



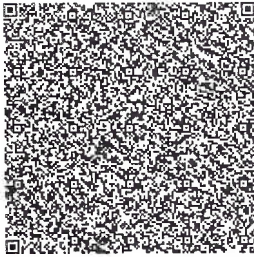
सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL59646139015937Q
Certificate Issued Date	: 02-Aug-2018 02:49 PM
Account Reference	: IMPACC (IV)/ dl916803/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL91680323535727147537Q
Purchased by	: LUCY RANA
Description of Document	: Article Others
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: LUCY RANA
Second Party	: Not Applicable
Stamp Duty Paid By	: LUCY RANA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER .IN DISPUTE RESOLUTION POLICY  
(Appointed by .IN Registry- National Internet Exchange of India)

#### ARBITRATION AWARD

Disputed Domain Name: <UNI-ASSIST.IN>

IN THE MATTER OF:  
uni-assist e.V.  
Geneststr. 5, 10829  
Berlin, Germany

...Complainant

-----versus-----

Ranadeep Ghosal  
M-7, Ground Floor,  
Old DLF Colony,  
Sector 14, Gurgaon,  
Haryana, India.

.....Respondent

*Drang*

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

### 1. The Parties

The **Complainant** in this arbitration proceeding is **uni-assist e.V.**, of the address Geneststr. 5, 10829 Berlin, Germany.

The **Respondent** in this arbitration proceeding is **Ranadeep Ghosal**, an individual, having address at M-7, Ground Floor, Old DLF Colony, Sector 14, Gurgaon, Haryana, India.

However, the Respondent has informed vide his Reply dated June 28, 2018 that his present address is: K404, BPTP Princess Park, 4<sup>th</sup> Floor, Saidham Sector 86, Faridabad, Haryana, India.

### 2. The Domain Name, Registrar and Registrant

The present arbitration proceeding pertains to a dispute concerning the registration of domain name <**uni-assist.in**> with the .IN Registry. The Registrant in the present matter is **Ranadeep Ghosal**, and the Registrar is **GoDaddy.com, LLC**.

### 3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated May 28, 2018, sought consent of Mrs. Lucy Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of her availability and gave her consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on May 29, 2018.

Thereafter, NIXI forwarded the soft copy of the Complaint, along with Annexures, as filed by the Complainant in the matter, to all Parties, including the Arbitrator vide emails dated June 05, 2018 and made the pronouncement that Mrs. Lucy Rana, in her capacity as Arbitrator, would be handling the matter.

The Respondent, Mr. Ranadeep Ghosal, confirmed receipt of the copy of the Complaint along with Annexures as filed by the Complainant in the matter vide email dated June 05, 2018.

The hard copies of the Domain Complaint along with Annexures as filed by the Complainant were received by the Arbitrator, and receipt thereof was confirmed vide email on June 06, 2018.

Thereafter, the Arbitrator, vide email dated June 06, 2018, informed the Respondent that as he has been duly served with the Complaint and Annexures thereto, as confirmed by him vide his email dated June 05, 2018, he is granted a period of **fourteen (14) days** from the date of receipt of the email in which to file a response to the Complaint in hard as well as soft copy and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter will be decided on the basis of material already available on record and on the basis of applicable law.

On June 21, 2018, the Arbitrator, vide email, informed NIXI of the expiry of the Respondent's deadline to respond to the Complaint on June 20, 2018 and noted that the Respondent had not filed or communicated a response in the matter within the aforementioned deadline. The Arbitrator requested NIXI to confirm that it had not received a response in this regard from the Respondent within the aforementioned deadline.

NIXI confirmed vide email dated the same day (i.e. June 21, 2018) that it had not received a response in this regard from the Respondent within the aforementioned deadline.

In view thereof, the Arbitrator, vide email dated June 22, 2018, addressed to the Respondent brought it on the record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on June 20, 2018, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** within which to submit a response (if any) in the matter.

Thereafter, on June 28, 2018, the Respondent, Mr. Ranadeep Ghosal, submitted a response to the Complainant's domain complaint as filed for the attention of the Arbitrator, due receipt of which was confirmed by the Arbitrator vide email dated June 29, 2018 wherein also the Complainant was granted **fourteen (14) days** from the date of receipt of the email within which to submit a suitable rebuttal thereto (if any).

Counsel for the Complainant, vide email dated July 13, 2018, duly submitted their statement of rebuttal on behalf of the Complainant for the attention of the Arbitrator, due receipt of which in both soft and hard copy was confirmed by the Arbitrator vide email dated July 17, 2018 wherein the Respondent was also granted a period of **seven (7) days** within which to submit a response to the Complainant's rebuttal (if any). Further, the parties were informed vide the same email that no further submissions would be entertained from either party thereafter.

The Respondent vide email dated July 24, 2018 submitted his counter-reply to the Complainant's rebuttal in soft copy receipt of which was duly acknowledged by the Arbitrator vide email dated July 25, 2018. Arbitral proceedings regarding the present matter were closed vide the same email and the Arbitrator reserved the arbitral award to be passed on the basis of facts and documents available on the record.

#### **4. Factual Background**

The Complainant has submitted that it is a non-profit organization registered under the laws of Germany. That it was founded in the year 2003 as an association of 41 German universities. That the association is headquartered in Berlin and is currently supported by over 180 German universities. That the Complainant processes approximately 300,000 student applications from over 180 countries and regions worldwide every year. That the Complainant guides students through every step of the application process to the said universities.



The Complainant has submitted that it owns the distinctive mark

 **assist**

Arbeits- und Servicestelle für  
internationalisierte Studienbewerbungen e.V.

in Germany vide (national) registration number DE302016224204 in classes 35, 41 and 42 in respect of the following services:

*“Administrative data processing; data processing; office administration [for others]; compilation of computer databases; data compilation for others; clerical services” in class 35; “Analyzing educational tests scores and data for others; recording services; educational services provided by institutes of higher education; higher education services; providing computer-delivered educational testing and assessments; educational testing, provision of educational examinations” in class 41; and “Quality checking and testing” in class 42. That the said registration was granted on October 19, 2016 and is still valid and subsisting.*

The Complainant has annexed documents evidencing the registration of trademark

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under German national registration number DE302016224204 as **Annexure-B**.

The Complainant has submitted that it is also the owner of the domain name (German ccTLD) <**uni-assist.de**> the registration of which it obtained on December 06, 2003 and which is still valid and subsisting.

The Complainant has annexed documents evidencing its registration of the said domain name as **Annexure-C**.

The Complainant has further submitted that the website as hosted on the aforesaid domain is widely accessed by huge numbers of students seeking admission into German universities and has gained immense popularity since its launch in 2003. That the said website offers assesment of foreign school and university certificates and determines their equivalence of German educational standards to facilitate university applications. That the website under the said domain name also offers a central point of contact for applying to a great number of universities and offers checking of individual entry

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requirements of the target universities. That the mark prominently displayed on the afore-mentioned website. is

##### **5. Complainant’s Submissions/ Contentions vide Complaint dated May 23, 2018**

The Complainant has submitted that it was the first to conceive, adopt, use and promote the mark/name “**uni-assist**” and the domain name <**uni-assist.de**>. That on account of long and extensive usage of the mark/name/domain name by the Complainant, the same are identified solely and exclusively with the Complainant and none other.

