

MAHARASHTRA NATIONAL LAW
UNIVERSITY, NAGPUR

1ST MNLU-N NATIONAL COMMERCIAL MEDIATION COMPETITION, 2023

(VIRTUAL)

APRIL 14-16, 2023



QUARTER-FINAL ROUND COMPETITION PROBLEM

Organized by

Alternative Dispute Resolution Society

&

Centre for Intellectual Property Rights & DPIIT- IPR Chair

IN ASSOCIATION WITH



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THE 'RAGA' CONTINUES

XYZ is a private limited company incorporated in India as per the Companies Act, 2013, and is engaged in providing software solutions by uniting marketing, sales, commerce, service, and IT teams from anywhere with Customer 360 - an integrated Customer Relationship Management (CRM) platform which powers the entire lounge of connected apps. XYZ Pvt. Ltd. thus brings companies and its customers together to provide a seamless experience by helping them use technology solutions- such as helping in customizing ads and marketing on various social media platforms; by using software applications to identify target customers, their demands etc. and creating a portfolio of company's growth rate periodically. For companies of any size in any industry, Customer 360 can flex with the customers' changing needs. With an ecosystem of 8,700+ mission-critical partner apps and services, XYZ Pvt. Ltd. can maximize the use of its technology to meet one's business needs. And with more than 9 million installs, one can implement their apps with confidence.

XYZ Pvt. Ltd. entered into a "Non-Disclosure Agreement" with one employee Mr. Ryan, developer of 'Raga', the software application handling customer data for its users and processing customers' needs. The agreement concerns non-disclosure of proprietary and confidential information about the algorithm and strategic plan with which 'Raga' functions. XYZ Pvt. Ltd. terms it a 'trade secret' and prohibits Mr. Ryan from utilizing it during the subsistence of his employment and even after the termination of his employment. Relevant clauses of 'trade secret NDA' reads as follows:

"3. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and any third party as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without the prior written approval of Disclosing Party, use for Receiving Party's benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information.


4. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first."

Mr. Ryan, after 10 years of working in XYZ Pvt. Ltd. started his own company 'RAGA 2.0' [with a team of 10-15 employees] aimed at providing technological solutions to customers by using a software application 'Rage'. These technological solutions include CRM management, a communication platform between customers and companies, a graphical representation of the periodic growth rate of companies, and customizable internal policy drafting templates for companies, inter alia. 'Rage' works exactly similar to 'Raga', however it contains more enhanced features such as providing 3D effects to customer advertisements and smoother user experience than the 'Raga' portal. Mr. Ryan obtains registration of the trademark for 'RAGA 2.0' and a certificate of copyright for the algorithm of 'Rage.' The company quickly sees success within 2 years of incorporation. Mr. Ryan, being tech-savvy has gotten hold of customer data of the most successful

companies in their segment of the industry through an independently developed network channel, which incidentally includes customer data of XYZ Pvt. Ltd.

On hearing about the growing popularity of 'Rage', XYZ Pvt. Ltd. believes that Mr. Ryan has violated NDA signed as regards the trade secret for 'Raga' by using the trade secret to his benefit without obtaining prior approval from XYZ Pvt. Ltd. Since no NDA is signed between Mr. Ryan and the employees of 'RAGA 2.0', there is also a growing fear of exploitation of trade secrets among 'RAGA 2.0' employees, which implies the dissemination of trade secrets to third parties with mala fide intention. Mr. Ryan is also found to have frequently obtained customer data of XYZ Pvt. Ltd. to deviate from their established customer base and violate data privacy therein. Per XYZ Pvt. Ltd., registration of the company name as 'RAGA 2.0', constitutes trademark infringement with their previously trademarked application name 'Raga' as it is likely to confuse customers for their own software solution products. However, Mr. Ryan is advised by his legal representative that he owns the copyright for the 'Rage' algorithm and mere utilization of pre-existing skills not requiring special expertise cannot be claimed as a trade secret, especially when he has not solely used the algorithm and strategic plan of 'Raga' but has used his skills and acumen based on his independent knowledge for developing 'Rage' and developing a whole new network channel for accessing customer data of highly successful companies with bona fide intention of increasing his customer base.

After repeated arguments and correspondences, XYZ Pvt. Ltd., after consulting their legal representatives, invited Mr. Ryan to try and settle the matter through Mediation, which was accepted by Mr. Ryan. The first meeting is scheduled on 15th April 2023 in a virtual mode. XYZ Pvt. Ltd. will be represented by Ms. Emily (the CEO of the company) and the legal



representative for XYZ Pvt. Ltd., Ms. Sana. Mr. Ryan shall be accompanied by his counsel, Mr. Hugh, in the virtual mediation session.