



महाराष्ट्र MAHARASHTRA

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अनु. क्र. १७१९ दि. १७/६/१५ मु. शु. रक्षण. पुणे जिल्हा  
दस्तावेजा प्रकार ..... कावडीशन मसौ  
दस्त नोंदणी करणारा .....  
मिळकतीचे वस्तु .....  
मुद्रांक विकत ..... शिरींग चिंतामण इनामवार  
पत्ता ..... २७०० शनिवार पेठ, पुणे  
दुसऱ्या पक्षाचा ..... निव्वरी  
हस्ते व्यक्तीचे नाव ..... राकेश जाधवकर माने - अजय सुर्यनारी पिंपळेगुप्त नेह  
मुद्रांक विकत घेणाऱ्याची सही .....  
महाराष्ट्र, शनिवार पेठ, पुणे-३०

16 JUN 2015  
पुणे मुद्रांक विभाग  
पुणे कारिता

## AWARD IN ARBITRATION

'FRANCKMULLER.IN'

FMTM Distribution Ltd.  
3A & 3B, Freeport,  
Ballasalla, Isle Of Man IM9 2AP  
GREAT BRITAIN

AND

Bel Arbor  
16, Noida, Delhi. 201301. India

THE COMPLAINANT

THE RESPONDENT /  
THE REGISTRANT

**IN THE MATTER OF DISPUTED DOMAIN NAME: -  
'FRANCKMULLER.IN'  
BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.  
SOLE ARBITRATOR**

**DELIVERED ON THIS 17th DAY OF JUNE TWO THOUSAND FIFTEEN AT  
PUNE, INDIA.**

**SUMMARISED INFORMATION ABOUT THE DISPUTE: -**

- 01. Names and addresses  
Of the Complainant: -** **FMTM Distribution Ltd.  
3A & 3B, Ballasalla  
Isle of Man, IM9 2AP  
GREAT BRITAIN**
- Through its authorized  
representative **Dr.Luca Barbero, c/o Studio Barbero  
Via Tripoli 104/106, 10137 Torino, Italy**
- 02. Name and address of  
The Respondent: -** **Bel Arbor  
16 Noida, Delhi. 201301. India.**
- 03. Name and address of the Registrar** **Webiq Domains Solutions Pvt. Ltd.  
Directiplex, Next to Andheri subway  
Old Nagardas Road, Andheri (East)  
Mumbai. 400069. India**

**04. Calendar of Major events:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Date (Communications in electronic mode)</b>
01	Arbitration case referred to me & acceptance given by me	15.05.2015
02	Hard copy of complaint received & Notice of Arbitration issued with the instructions to file reply latest by 31.08.2014	25.05.2015
03	Period to file reply extended suo-moto	06.06.2015
04	Notice of closure of arbitration	11.06.2015
06	Award passed	17.06.2015

## **I] PRELIMINARY: -**

1. FMTM Distribution Ltd. (**The Complainant**) is a company trading from Great Britain especially in the field of the luxury watches with all its well network. The said company has its office **3A & 3B, Ballasalla, Isle of Man, IM9 2AP, GREAT BRITAIN.**

2. **The Complainant** has filed complaint with National Internet Exchange of India (**NIXI**) disputing the registration of domain name **FRANCKMULLER.IN (the disputed domain name / domain name)**, through its authorized representative **M/s Dr.Luca Barbero, c/o Studio Barbero, via Tripoli 104/106, 10137 Torino, Italy.**

3. The Complainant has disputed registration of domain name '**FRANCKMULLER.IN**' in the name of **Bel Arbor, 16, Noida, Delhi. 201301, India. (The Respondent / Registrant).**

1) Major events took place as enumerated in the above table.

## **II] PROCEDURE FOLLOWED IN ARBITRAION PROCEEDINGS: -**

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 25<sup>th</sup> June, 2015 with the instructions to file his reply / say latest by 5th July, 2015.

02. The Notice of Arbitration was sent to The Registrant's postal address was returned undelivered by courier. Accordingly NIXI was directed to send the same by email on his registered email id.

03. Due to no response by the Registrant / Respondent till 5th June 2015, this panel extended the period to submit his reply / say till 11.06.2015. However no reply / say was filed by the Registrant even within the extended period.

