



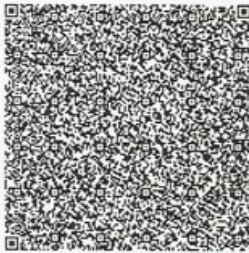
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL00820040895142N
Certificate Issued Date	: 05-May-2015 05:42 PM
Account Reference	: IMPACC (IV)/ dl835403/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL83540398795866381225N
Purchased by	: ANKUR RAHEJA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ANKUR RAHEJA
Second Party	: Not Applicable
Stamp Duty Paid By	: ANKUR RAHEJA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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INDRP ARBITRATION
THE NATIONAL INTERNET EXCHANGE OF INDIA [NIXI]

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: ANKUR RAHEJA, MCA FCS LLB

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.

In the matter of:

PERFETTI VAN MELLE BENELUX BV ... **Complainant**

versus

JING ZI XIN ... **Respondent**

ARBITRATION AWARD

Dispute Domain Name: www.mentosindia.co.in

1. The Parties:

a. Complainant: The Complainant in this arbitration proceedings is: **Perfetti Van Melle Benelux BV**, Zoete Inval 20, 4815 HK Breda, The Netherlands represented by Ms Sudarshana Sen-Mitra of DP Ahuja & Co., 14/2, Palm Avenue, Kolkata - 700019, West Bengal, India.

b. Respondent: The Respondent in this arbitration proceedings is Jing Zi Xin, South MaTou Road No 1187, App 28/601, Shanghai 200125, China (Email: jinzixin@startseek.com).

2. The Domain Name and the Registrar:

- a. The Disputed Domain Name is www.mentosindia.co.in.
- b. Disputed Domain Name is registered with Webiq Domains Solutions Pvt. Ltd, Mumbai, India.

Further, details of the Disputed Domain Name are as follows, as per the publicly available WHOIS details.

Domain Name:MENTOSINDIA.CO.IN

Created On:30-Oct-2014 15:39:09 UTC

Last Updated On:30-Mar-2015 06:15:56 UTC

Expiration Date:30-Oct-2015 15:39:09 UTC

Sponsoring Registrar:Webiq Domains Solutions Pvt. Ltd. (R131-AFIN)

Registrant Name:Jing Zi Xin

Registrant Organization:Private person

Registrant Street1:South MaTou Road No 1187, app 28/601

Registrant City:Shanghai

Registrant State/Province:Shanghai

Registrant Postal Code:200125

Registrant Country:CN

Registrant Phone:+86.13651842526

Registrant Email:jinzixin@startseek.com

Name Server:NS1.LOCALHOSTY.COM

Name Server:NS2.LOCALHOSTY.COM

3. Procedural History [Arbitration Proceedings]

This is mandatory Arbitration proceedings in accordance with the .IN Domain Name Dispute Resolution Policy (“INDRP”), adopted by the National Internet Exchange of India (“NIXI”). The INDRP Rules of procedure (“the Rules”) were approved by NIXI on 28th June 2005 in accordance with Arbitration and Conciliation Act, 1996. By Registering the Disputed Domain Name with the NIXI Accredited Registrar, the Respondent has agreed to the resolution of the domain disputes pursuant to the IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India [“NIXI”], the history of this proceedings is as follows:



In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed Advocate Ankur Raheja as the Sole Arbitrator for adjudicating upon the disputed in accordance with the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder, INDRP Policy and Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.

In this matter, the arbitration proceedings commenced on 08 April 2015 in terms of INDRP Rules. Relevant Dates are as follows:

Sr No	Particulars	Date
1	Arbitration Case referred to Arbitrator & Acceptance given	07 April 2015
2	Date of Handover of Complaint by NIXI	08 April 2015
3	Hard Copy of Complaint received by Arbitrator and Notice of Arbitration issued to the parties, also referred as date of commencement of Proceedings	09 April 2015
4	Soft Copy of Complaint served upon Respondent by the Complainant	09 April 2015
5	Second Notice to the Respondent	20 April 2015
6	Third Notice to the Respondent	24 April 2015
7	Award Passed	05 May 2015

