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S. MALLINATHAN
STAMP VENDOR
L.No. 14501-B1/86
Plot. 1706, 35th Street, I-Bldg
ANNA NAGAR WEST, MADRAS-600

BEFORE S SRIDHARAN, SOLE ARBITRATOR

OF NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

DATED: 11th May 2014

Idea Cellular Limited, Mumbai

Versus

Complainant

Mr. Santhosh Kumar, Chennai

Respondent

Sridharan

**BEFORE S SRIDHARAN, SOLE ARBITRATOR
OF NATIONAL INTERNET EXCHANGE OF INDIA**

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|--------------------------------------|---------------|--------------------|
| Idea Cellular Limited, Mumbai | ... | Complainant |
| | Versus | |
| Mr. Santhosh Kumar, Chennai | ... | Respondent |

1. The Parties

- 1.1 The Complainant, Idea Cellular Limited is a company incorporated under the Companies Act 1956, having its registered office at Suman Towers, Plot No. 18, Sector 11, Gandhinagar 382001 represented by Mr. Vivek A. Vashi of Bharucha & Partners at Cecil Court, 4th Floor, M.K. Bhushan Marg, Colaba, Mumbai – 400 039.
- 1.2 Respondent is Mr.Santhosh Kumar, 30-32 Subramaniam Street, Abiramapuram, Chennai – 600018.

The Domain Name and Registrar

- 1.3 The disputed domain name <ideamoney.in> created on 15.10.2013 is registered with Webiq Domains Solutions Pvt. Ltd. (R131-AFIN).

2. Procedural History

- 2.1 On 31st March 2014, NIXI asked me about my availability and consent to take up the Complaint for arbitration. On 1st April 2014, I informed my availability and consent. I also informed NIXI that I had no conflict of interest with either of the parties and could act independently and impartially.
- 2.2 On 08th April 2014, I received hardcopy of the Complaint.
- 2.3 On 08th April 2014, I issued by email a Notice to the Respondent setting forth the relief claimed in the Complaint and directing him to file his reply to the Complaint within 15 days. I also sent an email about my appointment to arbitrate the complaint to the Complainant and asked the Complainant to send a soft copy of the complaint to me.
- 2.4 On 09th April 2014, I received soft copy of the Complaint from the Complainant.
- 2.5 On 9th April 2014, Respondent sent a mail that he was out of country till end of the month. He had forwarded this mail to his top management and would revert with their reply.
- 2.6 On 4th May 2014 I sent a mail directing the Respondent to indicate his response, if any, on or before 6th May 2014. On 5th May, the Respondent sent a mail stating that he would update me the next day. But I have not received any response or update from the Respondent till this date.



- 2.7 The medium of communication of this arbitration and each email is copied to all, Complainant, Respondent and NIXI.

3. Factual Background

A Complainant

- 3.1 Since May 2002, the Complainant has been providing GSM Mobile Services across India under the trade / service mark 'Idea'. The said trade mark is identified with the Complainant's brand 'Idea' which is a well-known mark of the Complainant, of which the Complainant is the sole proprietor. The 'Idea' mark is solely associated with the Complainant and none else. The Complainant has established its reputation through its 'Idea' trade mark with which the said trade mark is related, and has extensive coverage of its products and services. The Complainant has:

- a) licences to operate in various service areas of India and presently has commercial operations over and above 22 service areas;
- b) a customer base in excess of 117 million users of its services across Delhi, Maharashtra including Goa, Gujarat, Andhra Pradesh, Madhya Pradesh including Chattisgarh, Haryana UP – West including Uttaranchal, Kerala, Himachal Pradesh, Rajasthan and UP – East Gujarat itself has more than one million users;
- c) a network of over 97,000 2G and 3G cell sites covering the entire length and breadth of the country;
- d) been the top gainer with highest net gain in respect of Mobile Number Portability, with over 3.7 million mobile users preferring Idea network;
- e) nearly 4000 Service Centers servicing Idea subscribers across the country, including over 650 special Experience Zones for 3G promotion;
- f) Operations covering approximately 1,11,164 small and major towns and villages along with a total highway connectivity of approximately 55,251 kilometres.
- g) over 540 "IDEA n U" outlets and a well-entrenched network of over 3100 dealers and 2,10,000 retailers across India.

