



सत्यमेव जयते

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BEFORE THE .IN REGISTRY OF INDIA  
INDRP CASE NO. 1349  
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY ("INDRP" or "the Policy"); THE INDRP RULES OF PROCEDURE  
("the Rules") AND THE ARBITRATION ACT

FINAL AWARD

*[Signature]*

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INDRP CASE NO. 1349**

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY ("INDRP" or "the Policy"); THE INDRP RULES OF PROCEDURE  
("the Rules") AND THE ARBITRATION ACT**

**IN THE MATTER OF:**

**International Quantum University for  
Integrative Medicine Inc. Db  
Quantum University Corporation  
735 Bishop St. Suite 200 Honolulu,  
Hawaii 96813 United States of America**

**...Complainant**

**versus**

**Quantum University  
Mandawar (22 Km milestone) Roorkee,  
Dehradun Highway (NH 73), Roorkee - 247167  
Uttarakhand, India**

**...Respondent**

**AND**

**IN THE MATTER OF**

**A DISPUTE RELATING TO THE DOMAIN NAME QUANTUMUNIVERSITY.EDU.IN**

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**FINAL AWARD**

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**Dated this the 4<sup>th</sup> day of May 2021**

**Venue: New Delhi, India**



**ROBIN RATNAKAR DAVID  
SOLE ARBITRATOR**

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## I. PARTIES TO THE ARBITRATION

### The Complainant

The Complainant is the International Quantum University for Integrative Medicine Inc., Db a Quantum University Corporation of 735 Bishop St. Suite 200 Honolulu, Hawaii 96813 United States of America. The Complainant's representative is stated to be Dr Paul Drouin (Founder and authorized representative) International Quantum University for Integrative Medicine Inc., Db a Quantum University Corporation 735 Bishop St. Suite 200, Honolulu, Hawaii 96813; Telephone: +1-877-888-8970; Fax: +1-818-864-3388; E-mail: [info@quantumuniversity.com](mailto:info@quantumuniversity.com). The legal representatives authorised to act for the Complainant are:—

1. Ms. Veronica Mohan and Ms. Keerti Gupta, Fox Mandal & Co., FM House, A-9, Sector-9, Noida - 201301, NCR of Delhi, India; Email: [veronica.mohan@foxmandal.com](mailto:veronica.mohan@foxmandal.com); [keerti.gupta@foxmandal.com](mailto:keerti.gupta@foxmandal.com); [deepa.chansoliya@foxmandal.com](mailto:deepa.chansoliya@foxmandal.com); Tel: +91-120-4305555; Fax: +91-120-2542222
2. Mr. Martin E. Hsia, Cades Schutte Limited Liability Law Partnership, 1000 Bishop Street 12th Floor, Honolulu, Hawaii 96813 E-mail: [mhsia@cades.com](mailto:mhsia@cades.com) Tel: +1-808-544-3835 Fax: +1-808-540-504

### The Respondent

The Respondent is Quantum University, Mandawar (22 Km milestone) Roorkee, Dehradun Highway (NH 73), Roorkee – 247167, Uttarakhand India and Address: 4th Floor, Near Kwaliti Hardware, 14, Gandhi Road, Dehradun – 248001. The Respondent is represented by :-

- a. Mr. Manish Jha, Registrar, Quantum University (E-mail: [registrar@quantumuniversity.edu.in](mailto:registrar@quantumuniversity.edu.in)) Camp at: Quantum University, Mandawar, Roorkee, Dehradun Highway (NH73) Roorkee-247167, Uttarakhand, India.
- b. Mr. S. C. Virmani, Advocate, Supreme Court of India, Camp office at 105, Chakrata Road, Dehradun, Uttarakhand India (E-mail: [scvirmani@yahoo.com](mailto:scvirmani@yahoo.com))
- c. Mr. Shobhit Goyal, Secretary, L.M.D. Educational & Research Foundation, Fourth Floor, 14 Gandhi Road, Newar Kwaliti Hardware, Dehradun 248001 (Uttarakhand) India ([Email-vc@quantumeducation.in](mailto:Email-vc@quantumeducation.in))



## II. APPLICABLE LAW AND JURISDICTION

### The .IN Domain Name Dispute Resolution Policy

1. This arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (**the INDRP / the Policy**) which was adopted by the National Internet Exchange of India (**NIXI**) and sets out the legal framework for resolution of disputes between a domain name registrant and a Complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name [QUANTUMUNIVERSITY.EDU.IN](https://www.quantumuniversity.edu.in) with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 16 September 2020 (**the Rules**) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**).

### Filing of the Complaint and Constitution of the Arbitral Tribunal

2. On 02 February 2021, the Complainant filed the Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain Name [QUANTUMUNIVERSITY.EDU.IN](https://www.quantumuniversity.edu.in) to the Complainant. On 01 March 2021, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in the said matter. On 02 March 2021, Mr. David, gave his consent along with the signed Statement of Acceptance and Declaration of Impartiality and Independence to act in the matter as Arbitrator.
3. On 02 March 2021, the Arbitral Tribunal comprising of the said Mr. Robin Ratnakar David, Sole Arbitrator was constituted under Rule 5(b) of the Rules in respect of the Complaint.
4. On 02 March 2021, the Arbitral Tribunal issued the Notice of Arbitration under Rule 5(c) of the Rules.
5. This Arbitral Tribunal has been constituted properly and in accordance with the Arbitration Act, the INDRP Policy and the Rules as amended from time to time. On 07 March 2021, the Respondent filed a reply/response *inter alia* stating that the Respondent has no agreement under Section 7 of the Arbitration Act with the Complainant and objected to the constitution and jurisdiction of the Arbitral Tribunal. In view of the objections raised by the Respondent the Arbitral Tribunal



will consider and deal with the same as required by Sections 16 and 20 of the Arbitration and Conciliation Act, 1996.

### III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

DNS Form	quantumuniversity.edu.in
User Form	quantumuniversity.edu.in
ROID	D414400000004773335-IN
Registrar Name	ERNET India
IANA ID	800068
Create Date	2017-08-04T07:18:58Z
Registrant Create Date	2017-08-04T07:08:32Z
Email	shobhitgoyal@yahoo.com
Phone	(91)1352657979
International Postal Name	Shobhit Goyal
International Postal Organisation	Quantum University
International Postal Street Line	14th Floor, 14 Gandhi Road
International Postal City	Dehradun
International Postal Postcode/Zip Code	248001
International Postal Country	IN
Local Postal Name	Shobhit Goyal
Local Postal Organisation	Quantum University
Local Postal Street Line	14th Floor, 14 Gandhi Road
Admin Street	4th Floor, 14 Gandhi Road
Admin City:	Dehradun
Admin Postal Code:	248001
Admin Phone:	(91)1352657979
Admin Email:	<a href="mailto:shobhitgoyal@yahoo.com">shobhitgoyal@yahoo.com</a>
Registry Tech ID:	T48850
Tech Name:	Ravinder Giri
Tech Phone:	(91)8126271888
Tech Email:	<a href="mailto:systemadmin@quantumeducation.in">systemadmin@quantumeducation.in</a>

### IV. PROCEDURAL HISTORY

1. On 02 March 2021, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent with the Complaint and annexures by email. The Respondent was directed to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 09 March 2021.



In addition, the service by the Arbitral Tribunal, the Complainant was directed to serve a hard copy and a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complaint (including annexures) was sent at the email address of the Respondent shown in the WHOIS details and service on the Respondent was done in accordance with Rule 2 of the Rules. The Respondent filed a Response/reply dated 07 March 2021 comprising of preliminary objections to the jurisdiction and a Written Defence to the Complaint on 08 March 2021 within the timeline set by the Arbitral Tribunal in the notice of Arbitration.

