



27 NOV 2019

**D. SARAVANAN**  
Advocate & Arbitrator  
Unit No.208, 2nd Floor, Beta Wing  
Reheja Towers, Near LIC  
No.113-134, Anna Salai, Chennai 600 002.

**BZ 160305**  
P.S. SHANMUGA SUNDARAM  
STAMP VENDOR  
L.No. B4 / 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.googlepays.in](http://www.googlepays.in)

Google LLC,  
1600 Amphitheatre Parkway,  
Mountain view,  
CA 94043  
United States of America

**INDRP CASE NO.1184**

**.. Complainant**

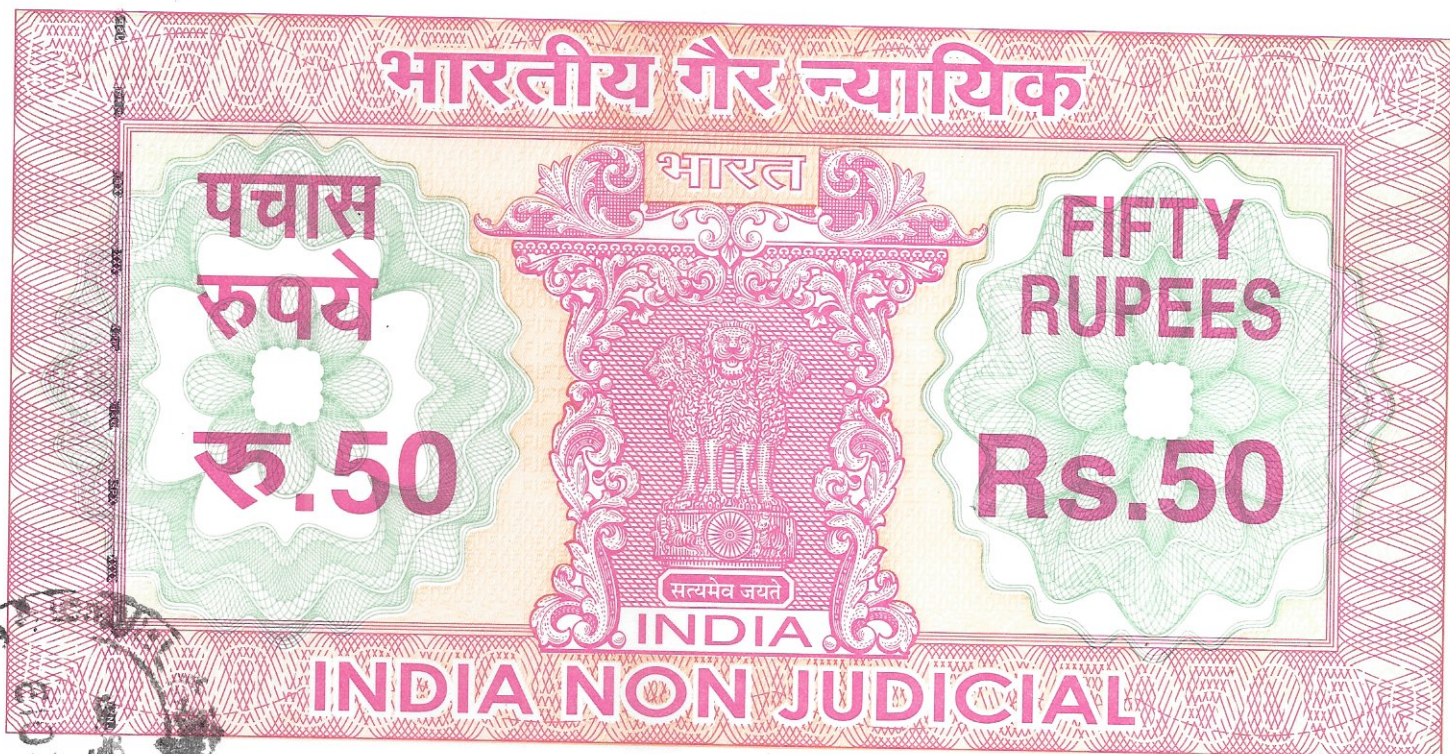
**Vs.**

Gurdeep Singh  
Sangat Nagar M.k Bye Pass  
Dhuri.  
Punjab- 148024  
India

**.. Respondent**







தமிழ்நாடு தமில்நாடு TAMILNADU

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-2-

### 1. The Parties:

The Complainant Google LLC, is a Delaware limited liability Company registered under the laws of Delaware, U.S.A, having its principal place of business in 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America. The Complainant is represented through its Attorneys, M/s.Fidus Law Chambers, F-12, Ground Floor, Sector 8, Noida- 20120, India.

The Respondent Gurdeep Singh having his address at Sangat Nagar, M.K Bye Pass, Dhuri, Punjab- 148024, is the current Registrant of the disputed domain name [www.googlepays.in](http://www.googlepays.in). The Respondent neither represented himself nor was represented by anyone.





## 2. The Domain Name and Registrar:

The disputed domain name is www.googlepays.in. The domain name has been registered with .IN REGISTRY through its Registrar, GoDaddy.com, LLC.

## 3. Procedural History:

9 <sup>th</sup> December, 2019	:	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
10 <sup>th</sup> December, 2019	:	Consent of the Arbitrator along with declaration was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
16 <sup>th</sup> December, 2019	:	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator. On the same day, the complete set of the soft copy of the Complaint with Annexure was sent to the Respondent by email while sending the hard copy of the same to the address of the Respondent by NIXI through courier and speed post respectively.
21 <sup>st</sup> December, 2019	:	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.





31 <sup>th</sup> December, 2019	:	Due date for filing response.
1 <sup>st</sup> January, 2020	:	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 Google LLC is a Delaware limited liability Company, registered under the laws of Delaware, U.S.A, having its principal place of business in 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States of America. The Complainant is represented through its Attorneys, M/s. Fidus Law Chambers, F-12, Ground Floor, Sector 8, Noida- 20120, India.