The Complainant has annexed documents evidencing use of the mark “**uni-assist**” by it over the years as **Annexure-D**.

The Complainant has submitted that it has invested substantial time, money and effort into promoting and advertising the name/mark “**uni-assist**” and that the reputation and

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goodwill primarily associated with the said name/mark is well earned and a result of continuous efforts and monetary investment by the Complainant.

The Complainant has annexed documents evidencing such advertisements/promotions over the years as **Annexure-E**.

The Complainant has submitted that the use of the word “**uni-assist**” on any leading search engine automatically reflects the webpage of the Complainant among the leading hits.

The Complainant has annexed relevant extracts from the search result page from the search engine Google.co.in for the search term “**uni-assist**” as **Annexure-F**.

The Complainant has submitted that by virtue of owning the legal rights in the trademark, domain name and corporate name comprising of “**uni-assist**”, and further having secured trademark and domain name registration therefor, the Complainant is the lawful registrant and user of the domain name and trademarks comprising of “**uni-assist**”.

The Complainant has submitted that the Respondent has registered a nearly identical/confusingly similar domain name- <**uni-assist.in**> with the .IN Registry. That the aforesaid domain name incorporates the Complainant’s popular, prior-used mark/name “uni-assist” and is nearly identical to the prior registered domain of the Complainant, i.e. <**uni-assist.de**>. Further, the Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant’s registered trademark in any manner.

The Complainant has submitted that on account of its extensive use and popularity of the name/mark “**uni-assist**”, the Respondent can have no plausible explanation for adoption of a domain name comprising the Complainant’s distinctive trademark. That the Respondent’s intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant’s name/mark “**uni-assist**”, trademark

The logo for uni-assist, featuring the word 'uni' in a small, sans-serif font above the word 'assist' in a larger, bold, sans-serif font.

Arbeits- und Beratungskolleg für  
mathematische Studiengänge e.V.

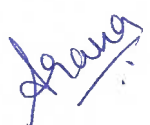
and domain name <**uni-assist.de**>.

The Complainant has submitted that the Respondent’s website on the impugned domain name, i.e. at [www.uni-assist.in](http://www.uni-assist.in), comprises a nearly identical/ confusingly similar mark

The logo for uni-assist, featuring the word 'uni' in a small, sans-serif font above the word 'assist' in a larger, bold, sans-serif font.

to that of the Complainant. That the Respondent is involved in the same business of providing consulting services and guidance to students applying to universities in Germany, using a nearly identical/ confusingly similar trademark and domain name. That therefore the Respondent’s intention is clearly to derive illegal profits by giving an indication of possible affiliation/association of the Respondent with the Complainant, thereby causing deception and confusion to the relevant public.

The Complainant has submitted that it will suffer incalculable harm and injury to its goodwill, reputation and business in general if the Respondent is allowed to maintain its domain name <**uni-assist.in**>. That the loss will not only be to the Complainant’s reputation but will also result in confusion and deception among the trade and public who shall have no reason to consider that a nearly identical domain name with the

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extension “.in” does not belong to the Complainant. That the trade and public may also assume that there exists a connection between the Complainant and the Respondent which is likely to further harm the reputation enjoyed by the Complainant.

The Complainant has submitted that it is a settled proposition of law that where there is copying, dishonesty ought to be presumed. That in the present case, copying by the Respondent is evident from its adoption of a nearly identical/ confusingly similar domain name and trade mark. That, furthermore, the Respondent's intention is clearly to take a free ride on the goodwill and the unique sales appeal that the Complainant's services under the name/mark “**uni-assist**” and domain <**uni-assist.de**> have achieved over a period of time.

The Complainant has submitted that the respondent has no rights or legitimate interests in respect of the domain name <**uni-assist.in**>, and that the reason behind adoption of a nearly identical/ confusingly similar domain name is only to reap in undue benefits from such unauthorized use, which is allegedly evident from the fact that the Respondent has copied the trademark as well as the domain name of the Complainant.

The Complainant has annexed a printed copy of an extract from the Respondent's website as **Annexure-G**.

The Complainant has submitted that the German Academic Exchange Service (DAAD), a German national agency, has also provided a warning on their official website with regards to misleading agencies which may be falsifying their true identity and the fact that they are affiliated with German universities. The Complainant has further submitted that while it is legitimately affiliated with the DAAD, the Respondent is likely to be one of the misleading agencies that the DAAD had warned about.

The Complainant has submitted that all three essential conditions as laid out under Paragraph 4 of the INDRP are satisfied in the present matter in favour of the Complainant and therefore the Complainant is entitled to transfer of the disputed domain name in its favour.

#### 6. Legal Grounds Submitted by the Complainant

The Complainant has submitted the following legal grounds for its complaint:

A. The domain name <uni-assist.in> is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights [INDRP, Para 4(i), Rules 3(b)(v), (b)(vi)(1)]

i. That the Complainant is the lawful proprietor of the mark

 **assist**

Assist - ist die Dienstleistung für internationale Studierende

/ “**uni-assist**”. That the said marks are symbols of dependability and reliability of the services in relation to which they are used and enjoys huge reputation among students. That the Respondent has registered a domain name that is nearly identical/ confusingly similar with the Complainant's name/mark “**uni-assist**”. That the Respondent is making calculated attempts to deceive the public which will lead to dilution of the reputation associated with the Complainant. That the disputed domain name being nearly identical/confusingly similar with the name/mark/domain name

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of the Complainant, the same is bound to cause the public to believe that the Respondent and its website are affiliated with the Complainant. That the gravity of the issue is heightened by the fact that a majority of the students, while applying to universities, look for information online. That therefore, the presence of the Respondent's website under the disputed domain name will mislead the students, who may believe the Respondent to be the Indian arm of the Complainant, and this may have an irreparable impact on their careers.

- ii. Owing to the aforesaid submissions, the Complainant has contended that it has established its prior adoption and use of the name/mark "uni-assist", and has also submitted sufficient evidence to establish its trademark rights in the mark

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. Therefore, the Complainant has contended that the conditions of **Paragraph 4(i)** of the INDRP have been satisfied in the present matter.

**B. The Respondent has no rights or legitimate interests in the domain name <uni-assist.in> [INDRP, Para 4(ii) and Rules 3(b)(vi)(2)]**

- i. The Complainant has contended that the disputed domain name <**uni-assist.in**> was registered by the Respondent on January 20, 2018 in India while the Complainant had adopted the name/mark "**uni-assist**" as far back as the year 2003. That therefore it is evident that the Complainant had already been in the industry for about 15 years at the time of the registration of the disputed domain name by the Respondent. That further, on account of the long and extensive use of the name/mark "**uni-assist**" by the Complainant, it has attained distinctiveness and is associated with the Complainant exclusively. That therefore it is obvious that the Respondent was aware of the Complainant's trademark rights in the name/mark "**uni-assist**" and trademark

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, and that his adoption of a nearly identical/confusingly similar domain, i.e. <**uni-assist.in**> is in bad faith.