2. The Complainant was granted an opportunity to file a Rejoinder to the reply. The Rejoinder was filed on 15 March 2021. Thereafter the parties were granted an opportunity to file short written submissions in support of their respective stands not exceeding five (5) pages by 19 March 2021. The Parties filed their respective submissions on 19 March 2021. The same has been taken on record. The Parties and their counsel strictly complied with the timelines set by the Arbitral Tribunal and the parties were treated equally and given a full opportunity to present their respective cases.
3. Rule 5 (c) of the Rules stipulates that the Arbitrator shall pass the award within 60 days of the commencement of the arbitration, the arbitrator is also empowered to extend the time by an additional period of 30 days in exceptional circumstances. In the present case the Notice of Arbitration was issued on 02 March 2021 and the 60 day period expired on 01 May 2021. However, the Award could not be passed by 01 May 2021 as there has been severe increase in the COVID-19 cases and lockdown has been issued by the government of Delhi since 19 April 2021 and the arbitrator was restricted in travel and access to office where the case documents were stored. Accordingly, under rule 5(c) of the Rules, the arbitrator extends the time by three days. Accordingly, the award is being passed on 04 May 2020.
4. All emails from the Arbitral Tribunal were copied to the Complainant and Respondent as well as to NIXI.

## **V. PARTIES' CONTENTIONS**

### **Complainant's Version**

1. The Complainant has contended that the disputed domain name "[www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in)" is identical and similar to the Complainant's





trademark "Quantum University" and domain name [www.quantumuniversity.com](http://www.quantumuniversity.com).

2. The Complainant states that it is a university operating from the United States of America, offering exclusively online courses (including bachelors, masters, and doctorate degrees) and certification programs in holistic, alternative, natural, and integrative medicine based on the science of quantum physics. The curriculum adopted by the Complainant follows key concepts of quantum physics in the learning and the scientific language explains many alternative healing modalities and fields of ancient and modern medical studies, therefore, the Complainant adopted the name "Quantum University" for its institutions.
3. The Complainant states that it has been using the word "Quantum" in its various endeavours in the educational services since 2002 as "Institute of Quantum Biofeedback Naturopathic Medicine", an institute established by the Complainant in San Diego, United States of America. Following the success of the said institution, "Quantum University" was incorporated on 05 February 2007. The Complainant states that it has been using the trade name and service name "Quantum University" since 01 September 2009.
4. The Complainant states that the trade name "Quantum University" was registered on 02 October 2009 with the Business Registration Division, Department of Commerce and Consumer Affairs, Hawaii as the registered DBA (Does Business As).
5. It is further stated that the Complainant's Trademark "Quantum University" was registered with the United States Patent and Trademark Office ("USPTO") on 14 October 2014 by Registration No. 4620311 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. The said application records that the first use of the said Trademark by the Complainant was on 01 September 2009.
6. The Complainant also states that it subsequently applied for international registration under the Madrid Protocol with the International Bureau of World Intellectual Property Organization which has been duly forwarded to the Indian Trademark Registry as per due process.
7. The Complainant states that at the relevant time, there was already a registered domain name "www.quantumuniversity.com" (which was registered in 2003 by





the original owner). In 2009 the Complainant purchased the domain name from its then registered owner and has actively and continuously marketed and offered its educational services through its website [www.quantumuniversity.com](http://www.quantumuniversity.com).

8. The Complainant states that it has registered and has been using the trademark "Quantum University" through many domain names in relation to large scale online educational services. The Complainant has marketed, advertised and promoted the 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.today	.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

9. The Complainant applied for registration of trademark under the Indian Trademarks Act, 1999 for “QUANTUM UNIVERSITY” in Class 41 which pertains to education; providing of training; entertainment; sporting and cultural activities.
10. The Complainant states that the Respondent applied for a separate trademark on 26 December 2013 for the trademark “LMDQUANTUM” and owns the said trademark.
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 Complaint 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 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".



19. The Complainant contends that it is a prior user of domain names linked with the trade name "Quantum University" in relation to online educational programs. This fact was known to the Respondent as a general online search would have directed the Respondent to the Complainant's website. The Respondent still chose to change its online presence from "Quantum Global Campus" to "Quantum University", which can only be with intent to confuse the public.
20. The Complainant states that both the Complainant and the Respondent offer courses under the tradename "Quantum University" at University level. Additionally, the Respondent offers similar courses to the Complainant's as below:

<b>Courses offered by the Complainant</b>	<b>Courses offered by the Respondent</b>
Undergraduate Course: Bachelor in Holistic Health Sciences	Undergraduate Course in Health Science department: a) B.Pharma b) D.Pharma c) B.Sc (Nutrition & Dietetics) d) B.Sc (Radiology)
Postgraduate Course: Master In Natural Medicine	Postgraduate Course: M.Sc (Nutrition & Dietetics)
Doctorate and PhD in Natural or Integrative Medicine	Doctorate PhD in Bio-Sciences, Nutrition & Dietetics

21. The Complainant alleges that the Respondent changed its trade name from "Quantum Global Campus" to "Quantum University" intentionally as the Respondent is seeking to increase its online presence by offering online courses/classes and services which completely overlap with the Complainant's services.
22. It is alleged that the domain name of the Respondent is identical and similar to the trademark and service mark "Quantum University". It is stated that the Disputed Domain Name uses the Complainant's Trade Name "Quantum University" in its entirety, and merely appends ".edu.in" to a mark by replacing the top level generic term ".com" which does not distinguish/ differentiate the domain name.
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 become the norm across the globe.

24. The Complainant alleges that the Respondent's domain name is squarely based on the registered trade name and domain name of the Complainant, which has had an internet presence since 2009. The Complainant states that it has incurred expenditure of USD 17,904.75 towards online advertisements in India alone. It further states that the Respondent knew of the Complainant's domain name, yet they chose to change their domain name which establishes bad faith (Paragraph 11 at page 10 of the Complaint).
25. The Complainant has provided a list of illustrations to establish the confusion:
  - i. The Complainant received email dated 06 January 2018 from the All India Council for Technical Education (which is a statutory body and a national-level council for technical education, under the Department of Higher Education, Ministry of Human Resource Development, India, which accredits postgraduate and graduate programs under specific categories) which was meant for the Respondent. This illustrates that the Statutory Council which approved the Respondent's courses is itself not able to distinguish between the Complainant and the Respondent. In the said circumstances the prospective students who might be interested in the courses offered by the Complainant would also be getting similarly confused with the Respondent's website resulting in the Complainant losing its goodwill and revenue.
  - ii. One Prof. Saini who was intending to correspond/communicate with the Respondent marked many e-mails to the Complainant at "vicechancellor@quantumuniversity.com" alongside the Respondent at [chairman@quantumeducation.in](mailto:chairman@quantumeducation.in). This evinces that even professors who are familiar with the industry can get confused as the domain names are identical.
  - iii. The Complainant contacted Google seeking the online traffic in India for the Complainant's website [www.quantumuniversity.com](http://www.quantumuniversity.com). The details shared by Google for the period October 2009 to 01 April 2017, the period prior to the Respondent registering the Disputed Domain Name reveal that the Complainant enjoys a substantial footfall to its website. It is therefore asserted that the Respondent registering the disputed domain name would definitely confuse the Complainant's prospective students going forward.



26. It is alleged that the Respondent has sought registration of only the trademark limiting to "Quantum", whereas the Complainant has correctly registered the trademark "Quantum University" with the USPTO and DBA and also applied for the international registration under the Madrid Protocol with the WIPO.
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](http://www.quantumuniversity.edu.in).

