

**11<sup>TH</sup> LAWASIA INTERNATIONAL MOOT COMPETITION 2016**

*held at*

**COLOMBO, SRI LANKA**

---

Arbitration proceedings in accordance with KLRAC i-Arbitration Rules

**CEYLON TEA COMPANY**

*(Claimant)*

*Versus*

**ALMOND TEA COMPANY**

*(Respondent)*

**TABLE OF CONTENTS**

**TABLE OF CONTENTS..... I**

**INDEX OF AUTHORITIES .....II**

**STATEMENT OF JURISDICTION ..... V**

**STATEMENT OF FACTS.....VI**

**QUESTIONS PRESENTED .....IX**

**SUMMARY OF PLEADINGS..... X**

**PLEADINGS..... 1**

**I. THE APPLICABLE LAW THAT SHOULD BE REFERRED TO IN THIS DISPUTE SHOULD BE THAT OF SRI LANKA. .... 1**

*1.1. Conflict of Laws principles of Sri Lanka shall be applicable in the present dispute. 1*

1.1.1. Choice of Forum..... 2

1.1.2. Real and Close connection test..... 3

*1.2. Arguendo: Conflict of Laws principles of Malaysia be applicable, the same shall yield the previous conclusion as well. .... 3*

**II. ATC HAS BREACHED THE AGREEMENT BY DISTRIBUTING SAILOR’S CEYLON AFFIXED WITH THE ATC’ MARK IN MALAYSIA. .... 4**

*2.1. Distribution Agreement between ATC and CTC was not vitiated by Economic Duress..... 4*

*2.2. Alternatively, the contract is not void ab initio even if effectuated by economic duress. .... 5*

*2.3. The Respondents have manufactured and distributed ‘competing goods’. .... 6*

*2.4. The Non-compete clause is valid and not unreasonable ..... 7*

**III. ATC’S USE OF THE WORD ‘CEYLON’ IN RESPECT OF ITS TEA PRODUCTS IS MISLEADING ..... 8**

**IV. THE USE OF THE ATC’S MARK BY ATC ON THE PACKAGING OF TEA BRANDED AS SAILORS’S CEYLON AMOUNTS TO BOTH PASSING OFF AND TRADEMARK INFRINGEMENT..... 10**

*4.1. The use of the ATC’s Mark constitutes the tort of passing off. .... 10*

4.1.1. The Claimant’s mark has goodwill as required ..... 13

4.1.2. The Respondent has made a misrepresentation that is likely to deceive the public; and..... 14

4.1.3. The said misrepresentation has caused damage. .... 17

4.2. *The use of the ATC's Mark constitutes Trademark Infringement*..... 18

**PRAYER FOR RELIEF..... 21**

---

**INDEX OF AUTHORITIES**

---

**Cases**

*A. G. Spalding & Bros. v. A. W. Gamage Ltd* (1915) 84 L.J. Ch. 449..... 11

*Allan v Redshaw* [2013] EXPCC B1 ..... 16

*Amin Rasheed Shipping Corp. v Kuwait Insurance Co.* [1984] A.C. 50.....2

*Barton v Armstrong* [1975] 2 A11 ER 465 .....4

*Beckett Investment Management Group Ltd v Hall* [2007] IRLR 79 .....7

*Bollinger & Ors v Costa Brave Wine Co Ltd*, [1960] Ch 262 .....9, 11, 13

*C v D* [2007] EWCA Civ. 1282 .....2

*Chocosuisse v Cadbury* [1998] RPC 117.....9, 14, 15

*Compagnie Tunisienne de Navigation S.A. v Compagnie d’Armement Maritime S.A* [1971] A.C. 572.....2

*Croesus Financial Services Ltd v Bradshaw and another* [2013] EWHC 3685 (QB) .....7

*Diaego North America v Intercontinental Brands (ICB)* [2010] EXCA Civ 920 .....9, 14