##### **4.2 Complainant's Activities:**

- (i) The Complainant submits that the Complainant is a company duly registered under laws of Delaware in the United States of America. Ever since its formation in the year 1998, it has been carrying on business in internet related services and products, which include advertising technologies, internet search, cloud computing and software, and mobile and computer hardware. The complainant is the operator of one of the most highly recognized and widely used internet search engines in the world under the trademark GOOGLE. In addition to search technologies and related activities, the Complainant is well- known for wide range of goods and services, including online advertising web browser software, email services, mobile phones,





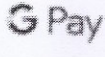
laptops and its accessories. Extracts from the Complainant's website at <https://about.google/intl/en/products/>, listing the products and services the Complainant offers under the trademark GOOGLE and other trademarks is enclosed by the Complainant as **Annexure A**.

- (ii) The Complainant submits that, it was one of the first few to have launched online payment platforms/ digital wallets since as early as 2011. In 2011, the Complainant launched "Google Wallet", a virtual wallet allowing users to make payments and transfer money straight from their phones (a peer-to-peer payment service). In 2015, at the Google I/O conference the Complainant announced the launch of **ANDROID PAY** a successor to "Google Wallet". **ANDROID PAY** was a full mobile payment system, designed to let people purchase items and services both online and in the real world by using the near field communication (NFC) technology. Subsequently in 2017, the Complainant launched TEZ in India, a payments and commerce app built for India first, on top of the country's Unified Payment Interface (UPI) standard. The Unified Payments Interface (UPI) has been developed by the National Payments Corporation of India to facilitate inter- bank transactions. The interface is regulated by the Reserve Bank of India and works by instantly transferring funds between two bank accounts on a mobile platform. The platform under the trademark **TEZ** could be used wherever UPI payments are accepted in India. Documents such as blog posts, news articles etc., discussing the above platforms launched over the years are enclosed as **Annexure B** by the Complainant.
- (iii) The Complainant submits that, in June 2018, the Complainant unified all its payment platforms into one single brand i.e. **GOOGLE PAY**. The digital wallet platform and online payment system under the trademark **GOOGLE**