#### Case Laws

28. In support of its contentions the Complainant sought to refer to and rely on the following judicial precedents:
- i. The Supreme Court in **Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd. (2004) 6 SCC 145** held that:

*"16. The use of the same or similar domain name may lead to a diversion of users, which would result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically, limitless) accessibility to users and potential customers and particularly so, in areas of specific overlap...."*

*"33...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 appellants have brought on record printouts of the respondents' website in which they have advertised themselves 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."*



- ii. The Hon'ble Delhi High Court in **Yahoo!, Inc. vs. Akash Arora and Ors.78(1999)DLT285** held that:

*"10. Therefore, it is obvious that where the parties are engaged in common or overlapping fields of activity, the competition would take place. If the two contesting parties are involved in the same line or similar line of business, there is grave and immense possibility for confusion and deception and, therefore, there is probability of sufferance of damage. In this case also both the plaintiff and the defendants have common field of activity. They are operating on the Web site and providing information almost similar in nature. In Card service International Inc. Vs. McGee; reported in 42 USPQ 2d 1850, it was held that the domain name serve same function as the trademark and is not a mere address or like finding number on the Internet and, Therefore, it is entitled to equal protection as trademark. It was further held that a domain name is more than a mere Internet address for it also identifies the Internet site to those who reach it, much like a person's name identifies a particular person or more relevant to trade mark disputes, a company's name identifies a specific company...."*

- iii. The Complainant referred to **HT Media Limited and Ors. vs. Brainlink International Inc. and Ors (2004) 6 SCC 145**. However, the Arbitral Tribunal is unable to consider the same as the case citation appears to be incorrect and corresponds to the afore mentioned *Satyam Infoways* decision.

**Remedies sought by the Complainant:**

29. The Complainant has prayed for:
- a. The cancellation of the Registrant's domain name and/or
  - b. The transfer of the Registrant's domain name registration to the Complainant and
  - c. Costs as may be deemed fit.

**Any other legal proceedings**

30. Under the head "Any other legal proceedings" the Complainant disclosed that a Cease-and-Desist Notice dated 17 May 2018 was issued by the Complainant to the Respondent demanding inter-alia –





- i. Cease and desist from using the mark "Quantum University" and domain name [www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in) in any manner whatsoever as referred to above
- ii. To Cease and desist from using the names and marks of "Quantum University" or any other words deceptively similar thereto.

However, no subsequent legal proceeding was initiated thereafter.

31. Notice of Opposition dated 09 November 2018 was issued by the Complainant in relation to registration of Trademark "Quantum" vide application no. 2489450 in Class 42 under the Trade Mark Act, 1999. The matter pending before the Trademark Registry concerns the trade mark "Quantum" and not "Quantum University". The said proceedings are pending before the Trademark Registry.

#### **RESPONDENT'S REPLY**

1. The Respondent resists the present arbitration proceedings and denies the existence of an agreement under Section 7 of the Arbitration & Conciliation Act 1996 with the Applicant/Complainant and has not given any consent for appointment of any arbitrator and jurisdiction to New Delhi Courts.
2. The Respondent has contended that the Sole Arbitrator has not complied with Section 12 of the Arbitration Act and has no jurisdiction to call upon the Respondent to file written defence under Section 23 of the Arbitration Act.
3. The Respondent has contended that the proceedings initiated by the Complainant are without jurisdiction, as the Complainant has not pointed out any provision of law, under which the Complainant has come before the National Internet Exchange of India (NIXI).
4. The Respondent has contended that it was not aware of the powers of NIXI. Despite the same, Respondent was filing its written defense to pay respect to the authority and bring correct facts before the authority and the Sole Arbitrator.
5. The Respondent contended that it was filing its Defence without prejudice to its rights, as they did not acknowledge and give their consent for the alleged appointment of Sole Arbitrator.
6. The Respondent contended that the jurisdiction of the court and the seat of the arbitrator, if any, is and shall be at Dehradun. The entire cause of action has arisen in District Dehradun where the suit between the parties is pending and all the



proceedings are subject to the jurisdiction of Dehradun under the High Court of Uttarakhand.

7. It is urged that the Respondent and Complainant were parties litigating before the District Judge Dehradun in a regular suit under Trade Mark Act 1999 and other relevant Acts, and the matter is sub-judice and interference in “the proceedings of the court of any parallel or contradictory proceedings to the power to adjudicate vested by the legislature upon the civil court”.
8. It is alleged that the Complainant has not disclosed that 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. The suit was filed on 01 August 2018, for the relief, the Complainant and the so-called business run under the name and style of Quantum University and his associates, his allied/cognate education services be restrained not to interfere and infringe the business name of the Respondent and not to give threats to Respondent and the notice dated 17-05-2018 of the Complainant, is illegal, void, inoperative and does not give any cause of action to the Complainant. The threat given by the Complainant is on the letter head of Fox Mandal and Company, hence the said Company knows that Respondent had given a threat dated 17 May 2018 and the same is sub-judice before a court of law. The Complainant is concealing himself., for effective service on him and stealthily has come before the Authority and got appointed an Arbitrator without the consent of the Respondent.
9. It is stated that L.M.D. Educational and Research Foundation is a “Trust”, duly registered under the provisions of the Indian Registration Act, 1908, under the name and style of L.M.D. Educational and Research Foundation at Book No.4, Volume No.228, Page Nos.25 to 76, ADFB No.1 at Serial No.1260, registered on 21-08-2007, in the office of Sub-Registrar, in the office of Sub-Registrar, Sardar-IVth, Dehradun.
10. It is stated that the object of the L.M.D. Educational and Research Foundation Trust are inter alia to:
  - a. To provide the restricting of higher education, facilities in the fields of Medial, engineering, Yoga, Sports, Agriculture & Horticulture, Management, Computer Science & in all Vocational Courses, Primary Education for needy students, intellectuals & other persons of the Society belonging to any caste, creed and religion etc.



- b. To engage Teachers, Professors, Instructors, Professionals, Management Personnel, Technical Advisors and experts of good moral character and having capabilities to impart efficiently and economically up to-date knowledge to student in Medial, Engineering, Management, computer Science, all Vocational courses, Primary Education, intellectual and other usual pursuits.
  - c. To establish, acquire, construct, maintain and run colleges, Institutions, Polytechnics, Universities to provide all sorts of education in the field of Medial, Engineering, Yoga, Sports, Agriculture & Horticulture, Management, Vocational courses, Public & Primary Education.
  - d. To establish, acquire, purchase, construct, maintain Hospitals, Diagnostic centers, Nursing Homes and Dispensaries to provide medical facilities to all or any person of the society.
11. The Respondent states that Quantum University is a "University" run and owned by the Respondent under the name and style of Respondent. Quantum University is a statutory body under Enactment No. 4 of 2017 declared under clause 3 of Article 348 of the Constitution of India the objects of the said University has been defined under Section 7(b) whereby it has been stated that the Quantum University can establish within the state campuses study centre or constitute colleges of technical education, higher education, medical and dental education legal education, aviation education, social sciences, general sciences and other areas of educations for offering certificates, diploma, graduate degree, post graduate degree and doctoral degree which would be as nominated by the University Grant Commission with a right to impart diplomas and certificate courses and further to establish examination centres.
12. Section 2(h) of the said Act defined campus. Section 2(ff), defines UGC to mean the University Grants Commission established under the University Grants Commission Act 1956. Section 2(gg) defines University as Quantum University.
13. It is stated that the Respondent has also been authorised to impart education also through a distance education system which means imparting Education within the State through any means of information technology communication such as multimedia broadcasting telecasting online over the internet other interactive methods, e-mails, internet, computer, interactive talk and e-learning correspondence courses seminars contact programs or a combination of any two or more such means. The various programs of Quantum University are duly approved by AICTE and PCI. The Governor of State of Uttarakhand is a Visitor under section 12 (1) of the said Act. Section 32 of the said Act provides for special



provisions for permanent residents of Uttarakhand. The enactment has a constitutional committee under Section 38.

