



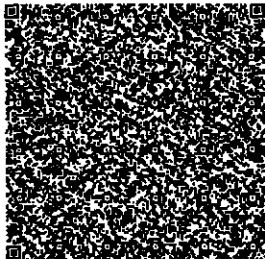
सत्यमेव जयते

# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	: IN-DL73163984303167M
Certificate Issued Date	: 01-Jul-2014 02:21 PM
Account Reference	: IMPACC (IV) d1732103/DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL73210343182882897974M
Purchased by	: V SHRIVASTAV
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V SHRIVASTAV
Second Party	: Not Applicable
Stamp Duty Paid By	: V SHRIVASTAV
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



Please write or type below this line

**VISHESHWAR SHRIVASTAV**

SOLE ARBITRATOR

IN

ARBITRATION PROCEEDINGS OF DOMAIN NAME

"fundermax.in"

between

FUNDERMAX GMBH

...COMPLAINANT

AND

ALOK ARORA

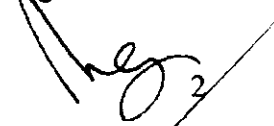
...RESPONDENTS

**AWARD**

**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. This Arbitral Tribunal was constituted by nomination of undersigned as the Arbitrator in the aforesaid proceeding vide communication by NIXI and accordingly this Tribunal issued notice to the parties on 21/04/2014. However, while checking the records of the proceedings, this Tribunal found that there is nothing on record which shows that the copy of the complaint has been supplied to the Respondents. Accordingly vide the aforesaid communication this Tribunal directed the Complainants to either supply proof of dispatch of the hard copy of the complaint to the respondent or send a copy of their complaint to the Respondents vide Courier .
  
2. That the Complainants vide their email dated 21/04/2014 requested a weeks time for compliance of the order which was granted. However, the email dated 23/04/2014 received from NIXI showed that the complaint sent through Blue Dart Courier remained unserved on the Respondent and was returned back with a note stating "CNEE SHIFTED FROM THE GIVEN

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ADDRESS". Hence, vide order dated 26/04/2014 the Respondent was directed to file his Statement of Defense by 03/05/2014 as the emails sent to him had not bounced back and thus he was aware of the ongoing Arbitration proceedings. In this duration this Tribunal received an email dated 30/04/2014 from one Mr. Pawan Pandey claiming himself to be the Counsel for the Respondent. Hence, the Tribunal vide order dated 03/05/2014 directed Mr. Pawan Pandey to send a duly executed Vakalatnama in his favour by 08/05/2014. On 09/05/2014 vide email Mr. Pandey informed that he has couriered the Vakalatnama on 8<sup>th</sup> May, 2014. Further vide order dated 12/05/2014 an extension of 5 days was given to the Counsel of the Respondent to send the hard copy of his Vakalatnama and also to send the correct and complete postal address of his client by 17/05/2014 .

3. That this Tribunal vide order dated 20/05/2014 gave the respondent time till 28/05/2014 to file their SoD, but on 27/05/2014 the Respondents requested for an extension of time



by 15 days to comply with the above directions. However, this Tribunal gave the Respondent 7 days time. The SoD sent by the Respondent was received on 07/06/2014. Thereafter, a Rejoinder of the complainants was received by this Tribunal. In view of the above both the parties were given 5 days time to file their Evidence by way of Affidavit. The Respondent requested some extra time for sending his Evidence by way of an affidavit on the ground that his Counsel was out of station. Keeping in view of the aforesaid situation this Tribunal was constrained to extend the date of publication of award by 20 days.

4. That this Tribunal noted that the Rejoinder sent by the complainants had gone back unserved hence on 19/06/2014 this Tribunal directed the complainant to send a copy of the rejoinder to the Tribunal's office and also directed the Respondent to collect the same by 21/06/2014. This situation again warranted an extension of time for publication of the award which was accordingly extended by another 10 days. Finally both the parties completed their pleadings by the filing of



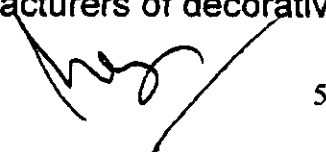
evidence by way of affidavit and on 28/06/2014 this Tribunal reserved its award.

### CLAIM

5. The claim as put forward by the complainant is briefly as under:

A. The Complainant FunderMax GMBH claims to be a company founded in the year 1890 in Austria having its head office at Klagenfurter Straße 87-89 A-9300 St. Veit/Glan, Austria and has further claimed international presence with locations and additional offices in Wiener Neudorf and Neudörfel, Austria; Lyon (France) and Bangalore (India). They have further claimed that on May 15, 2007 they had established an Indian subsidiary FunderMax India Private Limited having its registered office at 504, 5<sup>th</sup> Floor, Brigade Towers, 135 Brigade Road, Bengaluru-560025, India. Reliance is placed on Annexure F.

