



2023:DHC:9061



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (COMM) 260/2021**

QUANTUM UNIVERSITY Petitioner

Through: **Mr. Jayant Mehta, Sr. Advocate**
with **Mr. Samaksh Goyal, Advs.**

versus

INTERNATIONAL QUANTUM UNIVERSITY FOR
INTEGRATIVE MEDICINE INC Respondent

Through: **Mr. Sudhir K. Makkar. Sr. Adv.**
with **Ms. Veronica Mohan, Ms. Veena**
Mathai and Ms. Keerti Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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13.12.2023

1. Under challenge, in this petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”), is an award dated 4 May 2021, passed by a learned Sole Arbitrator in arbitral proceedings instituted against the petitioner Quantum University, by the respondent International Quantum University for Integrative Medicine INC before the .IN Registry, under the .IN Domain Name Dispute Resolution Policy (INDRP).

2. The complaint instituted by the respondent sought cancellation of the domain name www.quantumuniversity.edu.in (in which “quantumuniversity” is known as the “Secondary Level Domain” or “SLD” and “.edu.in” is known as the “Top Level Domain” or “domain



extension”) registered in favour of the petitioner on 4 August 2017. The respondent alleged that it was a prior registrant of the domain name www.quantumuniversity.com as well as various other domain names, all of which used the SLD “quantumuniversity” with various extensions, principally quantumuniversity.net, quantumuniversity.org, quantumuniversity.education and quantumuniversity.online. (They shall collectively be referred to as the “quantumuniversity formative domain names”). The domain name of the petitioner, which was www.quantumuniversity.edu.in, alleged the respondent, infringed the respondent’s quantumuniversity.com domain name, which was registered prior in point of time, owing to the common “quantumuniversity” SLD. Clause 10 of the INDRP, which envisages cancellation of an infringing domain name was, therefore, pressed into service by the respondent. The impugned award finds the petitioner’s domain name www.quantumuniversity.edu.in in fact to be infringing the quantumuniversity formative domain names of the respondent, including www.quantumuniversity.com, in all of which “quantumuniversity” was the SLD. Inasmuch as the respondent’s quantumuniversity formative domain names were registered prior in point of time to the registration of the domain name www.quantumuniversity.edu.in in favour of the petitioner on 4 August 2017, the respondent was found entitled to the relief sought by it. The impugned award, therefore, concludes thus:

“The Tribunal thus concludes that the domain name “www.quantumuniversity.edu.in” is identified with Complainant’s name, mark and services. Therefore, the adoption, registration and use of the disputed domain name by the respondent show bad faith and the same must be cancelled as prayed for. That is the present case squarely falls within the premises of bad faith registration and use, thus fulfilling the condition laid down in clause 4(c) of the



INDRP Policy.

VII. DISPOSITIONS

The Arbitral Tribunal holds, that the Respondent's domain name www.quantumuniversity.edu.in is identical and confusingly similar to the name, trademark and brand name "QUANTUM UNIVERSITY" owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name www.quantumuniversity.edu.in and the same has been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant.

Accordingly, and in terms of the INDRP Policy, the Arbitral Tribunal hereby directs that the disputed domain name www.quantumuniversity.edu.in be cancelled.”

3. The petitioner, as the proprietor of the domain name www.quantumuniversity.edu.in, has assailed the aforesaid award before this Court under Section 34 of the 1996 Act.

Relevant clauses of the INDRP

4. Before proceeding further, it would facilitate matters if the relevant clauses of the INDRP are reproduced:

“1. **Definitions**

.IN Registry: Wherever used in this policy and the rules hereunder .IN Registry refers to National Internet Exchange of India (NIXI), a company registered under section 25 of the Companies Act, 1956 (*now Section 8 under Companies Act 2013*).

2. **Purpose**

This .IN Domain Name Dispute Resolution Policy (the “**Policy**”) sets out the legal framework for resolution of dispute(s) between a domain name Registrant and the Complainant, arising out of the registration and use of an .IN or .Bharat (Available in all Indian Languages) Domain Name.



3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful or malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.

4. Class of Disputes

Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

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

5. Dispute Resolution Process

The .IN Registry shall appoint an Arbitrator from the list of empanelled arbitrators maintained by the Registry. The List of the Arbitrators shall be published online by the .IN Registry on its website **www.registry.in** (<https://www.registry.in/>). The Arbitrator shall conduct



the Arbitration Proceedings in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration & Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules as well as the INDRP Policy and Rules, as amended from time to time.

6. Registrant's Rights and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4(b):

- (a) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or name corresponding to the domain name in connection with a bona fide offering of goods or services;
- (b) the Registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable



consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the market in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

10. Remedies

The remedies available to a Complainant pursuant to any proceeding before an Arbitrator shall be limited to praying for the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs as may be deemed fit may also be awarded by the Arbitrator. However, the implementation of such award of cost will not be supervised or controlled by .IN Registry."

5. I have heard Mr. Jayant Mehta, learned Senior Counsel for the petitioner, and Mr. Sudhir K. Makkar, learned Senior Counsel for the respondent, at exhaustive length. Written submissions have also been filed.

Rival submissions

Submissions of Mr. Mehta



6. Mr. Mehta predicated his challenge to the impugned award on the following submissions:

(i) The petitioner is the prior user of the name “Quantum University”, having adopted the name in 2006. “Quantum” was coined and adopted by the Trust which controls the petitioner in October 2006. Under the said name, the petitioner was initially running the Quantum School of Technology in Roorkee. As against this, the respondent adopted the name “Quantum University” only on 1 September 2009. Insofar as the word/mark “Quantum” is concerned, therefore, the petitioner enjoys the priority of user as compared to the respondent.

(ii) On 31 December 2007, the petitioner applied to the All India Council for Technical Education (AICTE) for grant of permission to open a new technical institution in the year 2008-2009. Permission, as sought, was granted by the (AICTE) on 21 June 2008.

(iii) In 2016, the Uttarakhand Legislature enacted the Quantum University Act, 2016 (hereinafter ‘the QU Act’), which came into effect in April 2017. Section 4 of the QU Act established the Quantum University. Sub-sections (1) and (2) thereof read thus:

“(1) Where the State Government after such inquiry is satisfied that Promoting Trust, has fulfilled the conditions, norms and requirements for establishment of QUANTUM UNIVERSITY, hence a Private University to be known as



Quantum University is hereby established.

(2) The University shall be a body corporate by the name "QUANTUM UNIVERSITY" and shall have perpetual succession and a common seal and shall sue and be sued by its name.”

The impugned award effectively renders the provisions of the QU Act redundant and otiose.

(iv) It is not in dispute that domain names with the extension “edu.in” can only be registered by educational institutions in India. As such, on 4 August 2017, the petitioner’s domain name www.quantumuniversity.edu.in was registered in favour of the petitioner.

(v) It was thereafter that the respondent instituted arbitral proceedings against the petitioner before the .IN Registry, which culminated in the impugned award dated 4 May 2021.

(vi) Section 22¹ of the University Grants Commission Act, 1956 (‘the UGC Act’) specifically empowers only Universities, established or incorporated under a Central Act, a Provincial Act or a State Act, or an institution deemed to be a University under Section 3 of the UGC Act, or an institution especially

¹ 22. **Right to confer degrees.** –

(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.



empowered by an Act of Parliament, to confer or grant degrees in India. Section 2(f) defines “University” as “a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with regulations made under (the UGC) Act”. As such, the respondent was not empowered to confer any educational degree in India, whereas the petitioner is empowered to do so, having been conferred the requisite authority in that regard by Section 22 of the UGC Act.

(vii) Section 23² of the UGC Act specifically proscribes the use of the word “University” in association with the name of any institution other than a university established or incorporated by or under a Central Act, a Provincial Act or a State Act. The respondent is, therefore, not entitled to use the word “University” as part of its name in India.

(viii) The ironic consequence of the impugned award is, therefore, that the respondent, which has no right to use the word “University” as part of its name in view of the proscription contained in Section 23 of the UGC act, has

(3) For the purposes of this section, “degree” means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

² 23. **Prohibition of the use of the word “University” in certain cases.** – No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word “University” associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word “University” associated with its name.



injunctioned the use of the domain name www.quantumuniversity.edu.in by the petitioner, who is the only entity which can call itself “Quantum University” in India. Such a consequence, even by itself, is sufficient to vitiate the impugned award.

(ix) The learned Sole Arbitrator could not have passed an award which effectively injunctioned the petitioner from using the name “Quantum University”. The decision sets at naught Section 4 of the Quantum University Act and is, even for that reason, illegal and contrary to public policy.

(x) The impugned award is also contrary to the provisions of the INDRP, under which it was passed. The arbitral proceedings having been initiated and concluded under the INDRP, the provisions of the INDRP were strictly binding on the arbitrator and any decision which infracts any of the provisions of the INDRP *ipso facto* cannot sustain.

(xi) Mr. Mehta advances the following submissions to demonstrate how the impugned award in fact infracts the INDRP:

(a) Clause 4 of the INDRP sets out the qualifications to be possessed by a person, in order to enable him to file a complaint to the .IN Registry. The complainant has, in the first instance, to possess legitimate rights in the



asserted domain name, which the respondent does not possess.

(b) The individual clauses (a), (b) and (c) are separated by the word “and”. This indicates that the clauses have to be read conjunctively, and not disjunctively. In other words, there must be cumulative satisfaction of all the three clauses (a) to (b) and (c) for a complaint, seeking cancellation of a domain name, to be maintainable before the .IN registry.

(c) None of the three clauses (a), (b), and (c), cumulative satisfaction of which is a pre-condition for a complaint seeking cancellation of a domain name to be maintainable before the .IN registry, is satisfied in the present instance.

(d) Apropos clause (a), it cannot be said that the domain name www.quantumuniversity.edu.in is confusingly similar to the domain name www.quantumuniversity.com or any of the other quantumuniversity formative domain names registered in the respondent’s favour. The respondent, admittedly, could not use the extension “.edu.in” as part of its domain name. There is, even for this reason, no question of any person being confused between the domain names quantumuniversity.edu.in and any other domain name of



which “quantumuniversity” is the SLD.

(e) Apropos clause (b), Mr. Mehta submits thus:

(i) It cannot be said that the petitioner has no rights or legitimate interests in respect of the domain name quantumuniversity.edu.in. The petitioner has been granted the status of a University, and conferred with the name “Quantum University” by Section 4 of the QU Act. The petitioner is the only institution in India which can use the name “Quantum University”. It cannot, therefore, be said that the petitioner did not have any right or legitimate interests in the domain name quantumuniversity.edu.in, especially as no other entity in the country – or even worldwide – is entitled to use this domain name.

(ii) That apart, Clause 6 of the INDRP enumerates certain circumstances which, if found to exist, would demonstrate the legitimate use of a domain name for the purposes of Clause 4(b). Inasmuch as the clause commences with the words “any of the following circumstances” and sub-clauses (b) and (c) are separated by “or”, fulfilment of any one of the three requirements envisaged in sub-clauses (a) to (c) would suffice to indicate that



the use of the domain name was in exercise of the rights and legitimate interests of its owner.

(iii) The petitioner is using its domain name in accordance with each of the three sub-clauses (a), (b), and (c) of Clause 6.

(iv) Sub-clause (a) envisages use, by the registrant of the domain name in connection with *bonafide* offering of goods or services. Inasmuch as the petitioner was offering educational services as Quantum University, being the name assigned to it by the QU Act, it was clear that the domain name quantumuniveristy.edu.in was being used by the petitioner in connection with *bonafide* offering of services. Sub-clause (a) of Clause 6 of the INDRP, therefore, stands fulfilled.

(v) Sub-clause (b) is also fulfilled, as the petitioner is commonly known by the domain name quantumuniversity.edu.in.

(vi) Sub-clause (c) is also satisfied, as it cannot be said that the petitioner is using the domain name quantumuniversity.edu.in, which stands registered in its favour since 4 August 2017, with any intent to misleadingly divert consumers or tarnish the



domain name of the respondent.

(vii) As the use, by the petitioner, of its domain name quantumuniversity.edu.in fulfils each of the three sub-clauses (a) to (c) of Clause 6, the petitioner clearly has rights and legitimate interests in the domain name quantumuniversity.edu.in within the meaning of Clause 4(b) of the INDRP.

(f) The respondent is also required, under Clause 4(c) of the INDRP, to demonstrate that the domain name quantumuniversity.edu.in was registered or was being used by the petitioner in bad faith. The circumstances in which registration or use of a domain name could be stated to be in bad faith stand enumerated in sub-clauses (a) to (c) of Clause 7. If, in the facts of a particular case, one or more of the sub-clauses (a) to (c) of Clause 7 is found to apply, a case of registration or use of the domain name in bad faith, within the meaning of Clause 4(c) would be made out.

(g) It was not in dispute that sub-clauses (a) and (b) of Clause 7 could not apply in the facts of the present case, as they relate to exigencies which have nothing to do with the circumstances at hand. (Mr. Makkar, too, did not seek to contend that either of clauses (a) or (b) of Clause 7 of INDRP was applicable in the present facts).



(h) Insofar as Clause 7(c) is concerned, it could not be said that the use of the domain name quantumuniversity.edu.in, which stood registered in favour of the petitioner consequent on the petitioner being designated as a University by the QU Act, results in likelihood of confusion with the respondent's domain name quantumuniversity.com or any of the other quantumuniversity formative domain names of the respondent, as envisaged by Clause 7(c). This was especially so as the respondent was not entitled to use the .edu.in extension at all.

(i) As none of the sub-clauses (a) to (c) of Clause 7 was applicable, the registration and use, by the petitioner, of the domain name quantumuniversity.edu.in could not be said to be in bad faith. The pre-requisite contained in Clause 4(c) of the INDRP was also, therefore, not satisfied in the present case.

(j) Thus, the situation that obtains is that, while the complainant is required to demonstrate cumulative satisfaction of the criteria envisaged in sub-clauses (a), (b) and (c) Clause 4 of the INDRP, in order to maintain a complaint before the INDRP registry, in the present case, none of the three sub-clauses are applicable.



(xii) The learned Arbitrator has not applied himself to the aforesaid arguments of the petitioner, and has rejected most of them as being irrelevant. The consequence, as already noted earlier, is that the respondent, which is not entitled to use the mark “Quantum University” within India, has succeeded in divesting the petitioner, which is the only entity entitled to use the mark “quantumuniversity” in India, from the right to use the said mark, as part of its domain name.