14. The Respondent has stated that it has registration under the Copyright Registration Act and is using the word "Quantum" as a right openly since 2006. The L.M.D Educational and Research Foundation has been registered in the year 2007 and the word "Quantum" is being used in the College of Technology duly approved by the Union of India since 2008 in the name and style "Quantum School of Technology".
15. It is stated that the College was elevated to a University under the Quantum University Act, 2016 with the name and style of Quantum University, in the same campus where the Quantum School of Technology was situated and was being run.
16. It is contended that the present Complaint is prohibited by law and the Complainant cannot interfere in the command of the legislature of India or any act by India or any act passed by the legislature of India and the Complainant is an unauthorized body making unhealthy competition with the Respondent.
17. It is stated that the Respondent applied for the website "QUANTUMUNIVERSITY.EDU.IN" in January 2018 after it was granted university status by the Legislature.
18. It is contended that in India, there is a different legislation act recognized by the Parliament. The University Grants Commission Act, 1956 which was enforced on 03 March 1956 and defines what is a "University" in India. The section 2(f) of the said Act defines the University as under: -

*"University" means 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 the regulations made in this behalf under this Act.*
19. By placing reliance on the INDR Policy, the Respondent contends that the domain extension "edu.in" has specifically been created by the Government of India for Academic / Educational / Research activities for Indian Educational Institutes. It is stated that "the Respondent has used this domain name and hence there is no point in it trying to impeach the rights of any other website or the domain".



20. It is stated 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 claimant at its own website the Complainant's website states that it is not accredited by agency recognized by the United States Secretary of Education.
21. The Respondent states that the Complainant offers degree programs as under: Bachelor's degree in one year, Masters for half to one year or granting of doctorate degree in one to two years or PhD in one year and the same is in clear violation of the degrees recognized by the UGC under section 22 of the University Grants Commission Act, 1956.
22. The Respondent states that the area where the Complainant's university is situated in Hawaii is covered in the educational line by "Hawaii Post Secondary Education Authorization Program" and the Complainant is not in the list of Authorized Schools.
23. It is submitted by the Respondent that in India for any Foreign University offering a degree, a certificate of equivalence from the Association of Indian Universities is necessary and the Complainant is not part of the said association. It has been mentioned in 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 to foreign degrees awarded under distance/open/online/virtual/home studies/private mode. It is urged that the Complainant is only offering online degrees it makes their degree invalid/ fake in India.
24. It is stated that Exhibit C-10, shows the visitors on their website from the period 01 October 2019 till 01 April 2017, however, data presented is for their website "Iquim.org" which is their correct website. They are trying to mislead the Court by claiming it to be of the QuantumUniversity.com website.
25. Further, it is stated that as per Exhibit C-14, the Respondent is using this application for imparting online education. However, the Respondent is only using this application for its students studying under various on-campus programs being offered by the Respondent and to inform them regarding their attendance, marks etc. In India to impart distance/ online education approval from the Distance Education Bureau is required which none of the parties s. In the future, however,



if and when the Respondent acquires this permission, they would offer distance/online degrees.

26. It is also contended that in all the communications that the Respondent does in the form of advertisements, website, application, it discloses the location/Country of its business.
27. The Respondent states that it is offering courses related to Medical Education like D. Pharma and B. Pharma which require permission from the Pharma Council of India which the Respondent has duly received.
28. The Respondent refuted the assertion that it is misusing trademark or service mark owned by the Claimant. The Respondent said that Exhibit C-5 filed by the Claimant shows that the Respondent is using "Quantum" since 01 April 2006 and has filed an application for the trademark of the word "Quantum" under class 41 to Controller General of Patent, Design and Trade Marks vide application Number 1838522 dated 10 July 2009 which shows that Respondent is a prior user of the word "Quantum". It is not denied that the name of the Complainant is "International Quantum University for Integrative Medicine INC." and the word INC. shows that the same is a company and not a University.
29. The Respondent states that the Complainant deals with the field of medicines, natural medicines, holistic medicines, alternative medicines, integrative medicines, quantum medicines or holistic health and distribution of training material in connection with therewith educational services namely conducting classes, seminars, conferences and workshops in the field of medicines, natural medicines, holistic medicines, alternative medicines, integrative medicines, quantum medicines or holistic health rendered through video conferencing. The Complainant in Exhibit C-6 has admitted that the said Complainant was incorporated under the name of "International Quantum University for Integrative Medicine INC." and not "Quantum University". It is alleged that the Complainant has been falsely stating that it was in continuous and genuine use of the alleged trade name and have failed to establish their continuous existence from 2014 till 2017 as can be inferred from C-7. Whereas, the Quantum University Act clearly shown that it was tabled before the Hon'ble Legislative Assembly of Uttarakhand State in 2016 during the period when the Trade Name "Quantum University" of the Complainant has expired.
30. It has been contended that the websites of the Complainant and the Respondent are incomparable, and the Respondent has been representing itself as a University



established in India and hence the question of confusion does not arise especially to any internet user of ordinary diligence. The notice dated 17 May 2018 was duly replied to by the Respondent and legal action was taken against the Complainant by way of a suit for permanent injunction which was decreed in favour of the Respondent (at para 45 on page 14).

31. The Respondent states that it has been the owner of the domain name "www.quantumuniversity.edu.in" and has been granting degrees in the field of educational services. The Respondent has denied that its domain name has completely overlapped the Complainant's services and it is contended the Complainant is fraudulently granting degree in the field of holistic medicines, natural medicines, alternative medicines, integrative medicines, quantum medicines or holistic health and hence the question of overlapping does not arise.
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 Complaint 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.

39. The Respondent has denied that Complainant is entitled to any of the remedies or relief sought. It is stated that the Complainant is not entitled to get an award for cancellation of the Respondent or the transfer of the domain name registration of the Respondent to the Complainant or entitled for any cost or other expenses. The Respondent also contends that liberty to the Respondent to challenge the jurisdiction and competency for the Arbitral Tribunal to rule over its jurisdiction has not been provided to the Respondent and Section 16, is stated to have been violated. It is stated that no equal treatment has been given to the Respondent. It is also stated that the jurisdiction of the court is at Dehradun and place of arbitration is at Dehradun and Respondent never agreed for the jurisdiction of the Delhi Courts which is no jurisdiction of the matter and no cause of action has arisen in Delhi and there are no agreed terms between the parties to have jurisdiction at Delhi. The Respondent also contends that the present matter cannot be sustained as the matter is sub-judice in the court of law. Further, it is contended that the arbitrator or any person under the Arbitration Act has no authority to overrule the legislative enactment "Quantum University Act, 2016" and the Arbitrator has no jurisdiction in the matter and is requested to step down in the matter holding that matter is already sub-judice before the District Judge, Dehradun in Original Suit No. 10 of 2000 LMD Educational & Research Foundation and others Vs. Dr Paul Drouin. The Respondent requested the Arbitrator not to commit contempt of the court.

