have been aware of the Complainant at the time of registering the disputed domain name. This is therefore a domain name which carries with it a high risk of confusion. The Complainant submits that the Respondent would potentially be able to commercially gain from this confusion through use of click-through advertising or potentially data-harvesting if not through the disruption of the Complainant's potential business. The Complainant submits that it is globally active. Its reputation as one of the largest mobile communications companies was built up over years of use of its distinctive VODAFONE mark. Given the fame of the Complainant's mark, it is inconceivable that the Respondent was not aware of the Complainant or its activities when the Disputed Domain Name was registered. The Complainant refers the Panel once again to the decision *Vodafone Group Public Limited Company v. Domain Privacy* WIPO Case No. D2007-1684. In addition to the clear case for bad faith due to the obvious opportunistic cybersquat the Complainant continues to rely on its global reputation as supporting bad faith. The Complainant submits that as discussed above, the Respondent must have been aware of the Complainant's reputation especially had they conducted even the most basic of searches before acquiring the Disputed Domain Name. The Complainant reiterates that it is globally active. With over 404 million customers, its reputation in the mark VODAFONE is world renowned. The Complainant submits that in 2014, the Complainant generated over £44.4 billion in revenue, across 30 countries spanning five continents. Given the fame of the Complainant's mark, it is inconceivable that the Respondents were not aware of the Complainant or its activities when the Disputed Domain Name was registered in October 2017. Any search for VODAFONE would have disclosed the Complainant. Any search for VODAFONE IDEA would have disclosed information about the possible merger and it is noted that the Respondent registered their domain name the same day as the announcement was made. The Complainant submits that VODAFONE has no meaning outside of referring to the



Complainant. It is not a common dictionary word and does not carry a secondary meaning. It is unique to the Complainant. The proximity of the Disputed Domain Name to the Complainant's trade mark suggests that the Respondent was aware of the Complainant's trade mark and the way in which they are being used. This is reinforced with reference to the signal strength device seen on the website. The Disputed Domain Name funnels customer traffic away from the Complainant's websites. It must have been clear to the Respondent when it registered the Disputed Domain Name that the registration and use of the Disputed Domain Name would unfairly disrupt the business of the Complainant. The Complainant submits that the prevention of the Complainant from reflecting its mark in a corresponding domain, and the misleading of users to a connection with the Complainant serves to disrupt the Complainant's business. Owing to the fame of the Complainant, any use or lack of use of the Disputed Domain Name by the Respondents would have this effect. The Complainant states that the Respondent's website is currently a holding page seeking entry of an e-mail address. It is not clear what happens to the data inputted into this field or as to the uses as to which these e-mail addresses, once provided, will be put. The printout of the Respondent's website page is annexed and marked by the Complainant as **Annexure H**. The Complainant submits that for the reasons given above and given the fame of the Complainant's VODAFONE brand, it is clear that the Respondent, in setting up the Disputed Domain name, intends to make use of the Complainant's famous mark VODAFONE to attract internet users by creating a likelihood of confusion regarding source, sponsorship, affiliation or endorsement that creates a confusing link in the consumers mind. The Complainant submits that this is the case given the widely publicized media around the possible merger between Vodafone and Idea. The Complainant submits that the domain name must have been chosen with this abusive aim in mind given the reputation and well-known status of the VODAFONE mark. It is therefore inevitable that consumers would confuse the source of the domain name to be that of the Complainant. The Complainant submits that taking into account the well-known status of the Complainant's VODAFONE mark there is no use of the disputed domain name which could not be intended to take advantage of the confusion caused especially when the comments regarding the possible merger are taken into account. The Complainant submits that there is no exhaustive list of factors to consider in reaching a conclusion of bad faith and as



noted above, it is well established that non-use and inaction can constitute bad faith; the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances for inactivity by the Respondent to amount to the domain name being used in bad faith" (*Telstra Communications v. Nuclear Marshmallows*). The Complainant submits that in the said case the Complainant's mark has a strong reputation and that there was no evidence of any actual or contemplated good faith use and therefore, found that there were no conceivably plausible uses of the domain name which would not be illegitimate. This is clearly the case with the disputed domain name here. The Complainant submits that such is the reputation enjoyed by the Complainant (and as recognized on numerous occasions by WIPO Panels) that there is no conceivable use which would not be an infringement of the Complainant's trade mark rights. There is established case law to support this conclusion. The Complainant submits that case law establishes that where the Respondent registered the domain name in full knowledge of the Complainant's rights and interests this can be highly indicative of bad faith. (Case D2000-0574 *Jupiters Limited V. Aaron Hall* at paragraph 6.1.7) The Complainant submits that not only is the Complainant's mark so well-known as established above it is inconceivable that the Respondent did not know of them, certainly even a minimal amount of searching on the internet for VODAFONE prior to registering the domain name would have revealed pages of results only relating to the Complainant. The Complainant submits that it is therefore fair to draw the inference that the Respondent hopes to capitalize on the reputation and draw of the Complainant (Jupiters Limited above). The Complainant submits that further case law also suggests that "it is most unlikely that the Respondent just happened to unintentionally select the Complainant's distinctive marks" (Case D 2002-0131 *Ladbroke Group Plc v Sonoma International LDC*). The Complainant submits that it is a fair conclusion to draw given the recognized reputation enjoyed by the Complainant and is supported by the case cited above. It is also noted that "any attempt by the Respondent to actively use the domain name would inevitably lead to a likelihood of confusion to the source, sponsorship, affiliation or endorsement of the Respondent's website among users of the Internet who would inevitably believe that such a "www" site would be owned by, controlled by, established by or in some way associated with the Complainant"



