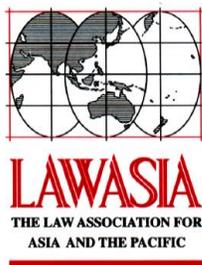




8th LAWASIA International Moot
MOOT PROBLEM 2013



Organiser of the LAWASIA International Moot Competition

MOOT PROBLEM

This year's Problem¹ involves a business dispute between the owners & operators of two Singapore department stores: Jack Small Ltd, which has been operated by the Small family for more than 70 years and Tan Sen Imports which imports clothing and other products primarily from India and China.

Faux fur

There are two competing types or categories of "fur coats" – those made with synthetic or imitation fur – generally referred to as "faux fur" and those made from the pelts² of real fur-bearing animals. Faux fur is made using synthetic fibers designed to resemble [fur](#). It was first introduced in 1929 and has been commercially available since the 1950s. Its use has become increasingly popular in many countries, especially in countries where animal rights and animal welfare organizations promote it as an *animal-friendly* alternative to traditional fur clothing.

Endangered species

If a product, such as a fur coat, is made using parts from endangered animals, its sale is prohibited by the UN Convention on International Trade in Endangered Species, also known as CITES.³

Mislabeling

There is evidence that some countries, including China, have been labeling their exports, particularly coats and jackets as "synthetic" when they are actually made with real fur - dog fur, rabbit fur, or the fur from local wild cats. The labels on these goods promote these products as looking like (real) fur, feeling like (real) fur and even smelling like

¹ While there is a worldwide concern regarding the mislabeling of fur products and the use of the fur of endangered species as well as allegations that real fur from China is being mislabeled as synthetic fur, the Moot Problem is fictitious as are the parties - Jack Small Ltd and The Tan Sen Chinese Emporium. The Asia Golden Cat is, however, quite real and **quite endangered**.

² A fur pelt is the undressed, raw skin of a wild animal with the fur in place.

³ An international agreement between governments intended to ensure that international trade in specimens of wild animals and plants does not threaten their survival. <http://www.cites.org/>. CITES has been implemented in Singapore by the ENDANGERED SPECIES (IMPORT AND EXPORT) ACT (Singapore). <http://eelink.net/~asilwildlife/singapore1.pdf>

(real) fur’ Unfortunately in some cases, *that may be true ... because the fur is actually real!*

Jack Small and the Tan Sen Chinese Emporium both sell fur clothing. In response to complaints filed by Jack Small, investigators from the Enforcement Support Office of the CITES Secretariat⁴ examined a number of faux fur products purchased at the Chinese Emporium and reported that the products were in fact made from real fur – some from the fur of the Asian Golden Cat.. They were advertised as “having the touch, feel and smell of real fur.”

Jack Small asserts that this constitutes “false and/or misleading” advertising while Tan Sen suggests a fatal inconsistency in Jack Small’s assertions: If, as Jack Small asserts, the fur is “authentic” it most likely actually has “the touch and feel of real fur.!”

The Asian Golden Cat

The specific fur products involved in this Moot Problem are made from fur of the ASIAN GOLDEN CAT also known as TEMMINCK’S CAT.⁵



⁴ This is an example of “fiction becoming fact,” at least for the purpose of this Moot. The author is not aware of any such investigation being conducted by CITES or any other animal protection organization in Singapore – but for purpose of this Moot – it must be treated as a FACT. Nor is he aware that clothing made from the fur of the Asian Golden Cat is available anywhere in Singapore or elsewhere in the LAWASIA Region. However, students are allowed – and encouraged – to find and use “real facts” available to the public regarding the export of mislabeled fur from China or other countries. The source of such information must be clearly cited in the Team’s Memorial.

⁵ Its scientific name is *Catopuma temminckii*.