- In accordance with INDRP read with INDRP Rules of procedure, notice of Arbitration was sent to the Respondent on 09th April 2015, with the instructions to file his reply / response by 20th April 2015.
- That the Complainant was requested to provide a soft copy of the Complaint along with Annexures to the Respondent, which was duly complied with on 09 April 2015, to expedite the proceedings.
- That Legal officer - NIXI informed on 17 April 2015 that the Hard Copy sent to the Respondent through courier could not be delivered due to incomplete/incorrect address and the consignment was put on hold. The Respondent was asked to provide complete/correct address on the same day but no response was received.
- That on failure of the Respondent to file any response to the complaint, another opportunity was provided to the Respondent on 20 April 2015.
- The communication at various stages of proceedings through emails at the ID provided in the WHOIS information of the Disputed Domain was tried to be delivered upon the Respondent but bounce back messages, indicating sender as an "Unknown User" were received.

- Also as the hard Copy of the Complaint also remained undelivered, therefore in terms of Rule 2(i)(B) of the Rules of procedure, another notice was re-issued to the email postmaster@mentosindia.co.in on 24 April 2015, with the time till 30 April 2015 to respond.
- That, in the interim, it was confirmed from the Complainant as to delivery of Soft Copy of the Complaint upon Respondent as served on 09 April 2015. Which was confirmed as successfully delivered and no bounce back message was received by the Complainant.
- Also in terms of Para 9 of the INDRP policy, the Domain Registrar [*WebIQ Domains Solutions Pvt Ltd*] was notified of the unreachable physical and electronic address of the Respondent, on which enquiry was initiated at Domain Registrar's end, who after enquiry informed on 04 May 2015 that Respondent is unreachable and as a result WHOIS could not be updated.
- Therefore, an order for ex-parte proceedings was issued on 05 May 2015, as no response was received from the Respondent and the Domain Registrant remained unreachable. In any case, the WHOIS info was the only contact information available for the Domain name owner as per the WHOIS records and which is assumed to be true. Therefore, service of notice was deemed to have been complied with in accordance with Rule 2 of the INDRP Rules of Procedure.

- No personal hearing was requested / granted / held.

4. Factual Background

According to the documentary evidence and contentions submitted:

A. The Complainant company was founded by Izaak Van Melle way back in year 1900 and subsequently became Van Melle Nederland B.V. In March 2001, Perfetti SpA acquired Van Melle Nederland B.V. to form the present Perfetti Van Melle Group. In India, Complainant operates through its group company, Perfetti Van Melle India Pvt Ltd. *[Relevant documents relating to Complainant's history, business, activities and product range are annexed with the Complaint].*

B. **'MENTOS'** is the Trademark and Brand Name of Complainant's globally popular chewy candy range. The Trademark was adopted in 1949 and production started in 1950s, with global availability including India and China. Due to such long, extensive and illustrious global use, Complainant's trademark **'MENTOS'** has acquired tremendous reputation throughout the world, and consumers and the trade worldwide associate the expression **'MENTOS'** with high-quality products originating only from Complainant. *[In support, the Complainant has annexed the global advertising and promotional campaigns of Complainant's MENTOS brand]*

C. The Complainant has registered various Trademarks in India under Class 30 as MENTOS, MENTOS MINT, MENTOS COOL CHEWS, MENTOS POWER GUM, MENTOS CUBE, FULL FRESH MENTOS, to name a few. *[The Trademark registration and renewal certificates have been annexed as far as possible]*

D. Complainant is the owner of various Top Level and Country Level Domain Names, inter alia, <mentos.com>, <mentos.ca>, <mentos.jp>, <mentos.com.tr>, <mentos.com.au>, <mentos.info>, <mentos.us>, <mentos.biz>, <mentos.in>, <mentos.ru>, <mentos.co.id>, <mentos.co.uk>, <mentos.co.in>, <mentosindia.in>, <mentosindia.com>. *[WHOIS records of these domains have been annexed by the Complainant]*

5. The Dispute

- a. The Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has statutory/common law rights.
- b. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- c. The disputed Domain Name has been registered or is being used in Bad Faith.

