

The Verdict

NATIONAL MOOT COURT COMPETITION

PROBLEM STATEMENT

Sypran Inc. is a company incorporated under the laws of France and is involved in the designing and manufacture of cars, motorbikes, bicycles, trucks etc. Sypran was established in the year 1910 and is renowned for designing and manufacturing vehicles and automobiles with state of the art technology. The Company has a presence in over 20 countries all over the world including in United States of America, European Union, Argentina, Australia, China etc.. Sypran is the parent company of Sypran India Pvt. Ltd., a company incorporated under the Companies Act, 1956. Sypran India Pvt. Ltd. was incorporated in the year 1967 and has its registered office in Mumbai.

In the year 2002, Sypran, after months of conducting research, launched car in the sedan category with state of the art technology. The USP of the car was its capability to accelerate from 0 to 100 mph in less than 20 seconds. Sypran, after conducting several market surveys, decided to adopt the trademark **JENZ** for the car. Prior to the launch of the car, Sypran obtained registrations for the trademark **JENZ** in Class 12 in the European Union and United States of America. Sypran had also applied for the registration of the **JENZ** trademark in India in the year 2010 which was granted in February 2011. **JENZ** was initially launched in the European market and was an instant success with the Company selling over 10,000 units within six months of its launch. Till the year 2010, Sypran had sold over 1 million units of **JENZ** worldwide achieving sales revenues of over 20 billion USD. **JENZ** was the recipient of several awards and accolades all over the world and the success of **JENZ** had been widely reported in numerous automobile magazines all over the world including in India. Owing to the economic situation in the country and the obstacles in obtaining governmental clearances required for setting up a manufacturing plant in the country, Sypran decided to defer the launch of the **JENZ** car in the Indian market.

Jain Motors Pvt. Ltd. is a company incorporated under the Companies Act, 1956 and also has its registered office in Mumbai. Jain Motors was established in the year 2000 by one Mr. Harvarshdhan Jain and caters to customers particularly in the entry – level segment. The Company has exclusive showrooms in Mumbai, Hyderabad, Chennai, Bangalore and Kolkata.



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In March 2004, Jain Motors launched a car in the entry level segment under the trademark **JAINS**. **JAINS** was touted to be one of the cheapest cars in the world and was priced at merely Rs. 1,25,000 per unit. Jain Motors hugely advertised the launch of the **JAINS** car, particularly on the internet and sought to capture the youth as its primary market base. Jain Motors also applied for the trademarks **JAINS** in class 7, 12, 39 and its phonetic variant **JENZ** in Classes 7 and 39 in the year 2003 and both the trademarks were registered in favor of Jain Motors in the year 2004 itself.

In February 2011, Sypran decided to launch the **JENZ** product in India. For this purpose, Sypran spent a significant sum of money totaling to approximately Rs. 20 crores towards promoting the launch of the car in India. The launch of the car in India was hugely anticipated by consumers in India and was widely reported throughout the Indian press. Considering the economic situation of the country and the purchasing power of the consumers, the Sypran also decided to offer the **JENZ** product at a very attractive price of Rs. 6 lakhs for the Indian consumers. At this price, the car was one of the cheapest cars in the sedan category.

"GSearch.com" [owned and operated by GSearch Inc.] is one of the world's leading and most widely used internet search engines. GSearch is hailed for its ease of use and the accuracy and relevance of its search results. GSearch provides its services free of cost and earns the bulk of its revenue from its Adlinks service. The Adlinks service enables a party to be listed as a "Sponsored link" when a particular term [referred to "Adterm"] is searched on "GSearch". Since the "Sponsored link" is the first link to be displayed on GSearch when the Adterm is searched, the Adlinks service is highly sought after and companies ["Advertiser"] are required to pay Rs. 50,000 per Adterm. Additionally, the Advertiser is required to pay GSearch a sum of Rs. 1,000 each time a "Sponsored Link" is clicked upon by an internet user. GSearch has prescribed an Adlinks policy, which every Advertiser is required to conform to. The relevant portion of the Adlinks policy is given below:

"GSearch strongly recommends Advertisers to conform to intellectual property laws and we prohibit intellectual property infringement by advertisers. GSearch wishes to clarify that the sole responsibility for choosing a particular search term as an Adterm and the text that they choose to use in those advertisements lies with the Advertiser. GSearch does not examine the Adterm chosen by an Advertiser for its legality under the intellectual property laws. GSearch disclaims all liability for infringement of any intellectual property laws by an Advertiser."



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However, on receiving a complaint by a trademark owner, GSearch may agree to examine whether the Adterm amounts to infringement of the trademark owner's rights. If on examining the complaint, GSearch adjudicates that the use of the Adterm amounts to trademark infringement, GSearch may discontinue the display of the relevant Sponsored Links unless the Advertiser institutes appropriate legal proceedings before an appropriate Court within 30 days from such decision by GSearch and GSearch is intimated of such legal proceedings."

In order to capture a wider market, Jain Motors decided to purchase "**JAINS**" and "**JENZ**" as Adterms such that the link for **JAINS** car appeared as a Sponsored Link when a user searched for either "**JAINS**" or "**JENZ**". In March, 2011, Sypran learnt of the use of **JENZ** by Jain Motors as an Adterm and immediately filed a complaint with GSearch asking them to discontinue the use of **JENZ** as an Adterm by Jain Motors. GSearch, on examining the complaint by Sypran and the response by Jain Motors, found that the trademark **JENZ** was also registered in favour of Jain Motors and refused to interfere in the matter.

On learning of Jain Motors's registration of the trademark **JENZ**, Sypran filed rectification proceedings before the Intellectual Property Appellate Board for the removal of the said registration. The said rectification petition is pending before the Intellectual Property Appellate Board.

Subsequently, Sypran filed a suit in the High Court of Delhi against Jain Motors (being suit No. 3108 of 2011) for trademark infringement, passing off, misrepresentation, damages etc. In the said suit, Sypran has filed an application [being I.A. No. 1234 of 2011] praying for interim injunction restraining Jain Motors from using the trademarks **JAINS** and **JENZ**. Jain Motors has filed an application [being I.A. No. 1243 of 2011] for the return/ rejection of the plaint on the grounds that an infringement suit against a registered proprietor of a trademark is not maintainable and that the Hon'ble High Court of Delhi lacks the jurisdiction to entertain the suit. Sypran also filed a suit in the High Court of Delhi (being suit No. 3109 of 2011) against GSearch Inc. for trademark infringement. In the said suit, Sypran has filed an application being I.A. No. 1244 of 2011] praying that GSearch Inc. be restrained from displaying Jain Motors's Sponsored Links on the use of the trademark **JENZ** and **JAINS**.

The High Court of Delhi consolidated the two suits and the above mentioned applications i.e. I.A. No. 1234 of 2011, I.A. No. 1243 of 2011 and I.A. No. 1244 of 2011 and the matters are listed for hearing on 28th January, 2012.



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Following issues have been framed by the Court:

1. Whether the High Court of Delhi has the jurisdiction to try the present petitions?
2. Whether Jain Motors is liable for infringing and passing off trademark of Sypran?
3. Whether GSearch is liable for infringing the trademarks of Sypran?

The participants would be submitting memorials from both the sides, the Plaintiff being Sypran Inc. and the Defendants being Jain Motors Pvt. Ltd. and GSearch Inc.

The participants may include any other issue which they may feel fit for the case.

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