



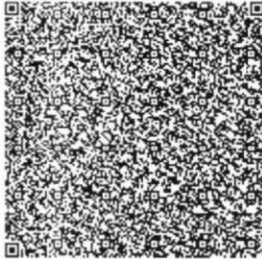
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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Certificate No.	: IN-DL71245977381207L
Certificate Issued Date	: 23-Jan-2013 03:57 PM
Account Reference	: IMPACC (IV)/ dl719703/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL71970342173489030349L
Purchased by	: DEEPA GUPTA
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0
	(Zero)
First Party	: DEEPA GUPTA
Second Party	: NA
Stamp Duty Paid By	: DEEPA GUPTA
Stamp Duty Amount(Rs.)	: 100
	(One Hundred only)



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**BEFORE SMT. DEEPA GUPTA, SOLE ARBITRATOR OF
NATIONAL INTERNET EXCHANGE OF INDIA**
.IN REGISTRY – NATIONAL INTERNET EXCHANGE OF INDIA
.IN domain Name Dispute Resolution Policy and INDRP Rules of
Procedure

ARBITRATION AWARD

DATED: 22nd January, 2013

In the matter of:

**Flsmidth A/S
FL Smidth House,
34 Egatooor
Kelambakkam,
Rajiv Gandhi Salai)
Chennai, 603103, India
Vs**

..... Complainant

**Development Services,
Telepathy, Inc.,
PO Box 11077
Washington, District of Columbia-20008
US**

.....Respondent

1. THE PARTIES:

The parties to domain name dispute are:

- (a) Complainant firm is FLS Midth. with registered office at **FL Smidth House, 34 Egatooor, Kelambakkam, Rajiv Gandhi Salai), Chennai, 603103, India**
- (b) Respondent firm is: **Development Services, Telepathy, Inc., PO Box 11077, Washington, District of Columbia-20008, US**. It is also a company providing search engine, web development, marketing, advertisement and promotion services. It has presence on internet with domain name of "fls.co.in" which is subject of dispute.



2. THE DOMAIN NAME IN DISPUTE, REGISTRAR AND POLICY

- i. The disputed domain name is www.flsmidth.com registered with the .IN Registry.
- ii. The registrar NIXI is at Incube Business Centre, 38 Nehru Place, New Delhi
- iii. The Arbitration Proceeding is conducted in accordance with the Arbitration and Conciliation Act of 1996 (India), the current .IN Domain Name Dispute Resolution Policy (the "INDRP Policy"), and the INDRP Rules of Procedure (the "Rules").
- iv. Paragraph 4 of the Policy and paragraph 3(b)(vi) of the Rules states:
 - (a) The Infringing Domain name is identical or confusing similar to a trademark or service mark in which complaint has rights,
 - (b) The respondent has no rights or legitimate interest in respect of Infringing Domain Name, and
 - (c) The Infringing Domain Name should be considered as having been registered and is being used in bad faith.

3. BRIEF BACKGROUND

FACTUAL & LEGAL GROUNDS- COMPLAINANT

FLSmidth has been in business since 1982 and active in India since 1904, Furthermore, FLSmidth has been using the domain name flsmidth.com since 1993, and owns many trademark and service mark registrations and applications for the FLS mark throughout the world, covering a wide variety of goods and services. "FLS" (the abbreviation of the names of the Founder F - Frederik, L- Laessoe, S-Smidth). The Complainant is listed on the Copenhagen Stock Exchange and has a presence in more that 40 countries across the globe including India) accessed at the URL <http://www.flsmidth.com> and <http://www.flsmidth.com>. The website is one of the leading internet sites in the world with in its industry.

Over the years, the Complainant has expended large sums of money advertising its goods and services, and promoting its products, services, and trademarks having registered 485 domains names around the world. Complainant has considerable goodwill in its business and in its trademarks.

The Complainant has huge annual turnover and many millions are spent on advertising and establishing the brand FLSmidth worldwide.