*Egon Oldendorff v Libera Corporation (No. 2)* [1996] 1 Lloyd’s Rep. 380 .....2

*Erven Warnink Besloten Vennootschap and Another v J. Townend & Sons (Hull) Ltd. and Another* [1979] AC 731 ..... 11, 14

*Fage UK v Chobani UK* [2013] EWHC 630 (Ch.).....9, 14

*Franmax UAB vs. EUIPO- Ehrmann AG Oberschönegg im Allgäu* .....6

*G W Plowman & Son Ltd v Ash* (1964) 1 WLR 568 (CA) .....7

*Hodgkinson Corby Limited and Another v Wards Mobility Services Limited* [1995] F.S. 169 ..... 13

*James Capel (Far East) Ltd vs YK Fung Securities* [1996] 2 MLJ 97 (HC).....3

*John Walker and Sons v Henry Ost* [1970] 2 All ER 106 .....9, 14

*Kolmar Group AG v. Traxpo Enterprises Pte Ltd* [2011] 1 All E.R. (Comm.) 46..... 4

*L’Oreal v Bellure* [2006] EWHC 2355 Ch..... 13, 15, 16, 17

*Long John International v Stellenbosch Wine Trust* [1990] 4 SA 136..... 9

*M.S. Hebtulabhoy and Co. Ltd. v Stassen Exports Ltd* C.A. Appeal No. 286/93 (F)..... 19

*Maestro Swiss Chocolate Sdn. Bhd. & 3 Ors v Chocosuisse Union Des Fabricants Suisses De  
Chocolate & 2 Ors & Another Appeal*..... 12

*North Ocean Shipping v. Hyundai Construction Co. Ltd* [1978] A11 ER 1170 ..... 5

*Reddaway v. Banham* [1896] A.C. 199..... 11

*Rekitt & Colman v Borden* (1990) 1 WLR 491 ..... 12

*Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal  
No. 41/2014*..... 12, 13, 15, 16, 17

*Sulamerica Cia Nacional De Seguros S.A. v Enesa Engenharia S.A* [2012] EWHC 42..... 3

*Tattinger v Allbev* [1994] 4 All ER 75 ..... 9, 13

*The Kuminos* [1991] 1 Lloyd’s Rep. 370..... 2

*The Leather Cloth Co v The American Cloth Co* (1865) 11 H.L Cas. 538..... 11

*Thomson Holidays v Norwegian Cruise Line* [2002] IP&T 299 ..... 16

*United Biscuit (UK) Ltd v Asda Stores* [1997] RPC 513 ..... 15, 17

*Vine Products v Mackenzie* [1969] RPC 1..... 9, 13

*William Grant v Cape Wine and Distillers* (1990) 3 SA 897 ..... 9

**Treatises**

*Asia Arbitration Handbook* (Michael J. Moser and John Choong eds., OUP 2012)..... 3

*Black’s Law Dictionary* (9th edn)..... 11

*Dicey and Morris on the Conflict of Laws* (Collins ed., Sweet and Maxwell 2000)..... 2, 3

Lionel Bently and Brad Sherman, *Intellectual Property Law* (4<sup>th</sup> edn, OUP 2014)..... 13

*Redfern and Hunter on International Arbitration* (eds Blackaby and Partasides, 6th edn. 2015) ..... 1, 2

**Statutes**

Intellectual Property Act, No.36 of 2003 of Sri Lanka.....8, 18

**Other Authorities**

Annual Report 2012, Sri Lanka Tea Board. .... 18

**STATEMENT OF JURISDICTION**

---

---

---

*The Parties to the Distribution Agreement have consented to submit the dispute to arbitration as per Clause 22 of the said agreement in accordance with the Kuala Lumpur Regional Centre for Arbitration i-Arbitration Rules (KLRCA Rules).*

---

## STATEMENT OF FACTS

---

---

### **The Parties Involved**

The Claimant, Chelsea Tea Company ('CTC'), is a company incorporated in Sri Lanka and is the manufacturer of "Ceylon tea" under the brand name 'CTC CEYLON'. It was established in 1965, and has its registered address at Lot 14, Dawson Street, Colombo 00202, Sri Lanka.