6. Parties Contentions

I. Complainant contends as follows:

A. That Respondent has registered the Disputed Domain Name mentosindia.co.in on 30 October, 2014 which incorporates the Complainant's mark '**MENTOS**' entirely with the ccTLD .co.in as extension. The word 'India' merely stands as a descriptive element, indicative of the territory where the domain name is meant to be used. If a well-known trademark is incorporated in its entirety, it is sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark.

B. The Complainant already has several top level domains ("TLDs") that incorporates the said style and marks. And it is apparent that the Respondent's Domain Name wholly contains the Complainant's mark. And an internet user is likely mistakenly believe that a website accessible by the URL: <http://www.mentosindia.co.in> is managed or endorsed by Complainant, or enjoys the benefit of Complainant's news and information resources. And user looking for India specific offers would be misled by the address of the disputed domain name.

C. The trademark '**MENTOS**' is a coined term and has no meaning other than to identify Complaint's products. Respondent, clearly, has not independently

arrived at its use of '**MENTOS**' in its domain name. Further, Respondent's name is Jing Zi Xin. There is neither any indication that Respondent is commonly known by a name or carrying on business under a name, corresponding to the disputed domain name, nor Complainant has ever assigned, granted, licenced, sold, transferred or in any way authorized the respondent to use the distinctive mark '**MENTOS**' or to register the disputed domain name.

D. Complaint has protected its well-known trademark all over the world and also have filed several complaints under UDRP in the past. Respondent, on the other hand, does not appear to have registered or applied for registration of '**MENTOS**' as a Trademark in any jurisdiction.

E. The website address <**mentosindia.co.in**> leads to a parking page displaying unrelated links. Thus, Respondent has not made any legitimate offering of goods or services under the domain <**mentosindia.co.in**>, Domain parking, evidently for the sole purpose of sale of the domain to the trademark right holder at the high price or to its competitor, cannot be said to be legitimate and active use of the domain. The Registrant is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleading divert consumers or to tarnish the trademark or service mark at issue.



F. Respondent's registration and passive holding of the disputed domain name fails to show, before any notice to the Registrant of the dispute, use of the domain name or the demonstrable preparations to honestly use the disputed domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services by Respondent. It has been held merely registering the domain is not sufficient to establish right or legitimate interests.

G. Complainant's mark '**MENTOS**' is distinctiveness, unique and well-known over the world, and '**MENTOS**' candy widely advertised and sold in China for past several years. Respondent is obviously well aware of the '**MENTOS**' brand name and no doubt also familiar with the highly popular range of '**MENTOS**' candy of Complainant which are extensively advertised in Respondent's country, besides several other. Registration of a domain name that is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith.

H. Complainant on coming to know of the disputed domain name, wrote to the Respondent on 30th January 2015 advising him of Complainant's trademark right and its infringement, and demanded that the disputed domain be transferred to the Complainant. Respondent did not reply to Complainant's notice which was sent by e-mail and via DHL courier service. While the email appeared to have

been delivered, the paper copy of the notice sent by DHL could not be delivered even after multiple attempts, due to incomplete/incorrect address.

I. Even where Internet users realize that the Respondent's parked page is not connected with the owner of the mark, the Respondent is still liable to profit from their initial confusion, since they may still be tempted to click on the sponsored links. Further, the disputed domain name is not being used for any bonafide business or commercial purpose. Passive Holding of a domain name, following a bad faith registration is evidence of bad faith intent on the part of Respondent.

J. The Respondent has registered the disputed domain name but has not put it to any material use, merely having a parked or in storage, whilst, it may reasonably be concluded, generating incidental revenue from advertising referrals. Hence, the disputed domain name is likely to be used, through its parking page, to promote the offerings of Complainant's competitors, by luring visitors to the parking page with the '**MENTOS**' brand, which activity evidences bad faith.

K. '**MENTOS**', as a brand name, has a strong recall value among consumers around the world. It has been held that bad faith is found if it is unlikely that the

registrant would have selected the domain name without knowing the reputation of the well-known trademark in question.

L. The Rules of Procedure of the INDRP state that, while applying for a domain name, the registrant must accurately represent that, to the registrant's knowledge, the registration of a domain will not infringe upon or otherwise violate the rights of any third party. It is inconceivable that Respondent did not know of Complainant and its rights in the mark/name '**MENTOS**', Respondent is thus guilty of wilful misrepresentation and providing inaccurate / incorrect information to the registry.