The International distributors and licensees of the complainants also undertakes their own marketing and promotional activities in support of the services offered under FLSmidth as a brand name. Further, the brand FLSmidth has gained a huge customer base internationally and is identified, associated and recognized only with the complainant.

FACTUAL & LEGAL GROUNDS- RESPONDENT

Respondent is a renowned company incorporated under the laws of United States of America carrying on varied businesses including providing search engine services, web development services, online (over the internet) marketing, advertisement and promotions. Respondent operates the deal aggregator website www.dealmagic.com, among other business ventures. Respondent parent company of State Ventures LLC, a publisher of online regional guides, and of Riptide LLC, the owners and developers of the RezEZ online hotel reservation system (<http://www.rezez.com>) and of MiniSites.com, providers of inexpensive, bespoke web sites. Respondent is the owner of several domain names through which it carries on its aforesaid business. Respondent is also the owner of many three lettered domain names as they are easy to remember and are useful for its business operations.

4. PARTIES CONTENTIONS:

A. COMPLAINANTS CONTENTIONS:

- a. **THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK/ SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHT:**

Complainant is registrant and proprietor of various Domain name registrations much before the registration of the infringed domains names by the Respondent.

The Respondent domains name fls.co.in is identical to the said mark FLSmidth and various other domains names including www.fls.com in which the Complainant has rights on account of prior registration and use all over the world.



That Respondent's domain name is blatant imitation of Complainant's trademark, wherein he has not created any content to his website but is merely offering his Domain for sale. Various correspondences attached as Exhibits F. Respondent's intention is to merely ride on the goodwill associated with the complainants website www.flsmidth.com and fls.com, result ing in conflict and confusion and leading to dilution of the reputation associated with the complainants business.

Thus, complainant's search engine ranking would be adversely impacted thereby directly resulting in drop in reputation and revenue.

Respondents domain name is phonetically, visually and conceptually identical as that of the complainant's. Respondents domain name would cause the public to believe that the respondent and their domain name is sponsored by/affiliated to the complainant thus take unfair advantage of and /or be detrimental to the character and repute of the of the complainant's trade mark, corporate name and domain name created domain name www.fls.co.in, it being fully aware of the Complainant's trademark domain names to trade and benefit under the complainants repute and goodwill.

The corporate name trademark and domain name of the complainant are highly distinctive on account of their extensive use which has qualified "FLSmidth" know as FLS into a well know mark under the Complainant's Intellectual Property Law.

(b) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The dispute domains names was registered by the Respondent on 24th March 2005. At this time, the complainant already had built considerable reputation in the mark FLSmidth and actively using www.flsmidth.com/www/fls.com ie since 6th November 1996, Complainant has common law rights in the FLSmidth in all prominence and is the only identifiable name of the complainant since the inception by the Complainant's predecessor on title.

Respondents domains name www.fls.co.in does not depict any activity shows that its a cyber squatting activity. Respondent is not or has never been known by the name fls or by any confusingly similar name.



The Respondent registration and use of the disputed domain name is with clear intention to take advantage of the complainants substantial reputation and its prominent presence on the internet to confuse the public by offering similar services and goodwill and unduly gain to the detriment of the complainant .

(c) THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH.

Respondents have not been authorized licensed or otherwise consented by the Complainant to use the mark FLSMIDTH or FLS . Being aware of the complainant's mark, domain names, the repute, recognition and goodwill, respondent with malafide intention adopted the disputed domain name, incorporating the said mark of the Complainant.

The registration done by the Respondent is for the purpose of defrauding the public. Its a d eliberate attempt by the respondent to attract for commercial gain, Internet users to another online location by creating a likelihood of confusion with the Complainant's Flsmidth/FLS mark and domain name such that the public would in all likelihood falsely believe that the Domain Name is Sponsored, endorsed or authorized by or in association with the Complainant. Respondent did not use or register the mark or name Flsmidth/FLS or any variation prior to the date upon which the disputed domain name was registered, nor Respondent is / was commonly know by the mark or name Flsmidth or any variation thereof . It is respectfully prayed that the ownership in fls.co.in be rightfully transferred to us the Complainant herein.