**PAY** was developed by the Complainant to power in-app and tap-to-pay purchases on mobile devices, enabling users to make payments with mobile phones, tablets or watches. In light of such re-branding the Complainant also sought registrations for the trademark **GOOGLE PAY** across various jurisdictions, including in India. In India, the Complainant is the registered proprietor of the trademark **GOOGLE PAY** under registration no. 3890013 in classes 9 and 36. Copies of blog posts and news articles discussing the afore-mentioned re-branding and a copy of the registration certificate of Indian registration no.3890013, are marked by the Complainant as **Annexure C**.

(iv) The Complainant submits that, the complainant also runs a microsite at <https://pay.google.com/payments/u/0/home#> where details about the platform under the trademark **GOOGLE PAY**, popularly known as GPAY (represented by the logo ) are available. Extracts from the microsite are enclosed by the Complainant as **Annexure D**. The Complainant also maintains the following mobile Apps:

- a. Google Pay- available on the Google Play store and the iOS App Store
- b. Google Pay Business- available on the Google Play store

Extracts of the apps, as available on the Google Play Store and the iOS App store are enclosed by the Complainant as **Annexure E**.

(v) It is submitted that, the product and service offered under the trademark **GOOGLE PAY** is widely popular around the globe as well as in India. Various online publications, blogs, etc. have discussed the service and extracts of few such publications are marked by the Complainant as **Annexure F**.





- (vi) The Complainant submits that, it has a significant global presence with commercial operations in more than 60 Countries and a strong presence around the globe with more than 150 offices. The products and services of the Complainant reach more than 150 countries worldwide including India. The Complainant owns and operates over 190 GOOGLE based domains where search can be accessed. A list of those are marked by the Complainant as **Annexure G**. The Complainant has consistently used the trademark **GOOGLE** as a part of its products, services and business since the year 1998 and has been given the status of a well-known trademark globally. Documents evidencing the said facts are enclosed by the Complainant as **Annexure H**.
- (vii) The Complainant submits that, the Complainant has continuously used the trademark **GOOGLE** globally since its launch. The trademark is inherently distinctive and is a strong identifier of source for the Complainant and its products and services. It has no dictionary meaning and does not otherwise exist in the English language. The primary platform under the trademark **GOOGLE** is located at [www.google.com](http://www.google.com). And that, the complainant's search engine platform is integrated with various other products and services of the Complainant.

#### 4.3 Complainant's Trading Name:

- (i) It is submitted that the Complainant is based on the trademarks **GOOGLE** and **GOOGLE PAY**, registered in favour of the Complainant and used primarily in connection with online search engine services and online payment platform.





- (ii) The Complainant submits that, it owns numerous registrations for the trademark **GOOGLE** with earliest registration dating back to September 16, 1998 in the United States of America and commercial use in India since March 1999. Details about the registration for the trademark **GOOGLE PAY** have been given in paragraph (iii) above. Each registration remains valid and are in full force and effect.
- (iii) It is submitted that the complainant owns over 650 registrations for the trademark **GOOGLE** in various classes in 163 countries. Copies of Registration Certificates from a few countries are enclosed by the Complainant as **Annexure I (Colly)**.
- (iv) The Complainant submits that, it has registered its trademark "**GOOGLE**" and various forms of the trademark in India in Classes 9, 16, 20, 25, 38 and 42, details of which are set out below:

Trademark	Registration Application No.	Application Date	Class(es)	Status
GOOGLE	845041	12/03/99	9	Registered
GOOGLE	1480385	17/8/06	38	Registered
GOOGLE	1237958	18/09/03	42	Registered
GOOGLE	1351909	20/04/05	35	Registered
GOOGLE	1351910	20/04/05	16	Registered
GOOGLE	1351911	20/04/05	25	Registered
GOOGLE	2378924	13/08/12	39	Registered
GOOGLE	1480380	21/08/06	36	Registered
गूगल	1513045	13/12/06	9, 38, 42	Registered
Google	1404165	06/12/05	9	Registered
Google	1404168	06/12/05	42	Registered
Google	2176019	15/07/11	9, 35, 36, 42	Registered
GOOGLE	2166829	28/06/11	3, 20	Registered
Google	2297910	13/03/12	42	Registered
Google	3178084	05/02/2016	9, 25, 35, 36, 38, 39, 42,	Registered





Copies of registration certificates of the afore mentioned Indian registrations are marked by the Complainant as **Annexure J (Colly)**.

