



**7th SURANA & SURANA INTERNATIONAL
TECHNOLOGY LAW MOOT COURT COMPETITION 2007 – 08
RECORD**

In the International Court of Arbitration, Paris

DietZip

Applicant

Vs

Mr. Cyriano Proust

Respondent

1. Blaze TV Company (BTV), UK, won the rights to telecast a new version of a cricket competition called Quick20 in which teams from all major cricketing countries registered for participation. It was dubbed as a mini world cup and to be held in major cities in India with the finals to be held at its Capital New Delhi. This decision was influenced by the fact that India will attract the maximum viewers and will be the deciding factor for popularizing this version of a game that is almost a religion in this part of the globe.
2. BTV had paid a huge sum to win the exclusive global telecasting right beating established competitors in the industry. BTV had engaged ARWare of California, an upcoming software company headed by Mr. Arcenna, considered a maverick in software designing. He was earlier the number two in Tinysoft the numero uno among software companies in the world. ARWare employed a new technology called Augmented Reality known as AR in short which has a revolutionary concept of seamlessly mixing virtual images with real events thereby creating a new experience for the viewers. ARWare's software engineers mostly hail from India and they have a huge Indian arm, where most of the work gets done.
3. ARWare offered competitive pricing to BTV with the idea of grabbing the opportunity for global exposure. BTV was impressed with the new technology and took this offer over telecasting giants, considering the huge sum it had to pay for getting the telecast rights, though it had no idea of the actual technicalities involved.
4. The augmentation can take on a number of different forms like, Engineering, Engineering design, Entertainment, Medical, Military Training, Robotics, Telerobotics and scores of other areas. In all applications, AR presented to the user enhanced performance and perception of the world. The ultimate goal is to create a system such that the user cannot tell the difference between the real world and the virtual augmentation of it. To the user of this ultimate system, it would appear that he is looking at a single real scene.
5. While ARWare highlighted these qualities of AR, it did not mention that virtualisation of data involves very minimal or no human intervention and is handled by special software applications involving Artificial Intelligence in virtual setups. The specialty of this technology is that when a TV camera or any other web cam or other CTV cameras, networked or wirelessly linked by infra or blue tooth technology, zoom in on a subject, these devices can be manipulated by an array of virtual networks. The data concerning the subject is dug out by data mining techniques, and can be exploited manually by the TV camera operators, or by machines (computers) using Artificial Intelligence. The software handles the blending of the real life shots with the virtual ones and placing them appropriately on the TV screens creating a viewing experience that is unique. ARWare had not encountered any problem since it commercially employed this technique 6 months back.
6. Mr. Cyriano Proust a French National, was a racing icon and 5 times world champion and had held several world records. He is now retired but is still admired and held in great esteem. He is the

special invitee and the Guest of Honor for the opening and closing ceremonies of the Quick20. He is a darling of the kids due to his innocent countenance and also because of his earlier association with the promotion of Teddy Candies and Sweets that are sold worldwide. The products are also promoted as healthy and nutritious and are a great favorite of kids and old alike. He was also a subject of many a parodies and mime programs in restaurants and clubs. Cyriano look-alikes loved to imitate his various feats promoting Teddy Candies in bars and clubs and other social functions. These shows were always a hilarious hit.