(xiii) Inasmuch as the impugned award is contrary to the UGC Act, the QU Act and the INDRP, and has resulted in the aforesaid adverse consequences, the award has to be regarded as contrary to public policy and to the fundamental policy of Indian law, besides being shockingly perverse and patently illegal. It is, therefore, liable to be set aside by this Court, in exercise of the jurisdiction vested in it by Section 34 of the 1996 Act.

Submissions of Mr. Makkar

7. Responding to the aforesaid submissions of Mr. Mehta, Mr. Sudhir Makkar, learned Senior Counsel for the respondent, contends thus:

(i) The respondent has, for the purposes of the present dispute, no objection to the petitioner either using the word “Quantum” as part of the name of its University or even to the



use of “Quantum University” as the name of the petitioner institution.

(ii) The objection of the respondent is to the domain name quantumuniversity.edu.in, specifically to the SLD “quantumuniversity”. The arbitral proceedings were not with respect to trade mark infringement but with respect to domain name infringement, in that the petitioner was using a domain name which was deceptively similar to the quantumuniversity formative domain names of the respondent. This was clearly impermissible.

(iii) Prior to 4 August 2017, the petitioner was functioning as “Quantum School of Technology”. Section 4 of the QU Act did not *ipso facto* entitle the petitioner to use the domain name quantumuniversity.edu.in, especially as, much prior thereto, a large number of quantumuniversity formative domain names, including quantumuniversity.com, quantumuniveristy.co.in and quantumuniversity.in stood registered in favour of the respondent. The adoption, by the petitioner, of the domain name quantumuniversity.edu.in, was bound to result in confusion, thereby making out a clear case for its cancellation.

(iv) The respondent has registered “Doing Business As” (DBA) status in Hawaii since 2 October 2009. The quantumuniversity formative domain names of the respondent, including the domain name www.quantumuniversity.com, are



valid registrations granted to the respondent outside India (except quantumuniversity.co.in and quantumuniversity.in, which are registered in India). The respondent is well aware of the fact that it cannot seek registration of the domain name www.quantumuniversity.edu.in as the extension “edu.in” can be used only by educational institutions functioning in India. For that reason, the respondent is not seeking to use the extension “edu.in” as part of its domain name.

(v) The respondent, therefore, has no objection to the petitioner’s use of the extension “edu.in”. It, however, legitimately objects to the use of “quantumuniversity” as the SLD of the petitioner’s domain name, as this creates clear confusion with the registered quantumuniversity formative domain names of the respondent, including quantumuniversity.com.

(vi) The respondent is functioning as Quantum University since 2007. The domain name www.quantumuniversity.com stands registered in favour of the predecessor-in-interest of the respondent in 2003. The respondent purchased the domain name www.quantumuniversity.com from the predecessor-in-interest in 2007. My attention was invited, in this context, to the recitals contained in paras 1 to 3 of the complaint in which the present award has come to be passed, which read thus:

“1. The Complainant is engaged exclusively in providing online courses (including bachelors, masters, and



doctorate degrees) and certification programs in holistic, alternative, natural, and integrative medicine based on the science quantum physics. The Complainant is in continuous and constant use of its trade name in relation to higher educational services at university level. The university was incorporated in 2007 and since then, the Complainant has been in continuous use of trade name "*Quantum University*". The trade name has also been registered with the Business Registration Division, Department of Commerce and Consumer Affairs, Hawaii as the registered DBA (Does Business As) since 02.10.2009. Since at the relevant time, there was already a registered domain name "www.quantumuniversity.com" (which was registered in 2003), the Complainant purchased the same from its then registered owner.

2. The Complainant has a valid and subsisting registration of its trade mark "*Quantum University*" with the USPTO under Class 41 for educational services in the nature of courses at the university level, educational services namely conducting classes, seminars, conference and workshops in the field of medicine etc., on 14.10.2014 vide Registration No. 4620311.

3. Over the years, the Complainant has registered and used the trade mark "*Quantum University*" through numerous domain names in relation to large scale online educational services. The Complainant has marketed, advertised and promoted their trade name all over the world including India through various registered internet domain names such as:

S.No	Domain Name	TLD	Creation Date	Expiration Date
1.	quantumuniversity.com	.com	10-10-2003	10-10-2023
2.	quantumuniversity.net	.net	01-07-2009	01-07-2021
3.	quantumuniversity.org	.org	02-07-2009	02-07-2021
4.	quantumuniversity.biz	.biz	11-01-2010	10-01-2021
5.	quantumuniversity.me	.me	11-01-2010	11-01-2021
6.	quantumuniversity.tv	.tv	11-01-2010	11-01-2021
7.	quantumuniversity.us	.us	11-01-2010	10-01-2024
8.	quantumuniversity.co	.co	05-04-2011	04-04-2021
9.	quantumuniversity.careers	.careers	05-03-2014	05-03-2022
10.	quantumuniversity.academy	.academy	10-03-2014	19-03-2022
11.	quantumuniversity.training	.training	26-03-2014	26-03-2022
12.	quantumuniversity.education	.education	02-04-2014	02-04-2022
13.	quantumuniversity.institute	.institute	02-04-2014	02-04-2022



14.	quantumuniversity.foundation	.foundation	22-05-2014	22-05-2022
15.	quantumuniversity.info	.info	22-05-2014	22-05-2023
16.	quantumuniversity.mobi	.mobi	22-05-2014	22-05-2023
17.	quantumuniversity.ws	.ws	22-05-2014	22-05-2023
18.	quantumuniversity.reviews	.reviews	04-06-2014	04-06-2022
19.	quantumuniversity.community	.community	18-06-2014	18-06-2022
20.	quantumuniversity.vision	.vision	02-07-2014	02-07-2022
21.	quantum.university	.university	29-07-2014	29-07-2022
22.	quantumuniversity.university	.university	30-07-2014	30-07-2022
23.	quantumuniversity.healthcare	.healthcare	22-11-2014	22-11-2023
24.	quantumuniversity.degree	.degree	14-01-2015	14-01-2022
25.	quantumuniversity.school	.school	03-06-2015	03-06-2022
26.	quantumuniversity.courses	.courses	23-09-2015	23-09-2022
27.	quantumuniversity.college	.college	29-09-2015	29-09-2022
28.	quantumuniversity.center	.center	09-11-2016	09-11-2021
29.	quantumuniversity.international	.international	09-11-2016	09-11-2023
30.	quantumuniversity.life	.life	09-11-2016	09-11-2023
31.	quantumuniversity.online	.online	09-11-2016	09-11-2023
32.	quantumuniversity.store	.store	09-11-2016	09-11-2023
33.	quantumuniversity.world	.world	09-11-2016	09-11-2023
34.	quantumuniversity.co.in	.co.in	27-04-2018	27-04-2022
35.	quantumuniversity.guru	.guru	27-04-2018	27-04-2022
36.	quantumuniversity.in	.in	27-04-2018	27-04-2022
37.	quantumuniversity.toda	.today	27-04-2018	27-04-2022
38.	quantumuniversity.app	.app	08-05-2018	08-05-2022
39.	thequantumuniversity.com	.com	06-03-2009	06-03-2021
40.	thequantumuniversity.net	.net	01-07-2009	01-07-2021
41.	thequantumuniversity.org	.org	02-07-2009	02-07-2021
42.	quantum-university.co	.co	01-03-2018	01-03-2022
43.	quantum-university.education	.education	01-03-2018	01-03-2022
44.	quantum-university.net	.net	01-03-2018	01-03-2022
45.	quantum-university.org	.org	01-03-2018	01-03-2022

(vii) The mark “Quantum University” is also registered in favour of the respondent by the USPTO on 14 October 2014. The registration certifies user, by the respondent, of the mark “Quantum University” since 1 September 2009.

(viii) The submissions of Mr. Mehta, apropos the right to use the mark “University” as part of its name, the right to award



degrees in India, the enactment of the QU Act and Section 4 thereof, and the various provisions of the UGC Act to which Mr. Mehta alludes, are all irrelevant insofar as the issue in controversy is concerned. The sole controversy forming subject matter of the arbitral proceedings was whether the domain name “quantumuniveristy.edu.in”, of the petitioner, was deceptively similar to the quantumuniversity formative marks of the respondent including “quantumuniversity.com” in respect of which the respondent held domain name registrations prior to the registration of the domain name “quantumuniveristy.edu.in” in favour of the petitioner on 4 August 2017.

(ix) Inasmuch as the respondent was not operating as a University in India, and was not seeking to provide any services in India as a University, the reliance on Section 23 of the UGC Act was completely misplaced. Section 23 of UGC Act could not, however, be so construed as to prohibit the use, by any entity, of “University” as part of its mark in India. The respondent had not set up any university in India, and was not intending to do so. The services provided by the respondent were entirely online. The mere fact that those services could be accessed in India, would not result in the respondent falling foul of Section 23 of the UGC Act.

To support his submissions, Mr. Makkar placed reliance in paras 12, 18, 20 and 33 to 34 on the judgment of the Supreme Court in *Satyam*



*Infoway Ltd. v. Siffynet Solutions (P) Ltd*³, paras 11, 13 and 14 of the decision of a learned Single Judge of this Court in *Yahoo! Inc. v. Akash Arora*⁴ and the decision of a Division Bench of this Court in *Dean Chandler v. Sazerac Brands LLC*⁵

The impugned award

8. Before proceeding further, it is necessary to reproduce the relevant paragraphs from the impugned award, thus:

“V. PARTIES’ CONTENTIONS

Complainant’s Version

11. The Complainant states that according to Google's report between 2009 and 2018, the Complainant has incurred expenditure of USD 17,904.75 on online advertisement of its educational services in India, which translates to approximately 17 million views of the Complainant's advertisements in India.

12. It has been asserted that the Complainant has substantial Indian clientele and list of students from India and the various inquires/requests/correspondences from India has been filed with the Complainant as Exhibit C-15.

13. The Complainant contends that in 2018, it noted that the Respondent, sought to change its trade name to "Quantum University" in 2017 and that the Respondent was using the trade name "Quantum Global Campus" / "Quantum College". The Complainant states that the Disputed Domain Name on 04 August 2017, with Education & Research Network (ERNET), India.

14. The Complainant contends that the Respondent, by application bearing no. 1838522 dated 10 July 2009, applied for registration of Trademark/name “QUANTUM” under the Trademarks Act,1999. The Complainant opposed the said application of the Respondent before the Trademarks Registry by

³ (2004) 6 SCC 145

⁴ (1999) 78 DLT 285

⁵ (2022) 289 DLT 376



filing objections on 06 April 2018 and the same is pending adjudication.

15. The Complainant stated that it issued a cease-and-desist notice dated 17 May 2018 demanding that the Respondent stop the usage of the name "Quantum University" and domain name "www.quantumuniversity.edu.in" with immediate effect as the same was deceptively similar to the Complainant's trade name and domain name.

16. The Complainant mentions that in its response to the aforesaid notice, the Respondent contacted the Complainant directly by a reply dated 20 June 2018, wherein the Respondent did not dispute the usage of the domain name "www.quantumuniversity.edu.in" in relation to educational services, but rather notified the Complainant that it intended to enter into the arena of online courses as well. In the said reply the respondent stated as under:

"3. That we have also been authorized to impart education also through the distance education system which means imparting education within the state through any means of information technology, communication such as multimedia, broadcasting, telecasting, online over internet, other interactive methods, e-mails, internet, computer, interactive talk and e-learning correspondence course, seminars, contact programs or a combination of any two or more such means."

17. The Complainant states that by its letter dated 20 July 2018 it proposed that the Respondent revert to its original name "Quantum Global Campus" or any other name distinguishing the two universities, so as to remove any possible confusion for the public.

18. It is alleged that the Respondent did not reply to the said Complainant's letter and has started holding online classes for their courses and launched a mobile application "My Quantum".

23. It is stated that the Registration of an identical and confusingly similar domain name evinces the Respondent's bad faith with an intent to attract and divert internet users to its website, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of its domain name by the Complainant.



All this is done to create confusion for the users and prospective students especially during the present times when online education has been become the norm across the globe.

27. The Complainant being aggrieved by the conduct of the Respondent has invoked the present Arbitration under the INDRP Policy on the following grounds:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights
- ii. The domain name was registered and is being used by the Respondent in bad faith.
- iii. The Respondent has no rights or legitimate interest in respect of the domain name www.quantumuniversity.edu.in.

RESPONDENT'S REPLY

32. That the Respondent has contended that as per Alexa Rankings of websites the domain name "quantumuniversity.edu.in" is Ranked No. 167629 in the world while the domain name "quantumuniversity.com" is Ranked No. 452980 in the world which shows that the Respondent is far more popular among the public and have a far greater audience as compared to the Complainant.

33. The Respondent has alleged that Complainant has failed to establish that:

- i. That the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has right.
- ii. The domain name was registered and is being used in bad faith.
- iii. The respondent has no rights or legitimate interests in respect of the domain name "www.quantumuniversity.edu.in.



34. The Respondent has denied that the Complainant is offering any legitimate degree or doctorate in the sphere of holistic alternative natural or integrative medicine. The Complainant on website published a disclaimer whereby it has admitted that the University has no authority to grant any "M.D." The Respondent alleges that the degrees are fake certificate diploma degree which do not entitle degree holders to practice as naturopathic doctors.

35. The Respondent has denied that the Complainant has been an established institution in the field of medicinal education and the Complainant has failed to establish by which parameter it claims itself to have achieved "success", as the Complainant has not been able to ensure that its institution gets accredited by the recognized accreditors. The Respondent has averred that the method and procedure adopted by the Complainant shows that it has been acting merely as a "Diploma mill" on the false facade of "University" to make money from the unaware students and practitioners. The Respondent has contended that none of the degrees, certificates or diplomas have been recognized or have any validity in India and the career and the resources of students/clientele must be safeguarded.

36. The Respondent has contended that as per archive.org which is a not-for-profit organization working on saving old websites since 1996 and the documents available in the public domain, it is clear that the Complainant was using its original website "iquim." since its establishment and had never used its website "quantumuniversity.com" till March 2017. It is only after this period that they stopped using their original website and started using 'quantumuniversity' in their various domain names which shows that only after the Respondent was granted the university status the Complainant with ulterior motives changed its domain name.

