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## ARBITRATION AWARD

**.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA  
.IN domain Name Dispute Resolution Policy  
INDRP Rules of Procedure**

**IN THE MATTER OF:**

PERFETTI VAN MELLE BENELUX B.V.  
ZOETE INVAL 20-4815  
HK BREDA THE NEITHERLANDS

COMPLAINANT

VERSUS

ANUPAM  
E-40, JEEWAN PARK,  
UTTAM NAGAR,  
NEW DELHI-110059-INDIA

..... RESPONDENT

1. **The Parties:**

The Complainant is PERFETTI VAN MELLE BENELUX  
B.V.ZOETE INVAL 20-4815 HK BREDA THE  
NEITHERLANDS.

The Respondent is ANUPAM, E-40, JEEWAN  
PARK,UTTAM NAGAR. NEW DELHI-110059-INDIA

2. **The Domain Name and Registrar**

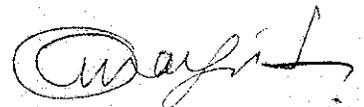
The disputed domain name www.mentis.in is registered with  
Incyber Advertising Incorporation.

3. **Procedural History**

The Complaint was filed with the .In Registry. National  
Exchange of India (NIXI), against ANUPAM, L-40, JEEWAN  
PARK,UTTAM NAGAR. NEW DELHI-110059-INDIA. The  
NIXI verified that the Complaint together with the annexures  
**TO** the Complaint satisfied the formal requirements of the .in  
Domain Name Dispute Resolution Policy ("The Policy") and  
the Rules of Procedure ("The Rules").

3.1 In accordance with the Rules, Paragraph-2(a) and 4(a), NIXI  
formally notified the Respondent of the Complaint, and  
appointed me as a Sole Arbitrator for adjudicating upon the  
dispute in accordance with The Arbitration and Conciliation  
Act, 1996. Rules framed thereunder, .in Dispute Resolution  
Policy and Rules framed there under on 26th July, 2008. The  
parties were notified about the appointment of Arbitrator on  
29th July, 2008

3.2 In response to the notification for the commencement of  
arbitration proceedings, the Respondent wrote back to NIXI  
and me stating that he had not received the paper book of the  
case by his E-mail dated 5<sup>th</sup> August. 2008.



The Respondent also intimated his new address of correspondence as "Anupam K. Sinha. F-30. Jeevan Park. Uttam Nagar. Nov, Delhi-110059". The NIXI once again forwarded the paper book to the newly intimated address of the Respondent and the same was received by him. The Respondent acknowledged the receipt of the paper book by his E-mail dated 7<sup>th</sup> August, 2008.

3.3 The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with the Rules (paragraph-6). The arbitration proceedings commenced on 7<sup>th</sup> August, 2008. In accordance with the rules, paragraph 5(c), the Respondent was notified by me about the commencement of arbitration proceedings and the due date for filing his response.

3.4 The Respondent while acknowledging the document under the cover of his E-mail dated 7th August, 2008, submitted that "The fear of MENTOS is genuine but this is just an assumption that this will be used for bad faith. If it was so, I must have replied or assured for bidding pricing as happens in some cases--". "Even if MENTOS needs the domain mentis.in, I can transfer it subject to I am compensated with all expenses which I have already incurred".

3.5 The response as has been filed by the Respondent, was forwarded to the Complainant and 7 days time was given to him to file his rejoinder, if any, under the cover of my letter dated 8th August, 2008. The Complainant did not file any rejoinder to the response filed by the Respondent.

3.6 The opportunity for filing evidence in support of claims made by the parties was given by me by my letter dated 18th August, 2008 for a period of 10 days to both the parties.

3.7 The Complainant by his E-mail dated 26 August, 2008 intimated to the panel that he does not wish to file any evidence



in support of claims and further submitted that the complaint already contained the main evidence in support of their claims.

3.8 The Respondent, by his E-mail dated 28th August. 2008 in addition to what is stated in para 3.4 above intimated the Panel that "As this is a web site and has to be present on the net so I had given links to support my views. Apart from these I have no document at present to submit, once it is cleared, exactly what document is required I can present, if available"

3.9 Copies of all communication, documents and replies were forwarded to the parties and .IN Registry through E-mails for maintaining transparency in the proceedings.

3.10 The Panel considers that according to Paragraph-9 of the Rules, the language of the proceedings should be in English.