- ii. The Complainant has contended that the Complainant's trademark

 **assist**

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has been registered and widely known long before registration of the disputed domain name by the Respondent. That the use of the domain in question is clearly an attempt to misappropriate the goodwill and reputation accrued by the Complainant under its trademark and domain name. That this is clearly evidenced by the fact that the Respondent is also

using the nearly identical/confusingly similar mark  **assist** on his website and is also providing the same services as the Complainant. That it is evident that the Respondent has no legitimate interest in the Complainant's trademark "**uni-assist**" and has registered the disputed domain name only to derive undue benefit therefrom by duping students looking for information on German universities.

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C. The Complainant submits that the domain name was registered and is being used by the Respondent in bad faith [INDRP Para 4(iii), Rules 3(b)(vi)(3)]

- i. The Complainant has contended that the Complainant is the prior adopter and user of the name/mark “**uni-assist**” and prior owner of the domain <**uni-assist.de**> which has been registered in the name of the Complainant since 2003. That, in addition, registration of the domain name <**uni-assist.de**> was a constructive notice of the Respondent of the Complainant’s rights in the “**uni-assist**” mark and domain name. That thus the adoption of a nearly identical/confusingly similar mark/domain name by the Respondent is in bad faith.
- ii. The Complainant has contended that the mark “**uni-assist**” is the main component of the Complainant’s mark/corporate name and domain name and is distinctive in nature. That therefore there cannot be any plausible explanation for the Respondent’s adoption of the a nearly identical/confusingly similar domain name and mark. That the adoption and use of a nearly identical/confusingly similar trademark for identical services by the Respondent cannot be a coincidence and is therefore in ‘bad faith’.
- iii. The Complainant has contended that the Respondent is conducting the same business activities as the Complainant through the domain name <**uni-assist.in**>, i.e. providing consulting services and guidance to students applying to universities in Germany using a nearly identical/confusingly similar trademark and domain name. That the purpose of registering a nearly identical/confusingly similar domain name by the Respondent is to divert internet traffic by using an established name/mark in the industry.
- iv. The Complainant has contended that the registration of the domain < **uni-assist.in**> is a clear case of apssing off with intention to take advantage of the Complainant’s substantial reputation and its prominent presence on the internet in order to confuse the public by creating an impression of authorization from the Complainant, divert business, tarnish the reputation and goodwill of the Complainant and the said mark, and unduly gain in all aspects to the detriment of the Complainant.

7. Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 3(b)(vii) of the INDRP Rules of Procedure)

The Complainant has claimed for the disputed domain name, i.e. <**uni-assist.in**> to be transferred to the Complainant by means of the present Complaint, and for costs to be awarded in favour of the Complainant.

The Complainant has submitted that there are no other legal proceedings that have been commenced, are continuing, or have terminated with regards to the disputed domain name.





**8. Respondent's Submissions/Contentions vide Reply dated June 28, 2018**

The Respondent has contended that the Complaint dated May 23, 2018 has not been filed by a duly authorized representative of the Complainant. That no document evidencing the authorization of the signatory of the Complaint by the Complainant has been filed on the record. That the signatory of the Complaint, therefore, does not have the capacity to file the present Complaint, which is liable to be dismissed on this score alone.

The Respondent has contended further that the present Complaint is liable to be dismissed as the Complainant is in fact trying to grab the lawful domain name as belonging to the Respondent.

The Respondent has submitted in this regard that it is the registered owner of several domain names, all comprising primarily of the name/mark "**uni-assist**", including <uni-assist.in>, which is the subject matter of the present proceedings. Such domain name registrations in the name of the Respondent include: <uni-assist.online>, <uni-assist.biz>, <uni-assist.info>, <uni-assists.org>, <uni-assist.support>, <uni-assit.asia>, <uni-assit.co> and <uni-assist.club>. That despite knowing this fact, the Complainant is trying to grab only the one domain name (i.e. <uni-assist.in>) for the reason that the Complainant is aware that an Indian company is doing an honest and fair business in India from the said domain name and in order to keep its monopoly on the world market in this regard is trying to take control of the said domain name so that no Indian can rise. That the Complainant has made no attempt to file complaints against any of the other "uni-assist"-formative domains as registered by the Respondent and listed above. That the said domains have been at the disposal and usage of one **M/s Uniassist Edutech Pvt. Ltd.**, a company incorporated under the Indian Companies Act, having its registered address at **Ground Floor, M-7, Old DLF Colony, Sector 14, Gurgaon, Haryana-122001**, with whom the Respondent has entered into a Memorandum of Understanding, a copy of which document the Respondent has annexed alongwith the reply. The Respondent has contended that the present Complaint is liable to be dismissed on account of the aforesaid.

The Respondent has contended that the present Complaint is also liable to be dismissed as there is no evidence of trademark registration for the mark "**uni-assist**" in India. That the assertion of ownership thereto by the Complainant is liable to be declined on the grounds of no relevant trademark registration in India. That the Complainant has instead submitted evidence of a German national registration which is not admissible in evidence. That the evidence as tendered by the Complainant in support of the present Domain Complaint is not admissible as such as the same does not conform to the requirements under Section 65B of the Indian Evidence Act, 1872. The Respondent has cited the following INDRP decisions in support of its contentions:

- *Jagdish Purohit v. Mr. Stephen Koeing*, INDRP/006, July 07, 2006
- *Suresh Kumar Sareen v. Jim J*, INDRP/007, October 04, 2006
- *Pepsico Inc. v. Bijon Chatterji*, INDRP/014, June 24, 2006
- *Phoenix IT Solution Ltd. v. Mr. M. Ramesh*, INDRP/495, September 28, 2013
- *Gokul Kalyansundaram v. Eternal Software*, INDRP/564, February 02, 2014



The Respondent has contended that the registrant (of the disputed domain name) has every right to and legitimate interests in the said domain name in particular and without limitation. That the Respondent is offering bona fide information services vide the said domain name. That the nature of the Respondent's business is not similar to that of the Complainant, i.e. admission to various German universities, and that the present Complaint is liable to be dismissed on this score alone. That the Complainant is trying to crush an independent company so that Indian students remain dependant upon them for everything and they do not get the knowledge, information and assistance free of cost, or at least cost. That the Complainant wants that Indian children and their parents continue to pay hefty amounts to them which at times may be beyond the reach of various Indian bright students and their parents although they wish to study abroad and serve India thereafter, but have a fairly reasonable budget and limited resources and thus are deprived of the better, true and cheaper information from the domain of the Respondent.

The Respondent has contended that the present Complaint is liable to be dismissed due to misjoinder of proper parties. That, as previously mentioned by the Respondent, he had entered into a Memorandum of Understanding with **M/s Uniassist Edutech Pvt. Ltd.** which has been commonly known by the disputed domain name even though they have not acquired trademark or service mark rights in respect thereof. That the said company is making a legitimate and fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers, or to tarnish the Complainant's trademark/service mark at issue. That the line of business of the said company is totally different from the business being carried out by the Complainant, who is a recruiter for various universities. The Respondent has annexed a copy of the said company's incorporation certificate along with his reply.