The Respondent, involved in the distribution concerning the subject matter is, Almond Tea Company ('ATC'), incorporated in Singapore. It was founded in 1999 with the registered address at Suite 18-1, Katong Tower, 87 Ceylon Road, Singapore 429665.

The Sri Lankan Tea Board ('SLTB') is a fully government controlled statutory body that was established by the Parliament on 1 January 1976. It is responsible for the development of tea industry in Sri Lanka, promotion of the Ceylon tea globally and also the implementation of the regulations that are related to the industry.

### **The Distribution Agreement**

The claimants and the respondents entered into a distribution agreement ('the Agreement'), which was signed by the heads of both the parties, Marvan Ranatunga, the Chairman of CTC and Philip Chan, the Managing Director of the ATC, in Malaysia, on 20 October 2008, in order to expand the tea business in Malaysia.

The background to this was that during a visit to a Tea Plantation in Malaysia, Mr. Ranatunga had met Mr. Chan and was really impressed with his knowledge of Malaysian Tea industry and therefore decided to appoint ATC as the exclusive distributor of the tea CTC CEYLON in Malaysia. Initial reluctance and turning down of the offer by Mr. Chan didn't bog down Mr. Ranatunga. A fungal disease had destroyed the plantations from where the ATC sourced



its tealeaves. Mr. Ranatunga, after this, went back to negotiations with Mr. Chan and finally they agreed upon a nominal monetary consideration and entered into the distribution agreement.

The Agreement had all the particulars about the distribution targets, restrictions on the distributor, termination and its consequences, warranties and liabilities, marketing and support and training and had appointed ATC as the exclusive distributor of CTC CEYLON in Malaysia.

### **Breach of the Agreement**

The relevant terms of the Agreement that were found to be breached by the Respondent are mentioned in the clause 4.2 which read, “During the Term and for a period of 12 months after it the Distributor must not be concerned or interested, either directly or indirectly, in the manufacture or distribution in the Territory of any goods that compete with the Products, affixed with the Trade Marks or any other arguably similar mark in the Territory.”

It was found by the claimants in March 2015, that the Respondents had been growing and manufacturing tea and distributing the products under the brand name ‘SAILOR’S CEYLON’ in Malaysia since November 2012. That was when the Agreement was still in force as it had to come to an end on October 3013 and therefore the Respondents have breached the contract.

### **Violation of Trademark**

The name that the Respondents were using for their products was ‘SAILOR’S CEYLON’ that was allegedly similar to the name used by the Claimants for their tea i.e. Ceylon Tea. The Respondents also used the mark on the product which had a lion logo that was also similar to the Claimants logo.

The Claimants had immediately asked the Respondents to pay damages and for the breach and in response to it, the Respondents said that they have every right to use the word “Ceylon” on their products.

The parties decided to resort to arbitration to resolve the dispute.

**QUESTIONS PRESENTED**

---

---

*The following questions are presented before the Arbitral Tribunal for its consideration:*

1. What is the applicable law in the present dispute?
  2. Whether or not ATC's has breached the Distribution Agreement by distributing Sailor's Ceylon affixed with the ATC's mark in Malaysia?
  3. Whether the use of the word 'Ceylon' by the Respondent in respect of its tea products misleading?
  4. Whether the use of the ATC's mark amounts to either passing off or trademark infringement or both?
-

---

**SUMMARY OF PLEADINGS**

---

**I. THE APPLICABLE LAW THAT SHOULD BE REFERRED TO IN THIS DISPUTE SHOULD BE THAT OF SRI LANKA**

The applicable law should be that of Sri Lanka. We submit that the seat of the arbitration is in Sri Lanka and consequently the substantive laws of Sri Lanka will govern the disputes. Further, the conflict of rules would also establish that these substantive laws of Sri Lanka will be the applicable law.