#### **Case laws**

44. The Respondent in support of its contentions has placed reliance of the following case law :
- i. CITI Corporation and Another vs. TODI Investors, reported in 2006 (4) Arb. LR.19
  - ii. Beiersdorf A.G. v Ajay Sukhwani & Anr., reported in 156 (2009) DLT 83
  - iii. Reckitt and Colman v Borden, reported in (1990) RPC 341
  - iv. Westinn Hospitality Services v Caesar Park Hotels and Resorts, reported in 1998 (3) CTC 149
  - v. Banyan Tree Holding (P) Limited v A, Murali Krishna Reddy & Anr., reported in (2010) 42 PTC 361 (Del)
  - vi. Bastyr University v GNS Dauphin Revant, Case No. D2002 0574, WIPO Administrative Panel Decision
  - vii. Interstellar Starship Services Ltd. v Epix Inc., United States Court of Appeal, Ninth Circuit 304, F.3d 936 (9 th Cir. 2002) decided on September 20, 2002



- viii. Clockwork IP, LLC, One Hour Air Conditioning Franchising, LLC vs. Elena Wallace Case No. D2009-048, WIPO Administrative Panel Decision
- ix. The Perfect Potion vs. Domain Administrator, Case No. D2004-0743, WIPO Administrative Panel Decision.

Each of the above-mentioned caselaw has been discussed and considered by the Arbitral Tribunal in the Discussions and Findings below.

#### **REJOINDER BY THE COMPLAINANT**

1. The Complainant has denied the allegations made in the Reply and said that it had no notice or knowledge of the Suit before the District Judge, Dehradun. That to date the notice of the Suit has not been served on the Complainant even though the parties have exchanged emails in the past. The service of notice through email has been accepted mode of service under Order 5 Rule 9 (3) CPC from 2002, no e-mail has been received by the Complainant from the Respondent.
2. The reply filed by the Respondent to the Complainant's opposition before the Trademark registry was dated 23.01.2019 which was filed after the filing of the civil suit before the District Court, Dehradun however, there is no reference to the said suit even in the reply. The Complainant states that the record of the case as available on the website shows that the Respondent has to take steps to serve the Respondent thus in the last proceedings the business has been referred to as "steps" and the purpose is for filing of written statement and framing of issues. The Respondent has not annexed any proof of service of the civil suit. Additionally, the Suit, maintainability of which is itself questionable is distinct from the dispute in the present Arbitration. In the Suit before the Ld. District Judge, the Respondent does not seek any relief/protection relating to the domain name. The prayers in the Suit and the present Arbitration are also different as also the objections/oppressions pending before the Trade Mark Registry. It is stated that accordingly, the pendency of the Suit has no bearing on the present Arbitration.
3. It is submitted that the Respondent's contention that the Complainant's courses are not approved in Hawaii and/or in India is not the subject matter of present Arbitration. The Complainant has been openly conducting and providing online courses and degrees under the name and style of "Quantum University" and there has been no legal issue concerning the stature of the Complainant'. The Complainant has itself mentioned on its website that they are not certified by the United State Secretary Education. Annexure R-9 and Annexure R-10 relating to the Hawaii Post secondary Authority Programme are not relevant for determining



prior usage of the domain name, which is the dispute in the present Arbitration.

4. The Complainant stated that the Respondent is intentionally seeking to misrepresent the Complainant's stature in as much as the Complainant's website records as follows.

<b>Accreditation</b> <b>Quantum University's degree programs are accredited by over a dozen professional certification boards</b> and enable students to earn their bachelor's, master's, doctorate and PhD degrees. After graduation, Quantum University students can apply directly to the following boards to become board certified: Board of Natural Medicine Doctors and Practitioners (BNMDP) Board of Integrative Medicine (BOIM) American Alternative Medical Association (AAMA) World Organization of Natural Medicine (WONM) American Association of Drugless Practitioners (AADP) American Alternative Medical Association (AAMA) American Naturopathic Medical Association (ANMA) American Naturopathic Medical Certification Board (ANMCB)	<i>Quantum University is a degree-granting university in the State of Hawaii and is accredited by the World Organization of Natural Medicine (WONM), the American Naturopathic Medical Accreditation Board (ANMAB), the International Association for Continuing Education and Training (IACET), and many other organizations.</i> <i>The International Quantum University for Integrative Medicine is not accredited by an accrediting agency recognized by the United States Secretary of Education.</i> <i>Note: In the United States, many licensing authorities require accredited degrees as the basis for eligibility for licensing. In some case, accredited colleges may not accept for transfer courses and degrees completed at unaccredited colleges. Some employers may require an accredited degree as a basis for eligibility for employment, and government agencies do not offer financial air and/or student loans.</i>
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*Quantum University's degree programs are accredited by many professional certification boards which issue professional certifications, credentials, and titles. Upon graduation from their degree programs, Quantum University students will apply directly to these boards to become certified."*



The Complainant asserted that it serves around 9000 (nine thousand) students in more than 70 (seventy) countries with local, international, and multicultural staff, supportive student mentors, and world-renowned faculty members.

## **VI. DISCUSSIONS AND FINDINGS**

1. Before dealing with the rival contentions of the Complainant and the Respondent on merits as pleaded in the Complaint and the Reply/Defence and their respective written submissions, the Arbitral Tribunal considers it appropriate to deal with the preliminary objections raised by the Respondent concerning the jurisdiction of the Tribunal.
2. The Complainant's case is that the grounds specified in Paragraph 4 of the Policy in respect of the disputed domain name [www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in) are satisfied and hence the Complainant has rightly invoked the present arbitration.
3. The Respondent has contended that there exists no agreement with the Complainant as envisaged under Section 7 of the Arbitration Act and it has not given any consent for the appointment of an arbitrator and jurisdiction to New Delhi courts. The Respondent also contended that it was unaware of the powers of NIXI.
4. To address the aspect of the existence of an "arbitration agreement" as defined under Section 2 (1) (c) and Section 7 of the Arbitration Act it will be useful to examine the .IN Dispute Resolution Policy. At the outset, the Policy specifies that the Policy is incorporated by reference to the Registry Accreditation Agreement and sets forth the terms and conditions which shall govern any or all disputes concerned with an .IN domain name. The preamble is reproduced below:

*This INDRP (the "Policy") has been adopted by NIXI, is incorporated by reference to the Registry Accreditation Agreement (RAA), and sets forth the terms and conditions which shall govern any or all disputes in connection with .IN or .Bharat (Available in all Indian Languages) domain name.*

5. Further Clause 15 of the Policy stipulates that the Policy shall apply to all/any disputes relating to .IN or .BHARAT (Available in all Indian Languages) IDN's in any of the other Indian Languages. Domains under .IN or BHARAT (Available in all Indian Languages) IDN's in any of the other Indian Languages must confirm the provisions under INDRP and the Rules of procedure laid out therein. It is globally accepted that every applicant seeking registration of a domain name has to give an undertaking to agree to dispute resolution which is mandatory in case a complaint is made by a third party.