RESPONDENTS CONTENTIONS:

Respondent hereby responds to the statements and allegations in the Complaint and respectfully submits that the prayers requested by the Complainant be rejected and the Complaint be dismissed taking into account the following reasons.

Respondent has used the website under the said domain name openly, extensively and uninterruptedly. Website has attracted visitors around the world. Respondent has generated revenues in relation to their aforesaid services including through the said domain name; has invested sums in the acquisition and maintenance of the said domain name. Respondent has acquired reputation and goodwill in its aforesaid business domain name is exclusively associated with the Respondent.



Respondent denies all and singular, statements, allegations, contentions and submissions made in the Complaint, which are contrary to, with what is stated in this Response as if the same were specifically set out herein and traversed.

Respondent submits that the Complaint is false, frivolous and vexatious and deserves to be rejected. None of the grounds of paragraph 4 of INDRP have been proved by the Complainant Respondent submits following submissions :

- i. Exhibit B evidences that Complainant has no application/registration for FLS in India. Moreover, the Complainant's alleged mark FLSMIDTH (and not FLS) is pending registration in India and applied in India subsequent to the date of registration of the said domain name FLS.CO.IN. **Exhibit 'A1' to 'A10'** are extracts of online status reports, trademark applications for FLSMIDTH subsequent to the registration of the said domain name FLS.CO.IN by the Respondent. Exhibit B to the Complaint does not provide any details of the trademarks. Thus Complainant is not entitled to rely on Exhibit B of the Complaint. Respondent submits that worldwide trademark registration is irrelevant to the present proceedings. Respondent submits that it is the prior adopter of the said domain name in India and is not required to seek any authorization or approval from the Complainant. Respondent denies domain name is identical to the Complainant's domain names FLSMIDTH.COM or FLS.COM as alleged or otherwise.
- ii. Complainant has failed to provide any details of commencement of alleged marks FLSMIDTH or FLS in India whereas Respondent is using the website from March 24, 2005. Respondent is therefore the prior adopter.
- iii. Respondent is not aware and does not admit that the Complainant is a global engineering company founded in 1882 or that it is based in Copenhagen, Denmark as alleged or otherwise. Respondent is not aware and does not admit Complainant has grown to become a world leading supplier of equipment or services to the global cement or minerals industries or that it employs more than 10,500 people worldwide as alleged or otherwise. Respondent denies that the Complainant is known as 'FLS' or that FLS is the abbreviation of the names of the Founder F – Frederik, L – Laessoe, S – Smidth as



alleged or otherwise. Respondent adopted FLS without any awareness of Complainant. FLS is abbreviation for the words **FIND**, **LOOKUP**, **SEARCH** as annexed in **Exhibit 'B'**. Respondent denies that the Complainant has developed considerable goodwill in its business or in its trademarks and especially FLS as alleged. There are many corporations known as FLS and there are many entities owning FLS marks in different countries.

- iv. Respondent was not aware of Complainant's marks FLSMIDTH and/or FLS. Respondent became aware of it only when the Respondent received a cease and desist email from Complainant's on July 14, 2011.

Complainant offered to settle its claims by acquiring the said domain name FLS.CO.IN. Respondent was willing to consider the purchase offer. Respondent claims that website under the said domain name of the Respondent does not make even the slightest of reference to the Complainant or its businesses and does not in any way create any likelihood of confusion to make the visitors believe that the website is in any way associated with or sponsored by the Complainant.