**II. ATC HAS BREACHED THE AGREEMENT BY DISTRIBUTING SAILOR'S CEYLON AFFIXED WITH THE ATC'S MARK IN MALAYSIA.**

ATC has materially breached the Distribution Agreement by distributing Sailor's Ceylon in Malaysia. We also contend that the ATC's product was a competing product and further the non-compete clause is a valid clause.

**III. ATC'S USE OF THE WORD 'CEYLON' IN RESPECT OF ITS TEA PRODUCTS IS MISLEADING.**

The use of word 'Ceylon' along with the use of the ATC's mark, which is deceptively similar to the Lion Logo (a symbol closely associated with tea grown in Sri Lanka) gives an impression that the product originates in Sri Lanka. Such use violates statutory provisions as well as law elucidated in case law. Therefore, the use of the word 'Ceylon' is misleading as to origin function and deceives as to the origin function of concerned Geographical Indication.

**IV. THE THE USE OF THE ATC'S MARK BY ATC ON THE PACKAGING OF TEA BRANDED AS SAILORS'S CEYLON AMOUNTS TO BOTH PASSING OFF AND TRADEMARK INFRINGEMENT.**

The test laid down for ascertaining passing off in the *Rekitt & Colman v Borden*<sup>1</sup> (popularly known as “**Jif Lemon case**”) case is satisfied by the use of the ATC’s mark because the Claimant’s product has requisite goodwill, the misrepresentation caused by the Respondent is deceptive and the Claimant has suffered damage. As a result, extended passing off of the Claimant has occurred.

The Respondent has used a mark that *nearly resembles* the Claimant’s mark. This amounts to infringement under the requisite law.

---

<sup>1</sup> *Rekitt & Colman v Borden* (1990) 1 WLR 491.

---

**PLEADINGS**

---

**I. THE APPLICABLE LAW THAT SHOULD BE REFERRED TO IN THIS DISPUTE SHOULD BE  
THAT OF SRI LANKA.**

Multiple laws govern different aspects in an international commercial arbitration. According to Redfern and Hunter, amongst the five different systems of law, which in practice may have, a bearing on an international commercial arbitration is often described as the ‘applicable law’, the ‘governing law’, the ‘proper law of the contract’, or the ‘substantive law’. This law governs the substantive issues in dispute.<sup>2</sup>

Albeit, the Distribution Agreement (hereafter ‘**the Agreement**’) contains the dispute resolution clause, the same does not specify the applicable law that would govern the merits of the dispute.<sup>3</sup> However, the clause specifies that the parties have agreed to use the KLRCA i-Arbitration Rules and the seat of the arbitration is Sri Lanka.<sup>4</sup>

That we submit before the tribunal, that the appropriate conflicts of laws principles indicate the laws of Sri Lanka as the applicable law. For, [1] the seat of the arbitration is in Sri Lanka, and [2] the real and close connection test also leads to the same conclusion.

**1.1. Conflict of Laws principles of Sri Lanka shall be applicable in the present dispute.**

The institutional rules governing the present arbitration as indicated by the parties are the KLRCA i-Arbitration Rules. Article 35 of the said Rules clearly state that if the parties fail to designate the rules of law that would be applied to the substance of the dispute, *the arbitral tribunal shall apply the law which it determines to be appropriate.*<sup>5</sup>

---

<sup>2</sup> Redfern and Hunter on International Arbitration (eds Blackaby and Partasides, 6th edn. 2015) 165.

<sup>3</sup> Clause 22, The Agreement.

<sup>4</sup> Clause 22, The Agreement.

<sup>5</sup> Redfern and Hunter on International Arbitration (eds Blackaby and Partasides, 6th edn. 2015) 165.