6. Now considering the facts of the present case, the disputed domain name is QUANTUMUNIVERSITY.EDU.IN. The disputed domain name is admittedly a .IN domain name, registered with a NIXI accredited Registrar under a Registry Accreditation Agreement (RAA). Therefore, by registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the Policy and Rules framed thereunder. Interestingly, the Respondent, in its Written Defence at paragraph 28 at Pages 9 and 10, has mentioned that :

*“the domain extension “edu.in” has been created by the Government of India for Academic / Educational / Research activities for Indian Educational Institutes. The Respondent has used this domain name and hence there is no point in trying to impeach the rights of any other website or domain. The relevant policy maintained by NIXI or its website <http://www.registry.in/policies> is annexed as Annexure R-6.”*

7. Accordingly, the Arbitral Tribunal holds that the said contention raised by the Respondent is without any merit as the present arbitration proceedings have been initiated in accordance with the Policy adopted by NIXI. The Rules were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.
8. Further, the assertion that the Respondent is unaware of the powers of NIXI are belied by the fact that the Respondent has relied on NIXI Policy for registration of the disputed domain name and has placed a policy of NIXI on record as Annexure R-6 to its reply/ defence.
9. The Respondent’s contention that the Arbitrator has not complied with Section 12 of the Arbitration Act is incorrect. The Arbitrator is a INDRP Arbitrator and mentioned in the list as required by Paragraph 5 of the Policy. Pursuant to NIXI having formally appointed the Ld. Arbitrator for adjudicating upon the disputes, the Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI in the Notice of Arbitration dated 02 March 2021. The Arbitrator in the said Notice of Arbitration has mentioned as under:

**“NOTICE OF ARBITRATION**

**WHEREAS** a Complaint has been filed under the .IN Domain Name Dispute Resolution Policy against you the above-named Respondent, for cancellation of domain name QUANTUMUNIVERSITY.EDU.IN and / or transfer of [QUANTUMUNIVERSITY.EDU.IN](http://www.registry.in/policies) to the Complainant.



**AND WHEREAS** the Arbitral Tribunal comprising a Sole Arbitrator (the undersigned) was constituted on 2 March 2021 under the INDRP and INDRP Rules of Procedure (the Rules) in respect of the Complaint.

**The Arbitral Tribunal hereby issues Notice** of Arbitration to you the Respondent above-named. You may file a response / reply in writing in opposition to the Complaint, if any, along with documents and evidence in support of your stand or contention on or before **9 March 2021**. A soft copy of the Complaint with all annexures as filed is attached to this Notice of Arbitration."

10. The Respondent's contention that the proceedings initiated by the Complainant are without jurisdiction as the Complainant has not pointed out the provision of law is without merit. The Complaint specifies that the arbitration is initiated in accordance with the INDRP read with Rules seeking cancellation and/or transfer of domain name "[www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in)" in favour of the Complainant. The Respondent's contention cannot be accepted as seen above the Notice of Arbitration explicitly spells out the provisions of law and the reason why the Complaint was filed.
11. The Respondent has raised an objection regarding jurisdiction of the Delhi courts and has asserted courts at Dehradun are competent on account of the pendency of the suit between the parties. The objection regarding jurisdiction of the Delhi Court is without basis as the dispute in the present case pertains to the domain name [www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in) which squarely falls within the class of disputes in paragraph 4 of the Policy and as per paragraph 16 of the Policy "Any or all disputes shall be subject to the jurisdiction of Delhi courts only".
12. The Respondent has further raised an objection regarding the jurisdiction of the seat of the arbitrator. This objection is baseless as according to paragraph 5 of the Policy as well as the Rule 5 of the Rules an Arbitrator is appointed by the .IN Registry from the list of empanelled arbitrators maintained by the Registry. The List of the Arbitrators is published online by the .IN Registry on its website at [www.registry.in](http://www.registry.in). Further, as per paragraph 16 of the Policy, the jurisdiction shall remain with Delhi courts.
13. The Respondent has also averred that the Arbitrator or any other person under the Arbitration Act has no authority to overrule the legislative enactment i.e. Quantum University Act 2016. The Respondent stated that the Arbitrator should step down from the proceedings and not commit contempt of Court. The Respondent has also stated that the Complaint is prohibited by law.





14. The Supreme Court in **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.**, reported in (2011) 5 SCC 532, discussed the meaning of the term “arbitrability”. The Supreme Court held that:

*34. The term “arbitrability” has different meanings in different contexts. The three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under:*

- (i) Whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts).*
- (ii) Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the “excepted matters” excluded from the purview of the arbitration agreement.*
- (iii) Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be “arbitrable” if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal.*

15. The Hon’ble Supreme Court in **Vidya Drolia v. Durga Trading Corpn.**, reported in (2021) 2 SCC, propounded a fourfold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

- 1. When the cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.
- 2. When the cause of action and subject matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.
- 3. When the cause of action and subject matter of the dispute relates to an inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.
- 4. When the subject matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).



16. Although the Hon'ble Supreme Court in the aforesaid judgment clarified that these tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with a great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. The Court further clarified that only when the answer is affirmative that the subject matter of the dispute would be non-arbitrable.
17. The Hon'ble Supreme Court in **N.N. Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd. & Ors**, reported in 2021 SCC Online SC 13, held that all civil or commercial disputes, either contractual or non-contractual, which can be adjudicated upon by a civil court, in principle, can be adjudicated and resolved through arbitration unless it is excluded either expressly by statute, or by necessary implication. The Arbitration Act does not exclude any category of disputes as being non-arbitrable. Section 2(3) of the Arbitration Act however recognizes that certain categories of disputes by law may not be submitted to arbitration. In all jurisdictions, certain categories of disputes are reserved by the legislature, as a matter of public policy, to be adjudicated by a court of law, since they lie in the realm of public law.
18. The Hon'ble Supreme Court in the above judgment further held that the broad categories of disputes which are considered to be non-arbitrable are penal offences which are visited with a criminal sanction; offences pertaining to bribery/corruption; matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody and guardianship matters, which pertain to the status of a person; testamentary matters which pertain to disputes relating to the validity of a Will, grant of probate, letters of administration, succession, which pertain to the status of a person, and are adjudicated by civil courts. Further, certain categories of disputes such as consumer disputes; insolvency and bankruptcy proceedings; oppression and mismanagement, or winding up of a company; disputes relating to trusts, trustees and beneficiaries of a trust are governed by special enactments.
19. The present dispute is not within the categories of disputes which are non-arbitrable and does not even remotely attempt to override the Quantum University Act 2016. Accordingly, the Arbitral Tribunal holds that there exists a valid arbitration agreement and the present dispute which is covered by the Policy is arbitrable and the Arbitral Tribunal is competent to hear and dispose of the matter in accordance with law.



20. The Respondent has also raised a preliminary objection to the maintainability of the present arbitration proceedings on account of the pendency of the Suit before the Dehradun District Court being its Original Suit No. 10 of 2018. The Respondent has objected to the jurisdiction of the present Arbitral Tribunal on account of the Suit being sub-judice.
21. The Suit filed by Respondent/Plaintiff before the Ld. District Judge, Dehradun seeks a permanent injunction under Trademark Act, 1999 read with the provisions of the Specific Relief Act, 1963. A careful perusal thereof reveals that the plaint was signed on 1 August 2018 and filed on 8 August 2018. The Suit was filed by the Respondent/Plaintiff after issuance of the cease-and-desist Notice dated 17 May 2018 issued by the Complainant/Defendant. The Respondent/Plaintiff in the plaint has referred to a query notice dated 14 June 2018 sent to the Complainant/Defendant, however the same has not been placed on record by the Respondent in these arbitration proceedings.
22. Section 8 of the Arbitration Act deals with the power to refer parties to arbitration where there is an arbitration agreement. Section 8(1) provides that a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.
23. Although the Respondent has contended that the jurisdiction of the Arbitral Tribunal is barred on account of the parties litigating in Regular Suit under the Indian Trade Mark Act, 1999 and the matter being sub-judice, the Respondent has neither averred nor stated in its pleadings that the subject matter of the suit overlaps or falls within the scope of the present arbitration proceedings. The Tribunal notes that the Respondent possibly being aware of the same, sought to make up its shortcoming by contending in its Written Submissions that "the case is sub-judice in the District Court of Dehradun as it forms part of a larger case as to the rights of the body to use the word "Quantum University" and hence your good office should dismiss the case".
24. The submission made by the Respondent in its Written Submission regarding the case pending before the District Court of Dehradun forming part of a larger case indicates that the issues involved and raised in the Suit are not the same.