37. The Respondent has denied that the courses offered by the Complainant are similar to the courses offered by the Respondent. The courses offered by the Complainant are not recognized or accredited by Council for Higher Education Accreditation (CHEA) or the U.S. Department of Education (USDE) or both. The Complainant has also not established that the courses offered by it have been recognized by any legislation or statutory body. The Respondents stated that the courses offered by the Respondent are as per Rules prescribed by the Pharmacy Council of India and consequently the contention that the courses offered by the Respondent are similar to the courses offered by the Complainant holds no water. The Respondent contends that the online courses



offered by Quantum University are not as per the norms and rules of the legislature and other statutory body in India. The Respondent further contends that the Complainant has failed to show that the students who are interested in the courses offered by the Complainant would get deceived or confused with the courses that are offered by the Respondent. The details regarding the online traffic received by the Complainant shows that it is evident that the Complainant is not an acclaimed institution or possess well-known trade name. The online traffic received by the Complainant's website as per the "Alexa" ranking is way below the Respondent's website.

38. The Respondent has denied that it has intentionally changed its name to create confusion for the user and prospective student. The said name was adopted as per the enactment by which the status of the university was granted to the Respondent. The name "quantum" has been used by the Respondent before the registration made by the Complainant in the name of International Quantum University for Integrative Medicine INC.”

VI. DISCUSSIONS AND FINDINGS

32. It is the case of the Complainant that the Disputed Domain Name "*www.quantumuniversity.edu.in*" was registered by the Respondent on 04 August 2017. The Complainant states that the disputed domain name is creating confusion as the same is identical/ similar to the Complainant's Domain Names. The Disputed Domain Name conflicts with the legitimate rights and interests of the Complainant

33. The Complainant has contended that both the Complainant and the Respondent are engaged in the same industry i.e., education, offering similar courses at the university level.

34. The Complainant has also contended that till recently the Respondent had no online courses in offer, however, the Respondent is authorized to impart education through distance learning through various modes including online over the internet and recently has come up with an online application to impart education online. The Respondent in its Written Defence also does not deny this.

35. The Complainant in support of its contention has submitted a few illustrations of confusion over the Disputed Domain Name.



One such incident is relating to the All India Council for Technical Education which is a statutory body and a national-level council for technical education which accredits postgraduate and graduate programs under specific categories also cannot distinguish between the domain names. Complainant has contended that this fact has been unrebutted by the Respondent in its Written Defence.

36. The Complainant asserts that it is the prior user of the word "Quantum" as well as the trade name "Quantum University" and the domain names having the phrase "quantumuniversity".

37. The Complainant has contended that the Respondent could not have been unaware of the Complainant's domain name/s as even in 2017 (when the Respondent got the Disputed Domain Name registered) . By then the Complainant had 36 domain names registered in its favour. It is also pertinent to note that the Respondent, does not dispute in its Written Defence, the Complainant's 45 registered domain names with the phrase "quantumuniversity".

38. The Complainant in the Complaint has asserted that the Respondent knew about the Domain Name of the Complainant as under:

a. The Respondent knew of the Complainant's domain name, yet they chose to change their domain name which establishes bad faith (para 7(c)(iii) at pages 9 and 10 of the Complaint)

b. This fact was to the knowledge of the Respondent as a general online search would have directed the Respondent to the Complainant's site (page 7 of the Complaint).

However the Respondent has not controverted the above assertions.

39. The Respondent has objected to the case of the Complainant and raised various defences in response to the same. The Respondent has contended that the Complainant's Complaint is not based on truth as the Original civil suit no.10 of 2019 L.M.D Educational and research Foundation and another vs. Dr. Paul Drouin, Quantum University, is pending adjudication before District Judge Dehradun has not been disclosed in the present proceedings.



40. The Tribunal has hereinabove considered the Respondent's contention regarding the pendency of the Suit acting as a bar to the present arbitration proceedings. However, to consider the aspect of concealment by the Complainant it may be noted that the Respondent has maintained a stoic silence on the aspect of whether the Complainant was served in the Suit proceedings. The Tribunal notes that the Respondent has not placed orders in the civil suit proceedings on record. The Complainant has in support of its contention, along with its Rejoinder produced the online case of the Suit status as per the website of the District Judge Dehradun. The online case status also reveals that the suit is still at the stage of service. Hence the Complainant's contention that it had no prior knowledge of the Suit initiated by the respondent/plaintiff and remains unserved gains credence and is accepted by the Tribunal.

41. The Respondent has contended that L.M.D. Educational and Research Foundation is a "Trust" and that Quantum University is a "University" which is a statutory body under the Quantum University Act, 2016 declared under clause 3 of Article 348 of the Constitution of India. The documents filed by the Respondent along with its Reply show that on June 21, 2008, the Respondent was granted approval by the All India Council for Technical Education for the establishment of Quantum School of Technology. The objects of the University have been mentioned by the Respondent and noted by the Tribunal.

42. The Respondent's contention regarding the registration of L.M.D. Educational and Research Foundation as a Trust with the Sub-Registrar Dehradun in 2007 is not germane or relevant to the issue involved in the present arbitration relating to the domain name "www.quantumuniversitv.edu.in". The fact regarding the registration of L.M.D. Educational and Research Foundation as a Trust and the AICTE approved are not in dispute nor does have a bearing on the disputed domain name "www.quantumuniversity.edu.in" or the service mark "Quantum University" or the internet presence of the parties

43. The Respondent has contended that it was using the word "Quantum" as a right openly since 2006. The Tribunal notes that the Respondent has not placed any evidence or documents on record in support of its contention that Respondent was using word "Quantum" as a right openly since 2006. Even if Respondent's contention were to be taken at face value, the said contention in no manner advances the case of the Respondent in the present proceedings. The dispute in the present proceedings does not relate to the usage of the word "Quantum" but the trade name/domain name "Quantum University". It is established that Complainant's



trade name is registered with the Business Registration Division, Department of Commerce and Consumer Affairs, Hawaii as the registered DBA (Does Business As) since 02 October 2009 and subsisting registration of its trademark "Quantum University" with the USPTO establishes that the Complainant has intellectual property rights and ownership in the name "Quantum University" and in the disputed domain name which is identical to the service mark in which the Complainant has rights. The Tribunal on careful consideration of the evidence placed on record by both parties is of the view that the Complainant has been able to establish ownership of rights in the service mark "Quantum University" and it has been in continuous use thereof since 2009 through 45 domain names concerning its online educational services.

44. The Respondent's contention that Quantum University is a "University" which is a statutory body under the Quantum University Act, 2016 is not relevant for the purposes of the present arbitration proceedings as the issue in question relates to the domain name "www.quantumuniversity.edu.in" which the Complainant has inter alia alleged is identical and confusingly similar to the Complainant's name, trademark and service mark. The Tribunal notes that the Respondent has admitted in its Written Defence at Paragraph 24 that the Respondent applied for the website "www.quantumuniversity.edu.in" only in January 2018 after it was granted university status by the Legislature. Thus, Complainant's contention that Respondent was previously operating under the trade name "Quantum Global Campus" is accepted by the Tribunal.

45. The Tribunal notes that the Respondent has not denied in its Written Defence, that even when the Respondent was applying for the website in January 2018, Complainant had 36 domain names registered with the word "Quantum" and having the phrase "Quantum University". Furthermore, the Respondent has not disputed the fact that Complainant as on date has 45 registered domain names with the phrase "Quantum University".

46. The Respondent's primary contention in its Written Defence is based on the elevation of the Respondent college with the name and style of Quantum University under the Quantum University Act, 2016. The Tribunal is however of the view that the fact of the elevation is not a relevant consideration for the present proceedings and does not in any manner address the Complainant's contention that the Respondent's domain name is identical and/or confusingly similar to the trade name being used by the Complainant



47. It is an undisputed fact that the Complainant and the Respondent are engaged in the same industry i.e. education, offering similar courses at the university level. The Complainant's contention regarding the confusingly similar domain name is established from the evidence placed on record by the Complainant, namely that the Complainant received an email dated 06 January 2018 from the All India Council for Technical Education meant for the Respondent and emails addressed by Prof. Saini who was intending to correspond/communicate with the Respondent marked numerous e-mails to the Complainant at "vicechancellor@quantumuniversity.com" alongside the Respondent at chairman@quantumeducation.in. This contention of the Complainant remained unrebutted.

50. The Tribunal is unable to accept Respondent's contention that Complaint filed by the Complainant is prohibited by law. Respondent has not placed on record the relevant provision of law which prohibited the Complainant from making the Complaint under the Policy. The Tribunal is of the view that the Complaint relating to the domain name is not prohibited under any law. Respondent has made a bald averment regarding the Complaint being purportedly prohibited by law without specifying or alluding to the law which contains the prohibition if any. Hence the contention raised by Respondent regarding prohibition under law is misplaced and stands rejected.

51. The Respondent's defence is based on the argument that as per the University Grants Commission Act, 1956, the right of conferring degrees can only be exercised by a University incorporated under a Central or State Act or by an institution deemed to be a University. Since Complainant is not a University within the meaning of the University Grants Commission Act, 1956, Complainant cannot award degrees. The Tribunal is unable to accept the Respondent's contention as the issue relating to the validity of the degrees awarded by the Complainant is not the subject matter of the present arbitration proceedings or relevant to the usage of the domain name "www.quantumuniversity.edu.in".

52. The Respondent's defence based on the argument that since the domain extension "edu.in" has specifically been created by the Government of India for Academic / Educational / Research activities for Indian Educational Institutes, hence the same would not impeach the rights of any other website or domain. The Tribunal is of the view that the domain extension in itself does not serve to dispel the confusion in the minds of the online public. The



domain name with the words "quantumuniversity" is identical and confusingly similar to the 45 domain names held by the Complainant containing the trade name "quantumuniversity". The Tribunal thus does not find any merit in the said submission advanced by the Respondent.

53. The Respondent has also contended that the Complainant is an unauthorized body of USA and has no status and no consent of any legislature or Government of USA or any accreditation body by Government of USA as depicted by the Complainant at its website. The said contention is strongly disputed by the Complainant which has contended that though the Complainant's courses are not accredited by an accredited agency recognized by the United States Secretary of Education, however, the Complainant's degree programs are accredited by over a dozen professional certification boards and enables students to earn their bachelor's, master's, doctorate and PhD degrees. It has further been contended that after graduation, students from the Complainant can apply directly to several boards to become board certified.

54. The Tribunal has carefully considered the rival submissions is of the view that the alleged lack of accreditations in respect of the courses offered by the Complainant is irrelevant under the INDRP Policy. The absence of accreditations or insufficient accreditations is not an issue that is the subject matter of the present arbitration proceedings.

55. The Tribunal does not find any merit in Respondent's contention that Complainant is offering degree programs in violation of the degrees recognized by the UGC. The validity and sanctity of an online degree offered by a foreign university is an aspect which is not in issue in the present proceedings.

58. The Respondent has further contended that in India, Foreign Universities are required to obtain a certificate of equivalence from the Association of Indian Universities and the Complainant is not part of the said association. Paragraph 4(3) of Advisory to Students for seeking admission to programs of studies promising qualification/ degree from foreign universities says that as of now equivalence is not accorded foreign degrees awarded under distance/open/online/virtual/home studies/private mode. The Respondent has thus alleged that as the Complainant is only offering online degrees it makes their degree invalid/fake in India. The Tribunal on careful perusal of the advisory issued by the Evaluation Division Association of Indian Universities (AIU) placed on record by the Respondent notes that the same clearly



advises students to read the Information Brochure of the AIU on the equivalence of Foreign Qualification /Degrees. The Advisory also cautions students that equivalence is granted to students only if the degree in question fulfils the eligibility conditions and that equivalence is not accorded to foreign degrees awarded under the Distance/ Online/ Virtual/Home Studies/Private mode. The said fact is an aspect which is required to be considered by prospective students prior to enrolling for a course with the University. The issue involved in the present arbitration does not relate to the equivalence attached to the degree awarded by the Complainant or the lack of it. The Tribunal is of the opinion that the fact that the degree offered by the Complainant does not fulfil the test for certificate of equivalence does not bar the Complainant from offering a course nor does it have any bearing on the domain names already held by Complainant. The validity of the degrees offered by the Complainant is not in question in these proceedings and hence this Tribunal refrains from passing any observations or findings regarding the same.

59. The Complainant's contention that the Respondent started holding online classes for their courses and launched a mobile application " My Quantum" and is seeking to increase its online presence by offering online courses has strongly been objected to by the Respondent. The Respondent has contended that it was only using the application for its students studying under various on-campus programs being offered by the Respondent and to inform them regarding their attendance, marks etc. It has further contended that in India to impart distance/ online education, approval from Distance Education Bureau is required which at present was not available with Respondent . In the future, however, if and when the Respondent acquired the permission, the Respondent has contended that it would offer distance/ online degrees. The Tribunal on consideration of the rival contentions is of the view that the intention of the Respondent to hold online study in future will add to the existing confusion vis a vis "Quantum University" and "quantumuniversity.edu.in".

61. The Respondent has contended that it is using "Quantum" since 01 April 2006 and has filed an application for the trade mark of the word "Quantum " under class 41 to the Controller General of Patent, Design and Trade Marks vide application Number 1838522 dated 10 July 2009 and this clearly shows that Respondent is a prior user of the word "Quantum". The Tribunal is, however, of the view that the said contention fails to address the material issue as the dispute pertains to the domain name "quantumuniversity"



and not 'Quantum'. The Respondent's contention regarding the submission of trademark application is misplaced as the Complainant issued a Notice of Opposition dated 09 November 2018 in relation to the registration of Trademark " Quantum" vide application no. 2489450 in Class 42 under the Trade Mark Act, 1999 and the matter is pending before the Trade Mark Registry limited to the registration of the trademark "Quantum" and not "Quantum University".

67. The Respondent in its Written Submissions in addition to the defences raised in its Written Defence/ Objections contended that the present arbitration is not just about the use of the domain name "quantumuniversity" but also of the fact that who is legally entitled to use the word "university" in the Indian context and for Indian students. The Respondent's contention regarding the scope of the present arbitration including within its ambit the entitlement of parties to use the word "university" in the Indian context and for Indian students is misplaced and rejected. The issue in question in the present arbitration proceedings relates to the domain name "www.quantumuniversity.edu.in" which the Complainant has inter alia alleged is identical and confusingly similar to the Complainant's name, trademark and service mark. The Respondent has not shown any impediment operating against the Complainant from offering online courses or using the name "Quantum University", which Complainant claims it has been using world over.

79. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:

(a) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

i. The trademark QUANTUM UNIVERSITY have been used by the Complainant since 2007. The Complainant owns domain names with its brand QUANTUM UNIVERSITY in several countries. A careful consideration of the Trademark registrations, tradename registration and extracts of the WHOIS records filed by the Complainant establish that the Complainant owns and holds intellectual property rights in the name, trademark and brand QUANTUM UNIVERSITY in India and other



jurisdictions and the Complainant owns the domain names quantumuniversity.com and quantumuniversity.in.

iii. In **Yahoo! Inc. v Akash Arora & Anr.** (1999 PTC (19) 210 Delhi), the Delhi High Court enjoined the use of domain name 'yahooindia.com' in a suit filed by Yahoo! Inc., the owner of the trademark "Yahoo" and the domain name <yahoo.com> by holding that defendant's domain name incorporated the Plaintiff's name in its entirety and was deceptively similar and could be perceived as being of the Plaintiff's.

iv. In **eBay, Inc v. Progressive Life Awareness Network**, WIPO Case No. D2001-0068, the UDRP returned a finding that the domain name <gayebay.com> incorporated the complainant's mark "ebay" in its entirety, which is confusingly similar to complainant's mark.

v. The registered trademark of the Complainant, "QUANTUM UNIVERSITY" and the domain names quantumuniversity.com, quantumuniversity.org, quantumuniversity.university, quantumuniversity.online are distinctive and the disputed domain name "quantumuniversity.edu.in" bears the Complainant's registered trademark "QUANTUM UNIVERSITY" in its entirety. Considering the similarity between the Complainant's trademark and the domain name "QUANTUM UNIVERSITY" and the disputed domain name "quantumuniversity.edu.in" of the Respondent and based on the unrebutted evidence placed on record by the Complainant. The Arbitral Tribunal finds that an average consumer would be led to believe that the Complainant and the Respondent or the disputed domain name are related. After taking into consideration the facts of the present case and the settled law on the issue, the Arbitral Tribunal finds that the disputed domain name "quantumuniversitywork.in" is identical and confusingly similar to the Complainant's registered trademarks "QUANTUM UNIVERSITY" and as also the domain names quantumuniversity.org, quantumuniversity.online. Accordingly, the Arbitral Tribunal holds that the requirement of the first



element in the INDRP Policy paragraph 4(a) is satisfied.

vi. Based on the submissions and evidence filed by the Complainant, it is established that the Complainant is a university operating from the United States of America, offering exclusively online courses and certification programs in holistic, alternative, natural and integrative medicine based on the science of quantum physics. The Complainant incorporated "Quantum University" on 5 February 2007 and registered its trade name as "Quantum University" on 02 October 2009 with the Department of Commerce and Consumer Affairs. Complainant's trademark "quantum university" is a registered in the United States patent and trademark office since 14 October 2014, which records that the first use by the Complainant was on 1 September 2009. The Complainant has a substantial Indian clientele as evident from Exhibit C-15. Complainant has 45 domain names with the words "Quantum University" since 2009 and has offered its educational services through its website "www.quantumuniversity.com" which is in registration since 10 October 2003.

vii. The Respondent by its own admission applied for the domain name "quantum university.edu.in" on 04 August 2017 and sought to change its trade name to "Quantum University" only in January 2018 after it was granted university status by the Quantum University Act, 2016.

viii. The fact that the domain name "quantumuniversity.edu.in" is identical and confusingly similar to the trade name/ domain names held by the Complainant having the words "quantum university" stands proved by the evidence placed on record by the Complainant. One such incident relating to the All India Council for Technical Education, a statutory body and a national-level council for technical education which accredits postgraduate and graduate programs under specific categories having issued an official communication on the address belonging to the Complainant. Another instance has been when one Prof. Saini who was intending to



correspond/communicate with the Respondent marked numerous e-mails to the Complainant at "vicechancellor@quantumuniversity.com" alongside the Respondent at chairman@quantumeducation.in. The respondent has not been able to rebut the evidence placed on record by the Complainant regarding the confusing similarity to the domain names/trade names held by the Complainant and has admitted the same at page 28 of the Written Defence filed by the Respondent.

ix. The Respondent and Complainant are both engaged in providing educational services at the university level. Although the respondent has contended that the courses offered by the Complainant are unaccredited and unrecognised by the UGC in India, the similar nature of the courses has only added to the confusion from the disputed domain name

x. As per WIPO Jurisprudential Overview 3.0, the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognisable within the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

xi. The documentary evidence placed on record by the Complainant reveals that the Complainant is the registered owner 45 domain names containing the trade name quantum university which is entirely contained in the disputed domain name of the respondent. A visual comparison of the disputed domain name quantumuniversity.edu.in and other domain names with QUANTUM UNIVERSITY of the Respondent with the Complainant's name, trademark, brand QUANTUM UNIVERSITY and



the domain names quantumuniversity.com, quantumuniversity.net, quantumuniversity.org, quantumuniversity.education, and quantumuniversity.online, demonstrate that "QUANTUM UNIVERSITY" is entirely contained in the disputed domain name of the Respondent.

xii. It is thus evident that in the present case the disputed domain name "www.quantumuniversity.edu.in" is identical and confusingly similar to the Complainant's registered trademark /trade name quantum university and the domain names held by the Complainant in respect of which the Complainant obtained registration as early as in 2009. This Tribunal is of the view that owing to the worldwide presence of the Complainant's business and its Indian clientele, the disputed domain name could make Internet users believe that such domain name and the contents of originating therefrom belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(a) stands satisfied.

(b) The Registrant has no rights or legitimate interests in respect of the domain name

i. To pass muster under paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights under paragraph 6 of the Policy.

ii. According to paragraph 3 of the Policy, it is the obligation of the Respondent (registrant) to provide complete and accurate particulars and find out before registration that the domain name intended for registration does not violate the rights of any third party. The Complainant and its trademark, service mark and brand name have been in use since 2007 and is commonly known by the name 'QUANTUM UNIVERSITY'. The Complainant has been able to establish that it owns and holds intellectual property rights in the name, trademark and brand name QUANTUM UNIVERSITY in India and other jurisdictions and the Complainant owns the domain names quantumuniversity.com, quantumuniversity.online



and has a global presence. However, the disputed domain name www.quantumuniversity.edu.in was created only in 2017 by the Respondent use of the disputed domain name, the Respondent was not known by the disputed domain name and the disputed domain name is clearly hit by paragraph 6 of the Policy.

(iii) In view of the above, the Arbitral Tribunal finds that the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name www.quantumuniversity.edu.in and has satisfied the second element under paragraph 4 (b) of the Policy.

(c) The Registrant's domain name has been registered or is being used in bad faith

i. Paragraph 4(c) of the INDRP stipulates that the Complainant is required to establish that the registrant/respondent has no rights or legitimate interests in respect of the domain name.

ii. Paragraph 6 of the INDRP dealing with the registrant /respondent's rights and legitimate interests in the domain name stipulates that any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4(b):

a. before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

b. the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or



c. the Registrant is making a legitimate non- commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

iii. Having considered the submissions and evidence placed on record, the Tribunal is of the view that the respondent has no legitimate interest in the Trade Name "Quantum University" which has been used by the Complainant since 2007.

iv. The Respondent only sought registration of the trademark limited to "Quantum", whereas the Complainant registered the trademark "Quantum University" with the USPTO. Furthermore, the Complainant also applied for international registration under the Madrid Protocol with the WIPO.

v. Hence the Tribunal is of the view that the Respondent has no legitimate interest in the disputed domain name and is likely to be trading on the fame of the Complainant's domain name which is likely to deceive the users.

vii. Paragraph 7 of the INDRP Policy deals with Evidence of registration and use of Domain Name in Bad Faith. Paragraph 7 provides that for the purposes of Clause 4(c), the following circumstances, in particular but without limitation if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

a. circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or



b. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

c. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location

viii. The admitted fact that Complainant has several domain names with the trade name "quantumuniversity" in relation to online educational services, worldwide use, registration of the trademark "quantum university" by the Complainant with the USPTO, the Tribunal is of the view that the Respondent was well aware of the Complainant's services while registering the disputed domain name "quantumuniversity.edu.in".

ix. The Complainant's domain name has been registered since 2003 whereas the respondent's domain name was registered on 04 August, 2017, subsequent to the Complainant's registration. Further, paragraph 3 of the policy because an obligation on the registrant to declare that the registration of the domain name will not infringe upon or violate the rights of any third party. The Respondent has not denied the assertions that it knew and had knowledge of the domain names of the Complainant pleaded at pages 7 and 10 of the Complaint.

x. It is clear that the Respondent registered the disputed domain name with an obvious intention to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name.



xi. The disputed domain name "www.quantumuniversity.edu.in" is identical to the Complainant's trademark, service mark and the domain name "quantumuniversity.com". The disputed domain name uses the Complainant's trade name "Quantum University", in its entirety and merely appends ".edu.in" to the mark by replacing the top-level gendered term ".com". The Tribunal is of the view that this does not sufficiently distinguish or differentiate the Complainant's domain name. Further the use of the mark 'QUANTUM UNIVERSITY' is in its entirety. Clearly, the Registrant/Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complaint's trademark and website. This is a violation of paragraph 7 (c) of the Policy.

The Complainant has also sought costs as the Tribunal may deem fit to be awarded. The Complainant has not adduced any evidence in support of its cost submissions. The Tribunal is thus not inclined to grant any costs. Parties are left to bear their own costs.

xii. Accordingly, the Arbitral Tribunal holds that the Respondent's domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element in paragraph 4(c) of the Policy has been satisfied.

The Tribunal thus concludes that the domain name "www.quantumuniversity.edu.in" is identified with Complainant's name, mark and services. Therefore, the adoption, registration and use of the disputed domain name by the respondent show bad faith and the same must be cancelled as prayed for. That is the present case squarely falls within the premises of bad faith registration and use, thus fulfilling the condition laid down in clause 4(c) of the INDRP Policy.”

Analysis

9. The INDRP Policy subjects arbitral proceedings, thereunder, to the 1996 Act. The court, in the present proceedings, is, therefore,



exercising jurisdiction under Section 34⁶ of the 1996 Act. The dispute between the parties may be divided into two broad parentheses.

10. Infirmity on account of reasons outside the INDRP Policy

10.1 Mr. Mehta contends that the impugned award is contrary to public policy and the fundamental policy of Indian law, as it violates the provisions of the UGC Act and the QU Act and renders otiose

⁶ 34. **Application for setting aside arbitral award. –**

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if –

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that –

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that –

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1. – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, -

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.



several of them, especially Section 4 of the QU Act. Inasmuch as it has resulted in the petitioner, as the only entity which is competent and entitled, legally, to call itself “Quantum University” in India or to use the domain name quantumuniversity.edu.in, being divested of the right to use the said domain name, the impugned award is contrary to public policy and the fundamental policy of Indian law. It has resulted in an entity which is neither entitled to call itself Quantum University (within India) nor to use the domain name quantumuniversity.edu.in divesting the petitioner entirely of its right to use the said domain name, which the petitioner alone, to the exclusion of every other entity in the world, is competent to use.

10.2 The very consequence of the impugned award, therefore, results in the impugned award being rendered patently illegal and shockingly perverse on its face, according to Mr. Mehta.

11. Infirmity on account of non-compliance with the INDRP

The second parenthesis of Mr. Mehta’s submission relates to the INDRP. Mr. Mehta submits that the very complaint instituted by the respondent before the .IN registry did not satisfy the requirements of Clause 4 of the INDRP, read with Clauses 6 and 7 thereof. As such, the complaint was bad at the very threshold. The respondent was not, therefore, entitled to the reliefs that it sought.

12. In the manner Mr. Mehta articulated these submissions, I must confess that I was considerably impressed with them, before Mr.



Makkar took centre stage.

13. Following the submissions of Mr. Makkar, however, it becomes clear that the court cannot proceed in this matter as though it is operating on a *tabula rasa*. I am exercising Section 34 jurisdiction. The parameters and peripheries of Section 34 jurisdiction stand clearly delineated by a plethora of decisions of the Supreme Court. The main bone of contention between the parties centres, in the present case, on the interpretation of the provisions of the INDRP. The provisions of the INDRP, insofar as they govern the parties may, as Mr. Mehta himself acknowledged, be likened to a contract between the parties. The scope of interference in Section 34 of the 1996 Act, with the interpretation, by an arbitral tribunal, of contractual covenants which govern the parties before it, is heavily circumscribed.

14. The most recent elucidation of the law in this regard is to be found in the judgment of a two-judge bench of Supreme Court in *Hindustan Construction Company Ltd. v. National Highways Authority of India*⁷. The following passages from the said decision are relevant:

“**26.** The prevailing view about the standard of scrutiny- *not judicial review*, of an award, by persons of the disputants' choice being that of their decisions to stand-and not interfered with, [save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily chose the path of *least interference, except when absolutely necessary*]. By training, inclination and experience, judges tend to adopt a corrective lens; usually, commended for appellate review. However, *that lens is unavailable when exercising jurisdiction*”

⁷ 2023 SCC OnLine SC 1063



under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34. So viewed, the Division Bench's approach, of appellate review, twice removed, so to say [under Section 37], and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, *and substitution of another view.* As long as the view adopted by the majority was plausible- and this court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, *compacted* matter, comprising both soil and fly ash), such a substitution was impermissible.

27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. The proposition was placed in *State of UP v. Allied Constructions*⁸:

*“[...] It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for arbitrator to determine (see *Sudarsan Trading Co. v. The Government of Kerala*⁹). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law”*

28. This enunciation has been endorsed in several cases (Ref *McDermott International Inc. v. Burn Standard Co. Ltd.*¹⁰). In *MSK Projects (I) (JV) Ltd v. State of Rajasthan*¹¹ it was held

⁸ 2003 Supp (2) SCR 55

⁹ (1989) 2 SCC 38 : AIR 1989 SC 890

¹⁰ 2006 Supp (2) SCR 409

¹¹ (2011) 9 SCR 402



that an error in interpretation of a contract by an arbitrator is “an error within his jurisdiction”. The position was spelt out even more clearly in *Associate Builders* (supra), where the court said that:

“[.] if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.”