(Case D 2002-0131 *Ladbroke Group Plc v Sonoma International LDC*). The Complainant submits that the domain name is currently a holding page seeking input of an e-mail address. The Complainant has no control over this domain despite it incorporating the identical VODAFONE element. The Complainant submits that the risk of confusion is therefore clear and there is a tacit acknowledgment of the rights of the Complainant. The Complainant is concerned that the domain name is being used to collect data, i.e. e-mail addresses, from customers of the Complainant. Case D-2009-0273 *Intel Corporation v. The Pentium Group* was also relied by the Complainant. The Complainant submits that in that case it was again accepted that "the incorporation of a well-known trademark into a domain name by a Registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith". The Complainant submits that there is no plausible explanation here and that the Complainant has not authorized the use of their VODAFONE mark and any use not by the Complainant has the risk of being clearly detrimental to the Complainant. The Complainant submits that indeed it appears to have been registered solely to take advantage of an announcement regarding a possible merger between two entities, Vodafone and Idea. The Complainant submits that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondents website or the products or services offered/available on the Respondents website thereby violating paragraph 6 of INDRP. Further, the Complainant submits that the Respondent has deliberately registered the disputed domain name with the intention of preventing the Complainant who is the owner of the trademark "VODAFONE" from reflecting the said mark in its domain name in India. The Complainant concludes that as a result of their significant rights and well known status, which has been recognized in multiple previous UDR decisions at the WIPO, that the disputed domain name must have been registered in bad faith. The Complainant reiterates that the domain name contains the identical VODAFONE element and that the website itself uses a "mobile signal strength" device, well known to refer to telecommunication services, the Complainant's core field. This only further causes confusion to consumers and would allow the Respondent to exploit the well-known status of the Complainant. The



Complainant reiterates that the domain name was registered the same day as an announcement was made regarding a possible merger between Vodafone, the Complainant, and Idea, an Indian entity. The Complainant submits that therefore this is a clear case of cybersquatting, seeking to take advantage of the rights of the Complainant and a breaking news story to cause confusion and hence it is a bad faith registration. The copies of the various judgments and case law referred by the Complainant is annexed and marked by the Complainant as **Annexure I**. The Complainant submits that following the lifting of the privacy shield, the correct whois details are noted with interest and this has uncovered a number of other WIPO decisions which mirror the facts of the present case. Although the named company was different, the Respondent contact name and Administrative contact name in those earlier decision was Mr.Syed Hussain-the same as with the Disputed Domain name. The Complainant submits that WIPO Case No.D2003-0748 is noted with interest. This involves essentially the same Respondent as the named contact, Mr.Syed Hussain, is the same across the domains. The link is referenced also in WIPO Case No.D2017-1523 and it is submitted that this link should be noted in the present case. The Complainant further submits that in case no.D2003-0748 Mr.Hussain obtained a domain name relating to a proposed acquisition of companies and the same was done on the day, the acquisition talks were made public. The Complainant submits that it exactly mirrors the present facts. The Complainant submits that the conclusions on confusing similarity and lack of rights or legitimate interest in particular should therefore be followed. In YELLOWROADWAY, the domain name was found confusingly similar to the YELLOW rights of the Complainant and it therefore follows that VODAFONEIDEA must be confusingly similar to the Complainant's rights in VODAFONE. In Case No. D2003-0748 there was also a finding of bad faith and it is clear that Mr.Hussain has a history of acting in this manner. The Complainant submits that in WIO Decision No. 2001-1246 a similar action was taken by Mr.Hussain and hence there is a clear pattern of behavior and these earlier decisions should be guiding on the Panel in this instance as well.

B. Respondent:

The Respondent, in spite of notice dated July 11, 2018 and default notice dated July 23, 2018 did not submit any response.



6. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper and whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the response by the Respondent had also been notified to the Respondent on July 23, 2018.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainant must prove each of the following three elements to establish their case, that:

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

(a) Identical or confusing similarity:

i) The Arbitral Tribunal finds that the Complainant has provided evidences that it possesses registered trademark "VODAFONE" around the world, including in India. The same is evident from **Annexure C and D** marked by the Complainant. The disputed domain name, www.vodafoneidea.in, in toto, incorporates the complainant's mark, namely VODAFONE. The Complainant also has the presence of Indian subsidiary which is evident from **Annexure F**.



ii) In *Kenneth Cole Productions V. Viswas Infomedia* INDRP/093, it has been held that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trademark. Similarly, the domain name www.vodafoneidea.in is confusingly similar to the Complainant's mark and also wholly incorporates the mark, VODAFONE. Thus, this Arbitral Tribunal finds that the disputed domain name www.vodafoneidea.in is identical or confusingly similar to the Complainant's mark. This Tribunal also relies on the case relied by the Complainant in *Pepsi Co, Inc V PESI, SRL and EMS COMUTER INDUSTRY* WIPO Case No.2003-0696, wherein it is observed that incorporating a trademark in its entirety in a domain name can be sufficient to establish identity or confusing similarity.

iii) This Tribunal inclines with the decisions relied by the Complainant in previous UDRP panels (*Missoni S.p.a. v. Colin Zhao* WIPO Case No.DCC2010-0004, *F.Hoffmann-La Roche AG v.Macalve e-dominios S.A.* WIPO case No.D2006-0451 and *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No.D2000 0003) wherein it is established that the mere addition of a gTLD or a ccTLD to a disputed domain name does not avoid confusing similarity.

iv) In view of the above, the Arbitral Tribunal concludes that the Complainant has established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i) It is seen from the WHOIS lookup in **Annexure B, it** relates the Respondent to the Disputed Domain name. However, it identifies the registrant as 'Syed Hussain', with organization name as IBN7 Media Group, which is not in the slightest way similar to the Disputed Domain name. The Respondent is therefore found to have acted in a way that tarnishes the Complainant's well known mark "Vodafone", by using the mark without any proper authorization.

ii) The Tribunal inclines with the decision relied by the Complainant in *Vodafone Group Pls v. Jad Corporation* WIPO Case No.DPH 2010-0001 dated 4 June 2010 (the "Jad Decision"), wherein the sole panelist found that "[i]n view of the notoriety



enjoyed by the Complainant in its VODAFONE trademark, it is difficult to imagine what evidence the Respondent could produce to establish that it does have rights or legitimate interests in the disputed domain name." In *Vodafonewallet.com* decision, it was noted that "it is difficult to imagine what legitimate use might be made of a domain name entailing such a very strong likelihood of confusion with a well-known brand". The Complainant having produced records to establish their well-known mark and having established confusing similarity, it is seen that the Respondent has no legitimate interest in the disputed domain name

iii) Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of Paragraph 4 (ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the mark "VODAFONE". The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

iv) Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.



v) The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

i) The Tribunal perceives from **Annexure G**, the BBC Press Release dated 30.01.02017, it reflects the announcement of merger of Vodafone and Idea in India. Ironically, from the WHOIS lookup of the Respondent in **Annexure B**, it is seen that the disputed domain name has been created on the very same date.

ii) The Complainant having well-known trademark as established above, the Respondent must have been aware of the Complainant's presence well before the registration of the disputed domain name. The Tribunal sees the act of the Respondent as an act of cybersquatting and such a speculative registration of the disputed domain name is nothing but registration in bad faith.

iii) **Annexure H** is the Respondent's website page and in the home page it seeks for the e-mail address of the person using the page. The Complainant apprehends that it is not clear what happens to the data inputted into this field or as to the uses as to which these e-mail addresses, once provided, will be put. The Tribunal also apprehends the same and there is likelihood that the Respondent domain name will tarnish the reputation of the Complainant.

iv) It is pertinent to note the case of *Yellow Corporation v MIC* WIPO Case No.D2003-0748 relied by the Complainant in this regard. In the said dispute, the Respondent in the present dispute is seen to have taken advantage of the merger between the Yellow Corporation and Roadway Corporation and registered the domain name <yellowroadway.com> on the same date the public announcement of the merger was made. The Respondent is seen to have followed a similar practice in the present case which is nothing but registration and use in bad-faith.

v) In view of the above findings and discussion, it is seen that the Respondent has no legitimate rights or interests in the disputed domain name and there was a



mala fide intent for registering the disputed domain name other than for commercial gains, and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.

(i) The Arbitral Tribunal is satisfied that the Respondent used the Complainant's domain name in bad faith and, accordingly paragraph 4(iii) of the Policy is also satisfied.

(ii) In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

7. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the INDRP Policy, the Arbitral Tribunal orders that the Respondent shall cease to use the mark VODAFONE and also disputed domain name www.vodafoneidea.in and the disputed domain name be transferred to the Complainant.



D.SARAVANAN
Sole Arbitrator

July 24, 2018
Chennai, INDIA.