The Asian Golden Cat It is found throughout South East Asia from Tibet and Sikkim (India) to southern China, Myanmar, Thailand, and peninsular Malaysia and Sumatra (Indonesia). Areas of good habitat still exist in parts of northeastern India, and China. It inhabits tropical and subtropical evergreen lowland and dry deciduous forest but is sometimes found in more open habitats such as shrub and grasslands and even in more open rocky areas. The Asiatic golden cat is threatened primarily by habitat loss due to deforestation and illegal hunting for its fur. It is listed on CITES under Appendix I and is listed by the IUCN as “Near Threatened.”

It takes the fur of up to eight of these small cats to make a single fur coat.

When the parties were unable to resolve this dispute amicably, they agreed submit the dispute to binding arbitration⁶ in order to save money and to avoid potentially harmful publicity.⁷

In its Petition, Jack Small requests the tribunal to find that Tan Sen has engaged in unfair business practices by

1. selling clothing made with the fur of endangered species, namely the Asian Golden Cat, in violation of both Singapore law - the ENDANGERED SPECIES (IMPORT AND EXPORT) ACT and CITES to which both Singapore and Malaysia are signatories.
2. by failing to clearly disclose to the public that the garments are made from the fur of endangered species
3. by using deceptive and misleading advertising, namely that its fur products have “the touch, feel and smell of real fur,” which, while true, is intentionally misleading as it was intended to – and clearly conveys – the message that the fur is fake BUT, nevertheless appears to be real.

In addition to seeking damages⁸ to redress the economic losses it has suffered from lost sale of its faux fur products, Jack Small requests the tribunal to issue an order

⁶ The Parties jointly executed the following agreement:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach or termination or invalidity thereof shall be settled by arbitration in accordance to the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration. All hearings and other proceedings will be held in Singapore at a time and place agreed to by the parties.

The validity and enforceability of this provision are not disputed.

⁷ Tan Sen threatened to file a countersuit against Jack Small asserting mislabeling of cosmetic products.

⁸ If the Tribunal determines Tan Sen has violated Singapore Law by selling clothing containing the fur of endangered animals, a hearing will be held at a future date to allow Jack Small to produce evidence of the economic harm it has suffered as a result of such sales.

prohibiting Tan Sen from continuing to carry, promote, and/or sell clothing containing the fur of any endangered species on the relevant CITES protected list and to establish a penalty of \$500 (US) for each item of clothing containing the fur of an “endangered species” it sells.⁹

The Respondent’s Contentions

1. While not admitting the allegation that it may have sold clothing containing the fur of endangered species in the past, Tan Sen asserts it had no knowledge that the fur was genuine and that most buyers could not tell the difference between real and high quality faux fur.¹⁰
2. It further asserts that neither Singapore’s ENDANGERED SPECIES (IMPORT AND EXPORT) ACT nor Singapore’s adoption of CINSSES does not create or provide a private right of action between private business entities for violations of any of their provisions but only authorizes action by the Singapore government to seek to enforce its laws and treaty obligations and neither the Singapore government nor any of its agencies or employees have taken any action to prevent its sale of these products.
3. It further asserts that, while it may award damages for monetary harm the Claimant can establish it suffered due to the sale of allegedly mislabeled goods by the Respondent in Singapore, the Arbitral Tribunal has no authority – implied or express – to award a “penalty” for suture sales of mislabeled goods.
4. Finally, it further asserts that under the Rules of the Kuala Lumpur Regional Centre for Arbitration [hereinafter referred to as the “KL Rules,” the arbitral tribunal lacks the authority to impose the future injunctive relief sought by the Complaint. While recognizing that Article 26 of the KL Rules does provide for *interim* relief, primarily to maintain the status quo; neither Art 26 nor any other provision of the KL Rules authorize the granting of a permanent injunction and further that no Singapore court would enforce such an order issued by a private arbitral tribunal.

⁹ Jack Small has promised to donate all “penalties” to The Nature Society (Singapore) ('NSS') <http://www.nss.org.sg/index.aspx>

¹⁰ It refers to Appendix C which indicates that most buyers couldn’t tell the difference.