The Respondent has contended that the present Complaint is liable to be dismissed as the company, **M/s Uniassist Edutech Pvt. Ltd.**, allegedly operating and/or carrying on business vide the disputed domain name has included a disclaimer on their website which reads:

***"Disclaimer: All the material and/or information on this website belongs to www.uni-assist.in. We are not connected to any other websites or offices outside India. We will not be liable to any person in respect of any misunderstanding."***

That thus nothing else remains to be clarified and it can be safely presumed that the persons visiting the website go through the said Disclaimer and are clear that they are on the website of an Indian concern only.

The Respondent has, thereafter, provide para-wise denials in reply to the Complaint as filed on merits wherein the salient points as contended by the Respondent are as follows:

The Respondent has clarified that his present contact address is:

Mr. Ranadeep Ghosal  
S/o Shri Bipulendu Ghosal  
R/o K 404, BPTP Princess Park,  
4<sup>th</sup> Floor, Saidham,



Sector 86, Faridabad,  
Haryana.

The Respondent has contended that the present Complainant has no grounds or locus standi for filing the present Complaint and that the Respondent has been dragged into unnecessarily proceedings against it knowingly and intentionally by the Complainant despite knowing the following facts:

- 1) That the Respondent is just the registrant in respect of the disputed domain name whereas it is actually being used by the company **M/s Uniassist Edutech Pvt. Ltd.** and who, it is further contended, should have been recognized by the Complainant as being the actual respondent in the present proceedings;
- 2) That there is a specific disclaimer on the first page of the Respondent's website at [www.uni-assist.in](http://www.uni-assist.in) wherein all association/affiliation with any third party, including the Complainant has been disclaimed.

The Respondent has denied that the disputed domain name is nearly identical/confusingly similar to the Complainant's trademark registered in respect of services in classes 35, 41 and 42. The Respondent has further denied that "**uni-assist**" is the principal trademark of the Complainant and that it forms the dominant part of the Complainant's corporate name.

The Respondent has contended that he had lawfully purchased the disputed domain following all requisite procedures and norms and subject to its availability. That the Complainant cannot claim that the domain **<uni-assist.in>** is its personal property. That the Complainant has not provided any reasoning as to why it had not acquired the disputed domain which had been available in the interim for almost 15 years (i.e. since its inception in 2003 till 2018). That the Respondent is not required to take permission before buying a domain that is available for sale to the public.

The Respondent has submitted that there were never any bad intentions towards the Complainant on the part of the Respondent or the company **M/s Uniassist Edutech Pvt. Ltd.**

The Respondent has contended that the domains **<uni-assist.in>** and **<uni-assist.de>** are dissimilar to each other by virtue of the fact that the Complainant's domain uses the country identifier extension **".de"** while the Respondent's domain uses the country identifier extension **".in"**. That the letters **"d"** and **"e"** are situated far apart from the letters **"i"** and **"n"** on the average keyboard so as to preclude any confusion between the two.

The Respondent has denied the Complainant's allegations of dishonesty and copying,

**uniassist**

inter alia of their trademark

of their website at [www.uni-assist.de](http://www.uni-assist.de). The Respondent has further submitted that it has no affiliation with DAAD, nor does it claim as such anywhere on its impugned website.

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The Respondent has contended that the Complainant, by way of the present Domain Complaint, is in fact trying to grab the lawfully acquired domain of the Respondent with mala fide intent.

The Respondent has denied the Complainant's contention that its registration and use of the pre-existing domain <uni-assist.de> acted as constructive notice to the Respondent of its rights in the "uni-assist" name/mark as well as in the said domain. The Respondent has further denied having any role or say in the activities of the company **M/s Uniassist Edutech Pvt. Ltd.** The Respondent has also contended that the Complainant and the company **M/s Uniassist Edutech Pvt. Ltd.** are engaged in different lines of trade: whereas the Complainant is engaged in carrying out recruitments in association with German universities, the said company is allegedly not engaged in doing so.

The Respondent has contended that the Complainant's submission that it appears prominently in major search engine results for the term "uni-assist" is in contradiction to its allegation against the Respondent that it is diverting Internet traffic away from the Complainant's website by using the domain <uni-assist.in>.

The Respondent has contended that the Complainant has filed the present Complaint with a view to take hold of and control the Respondent's domain and its contents without compensating the Respondent for the same and use it to the detriment of both the Respondent and the company **M/s Uniassist Edutech Pvt. Ltd.**

#### Reliefs claimed by the Respondent

The Respondent has claimed on the basis of its submissions and contentions as tendered vide its statement in reply that the present Complaint be dismissed, and exemplary costs be awarded against the Complainant.

#### 9. Complainant's Submissions/Contentions vide Statement in Rebuttal dated July 13, 2018

The Complainant, vide the above-mentioned Statement of Rebuttal, has responded to the Respondent's reply dated June 28, 2018. Facts, submissions and contentions already stated are not being repeated hereunder for the sake of brevity. The salient points in rebuttal by the Complainant are summarised as follows:

The Complainant has contended that it is evident from Paragraph 1.2 of the Memorandum of Understanding between the Respondent and the company **M/s Uniassist Edutech Pvt. Ltd.** that the Respondent has given the right to **use the domain name <uni-assist.in>** to the company **M/s Uniassist Edutech Pvt. Ltd.** for **running and promoting the latter's work and activities** (emphasis as supplied by Complainant). Therefore, it is contended by the Complainant that the Respondent has no legitimate interest in the disputed domain name himself and that the same was acquired by him solely with a view to gain undue profits by renting the said domain name to a competitor of the Complainant and diverting internet traffic thereto.

The Complainant has further submitted that, as per Paragraph 1.8 of the aforementioned Memorandum of Understanding, the Respondent shall be entitled to a

**royalty of 1% of the annual net profits of (the company) M/s Uniassist Edutech Pvt. Ltd. (emphasis as supplied by Complainant).**

The Complainant has also submitted the following sequence of events as being notable:

- Date of registration of the disputed domain name by the Respondent: January 20, 2018
- Date of incorporation of the company M/s Uniassist Edutech Pvt. Ltd.: February 24, 2018
- Date of Board Resolution authorizing one Mr. Sandipan Kabiraj (director) to sign MoU with the Respondent: February 26, 2018
- Date of MoU: March 01, 2018

In view thereof, the Complainant has contended that it is evident that the Respondent has registered the disputed domain name primarily for the purpose of selling/renting/transferring the same to the company **M/s Uniassist Edutech Pvt. Ltd.** (which is a competitor of the Complainant) for valuable consideration in excess of the Respondent's out of pocket expenses directly related to the disputed domain name.

The Complainant has contended, against the Respondent's admission of having registered several other domains comprising of the name/mark "**uni-assist**", that it is evident from such pattern of conduct that the Respondent is trying to prevent the lawful owner of the said name/mark, i.e. the Complainant, from reflecting the same in corresponding domain names.

The Complainant has contended that the incorporation of the company **M/s Uniassist Edutech Pvt. Ltd.**, as well as the registration of all the "**uni-assist**"-formative domain names, including **<uni-assist.in>**, are with the intention to wrongfully trade upon the goodwill and reputation of the Complainant and are in bad faith. That this is evident from the fact that the Respondent has adopted a nearly identical/ confusingly similar

mark and name "**uni-assist**"/**assist** to that of the Complainant without any authorization from the Complainant and is displaying the same on the website hosted at the disputed domain.