(emphasis supplied)

15. The law could not have been more plainly stated.

16. The inbuilt restraints on the scope of interference, by Courts, with the manner in which the Arbitral Tribunal has interpreted the relevant statutory covenants, in fact, also inherently advise against the Court embarking on the exercise of interpreting the contract for itself. The occasion for the Court to interpret the contractual provisions would arise only if the Court could, based on its interpretation, assess the correctness of the decision – whether order or award – under challenge before it. The law firmly proscribes the Court from interfering with the award only because, in its view, the contractual clauses should have been interpreted differently. The Court’s scope of interference is restricted to cases where the interpretation of the contract, by the Arbitral Tribunal, is vitiated by patent illegality or perversity. For this, all that is to be seen is the manner in which the Arbitral Tribunal has interpreted the contract. Of course, the Court has, in doing so, to bear settled principles of contractual interpretation in mind. The mere fact that the Arbitral Tribunal has erred in its interpretation, in the perception of the Court, would not, however,



justify interference. There is always scope for a difference of view, even in the matter of interpretation of a contract. Where, however, the manner in which the Arbitral Tribunal has interpreted the contract is patently illegal or perverse, the Court must unquestionably step in and right the wrong. Absent such patent illegality or perversity, however, both parties have to live with the understanding, by the Arbitral Tribunal, of the contractual provisions.

17. The decision in *Hindustan Construction Company Ltd*, as well as slew of decisions prior thereto, including *Associate Builders v. D.D.A.*¹², *Ssangyong Engineering & Construction Co. Ltd v. N.H.A.I.*¹³, *Delhi Airport Metro Express Pvt Ltd v. D.M.R.C.*¹⁴ *PSA SICAL Terminals (P) Ltd v. Board of Trustees*¹⁵, *I.O.C.L. v Shree Ganesh Petroleum*¹⁶ and *N.H.A.I v. Oriental Pathways (Nagpur) Pvt Ltd*¹⁷ clearly forbear interference, by a Section 34 court, with the manner in which an Arbitral Tribunal interprets the covenants of the contract before it.

18. Extrapolating the said legal position to the INDRP, this Court, while exercising jurisdiction under Section 34 of the 1996 Act, would forbear from interfering with the manner in which the learned Arbitrator has interpreted the clauses of the INDRP, unless there is any clause which has not been considered by the learned Arbitrator or in respect of which the construction accorded by the learned Arbitrator

¹² (2015) 3 SCC 49

¹³ (2019) 15 SCC 131

¹⁴ (2022) 1 SCC 131

¹⁵ 2021 SCC OnLine SC 508

¹⁶ (2022) 4 SCC 463

¹⁷ (2016) 3 Arb LR 448 (DB)



is so perverse or illegal that no man, properly instructed in the law, would so interpret that clause. Absent that standard, the arbitrator has necessarily to be regarded as the final arbiter on interpretation of the contractual covenants – or, in the present case, the covenants of the INDRP – before him.

19. Before proceeding further, the passages from the impugned award, reproduced in para 8 *supra*, clearly indicate that Mr. Mehta’s contention that the learned Arbitrator has not addressed himself to the submissions advanced by the petitioner, including, in particular, the relevant clauses of the INDRP, is not correct. The learned Arbitrator has considered every argument that Mr. Mehta has advanced before this Court and also considered Clauses, 4, 6 and 7 of the INDRP. The impugned award is not, therefore, vulnerable to evisceration for reasons of not having considered any of the relevant issues that were urged before the learned Arbitrator Tribunal and have now being urged by Mr. Mehta before this Court.

20. All that is left to be seen, therefore, is whether the manner in which the learned Arbitrator has addressed the said submissions and interpreted the relevant clauses of the INDRP suffers from patent illegality or perversity, or are contrary to the fundamental policy of Indian law, as would justify interference by this Court under Section 34 of the 1996 Act.

21. Having applied myself to the rival submissions of both sides, *vis-a-vis* the findings of the learned Arbitrator in the impugned award,



I am of the opinion that the answer has to be in the negative.

22. I say so, for the following reasons:

(i) As the learned Arbitrator has correctly held that, the issue before him was only whether the domain name www.quantumuniversity.edu.in, registered in favour of the petitioner was, or was not, confusingly similar to the quantumuniversity formative domain names of the respondent, including quantumuniversity.com. The fact that the quantumuniversity formative domain names of the respondent, including quantumuniversity.com, were registered in the respondent's favour prior in point in time to the registration, in favour of the petitioner, of the domain name www.quantumuniversity.edu.in, is not in dispute.

(ii) On the aspect of deceptive similarity, there is clearly no ground to interfere with the findings of the learned Arbitrator. The question of whether one mark is deceptively similar to the other is essentially a matter of subjective satisfaction of the court or the authority seized with the challenge raised in that regard. Being a matter of subjective satisfaction, the decision in that regard is even for that reason substantially immune from interference under Section 34 of the 1996 Act. Even otherwise, as the quantumuniversity formative domain names of the respondent, and the petitioner's www.quantumuniversity.edu.in, both use "quantumuniversity" as their SLD, the only difference



being with respect to the extensions, the likelihood of confusion between the marks looms large. There is every likelihood of a member of the public confusing the quantumuniversity formative domain names of the respondent with the petitioner's quantumuniversity.edu.in domain name. At the every least, the use of the domain quantumuniversity.edu.in, by the petitioner, has every likelihood of resulting in a member of the public believing an association between the petitioner and the respondent, as both domain names are used for providing services in the educational arena.

(iii) The finding of the learned Arbitrator that the domain name quantumuniversity.edu.in is confusingly similar to the quantumuniversity formative domain names of the respondent, including quantumuniversity.com does not, therefore, merit interference.

(iv) The reliance, by Mr. Mehta, on the provisions of the QU Act, and the UGC Act is, in my considered opinion, misplaced. Section 4 of the QU Act merely establishes the petitioner as a private university to be known as "Quantum University". The impugned award does not compromise this status in any manner whatsoever. The petitioner has not been disentitled from calling itself Quantum University or deprived of the status of a University, conferred by Section 4 of the QU Act. The QU Act has nothing to do with the domain name of the petitioner. As such, the QU Act, and its provisions, are, in my considered



opinion, of no relevance whatsoever.

(v) Equally, I am in agreement with the learned Arbitrator that the provisions of the UGC Act, too, do not impact, in any manner, the dispute at hand. Section 2(f) of the UGC Act defines “University”. Section 22 of the UGC Act states that degrees may be conferred, in India, only by universities as defined in Section 2(f). Section 23 prohibits any institution, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act from having the word “University” associated with its name in any manner whatsoever. It is quite obvious that the respondent is not claiming any right which flows from Section 22 or Section 23 of the UGC Act. The respondent is not conferring degrees in India, nor does it desire to do so. Nor is the respondent setting up any educational institute in India using the word “University” as a part of its name. The respondent University has been set up as a body corporate in Hawaii. The respondent’s domain name also stands registered outside India. The respondent is not, therefore, using “University” as part of its name in respect of any services which the respondent provides in India. The petitioner asserts that, within India, it is the only entity entitled to call itself “Quantum University”, and confer degrees, and it is right. The impugned Award does not, however, compromise, or interfere with, these rights, which the petitioner legitimately claims and to which the respondent can lay no claim whatsoever. As the impugned Award correctly



observes, the controversy in issue has nothing to do with the right to use the word “University” as a part of one’s name within India, or the right to confer degrees. The sole issue for consideration was – and is – the right to the petitioner to use the domain name quantumuniversity.edu.in, in the face of the *a priori* “quantumuniversity” formative domain names which stand registered in favour of the respondent.

(vi) As Mr. Makkar correctly pointed out, the services of the respondent are entirely provided online. The respondent has no office in India. The mere fact that the services provided by the respondent may be accessible in India cannot, by any means, be regarded as use, by the respondent, of the word “University” as part of its name in violation of the proscription contained in Section 23 of the UGC Act. In fact, as the respondent is neither a university set up in India nor using the word “university” as a part of its name in respect of any educational services or conferment of degrees in India, the provisions of the UGC Act are, again, of no relevance to the controversy at hand.

(vii) The findings of the learned Arbitrator, in this regard, are to be found in paras 43, 46, 48, 51, 54 and 55 of the impugned award, and I find myself entirely in agreement therewith.

(viii) The submissions of Mr. Mehta suffer from a conflation of the right, of the petitioner, to call itself “Quantum University” and the right to use quantumuniversity.edu.in as its domain



name. Mr. Mehta seems to be suggesting that, as the petitioner has statutorily been conferred the name and title “Quantum University”, it has, *ipso facto*, a legitimate right to use the domain name quantumuniversity.edu.in, especially as the extension “edu.in” is not available to the respondent. The premise, though correct, does not, unfortunately, justify the conclusion. The petitioner is unquestionably entitled to call itself “Quantum University”, said right having been conferred expressly by Section 4 of the QU Act. There can be no possible derogation of the petitioner’s right, therefore, to call itself “Quantum University”. The right of the petitioner to call itself “Quantum University” does not, however, *ipso facto* translate into a consequential right to adopt the the domain name “quantumuniversity.edu.in”. Expressed otherwise, an institution named “Quantum University” cannot, merely for that reason, treat itself as *ipso facto* entitled to use the domain name “quantumuniversity.edu.in”. There is difference between the name of an institution and its domain name. This difference cannot be overlooked, especially as domain name rights are global in nature, whereas trade mark rights, which flow from the name of the institution, are territorial. It is not permissible for a person, therefore, to use a domain name which is deceptively similar to the domain name used by another person, even if that other person is situated outside the territory in which the first person is using its domain name. To reiterate, this is because the right that flows from domain name registration, unlike the right that flows from trade mark



registration, is a global, and not a territorial right to exclusivity. The *a priori* registration of the the domain name “quantumuniversity.com” or any of the other quantumuniversity formative domain names in the respondent’s favour confers, in the respondent’s favour, a right to oppose registration of any deceptively similar name by anyone else, across the internet. The right is global in nature, and the decision of the Supreme Court in *Satyam Infoway Ltd.*¹ clearly recognises the global character of this right.

(ix) Thus, though the petitioner is entitled to call itself “Quantum University” as it is not infringing anyone’s intellectual property rights in India by using the said name, it cannot use the domain name “quantumuniversity.edu.in” if, globally, there is another entity in favour of whom confusingly similar domain names, using the quantumuniversity SLD, already stand registered prior in point of time. Inasmuch as the quantumuniversity formative domain names, including the domain name “quantumuniversity.com”, stand registered in the respondent’s favour prior in point of time to the registration of the domain name “quantumuniversity.edu.in” in favour of the petitioner, no fault can be found, on merits, with the decision of the learned Arbitrator to direct cancellation of petitioner’s domain name “quantumuniversity.edu.in”.

(x) Mr. Mehta has, however, launched a very serious challenge to the very maintainability of the complaint instituted



by the respondent before the .IN registry. He submits that the complaint was not maintainable, for non-satisfaction of the criteria enumerated in sub-clauses (a), (b) and (c) of Clause 4 of the INDRP which were required to be cumulatively satisfied before a complaint could be maintained.

(xi) Mr. Mehta submits, in the first instance, that, before proceeding to any of the sub-clauses (a), (b) and (c) of Clause 4, the complainant has to establish the *existence of his/her legitimate rights or interests* which, according to the complainant, are injured by the registration of the later domain name. Mr. Mehta submits that the complaint of the respondent fails even on this ground, as the respondent has no legitimate right or interest in the domain name “quantumuniversity.com” or in any of the other quantum university formative domain names which the respondent was asserting in its complaint.

(xii) The submission is obviously fallacious. The basis of Mr. Mehta’s submission was the entitlement of the respondent to use “University” as part of its name within India, and was again predicated essentially on the provisions of the UGC Act. As I have already noted, the respondent was not seeking the benefit of any of the provisions of the UGC Act. Even otherwise, none of the provisions of the UGC Act are either relevant to the right which the respondent was asserting before the .IN registry by means of the complaint instituted by it against the petitioner. The respondent was, admittedly, the registrant of the



“quantumuniversity” formative domain names including the “quantumuniversity.com”. The validity of these registrations which were granted outside India is not in question. As a registrant of these registrations, the respondent was entitled to protect the registration from any other subsequent deceptively similar domain name registration. In doing so, the respondent was asserting its legitimate right and interest arising out of the prior registration, in favour of the respondent, of “quantumuniversity.com” and the formative “quantumuniversity” domain names. The right asserted by the respondent in its complaint was, therefore, a very much legitimate right which the registration of the domain names in the respondent’s favour conferred on it.

(xiii) I cannot, therefore, agree with Mr. Mehta’s submission that the respondent was not prosecuting its legitimate rights or interest.

(xiv) To adverting, now, to sub-clauses (a), (b) and (c) of Clause 4 of the INDRP.

(xv) Mr. Mehta’s submission that sub-clauses (a), (b) and (c) of Clause 4 of INDRP required cumulative satisfaction for a complaint to be maintainable before the .IN registry, is premised on the use of the word “and” between each clause and the next. The use of the word “and”, submits Mr. Mehta, is indicative of the fact that the clauses are required to be read



conjunctively and not disjunctively. In other words, it is only if the complaint satisfies all the three criteria envisaged in sub-clauses (a), (b) and (c) of Clause 4 of INDRP that it would be maintainable before the .IN registry.