- 3.2 The Complainant has won many awards over the years including the following:

- a) 'NDTV Business Leadership Award' in the Telecom category for its solid, consistent performance in 2012 and ET Telecom Awards 2012, in the categories - 'Customer Experience Enhancement', 'Excellence in Marketing', and 'Innovative Products';
- b) ranked no.1 in the Telecom sector in "India's Best Companies to Work for Study – 2013 and the "Best Place to Work" at the Asia Communication Awards 2013;
- c) 'Best Ad Campaign of the Year' award for the popular Honey Bunny campaign at the Tele.Net Telecom Awards 2012 and the 'Best Brand Campaign' at the esteemed World Communication Awards in 2012 and 2011;
- d) 3 Awards at the ET Telecom Awards 2012, in the following categories Customer Experience Enhancement, Excellence in Marketing and Innovative products, respectively;
- e) 'Best Brand Campaign' at the esteemed World Communication Awards 2011;
- f) 'The Emerging Company of the Year Award' at The Economic Times Corporate Excellence Awards 2009;

- g) Avaya GlobalConnect Award for being the 'Most Customer Responsive Company' in the Telecom sector in the year 2010;
 - h) GSM Association Award for 'Best Billing and Customer Care Solution' for 2 consecutive years;
 - i) awarded the GSM Association Award for 'Best Billing and Customer Care Solution' for two consecutive years, and 'Mobile Operator of the Year Award – India' for 2007 and 2008 at the Annual Asian Mobile News Awards;
 - j) won an award for the "CARE" service in the "Best Billing or Customer Care Solution" at the GSM Association Awards in Barcelona, Spain in 2007; and
 - k) 'Mobile Operator of the Year Award – India' for 2007 and 2008 at the Annual Asian Mobile News Awards.
- 3.3 The trade mark "Idea" has been advertised and popularized by the Complainant by means of hoardings, signboards, wall paintings, danglers as well as through other forms of media and has spent money, time, energy, skill and labour to popularize the trade mark amongst the public and / or the trade circles. The Complainant advertises its brand extensively, and as on 2013, includes but is not limited to:
- a) on various satellite channels such as Sony, CNN-IBN, AXN, Zee, COLORS, SET MAX etc, by means of sponsoring numerous television programs such as "*Kaun Banega Crorepati*" powered by Idea on Sony Entertainment Television, "*Citizen Journalist*" on CNN-IBN, "*Idea Filmfare Awards*" on SONY, "*Mirchi Music Award*" on Colors, Idea presents "*The Voice*" on AXN, "IPL" on Set Max, "*Idea Sa Re Ga Ma Pa*" and "*Dance Maharashtra Dance*" in partnership with Zee Marathi and "*Star Singer*" with Asianet, "*Idea Rocks India*" in partnership with Zee Television and "*Idea Khatron ke Khiladi*" with UTV Colors.
 - b) The Complainant, and now its wholly owned subsidiary Idea Telesystems Ltd., has been organizing a popular nationwide talent hunt and musical concert series known as "*Idea Rocks India*" which has extensively used and publicised the "Idea" brand all across India.
 - c) The Complainant was also the primary sponsor of the International Indian Film Academy Awards, held annually at international locations across the globe, for four (4) consecutive years from 2006 to 2009. The Complainant has also been sponsoring the most popular Bollywood awards, the Filmfare Awards, for the last five (5) years from 2009 onwards.
 - d) The Complainant has hosted popular contests such as the "*WinsmsContest*" and "*CricCrazy*" where subscribers from across the country participate through use of the mobile phone and / or the Complainant's website. The Applicant had also launched a popular Bollywood related contest for its subscribers called the "*UTV @ Play Contest*".
 - e) The Complainant has, along with Ten Sports, hosted and sponsored a cricket series called the Idea Cup, 2008 between India and Sri Lanka, held in Sri Lanka in July, 2008. The Complainant's "Idea" brand and trade mark has therefore become synonymous with the Applicant and is as such exclusively associated with the Complainant in India. The Complainant was the Title Sponsor of Idea Cup, Bangladesh in January 2010.
 - f) The Complainant has sponsored various teams in 'Indian Premiere League', the highly popular and widely followed cricket tournament across India and abroad:
 - (i) Founding Partner of 'Mumbai Indians' team in IPL season 2 (2009);