The Complainant has contended that it is pertinent to note that there are no active websites at the other "**uni-assist**"-formative domain names listed by the Respondent and that the same are even available for sale. The Complainant has further contended in this regard that as per the WHOIS details available for the said domain names, the name of the Registrant is not available, therefore it is unclear whether the Respondent is in fact the registrant of the said domain names. Moreover, the registrant for one such listed domain name, i.e. **<uni-assist.org>** is given as **WhoisGuard, Inc.** and not the Respondent. In view thereof, the Complainant has contended that the mala fide intent of the Respondent is evident.

The Complainant has annexed copies of WHOIS as well as corresponding website extracts in support of its contentions as **Annexure-A**.

The Complainant has contended that the Respondent's registration of the domain name **<uni-assist.in>** is in bad faith also because on the Respondent's website as hosted at the said domain name, there is a link labelled 'DISCOVER GERMANY', and while

describing themselves in the 'About Us' section of the website, it is stated that: "*Our expertise in German education is simply unmatched in India. We are especially confident enough to declare ourselves the best consultancy in India to guarantee admissions for education in Germany.*" (emphasis as supplied by the Complainant). The Complainant has annexed extracts from the Respondent's website in support of its contentions as **Exhibit 2 of Annexure-B**.

The Complainant has contended that it is noteworthy that the Respondent's website did not have any disclaimer regarding '*no affiliation with any other website or office outside of India*' as stated in the reply filed by the Respondent. That the said disclaimer was allegedly added only after filing of the present Complaint by the Complainant. That the said disclaimer is clearly an afterthought only to cover up the mala fide intent of the Respondent.

The Complainant has annexed screenshots of the Respondent's website evidencing absence of the said disclaimer as on March 28, 2018 (i.e. prior to the preparation of the Complaint) as **Exhibit 1 of Annexure B**.

The Complainant has further contended that the admission by the Respondent that the disputed domain name has been licensed to a third party for commercial gain establishes the mala fide intention of the Respondent.

The Complainant has contended that the Respondent has failed to provide any explanation for adoption and use of the name/mark "**uni-assist**" or the registration of a corresponding domain name without due authorization, permission or license from the Complainant, particularly when he had no intention of using the same himself and had registered the said domain name only to license it to a competitor of the Complainant. That therefore it is evident that the Respondent is trying to take undue commercial advantage of the reputation associated with the Complainant's name/mark/domain name, and that the use of the disputed domain name is therefore unfair and illegitimate.

The Complainant has further contended that the Respondent was never known nor intends to be known as "**uni-assist**" and that the disputed domain name has been registered only to divert internet traffic and to tarnish the reputation of the Complainant.

The Complainant has, thereafter, presented para-wise denials of the Respondent's submissions/contentions as tendered vide its statement of reply dated June 28, 2018. Salient points therefrom are summarised as below:

The Complainant has denied that the Complaint has not been filed by a duly authorized representative and, in support thereof, has annexed a duly executed Power of Authority in favour of the Complainant's representative in the present proceedings as **Annexure-C**.

The Complainant has further responded to the Respondent's contention that the evidence as tendered by the Complainant in support of the Complaint is inadmissible by virtue of not having been submitted vide supporting affidavit as stipulated under the provisions of Section 65B of the Indian Evidence Act, 1872, by stating that the present proceedings are administrative in nature and do not require such strict standards for submission of evidence. The Complainant has submitted that it is prepared to comply with such evidentiary requirements if required to do so by the Arbitrator.





The Complainant has rebutted the Respondent's allegation that it is attempting to monopolize business in its relevant field of activity, that it is engaging in anti-competitive practices and attempting to keep prices of its services at premium, by submitting that it is a non-profit organization having the aim of achieving what is in the best interests of students.

The Complainant has annexed a copy of its Articles of Association in support of its non-profit status as **Annexure-D**.

The Complainant has rebutted the Respondent's contention that the Complaint is liable to be dismissed on account of misjoinder of proper parties by stating that the registrant as per the WHOIS records for the disputed domain is Mr. Ranadeep Ghosal who has, accordingly, been named as the Respondent in the present proceedings (in accordance with the provisions of the INDRP). That the Memorandum of Understanding as signed between the Respondent and the third party company **M/s Uniassist Edutech Pvt. Ltd.** does not absolve the respondent of his responsibilities and liabilities towards the Complainant and the general public, including innocent students.

The Complainant has contended that line of business of the company **M/s Uniassist Edutech Pvt. Ltd.** which is named as the Second Party in the Memorandum of Understanding as submitted by the Respondent, is confusingly similar to that of the Complainant since they are both in the field of providing services related to higher education and thus there is a strong likelihood of confusion amongst the relevant public who may mistakenly assume that the Respondent's domain is associated with the Complainant, especially given the identity and confusing similarity between the trademarks/logos which are prominently visible on both websites.

The Complainant has rebutted the Complainant's assertions of no likelihood of consumer confusion on the basis of its appended disclaimer on its website by submitting that such a disclaimer does not absolve the Respondent of its liabilities towards the Complainant, the general public, especially innocent students who are likely to be confused by the Respondent's domain name and website into believing that there exists an association between the Respondent and the Complainant.

The Complainant has further submitted in this regard that the Respondent did not have such a disclaimer at the time of submission of the present Domain Complaint. Moreover, the said disclaimer is added in very small font at the end of the website page and its visibility is therefore limited. That it is likely to not be read or noticed by most visitors or browsers to the site. The Complainant has also contended that the Respondent appears to have updated its website since the filing of the present Complaint, including adding of the said disclaimer, which is evident of the same being in the nature of an after-thought to cover up the mala fide intention of the Respondent to draw an association with the Complainant, and therefore itself mala fide.

The Complainant has contended that as the Respondent claims expertise in German education and in sending students to study in Germany, therefore it must also have been aware of the Complainant's goodwill and reputation in this regard. That therefore, it is abundantly clear that the Respondent had knowledge of the Complainant's reputation and popularity and consequently adopted the disputed domain name in bad faith and with dishonest intentions to take unfair advantage of the same.

The Complainant has rebutted the Respondent's assertion that their respective domain names are dissimilar by virtue only of their different country identifier extensions of ".de" and ".in". The Complainant has contended in this regard that it is a common practice for organizations, particularly those having an international reach, to register different ccTLDs having different country identifier extensions. That therefore consumers are bound to assume that the disputed domain name in fact belongs to the Complainant and that there can be no other reason for the Respondent to use the disputed domain name comprising the Complainant's name/mark "**uni-assist**" along with the ".in" extension except to present itself as the Indian arm of the Complainant to the general public, including innocent students.

The Complainant has contended that the use of the name/mark "**uni-assist**" by the Respondent is very recent, as is evidenced by the fact of the domain name <uni-assist.in> was registered only on January 20, 2018 and was licensed under the aforementioned MoU on March 01, 2018. That therefore, the Respondent cannot claim any rights or interests thereto as it is not possible that the Respondent can have gained sufficient goodwill, recognition or reputation under the name/mark "**uni-assist**" in such a short period of time.