M. The disputed domain name was created on 30th October 2014. If Respondent had a bona fide reason or intention for registering the said domain name, he would have proceeded to host a proper and relevant website with the domain name. The fact that Respondent has chosen not to do so proves Respondent's wrongful intentions.

II. Respondent

A. The Respondent was provided various opportunities to file his response to the Complaint by the Arbitrator by its notice dated 09 April 2015, 20 April 2015 and 24 April 2015 respectively.

B. However, Respondent is unreachable and/or failed and/or neglected to file any response to the Complaint filed by the Complainant despite being given an adequate notification and several opportunities by the Arbitrator.

C. The Arbitrator, therefore, has no other option but to proceed with the proceedings and to decide the complaint on the basis of the material on record and in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder.

7. Discussion and Findings:

I. Procedural Aspects

A. The Complainant, while filing the Complaint, submitted to Arbitration proceedings in accordance with the .IN Dispute Resolution Policy and the Rules framed thereunder. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the INDRP Policy, while seeking registration of the disputed domain name.

B. The .IN Dispute Resolution Policy requires the Complainant, to establish the following three elements:

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

C. Undoubtedly, the Complainant has statutory and common law rights in the word '**MENTOS**'. The same have been protected by registration as Trademark all across the globe in different countries, including India, the copy of various Indian registration certificates have been annexed to the Complaint. As per the online records available at Trade Mark Registry website, Complainant first applied for '**MENTOS**' Trademark in India back in 1997 under class 30. And since then also has applied under the same class in various forms and combinations.

D. Further, prima-facie the Respondent does not have any relationship with the business of the Complainants or any legitimate interest in the trademarks or trade name. Moreover, the Complainant has neither given any licence nor authorized the Respondent to use the Complainant's mark. The Respondent has never been commonly known by the domain name in question, of late, registered

the Domain Name on 30 October 2014 and no legitimate use of the Domain has been made.

E. Rather the Domain has been parked at Domain Name Parking service company hosted by NAI - www.networkadvertising.org and the resulting webpage at the disputed Domain Name displays PPC (pay per click) links categorized in various relevant categories based upon the keywords as determined NAI's policies, thereby is causing confusion as to the source, sponsorship, affiliation, or endorsement of the activity being carried on through the website.

II. Respondent's Default

Several UDRP decisions have established that once a complainant has made a prima facie case that a Respondent lacks legitimate interest or right, the burden shifts to the Respondent to prove its right or legitimate interest in the domain name (F. Hoffman-La Roche AG v. Steven Pratt, WIPO Case No. D2009-0589 and Canadian Tire Corporation Limited v. Swallowlane Holdings Ltd., WIPO Case No. D2009-0828). That is, it is well established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the Domain Name to rebut this

presumption. But the Respondent has failed to come forward with a Response and therefore, in light of Complainant's unrebutted assertion that Respondent has no rights or legitimate interests in the disputed domain name, the Arbitrator may presume that no such rights or interests exist. [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

The INDRP Rules of Procedure require under Rule 8(b) that the Arbitrator must ensure that each party is given a fair opportunity to represent its case. Further, Rule 11 (a) empowers the arbitrator to proceed with an ex-parte decision in case any party does not comply with the time limits. The Respondent was given notice of this administrative proceedings in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) of the INDRP Rules of Procedure to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

The Respondent has not filed its reply or any documentary evidence thereof and has not sought to answer the complainant's assertions, evidence or contentions in any manner. The averments made in the complaint remain unrebutted and unchallenged. There is no dispute raised to the documents relied upon by the Complainant.

In the matter of Taco Bell Corporation V. Webmasters Casinos Ltd [INDRP/067], it was held that the Respondent registered the disputed domain name maliciously and he shows his depraved intention, in the arbitration proceedings by his act because three notices were sent by the arbitrator but he has submitted no reply of anyone. [INDRP/067 - tacobell.co.in - May 29, 2008]. Also in the matter of Talk City, Inc. v. Robertson, WIPO Case No D2000-0009, it has been held that because Respondent failed to submit a Response, the Panel may accept all of Complainant's reasonable assertions as true.