- (ii) Principal Partner of 'Delhi Daredevils' team from 2010 to 2013; and
- (iii) Principal Partner of 'Deccan Chargers' team in 2010.

- g) The Applicant has generated marketing material including:
- (i) hoardings set up across India;
 - (ii) banners and steamers displayed at most prominent locations across India as also outside its dealer's / distributor's shops / offices; and
 - (iii) promotional material in relation to product launches etc., to advertise the 'Idea' trademark and brand.
- 3.4 These satellite channels are beamed across India and the globe and the public across the globe is aware of and as such identifies the "Idea" brand and trade mark exclusively with the Complainant. It is submitted that the Complainant expends an approximate of Rs. 400 crores per year on advertising its trademark and brand across India.
- 3.5 The Complainant has filed diverse applications for registration of its Idea trade / service marks (falling within the "Idea" brand) across various classes of the Fourth Schedule to the Trade Marks Rules, 2002, with the Trade Marks Registry, Mumbai (and Delhi). The Trade Marks Registry, recognizing and accepting the distinctiveness of the get-up, colour schemes and style of the Idea trade / service marks as well as its continued and pan-Indian popularity, has registered over 46 marks in our client's favour and has also allowed a substantial portion of the balance applications to be advertised in various Trade Mark Journals.
- 3.6 Idea Mobile Commerce Services Ltd., the wholly owned mobile banking subsidiary of the Complainant has also made an application (being Application No. 2672958) for the trade mark 'Idea Money' specifically, and the same is currently pending registration with the Trade Mark Registry, New Delhi.
- 3.7 The 'Idea' brand has been in continuous use and the public across the country as such associates the 'Idea' brand exclusively with the Complainant. The Complainant craves leave to refer to and / or rely upon the relevant market recall data etc. when required. The Complainant, in addition to being the registered proprietor of the 'Idea' trade / service marks, is also the absolute owner of diverse domains in respect of its 'Idea' brand with the .com extension including www.ideacellular.com domain. The 'www.ideacellular.com' domain is accessible across the globe to any person with an internet connection. Apart from that, the Complainant also has various promotions; new pre-paid and post-paid scheme launches and write-ups displayed on the said domain.
- 3.8 A similar issue of wrongful domain squatting had arisen in relation to the domain names 'www.idea.in' and 'www.ideacellular.in'. However, on taking up the matter with the Registry and on fully satisfying the Registry, the Registry was pleased to pass an order directing transfer of both domains to our client.
- 3.9 Clearly the Complainant's trade / service mark Idea is now acknowledged as a 'well-known' mark, and is as such exclusively associated with Complainant's GSM Mobile Services. The Idea brand has created substantial brand value and generated immense goodwill for the Complainant, and the Complainant has taken adequate steps to protect its right title and interest thereto.
- 3.10 The Complainant has filed 51 annexures along with the Complaint.

B Respondent

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3.11 The Respondent has not filed any reply to the Complainant's Complaint in this arbitration.

