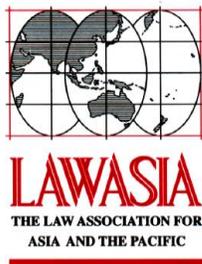




8th LAWASIA International Moot
CORRECTIONS AND CLARIFICATIONS TO THE MOOT
PROBLEM



CORRECTIONS & CLARIFICATIONS

Important caveat

The decision of the Author to provide answers to the following questions must not be viewed as indicating that these Questions and Answers are especially important to this year's Moot Problem.

It is the responsibility of each team to determine the importance and relevancy of these "clarifications" and whether to incorporate them in their pleadings.

A. Source and Origin of the fur clothing

1. Q How did Tan Sen acquire the fur products at issue?

A They were purchased from China Fur Import & Export Company (hereinafter referred to as China Fur) which has its headquarters in Tianjin, Peoples Republic of China (PRC). China Fur's sales manager met with Tan Sen's Chief Buyer in Singapore where she displayed samples of its products. Tan Sen subsequently placed an order by mail for a large shipment of goods, including the products involved in this Problem.

2. Q. What representations did China Fur make to Tan Sen regarding the fur clothing in issue?

A. It assured Tan Sen that the clothing was made from the pelts of "Asian Cats." Tan Sen asserts that its buyer believed they were domestically raised animals not "hunted in the wild" but there is no evidence that any such representations were made by China Fur.

B. The parties

1. Q. Are Jack Small Ltd. ("Jack") and Ton Sen Imports ("Ton") Singapore companies or Chinese companies operating in Singapore?

A. Both are incorporated under the laws of Singapore, and have their principal places of business in Singapore. While neither has a store or outlet in any other country Ton Sen advertises its products in several other Asian countries (including Japan) and the United States. Its international sales account for approximately 25% of its profits.

2. Q. What kind of *real fur* clothing products do Tan Sen and Jack Small generally sell?

A. They both sell a wide range of products including coats, jackets, hats, scarves, ear muffs & head bands, and mittens.

3. Q. Where does Tan Sen Chinese Emporium import its goods from?

A. Its fur products are imported from China, India and Indonesia. Other products are from Singapore, Hong Kong and Bangladesh.

While in some situations, synthetic fur is less expensive than real fur, in this case the real fur was less expensive than the synthetic fur. This allowed Tan Sen to charge less for its real fur products which were in direct competition with Jack Small's synthetic fur products.

4. Q Are the imported goods labeled by the manufacturers or distributors

A. The labels are affixed to the clothing where they are manufactured but the labels are designed and supplied by Ton Sen.

5. Q. Does Jack Small sell faux fur products which appear similar to some of Tan Sen's real fur products?

A. Yes.

6. Q. Did Tan Sen create the advertising slogan indicating the furs in question have "the touch, feel, and smell of real fur," or did China Fur create the slogan?

A. Tan Sen created the slogan.

7. Q What percent of Jack Small Ltd.'s business involves selling furs and/or faux furs clothing?

A. Approximately 60% of its total sales are fur (real and faux) products. These sales typically produce more than 90 % of its profits.

8. Q. What economic damage has Jack Small Ltd. suffered as a result of this alleged misconduct by Tan Sen?

A. Total sales have dropped 40%; sales of fur products have dropped 70%. [The actual economic losses suffered by Jack Small will be considered at a later hearing if necessary.]

8. Q. Did the purchase/sales agreement between Tan Sen and China Fur contain a "choice of forum" agreement?

CORRECTIONS AND CLARIFICATIONS

A. Yes, the parties agreed that any dispute arising from the purchase and sale of fur products would be resolved by arbitration under the auspices of the Hong Kong International Arbitration Centre.

C. Government action

1. Q. Was the Singapore government aware that Tan Sen was selling products containing real fur before the CITES inspection?

A. There is no publically available information indicating that it was.

2. Q. Did the Singapore government take any action against Tan Sen regarding its sale of real fur either before or after the inspection?

A. No!

3. Q. Has Singapore appointed a “designated management authority” to assess the status of the Asian Golden Cat?

A. No.

D. The Asian Golden Cat

1. Q. What’s the “official status” of the Asian Golden Cat?

Officially, the Asian Golden Cat is listed as “threatened” species.” The reference to it in the Problem as it being “quite endangered” is a “lay term” meaning only that it is generally recognized as needing protection if the species is to remain in the wild.

2. Q Does either company have a permit to trade pelts of the Asian Golden Cat? (Both the Treaty and the Act authorize a permit exemption.)

A. No

E. Applicable Law

1. Q Have the parties involved in this dispute (Jack Small and Tan Sen) agreed on the applicable law to apply in resolving this dispute.

A. No.

2. Q. Does Tan Sen sell any products which are actually made with faux fur and not real fur?

A. Yes. They are conspicuously identified as either “simulated fur” or “artificial

CORRECTIONS AND CLARIFICATIONS

fur.”

F. Requested Remedy

Q. When will the arbitral tribunal consider Jack Small’s request that it “issue an order 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?’”

A. As Jack Small has not requested an immediate, provisional, or temporary order (assuming that the Arbitration Tribunal has the authority to grant such an order), the Tribunal may only include such an order as part of its “final award” in this matter.

G. Miscellaneous Questions

Q. Does Malaysia have any relevant connection to the parties or the dispute between them other than being one of the areas where the Asian Golden Cat is found in the wild and being the location of the arbitral institution selected by the parties to resolve this dispute?

A. No

H. Arbitration Agreement

1. Q. What is the source of the Arbitration Agreement?

A. After it became apparent that the parties would not be able to resolve this matter amicably, they mutually agreed to resolve it by arbitration to “save time and money.” To effectuate their verbal agreement, they borrowed an arbitration clause from a contract that Jack Small uses in some of its other contracts. It is undisputed that both parties intended the phrase “arising out of... this contract,” to mean “arising out of or relating to this dispute.” They have agreed not to raise any issues regarding the authority of the Kuala Lumpur Regional Arbitration Center to resolve this dispute.

2. Q. The KLRCA has multiple sets of arbitration rules (e.g., 2010, 2012, Fast Track). Which set of rules is applicable to this dispute?

A. The “Fast Track” rules.

X. Unanswered questions

1. Some of the requested Questions do not deal with undisputed “facts” [real or fictional] but with “legal questions” (e.g., What source of law governs the issue of the mislabeling and unfair competition claims? What qualifies as “mislabeling” and does that definition cover the labels in question? Are there any domestic laws that

supersede

CORRECTIONS AND CLARIFICATIONS

the Treaty or the Act?)

Each team must do their own research and develop its own answers to such legal questions - citing legal authority when possible in order to supports their arguments. The “answers” may not be the same for both Claimant and Respondent.]

2. Other “unanswered questions” deal with *actual facts or conditions* which each team is responsible for determining based on its own research. (e.g., Does Singapore generally vigorously enforced its obligations under international treaties and conventions and what actions has it taken to enforce the provisions of CITES? Are there any domestic laws that supersede the Treaty or the Act?)

Corrections (Errors/corrections underlined.)

Page 1 line 19 the phrase: "using pets made from endangered animals" should be: "using pelts made from endangered animals."

In Respondent's Contentions #2, "CINSES" should be replaced by "CITES".

In Respondent's Contentions #3, "suture sales" should be replaced by "future sales."

Page 4 line 25 Respondent asserts that “Article 26 of the KL Rules” provides for *interim* relief” but the Kuala Lumpur Regional Rules do not actually contain an Article 26. They do, however, incorporate the UNICTRAL Arbitration Rules which do have an Article 26 that provides for interim protection.

June 2013