- (v) The Complainant has conceived, adopted and used the trademark "**GOOGLE**" in connection with its online search engine services since 1998 and the same has been in use continuously till date. By virtue of its adoption for twenty years and extensive use of thereof, the trademark **GOOGLE** has become exclusively and globally associated with the Complainant in the eyes of consumers. Additionally, the trademark **GOOGLE** has also been declared a 'well known' trademark by the Delhi High Court in 2011. By the virtue of the said order, the trademark **GOOGLE** has been included in the well-known trademark list maintained by the Indian Trademark Registry. Therefore, use of this mark by any third party will lead to confusion and deception among consumers and general public. A copy of the said court order of the Hon'ble High Court declaring the trademark **GOOGLE** as well-known as well an extract of the well-known trademarks list (obtained from the trademark Registry website at [www.ipindia.nic.in](http://www.ipindia.nic.in)) maintained by the Indian trademark Registry is attached as **Annexure K (Colly)**.
- (vi) The search engine service under the trademark **GOOGLE** located at [www.google.com](http://www.google.com) is accessible around the world including in India and the Complainant has owned and operated the same since September 15, 1997. The domain name particulars of the above website are annexed as **Annexure L**.
- (vii) The Complainant has successfully pursued domain name complaints before WIPO, NIXI and National Arbitration Forum and obtained favourable decisions in respect of numerous infringing domain names such as, [www.googleplace.in](http://www.googleplace.in)  
[www.googlelisting.co.in](http://www.googlelisting.co.in)





[www.googletezuplapp.in](http://www.googletezuplapp.in)

[www.googlee.in](http://www.googlee.in)

[www.google-money-system.in](http://www.google-money-system.in)

[www.igoogle.co.in](http://www.igoogle.co.in)

googleblog.com

google-0.com

chotagoogle.com

google-montenegro.me

google-sina.com

google-vietnam.com, etc.

All these decisions acknowledge the Complainant's proprietorship over the trademark **GOOGLE**. The decisions are marked by the Complainant as **Annexure M (Colly)**.

#### 4.4 Respondent's Identity and activities:

- (i) The Complainant submits that, it came across the Respondent's website under the domain name <http://googlepays.in/> (hereinafter referred as "the disputed domain") which subsumes the Complainant's registered trademark **GOOGLE and GOOGLE PAY** and therefore amounts to trademark infringement and passing off.
- (ii) The Complainant further submits that, the disputed domain was registered on **2<sup>nd</sup> December 2018** subsequent to the Complainant's establishment of its rights in the trademark **GOOGLE (1998)** and **GOOGLE PAY (July 2018)**. And that, under the disputed domain the Respondent is offering crowd funding services with a claim to be sponsoring an NGO from the earnings from the Platform. Extracts from the website under the disputed domain are marked by the Complainant as **Annexure N**.





**5. Dispute**

The dispute arose when the Complainant came to know about the disputed domain name in the name of the Respondent. The Complainant had also never authorized the Respondent to use the disputed domain name. The Respondent is also not affiliated with the Complainant. In these circumstances, the Complainant requested this Tribunal to transfer the disputed domain name in favour of the Complainant.