3.11 In the facts and circumstances, in-person hearing was not considered necessary for deciding the complaint and consequently, on the basis of the statements and documents submitted on record, the present award is passed.

3.12 **The** present award is passed within **the** period of 60 days from the date of commencement of Arbitration proceedings as per Paragraph-5 of the rules.

#### 4.4 **Factual Background**

4.1 The Complainant in these administrative proceedings is PERFETTI VAN MELLE BENELUX B.V.ZOETE INVAL 20-4815 HK BREDA - THE NEITHERLANDS.

The Complainant requests arbitration proceedings in accordance with the Arbitration and Conciliation Act. 1996, .in Dispute Resolution Policy and Rules framed thereunder and any bye-laws. Rules and Guidelines framed thereunder and any law that the Arbitrator deems to be applicable.



The Complainant claims to be the proprietor of the trade mark MENTOS word and/or device around the world, covering mainly products of international Class-30 and used in particular of Candy and Chewing Gum. The complainant further claims the first international trade mark registration for "MENTOS" dates back to 1966. He further claims that in India "MENTOS" is the registered trade mark since 1983.

The Complainant submitted that Respondent has booked the domain name "MENTIS" which is not only confusing but also almost identical to the Complainant registered trade mark "MENTOS".

The Complainant runs the corporate website on [www.perfettivanmelle.com](http://www.perfettivanmelle.com) and [www.mentos.com](http://www.mentos.com)

The Respondent in these proceedings is "ANUPAM E-40, JEEWAN PARK. UTTAM NAGAR, NEW DELHI-110059 INDIA". The domain name in issue is [www.mentis.in](http://www.mentis.in). The Complainant/Respondent has not provided with the registration date of the domain name [www.mentis.in](http://www.mentis.in) to the Panel.

The Respondent by his E-mail dated 7th August, 2008 submitted to the Panel that the domain name "Mentis.in" is used for internal process (Interacting with clients) of his Company HURL TECHNOLOGIES PVT. LTD. and also the detail of his Company is available on [www.hurltechnologies.com](http://www.hurltechnologies.com).

The Respondent also contended that he is ready to transfer the domain name Mentis.in to the Complainant if he is compensated with all the expenses which he has already incurred.



5. **Parties Contentions**

A **Complainant**

5A-1 The Complainant claims to be the Proprietor of Trade Mark "MENTOS" word/device around the world concerning products of International Class-30 and in particular -CANDIES AND CHEWING GUM".

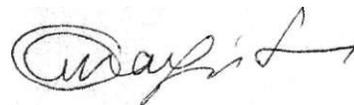
5A-2 The Complainant claims that his products "MENTOS" has been in use IN respect of Candies in Netherlands *since 1950's* and now "MENTOS products are widely advertised and sold successfully around the world.

5A-3 The Complainant has annexed a Chart having detail of Registration of Trade Mark "MENTOS" word/device in various part of the world. The Complainant has also annexed the Registration of Trade Mark "MENTOS" in India. The Trade Mark "MENTOS" device is registered in the name of Complainant under nos, 1135225 and 1206953 in class 30 in India.

5A-4 The Complainant submits that he operates and maintains websites [www.perfettivanmelle.com](http://www.perfettivanmelle.com) and [www.mentos.com](http://www.mentos.com). He further submits that the website [MENTOS.COM](http://MENTOS.COM) is specific dedicated to MENTOS products and its promotion.

5A-5 The Complainant submits that the Respondent has no right or legitimate interest in respect of the domain name [www.mentis.in](http://www.mentis.in). He further submits that the Respondent has not been commonly known by the domain MENTIS.IN and to the best of complaint 's knowledge, the respondent does not possess any traditional or legitimate prior use of the name MENTIS.

5A-6 In accordance with Rule-3 (VI) (3). The Complainant submits the Complainant has never received any information about the existence of the Respondent and has



never had any connection, affiliation or commercial relationship with him. The Respondent has never approached the Complainant to inform of his intention to register the challenged domain name or to ask for consent to its registration, which he should have done if his intention were to use the domain name MENTIS.IN in good faith.

5A-7 The Complainant further submits that due to the strict similarity between the words MENTOS and **MENTIS**, consumers may think there is a link between the Complainant's products and the contested domain name. Searching the Internet for MENTOS products. they may also run the risk of misspelling and mistyping the word MENTOS on the computer board ending up in MENTIS.