04. On 11th June 2014 notice of closure of arbitration procedures was issued.

05. No personal hearing was requested / granted / held.

## **III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -**

The Complaint is based on the following points / issues in brief: - -

### **(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:**

1. The Complainant states that the domain name registered by the Respondent includes the word FRANCKMULLER which is both similar and identical to 'FRANCK MULLER MARKS', of which it is the registered owner. A list of such registered trademarks is provided in Annexure to the Complaint, by the Complainant. Among other registered trademarks, the Complainant also holds Indian Trademark under Registration No. 750053 for Franck Muller since 01.08.1997 which has been renewed from time to time.

2. The Complainant is one of the renowned and leading manufacturers of luxury watches. The Complainant has granted an exclusive license for the FRANCK MULLER trademark to Franck Muller Watchland SA, a Swiss commercial entity, which, since the inception of the brand, manufactures and distributes watches bearing the FRANCK MULLER trademark, throughout the world and both the companies are members of Franck Muller group.
3. Globally there are 48 exclusive shops and 600 points of sale in more than 100 countries. In the year 2010-11 total sales were about €290 M with an yearly production of over 40,000 pieces. It also owns various domain consisting of or comprising the words FRANCK MULLER under more than 130 different TLDs including [www.franck-muller.in](http://www.franck-muller.in) and [www.franckmuller.co.in](http://www.franckmuller.co.in). The principal website of the Complainant is [www.franckmuller.com](http://www.franckmuller.com).
4. The website registered by the Respondent was redirecting to web page featuring several sponsored links to third parties commercial websites mainly related to the products for which FRANCK MULLER trademarks are registered. By clicking on the related links internet users are redirected to additional pay-per click pages on the same website featuring sponsored links to third commercial websites like CHANEL, GUESS etc.
5. Immediately after Complainant's becoming aware of such registration, authorised representative of the complainant sent Cease & Desist Letter on 13.06.2013.
6. On the same day the Respondent replied to the Cease & Desist Letter by email requesting €3000 for the transfer of disputed domain name. This amount was further reduced to €2000 as rock bottom price by the Respondent.

**(B) GROUNDS OF COMPLAINT ACCORDING TO INDRP RULES: -**

1. The Registrant's domain name contains the word FRANCK MULLER which is an integral part of the brand and trade / service mark of the Complainant and also identical to that of the Complainant's name in which the Complainant has right and it would confuse the customers in India due to this similarity. The Trademark 'FRANCK MULLER' has acquired tremendous fame, recognition and goodwill worldwide and is exclusively associated with the Complainant only.
2. The Respondent registered the disputed domain name on 30th July 2012, much after the Complainant's registration of trademarks in India, without Complainant's authorisation.
3. The Complainant became aware of the registration of the disputed domain name in June 2013. The Complainant states that it had never authorised the registrant to use the name FRANCK MULLER in any way or to deal in the products of the Complainant. Hence it constitutes trademark infringement.

4. The disputed domain name is identical to the domain name 'franckmuller.com' under which the Complainant operates its official website for the promotion of the FRANCK MULLER brand.
5. The Respondent is not a licensee, an authorised agent of the Complainant, or in any other way authorised to use Complainant's trademark.
6. There is no evidence showing that the Respondent, whose name is indicated in the WHOIS database as Bel Arbor, might be commonly known by the Domain name as an individual, business or other organisation and Franck Muller is not his family name.
7. The Respondent has not provided Complainant with any evidence of his use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute. The domain name has been redirected to web pages displaying several sponsored links which generate revenues via pay-per-click system to the Respondent. Some of the links also pertain to the products of the competitors and counterfeited products.
8. The Registrant is not making any legitimate non-commercial or fair use of the domain name. The Registrant has no right or legitimate interests in respect of disputed domain name.
9. The only intention of the Respondent in registering the domain name was to capitalise on Complainant's well known trade mark and reputation.
10. The domain name was registered or is being used in bad faith.

**(C) REMEDIES SOUGHT BY THE COMPLAINANT: -**

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of the Registrant's domain name to it.

**V] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -**

No reply has been filed by the Respondent even within the extended period granted suo-moto to him.

**VII] REJOINDERS OF THE PARTIES: -**

In view non-filing of any reply by the Registrant no rejoinders were called for.

**VIII] ISSUES & FINDINGS: -**

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

S. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	<b>Yes</b>
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	<b>Yes</b>
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	<b>No</b>
04	Whether the Registrant has commonly been known by the domain name?	<b>No</b>
05	Whether the Registrant has any legitimate interests in the disputed domain name?	<b>No</b>
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	<b>Yes</b>
07	Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?	<b>Yes</b>
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	<b>Yes</b>
09	Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?	<b>Yes</b>

#### **IX] BASIS OF FINDINGS: -**

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant owns the brand FRANCK MULLER in India vide registered Trade Mark No. 750083 which has been renewed from time to time and is in force on the date of the filing of the complaint. The Complainant also owns trade marks in other countries.

