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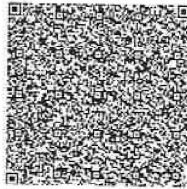
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ARBITRATION AWARD .IN REGISTRY

(C/O National Internet Exchange of India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <KASHMIRHARVARD.EDU.IN>

INDRP Case No: 1660

In the matter of:

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

Complainant

vs

KASHMIR HARVARD EDUCATIONAL INSTITUTE

Respondent

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Binny Kalra

**ARBITRATION AWARD
.IN REGISTRY**
(C/O NATIONAL INTERNET EXCHANGE OF India)
Before the Sole Arbitrator, Binny Kalra

Disputed domain name < **KASHMIRHARVARD.EDU.IN** >

In the matter of:

PRESIDENT AND FELLOWS OF HARVARD COLLEGE
124 Mt. Auburn Street, Suite 570 – N
Cambridge, MA 02138
United States of America

Complainant

v.

Kashmir Harvard Educational Institute
4RVH+4QV, Habak, Nasim Bagh,
Srinagar
Jammu and Kashmir 190023

Respondent

Email: kashmirharvardschool@gmail.com

INDRP Case No. 1660

1. The Parties:

The Complainant is identified as President and Fellows of Harvard College, a Charitable and educational corporation organized and existing under the laws of the Commonwealth of Massachusetts, USA (hereinafter 'Harvard'). The Complainant is represented in these proceedings by its attorneys, M/s Aggarwal Associates, having their address at N 17, Jangpura Extension, New Delhi 110014, India. The Respondent is identified as Kashmir Harvard Educational Institute having a registrant name Tariq Ahmad Baktoo and Tech name Arshid Ahmad. The Respondent information provided includes the email addresses kashmirharvardschool@gmail.com and arshid.ahma@kashmirharvard.org.



2. The domain name, Registrar, and Policy:

The disputed domain name is < **kashmirharvard.edu.in** > (hereinafter referred to as the "Disputed Domain Name"). The Registrar for the Disputed Domain Name is identified by NIXI as ERNET India, Ministry of Electronics & IT, 5th Floor, Block-I, A Wing DMRC, IT Park, Shastri Park, New Delhi 110053 IANA ID: 800068 with the email address helpdesk@domain.ernet.in per the WHOIS details.

The present arbitration is being conducted in accordance with the Arbitration and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

3. Procedural history:

- 8 February 2023: The .IN Registry transmitted information of appointment of the arbitrator and circulated the complaint and its annexures to the parties.
- 9 February 2023: Statement of acceptance along with a declaration of impartiality and independence sent to the .IN Registry by the arbitrator
- 9 February 2023: Notice of commencement of arbitration proceedings was sent by the Panel to the parties and a period of 15 days, until 25 February 2023, was given to the Respondent to submit a statement of defense
- 27 February 2023: Since no response was received from the Respondent it was deemed to have forfeited its right to file a statement of defence. The award was reserved.

4. Complainant's case:

The Panel notes that the complaint seems to run into more than 5000 words, beyond the prescribed word limit for complaints filed under the INDRP. The

complaint is based on the reputation of the trademark HARVARD which is also registered in favor of the Complainant in several classes in India. The disputed domain name fully incorporates the trademark HARVARD of the Complainant. The exhaustive submissions of the Complainant in its complaint are paraphrased and summarized below.

- i. The Complainant / Harvard was established in 1636 and first used the HARVARD mark in 1638 for educational services. It is the oldest institution of higher learning in the United States and enjoys a reputation throughout the world as a premier educational and research institution. Printouts from Harvard's website www.harvard.edu are attached at Annexure A.
- ii. Harvard is comprised of several well-known schools, including but not limited to Harvard Law School, Harvard Business School, Harvard Medical School, the Harvard Kennedy School, and Harvard T. H. Chan School of Public Health, as well as the undergraduate school, Harvard College.
- iii. Though Harvard's physical campus is in Cambridge, Massachusetts, its impact, fame, and services are global. Over 30 heads of state have graduated from Harvard University, including eight Presidents of the United States, and its faculty has produced 49 Nobel Laureates and 48 Pulitzer Prize winners.
- iv. Harvard presently has over 371, 000 living alumni and alumnae that are located in 202 countries. Approximately 185 Harvard Clubs for alumni and alumnae are located in more than 70 countries. Harvard X, a distance education program, has produced online learning experiences that have reached more than 1,600,000 students from 195 countries as of 2014. Harvard supports numerous student organizations and departments in various fields, such as public service, health and wellness, and peer counseling, for the benefit of the Harvard community. One such department is Harvard Public Affairs & Communications. Complainant relies on Annexures A, B, C, D and E.
- v. There are many successful Indian alumni of the Harvard Business School. A well-known Club, by the name of HARVARD ALUMNI CLUB, has been functioning in India for more than 20 years. Harvard scholars also work on research projects and partnerships in India. Hundreds of Indian alumni subscribe to the well-known Harvard Magazine.