**B Respondent**

513-1 The Respondent filed his reply by his E-mail dated 7th August. 2008. The Respondent did not file a formal parwise reply to complaint as was forwarded to him by NIXI on 6th August. 2008.

5B-2 The Respondent contends that the domain [www.mentis.in](http://www.mentis.in) is basically used for internal process (Interacting with clients) of his Company HURL TECHNOLOGIES PVT. LTD. for the purposes of Sales tracking, testing of Software, websites. Bug tracking, etc.

The Respondent also provided following links:-

<http://mentis.in/ones> Online Examination System

<http://mentis.in/stock/> Stock maintenance system

<http://mentis.in/sot/> Sales Office Tracking System

<http://mentis.in/sangeet> Sangeet Mahavidyal Award function website

of his websites for establishing fair use of the domain name MEN i IS IN



5B-3 The Respondent further submits that he had never asked for any bidding price as happened in other case such as [kumarmangalambirla.com](http://www.kumarmangalambirla.com). He further submits that for more details the Panel should go through the following websites:

<http://www.mentis.co.uk/>

<http://www.mentis.co.za/>

[www.mentissystems.com](http://www.mentissystems.com)

[www.mentiscura.is](http://www.mentiscura.is)

[mentiscorp.com](http://mentiscorp.com)

[www.mentis-consulting.com](http://www.mentis-consulting.com)

[www.thementis.com](http://www.thementis.com)

[www.jimmymentis.com](http://www.jimmymentis.com)

5B-4 However, the Respondent submits that if the Complainant wants the domain name, the same can be transfer to the Complainant subject to the compensation of all the expenses already incurred by the Respondent on the Domain Name.

## 6 **Discussions and Findings**

6.1 The Complainant, while filing the complaint, submitted to arbitration in accordance with the .in Dispute Resolution Policy and the Rules framed thereunder in terms of paragraph 3(b) of the Rules and Procedure. The Respondent also submitted to the mandatory arbitration proceedings in terms of paragraph 4 of the policy.

6.2 Paragraph 12 of the Rules provides that the Panel is to decide the Complaint, on the basis of the statements and documents submitted and that there shall be no in-person hearing (including hearing by teleconference video conference, and web conference) unless, the Arbitrator, in his sole discretion and as an exceptional matter, otherwise determines that such a hearing is necessary for deciding the Complaint.



I do not think that the present case is of exceptional nature where the determination cannot be made on the basis of material on record and without in-person hearing.

Under Section 19 of the Arbitration & Conciliation Act, 1996, the Arbitral Tribunal is not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872.

Sub-Section 3 of Section 19 also empowers the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate including the power to determine the admissibility, relevance, materiality and weight of any evidence.

It is therefore appropriate to examine the issues in the light of statements and documents submitted as evidence as per Policy, Rules and the provisions of the Act.

The Complainant has filed evidence by way of Annexure 1-5 with the Complaint. The Respondent has filed his reply but had not filed any documentary evidence.

6.3 The onus of proof is on the Complainant. As the proceedings is of a civil nature, the standard of proof is on the balance of probabilities. The material facts pleaded in the complaint concerning the complainant's legitimate right, interest and title in the trade mark, trade name and domain name Mentos/Mentis and the reputation accrued thereto have neither been dealt with nor disputed or specifically denied by the Respondent. The Respondent has not also denied the correctness and genuineness of any of the Annexures filed by the Complainant along with the complaint.

6.4 Under the provisions of Order 8 Rule 5 of the Code of Civil Procedure, 1908 the material facts as are not specifically denied are deemed to be admitted. The decision of Hon'ble Supreme Court of India in the matter of Jahuri Sah Vs.

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Dwarika Prasad AIR 1967 SC 109. be referred to. The facts as are admitted expressly or by legal fiction require no formal proof. (see Section 58 of the Indian Evidence Act. 1872). The Panel therefore accepts case set up and the evidence filed by the Complainant and concludes that the same stand deemed admitted and proved in accordance with law.

6.5 The Complainant has omitted to provide the WHOIS record for the domain MENTIS.IN to the Panel.

6.6 However, the Complainant has submitted the Respondent's detail as under:-

Name: ANUPAM  
Address: E-40, JEEWAN PARK. UTTAM NAGAR.  
NEW DELHI-110059-INDIA  
Phone: +91 9811309036  
E-mail: skanupam@gmail.com

6.7 The record of the proceedings shows that the respondent received the communication and the notice of initializing the Arbitration Proceedings against him on 7<sup>th</sup> August. 2008.