The Arbitrator finds that the Respondent has been given a fair opportunity to present his case. The paragraph 12(a) of INDRP Rules of Procedure provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the arbitrator's decision is based upon the Complainant's assertions, evidence and inferences drawn from the Respondent's failure to reply.

III. Requirements of Paragraph 4 of the INDRP Policy, i.e. Issues Involved in the Dispute:



The INDRP policy lists the following three elements that the Complainant must prove to merit the finding that the domain name of the Respondent be transferred to the Complainant or whether any other remedy in terms of the paragraph 10 of the INDRP Policy will be available or not:

(i) Identical or Confusingly similar with the Trade Mark, etc [Para 4(i) of INDRP Policy]

The Complainant has shown that it has rights in the Trade Mark '**MENTOS**'. The trademark was adopted in India in 1997, though it was first adopted internationally in 1949 and till date It has presence in almost every country of the world including India and China. Due to the said reasons, '**MENTOS**' has acquired tremendous reputation throughout the world, and consumers and the trade worldwide associates the expression '**MENTOS**' with quality products originating from the Complainant.

It was held in the matter of Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER [WIPO Case No. D2010-0858] Trademark registration constitutes prima facie evidence of the validity of trademark rights. [See Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol, WIPO Case No. D2001-0654.] The

Complainant has established its rights in the MENTOS trademark by furnishing documents of its trademark registration in the Russian Federation and by providing the details of its registered trademarks for MENTOS in numerous countries. [WIPO Case No. D2010-0858]

While the disputed Domain Name mentosindia.co.in incorporates the said Trademark in its entirety. The paragraph 3 of the INDRP policy clearly states that it is the responsibility of the Respondent to find out before registration that the domain name that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party.

The complainant asserts that Respondent has registered the Disputed Domain Name mentosindia.co.in on 30 October, 2014, it entirely comprised of Complainant's mark. While the word 'India' merely stands as a descriptive element, indicative of the territory where the domain name is meant to be used. In a UDRP proceedings brought by Wal Mart, it was found that a domain name is confusingly similar to a mark where a common geographical term is added to a trademark, wherein <wal-mart-europe.com> was held confusingly similar to the Wal-Mart trademark. [Wal-Mart Stores, Inc. v. Lars Stork, WIPO Case No. D2000 0628].

Furthermore, complainant already has several top level and country level domains that incorporate the said style and marks. And it is apparent that the Respondent's Domain Name entirely contains the Complainant's trade mark.

Indeed, numerous courts and UDRP panels have recognized that "if a well known trademark is incorporated in its entirety, it may be sufficient to establish that a domain name is identical or confusingly similar to Complainant's registered mark." [ITC Limited V Travel India (INDRP Case No. 065); Boehringer Ingelheim Pharma GmbH & Co. KG v Philana Dhimkana (WIPO Case No. D2006-1594); Allied DOMECCQ Spirits and Wine Limited v Roberto Ferrari, (INDRP Case No. 071); Philip Morris USA Inc. v Doug Nedwin/SRSPlus Private Registration (WIPO Case No. D2014-0339)]. Further, it has been held in the matter of Disney Enterprises, Inc. v. John Zuccarini, Cupcake City and Cupcake Patrol [WIPO Case No. D2001-0489] that "domain names that incorporate well-known trademarks can be readily confused with those marks".

Therefore, based on Complainant's clear rights in the Marks, along with the widespread popularity of Complainant's mark '**MENTOS**', it is quite obviously as Complainant contends that an Internet User would likely mistakenly believe that a website accessible by the URL: www.mentosindia.co.in is managed or endorsed by Complainant, or enjoys the benefit of Complainant's news and information

resources. And no doubt, Respondent's Infringing Domain Names are confusingly similar to Complainant's Marks.