- v. Respondent has no intention of violating the Complainant's alleged rights. Respondent used and intends to continue the use of domain name FLS.CO.IN bonafidely offering search engine services and advertising services. Presently the Respondent is offering a paid search listing and advertising service and has intention to launch full fledged services shortly.
- vi. FLS a mere 3 lettered word, is non distinctive and the Complainant cannot claim any monopoly in FLS when Complainant has no trademark registrations for FLS in India. **Exhibit F** declaration from the President of the Respondent to support the adoption of the said domain name.
- vii. Further, there are number of companies other than the Complainant which are using FLS and have applied/registered FLS as a trademark which are co-existing without any likelihood of confusion. **Exhibit 'C1' to 'C13'** sample extracts of status reports global trademark registrations/applications for FLS in the name of various entities. Some of these FLS marks are owned by companies whose corporate



name comprises 'FLS' as evinced by the attached extracts of status reports e.g. FLS Corporation, FLS Industries, FLS Services Inc. Hence, the Complainant cannot claim any exclusivity in respect of FLS.

- viii. FLS is acronym/abbreviation for hundreds of different purposes **Exhibit 'D1' to 'D4'**.
- ix. There are many other corporations apart from the Complainant using the FLS domain websites e.g. fls.net, flscorporation.com, fls.info. as **Exhibits 'E1' to 'E4'**.
- x. Products/services offered by the Complainant and the Respondent are completely different and distinct. Thus there is no likelihood of confusion.
- xi. The Respondent has been using the said domain name from March 24, 2005 and Complainant has filed the Complaint only now i.e. nearly 7 years after the domain name was created. Complainant did not raise any opposition during the 'Sunrise Period' that was made available under INDRP for the trademark proprietors to raise objections against such registrations that they think would infringe their trademarks. The Complainant is guilty of delay, laches and acquiescence.
- xii. Complainant has not used FLS and is trying to seek a mere monopoly in the domain names for FLS as is evident from Exhibit D of the Complaint. Complainant's alleged domain name FLS.COM does not lead to a website under the domain name FLS.COM but only links to a website FLSMIDTH.COM.

This proves Complainant does not have any interest in FLS and is merely trying to block, reserve and monopolize FLS whilst attempting to prevent others from using it.

- xiii. Entire Complaint is based on the FLSMIDTH mark and not FLS mark. FLS is materially different from FLSMIDTH and the Complainant cannot rely on its FLSMIDTH mark to challenge the said domain name FLS.CO.IN registration of the Respondent.
- xiv. Complainant is guilty of reverse domain name hijacking.



Going further Respondent states that:

A. WHETHER THE RESPONDENT'S DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A NAME, TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS; (POLICY, PARA. 4(I))

Complainant is not the proprietor of FLS in India and does not hold any registrations/applications for the same. Complainant has not used and has no bonafide intention of using FLS. Complainant is not using the domain name FLS.COM and is merely using it as a link to www.FLSMIDTH.com

Complainant has merely set out the list of countries where the trademark FLSMIDTH is applied or registered. Details of trademark application numbers, status of the same (i.e whether the same are pending registration or registered is set out) or copies of applications/registrations have not been provided in the Complaint. Mark FLSMIDTH is not registered in India and has been applied in India subsequent to the date of registration of the domain name. This fact has been concealed by the Complainant. Complainant cannot claim any exclusive rights in FLS through its alleged trademark FLSMIDTH. Respondent submits that the said domain name is not identical with or confusingly similar to the Complainant's alleged mark FLSMIDTH especially when the Respondent is using the said domain name for dissimilar services.

Complainant has no exclusive rights in FLS in the circumstances explained by the Respondent. The alleged domain name www.FLS.com which is inactive and merely links to FLSMIDTH.com does not give any exclusive rights in FLS to the Complainant.