4. Parties Contentions

A Complainant

- 4.1 The disputed domain name is identical and / or confusingly similar to the Complainant's trade / service mark since it uses the same name / mark as the Complainant's well-known mark and that of its wholly owned subsidiary Idea Mobile Commerce Services Ltd.
- 4.2 It is clear that the Respondent's use of the said domain name is not in connection with a *bona fide* offering of goods or services. This is evident by the fact that the said domain name is completely unused by the Respondent up until the filing of the present complaint. Clearly, the Respondent has no intention to use the said domain name and there exists a definite possibility that the domain name may be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade / service marks.
- 4.3 The purpose behind creation of the .IN domain name was to establish it as a globally "recognised symbol of India's growth in the field of Information Technology." Clearly therefore, the Respondent has attempted to use the popularity of our client's well-known 'Idea' brand for his own personal benefits. This action of the Respondent clearly constitutes an attempt to free-ride on our clients' goodwill and reputation. The Respondent has sought to squat / hoard the said with *mala fide* intent and to our client's detriment and prejudice.
- 4.4 The Respondent has no legitimate right to use the 'www.ideamoney.in' domain since the Complainant's wholly owned subsidiary Idea Mobile Commerce Services Ltd. is the proprietor of the trade / service marks. Admittedly, Mr. Santhosh Kumar,
- a) has nothing to do with our client and / or its business including the 'Idea' brand;
 - b) has registered the said domain to unjustly enrich himself and / or squat and / or hoard the same;
 - c) has blatantly violated the Policy adopted by ICANN and the Rules framed thereunder, in that he has violated and breached the representations to be made by an applicant (at the time of registration of a domain name) under paragraph 2 and 4 of the Policy;
 - d) has registered the Idea Domain which is identical and / or confusingly similar to our client's 'Idea' mark;
 - e) has no legitimate interests / rights in respect of the Policy;
 - f) is likely to use the said domain in bad faith; and
 - g) has intentionally attempted to attract, for commercial gain or otherwise, Internet users to his web site, by creating a likelihood of confusion with our client's 'Idea' brand as to the source, sponsorship, affiliation, or endorsement of the said domain.

B. Respondent

- 4.5 Even after two reminders, Respondent has not come out with any response.

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5. Discussion and Findings

5.1 The Respondent was given two opportunities to file his reply to the Complaint. He promised to come out with the reply. But I have not received any reply on merits from him till the date of this award. Therefore, I am proceeding to determine this Complaint on the basis of the materials available on record.

5.2 The Complainant in order to succeed in the Complaint must establish under Paragraph 4 of .IN Domain Name Dispute Resolution Policy (INDRP) the following elements:

- (I) Respondent's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (II) Respondent has no rights or legitimate interests in respect of the domain name; and
- (III) Respondent's domain name has been registered or is being used in bad faith.

5.3 Each of the aforesaid three elements must be proved by a Complainant to warrant relief.

Disputed domain name is identical or confusingly similar to a trade mark of the Complainant.

5.4 The Complainant is the proprietor of the mark Idea. Complainant has been using Idea as a trade mark continuously since 2002. The Complainant owns several registrations for the trade mark idea in numerous classes in India. In India, the first registration of the Complainant under No.1240711 in class 38 dates back to 1.10.2003. This registration has claimed user of the mark from 1.5.2002. The Complainant's domain name www.ideacellular.com was created on 23.04.2002. The disputed domain name <ideamoney.in> was created on 15.10.2013. Obviously, the Complainant is the prior adopter of Idea mark. The above facts have established that the Complainant has statutory and common law rights in respect of its Idea mark.

5.5 Idea is the predominant and distinctive part of the Complainant's web site www.ideacellular.com and the disputed domain name <ideamoney.in>. The expressions cellular and money is purely descriptive. The expressions .com and in need to be discarded while comparing the marks with the domain names. Complainant's Idea mark is famous and well known throughout India. It is clearly seen that the disputed domain name <ideamoney.in> wholly incorporates the prior registered mark Idea of the Complainant. The Complainant has also applied for registration of the combination idea and money, i.e. for ideamoney under Application No. 2672958. The disputed domain name <ideamoney.in> is similar to the Complainant's domain name www.ideacellular.com.

5.6 I, therefore, find that:

- (a) The Complaint has common law and statutory rights in respect of its Idea mark.
- (b) The disputed domain name <ideamoney.in> is:
 - (i) Similar to the Complainant's prior registered trade mark Idea, and
 - (ii) Similar to the Complainant's domain name www.ideacellular.com.