The Complainant has submitted that the Deutscher Akademischer Austausch Dienst (DAAD), the German Academic Exchange Service, an official German national body, is an associate and one of the founding members of the Complainant. That a representative of the DAAD is a member of the Board of the Complainant Association at all times. That it has issued a warning against "Misleading Agencies" which may dupe innocent students and that the Respondent is in fact one such misleading agency.

The Complainant has prayed for the reliefs as earlier vide its Complaint.

#### **10. Respondent's Submissions/Contentions vide Counter-Reply dated July 17, 2018**

The Respondent, vide the above-mentioned Counter-Reply, has responded to the Complainant's statement of rebuttal dated July 13, 2018. Facts, submissions and contentions already stated are not being repeated hereunder for the sake of brevity. The salient points in counter-reply by the Respondent are summarised as follows:

The Respondent has submitted that the website as hosted at [www.uni-assist.in](http://www.uni-assist.in) is only an informative site with no commercial activities engaged in therefrom.

The Respondent has contended that as the Complainant has not raised any objection to the name "**Uniassist**" as occurring in the corporate name of the company **M/s Uniassist Edutech Pvt. Ltd.**, therefore they ought not to have any objection to the domain name comprising the name/mark "**uni-assist**" as the same is derived from the company's corporate name.

The Respondent has contended that the disclaimer as appearing on its website was there since its commencement and that the Complainant appears to have manipulated and/or falsified the evidence tendered in this regard.

The Respondent has contended that its licensing of the domain name <uni-assist.in> to the company **M/s Uniassist Edutech Pvt. Ltd.** was lawful.

The Respondent has contended that arbitration proceedings cannot be said to be administrative proceedings but are a written and followed process. The Respondent has further contended that it is not the duty of the adjudicating authority to seek evidence to be properly filed in accordance with the law of evidence, as the adjudicating authority is a neutral person and it is the responsibility of the parties to ensure that they follow all proper procedural norms. That failure on the part of the Complainant to submit evidence in accordance thereto annuls the admissibility/validity thereof.

#### **11. Discussion and Findings**

With respect to the formal requirements as highlighted by the Respondent vide statement in reply dated June 28, 2018, namely that:

- a. The Complaint as filed on behalf of the Complainant has not been filed by a duly authorized representative. That no document showing the authorization of the signatory by the Complainant has been filed on records and the stated signatory does not have the capacity to file the said Complaint, and that the Complaint is liable to be dismissed on this score alone;
- b. The annexures as submitted by the Complainant in support of its Complaint and subsequent rebuttal are not admissible as evidence due to their not being supported by Affidavit as required under Section 65B of the Indian Evidence Act, 1872;
- c. The Complaint as filed is liable to be dismissed on account of misjoinder of proper parties as it has not included **M/s Uniassist Edutech Pvt. Ltd.**, an Indian company incorporated on February 24, 2018, with whom the Respondent entered into a Memorandum of Understanding dated March 01, 2018 wherein the Respondent has licensed the use of the disputed domain to the company in return for a stipulated royalty.

The Arbitrator hereby concludes that the said contentions as raised by the Respondent are untenable due to the reasons elaborated below:

- a. The representative on behalf of the Complainant has submitted a duly-executed Power of Attorney in their favour along with the statement of rebuttal dated July 13, 2018 which is hereby accepted by the Arbitrator as authorizing them to act on behalf of the Complainant.
- b. The Arbitrator further accepts the Complainant's defence in respect of point (ii) above that the present proceedings being held under the .IN Domain Name Dispute Resolution Policy and specifically under the INDRP Rules of Procedure as formulated thereunder, documents tendered in support of the parties' contentions need not adhere to the formalities stipulated under the Indian Evidence Act, 1872.



- c. The disputed domain being registered in the sole name of the Respondent as mentioned in the Complaint as filed and not in the name of **M/s Uniassist Edutech Pvt. Ltd.**, which is a company incorporated under the Indian Companies Act and admittedly having no relation to the Complainant, the Arbitrator concludes that the sole and suitable Respondent in the present matter has been properly identified in accordance with the .IN Domain Name Dispute Resolution Policy and hereby dismisses the Respondent's contention vide point (iii) above as untenable.

Further, with respect to the Respondent's contention that the Complainant has instituted the present proceedings solely to exert its monopoly in its field of activity against a bona fide Indian entity, the Arbitrator dismisses the said contention in view of the fact that the rightful proprietor of a trademark is fully within its statutory as well as common law rights to protect its rights in this regard, including by way of proceeding against infringing domain registrations and the same cannot be said to constitute unfair or anti-competitive practices and, in such a case, it becomes incumbent upon the respondent in such proceedings to establish its asserted honest, bona fide and legitimate rights and interests with respect to the mark/domain name.

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
  - ii. The Registrant has no rights and legitimate interest in respect of the domain name;
  - iii. The Registrant's domain name has been registered or is being used in bad faith.
- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights (Paragraph 4(i) of the .IN Domain Name Dispute Resolution Policy)**

It has been held by the Hon'ble Supreme Court of India in the the case of *M/s Satyam Infoway Ltd. v. M/s Sifynet Solutions (P) Ltd.*, JT 2004 (5) SC 541, that a domain name has all the characteristics of a trademark and such principles as are applicable to trademarks are concurrently applicable to domain names as well.

The Complainant has established its rights in the name/mark "**uni-assist**"/

**uni-assist**

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as derived, inter alia, from its business name, i.e. '**uni-assist e.V.**', as well as by virtue of its trademark registration for the

**uni-assist**

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mark, of which "**uni-assist**" forms the most prominent component, in Germany under registration no. DE302016224204 which was granted on October 19, 2016 and remains valid and subsisting. Use of the name/mark "**uni-assist**" by the Complainant (in its business

*Dr. Rang*

name) dates back to November 2003. The Complainant has placed details of its trademark registration no. DE302016224204 for

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on the record, which significantly pre-dates the registration of the Respondent's domain name (i.e. by over 14 years).

It may be mentioned, as also pointed out by the Respondent, that the Complainant does not possess any registered trademark or company name

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for 'uni-assist' in India. However, as has been held by the adjudicating administrative panel under the Universal Domain Dispute Resolution Protocol (hereinafter UDRP) in the matters of *Bennett Coleman & Co. Ltd. v. Steven S. Lalwani* (WIPO Case No. D2000-0014) and *Bennett Coleman & Co. Ltd. v. Long Distance Telephone Company* (WIPO Case No. D2000-0015) (decided together),

*"Since the essence of the Internet is its world-wide access, consideration of the propriety of domain name registrations cannot be confined to comparisons with trade mark registrations or other rights ... It is therefore relevant to consider the effects of a domain name registration and use in relation to the ... use of identical and confusingly similar trade marks in other countries.*

*"...it is this reputation from actual use which is the nub of the complaint, not the fact of registration as trade marks."*

It is pertinent to mention that the following UDRP decisions have also upheld the above-mentioned precedent:

- *Thaigem Global Marketing Limited v. Sanchai Aree*, WIPO Case No. D2002-0358
- *Sant'Andrea S.p.A. v. Andy Picken*, WIPO Case No. D2009-0517

It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. Even though the Complainant does not have statutory trademark rights with regard to the name/mark "uni-assist"/

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in India, its German national trademark registration dating from 2016, as well as its continuous, extensive and long-standing use

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of the name/mark 'uni-assist' in jurisdictions worldwide including through its website and online presence in India with respect inter alia to educational guidance and counselling services has led to the same having acquired distinctiveness and being identified exclusively with the Complainant. Such acquired trademark rights by virtue of long, continuous use are recognized in India and serve to establish the

*Drang*

Complainant's prior common law rights in the said name/mark as a trademark.