Respondent denies said domain name is an imitation of the Complainant's alleged trademark as alleged. Respondent denies that it has not created any content to his website or that it is offering the said domain name for sale. Respondent is in fact using the website in the manner set out above. Respondent has not registered FLS.CO.IN for the purposes of sale to the Complainant. Respondent never initiated a sale of the domain name to the Complainant. Its Complainant who approached the Respondent as to whether it is willing to sell its domain name to the Complainant. Respondent claims that it has been consistently held by the UDRP decisions that when a complainant offers to purchase the domain name of the Respondent and upon such offer, the Respondent indicates its willingness to sell, the same is unobjectionable. Respondent denies that



the use or registration of the said domain name will result in conflict or confusion or lead to dilution of the alleged reputation of the Complainant's business. The Respondent denies that the Complainant's search engine rankings would be adversely impacted or that it will lead to loss in revenue as alleged.

Respondent states Complainant does not have any exclusive rights in FLS.com and hence the question of any of the Complainant's rights being violated are denied. Respondent denies that the existence of the said domain name would cause the public to believe that the Respondent or their domain name is sponsored by or affiliated to the Complainant as alleged or otherwise.

Respondent denies that the said domain name without any due cause is taking or would take unfair advantage of or be detrimental to the alleged distinctive character or repute of the alleged Complainant's trademark or corporate name or domain names.

Respondent denies said domain name is liable to be prevented by Courts of Law by way of an injunction or appropriate order or that such prevention would protect the Complainant's intellectual property as alleged or otherwise.

Respondent denies that it has created or registered the said domain name subsequent to the Complainant's conception or adoption or usage of the trademarks or domain name as alleged or otherwise. Complainant has not even registered the mark FLS in India.

Respondent denies that it is not the bonafide owner or honest adopter or true/actual user of the said domain name. Respondent denies that the corporate name or trademarks or domain name of the Complainant is distinctive or that FLSMIDTH or FLS are well known under Intellectual Property Law. Respondent denies that FLSMIDTH is known as FLS. Respondent denies that the website under the said domain name will attract potential customers in the manner alleged.

B. WHETHER THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME; AND

Respondent submits that it has rights and legitimate interest in respect of the said domain name by virtue of its long, open, extensive and uninterrupted use since March 24, 2005



Respondent is not aware of the Complainant's marks FLSMIDTH and/or FLS website under the said domain does not make even slightest of reference to the Complainant or its business and does not in any way create any likelihood of confusion to make the visitors believe that the website is in any way associated with or sponsored by the Complainant.

Respondent denies registration or use of the said domain name amounts to cyber squatting or that it is the intention of the Respondent to take advantage of the Complainant's alleged reputation or its presence on the internet or to confuse the public or to divert business or to tarnish the reputé or goodwill of the Complainant or the said alleged marks or unduly gain in aspects to the detriment of the Complainant as alleged

C. WHETHER THE RESPONDENT'S DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH.

Respondent submits question of the said domain name being registered or used in bad faith does not arise. UDRP decisions have consistently held that the issue of bad faith registration and use was moot once it is established that the respondent had rights or legitimate interests in the disputed domain name in UDRP decisions consistently held that to establish bad faith registration, there must be sufficient evidence that the Respondent had the intent in some manner to deliberately "target" the Complainant and its marks or goodwill in order to capitalize on them and particularly where the trademark in question comprises a combination of three letters that is widely used by persons other than the Complainant on the Internet or elsewhere.

Complainant has failed to prove any intent on the part of the Respondent to deliberately 'target' the complainant's mark

Respondent has not sold or offered the said domain name for sale for 7 long years since its registration. Upon a purchase request from the Complainant if the Respondent expresses his willingness to offer to sell, it does not amount to 'intent to sell' and hence the same is unobjectionable.



Respondent was not aware of the Complainant's alleged marks, there is no question of the Respondent registering the said domain name in order to prevent the Complainant from reflecting its mark in a corresponding domain name.

The said domain name does not make reference to the Complainant or its business much less attempting to attract internet users to its website by creating any likelihood of confusion with the Complainant's alleged name or mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

Respondent submits that there is no requirement for the Respondent to seek authorization or license or otherwise take consent from the Complainant.