- vi. Harvard, including its various schools, maintains a global presence through numerous websites such as www.harvard.edu (Annexure A), and social media accounts that are frequented by users worldwide, such as www.facebook.com/Harvard (over 5.5 million "likes"), <https://twitter.com/Harvard> (over one million followers), and <https://twitter.com/HarvardBiz> (over 5.5 million followers). Harvard also owns domain name registrations on various levels which contain the term HARVARD.
- vii. Since 1989, the Harvard Trademark Program, operated under the Office of the Provost, has established a worldwide enforcement and licensing program for the HARVARD Marks. The global retail sales of licensed goods branded with the HARVARD Marks generate tens of millions of dollars per year. Information about the Harvard Trademark Program is attached at Annexure F.
- viii. Harvard is consistently ranked as a top university in the United States and throughout the world:
- It is ranked in the annual survey of the "Best Colleges in America" since 1990 (Annexure G).
 - It has also been ranked first as the "Best Global Universities Rankings" in U. S. News and World Report's for the years 2015 through 2019 editions when the ranking was published (Annexure H).
 - the HARVARD mark is consistently ranked as being the most powerful global university brand in The Times Higher Education's World Reputation Rankings (Annexure I),
- ix. As such the Complainant is the first adopter and continuous and extensive user of its mark / name HARVARD for educational activities and the mark HARVARD has come to be associated worldwide with the Complainant alone and no one else and stands for high- quality services of the Complainant. The Complainant has built vast and enviable reputation and goodwill in the mark.
- x. Harvard owns approximately 750 trademark registrations for marks that contain the mark HARVARD, covering many classes, throughout the world. A list of registrations along with some copies of registration certificates are adduced as Annexure J.



- xi. In India the Complainant has the following registrations:

Registration No.	Trademark	Class
824285	HARVARD BUSINESS REVIEW	16
1301756	HARVARD	41
1303894	HARVARD	09
1302475	HARVARD VERITAS SHIELD DESIGN	41
1241784	HARVARD VERITAS SHIELD DESIGN	42
1241786	Harvard Medical International & Line Design (logo)	42
1241787	Harvard Medical International & Line Design (logo)	41
1221606	Harvard Medical International & Line Design (logo)	16
1378489	Harvard Graphics	09
1493805	Harvard Business School Publishing House	16
1493806	Harvard Business Review – South Asia	16
1493805	Harvard Veritas Shield	14, 16, 18
1302475	Harvard Veritas Shield Design	41
1594962	Harvard	28
1426603 and 1426604	Harvard Dental International	41 and 42

- xii. The mark HARVARD has been declared as a famous and well-known trademark by the Republic of the Philippines Supreme Court, Abu Dhabi Federal Court, Higher Council of Examination and Evaluation in Turkey, United States District Court, African Organization of Intellectual Property, Taipei Administration Court, and the Ecuadorian Institute of Intellectual Property.

Binay Kalia

- xiii. The Complainant has been vigilant about its rights and filed cases in India including suit No. 1061/2002 and suit No. 948/2004. The Complainant had also issued a Caution Notice in the Economic Times and The Times of India to inform the general public about their ownership of the name/Mark HARVARD and deter any misuse thereof. An application for declaration of HARVARD as a well-known mark in India is pending with the Trademarks Registry.
- xiv. Complainant relies on decisions of courts and tribunals, including UDRP panels that have found the HARVARD Marks famous, e. g.,
- President and Fellows of Harvard College v. Matthew Hoss, FA 1746089 (Nat. Arb. Forum Sept 25, 2017) (referring to the HARVARD mark as "famous");
 - President and Fellows of Harvard College v. Halil CIL / Union of Brands, FA 1645647 (Nat. Arb. Forum Dec. 18, 2015) (stating that Complainant's "reputation is ubiquitous");
 - President and Fellows of Harvard College v. Texas International Property Associates, D2008- 0597 (WIPO July 7, 2008) (referring to the HARVARD mark as "famous");
 - President and Fellows of Harvard College, Harvard Business School Publishing Corporation v. LeEl Technology. com, D2007- 1536 (WIPO Dec. 7, 2007) (referring to the "HARVARD BUSINESS REVIEW and other HARVARD- formative marks" as "well-known and famous");
 - President and Fellows of Harvard College v. Nikolay, D2005- 0120 (WIPO May 16, 2005) (referring to the HARVARD mark as a "distinctive and famous mark" and ordering transfer of harvardgirlschoo.com);
 - President & Fellows of Harvard College v. World Capital Market, Ming Xu, D2013- 1982 (ordering transfer of harvardgi.org).

Copies of decisions in these domain name disputes are adduced as Annexure K.