The Complainant has also submitted that it has registration of its own domain [www.uni-assist.de](http://www.uni-assist.de) since December 06, 2003, wherein it advertises as well as provides its various services, inter alia as a guidance, consultation and counselling provider for students seeking to apply to its affiliated German universities as well as offering assessment of foreign school and university certificates and determining their equivalence to German standards towards facilitating university applications of aspiring students,

The logo for uni-assist, featuring a stylized 'u' icon followed by the word 'assist' in a bold, sans-serif font.

under its name/mark “uni-assist”/

The Complainant has, in support of its arguments, further pointed out that the disputed domain name, [www.uni-assist.in](http://www.uni-assist.in), incorporates its name/mark “uni-assist” in its entirety and may, therefore, be said to be identical/confusingly similar to the Complainant's aforementioned trademark.

The Complainant has submitted that Respondent has intentionally adopted a domain name identical/ confusingly similar to the Complainant's popular trademark name/mark “uni-assist” to divert business away from the Complainant and take undue advantage of the goodwill and reputation associated with the Complainant's aforementioned name/mark and calculated to deceive the lay public which will lead to dilution of the goodwill and reputation associated with the Complainant's aforementioned name/mark.

The Complainant has submitted that the Respondent has further used the impugned domain name with respect to identical services such that the lay public, especially students who visit the Respondent's site, may easily be deceived into believing that there exists an affiliation, association or sponsorship of the Respondent's activities with the Complainant, as they will have no reason to believe otherwise from a domain differing only in respect of its country-specific extension (i.e. “.in”).

The Complainant has established that it did not at any time license or otherwise authorize the respondent to register the disputed domain name or carry out its activities under the Complainant's name/mark “uni-assist”.

The Complainant has submitted a number of annexures, as described above, to establish the availability, extent of use and popularity of its name/mark “uni-assist” in India as well as worldwide.

In response, the Respondent has attempted to establish its rights to the name/mark “uni-assist” by submitting that it is the registered owner of several “uni-assist”-formative domain names and contending that the Complainant, despite being aware of this fact, is attempting to grab the one domain name, i.e. <uni-assist.in>, for the purpose of preserving its

A handwritten signature in blue ink, appearing to read 'Aravind'.



monopoly in its particular sphere of business, i.e. providing services, inter alia, as a guidance, consultation and counselling provider for students seeking to apply to its affiliated German universities as well as offering assessment of foreign school and university certificates and determining their equivalence to German standards towards facilitating university applications of aspiring students.

The Complainant has refuted this contention of the Respondent by providing documentary evidence (in the form of WHOIS extracts and website screenshots) to establish that all the domains as referred to by the Respondent have all been registered on **June 25, 2018**, with the sole exception of <uni-assist.org> which was registered on December 04, 2013, i.e. subsequent to the institution of the present domain complaint and, in any case, subsequent to the Complainant's date of first use of the name/mark "uni-assist".

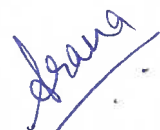
Further, as established by the Complainant, none of the said domains host any websites and the same are also listed for sale (<uni-assist.org> also only hosts a parked page). As also established by the Complainant in this regard, the name of the registrants of the said domains have not been provided in their WHOIS results and therefore their respective registrants are unclear. The Respondent has not submitted any documentary evidence to show that it is in fact the registrant of the said domains as claimed.

In view of the aforesaid, the Respondent's contention of owning the aforementioned "uni-assist"-formative domains as the basis of its rights to the name/mark "uni-assist" fails.

In view of the aforesaid, it is held that the disputed domain name <uni-assist.in> is confusingly identical/similar to the Complainant's name/mark "uni-assist" and completely incorporates the said name/mark of the Complainant. It has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Indian Hotel Companies Limited v. Mr. Sanjay Jha, INDRP/148* <Gingerhotels.co.in>, *Carrier Corporation, USA v. Prakash K.R. INDRP/238* <Carrier.net.in>, *M/s Merck KGaA v. Zeng Wei INDRP/323* <Merckchemicals.in>, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887* <Colgate.in> and *The Singer Company Limited v. Novation In Limited INDRP/905* <singer.co.in>.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its name/mark "uni-assist" under Paragraph 4(i) of the INDRP has been established.

- ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(ii) and Paragraph 7 of the .IN Domain Name Dispute Resolution Policy)**



The Complainant has established its rights as the lawful proprietor and prior

 **uni-assist**

user of the name/mark “**uni-assist**”/ . The disputed domain name incorporates the name/mark “**uni-assist**” which is identical to the Complainant’s name/mark in which it has proprietary rights by virtue of its established use in jurisdictions worldwide including India, since at least November 2003.

In comparison, the Respondent registered the domain <**uni-assist.in**> only on January 20, 2018, i.e. more that 14 years after the adoption of the name/mark “**uni-assist**” by the Complainant. It is additionally unlikely that the Respondent can have acquired sufficient distinctiveness in the name/mark “**uni-assist**” between January 20, 2018 and the date of filing of the present Complaint, i.e. May 23, 2018 so as to suggest that it has gained rights and/or legitimate interests in such name/mark to combat the Complainant’s already established rights and interests thereto.

The Respondent has further not been able to establish any rights or legitimate interests in its favour in terms of prior, superior or honest and concurrent use of the name/mark “**uni-assist**”. It has also not been able to establish that it has any relationship with the Complainant, or that it has been using the said name/mark with respect to its own business under any form of authority, permission or license from the Complainant.

The Complainant has contended, with substantiating arguments, that there is no credible or legitimate reason for the Respondent to have adopted a domain name nearly identical/ confusingly similar to the Complainant’s name/mark “**uni-assist**” other than to ride on the goodwill and reputation accumulated by the Complainant’s mark by the time of the Respondent’s registering the disputed domain name, and to derive unjust enrichment therefrom by causing consumer confusion.

Where the Respondent has contended that as the Complainant has not raised any objection to the name “**Uniassist**” as occurring in the corporate name of the company **M/s Uniassist Edutech Pvt. Ltd.**, therefore they ought not to have any objection to the domain name comprising the name/mark “**uni-assist**” as the same is derived from the company’s corporate name, it is stated that objecting to a company’s corporate name constitutes separate proceedings under the Indian Companies Act and proceedings under the INDRP are not the appropriate forum to address the same. In view thereof, the Complainant has correctly chosen not to raise objections to the company name **Uniassist Edutech Pvt. Ltd.**, if any, in the present proceedings. Moreover, it is stated that on the basis of its established rights and interests in the name/mark “**uni-assist**”, the Complainant is within its rights to approach the present forum for redressal of the same.