Respondent has independent rights in the said domain name and the Complainant has no right in FLS.

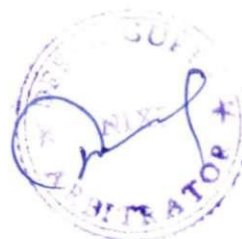
Respondent denies that the said domain name has been adopted with a malafide intention for the reasons alleged or otherwise.

Respondent denies said domain name is for the purpose of defrauding the public or a deliberate attempt to attract for commercial gain, internet users to another online location or to create a likelihood of confusion with the Complainant's alleged marks or domain names.

Respondent submits domain name FLS.co.in is not in bad faith and the Complainant has no rights whatsoever in FLS either as a domain name or as a mark and the present complaint has been brought in bad faith by the Complainant. In fact the Complainant is guilty of reverse domain name hijacking.

Prayers

Respondent submits that the Complainant is not entitled to any prayers/remedies as set out in paragraph 12 of the Complaint. The Respondent prays that the Complaint be dismissed.



5. OPINION:

I. Issue:

- A) to obtain relief under the dispute resolution policy and the rules framed by the .IN registry the complainant is bound to prove each of the following :
1. Manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
 2. Why the respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the complaint.
 3. Why the domain name in question should be considered as having been registered and being used in bad faith.

Complainant's principal contention as enumerated in Para 4 and on the basis of perusal of the records submitted by Complainant with the complaint –

This tribunal is of confirmed opinion that the Complainant FLSmidth A/S has origination since Year 1882 and is using the domain name fls.com since 1993."FLS" is the abbreviation of the names of the Founder F - Frederik, L- Laessoe, S-Smidth. It is undoubted that since inception of the business in 1882 Complainant has made enormous efforts to promote the brand name 'FLSmidth' by consuming various resources available at his end and word 'FLS' and 'FLSmidth' has certainly acquired a popular Brand name across the length and breadth of the globe and a prominent place in internet electronic media too.

On the basis of the records submitted by the complainant it's proved that the domain name 'fls.co.in' is related to the business of Complainant.

It is confirmed that Complainant is user of name 'FLS' The allegation made by the Complainant that the traffic of Complainant can be wrongly diverted to the Respondents site is correct and similar web names lead to confusion among web surfers cannot be denied.

That trade mark ' FLS' with or without other symbol or Figure or other injunctions has been registered effectively in different places over the world from time to time as attached in the Annexures submitted. Respondent's



registration of the infringing Domain name 'fls.co.in' cannot be without knowledge of the fame and public recognition of the 'fls' marks all over the world and throughout the global internet establishes that Respondent has registered the Infringing Domain Name to prevent the complainant from using its 'fls.co.in' mark as a domain name in India.

Furthermore, if a trademark is incorporated in its entirety in a domain name, it is sufficient to establish that said name is identical or confusingly similar to Complainant's registered mark.

It cannot be overlooked that whenever a domain name registration is sought ample professional efforts need to be made to make sure that there is no pre existence of same or similar domain names on the world wide web so as to avoid any intentional or unintentional imbroglio or illegality of its operation and to ensure that no illegalities are committed.

The respondent has flouted the legal requirements and rules of registration of getting a Domain name and its registration. Knowing completely well of the pre existence of the domain name wishing to be registered at the various registries of internet, and without understanding whether he has rights to register such a name or not , still the respondent proceeded with registration of the domain name in question which certainly leads to discounting and reduction in the FLSmidth's reputation, goodwill and trademarks and was purportedly using the name for business purposes though indirectly and illegitimately putting it for sale.