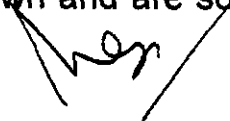
B. The Complainant claims to be one of the world's leading manufacturers of decorative surfaces in Compact Laminates



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and have been engaged in the business of manufacturing, designing and supplying of wide range of interior and exterior panels such as homogenous, hardboard, compact interior products, compact elements, decorative laminates, and semi-finished products for interior applications; and panels for exterior wall-cladding, outdoor furniture, balconies, and outdoor flooring systems to commercial and industrial consumers, various High Pressure Laminates (HPL) used in exterior application including residential, commercial projects across the globe including India for several years. Reliance is placed on **Annexure G**.

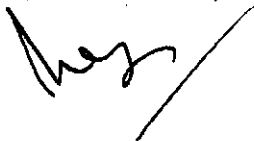
C. The Complainant claims that in May 2005 it adopted the trademark/ trade name "**FUNDERMAX**" and has been openly, continuously and extensively using the mark "**FUNDERMAX**" as its trade name, corporate name, business name, trading style, trade mark worldwide since then and its products bearing the mark "**FUNDERMAX**" are well known and are sold in more than 30 countries such as



India, France, Germany, Australia, USA, Switzerland, Bosnia& Herzegovinian, China, Serbia, Mexico, Russia, Moldova, UK, Greece, Italy, Japan, Chile, Kazakhstan, Estonia, Iran, Bahrain, Oman, New Zealand, Portugal, Spain, Norway, Ecuador, Jordan, Israel, Czech Republic, UAE, South Africa, Singapore, Taiwan, Qatar, Hungary, South Korea, Poland, Peru, Kuwait, Saudi Arabia, Finland.

D. The Complainant FUNDERMAX GMBH claims to be the registered proprietor of trademark and domain name **FUNDERMAX** in various countries and has in addition thereto given list of domain names registered by them and has vide **Annexure A,B & C**.

E. The Complainant claims that it has built up worldwide reputation for itself and for this purpose has invested substantial amounts of resources in advertising its products under the trademark "**FUNDERMAX**" in various international magazines, brochures, catalogues, Internet and other print

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and visual media and also through fairs, exhibitions and events. Reliance is placed on Annexure H .


F. The Complainant states that in and around October, 2013 the Complainant became aware of the Respondent's impugned website <www.fundermax.in>. and they through their Regional Head (North & East) had a meeting with the Respondent on November 08, 2013 wherein he was asked to refrain from using the impugned domain name as the same is identical and/or confusingly similar to the Complainant's prior registered trademark/ trade name/ brand name/logo and domain name "FUNDERMAX". It is claimed that the Respondent agreed to remove reference of the Complainant's trademark/tradename/logo from his website <www.fundermax.in>. On November 18, 2013, the Complainant noticed that the Respondent had removed the Complainant's mark/logo and brochure from the website <www.fundermax.in> but continued to use the Complainant's trademark/trade name **FUNDERMAX** on his

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website. The Complainant through their employee Ms. Nivedita Vibhaw (Head-Marketing & Customer Relations) sent an email dated November 26, 2013 to the Respondent again asking him to refrain from using brand name/trade mark/ trade name "FUNDERMAX" from his website. **Reliance is placed on Annexure D** which is an email dated November 26, 2013. However, no response to the said email was received and the Respondent continued to use the mark "FUNDERMAX" and similar words like "FUNDERMA" and "UNDERMA" which according to complainant was a violation of the Complainant's statutory and Common Law rights *qua* registered trademark "FUNDERMAX".

G. The Complainant then served a Cease & Desist Notice dated January 10, 2014 on the Respondent via Registered AD and hand delivery calling upon the Respondent to cease and desist from using the Complainant's registered trademark/trade name/logo/domain name in any manner



whatsoever and for unauthorized registration and holding a domain name "<www.fundermax.in>" identical to that of the Complainant's domain name. Reliance is placed on **Annexure E**. However, it is claimed despite receipt of the Cease & Desist Notice the Respondent failed to respond to the Notice or cease use of the impugned domain name and continued to use the impugned domain name containing the Complainant's registered trade mark/trade name.

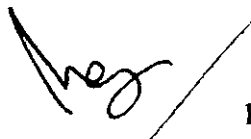
H. According to the complainant the Domain Name <www.fundermax.in> is identical and/or confusingly similar to the trade mark/service mark/trade name "FUNDERMAX" in which the Complainant has rights as per Para 3(b)(vi)(1) INDRP Rules of Procedure read with Para 3 of INDRP.