The Complainant has established a prima facie case of its rights in the name/mark “**uni-assist**”, as has been mentioned above. Therefore, in accordance with the holding of previous panels under the INDRP, the

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evidentiary burden shifted to the Registrant (Respondent) to rebut the showing by providing evidence of its rights or legitimate interests in the domain name, which it has failed to do in the current proceedings.

On the other hand, the Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 7 of the INDRP.

Use of such a confusingly and deceptively identical/similar domain name by the Respondent is likely to mislead and misrepresent to the general public and members of the trade as to the source, sponsorship, affiliation or association of the activity being carried on through the website.

In view of the aforesaid, the Arbitrator accepts the Complainant's claim that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(ii) and 7 of the INDRP.

iii. **The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the INDRP)**

As per the Respondent's statement in reply to the Complaint as filed, the Respondent had admittedly entered into a Memorandum of Understanding with **M/s Uniassist Edutech Pvt. Ltd.**, a company incorporated under the Indian Companies Act and admittedly having no relation with the present Complainant, for use of the disputed domain name. As per the terms of the said Memorandum, the Respondent is the owner of the domain **<uni-assist.in>** and the company is engaged in the business of providing consultation to students, which is nearly identical/ confusingly similar to the services as provided by the Complainant. Further as admitted by the Respondent vide the statement in reply, the Respondent has given a right to use the domain name **<uni-assist.in>** to the company for running and promoting the latter's work and activities in return for which the Respondent shall be entitled to a percentage of the Annual Net Profit of the company as royalty.

As pointed out by the Complainant in this regard vide its statement in rebuttal dated July 13, 2018, the following sequence of events is notable:

- Date of registration of the disputed domain name by the Respondent: January 20, 2018
- Date of incorporation of the company **M/s Uniassist Edutech Pvt. Ltd.:** February 24, 2018
- Date of Board Resolution authorizing one Mr. Sandipan Kabiraj (director) to sign MoU with the Respondent: February 26, 2018
- Date of MoU: March 01, 2018


The above-mentioned sequence of events, falling consequently to each other and within a relatively short period of time, evidences the likelihood that the Respondent registered the disputed domain name primarily for the purpose of selling/renting/transferring the same to the company **M/s Uniassist**



**Edutech Pvt. Ltd.**, an Indian competitor in the Complainant's field of business, for valuable consideration in excess of the presumable out-of-pocket expenses directly related to the disputed domain name likely to have been incurred by the Respondent.

Further as noted by the Complainant vide its statement in rebuttal dated July 13, 2018, the Respondent admits to having registered several other domain names comprising the name/mark "**uni-assist**". As has been noted previously, there are no websites hosted on any of the other "uni-assist"-formative domains and they are in fact listed for sale. Therefore, it is evident from such an admitted pattern of conduct that the Respondent is trying to prevent the lawful owner of the name/mark "**uni-assist**" from reflecting the same in corresponding domain names.

It has also been brought to attention that the Respondent, apart from having registered the nearly identical/ confusingly similar domain name, i.e. <**uni-assist.in**>, has moreover adopted and is using on its website at [www.uni-assist.in](http://www.uni-assist.in)

assist.in the nearly identical/ confusingly similar mark , which is clearly derived from and is in fact a colourable imitation of the



Complainant's trademark ASSIST- und Servicecenter für internationale Studierende e.V., in respect of similar services to those offered by the Complainant.

The Complainant has contended vide its statement in rebuttal dated July 13, 2018 that it is evident that the Respondent's registration of the domain name <**uni-assist.in**> is in bad faith as the overall look-and-feel of the Respondent's website at [www.uni-assist.in](http://www.uni-assist.in), which, as has been noted previously, offers services identical/similar to those offered by the Complainant, is deceptively similar to the design/get-up of the Complainant's website at [www.uni-assist.de](http://www.uni-assist.de). The Complainant has provided evidence in the form of extracts from both websites to establish the visual similarities between the two websites.

The Respondent vide its statement in reply to the Complaint dated June 28, 2018 has submitted that there is a specific Disclaimer on the first (home) page of the website at [www.uni-assist.in](http://www.uni-assist.in), which states as follows:

***"Disclaimer: All the material and/or information on this website belongs to [www.uni-assist.in](http://www.uni-assist.in). We are not connected to any other websites or offices outside India. We will not be liable to any person in respect of any misunderstanding."***

The Indian courts as well as NIXI have held on several occasions that mere addition of a disclaimer does not absolve a party of all liability in case of an offence. It is pertinent to refer to the judgements as pronounced in the following cases in this regard:


- *Maruti Suzuki India v. R.S.* (INDRP 881/2017)


- *FDC Ltd. v. Docsuggest Healthcare Services Pvt. Ltd. & Anr.* I.A. 3733/2016; I.A. 6690/2015, Delhi High Court (quoting McCarthy on Trademarks and Unfair Competition, Vol.4)
- *Industrial Distributors v. State Bank of India* Delhi State Consumer Disputes Redressal Commission, November 21, 2008.

The Complainant has further brought it to the Arbitrator's attention that the said disclaimer was added subsequent to filing of the present Complaint and appears in small font at the bottom of the Respondent's webpage, which is easy to miss for the lay reader. In light thereof, the said disclaimer seems to have been an after-thought and therefore a mala fide act on part of the Respondent. The Complainant has annexed relevant screenshots of the Respondent's website in support of its contention.

In view of the aforesaid discussion, the Arbitrator is inclined to agree with the contentions of the Complainant as the Respondent has not been able to adduce sufficient reason or evidence either vide its statement in reply dated June 28, 2018 or its counter-reply dated July 17, 2018 to preclude allegations of bad faith/ mala fide intent around the registration of the disputed domain name to the satisfaction of the Arbitrator.

The facts of the Respondent's adoption and use of the nearly

identical/confusingly similar name/mark "**uni-assist**" /  in respect of identical services as offered by the Complainant under its established trademark since 2003; his registration, particularly after the institution of the present domain Complaint against him, of additional domains all including the Complainant's afore-mentioned name/mark "**uni-assist**"; his licensing of the disputed domain name to the entity **M/s Uniassist Edutech Pvt. Ltd.** for monetary gain; the similarity in get-up/design/look-and-feel of the Respondent's website at [www.uni-assist.in](http://www.uni-assist.in) with the Complainant's prior established website at [www.uni-assist.de](http://www.uni-assist.de), including use thereon of the deceptively and confusingly similar mark

, all contribute towards exhibiting the mala fide intent of the Respondent in this regard.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(iii) and Paragraph 6 of the INDRP.

## 12. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has statutory and proprietary rights over the name/mark "**uni-assist**" /





. The Complainant has herein been able to prove conclusively that:

- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- ii. The Registrant has no rights and legitimate interest in respect of the domain name;
- iii. The Registrant's domain name has been registered or is being used in bad faith.

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**uni-assist.in**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.

A handwritten signature in blue ink, appearing to read "Lucy Rana", written over a horizontal line.

**Lucy Rana**

**Sole Arbitrator**

**Date: August 06, 2018**

**Place: New Delhi, India.**

A handwritten signature in blue ink, appearing to read "Lucy Rana", written over a horizontal line.