*Therefore my finding on this issue is in affirmative.*

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'FRANCK MULLER' is an integral / prominent component of disputed domain name and also is an integral / prominent component of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also vide various WIPO decisions that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its international presence as also its strong presence on the internet it is very hard to believe

that the Registrant was not aware of the same at the time of registering the disputed domain name.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'FRANCK MULLER'.

*Therefore my finding on the first issue is affirmative.*

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

*Therefore my finding on this issue is in negative.*

4. Whether the Registrant has commonly been known by the domain name?

The name of the Present Registrant, as on the Whois records is Bel Arbor, which is neither similar to the disputed domain name, nor has any nexus to the word FRANCK MULLER in any manner. As such the Registrants is NOT commonly known by the domain name or any variation thereof.

*Therefore my finding on this issue is in negative.*

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'FRANCK MULLER'. He is not commonly known by that name or any variation or combination thereof. He has not established that he has been using the registered domain name for bona fide business activities or for non-commercial purpose. He is not authorised / permitted by the Complainant to use the said name. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant in this behalf.

*Therefore my finding on this issue is negative.*

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The domain name is registered without any authority, agreement or arrangement between the Complainant and the Registrant. The webpage included several links to the third parties as also to the official links of the Complainant in respect of its own products. The web page included pay-per-click mechanism which entitled the Registrant to earn money whenever any internet surfer clicks on any of the links. Thus the Registrant was making money illegally by using the name and fame, of the Complainant.

*Therefore my finding on this issue is affirmative.*

7. Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?

The act of the Registrant of registering the disputed domain name in his name, has prevented the Complainant and also deprived him from using the disputed domain name for his legitimate business purposes. This is done without any authority of or agreement with the Complainant. This act has resulted into business loss to the Complainant as also damaging its reputation since the webpage included links to third party products also. Therefore it is established that such registration by the Registrant has resulted into denying the Complainant his lawful right to register and use the disputed domain name for his business purposes.

*Therefore my finding on this issue is in affirmative.*

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website was deceitfully appearing as the official website of the Complainant. It included links to various products including those of the Complainant and therefore there was all probability of confusion being created among the internet surfers as to why reputed company like the Complainant had also links to third parties products. This is obvious act of intentionally attempting to attract internet users by creating likelihood of confusion with the Complainant's name / mark.

*Therefore my finding on this issue is affirmative.*

9. Whether the Registrant has registered the disputed domain name for selling or otherwise transferring it for valuable consideration?

In response to the Cease & Desist Letter sent by the Complainant on the email address registered on Whois database on 13.06.2013, the Respondent replied by demanding € 3000. The Registrant responded to reminder by reducing his expectations € 2000. Obviously this amount was far in excess of the reasonable expenses one has to incur for registering the domain name in India. This act of Registrant is clearly an act of selling disputed domain name for valuable consideration.

*Therefore my finding on this issue is positive.*

#### **IX] CONCLUSION AND BASIS OF AWARD: -**

From above discussion this panel has reached the conclusion that: -

1. The disputed domain name includes the word FRANCK MULLER which is an integral part of the registered marks and registered domain names of the Complainant.

2. The Registrant / Respondent does not have any registered trade mark / service mark in his name containing the words 'FRANCK MULLER' and hence does not have any legitimate interest in the same and resultantly in the disputed domain name. He has not been authorised by the Complainant to register the said domain name.
3. The Registrant is not commonly known by the disputed domain name.
4. The Registrant is not making bona fide and fair use of the disputed domain name, much less for non-commercial purpose.
5. The Respondent / Registrant has failed to establish any nexus, rights or interests in or with the disputed domain name in any way.
6. Very importantly the Registrant has registered the disputed domain name for the purpose of selling the same for valuable consideration, much in excess than the reasonable amount required for the registration of domain name in India.

Thus it is a clear case of cyber squatting and gaining unlawfully and immorally by encashing the reputation of others.

From all findings on the issues framed, it can be concluded that the Registrant(s) has / have registered domain name without any legitimate interests in it.

On the basis of my findings on issues and foregoing discussion I pass the following award: -

- 01. The Complainant is entitled to the disputed domain name – 'FRANCKMULLER.IN' and hence the same be transferred to the Complainant.**

Dated: - 17.06.2015  
Place: - Pune

  
**(S.C. INAMDAR)**  
**SOLE ARBITRATOR**