It is claimed that the conflict of laws of Sri Lanka be applied as the seat of the arbitration is Sri Lanka.

*1.1.1. Choice of Forum*

One of the general criteria for attributing a choice of law to the parties is based on the choice of forum. This assumption is expressed in the maxim *qui indicem forum elegit jus*: a choice of forum is a choice of law.<sup>6</sup>

In *Compagnie Tunisienne de Navigation S.A. vs. Compagnie d'Armement Maritime S.A.*<sup>7</sup> (hereafter '**Compagnie**'), Lord Wilberforce explicitly mentioned, "*that the selection of a certain place of arbitration...is an indication that the parties intended the law of that place to govern is a sound general rule.*"<sup>8</sup> Similarly, in *Egon Oldendorff vs. Libera Corporation (No. 2)*<sup>9</sup> (hereafter '**Egon**'), the court stressed on the fact that if an arbitration clause contemplates that the arbitration will take place in a particular country, the same will permit an inference that the parties intended that the law of that country should be applied.

We further submit that only in the absence of an express choice or in the absence of any indication of the parties' intention, can this tribunal reach the third stage of investigating the system of law with which the contract has its closest and most real connection.<sup>10</sup> Per Bingham L.J. in *The Kuminos*,<sup>11</sup> to ascertain the parties' intention if the express choice is absent, the surrounding circumstances are to be weighed in the sense that what the parties would have said if asked.

---

<sup>6</sup> *Redfern and Hunter on International Arbitration* (eds Blackaby and Partasides, 6th edn. 2015) 232.

<sup>7</sup> *Compagnie Tunisienne de Navigation S.A. v Compagnie d'Armement Maritime S.A* [1971] A.C. 572.

<sup>8</sup> *Id.* p. 596.

<sup>9</sup> *Egon Oldendorff v Libera Corporation (No. 2)* [1996] 1 Lloyd's Rep. 380, 389-390; see: *C v D* [2007] EWCA Civ. 1282.

<sup>10</sup> *Dicey and Morris on the Conflict of Laws* (Collins ed., Sweet and Maxwell 2000) 9; *Amin Rasheed Shipping Corp. v Kuwait Insurance Co.* [1984] A.C. 50 per Lord Diplock.

<sup>11</sup> *The Kuminos* [1991] 1 Lloyd's Rep. 370.

Therefore, Clause 22 of the Agreement clearly stipulates Sri Lanka as the choice of forum for the arbitration.

*1.1.2. Real and Close connection test*

It is submitted that if there is no express selection of the governing law, an intention with regard to the law to govern the contract could be inferred from the terms and nature of the contract and from the general circumstances of the case.<sup>12</sup> Further, if intention cannot be deciphered from the circumstances, the contract is to be governed by the system of law with which the transaction had its closest and most real connection.<sup>13</sup> In *Sulamerica Cia Nacional De Seguros S.A. v Enesa Engenharia S.A.*,<sup>14</sup> the principle of closest and the most real connection test was reiterated and relied upon.

We submit that the claimant company is a company incorporated in Sri Lanka. The subject matter of the agreement was the product being manufactured in Sri Lanka. More importantly, the agreement seeks to protect ‘Ceylon Tea’ and ‘Symbol of Quality’. This implies that the parties wanted to submit themselves to the legal regime of Sri Lanka.

**1.2. Arguendo: Conflict of Laws principles of Malaysia be applicable, the same shall yield the previous conclusion as well.**

Malaysia is influenced by the English legal system and the common law system applies in the region.<sup>15</sup> In *James Capel (Far East) Ltd vs YK Fung Securities*,<sup>16</sup> the Malaysian Court explicitly mentioned the presence of choice of forum clause as one of the criteria to decipher the choice of the proper law.

---

<sup>12</sup> *Dicey and Morris on the Conflict of Laws* (Collins ed., Sweet and Maxwell 2000) 9; *Amin Rasheed Shipping Corp. v Kuwait Insurance Co.* [1984] A.C. 50.