5. Respondent's case:

Despite being served with a notice of the Arbitration Proceedings in respect of the Disputed Domain Name and having been granted adequate time to respond, the Respondent has failed to submit any response, communication or evidence to the Panel in this matter.



6. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant needs to establish the following elements to succeed:

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

7. Discussion and findings:

The Panel has gone through the complaint and annexures submitted by the Complainant. The three elements that the Complainant must satisfy to succeed in the Domain Name Dispute are discussed below.

A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <kashmirharvard.edu.in>. The Complainant has shown that it has rights in the trademark / name HARVARD by virtue of:

- i. prior adoption and continuous use of the distinctive trademark HARVARD.
- ii. trademark registrations of HARVARD and formative marks in India, and other countries;
- iii. ownership of domain names consisting of the mark/name HARVARD.
- iv. a widespread network of Harvard alumni including in India.
- v. enforcement of its rights in the HARVARD Mark and successful transfer / cancellation of unauthorized domain names containing the mark HARVARD;
- vi. goodwill and reputation of the HARVARD Mark as reflected in its rankings, successful alumni, recognition of HARVARD as a well-known trademark in some jurisdictions

The Disputed Domain Name wholly contains the Complainant's mark along with the prefix 'Kashmir'. The mere prefixing of a geographical name to a distinctive mark like HARVARD does nothing to distinguish the Disputed Domain Name from the Complainant's trademark or name and obviate confusion. Since the field of activity of the Respondent is presumably education services, given the domain extension **edu.in**, any attempt to cause confusion by the use of a confusingly similar name must be prevented to protect a vulnerable section of the public, namely students. It is common knowledge that online educational courses are widely subscribed in the present day and age, and can be a lifeline for many students. Therefore even the slightest possibility of confusion being caused by the misrepresentation of a possible connection with an established and reputed educational institution must be avoided.

In this regard it is pertinent to quote from the decision of the hon'ble Delhi High Court in *Ritnand Balved Education Foundation v Ranchhod M. Shah & Ors.*, (2018) 76 PTC 439:

"25. It is a settled position under Trademark law that this area of law is meant to protect not just the rights of the owners, but also to avoid any confusion from being caused amongst the members of the public. There is no doubt that AMITY INTERNATIONAL SCHOOL of the Plaintiff is well known, and there are several branches of the said school. The use of an identical name by the Defendants would not merely confuse the students and parents but also those persons who wish to collaborate with the Defendants. There would be no way of knowing as to whether the AMITY INTERNATIONAL SCHOOL of the Defendants is the same as that of the Plaintiff or not. The area of operation i.e. education is one such area in which any chance of confusion should be completely avoided. This is because schools, universities and colleges have very expansive activities and operations. Students studying in educational institutions participate in events, competitions, cultural festivals, and sports meets across the country. The use of identical names for two schools, completely disconnected from each other, would result in enormous confusion

and could also result in having a damaging effect on careers of children. The chances of mistaken identities are very high and especially in the educational field, such confusion ought to be avoided.

28. The present dispute is restricted in its relief against the 'AMITY INTERNATIONAL SCHOOL' run by Defendant No. 5 - Gyanoday Medical and Educational Trust. ... It is pleaded in the written statement that Defendants No. 1 to 4 are educationists. If that is so, then the reputation of the Plaintiffs schools ought to have been are (*sic*) within their knowledge owing to the large scale publicity undertaken by the Plaintiff under the name AMITY.

29. While the words 'INTERNATIONAL' and 'SCHOOL' could be descriptive/generic in nature when taken on a standalone basis, when taken in conjunction i.e. 'AMITY INTERNATIONAL SCHOOL', the name is absolutely identical to the name of the Plaintiff's school. **In a passing off suit, confusion and deception has to be avoided at all costs. This would apply with greater force in the field of education.**" (Emphasis supplied)

Further, the court held:

"30. Thus, the Defendants are not the prior users of the mark and name 'AMITY INTERNATIONAL SCHOOL'. The Plaintiff has established its prior rights in the name 'AMITY INTERNATIONAL SCHOOL'."

In *British School Society v Sanjay Gandhi Educational Society and others* (2022) 91 PTC 255 it was held by the hon'ble Delhi High Court:

"34. ...

(iii) "The British School" is an essential feature of the mark of the plaintiff. The adoption of the said mark by the defendant shall infuse confusion in the minds of the students as also their parents who may act under the impression that the defendant is connected to the plaintiff.

...