(xvi) To employ a time-worn cliché, the submission, though attractive at first blush, is not so appealing at second. No doubt, when clauses in a particular provision of a statutory instrument are separated by the conjunction “and”, cumulative satisfaction of the clauses is normally required. That, however, would have been the case in the present instance too, *had clauses (a) to (c) in Clause 4 represented conditions which required satisfaction to maintain a complaint*. In the present case, however, sub-clauses (a) to (c) in Clause 4 set out *the premises in which a complaint can institute a complaint in the .IN Registry*. They, therefore, set out three *premises on which a complaint can be lodged*. The Clause states that that “any person who considers that a registered domain name conflicts with his/or legitimate rights or interest may file a complaint to .IN registry *on the following premises*”, and, thereafter, sets out to enumerate the premises in which such a complaint may be filed in sub-clauses (a), (b) and (c) which follow. It is not, therefore, as though sub-clauses (a), (b) and (c) are conditions which are required to be fulfilled in order to maintain a complaint before the .IN registry. Had they been conditions which were required to be fulfilled before a complaint could be maintained, the use of “and” between one clause and other would be indicative of the



requirement of cumulative satisfaction of all the three clauses, for a maintainable complaint to be instituted. Sub-clauses (a), (b) and (c) are, however, as already noted, not conditions which are required to be satisfied for a complaint to be maintained, but are the premises which a person who is aggrieved by the registration of a domain name which conflicts with his own, may approach the .IN registry with a complaint. The three clauses being three premises on which a complaint may be instituted, the word “and” between the clauses indicates that a complaint may be institute *on premise (a), and on premise (b), and on premise (c)*. The Supreme Court, as far back as in *A.K. Gopalan v. State of Madras*¹⁸ and *S. Krishnan v. State of Madras*¹⁹, held that the word “and”, when used between clauses in an enabling provision, has to be read as “or”. Clause 4 is an enabling provision, which enables the filing of a complaint with the .IN Registry in the three premises enumerated in sub-clauses (a) to (c) thereof. The word “and” which separates the sub-clauses has, therefore, to be read as “or”. It has, therefore, been used to convey that a complaint can be filed *in premise (a) and premise (b) and premise (c)*, and not to indicate that a complaint can be filed only when premises (a), (b) and (c) *all* apply, cumulatively. In other words, each of the three clauses is available as an independent premise on the basis of which a complaint may be instituted by the registrant of an earlier domain name against the registration of a later domain name which is perceived by him to be injuring his legitimate rights.

¹⁸ 1950 SCC OnLine SC 17



(xvii) Viewed thus, the complaint would straightaway be maintainable, as sub-clause (a) of Clause 4 of the INDRP is, in any case, satisfied. There is clear chance of confusion between the domain name quantumuniversity.edu.in, of the petitioner, and the quantumuniversity formative domain names of the respondent, including quantumuniversity.com. The learned Arbitrator has examined the aspect of confusing similarity painstaking detail in paras 79(a)(i) to (xii) of the impugned Award. They are pure findings of fact based on a subjective assessment of the rival domain names, and cannot, therefore, invite interference under Section 34 of the 1996 Act. The fact that the quantumuniversity SLD is common is not in dispute. That being so, the question of whether the rival domain names are, or are not, likely to create confusion, is one of subjective satisfaction. In view of the common SLD, the decision cannot be regarded either as patently illegal or perverse, or as one at which no one instructed in the facts and law would arrive.

(xviii) Clause 4(a) of the INDRP being satisfied, the complaint was maintainable.

(xix) Even if one were, for the sake of argument, to proceed on the premise that sub-clauses (a), (b) and (c) of Clause 4 of the INDRP are required to be cumulatively satisfied by a complainant in order to be eligible to maintain a complaint



before the .IN registry, the sequitur would be no different.

(xx) I have already found the decision, of the learned Arbitrator, that clause 4(a) stands satisfied, to be unexceptionable.

(xxi) Clause 4(b) requires the complainant, i.e. the respondent in the present case, to demonstrate that the registrant of the subsequent allegedly infringing domain name has no right or legitimate interest in respect of the domain name.

(xxii) Clause 6 of the INDRP sets out, in sub-clauses (a) to (c), circumstances which, if they are found to exist, would evince the rights and legitimate interests of the subsequent registrant in the domain name under challenge.

(xxiii) Mr. Mehta is correct in his contention that, if the petitioner is able to peg its case on anyone of the three sub-clauses (a) to (c) of Clause 6, the use, by the petitioner, of the “quantumuniversity.edu.in” domain name would *ipso facto* be shown to be in exercise of its rights and legitimate interest in the said domain name. According to Mr. Mehta, the petitioner’s case falls not under one but under each of the three sub-clause (a), (b) and (c) of Clause 6.

(xxiv) Before coming to my observations in this regard, it is necessary to reproduce, once again, the findings of the learned



Arbitrator, on the aspect of legitimacy of the rights and interest of the petitioner in the domain name “quantumuniversity.edu.in”, as contained in paras 74 and 79 of the impugned award thus:

“74. The Respondent has relied on **Clockwork IP, LLC, One Hour Air Condition Franchising, LLC vs. Elena Wallace**. The case concluded that there was no evidence in the record establishing that Respondent obtained the disputed domain names in an intentional attempt to attract for commercial gain Internet users to her website by creating a likelihood of confusion with Complainant's marks. The case is inapplicable as the Tribunal in the present case finds that the disputed domain name "www.quantumuniversity.edu.in" is identical to the Complainant's trade mark, service mark and domain name "quantumuniversity.com". The disputed domain name uses the Complainant's trade name "Quantum University", in its entirety and merely appends ".edu.in" to mark by replacing the top-level gendered term ".com". Clearly the Registrant /Respondent has intentionally attempted to attract Internet users to its website by migrating from "Quantum Global Campus" and creating a likelihood of confusion with the Complaint's trademark and website. This is a violation of paragraph 7(c) of the Policy.

79. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:

(a) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

i. The trademark QUANTUM UNIVERSITY have been used by the Complainant since 2007. The Complainant owns domain names with its brand QUANTUM UNIVERSITY in several countries. A careful consideration of the Trademark registrations, tradename registration and extracts of the WHOIS records filed by the Complainant establish that the Complainant owns and holds intellectual property rights in the name, trademark and brand QUANTUM UNIVERSITY in India and other



jurisdictions and the Complainant owns the domain names quantumuniversity.com and quantumuniversity.in.

iii. In **Yahoo! Inc. v Akash Arora & Anr.** (1999 PTC (19) 210 Delhi), the Delhi High Court enjoined the use of domain name 'yahooindia.com' in a suit filed by Yahoo! Inc., the owner of the trademark "Yahoo" and the domain name <yahoo.com> by holding that defendant's domain name incorporated the Plaintiff's name in its entirety and was deceptively similar and could be perceived as being of the Plaintiff's.

iv. In **eBay, Inc v. Progressive Life Awareness Network**, WIPO Case No. D2001-0068, the UDRP returned a finding that the domain name <gayebay.com> incorporated the complainant's mark "ebay" in its entirety, which is confusingly similar to complainant's mark.

v. The registered trademark of the Complainant, "QUANTUM UNIVERSITY" and the domain names quantumuniversity.com, quantumuniversity.org, quantumuniversity.university, quantumuniversity.online are distinctive and the disputed domain name "quantumuniversity.edu.in" bears the Complainant's registered trademark "QUANTUM UNIVERSITY" in its entirety. Considering the similarity between the Complainant's trademark and the domain name "QUANTUM UNIVERSITY" and the disputed domain name "quantumuniversity.edu.in" of the Respondent and based on the unrebutted evidence placed on record by the Complainant. The Arbitral Tribunal finds that an average consumer would be led to believe that the Complainant and the Respondent or the disputed domain name are related. After taking into consideration the facts of the present case and the settled law on the issue, the Arbitral Tribunal finds that the disputed domain name "quantumuniversitywork.in" is identical and confusingly similar to the Complainant's registered trademarks "QUANTUM UNIVERSITY" and as also the domain names quantumuniversity.org, quantumuniversity.online. Accordingly, the Arbitral Tribunal holds that the requirement of the first



element in the INDRP Policy paragraph 4(a) is satisfied.

vi. Based on the submissions and evidence filed by the Complainant, it is established that the Complainant is a university operating from the United States of America, offering exclusively online courses and certification programs in holistic, alternative, natural and integrative medicine based on the science of quantum physics. The Complainant incorporated "Quantum University" on 5 February 2007 and registered its trade name as "Quantum University" on 02 October 2009 with the Department of Commerce and Consumer Affairs. Complainant's trademark "quantum university" is a registered in the United States patent and trademark office since 14 October 2014, which records that the first use by the Complainant was on 1 September 2009. The Complainant has a substantial Indian clientele as evident from Exhibit C-15. Complainant has 45 domain names with the words "Quantum University" since 2009 and has offered its educational services through its website "www.quantumuniversity.com" which is in registration since 10 October 2003.

vii. The Respondent by its own admission applied for the domain name "quantum university.edu.in" on 04 August 2017 and sought to change its trade name to "Quantum University" only in January 2018 after it was granted university status by the Quantum University Act, 2016.

viii. The fact that the domain name "quantumuniversity.edu.in" is identical and confusingly similar to the trade name/ domain names held by the Complainant having the words "quantum university" stands proved by the evidence placed on record by the Complainant. One such incident relating to the All India Council for Technical Education, a statutory body and a national-level council for technical education which accredits postgraduate and graduate programs under specific categories having issued an official communication on the address belonging to the Complainant. Another instance has been when one Prof. Saini who was intending to



correspond/communicate with the Respondent marked numerous e- mails to the Complainant at "vicechancellor @ quantumuniversity.com" alongside the Respondent at chairman @ quantumeducation.in. The respondent has not been able to rebut the evidence placed on record by the Complainant regarding the confusing similarity to the domain names/trade names held by the Complainant and has admitted the same at page 28 of the Written Defence filed by the Respondent.

ix. The Respondent and Complainant are both engaged in providing educational services at the university level. Although the respondent has contended that the courses offered by the Complainant are unaccredited and unrecognised by the UGC in India, the similar nature of the courses has only added to the confusion from the disputed domain name.

x. As per WIPO Jurisprudential Overview 3.0, the standing or threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognisable within the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

xi. The documentary evidence placed on record by the Complainant reveals that the Complainant is the registered owner 45 domain names containing the trade name quantum university which is entirely contained in the disputed domain name of the respondent. A visual comparison of the disputed domain name quantumuniversity.edu.in and other domain names with QUANTUM UNIVERSITY of the Respondent with the Complainant's name, trademark, brand QUANTUM UNIVERSITY and



the domain names quantumuniversity.com, quantumuniversity.net, quantumuniversity.org, quantumuniversity.education, and quantumuniversity.online, demonstrate that "QUANTUM UNIVERSITY" is entirely contained in the disputed domain name of the Respondent.

xii. It is thus evident that in the present case the disputed domain name "www.quantumuniversity.edu.in" is identical and confusingly similar to the Complainant's registered trademark /trade name quantum university and the domain names held by the Complainant in respect of which the Complainant obtained registration as early as in 2009. This Tribunal is of the view that owing to the worldwide presence of the Complainant's business and its Indian clientele, the disputed domain name could make Internet users believe that such domain name and the contents of originating therefrom belong to the Complainant. In view of the above, the requirement of the INDRP Policy paragraph 4(a) stands satisfied.

(b) The Registrant has no rights or legitimate interests in respect of the domain name

i. To pass muster under paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights under paragraph 6 of the Policy.

ii. According to paragraph 3 of the Policy, it is the obligation of the Respondent (registrant) to provide complete and accurate particulars and find out before registration that the domain name intended for registration does not violate the rights of any third party. The Complainant and its trademark, service mark and brand name have been in use since 2007 and is commonly known by the name 'QUANTUM UNIVERSITY'. The Complainant has been able to establish that it owns and holds intellectual property rights in the name, trademark and brand name QUANTUM UNIVERSITY in India and other jurisdictions and the Complainant owns the domain names quantumuniversity.com, quantumuniversity.online and has a global presence. However, the disputed



domain name www.quantumuniversity.edu.in was created only in 2017 by the Respondent use of the disputed domain name, the Respondent was not known by the disputed domain name and the disputed domain name is clearly hit by paragraph 6 of the Policy.

iii. In view of the above, the Arbitral Tribunal finds that the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name **www.quantumuniversity.edu.in** and has satisfied the second element under paragraph 4 (b) of the Policy.

(c) The Registrant's domain name has been registered or is being used in bad faith

i. Paragraph 4(c) of the INDRP stipulates that the Complainant is required to establish that the registrant/respondent has no rights or legitimate interests in respect of the domain name.

ii. Paragraph 6 of the INDRP dealing with the registrant /respondent's rights and legitimate interests in the domain name stipulates that any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Clause 4(b):

a. before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

b. the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or



c. the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

iii. Having considered the submissions and evidence placed on record, the Tribunal is of the view that the respondent has no legitimate interest in the Trade Name "Quantum University" which has been used by the Complainant since 2007.

iv. The Respondent only sought registration of the trademark limited to "Quantum", whereas the Complainant registered the trademark "Quantum University" with the USPTO. Furthermore, the Complainant also applied for international registration under the Madrid Protocol with the WIPO.

v. Hence the Tribunal is of the view that the Respondent has no legitimate interest in the disputed domain name and is likely to be trading on the fame of the Complainant's domain name which is likely to deceive the users.

vii. Paragraph 7 of the INDRP Policy deals with Evidence of registration and use of Domain Name in Bad Faith. Paragraph 7 provides that for the purposes of Clause 4(c), the following circumstances, in particular but without limitation if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

a. circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or



b. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

c. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location

viii. The admitted fact that Complainant has several domain names with the trade name "quantumuniversity" in relation to online educational services, worldwide use, registration of the trademark "quantum university" by the Complainant with the USPTO, the Tribunal is of the view that the Respondent was well aware of the Complainant's services while registering the disputed domain name "quantumuniversity.edu.in".

ix. The Complainant's domain name has been registered since 2003 whereas the respondent's domain name was registered on 04 August, 2017, subsequent to the Complainant's registration. Further, paragraph 3 of the policy because an obligation on the registrant to declare that the registration of the domain name will not infringe upon or violate the rights of any third party. The Respondent has not denied the assertions that it knew and had knowledge of the domain names of the Complainant pleaded at pages 7 and 10 of the Complaint.

x. It is clear that the Respondent registered the disputed domain name with an obvious intention to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name.



xi. The disputed domain name "www.quantumuniversity.edu.in" is identical to the Complainant's trademark, service mark and the domain name "quantumuniversity.com". The disputed domain name uses the Complainant's trade name "Quantum University", in its entirety and merely appends ".edu.in" to the mark by replacing the top-level gendered term ".com". The Tribunal is of the view that this does not sufficiently distinguish or differentiate the Complainant's domain name. Further the use of the mark 'QUANTUM UNIVERSITY' is in its entirety. Clearly, the Registrant/Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complaint's trademark and website. This is a violation of paragraph 7 (c) of the Policy.