25. The Respondent has not been able to show that the suit pertains to the disputed domain name [www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in). In fact, the disputed domain name does not find mention anywhere in the plaint.
26. Further, the reliefs sought by the Respondent/Plaintiff in the Suit pending before the Dehradun Court are not specific to the domain name "[www.quantumuniversity.edu.in](http://www.quantumuniversity.edu.in)". The Respondent/Plaintiff has sought the following reliefs in the Suit:
- a) *That Defendant and the so called business run under the name and style of Quantum University and his associates, his allied/cognate Educational Services be restrained not to interfere and infringed the business name of the plaintiff No. 2, and not to give threats to the plaintiff and the notice dated 17-05-2018 of the defendant, is illegal, void, inoperative and does not give any cause of action to the defendant.*
  - b) *That any other or further relief which can be granted in favour of plaintiff and against the defendant.*
  - c) *That full cost of the suit be granted in favour of the plaintiff and against the defendant.*
27. The judgement in the case of **CITI Corporation and Another vs. Todi Investors [2006(4) Arb.LR.19]** and **Beiersdorf A.G. v Ajay Sukhwani & Anr., 156 (2009) DLT 83 (156 (2009) DLT 83)** of the Delhi High Court which dealt with the exclusion of civil court's jurisdiction in case of a Suit for the injunction of trademark and passing off followed by the Defendant's application for rejection of the plaint is of no help to the Respondent as the suit filed in Dehradun Court does not advert to the disputed domain name. Hence the Respondent's contention regarding the matter being "sub-judice" or that the pendency of the suit is likely to have any bearing on the present arbitration proceedings is rejected.
28. Further, the Respondent has not placed on record any Orders passed in the Civil Suit proceedings indicating the stage or present status of the Suit pending before the Dehradun court. Rather to the contrary, the documents filed by the Complainant along with its Rejoinder containing the online case status (Exhibit C-25) show that the Respondent has till date not taken steps to serve the Complaint/Defendant. Additionally, the Respondent in its Written Defence (at para 45 at page 14) has also stated that the Suit for a permanent injunction has been decreed in favour of the Respondent.



29. The Respondent's contention regarding the present arbitration likely to result in parallel or contradictory proceedings is devoid of any merit. Respondent has been unable to show that the matter of the domain name in the arbitration is the subject matter of the Suit proceedings.
30. Accordingly, the Arbitral Tribunal holds that there is an "Arbitration Agreement" under Section 7 of the Arbitration Act. The Courts at Delhi have jurisdiction to entertain the present dispute. The Arbitrator has jurisdiction to proceed with the present Arbitration and has duly complied with the requirement of Section 12 and 23 of the Arbitration Act read with the Policy. The Respondent's contention that the Arbitrator has committed contempt of court by issuing notice is legally invalid.
31. The Arbitral Tribunal has dealt with Respondent's preliminary objection regarding jurisdiction now proceeds to deal with the merits of the respective case set forth by Complainant and Respondent.
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 un-rebutted 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.quantumuniversity.edu.in](http://www.quantumuniversity.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](http://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](http://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](http://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](mailto:chairman@quantumeducation.in). This contention of the Complainant remained unrebutted.



48. The Respondent has contended that the Respondent has registration under the Copyright Registration Act and is using the word "Quantum" since 2006. The Respondent's contention regarding registration of the word "Quantum" does not advance the Respondent's case as the present dispute pertains to the trademark/service mark "Quantum University". Admittedly, the Respondent does not have such registration rights in respect of "Quantum University". The Complainant has applied for registration of trademark under the Indian Trademarks Act, 1999 for "QUANTUM UNIVERSITY" in Class 41 which pertains to education; providing of training; entertainment; sporting and cultural activities. The Respondent by its application no. 1838522 dated 10 July 2009 applied for trademark under the Trademarks Act, 1999 limited to the trade name "QUANTUM". The Complainant has opposed the said application submitted by the Respondent before the Trademarks Registry and filed its objections to the Respondent's said application which is pending adjudication.
49. The Tribunal is of the view that the evidence placed on record by the Complainant regarding usage of the trade names "Quantum University" through 45 domain names all over the world including India clearly establishes that Complainant has been using the trade name "Quantum University" and has legitimate interests in respect of the same. The Complainant substantiated its prior registration by placing on record the registration of the trade name "Quantum University" with the Business Registration Division, Department of Commerce and Consumer Affairs, since 02 October 2009.
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](http://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.
56. The Respondent has further contended that the Complainant vide Exhibit C-6 has itself admitted that the Complainant was incorporated under the name of



"International Quantum University for Integrative Medicine INC" and is falsely using the short form as Quantum University. The Respondent's contention in this regard is misplaced as the Complainant was incorporated in 2007 and since then, 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 October 2009. Furthermore, the Complainant has placed evidence on record regarding usage of the trade names "Quantum University" through 45 domain names all over the world including India clearly establishes that Complainant has been using the trade name "Quantum University" and has legitimate interests in respect of the same. The Respondent on the other hand has admitted in Paragraph 24 of its Written Defence that the Respondent applied for the website "quantumuniveristy.edu.in" only in January 2018.

57. The Tribunal does not find any merit in the Respondent's contention that Complainant is situated in an area in Hawaii which is covered in educational line by "Hawaii Post Secondary Education Authorization Program" and despite the same Complainant is not even listed in the list of Authorized Schools published by the Hawaii Post Secondary Education Authorization Program. The fact that Complainant is not listed in the list of Authorized Schools published by the Hawaii Post Secondary Education Authorization Program is not an issue being adjudicated upon in the present proceedings. The Respondent has been unable to place documents or evidence on record that the non-listing of the Complainant in the list of Authorized Schools has resulted in any action by the competent authorities in Hawaii or any legal consequences or restraining order against the Complainant from offering courses in the context of the Policy.
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 to 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".
60. The Respondent's contention that in all communications that the Respondent does in the form of advertisements, website, application, it clearly mentions the location/Country of its business is of no relevance as the issue involved in the present arbitration relates to the domain name "[quantumuniversity.edu.in](http://quantumuniversity.edu.in)" and the confusion regarding the use of the trade name "quantumuniversity".
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".

62. The Respondent's contention that the name of the Complainant is "International Quantum University for Integrative Medicine INC" and that the word INC shows that the same is a company and not a University is devoid of any merit. The incorporated structure of the Complainant is not the subject matter of the present proceedings and has no relevance to the issues involved in the present arbitration. The Tribunal notes that the aforesaid contention does not advance the Respondent's defence as the Respondent has not denied that the Complainant has been providing online courses.
63. The Tribunal is of the view that the Respondent has not been able to rebut the fact that the Complainant was incorporated in 2007 and since then, it 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 October 2009. The Respondent has not placed any evidence or documents on record in support of its contention that the Quantum University Act was tabled before the Legislative Assembly of Uttarakhand in 2016, during the period when the trade name "Quantum University" expired.
64. The Tribunal is of the view that the Respondent's contention that its website does not and cannot result in any confusion or deception to the Internet users is bereft of merit. The documentary evidence placed on record by the Complainant clearly reveals the confusion over the disputed domain name. As noted above All India Council for Technical Education also could not distinguish between the domain names quantumuniversity.com and quantumuniversity.edu.in. One Prof. Saini who was intending to correspond/communicate with the Respondent marked e-mails to the Complainant at "vicechancellor@quantumuniversity.com" alongside the Respondent at [chairman@quantumeducation.in](mailto:chairman@quantumeducation.in). This has been adverted by the Respondent in its Reply at page 28. The evidence reveals that even professors who are otherwise familiar with the Respondent are also getting confused due to the domain names being identical. The Tribunal is also mindful of the fact that the Complainant has marketed, advertised and promoted their trade name all over



the world including India through 45 registered internet domain names having the word "Quantum University". The domain names in question are not only similar but both the Complainant and the Respondent have the same service mark and are engaged in providing the same service i.e. online educational courses, which adds to the confusion. Hence, the Respondent's contention that the website would not result in any confusion or deception is misplaced and stands rejected.