Respondent has no rights or legitimate interests in respect of the disputed domain name

5.7 It is already seen that:



- (a) The Complainant is the prior adopter and user of the Idea mark. The Complainant's Idea mark is well known all over India.
- (b) The Complainant's Idea mark was adopted in the year 2002. The first Indian registration for the mark Idea under class 38 was obtained in 2003. The Complainant's domain name www.ideacellular.com was created on 23.04.2002. The disputed domain name [<ideamoney.in>](http://ideamoney.in) was created on 15.10.2013.
- 5.8 Respondent did not register the disputed domain name until 15.10.2013. Complainant has adopted and used the mark Idea and a domain name containing the mark Idea before Respondent registered the disputed domain name [<ideamoney.in>](http://ideamoney.in). It is unlikely that the Respondent was unaware of existence of Complainant's trademark and domain name rights before registering the disputed domain name [<ideamoney.in>](http://ideamoney.in).
- 5.9 I have visited on this date of award the web site of the Respondent under the disputed domain name [<ideamoney.in>](http://ideamoney.in). The domain name has not led to any web page. The Mozilla browser has come out with the message:- *Server Not found*. It is obvious from the above message that the Respondent has never intended to use the disputed domain name [<ideamoney.in>](http://ideamoney.in) in connection with a bona fide offering of goods or services. The Respondent has no intention to use the disputed domain name [<ideamoney.in>](http://ideamoney.in) and there exists a definite possibility that the disputed domain name may be used in a manner that will tarnish the reputation and good name of the Complainant and therefore adversely impact its trade / service marks.
- 5.10 Therefore, I have no hesitation to hold, for the above reason that the Respondent has no right or legitimate interest in respect of the disputed domain name [<ideamoney.in>](http://ideamoney.in).

Respondent's domain name has been registered or is being used in bad faith.

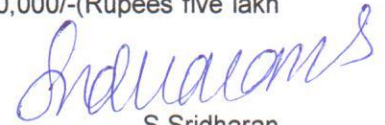
- 5.11 The Complainant is the proprietor of the mark Idea. Complainant has been using Idea as a trade mark continuously since 2002. The first Indian registration for the mark Idea under class 38 was obtained in 2003. The Complainant's domain name www.ideacellular.com was created on 23.04.2002. The disputed domain name [<ideamoney.in>](http://ideamoney.in) was created on 15.10.2013. Obviously, Complainant's rights in the Idea mark pre-date Respondent's registration of the disputed domain name [<ideamoney.in>](http://ideamoney.in). The Respondent could not have ignored, rather actually influenced by, the well-known Idea mark of the Complainant at the time he acquired the disputed domain name [<ideamoney.in>](http://ideamoney.in).
- 5.12 As seen above, Respondent is currently not using the disputed domain name [<ideamoney.in>](http://ideamoney.in) in any manner. The Respondent is no way connected with the Complainant. Respondent's adoption of the disputed domain name [<ideamoney.in>](http://ideamoney.in) is nothing but an unjust exploitation of the well-known reputation of the Complainant's prior registered Idea mark.
- 5.13 Respondent's lack of response on merits to the Complaint indicates that the Respondent has no reason and/or justification for the adoption of the Complainant's Idea mark.
- 5.14 Thus it is clearly established that Respondent registered the disputed the disputed domain name [<ideamoney.in>](http://ideamoney.in) in bad faith.
- 5.15 The actions of the Respondent should not be encouraged and should not be allowed to continue. Respondent never intended to put the disputed domain name [<ideamoney.in>](http://ideamoney.in) into any fair/useful purpose. Respondent not even considered it worth responding the

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complaint of the Complainant. Respondent did not file any response. The conduct of the Respondent has necessitated me to award costs of the Complaint to and in favour of the Complainant.

6. Decision

- 6.1 For all the foregoing reasons, the Complaint is allowed as below.
- 6.2 It is hereby ordered that the disputed domain name <ideamoney.in> be transferred to the Complainant.
- 6.3 Respondent is ordered to pay the Complainant a sum of Rs.5,00,000/-(Rupees five lakh only) towards costs of the proceedings.



S.Sridharan
Arbitrator