The Complainant has also sought costs as the Tribunal may deem fit to be awarded. The Complainant has not adduced any evidence in support of its cost submissions. The Tribunal is thus not inclined to grant any costs. Parties are left to bear their own costs.

xii. Accordingly, the Arbitral Tribunal holds that the Respondent's domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element in paragraph 4(c) of the Policy has been satisfied.

The Tribunal thus concludes that the domain name "www.quantumuniversity.edu.in" is identified with Complainant's name, mark and services. Therefore, the adoption, registration and use of the disputed domain name by the respondent show bad faith and the same must be cancelled as prayed for. That is the present case squarely falls within the premises of bad faith registration and use, thus fulfilling the condition laid down in clause 4(c) of the INDRP Policy.”

(xxv) In the course of arriving at a finding that the petitioner has no right or legitimate interest in respect of the the domain name “quantumuniversity.edu.in”, the learned Arbitrator has held thus:



(a) The petitioner had adapted the entire domain name of the respondent “quantumuniversity.com”, merely replacing “.com” with “.edu.in”. This was clearly an intentional attempt to attract internet users to the petitioner’s website by creating a likelihood of confusion with the respondent’s trade mark and website.

(b) Clause 3 of the INDRP obligated every person who sought to register a domain name to provide complete and accurate particulars and ascertain, before registration, that the domain name intended for registration did not violate the rights of any third party.

(c) The registration of the domain name “quantumuniversity.edu.in”, on the other hand, in fact violated the rights of the respondent as a third party, as the respondent owned and held intellectual property rights in the domain name “quantumuniversity.com” prior to the registration, in the petitioner’s favour, of the domain name “quantumuniversity.edu.in”.

(d) The petitioner only sought registration of the mark “Quantum” whereas the respondent registered the mark “Quantum University” with the USPTO and has also applied for international registration under the Madrid Protocol with the WIPO.



(e) The petitioner was, therefore, likely to be trading on the fame of the respondent's domain name.

(f) Prior to registration, the petitioner was never known by the domain name "quantumuniversity.edu.in". This domain name came into existence only after the petitioner was granted the status of a University by Section 4 of the QU Act.

(xxvi) I do not find any legitimate ground to interfere with these findings of the learned Arbitrator, or the conclusion, on the basis of these findings, that the petitioner in fact did not have any legitimate right or legitimate interest in the domain name "quantumuniversity.edu.in".

(xxvii) There is a specific finding, by the learned Arbitrator, that the petitioner intentionally adopted "quantumuniversity" as part of its domain name so as to create confusion with the domain name "quantumuniversity.com" and other quantumuniversity formative domain names which were already registered in favour of the respondent. This is a finding of fact. In the absence of any ground to characterise it as perverse, it is impervious to interference under Section 34 of the 1996 Act. The learned Arbitrator has arrived at this finding by relying, *inter alia*, on Clause 3 of the INDRP which requires every person, who seeks to register a domain name, to declare



that the domain name is not violative of the existing intellectual property rights of any other domain name holder. The respondent had a number of quantumuniversity formative domain names registered in its favour, prior to the application, by the petitioner, for registration of the domain name “quantumuniversity.edu.in”. Clause 3 of the INDRP presumed the petitioner to be aware of the prior quantumuniversity formative domain name registrations existing in the respondent’s favour and to provide a declaration that the domain name of which the petitioner sought registration did not infract any other domain name. If, despite this, the petitioner went ahead and sought registration of the domain name “quantumuniversity.edu.in”, the learned Arbitrator has held that the registration could not be said to be legitimate and the use of the domain name so registered could also be not regarded as legitimate use.

(xxviii) The learned Arbitrator has also held that, as the domain name “quantumuniversity.edu.in” was created only in 2017 and there was no evidence of the petitioner being known as “Quantum University” prior thereto, it could not be said that the petitioner was entitled to the benefit of Clause 6(b) of the INDRP.

(xxix) It is on these premises that the learned Arbitrator has arrived at the conclusion that the petitioner could not seek asylum under any one of the three sub-clause (a), (b) or (c) of



Clause 6 of the INDRP.

(xxx) So long as the reasoning of the learned Arbitrator is not patently illegal or perverse, the Court is proscribed from embarking on its own excursive journey into the covenants of the documents with which the learned Arbitrator was concerned.

(xxxi) The reasoning of the learned Arbitrator, in this regard, cannot be said to suffer from any patent illegality or perversity. It reflects an informed conclusion, by the learned Arbitrator, of the issue of whether the petitioner could be said to possess legitimate rights and interests in the domain name “quantumuniversity.edu.in”, despite the afore-noted disabling factors. The learned Arbitrator has chosen to conclude in the negative.

(xxxii) This Court, within its limited jurisdiction vested by Section 34 of the 1996 Act, cannot embark on a *de novo* examination of the facts to see whether it is possible to arrive at a different conclusion. Such an exercise is completely proscribed by Section 34.

(xxxiii) Besides, the word “legitimate” has been defined by the High Court of Andhra Pradesh in *Osmania University v. R. Madhavi*²⁰, as, in legal parlance, “that which is lawful, legally

²⁰ AIR 1998 AP 130



recognised by law or according to law.” A domain name which is deceptively similar to a domain name registered prior in point of time in favour of someone else, and which is registered without disclosing the said *a priori* registration existing in favour of other, cannot be said to satisfy the definition of “legitimate” as understood in law. There is no reason why the court should not apply, to the word “legitimate”, as employed in Clause 4(b) of the INDRP, the understanding of the expression as contained in afore-noted decision of the High Court of Andhra Pradesh. I respectfully concur with the said view.

(xxxiv) Sub-clause (c) of Clause 4 of INDRP required the respondent to demonstrate that the petitioner’s domain name quantumuniversity.edu.in had been registered or was being used in bad faith.

(xxxv) Clause 7 of the INDRP sets out, in sub-clauses (a) to (c), three instances in which it could be said that a domain name was registered and/or being used in bad faith. The clause, however, commences with the words “for the purposes of clause 4(c), the following circumstances, in particular, *but without limitation*.....”. The use of the words “but without limitation” indicate that the circumstances envisaged in sub-clauses (a) to (c) of Clause 7 are not be regarded as exhaustive but only illustrative of the circumstances in which the registration and/or the use of the domain name could be regarded in bad faith. Moreover, the use of the disjunctive “or”



between clauses indicates that, satisfaction of any one of three clauses would render the use of the domain name as vitiated by bad faith.

(xxxvi) The finding of the learned Arbitrator, in this regard, is to be found in para 79(c) (vii) to (xii) of the impugned award, which read thus:

“vii. Paragraph 7 of the INDRP Policy deals with Evidence of registration and use of Domain Name in Bad Faith. Paragraph 7 provides that for the purposes of Clause 4(c), the following circumstances, in particular but without limitation if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

- a. circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- b. the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- c. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.



viii. The admitted fact that Complainant has several domain names with the trade name "quantumuniversity" in relation to online educational services, worldwide use, registration of the trademark "quantum university" by the Complainant with the USPTO, the Tribunal is of the view that the Respondent was well aware of the Complainant's services while registering the disputed domain name "quantumuniversity.edu.in".

ix. The Complainant's domain name has been registered since 2003 whereas the respondent's domain name was registered on 04 August, 2017, subsequent to the Complainant's registration. Further, paragraph 3 of the policy because an obligation on the registrant to declare that the registration of the domain name will not infringe upon or violate the rights of any third party. The Respondent has not denied the assertions that it knew and had knowledge of the domain names of the Complainant pleaded at pages 7 and 10 of the Complaint.

x. It is clear that the Respondent registered the disputed domain name with an obvious intention to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's name.

xi. The disputed domain name "www.quantumuniversitv.edu.in" is identical to the Complainant's trademark, service mark and the domain name "quantumuniversity.com". The disputed domain name uses the Complainant's trade name "Quantum University", in its entirety and merely appends ".edu.in" to the mark by replacing the top-level gendered term ".com". The Tribunal is of the view that this does not sufficiently distinguish or differentiate the Complainant's domain name. Further the use of the mark 'QUANTUM UNIVERSITY' is in its entirety. Clearly, the Registrant/Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complaint's trademark and website. This is a violation of paragraph 7 (c) of the Policy.

The Complainant has also sought costs as the Tribunal may deem fit to be awarded. The Complainant has not adduced any evidence in support of its cost submissions. The Tribunal is thus not inclined to grant any costs. Parties are left to bear their own costs.



xii. Accordingly, the Arbitral Tribunal holds that the Respondent's domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element in paragraph 4(c) of the Policy has been satisfied.”

(xxxvii) In arriving at a conclusion that the registration and use of the impugned domain name www.quantumuniversity.edu.in, by the petitioner, was vitiated by bad faith, the learned Arbitrator has noted that

(a) admittedly, the respondent had several domain names of which “quantum university” was a part, used in relation to online educational services were provided worldwide,

(b) the mark “Quantum University” of the respondent also stood registered with the USPTO,

(c) the petitioner was, therefore, well aware of the services provided by the respondent while seeking registration of the domain name www.quantumuniversity.edu.in,

(d) Clause 3 of the INDRP obligated the petitioner to declare that the registration of the domain name www.quantumuniversity.edu.in would not infringe upon or violate the rights of any third party,

(e) the petitioner had not denied the fact that it knew and had knowledge of the domain names of the respondent, as pleaded in the complaint instituted by the respondent before the .IN Registry, and

(f) the petitioner, therefore, clearly registered the www.quantumuniversity.edu.in domain name with an



obvious intent to attract internet users to the petitioner's website by creating a likelihood of confusion with the respondent's name.

(xxxviii) These findings of the learned Arbitrator clearly attract sub-clause (c) of Clause 7 of the INDRP. The said sub-clause applies where a registrant intentionally attempts to attract internet users to its website by creating a likelihood of confusion with the name of the prior registrant as to the source, sponsorship, affiliation or endorsement of the registrant website or the location of a product or a service on the registrant website or location. As such, the registration of use of a domain name, with an intent to attract internet users to the registrant's website or location by creating a likelihood of confusion *ipso facto* amounts to registration and use of the domain name in bad faith.

(xxxix) Based on the above undisputed facts, the learned Arbitrator has, in para 79(c)(vii) to (xii), concluded that the petitioner had in fact intentionally attempted to attract internet users to its website and had created a likelihood of confusion by using the domain name www.quantumuniversity.edu.in in the full (presumed) knowledge of the fact that the respondent was a prior registrant of the domain name www.quantumuniversity.com and a number of other quantumuniversity formative domain names, registered prior in point of time.



(xl) This, again, is a finding of fact based on an appreciation of the material on record. It cannot be said that the finding suffers from perversity or patent illegality. The question of whether the petitioner was, or was not, acting intentionally with a view to confuse internet users by adopting a deceptively similar domain name is essentially a matter of discretion of the learned Arbitrator. Such a discretionary finding cannot brook interference under Section 34 of the 1996 Act unless it is completely perverse. The Court, in exercise of jurisdiction vested in it by Section 34 of the 1996, cannot venture into a re-appreciation of the facts and arrive at its own subjective satisfaction as to whether they make out, or do not make out, a case of intentional diversion of internet users by adoption of a deceptively similar domain name.

(xli) So long as the findings of the learned Arbitrator in that regard do not suffer from perversity or by the illegality, the matter must rest there. The Court in exercise of its jurisdiction under Section 34 of the 1996 Act, cannot itself venture into the factual thicket to arrive at its its own decision regarding the satisfaction of the ingredients which are required to be satisfied.

(xlii) The findings of the learned Arbitrator on this score do not, in my opinion, suffer either from perversity or patent illegality, so as to justify interference by the court under Section 34 of the 1996 Act.



23. *Satyam Infoway*

23.1 Before closing this judgment, it is necessary to refer to the decision of the Supreme Court in *Satyam Infoway*, on which Mr. Makkar placed reliance.

23.2 Mr. Mehta sought to submit that *Satyam Infoway* pertained to an allegation of passing off, within the realm of common law and that the definitive tests to be applied in such a case were completely distinct from those applied to domain name infringement under the INDRP.

23.3 It is true that the Supreme Court, in *Satyam Infoway*, was not directly concerned with domain name infringement under the INDRP. Nonetheless, the Supreme Court was concerned with domain name infringement, albeit in the context of an allegation of passing off.

23.4 The very opening words of the judgment identify the principal issue that arose before the Supreme Court as “whether internet domain names are subject to the legal norms applicable to other intellectual properties such as trademarks”. The case arose out of a passing off action instituted by Satyam Infoway (Satyam) against the respondent-Siffynet Solutions (P) Ltd. (SSPL). Satyam claimed to be aggrieved by use, by SSPL, of the domain names www.siffynet.net and www.siffynet.com. These domain names, it was contended, infringed the Satyam’s domain name www.sifynet, www.sifymail.com, www.sifyrealestate.com etc. Satyam, therefore, sought an injunction



against SSPL from using the domain names www.siffynet.net and www.siffynet.com.

23.5 The application for temporary injunction was allowed by the learned City Civil Court holding that Satyam was a prior user of the trade name “Sify”, in which it had earned considerable goodwill and reputation. As such, it was held that the use, by SSPL, of the domain names www.siffynet.net and www.siffynet.com was bound to result in confusion.

23.6 SSPL appealed, against the said decision, to the High Court. High Court allowed the appeal. Aggrieved thereby, Satyam appealed to the Supreme Court. Paras 12 to 15, 26 to 28 and 31 to 35 of the report deserve to be reproduced, thus:

“12. The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. *With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site. In the commercial field, each domain-name owner provides information/services which are associated with such domain name. Thus a domain name may pertain to provision of services within the meaning of Section 2(1)(z). A domain name is easy to remember and use, and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its goods or services, and to specify its corresponding online internet location [Ryder, Rodney D.: Intellectual Property and the Internet, pp. 96-97.] . Consequently a domain name as an address must, of necessity, be peculiar and unique and where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical.*



“As more and more commercial enterprises trade or advertise their presence on the web, domain names have become more and more valuable and the potential for dispute is high. Whereas a large number of trade marks containing the same name can comfortably coexist because they are associated with different products, belong to business in different jurisdictions, etc., the distinctive nature of the domain name providing global exclusivity is much sought after. The fact that many consumers searching for a particular site are likely, in the first place, to try and guess its domain name has further enhanced this value [See Rowland, Diane and Macdonald, Elizabeth: *Information Technology Law*, 2nd Edn., p. 521.] .”