65. The Respondent's contention that the Complainant has failed to establish that it is achieved any sort of "success" and has till date not even been able to ensure accreditation by the recognized accreditors is of no relevance in the present proceedings. The contentions raised by the Respondent in this regard have been considered by this Tribunal. Even if it were to be assumed that the Complainant started using the website "quantumuniversity.com" only after March 2017, the same in itself does not help the case of the Respondent as admittedly the Respondent applied for the website "quantum university.edu.in" only in January 2018 after it was granted university status by the legislature.
66. The Tribunal is of the view that the Respondent's contention that its website clearly signifies that the University of the Respondent has its campus in India and thus there is no overlapping of services is misplaced on account of the deceptive similarity in the domain name being used by the Complainant and the domain names held by the Respondent with the mark/ trademark/ service name "quantumuniversity". Hence the Respondent's contention in this regard is rejected.
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](http://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.





68. The Respondent has also alleged that the Complainant is offering degree programs with durations e.g., Bachelor's degree in one year, masters for half to one year or granting of doctorate degree in one to two years or PhD in one year which is in clear violation of the degrees recognized by the UGC under section 22 of the University Grants Commission Act 1956. The issue of Complainant possessing UGC recognition in the context of the impugned domain name is not a relevant consideration under the Policy, consequently, Tribunal does not find any merit in the Respondent's contention that the Complainant is offering degree programs in violation of the degrees recognized by the UGC.
69. The Complainant and the Respondent have relied on online sites such as Alexa ratings, archive.org and Google to indicate the online traffic to show who is more well known. The Tribunal has considered the rival contentions of both the Complainant and the Respondent in this regard and is of the view that these submissions do not advance the respective cases of the parties.
70. The Respondent has placed reliance on case laws in support of its defence. Respondent has not mentioned the legal proposition sought to be advanced or the applicability of the case law to its defence. Respondent has merely reproduced several paragraphs from the case laws.
71. Respondent has firstly relied on **CITI Corporation and Another vs. TODI Investors, 2006(4) ARBLR 19**. The Delhi High Court in the aforesaid decision held that INDRP does not oust the jurisdiction of the High Court to deal with the suit for permanent injunction. The decision is distinguishable and inapplicable to the present case. It is not the case of Complainant that the jurisdiction of the civil court is ousted. The Tribunal has already held that held the subject matter of the suit is different from the dispute being adjudicated by this Tribunal and hence the said case has no applicability.
72. The Respondent has thereafter relied on **Banyan Tree Holding (P) Limited vs. Murali Krishna Reddy & Anr., 2010 (42) PTC 361 (Del), Westin Hospitality Services vs. Caesar Park Hotels and Resorts CPHR 1998 (3) CTC 149 and Reckitt and Colman vs Borden (1990) RPC 341**. However, all of the aforesaid case laws relate to passing off and do not relate to a domain name dispute. Thus, the said case laws are clearly distinguishable and have no applicability to the facts of the present case.
73. The Respondent has also sought to rely on **The Perfect Potion vs. Domain Administrator, Case No. D2004-0743**. The said decision is distinguishable as the Respondent in the aforesaid case had never heard of the Complainant and





furthermore Complainant failed to prove that the Respondent has no legitimate interests in respect of the Domain Name. The said case is thus clearly distinguishable as the Respondent has not rebutted the assertion of the Complaint that the existence of the domain name of the Complainant was in existence and the same was to the knowledge of the Respondent.

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](http://www.quantumuniversity.edu.in)" is identical to the Complainant's trademark, 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.
75. The Respondent has also relied on **Interseller Starship Services, Ltd. vs. Epix Inc., United States Court of Appeals, Ninth Circuit 304 F. 3d 936 (9<sup>th</sup> Cir. 2002)**, is distinguishable. The aforesaid case discussed the concept of likelihood of confusion including initial interest confusion and held that actionable initial interest confusion is determined in large part by the relatedness of the goods offered and the level of care exercised by the consumer. The decision concluded that Interseller's products were extraordinarily different from Epix's digital imaging products. The said decision is distinguishable and not applicable to the present case as 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 and there exists confusion on account of the confusingly similar domain name as established from the evidence placed on record by the Complainant.
76. The Respondent has sought to place reliance on **Bastyr University vs. G N S Dauphin Revant, Case No. D2002-0574**, as in the aforesaid decision it was held that Complainant's evidence fell short of proving that the impression its name made was strong enough or known widely enough that Respondent should be



expected to be aware of it. In particular, there was no evidence either that Complainant publicized its services or received publicity in Oregon (where Respondent is located), or that it offered or promoted its services to audiences outside its field of naturopathic medicine. Therefore, this panel cannot conclude that Respondent should have been aware of Complainant when the domain name was registered. The aforesaid decision is distinguishable as the Respondent, does not dispute in its Written Defence, the Complainant's 45 registered domain names with "quantumuniversity" and the knowledge of the same.

77. The Respondent has relied on **Beiersdorf A.G. vs. Ajay Sukhwani and Anr. 156 (2009) DLT 83**, is distinguishable and not applicable to the present case as it relates to a case of passing off. The Respondent has relied upon certain paragraphs in the judgment wherein the Delhi High Court has held that civil suit is maintainable before and after administrative proceedings. The said judgment is inapplicable as the Tribunal has is not passing any order on the maintainability of the civil court initiated by the Respondent. The Tribunal notes that the Delhi High Court in the aforesaid judgment dealt with Defendant's contention that Plaintiff failed to produce any member of the public, who was actually deceived or mislead and, therefore, misrepresentation and deception has not been established. The High Court held that misstatement or deception has to be judged keeping in mind consumers of services or goods of the defendant. The standard applied is not of a vigilant consumer but an unwary normal consumer of the products or services offered by the defendants. Further, the test is not only deception but the likelihood of deception. Question of misrepresentation requires examination of the two words/marks or labels to find out whether a purchaser of defendants' articles/services can be deceived or is likely to be deceived or mislead. This is decided by noticing the distinctive features used by the plaintiff in his mark, name, label, etc. and whether there is a resemblance of the identity of the said distinguishing features in the mark, name or label, etc. of the defendants. A normal consumer is a man of imperfect recollection and the test is whether, considering the similarities between the two marks, a consumer is likely to get confused or mislead.

#### **Requisite conditions of paragraph 4 of the Policy**

78. On a careful consideration of the submissions and contentions of the parties, the Tribunal now proceeds to deal with the three requisite conditions stipulated in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy which is listed below.



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

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](mailto: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<sup>1</sup>, 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,

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<sup>1</sup> Paragraph 3 of the INDRP:

**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 and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.



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](http://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](http://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.

## **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.**

Place of Arbitration: New Delhi

Date: 4<sup>th</sup> May 2021



**Robin Ratnakar David**

Sole Arbitrator

The Arbitral Tribunal