Besides it is also well-established that the extensions such as '.co.in' in a disputed domain name does not affect a finding of similarity. In the INDRP matter of The Hershey Company V. Rimi Sen, it has been held that the addition of the country top level domain ".co.in" in the disputed domain does not avoid a determination that the domain name is identical or confusingly similar to the Complainant's mark [INDRP/289 - Hersheys.co.in]. Also in UDRP matters, it has been held that it is technically required for the operation of a domain name, and thus it is without legal significance in an inquiry of similarity. [Tumblr, Inc. v. Above.com Domain Privacy/Transure Enterprise Ltd., Host Master, WIPO Case No D2013-0213]. Also in the very recent matter of Compagnie Générale des Etablissements Michelin Michelin Recherche et Technique S.A. V Artemio Garza Hernandez [WIPO Case No D2015-0257], the Panel observes that the extension ".com" is typically not taken into consideration when examining the identity or similarity between a complainant's trademarks and a disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(i) of the INDRP Policy.

(ii) Rights or Legitimate Interests in the Domain Name [Para 4(ii) of INDRP Policy]

The circumstances has been elaborated under Paragraph 7 of the INDRP policy as under and the Respondent need to fit in atleast one circumstance under this clause in order to prove legitimate interest:

Para 7 of the INDRP Policy: Registrant's Rights to and Legitimate Interests in the Domain Name

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purposes of Paragraph 4 (ii):

- (i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or*
- (ii) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or*

(iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The trademark '**MENTOS**' is a coined term and has no meaning other than to identify Complainant's products and there is no indication that Respondent is commonly known by a name or carrying on business under a name, corresponding to the disputed domain name. Further, Complainant denies of having assigned, granted, licenced, sold, transferred or in any way authorized the Respondent to use the distinctive mark '**MENTOS**' or to register the disputed domain name.

It is well established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name, and then the burden shifts to the Respondent to come forward with concrete evidence of such rights or legitimate interests. The Arbitrator finds that the Complainant has made such showing in this case but no information has been submitted by the Respondent on what rights or legitimate interests he may have in the disputed domain name. [Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270]. Also Respondents' failure to respond can be construed as an admission that they

have no legitimate interest in the domain names [Pavillion Agency, Inc. v. Greenhouse Agency Ltd., WIPO Case No D2000-1221].

There is no showing that before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. Rather, the website associated with the disputed domain name is not being used for any bonafide / legitimate purposes, but leads to a parking page displaying PPC (pay per click) advertising links. It has been held that merely registering the domain name is not sufficient to establish right or legitimate interests. [Vestel Elecktronik Sanayi ve Ticaret AS v. Mehmet Kahveci, WIPO Case No. D2000-1244].

In the WIPO matter of American Home Products Corporation vs. Ben Malgioglio, [WIPO Case No. D2000-1602], it was held that the Respondent's website is not operational and the Panel infers that it never has been. The Panel simply does not see such passive use to constitute a legitimate non-commercial or fair use without any intent to misleadingly divert consumers or tarnish the trademark or service mark at issue. Further in the WIPO matter of Paris Hilton v. Deepak Kumar, [WIPO Case No. D2010-1364], if the owner of the domain name is using it in order "...to unfairly capitalise upon or otherwise take advantage of a similarity with another's mark then such use would not provide the registrant with a right or

legitimate interest in the domain name. The Respondent's choice of the Domain Name here seems to be a clear attempt to unfairly capitalise on or otherwise take advantage of the Complainants' trademarks and resulting goodwill.”

The disputed domain name directs towards a parking page displaying sponsored links does not constitute a bona fide offering of goods. Therefore, it is an indication that Respondent lacks of rights or legitimate interests (National Bedding Company L.L.C. v. Back To Bed, Inc., WIPO Case No. D2010-0106 and LEGO Juris A/S v. J.h.Ryu, WIPO Case No. D2010-1156).

Further, there is no evidence that the Respondent is commonly known by the disputed domain name or a corresponding name or uses a corresponding name in a business. Obviously, the WHOIS does not indicate that Respondent has ever been or is commonly known by the '**MENTOS**' trade mark.