**6. Parties contentions:**

**A. Complainant:**

(i) The domain name www.googlepays.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] :

- a) The present complaint is based on, and is being filed on account of the unauthorized and illegal registration and use of the Complainant's registered trade mark google pay as part of the Respondent's impugned domain name. The Complainant is the operator of one of the most highly recognized and widely used internet search engines in the world under the trademark **GOOGLE** and that the disputed domain name www.googlepays.in registered by the Respondent incorporates the Complainant's well-known trademark **GOOGLE** and registered trademark **GOOGLE PAY**, in their entirety.





- b) The relevant class of customers who are not aware that the Respondent has no affiliation with the Complainant and that they are not authorized or licensed to use the trademark **GOOGLE** and **GOOGLE PAY** will therefore have an impression that the Respondent's services are authorized or endorsed by or affiliated with the Complainant.
- c) In several UDRP decisions, various panels have found that the fact that a domain name wholly incorporates a Complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the policy. **Oki Data Americans. Inc. v. the ASD, inc.** (WIPO Case No. D2001-0903), **Go Daddy.com, Inc. v. Shoneye's Enterprises** (WIPO case no. D2007- 1090), **Qalo, LLC v. Chen Jinjun** and **Manganum Piering Inc. V. The Mudjackers** (WIPO Case No. D2000- 1525).
- d) The Complainant has used the trademark **GOOGLE** and its variant **GOOGLE PAY** well prior to 2<sup>nd</sup> December 2018, which is the registration date of the disputed domain. It is submitted that the Complainant has established rights in its trademark **GOOGLE** dating back to **September 1998** and for the trademark **GOOGLE PAY** since July 2018. The Complainant also has a domain registration for [www.google.com](http://www.google.com) since 1997.
- e) The sole Arbitrator appointed in the matter of **Google Inc. v. Mr. Gulshan Khatri** (case No. INDRP- 189 May 06, 2011), in relation to the domain *googlee.in*, held that the act of registering a domain name similar to or identical with or famous trade mark is an act of unfair competition whereby the domain name registrant takes unfair advantage of the fame of the trademark to either increase traffic to the domain, or to seize a potential asset





of the trademark owner in the hope that the trademark owner will pay the requirement to relinquish the domain name. As such, the same principal is applicable here as well, since the disputed domain name is identical to the trademark **GOOGLE** of the Complainant.

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

- a) In the present case, the Respondent is not a part of or is related to the Complainant. The Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to use as a part of their domain names comprising its trademark **GOOGLE** and/or its variant **GOOGLE PAY**. As already held by the previous panel decisions, a registrant may be found to lack any right or legitimate interest in a domain name where there is no indication that it is known by that name.
- b) The trademark **GOOGLE** of the Complainant is not a dictionary term and has been created and used by the Complainant for over two decades. The Services under the trademark **GOOGLE** are extremely well known around the globe and are associated by consumers with the Complainant only. Therefore, the adoption of the Complainant's trademark **GOOGLE** as a part of the disputed domain cannot come under the defence of fair or legitimate use. The Complainant relies upon *Red Bull GmbH v. Harold Gutch* WIPO case No. D2000-0766 where the panel held that, "*The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating any of those marks. Combination*







*of words "Red" and "Bull" is purely fanciful combination of words, as there does not exist a red coloured bull. Therefore, no trader would legitimately choose this mark unless seeking to create an impression of association with the Complainant. Accordingly, the Respondent had no rights or legitimate interests in respect of the disputed domain name".*

- c) The Complainant has not authorized or licensed the Respondent to use any of its trademarks in any way. Such unlicensed, unauthorized use of the disputed domain incorporating the Complainant's trademark is strong evidence that Respondent has no rights or legitimate interest in the disputed domain name.

**(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]:**

- a) The Respondent is using the trademark **GOOGLE PAY** as a part of their domain and a nearly identical variation of the logo  on their website. This makes it evident that the Respondent has been aware that the trademarks **GOOGLE PAY** and the logo  that are the exclusive property of the Complainant and the use of the same (on the webpage as well as a part of the disputed domain) denotes a reference to the Complainant and nobody else. Such knowledge of services and the trademarks it is being offered under is sufficient to establish registration in bad faith.
- b) The well-known status of the trademark **GOOGLE**, which was adopted and applied by the Complainant well prior to the registration of the disputed domain, makes it extremely unlikely that Respondent created the disputed domain name independently without any knowledge of Complainant's





trademark. According to **Section 3.1.4 of the WIPO overview 3.0**, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can itself create a presumption of bad faith.