<sup>13</sup> *Dicey and Morris on the Conflict of Laws* (Collins ed., Sweet and Maxwell 2000);

<sup>14</sup> *Sulamerica Cia Nacional De Seguros S.A. v Enesa Engenharia S.A* [2012] EWHC 42.

<sup>15</sup> *Asia Arbitration Handbook* (Michael J. Moser and John Choong eds., OUP 2012) 629.

<sup>16</sup> *James Capel (Far East) Ltd vs YK Fung Securities* [1996] 2 MLJ 97 (HC).



**II. ATC HAS BREACHED THE AGREEMENT BY DISTRIBUTING SAILOR'S CEYLON  
AFFIXED WITH THE ATC' MARK IN MALAYSIA.**

**2.1. Distribution Agreement between ATC and CTC was not vitiated by Economic  
Duress**

In a contractual matter, it is not sufficient to prove that there has been a commercial pressure on the plaintiff to vitiate the contract on grounds of economic duress. To repudiate the contract on this ground, the plaintiff has to prove that he has entered into the contract against his will and did not have any alternative means to confront the situation. The victim also has to prove that he was coerced against his will to enter into the contract.<sup>17</sup>

In this case, ATC was affected by the fungal disease, which devastated the tea plantations from which ATC used to outsource its tea leaves but they were not on the verge of bankruptcy.<sup>18</sup> This is clearly suggestive to the fact that although they were going through a financial stridency, their economic condition was not vulnerable enough for them to enter into the contract to salvage their company. Moreover, the claimant has made a clear offer before the defendant without resorting to any coercive methods to force them to enter into the contract.

In *Kolmar Group AG v. Traxpo Enterprises Pte Ltd*<sup>19</sup>, Christopher Clarke J. coined four conditions which determine whether the contract is vitiated by economic duress or not. They are:

Economic pressure can amount to duress if it is illegitimate and creates a contingent condition to enter the contract or make a payment.

To make someone act in pursuance of the threat to break the contract.

---

<sup>17</sup> *Barton v Armstrong* [1975] 2 All ER 465 at 476.

<sup>18</sup> Additional Clarification, question 7.

<sup>19</sup> *Kolmar Group AG v. Traxpo Enterprises Pte Ltd* [2011] 1 All E.R. (Comm.) 46.

It is relevant to consider that whether the victim party had a real choice or realistic alternative or not.

The presence of protest can also be relevant to consider. However, the absence of protest does not conclusively show that victim party entered the contract voluntarily.

In this case, the claimant did not exercise any illegitimate economic pressure or any contingency over the defendant. The claimant did not make the defendant act in any way in pursuance of the threat to break the contract. The defendant company had the choice to not enter the contract. They were never forced or tricked by the claimant to enter into the contract. The claimant had made a fair offer before the defendant which was voluntarily accepted. The contract continues to be in force because the same was not contended to be void at the time of execution of the contract.

Thus, it can be safely concluded from the aforementioned arguments that the distribution agreement between the CTC and ATC was not vitiated by economic duress.

**2.2. Alternatively, the contract is not *void ab initio* even if effectuated by economic duress.**

In *North Ocean Shipping v. Hyundai Construction Co. Ltd.*<sup>20</sup>, the court held that even though if a contract is voidable on grounds of economic duress, the victim party would not be held entitled to their claim if they had not protested the unfair terms of the contract at the earliest instance. In such cases, the contract is assumed to be affirmed by the party.

In this case, the facts clearly states that both the parties had undergone elongated negotiations before entering into a contract.<sup>21</sup> Moreover, the agreement got expired on 20<sup>th</sup> October, 2013 and until then ATC did not protest on any of the terms of the agreement. So, it can be clearly

---

<sup>20</sup> *North Ocean Shipping v. Hyundai Construction Co. Ltd* [1978] A11 ER 1170 at 1182-84.