7. He is also a Brand Ambassador for DietZip a health soft drink, a major sponsor of Quick20. His contract with DietZip is exclusive and bars him from promoting any other products / brands / services. DietZip, Germany is a multinational company and has its biggest manufacturing facility in Hyderabad, India.
8. Cyriano annulled his contract with Teddy Candies and Sweets a year back after his wife was diagnosed with an acute form of diabetes. Teddy Candies was her favorite too. Based on his request and a private settlement, Teddy Candies completely stopped airing the ads involving Cyriano. Many people, especially who were diabetic were moved by this gesture and held Cyriano in great respect and love. It was only after this that Cyriano entered into an exclusive contract with DietZip. Incidentally, ARWare handles TV and electronic media promos of Teddy Candies for the past 6 months.
9. During the inaugural ceremony and the opening matches, whenever the image of Cyriano appeared in the frame of the TV, Teddy Candy ads innocuously appeared on some corners of the telecast, sometimes in the sky, sometimes among the spectators or on the borderlines of the boundaries. Also Teddy Candy ads appeared during the over breaks immediately after Cyriano's appearance. This pattern repeated during the days when Cyriano appeared on TV on his other social outings visiting certain Non Governmental Organisations involved in Public Health, Environmental issues and also a specific NGO involved in creating awareness on diabetes during the course of the week.
10. It was then that the fans of Cyriano noticed the pattern. A close friend of his, who was also a diabetic, presumed that Cyriano had renewed his association with Teddy Candies and Sweets. Thinking that Teddy has released some sugar free version of their candies, he consumed some low calorie chocolates and was taken seriously ill. The organization he was associated with took up the matter seriously and arranged for demonstrations against Cyriano. When the finals of the match were going on, Cyriano came to know of the developments and approached BTV for explanation and demanded immediate end of their promo pattern.
11. BTV was taken aback and claimed ignorance. But then it was too late for any modification or adopting any new method, the pattern existed even during the closing ceremony and the prize distribution where Mr. Cyriano was actively involved. The damage has been done. The TV also covered a section of the crowd where there were demonstrations against Mr. Cyriano.
12. A furious Mr. Cyriano issued a legal notice to BTV that he has been defamed in the eyes of the society and his friends and well-wishers and demanded a huge sum of 35,000,000 USD as damages for his tarnished reputation.
13. BTV demanded explanation from ARWare about the non-disclosure of the technological procedures adopted by it. ARWare replied that software companies world over commonly adopt the policy of "don't ask, don't tell policy" to get virtual applications running without notifying users and vendors. It is not that "we are hiding anything from our clients but inform what is just essential. Our customers don't care what servers we run their applications on, for the most part, as long as it works."

14. Meanwhile, DietZip immediately took steps against Mr. Cyriano by issuing a notice for cancellation of his association with them and demanding the repayment of the amounts paid with interest citing the exclusivity clause of their agreement, plus punitive damages for loss of goodwill to the tune of 50,000,000 USD.
15. Cyriano replied to them stating that he is not in anyway connected with the fiasco and in no way associated with Teddy Candies anymore and in fact has taken up the matter legally with them.
16. DietZip ignored his reply and insisted on cancellation of their contract. All further communications between Cyriano and DietZip were futile and having failed to arrive at an amicable settlement, DietZip decided to go for Arbitration in the International Court of Arbitration, Paris, as included in their agreement.
17. The basic plea of DietZip as Applicant was to cancel the contract with Cyriano Proust as their Brand Ambassador and order for refund of the amount paid to him. While Mr. Cyriano Proust, Respondent was seeking order for continuation of the contract till the agreed period.
18. Counsels appearing for the Applicant and the Respondent are free to raise any other relevant issues in support of their arguments for their clients.

The salient features of the contract between DietZip and Mr. Cyriano Proust:

- a) This contract comes into effect from 1 September 2005 and will be effective for 3 years. (Till 31 August 2008).
- b) The contract is global in nature and all or any promos may appear in print, electronic media, television, hoarding, billboards or any other form that DietZip may devise in any part of the world.
- c) Cyriano Proust will exclusively be the Brand Ambassador for DietZip and will not promote or even appear passively in any promos of any other products/ brands / services in any part of the world.
- d) Cyriano Proust will receive USD 200,00,000 for the first year, USD 100,00,000 for the second year and USD 50,00,000 for the final year of the contract.
- e) Mr. Cyriano will not act contrarily in any way to the spirit of the contract and will not do anything professionally or socially that will denigrate the image of DietZip, or any of its products present and are likely to be produced in future.
- f) In the event that any of the clauses of the contract are compromised in any manner whatsoever, the contract will be terminated and appropriate action would be taken, including the steps of recovery of the moneys paid and in case of damages caused, punitive action in the form of monetary compensation for actual damages / loss that may be computed by DietZip.
- g) “Any party to this contract shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the International Chamber of Commerce in accordance with its Rules for a Pre-Arbitral Referee Procedure. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Conciliation & Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.”
- h) The governing law shall be that of INDIA