- c) In **Motorola, Inc. v. NewGate Internet, Inc., WIPO Case No. D2000-0079** it was held that "... the use if somebody else's trademark as a domain name (or even as a meta-tag) clearly does not constitute a "bona fide" offering of goods or services when the web site owner has no registered or common law rights to the mark, since the only reason to use the trademark as a domain name or meta-tag is to attract customers who... were looking for the products or services associated with the trademark. Such use of a trademark can create customer confusion or dilution of the mark, which is precisely what trademark laws are meant to prevent. And actions that create, or tend to create, violations of the law can hardly be considered to be "bona fide".

Based on the foregoing, the Complainant submitted that the Respondent has registered and is using the disputed domain name in bad faith.

## **B. Respondent:**

The Respondent, in spite of notice dated 21<sup>st</sup> December, 2019 and default notice dated 1<sup>st</sup> January, 2020 did not submit any response.

## **7. 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 that Respondent have 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 1<sup>st</sup> January, 2020.

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 the registered trademarks "GOOGLE and GOOGLE PAY" around the world, including India. The same is evident from **Annexures C, I and J** marked by the Complainant. The Complainant has registered domain names under "GOOGLE" and the same is evident from **Annexure G**. The Complainant's mark was first adopted by them in year 1998 and thus it is the rightful proprietor of the trademark GOOGLE by virtue of priority in adoption





and registration, continuous and extensive use, widespread advertising and the tremendous reputation accruing thereto in the course of trade. From **Annexure I**, this Tribunal perceives that the earliest registration of the Complainant's mark, GOOGLE dates back to 16<sup>th</sup> September 1999. Whereas, from **Annexure O**, this Tribunal perceives that the disputed domain name was registered on 2<sup>nd</sup> December, 2018 much later to the registration of the Complainant's mark. This Tribunal is therefore convinced from the documents marked by the Complainant that the Complainant owns the mark "GOOGLE and GOOGLE PAY".

(ii) The disputed domain name www.googlepays.in only reflects the addition of letter "s" to the Complainant's mark "GOOGLE PAY". The complainant has contented that in several UDRP decisions, various panels have found that if a domain name wholly incorporates the Complainant's registered trademark, it is sufficient to establish the identity or confusing similarity for the purpose of the policy. To establish the above contention, the Complainant has placed reliance on the decisions in *Oki Data Americas, Inc. v. the ASD, inc.* (WIPO Case No. D2001- 0903), *Go Daddy.com, Inc. v. Shoneye's Enterprises* (WIPO Case No. D2007- 1090), *Qalo, LLC v. Chen Jinjun and Magnum piercing Inc. v. The Mudjacks* (WIPO Case No. D2000- 1525).

(iii) The Complainant has further placed reliance on *Google Inc. v. Mr. Gulshan Khatri* (Case No. INDRP- 189 May 06, 2011), where the Sole Arbitrator was appointed in relation to the domain *googlee.in*, to establish "that the act of registering a domain similar to an already existing famous trademark can be considered as an act of unfair competition where the domain name registrant takes unfair advantage of the fame of the trademark to either increase traffic





to the domain or to seize a potential of the trademark owner” This Tribunal finds substance in the same and relies on the said decisions and finds that the disputed domain name www.googlepays.in incorporates the Complainant’s mark in entirety and hence is identical or confusingly similar to the Complainant’s mark.

(iv) In the light of the above, this Tribunal observes that the Respondent has used the identical mark of the Complainant.

(v) The Arbitral Tribunal therefore 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) The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. 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 however does draw evidentiary inferences from the failure of the Respondent to respond. It is also found that the respondent has no connection with the marks “GOOGLE and/or GOOGLE PAY”. The Respondent has failed to rebut the presumption of absence of rights or legitimate interests.