I. Further, the Complainant submits that upon perusal of the Respondent's website <www.fundermax.in>, it seem that the Respondent is engaged in the business of manufacturing, marketing and supplying of interior and exterior panels, High Pressure Laminates (HPL) used in



exterior application including residential, commercial projects which directly conflicts with the Complainant's business activities in India.

- J. The Complainant alleges that the Respondent has copied the Complainant's completed project photographs and images, installation methods which is apparent from the snapshot/screenshot of the Respondent's homepage. In the link "DÉCOR" on the impugned website <www.fundermax.in> the Respondent has uploaded the Complainant's products, colours, brochures and specifications and has copied the Complainant's proprietary specifications. Reliance is placed on Annexure I . It is alleged that the act of Respondent amounts to infringement of the Complainant's rights in the registered trade mark "FUNDERMAX" as per Section 29 of the Trade Marks Act, 1999 and is also in violation of the Complainant's Common Law rights in the trademark "FUNDERMAX". Reliance is placed on the case of **Farouk Systems Inc. v. Yishi, Case**



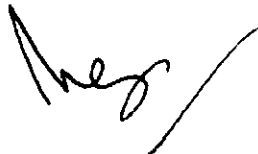
No. 02010-0006, Lego Juris A/S v. Robert Martin  
[INDRP/125].

- K. It is alleged that the Respondent has no rights or legitimate interest in respect of the disputed domain name as per Para 3(b)(vi)(2) INDRP Rules of Procedure to be read with Para 7 of INDRP.
- L. The Complainant claims that it has legitimate interest in the “**FUNDERMAX**” trademark in India as it had registered the said mark on April 04, 2004 and has been openly, continuously and extensively using it for more than 7 years thus by virtue of long and extensive use and advertising, the “**FUNDERMAX**” trademark has become well known in the relevant section. Further, it has registered the domain name www.fundermax.com on August 16, 2004 whereas the disputed domain name <www.fundermax.in> was registered by the Respondent on September 10, 2013. Hence, such subsequent adoption and registration of the impugned domain name shows that the Respondent has no right or



legitimate interest in the domain name <www.fundermax.in>. To substantiate their allegation the Complainant allege that the Respondent is neither commonly / popularly known in the public nor has applied for any registration of the mark “FUNDERMAX” or any similar mark or has registered his business under the said name with the Ministry of Corporate Affairs, India. They further alleged that the Respondent’s impugned domain name was intentionally created for commercial gain wherein the consumers or traders of the Complainant have been misleadingly diverted to the Respondent’s domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant. Reliance is placed on **BASF-SE v. GaoGou/Yerect International Ltd. INDRP/484.**

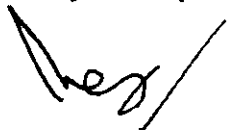
M. It is alleged that the Respondent has registered the disputed domain name in bad faith as per Para 3(b)(vi)(3) INDRP Rules of Procedure to be read with Para 6 of INDRP as he



was aware of the Complainant's registrations as the same were put on the email and cease and desist notice sent to the Respondent on November 26, 2013 and January 10, 2014, respectively and hence the use of the Complainant's trademark "FUNDERMAX" by the Respondent is in bad faith. Reliance is placed on **ITC Limited v. Travel India, L-2/5/R4 OF 2008**.

N. The Complainant alleges that by using the disputed domain name the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's name or mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered/available on the Respondent's website thereby violating Para 6 of INDRP.

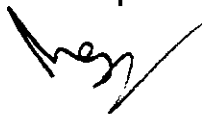
O. The Respondent in their rebuttal has claimed that the complainant has filed the present complaint without cause of action only to pressurize the respondent despite the



knowledge that the respondent had removed the logo, brochure, and some images which was objected by the official of the complainant and further he had stopped using the website in question since December, 2013 .

P. Further the present Tribunal has no jurisdiction to entertain/adjudicate the present complaint of the complainant in the absence of arbitration agreement.

Q. The Respondent claims to have booked the domain "FUNDERMAX.IN" on instance of the dealers of the complainant i.e. Mohan Ji, Creative Pulse Marketing Pvt. Ltd., 45/1, 2<sup>nd</sup> Floor, Corner Market Malviya Nagar, New Delhi and Mr. Shakti Bajaj, Red Floor India, Ansal Chambers, Bhikhajikama Place, New Delhi. It is stated that the respondent procures clients and sent the contact number and site address directly to the dealers of complainant and the dealer of the complainant deal with the parties and paid commission to the respondent per square feet basis. Respondent states that he is doing business of



installation of High laminated sheets of different brand which is available in the market for retain purchasers however some customers demanded the laminated sheets of Fundermax but generally Fundermax does not sale sheets to the outsiders in those cases the respondent contacted to the dealers of the complainant and sent the reference of the customers to the dealers of the complainant. The respondent allege that he has infact enhanced the business of the complainant even prior to booking of website in question. Reliance is placed on **Annexure-A**.