Respondent has registered and used the Infringing Domain Name to direct Internet users familiar with 'flsmidth' reputation and services to third party links on a portal site constitute bad faith use under the policy. It is very clear that the domain name was made available for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark for valuable consideration. Respondent has attempted to take unfair advantage of Complainant's rights in his mark by using it to attract Internet users. The argument of the Respondent that Complainant did not register the disputed domain name during the sunrise period holds no strength. The very fact an almost similar name 'fls.com' was already existing much before i.e. 2005 when 'fls.co.in' was registered should have deterred the Respondent from registering the disputed domain 'fls.co.in' name. It is immaterial whether the business information listed under the



disputed domain is similar to the business information listed under the Complainant's website or not. The very fact that traffic will be diverted from one sight to another on account of confusion by the internet user has to be kept in mind before making registration for similar domain names.

Moreover Parking of such domain names to obtain revenue through web traffic and sponsored results constitutes bad faith.

It is also important to note that the Respondent has not been commonly known by the domain name, that Respondent has no relationship with or without permission from the complainant for use of its marks and that Respondent cannot have ignored the fact that 'fls' and 'FLSMIDTH' are a famous brand, registered and protected trademark of the Complainant. That 'fls.com' is a registered domain name of the Complainant. Respondent intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site (Para 6 (iii) INDRP).

Complainant is well-known with its trademark .Due to the strong reputation of the trademarks 'fls' and 'flsmidth', Internet users will apparently and reasonably expect an offer of the Complainant or authorized or affiliated enterprises only under "fls.co.in".

The complainant has the right to exercise control on how its trademark is used by the third parties on the Internet. Complainant has prior rights in that trade/service mark, which precede the respondent's registration of the domain name.

The logo 'FLSMIDTH' and similar domain names ,i.e., 'fls.com' were legally registered at the various registries of internet by the Complainant before the respondent started the process of registration, and were legitimately using the name for business purposes. Similarity of name does not fade with passage of time. It is immaterial that the Complaint of the Disputed domain name by the Complainant was made after seven years of registration of disputed domain name in India. The rights of the Complainant for the domain name do not vanish with time. It profusely empowers them with the First right to the domain name 'fls.co.in' and



therefore any rights of the Respondent in this regard stand defeated in favour of Complainant.

The tribunal is of confirmed opinion that the domain name trade name and trade are factually and correctly conjoint to each other and is proof of the same of widespread recognition of the services provided by the Complainant make this complaint a plausible case of action.

This tribunal also holds that such misuse of the names should be checked in most efficient manner and that the complainant has tried to prove his good faith and right on the domain name in question should be considered good and that the domain name as having been registered and being used in bad faith by the respondent.

II. Domain name hijacking

This is an established rule that if the tribunal finds that the complaint was brought in good faith, for example in an attempt at forfeiting domain name hijacking or was brought primarily to rightly support the true domain name holder, the tribunal shall declare that the complaint was brought in good faith and constitute true use of administrative proceedings.

As enumerated in para 4 the Complainant asked for finding of bad faith, under this principle. In support of this prayer the Complainant cites the Respondent's misuse of name and it being available for a price sale through indirectly. Further, in support of this the Complainant submitted documents marked as Annexures which demonstrate and prove beyond any doubt that the complainant filed this complaint with no ulterior motive. Complainant's complaint is uncolorable and confirms beyond doubt the mind of tribunal that the present complaint is filed with no ulterior motive. Therefore, I am bound to conclude with the certainty that the present complaint by the complainant is an effort to save the disputed domain name from misuse and intention to harass or abuse the process of Law.


III. Conclusion

On the basis of the available records produced by the parties their conduct in the proceedings and the establish law, this tribunal is of considered opinion that the complainant succeeded to prove the necessary conditions. Further, this tribunal is bound to conclude with certainty that the present



complaint by the complainant is an attempt by the complainant to save the domain name of complainant from hijacking by the respondent and in good faith with no intention to harass the respondent or abuse process of law and the name fls.co.in be and is hereby transferred to Complainant with immediate effect.

Given under my hand and seal on this day of **22nd** day of **January 2013**.



Deepa Gupta
Arbitrator