- (ii) Further as observed above, the Complainant's registration of mark dates back to 1998 whereas, the disputed domain name is registered only in the year 2018. The Complainant placed reliance on the decision in *Red Bull GmbH v. Harold Gutch* WIPO Case No. D2000-0766, wherein the Tribunal observed that, "The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating any of those marks. Combination of words "Red" and "Bull" is purely fanciful combination of words, as there does not exist a red coloured bull. Therefore, no trader would legitimately choose this mark unless seeking to create an impression of association with the Complainant. Accordingly, the Respondent had no rights or legitimate interests in respect of the disputed domain name". This Tribunal observed that the present facts of the case squarely applies to the ratio held in the said decision wherein the Complainant has prior registration of the mark GOOGLE and GOOGLE PAY and the Respondent has not substantiated their right in the said mark and that it is most likely that the marks GOOGLE and GOOGLE PAY are known to the Respondent prior to the registration of the disputed domain name.
- (iii) The WHOIS lookup in **Annexure O**, reflects that the disputed domain name, [www.googlepays.in](http://www.googlepays.in) belongs to the Respondent herein namely, "Gurdeep Singh, having his address at Sangat Nagar M.k Bye Pass, Dhuri, Punjab- 148024, India", who is not even in the slightest manner connected with the Complainant or Complainant's marks, namely "GOOGLE and GOOGLE PAY". The view of the Tribunal is supported by the decision placed by the Complainant in the above mentioned *Red Bull GmbH v. Harold Gutch* WIPO Case No. D2000-0766, and finds that if respondent is not licensed or authorized by the Complainant to use the unfamiliar word which is not even in actual existence, then the respondent cannot have any legitimate rights or interests in the same.





- (iv) The above establishes that the Respondent do not have any rights or legitimate interest in the domain name and it intends to make unjust commercial profits.
- (v) 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. The Respondent is therefore found to have acted in a way that tarnishes the Complainant's well-known mark "GOOGLE and GOOGLE PAY", by using the mark without any proper authorization.
- (vi) In light of the above, this Tribunal finds that the Respondent does not have any rights or legitimate interest in the domain name.
- (vii) 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) It is seen from **Annexure O**, the Respondent had registered the disputed domain name on 02<sup>nd</sup> December, 2018 which is very much after the date of registration of the Complainant's trademark. By that time, the Complainant's marks, "GOOGLE and GOOGLE PAY" through extensive and continuous use,





had acquired immense goodwill and reputation amongst the public and trade. The rights of the Complainant in the marks are also well established by various precedents submitted by the Complainant, collectively marked as **Annexure K, L and M.**

- (ii) The Complainant has been declared a 'well known' trademark by the Delhi High Court in 2011 and by virtue of the said order the trademark GOOGLE has been included in the well-known trademark list maintained by the Indian Registry, the relevant order is marked by the Complainant as **Annexure K (Colly).**
- (iii) The Complainant in **Annexure H** has further established its worldwide search engine services, usage and accessibility around the world including India and has been operated since 15<sup>th</sup> September 1997. They had successfully pursued domain name complaints before the WIPO, NIXI and National Arbitration Forum, in which the Complainant obtained favourable decisions in respect of numerous infringing domain names which are also marked by the Complainant in **Annexure M (Colly).**
- (iv) From the discussions above, it is drawn that the Respondent is involved in cyber-squatting by registering domain names containing well known trademarks and thereby making illegal benefits.
- (v) 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.

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

(vii) 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.

**8. Decision:**

For all the foregoing reasons, in accordance with paragraph 10 of the .INDRP, the Arbitral Tribunal orders that the Respondent shall cease to use the mark "GOOGLE and/or GOOGELPAY" and also the disputed domain name [www.googlepays.in](http://www.googlepays.in) be transferred to the Complainant.



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**D.SARAVANAN**  
**Sole Arbitrator**  
1<sup>st</sup> January, 2020  
Chennai, INDIA