6.8 Paragraph 10 of the Policy provides that the remedies available to the complainant pursuant to any proceedings before an arbitration panel shall be limited to the cancellation or transfer of domain name registration to the complainant.

6.9 Paragraph 4 of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent to be transferred to the Complainant or cancelled:

- (i) the domain names are identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain names; and



(iii) the domain names have been registered and are being used in bad faith.

That being so, the Panel will now proceed to examine if the Complaint has otherwise discharged its onus to prove each of the three elements specified in paragraph 4 of the Policy.

A. **Identical or Confusingly Similar**

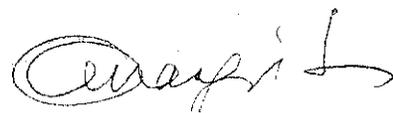
6A.1 The Complainant, PERFETTI VAN MELLE BENELUX B.V.ZOETE INVAL 20-4815 HK BREDA THE NEITHERLANDS is the owner of trade mark "MENTOS" word and / or device around the world and deals with the goods following in International Class-30 and mainly covering the products such as "Candies and Chewing Gum".

6A.2 It is not disputed that the Complainant holds registration of the trade mark "MENTOS" word and or device around the world in International Class-30).

6A.3 it is also not disputed that the Complainant is the owner of the trade mark "MENTOS" in India by the virtue of their Registration No. 1135225 and 1206953 dated 20th September, 2002 and 16th June, 2003 respectively.

6A.4 The Complainant's group website [www.perfettivanmelle.com](http://www.perfettivanmelle.com) and a website [www.mentos.com](http://www.mentos.com) specifically deals with the "MENTOS" products are also not in dispute.

6A.5 The Respondent, in its response dated 7th August, 2008, does not dispute the proprietorship of the mark "MENTOS" of the Complainant. The Respondent also did not dispute or deny the similarity between two marks "MENTOS" and "MENTIS" as alleged by the Complainant.



6A.6 The Respondent in his reply to the Panel also failed to give any explanation as to how the mark "MENTIS" has been conceived and adopted by him. The name of the respondent or any of the companies or organization does not contain the mark/Name MENTIS. The Respondent runs his business under the name of HURL TECHNOLOGIES PVT. LTD. and for that purposes he has registered the domain name www.hurltechnologies.com.

6A.7 The Respondent has thus failed to prove the first element of distinguishing the mark "MENTOS" with the mark "MENTIS".

6A.8 The Panel, therefore, holds that the domain name registered by the respondent is identical or confusingly similar to the trade mark and trade name of the Complainant.

**B Rights or Legitimate Interests**

6B.1 Paragraph 7 of the Policy lists the following three non-existence methods for determining whether the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the Registrant of the dispute, the Registrant use of. or demonstrate 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;
- (ii) the Registrant (as an individual, business, or other organization) have 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 noncommercial 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.



6B.2 The Complainant's case is that the Respondent has no legitimate interest in respect of the domain name MENTIS.IN as he has not been commonly known by the domain name.

6B.3 The Respondent in his reply dated 7th August, 2008 submits that the domain MENTIS.IN is used for internal process (Interacting with clients) of his Company HURL. TECHNOLOGIES PVT. LTD. for the service like Sales tracking, testing of Software, websites. Bug tracking, etc. The Respondent further provides following links:

<http://mentis.in/ones> Online Examination System

<http://mentis.in/stock/> Stock maintenance system

<http://mentis.in/sot/> Sales Office Tracking System

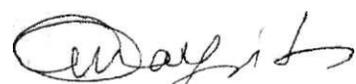
<http://mentis.in/sangeet> Sangeet Mahavidyal Award function website

to demonstrate legitimate use of the domain name MENTIS.IN.

6B.4 The Respondent further submits that he has a plan for domain MENTIS.IN and his Company is working on the same.

6B.5 The Respondent, as per Paragraph 7(1) of the policy discharged his onus to demonstrate the preparation to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. The service offered by the Respondent are totally different from the goods being offered by the Complainant under the trade mark MENTOS.