<sup>21</sup> Para 11, Moot Problem.

inferred by their actions that they have affirmed the terms of the agreement. So, even if the agreement is vitiated by economic duress, the defendant company cannot claim for any relief.

### **2.3. The Respondents have manufactured and distributed ‘competing goods’.**

The issue in the instant case is if the Defendant had in fact breached the Distribution Agreement, clause 4.1 and 4.2<sup>22</sup> by selling goods that compete with the goods of the Claimant that too while the Agreement was in force. Clause 4.2 of the Agreement has clear mention of the Term, i.e. the Agreement would be in force for a period of 5 years from the date of signing and would extend for 12 months after that. Since the Agreement was still binding on the Respondent in November 2012 when it started growing, manufacturing and distributing tea products in Malaysia, they have breached the Agreement.

Many cases have observed that goods that have the same purpose or method of use, the same distribution channels, the same target public, they are said to be in competition with each other.<sup>23</sup>

It has been given<sup>24</sup> that the Respondents manufacture black tea under the name SAILOR’S CEYLON, which basically is tea, a beverage, which is prepared and consumed like any other variety tea can be said to compete with the Claimants product.

It has also been found that both the products are available to the end consumers through the intermediaries like wholesalers, retailers and other beverage establishments.<sup>25</sup> Both are served in major cafes and are widely available in supermarkets and grocery stores. This goes on to show that the Respondents are using the same distribution channels for marketing their products.

---

<sup>22</sup> Refer to Clause 4.1 & 4.2, Appendix A

<sup>23</sup> *Franmax UAB vs. EUIPO- Ehrmann AG Oberschöneck im Allgäu*

<sup>24</sup> Refer to 11 & 15, Further Clarifications to the Moot Problem.

<sup>25</sup> Refer to Question 22 & 23, Further Clarifications to the Moot Problem.

Since the products were distributed in the ‘Territory’, as defined in the Agreement, since November 2012, they also targeted the same public and have competed with the goods of the Claimant.

The retail prices of both the Claimants and Respondents goods were almost similar. This had the effect of giving direct competition to the Claimant’s goods in the market.

#### **2.4. The Non-compete clause is valid and not unreasonable**

The restriction imposed per Clause 4.2 is restricting the respondent to directly or indirectly indulge in the manufacture or distribution in the Territory of any goods for a period of 12 months after the expiry of the Agreement is reasonable.

*In Beckett Investment Management Group Ltd v Hall,<sup>26</sup> the court stated "Any period of fixed duration bears an element of arbitrariness, but having regard to the evidence about the strength of the relationship between the adviser and the client, the pattern of contact and the fact that 12 months appears to be an industry standard, in my judgment 12 months was reasonable both for non-solicitation and non-dealing having regard to the interests of the parties and the interests of the public in this case."<sup>27</sup>*

Similarly, in *G W Plowman & Son Ltd v Ash<sup>28</sup>*, which remains the leading authority, it was held that a restraint to last for two years post-termination was reasonable even though it applied to customers who had ceased to be customers before the end of the defendant's employment. As Davies LJ said, *"the employer is entitled to retain the possibility that those who at one time during the employee's employment placed orders with the employer and have discontinued their custom might come back again..."*

---

<sup>26</sup> *Beckett Investment Management Group Ltd v Hall* [2007] IRLR 79; *Croesus Financial Services Ltd v Bradshaw and another* [2013] EWHC 3685 (QB)

<sup>27</sup> *Beckett Investment Management Group Ltd v Hall* [2007] IRLR 79; *Croesus Financial Services Ltd v Bradshaw and another* [2013] EWHC 3685 (QB)

<sup>28</sup> *G W Plowman & Son Ltd v Ash* (1964) 1 WLR 568 (CA)

ATC is only prevented from operating in Malaysia and not in other parts. Hence reasonable.