The answer to the question posed in the preceding paragraph is therefore in the affirmative.

13. The next question is, would the principles of trade mark law and in particular those relating to passing off apply? *An action for passing off, as the phrase “passing off” itself suggests, is to restrain the defendant from passing off its goods or services to the public as that of the plaintiff’s. It is an action not only to preserve the reputation of the plaintiff but also to safeguard the public. The defendant must have sold its goods or offered its services in a manner which has deceived or would be likely to deceive the public into thinking that the defendant’s goods or services are the plaintiff’s. The action is normally available to the owner of a distinctive trade mark and the person who, if the word or name is an invented one, invents and uses it. If two trade rivals claim to have individually invented the same mark, then the trader who is able to establish prior user will succeed. The question is, as has been aptly put, who gets these first? It is not essential for the plaintiff to prove long user to establish reputation in a passing-off action. It would depend upon the volume of sales and extent of advertisement.*

14. *The second element that must be established by a plaintiff in a passing-off action is misrepresentation by the defendant to the public. The word misrepresentation does not mean that the plaintiff has to prove any mala fide intention on the part of the defendant. Of course, if the misrepresentation is intentional, it might lead to an inference that the reputation of the plaintiff is such that it is worth the defendant’s while to cash in on it. An innocent misrepresentation would be relevant only on the question of the ultimate relief which would be granted to the plaintiff [Cadbury Schweppes v. Pub Squash, 1981 RPC 429]. What has to be established is the likelihood of confusion in the minds of the public*



(the word “public” being understood to mean actual or potential customers or users) that the goods or services offered by the defendant are the goods or the services of the plaintiff. In assessing the likelihood of such confusion the courts must allow for the “imperfect recollection of a person of ordinary memory” [Aristoc v. Rysta, 1945 AC 68] .

15. *The third element of a passing-off action is loss or the likelihood of it.*

26. *This brings us to the merits of the dispute between the parties. As we have already said, a passing-off action is based on the goodwill that a trader has in his name unlike an action for infringement of a trade mark where a trader's right is based on property in the name as such. Therefore, unless goodwill can be established by the appellant by showing that the public associates the name “Sify” with the services provided by the appellant, it cannot succeed.*

27. *The appellant's claim to be a leading information technology services company and one of the largest internet service providers in the country has not been seriously disputed by the respondent nor is there any challenge to the appellant's claim that it has more than 5 lakh subscribers, 840 cyber cafés, and 54 points of presence all over India. That it is the first Indian internet company to be listed in 1999 with NASDAQ where it trades under the trade name “Sify” was given extensive coverage in leading national newspapers. The appellant has brought on record the stringent conditions and deposit of a large fee for having a trade name included in the NASDAQ international market. The appellant has complied with the conditions for listing. The appellant has claimed that its shares are since 1999 actively traded in on a daily basis on NASDAQ. It is also claimed that the appellant has widely used the word Sify as a trade name/domain name for its software business and services. The appellant's website www.sify.com is claimed to be a comprehensive internet site with a gamut of subjects to choose from. It has brought out brochures and issued advertisements offering services in the internet under the name “Sify”. It has submitted its sale figures and expenses incurred on advertisement and market promotion of its business under the trade name Sify. It is also claimed that apart from the fact that the appellant is popularly known as Sify, it has also applied for registration of more than 40 trade marks with the prefix Sify under the Trade and Merchandise Marks Act, 1958 (since replaced by the Trade Marks Act, 1999).*



28. *In support of its claim of goodwill in respect of the name of “Sify”, the appellant had brought on record press clippings of articles/newspapers in which the appellant has been referred to as “Sify”. For example, a news item published in The Hindu on 5-5-2000 talks of “Sify plans of internet gateways”. Another article published in The Business Standard on 11-5-2000 says “Sify chief sees strong dotcom valuations rising”. There are several other publications filed along with the plaint all of which show that the appellant was referred to as “Sify”. That the listing of the appellant with NASDAQ in 1999 under the trade name “Sify” was featured on several newspapers has been established by copies of the news items. Documents have also been produced to show that the appellant had been awarded prizes in recognition of achievements under the trade name “Sify”. For example, the Golden Web Award for the year 2000 was awarded to the appellant's corporate site www.sifycorp.com. A number of advertisements in connection with “e-market services from Sify”, “Messaging solutions from Sify” have also been filed. It is unfortunate that none of these documents were even noticed by the High Court. We have, therefore, been constrained to appreciate the evidence and on doing so, we have reached, at least prima facie conclusion that the appellant has been able to establish the goodwill and reputation claimed by it in connection with the trade name “Sify”.*

31. *What is also important is that the respondent, admittedly, adopted the mark after the appellant. The appellant is the prior user and has the right to debar the respondent from eating into the goodwill it may have built up in connection with the name.*

32. *Another facet of passing off is the likelihood of confusion with possible injury to the public and consequential loss to the appellant. The similarity in the name may lead an unwary user of the internet of average intelligence and imperfect recollection to assume a business connection between the two. Such user may, while trying to access the information or services provided by the appellant, put in that extra ‘f’ and be disappointed with the result. Documents have been filed by the respondent directed at establishing that the appellant's name Sify was similar to other domain names such as Scifinet, Scifi.com, etc. The exercise has been undertaken by the respondent presumably to show that the word “Sify” is not an original word and that several marks which were phonetically similar to the appellant's trade name are already registered. We are not prepared to deny the appellant's claim*



merely on the aforesaid basis. For one, none of the alleged previous registrants are before us. For another, the word “sci-fi” is an abbreviation of “science fiction” and is phonetically dissimilar to the word Sify.

33. The respondent then says that confusion is unlikely because they operate in different fields. According to the respondent its business is limited to network marketing unlike the appellant which carries on the business of software development, software solution and connected activities. *The respondent's assertion is factually incorrect and legally untenable. A domain name is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial as we have earlier noted. Therefore a deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought-for services. Besides the appellant has brought on record printouts of the respondent's website in which it has advertised itself as providing inter alia software solution, integrating and management solutions and software development covering the same field as the appellant. To take a specific example, the respondent's brochure explicitly offers intranet and extranet solutions which are also explicitly offered by the appellant. There is clearly an overlap of identical or similar services. It may be difficult for the appellant to prove actual loss having regard to the nature of the service and the means of access but the possibility of loss in the form of diverted customers is more than reasonably probable.*

34. The last question is, where does the balance of convenience lie? Given the nature of the business, it is necessary to maintain the exclusive identity which a domain name requires. In other words, either “Sify” or “Siffy” must go. Apart from being the prior user, the appellant has adduced sufficient evidence to show that the public associates the trade name SIFY with the appellant. The respondent on the other hand has produced little proof to establish the averments in support of its case that it had a membership of 50,000. We are unable to hold, while not commenting on the authenticity of the bills relied on by the respondent, as the High Court has done, that the bills by themselves show that the respondent “has been carrying on conferences at different places and enrolling members who would be transacting with them in the business and like that they have enrolled about 50,000 members already”. Similarly, several bills raised in the name of the respondent in respect of different items do not by themselves establish that the members of the public have come to associate the word “Siffy” only with the respondent. Weighed in the balance of comparative hardship, it is difficult to hold that the respondent would suffer any such loss as the appellant would unless an



injunction is granted. The respondent can carry on its business and inform its members of the change of name. *We are conscious of the fact that the grant of an interlocutory order may disrupt the respondent's business. But that cannot be seen as an argument which should deter us from granting relief to the appellant to which we are otherwise satisfied it is entitled.*

35. The High Court's finding that no prejudice would be caused to the appellant because it had another domain name was a consideration which might have been relevant if there was a case of bona fide concurrent use and where the right to use was coequal. The doubtful explanation given by the respondent for the choice of the word "Siffy" coupled with the reputation of the appellant can rationally lead us to the conclusion that the respondent was seeking to cash in on the appellant's reputation as a provider of service on the internet. *In view of our findings albeit prima facie on the dishonest adoption of the appellant's trade name by the respondent, the investments made by the appellant in connection with the trade name, and the public association of the trade name Sify with the appellant, the appellant is entitled to the relief it claims.* A different conclusion may be arrived at if evidence to the contrary is adduced at the trial. But at this stage and on the material before the Court, we are of the view that the conclusion of the High Court to the contrary was unwarranted.

(emphasis supplied)

23.7 In the afore-extracted passages from *Satyam Infoway*, the Supreme Court has clearly noted that, with the increase of commercial activity on the internet, the importance of domain names has increased manifold and that a domain name is now a business identifier. It is not, therefore, merely an address for internet communication, but also a locator and identifier of a specific internet site. After thus underscoring the importance of domain names, the Supreme Court categorically holds, in para 12 of the report that "where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical".



23.8 The attempt of Mr. Mehta to distinguish the decision in *Satyam Infoway Ltd.* on the ground that it pertained to a passing off action, unlike the case at hand, cannot, unfortunately, succeed in view of para 13 of the report in *Satyam Infoway Ltd.* In the said passage, the Supreme Court has clearly held that a passing off action is not merely an action to preserve the reputation of the plaintiff *but also an action to safeguard the public*. Safeguarding of the public is the very *raison d’etre* of the INDRP. The INDRP envisages protection of registered domain names from the late registration of deceptively similar domain name with the sole intent of safeguarding the public from the likelihood of confusion. As such, the rationale of the decision in *Satyam Infoway* would apply, *mutatis mutandis*, to the present case as well.

23.9 The observations and the findings of the Supreme Court, as contained in paras 13 and 14 of *Satyam Infoway Ltd.*, apply, on all fours, to the case at hand, especially in view of the findings of the learned Arbitrator on the aspect of legitimacy of the interests of the petitioner in the www.quantumuniversity.edu.in domain name and the issue of whether the domain name was registered and being used by the petitioner in good faith.

23.10 Para 20 of *Satyam Infoway* discloses that the Supreme Court relied, extensively, on the Uniform Domain Name Disputes Resolution (UDNDR) Policy of the Internet Corporation for Assigned Names and Numbers (ICANN). The provisions of the UDNDR Policy are *identical* to those of the INDRP. This is clear from the



paragraph:

“20. While registration with such registrars may not have the same consequences as registration under the Trade Marks Act, 1999, nevertheless it at least evidences recognised user of a mark. Besides, the UDNDR Policy is instructive as to the kind of rights which a domain-name owner may have upon registration with ICANN, accredited registrars. In Rule 2 of the Policy, prior to application for registration of a domain name, the applicant is required to determine whether the domain name for which registration is sought “infringes or violates someone else's rights”. A person may complain before administration-dispute-resolution service providers listed by ICANN under Rule 4(a) that:

- (i) a domain name is identical or confusingly similar to a trade mark or service mark in which the complainant has rights; and
- (ii) the domain name-owner/registrar has no right or legitimate interest in respect of the domain name; and
- (iii) a domain name has been registered and is being used in bad faith.

21. Rule 4(b) has listed by way of illustration the following four circumstances as evidence of registration and use of a domain name in bad faith:

- “(i) circumstances indicating that the domain-name owner/registrar has registered or the domain-name owner/registrar has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain-name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the domain-name owner/registrar has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) the domain-name owner/registrar has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the domain-name owner/registrar has intentionally attempted to attract, for commercial gain Internet users, to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the domain-name



owner/registrant website or location or of a product or service on its website or location.”

22. The defences available to such a complaint have been particularised “but without limitation”, in Rule 4(c) as follows:

“(i) before any notice to the domain-name owner/registrant, the use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with bona fide offering of goods or services; or

(ii) the domain-name owner/registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the domain-name owner/registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue,”

23.11 Paras 31 to 34 of the report in *Satyam Infoway Ltd.* are of particular relevance. Para 31 underscores the right of a prior registrant of a domain name to protect itself against the registration of any deceptively or confusingly similar domain name at a later point of time. Para 32 recognises the possibility of confusion, in the face of simultaneous existence of similar domain name, in the mind of an unwary user of the internet of average intelligence and imperfect recollection to assume a business connection between the two. The competing domain names in that case were “sifynet” and “siffynet”. The Supreme Court held that an unwary user of the internet of average intelligence and imperfect recollection could, quite possibly, while trying to access the information, inadvertently add the extra ‘f’ or use one ‘f’ instead of two. The possibility of confusion as a result of deceptively similar domain name was, therefore, underscored.



23.12 In the present case, the domain names are identical, except for the extensions which, in the case of the petitioner is “.edu.in” and in the case of the respondent is “.com”. I am entirely in agreement with the learned Arbitrator in his finding that the mere difference between the extensions of the rival domain names would not mitigate, in any manner, the possibility of confusion as a result of the SLDs of the two domain names being identical i.e. “quantumuniversity”.

23.13 Para 33 of the report in *Satyam Infoway Ltd.* highlights the importance of ensuring that similar domain names are not available on the internet. A domain name, as noticed by the Supreme Court, is accessible to all internet users. The need to maintain an exclusive symbol for such access is, therefore, crucial. The possibility of loss being suffered as a result of confusingly similar domain names prevailing on the internet may not be possible to quantitatively determine, but is more than reasonably probable.

23.14 In para 34, the Supreme Court has observed that the disruption of the business of SSPL as a consequence of its judgment was a factor to which it was alive but that, where the use of a deceptively similar domain name was actually creating confusion, this consideration could not inhibit it from granting injunction.

23.15 I am also conscious of some adverse consequences which may result to petitioner, were the domain name www.quantumuniversity.edu.in to be cancelled. That, however, cannot constitute a legitimate factor to be taken into consideration by



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this Court, especially given the fact that it is exercising jurisdiction under Section 34 of the 1996 Act and examining the tenability of the impugned award on the anvil of the said provision.

Conclusion

24. For all the reasons cited hereinabove, I am unable to arrive at a conclusion that, within the limited peripheries of my jurisdiction under Section 34 of the 1996 Act, a case for interference with the impugned award dated 4 May 2021 exists.

25. The petition is accordingly dismissed, with no order as to costs.

C. HARI SHANKAR, J.

DECEMBER 13, 2023

dsn

Click here to check corrigendum, if any