In the matter of Tercent Inc. v. Lee Yi, FA 139720 (Nat. Arb. Forum February 10, 2003) it was held: “nothing in Respondent’s WHOIS information implies that Respondent is ‘commonly known by’ the disputed domain name” as one factor in determining that Policy paragraph 4(c)(ii) does not apply. Also in the matter of Gallup Inc. v. Amish Country Store, FA 96209 (Nat. Arb. Forum Jan. 23, 2001) “finding that the respondent does not have rights in a domain name when the respondent is not known by the mark. Therefore, the Arbitrator finds that

Respondent is not commonly known by the disputed domain name under Policy paragraph”.

Lastly, it is quite evident from the parked webpage at the disputed domain name that neither any legitimate, non-commercial or fair use of the disputed domain name being made, but the Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant’s well-known trademark ‘**MENTOS**’, in order to capitalize / profit from the goodwill associated with the famous mark.

Given the long and widespread reputation of the Complainant’s trademarks, the compelling conclusion is that the Respondent, by choosing to register and use a domain name which is not only confusingly similar to the Complainant’s widely known and distinctive trade mark but identical, intended to ride on the goodwill of the Complainant’s trademark in an attempt to exploit, for commercial gain, Internet traffic destined for the Complainant. Potential partners and end users are led to believe that the website is either the Complainant’s site, especially made up for the bearings, or the site of official authorized partners of the Complainant, while in fact it is neither of these [Viacom International Inc., and MTV Networks Europe v. Web Master, WIPO Case No. D2005-0321 – mtvbase.com].



The Complainant has adopted and used the MENTOS trademark for several decades prior to the registration of the disputed domain name and it has invested substantial amounts for publicizing its mark. Under these circumstances it can be inferred that the similarity of the disputed domain name to the Complainant's trademark MENTOS is not a coincidence. The Respondent has intentionally acquired the disputed domain name for exploiting its value as a phonetically similar variant and as a misspelling of the Complainant's trademark. [Perfetti Van Melle Benelux BV v. Lopuhin Ivan, IPHOSTER, WIPO Case No. D2010-0858]

In the circumstances, the Arbitrator concludes that the Complainant has established the requirement of paragraph 4 (ii) of the Policy.

(iii) Registered and Used in Bad Faith [Para 4(iii) of INDRP Policy]

The circumstances have been elaborated under Paragraph 6 of the INDRP policy as under and even single instance proved against Respondent is enough to conclude Bad Faith:

Paragraph 6 of the INDRP policy: Evidence of Registration and use of Domain

Name in Bad Faith:



For the purposes of Paragraph 4(iii), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(ii) the Registrant has 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, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

Complainant's mark '**MENTOS**' is distinctive, unique and well-known all over the world, and '**MENTOS**' candy widely advertised and sold in China for past several

years [some publicity material for the China region has been annexed in support].

Complainant contends Respondent is obviously well aware of the '**MENTOS**' brand name and no doubt also familiar with the highly popular range of '**MENTOS**' candy of Complainant which are extensively advertised in Respondent's country, besides several other.

Registration of Domain Name that is identical to a trademark, with actual knowledge of the trademark holder's rights, is strong evidence that the domain name was registered in bad faith [ITC Limited v Travel India, INDRP Case No 065; American International Group, Inc. v Walter Busby d/b/a AIG Mergers and Acquisitions, NAF Claim No FA030400156251]

In the matter of PepsiCo, Inc. v. "null", aka Alexander Zhavoronkov, WIPO Case No. D2002-0562, it has been held that registration of a well-known trademark as a domain name may be an indication of bad faith in itself, even without considering other elements of the Policy.

Under the Policy, it is evidence of bad faith registration and use that by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation,

or endorsement or your web site or location of a product or service on your web-site or location.

It was held in the matter of L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, [WIPO Case No. D2005-0623], exploitation of the reputation of trademarks to obtain click-through commissions from the diversion of internet users is a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous decisions: see e.g Future Brands LLC v. Mario Dolzer, WIPO Case No. D2004-0718; ACCOR v. Mr. Young Gyoon Nah, WIPO Case No. D2004-0681 and Deloitte Touche Tohmatsu v. Henry Chan, WIPO Case No. D2003-0584.