R. Respondents submits that the aforesaid domain "Fundermax.in" was registered by him and is being used by him in good faith and the business of the respondent was quite different from the complainant however booking domain in the same name with different registrant is not prohibited by any rule or law. It is alleged that the aforesaid domain was registered by the respondent in the month of September, 2013 and at the request of Sh. Anurag





Aggrawal Regional Head of Fundermax GMBH and the respondent after visiting his office had removed brochure, logo and some site image from his website and that after the respondent never used the website. It is alleged that the complainant had filed the present complaint without any cause of action as the respondent has already sent request for deletion/removal of website "Fundermax.in" on 02.05.2014. Reliance is placed on **Annexure-B**. It is claimed that the respondent has neither violated the rights nor infringed trade mark of the complainant "Fundermax GMBH".

#### **PRELIMINARY OBJECTION**

6. The present Tribunal addresses the Respondent qua the jurisdiction of the present Tribunal raised in Preliminary Objection of the Paragraph No. 2 of the Reply. The Respondent has got the disputed domain name registered as per .IN Registry and thus is governed by INDRP and hence he is estopped from pleading to the contrary. The said Rules provide for appointment



of an Arbitrator to entertain/adjudicate the complaint filed with .IN Registry and therefore the question of jurisdiction qua the competence of this Tribunal to entertain/adjudicate the disputes raised in the complaint in the absence of any arbitration agreement is wholly misconceived and is thus rejected.

### **FINDING**

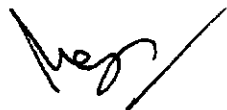
7. This Tribunal has considered the allegations of the complainants and the rebuttal of the Respondent and proceeds with its findings:
  
8. The case at hand has a chequered history. It is stated by the complainants that their representative / employee had met the respondent and had in the said meeting conveyed to the respondents to remove the logo, brochure and the name FUNDERMAX from his website (domain in question). It is seen that complainants have chosen not to file any affidavit of their employee Mr. Anurag Aggarwal. However there was no



that complainants have chosen not to file any affidavit of their employee Mr. Anurag Aggarwal. However there was no communication to the Respondent asking him to surrender the domain name "fundermax.in" This situation arose only on 13 Dec. 2013 after dispatch of complainants cease & desist notice

***Annexure E.***

9. The Respondent on the other hand allege that he booked the domain "FUNDERMAX.IN" on instance of the dealers of the complainant i.e. Mohan Ji, Creative Pulse Marketing Pvt. Ltd., 45/1, 2<sup>nd</sup> Floor, Corner Market Malviya Nagar, New Delhi and Mr. Shakti Bajaj, Red Floor India, Ansal Chambers, Bhikhajikama Place, New Delhi and that the aforesaid domain was registered by the respondent in the month of September, 2013 and at the request of Sh. Anurag Aggrawal Regional Head of Fundermax GMBH. I find that the Respondent too have chosen not to file any affidavits of the persons claiming to be dealers/ officers who had persuaded the respondents to register the disputed domain name.



10. It is seen that the Respondents post filing of the present complaint dated 24/3/2014 have on 2/5/2014 written to support@one.com which as per the WHOIS is the Admin Organization to delete the disputed domain name (reference Annexure B) filed with the written statement . It is seen that complainants have glimpsed / overlooked this averment at the time of making their rejoinder or their affidavit in Evidence.

11. Be it that as it may, this Tribunal sees that no useful purpose would be served in adjudicating on the allegations and counter allegation of the parties when the Respondent i.e. the registrant of the disputed domain name has voluntarily abdicated his claim by seeking cancellation of the disputed domain name by writing for its deletion. It is also an admitted position that the complainants have a *bonafide* claim on word FUNDERMAX.

### ORDER

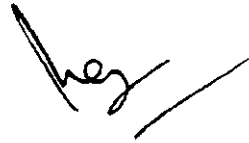
12. In view of the above this Tribunal directs the Registry to transfer the domain name <fundermax.in> to the complainants. The Complainants too are free to approach the Registry and get the



same transferred in their name. There is no order as to the cost. The original copy of the Award is being sent along with the records of this proceeding to National Internet Exchange of India (NIXI) for their record and a copy of the Award is being sent to both the parties for their records.

Signed this 8<sup>th</sup> day of July, 2014.

NEW DELHI  
08/07/2014

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V. SHRIVASTAV  
ARBITRATOR