6B.6 The Respondent however failed to demonstrate that he has been commonly known by the domain name MENTIS.IN or he has acquired any trade or service mark rights in the domain name MENTIS.IN in terms of Paragraph 7(2) of the policy. The Respondent express his interest to plan a



website and submits that his Company is working on the launch of service for offering software service through his domain name for which, he enlists four links to support his submissions.

6B.7 The Respondent has thus successfully demonstrated that he is making a legitimate noncommercial or fair use of the domain name MENTIS.IN without intent for commercial gain to mislead; divert consumers or to tarnish the trademark or service mark of the complainant as per Paragraph 7(3) of the policy.

6B.8 The Panel, therefore holds that the circumstances listed above demonstrate rights or legitimate interests of the Respondent in the domain name MENTIS.IN.

**C Registered and Used in Bad Faith**

6C.1 For a Complainant to succeed, the Panel must be satisfied that a domain name has been registered and is being used in bad faith.

6C.2 Paragraph 6 of the Policy states circumstances which, if found, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Registrant has registered or the Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of our 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 you have 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 website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Registrant website or location or of a product or service on the Registrant website or location".

6C.3 The Complainant submit that the Respondent must have approached the Complainant 10 inform his intention to registered the domain name MENTIS.IN. Paragraph 6(1) of the Policy envisages that to demonstrate a bad faith, the registrant of domain name should have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration.

The Complainant, fails to discharged his onus to prove that the domain name MENTIS.IN has been primarily registered with an intention to sell the domain to the Complainant. On the contrary the Complainant admits that the Respondent has never approached the Complainant and / or has never received any information about the existence of the Respondent or had any connection, affiliation or commercial relationship with Respondent.

The Respondent in his reply dated 7<sup>th</sup> August, 2008 submits that he is ready to transfer the domain name MENTIS.IN to the Complainant , if he is compensated with all the expenses which have been incurred by him for the domain MENTIS.IN. However, the Respondent has not made any claim of specified amount, nor submitted statement of accounts or expenses incurred on the registration of domain name MENTIS.IN. Therefore, the question



of selling the domain name to the Complainant " for valuable consideration in access of documented out of pocket cost related to the domain name" cannot be decided. There is no evidence on record produced by the Complainant during the course of proceedings in this regard. In the absence of such evidence, the first element is not satisfied by the complaint of Paragraph-6.

6C.4 The Complainant submits that due to the similarity between the marks 'MENTOS' and 'MENTIS' consumer may think that there is a link between the Complainant products and the domain name MENTIS.IN. He further contends that search result on the internet for the mark 'MENTOS' may and up providing the result of the domain MENTIS.IN or there may be instance of misspelling and mistyping by the users to reach the domain MENTIS.IN.

The Panel, does not accept the contentions of the Complainant as the service of both the parties are of totally different nature. The consumer of "CANDIES and CHEWING GUM" are not likely to be confused or deceived by visiting the website dealing in software and IT service. With the product of Complainant or its business the Complainant has not filed anything on record to demonstrate that the Respondent has intentionally attempted to attract. Internet users to the website MENTIS.IN by causing confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

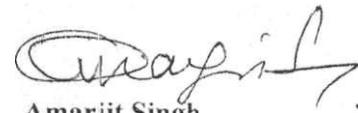
6C.5 The Panel, finds that though Respondent has offered the domain name MENTIS.IN for sale to the Complainant but the same has been offered after the initialization of administrative proceedings against the Respondent and the same cannot be indicative of respondents intention to register the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant as per Paragraph 6(1) of the Policy. The Complainant has also failed to demonstrate the use of dispute domain name by Respondent to attract the consumers/ users to his website by creating a likelihood of confusion and deceptively with the complainant name or mark as to the source.

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sponsorship, affiliation, or of a product or service of the Complainant on the Respondent's website.

7. Decision

In view of the fact that all the elements of Paragraphs 5 and 7 of the policy having not been satisfied in the facts and circumstances of the case, the Complainant is not entitled to any of the relief's provided under Paragraph 10 of the policy. The powers of the Arbitral tribunal are limited to the relief's under Paragraphs 10 of the policy on satisfaction of all the elements of the policy. The tribunal is not competent to determine the valuable consideration of costs directly related to the domain name incurred by Respondent for transfer in the absence of any evidence on record. Consequently, the complaint fails and is dismissed accordingly.



Amarjit Singh

Arbitrator