In the matter of Educational Testing Service v. Atak Teknoloji Ltd. Sti. [WIPO Case No. D2010-0479] it was held "the Respondent must have known of the Complainant's trademark TOEFL when registering the disputed domain names. This is particularly likely as an English language education service was offered under the disputed domain names. It appears that the Respondent has registered the disputed domain names solely for the purpose of creating an association with the Complainant's well known TOEFL tests. The Panel believes that the Respondent has intentionally registered the disputed domain names for use with educational English language services in order to mislead users who may search for official TOEFL test related information provided by the



Complainant. The Panel is convinced that the Respondent was aware that a legitimate use of the domain names would not have been possible without infringing the Complainant's trademark rights, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. This assessment is supported by the fact that the Respondent must have known the Complainant's TOEFL trademarks at the time of registration of the disputed domain names, in particular as both disputed domain names have been registered well after the Complainant's TOEFL trademark has become widely known in the world.”

Respondent registered the disputed domain name on 30 October, 2014, long after Complainant's Marks became well known, and long after Complainant registered its Marks globally. And it is impossible that the Respondent was not aware of the Complainant's rights to the trademarks as the Complainant's trademarks are famous and registered globally further they have active and official websites on various other extensions including MENTOSINDIA.COM, which was registered in 2011. Respondent seems to have intentionally registered the disputed domain name, which reproduces Complainant's well-known trademark '**MENTOS**', in order to capitalize / profit from the goodwill associated with the famous mark. Only a person who is familiar with Complainant's mark could have registered a domain name that is confusingly similar [Barney's Inc. v B N Y Bulletin Board: WIPO Case No D2000-0059]



Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic. Where a domain name is found to have been registered with an intention to attract Internet users by exploiting the fame of a well-known trademark, it constitutes bad faith registration. [LEGO Juris AS V. Robert Martin - INDRP/125 - 14 February 2010]

In the matter of HSBC Holdings plc v Hooman Esmail Zadeh, [INDRP Case No 032], it was held that non-use and passive holding are evidence of bad-faith registration. The evidence furnished by the Respondent does not give a plausible explanation as to why there was no use of the domain name for more than two years. [Bayer Aktiengesellschaft v. Henrik Monssen, Wipo Case No D2003-0275 and Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No D2000-0003]

Also very rightly, the Complainant points out that in terms of INDRP Rules of procedure, the Registrant represents that the registration of the Domain Name will not infringe upon or otherwise violate the rights of any third party. And given the above facts, Respondent is thus guilty of wilful misrepresentation and providing inaccurate / incorrect information to the Registry as well.

In the UDRP matter of Giorgio Armani S.p.A. Milan Swiss Branch Mendrisio v. Lizhen Ye [WIPO Case No. D2013-0808] as relied upon by the Complainant, the Panel found that there is beyond all doubt that the Respondent has registered the disputed domain names in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain names and that the Respondent has engaged in a pattern of such conduct. The Panel accepts the Complainant's arguments that the worldwide fame of the trademarks leaves no question of the Respondent's awareness of those at the time of the registration of the disputed domain names which wholly incorporate the Complainant's trademarks, as even recognized by numerous previous UDRP panels (Ga Modefine, Giorgio Armani S.p.A. v. Kim Hontage, WIPO Case No. D2007-0851, etc).

In the circumstances, the Arbitrator concludes that the Complainant has established the final requirement of paragraph 4 (iii) of the Policy also as to both registration and use of the Domain Name in bad faith.

8. Decision:

In the lights of the circumstances and facts discussed above, Arbitrator decides, "The disputed domain name is identical and confusingly similar to the registered trademarks and also the trade name of the Complainant in which Complainant has rights and the Respondent has no right or legitimate interests in respect of

the Domain Name and the Respondent's Domain Name has been registered and is being used in Bad Faith".

Consequently the Arbitrator orders that **the Domain Name <"mentosindia.co.in"> be transferred from the Respondent to the Complainant with the following order as to costs.**

Costs:

In the facts and circumstances as discussed above, the Respondent is also ordered to pay to the Complainant, the documented costs of these proceedings and relevant expenses. Further for any delays, it shall be accompanied with interest @ 15% p.a. (fifteen percent per annum) from the date of implementation of the decision till the date of payment.



Ankur Raheja, MCA FCS LLB

Sole Arbitrator, NIXI, India

Date: 05th May 2015

Place: New Delhi