Thus, the facts of the case do show the plaintiff adopted the mark The British School in the year 1963 and hence, there has been an exemplary long use of this name i.e. for about 58 years; the plaintiff alleges of earning revenue in crores of rupees and likewise is its expenditure in lakhs on promotion. Admittedly the defendant adopted its mark in the year 2005 and never explained as to why it adopted this name or that the defendant was never aware of the mark of the plaintiff, prior to its own registration. The British School is an essential feature of the mark of the plaintiff and its adoption by the defendant shall certainly infuse confusion in the minds of the students as also their parents as they shall believe the defendant has connection with the plaintiff and thus, the defendant shall ride upon the goodwill of the plaintiff. Being a prior user and adopter, the plaintiff is entitled to get the defendant restrained to use the mark deceptively similar of plaintiff's mark irrespective of the fact the defendant got its mark registered prior in time. The mark of the defendant when compared as a whole with the mark of plaintiff it certainly shall create confusion, especially, when both are in identical field viz. educational. The similarity in the name shall certainly cause damage not only to the career of students but also to the reputation of the plaintiff."

These decisions apply squarely to the present dispute.

For the above reasons, the Panel finds that the Disputed Domain Name is identical to the trademark HARVARD in which the Complainant has rights and that it can create confusion.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

The Panel has earlier noted that the Respondent has not submitted a statement of defense to establish a bona fide offering of goods or services under the Policy. The Panel takes into consideration the following submission of the Complainant to establish that the Respondent cannot prove any of the circumstances outlined in



Clause 6 of the INDRP Policy:

- i. The Respondent is not the owner or beneficiary of the HARVARD trademark that is identical/part of the disputed domain name.
- ii. Respondent's use of the disputed domain name is not in connection with a bona fide offering of goods or services and has adopted the Complainant's well-known trademark just to trade upon the reputation of the Complainant;
- iii. Respondent has not been commonly known by the name of HARVARD which is part of the disputed domain name; and
- iv. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without the intention of commercial gain by misleading or diverting consumers or to tarnish the Trademark or Service Mark at issue. Accordingly, Respondent cannot demonstrate it has rights or a legitimate interest in the disputed domain name for the purposes of the INDRP Policy (Rule 6 (a), (b) and (c)).

The Panel finds no material to suggest that the Respondent has any rights or legitimate interests in the Disputed Domain Name containing the mark / name HARVARD as an essential part thereof. It is also noted that there is no submission in the complaint or any document on record to the effect that the Disputed Domain Name is being used in relation to actual services. The intention of the Respondent to misrepresent itself as affiliated with the Complainant is presumed since the Respondent does not appear to have adopted /used the disputed domain name in connection with a bona fide offering of goods or services but to trade upon the reputation of the Complainant in its well-known trademark HARVARD.

The Respondent has not participated in these proceedings and submitted its defence if any. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Whether the Disputed Domain Name has been registered or is being used in bad faith

The Panel accepts the Complainant's submission that the Respondent does not have any legitimate rights in the Disputed Domain Name since it can neither claim



any proprietary right in the word KASHMIR which is a geographical name and cannot be protected as a mark, nor can it claim rights in the trademark HARVARD which is owned by the Complainant. The Respondent has not sought a license or permission of the Complainant to use its reputed HARVARD Mark. The adoption and use of an identical mark as a part of the Disputed Domain Name by the Respondent will inevitably pass off its services, if any, as those of the Complainant and deceive Internet users into believing these to be affiliated with the Complainant. The Panel also accepts the Complainant's submission that the Respondent is not using the Disputed Domain Name for any legitimate noncommercial use or fair use. Given that the Complainant's HARVARD mark has been used for over 300 years and is widely known, it is reasonable to presume that the Respondent registered the domain name in bad faith. The bad faith is further evident from the name of the Respondent seen in the WHOIS data, i.e. Kashmir Harvard Educational Institute and the email addresses it has provided, i.e., kashmirharvardschool@gmail.com and arshid.ahma@kashmirharvard.org.

The Panel can also determine on first principles that the Respondent's choice of the Disputed Domain Name appears deliberate and not coincidental, given the inherently distinctive nature of the trademark HARVARD and the Complainant's registrations in India that are a matter of public record. The Respondent has clearly sought to take undue advantage of the Complainant's trademark to create a false impression that it is affiliated with the Complainant in some manner. Such conduct gives rise to a presumption of bad faith.

It is instructive to refer to paragraph 3.1.4. of the WIPO Overview which states:

"panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

A handwritten signature in blue ink, appearing to read "Binay Kalia".

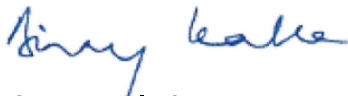
In view of the factors discussed above, the Panel finds that the Disputed Domain Name has been registered in bad faith.

Decision:

In conclusion, the Panel finds that the Complainant has succeeded in making a case for transfer of the Disputed Domain Name by meeting the criteria under paragraph 4 of the Policy.

The Panel directs that the disputed domain name < **kashmirharvard.edu.in** > be transferred to the Complainant.

Signed:



(Binny Kalra)

Arbitrator

Date: 4 April 2023