Reasonable restriction as ATC was involved exclusively in conducting operations in Malaysia on behalf of CTC. Post termination of the agreement ATC is likely to use the information obtained while operating in Malaysia for CTC, in its own interest.

Therefore, we submit that ATC has breached the contract and liable to pay damages to be determined by the profits of ATC made by the sale of SAILOR's CEYLON in Malaysia.

**III. ATC'S USE OF THE WORD 'CEYLON' IN RESPECT OF ITS TEA PRODUCTS IS  
MISLEADING**

Under the Intellectual Property Act, No.36 of 2003 of Sri Lanka, geographical indication means "*an indication which identifies any goods as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.*"<sup>29</sup> Therefore, the use of the word Ceylon qualifies as a Geographical Indication under Sri Lankan law.

Further, under Section 191 of the same Act:

*"Any person who—*

*..*

*(b) Makes a false declaration in respect of geographical indication inclusive of Ceylon Tea and Ceylon Cinnamon,*

*shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding five hundred thousand rupees."*

---

<sup>29</sup> Section 101, Intellectual Property Act, No.36 of 2003 of Sri Lanka.

Therefore, misrepresentation of tea originating Ceylon is severely protected under the law of Sri Lanka.

In the Spanish Champagne case<sup>30</sup>, it was held that producers of sparkling wine in England could not describe their products as Champagne. The reason for this was that consumers regarded products labelled as Champagne to have originated in the French district, Champagne. Products produced outside the said French district but labelled as Champagne were considered as misleading. Similar law was elucidated in the Sherry<sup>31</sup> case which originated in the Jerez district of Spain.

In the Scotch Whisky<sup>32</sup> case, Scotch Whisky purchased from Scotland was resold in Ecuador after mixing it with local alcoholic beverages. (Scotch Whisky itself is made after mixing different alcoholic drinks together; each brand mixes drinks in different proportion.) It was still retailed as Scotch Whisky. It was held that only the manufactures in Scotland could describe their products as Scotch Whisky as their was a clear geographical link with the product sought to be protected. Similar results were obtained in other jurisdictions such as South Africa in *William Grant v Cape Wine and Distillers*<sup>33</sup> and *Long John International v Stellenbosch Wine Trust*<sup>34</sup>.

Similar results were also obtained in the Swiss Chocolate<sup>35</sup> case, where the word ‘Swiss’ on chocolates was held to be indicative of Swiss origin, recipe and manufacturing process. Consequently, Cadbury was enjoined from using the word ‘Swiss’ on its products. Similar elucidations of law was made in the Vodkat<sup>36</sup> and Greek Yoghurt<sup>37</sup> cases.

---

<sup>30</sup> *Bollinger & Ors v Costa Brave Wine Co Ltd*, [1960] Ch 262; *Tattinger v Allbev* [1994] 4 All ER 75.

<sup>31</sup> *Vine Products v Mackenzie* [1969] RPC 1.

<sup>32</sup> *John Walker and Sons v Henry Ost* [1970] 2 All ER 106.

<sup>33</sup> *William Grant v Cape Wine and Distillers* (1990) 3 SA 897.

<sup>34</sup> *Long John International v Stellenbosch Wine Trust* [1990] 4 SA 136.

<sup>35</sup> *Chocosuisse v Cadbury* [1998] RPC 117.

<sup>36</sup> *Diaego North America v Intercontinental Brands (ICB)* [2010] EXCA Civ 920.

<sup>37</sup> *Fage UK v Chobani UK* [2013] EWHC 630 (Ch.).

The actions of ATC shows a conscious use of the "Ceylon" with the Lion logo on the front part of the packaging so as to give the impression of a link with Sri Lanka or an entity authorized by ATC to use the Lion Logo. Further, the history of the development of the brand Sailor's Ceylon shows that there was a conscious effort to create the impression of a link to Sri Lanka for marketing purposes. It is argued that the brand name "Sailor's Ceylon" was created to compensate for the loss of CTC's contract to distribute the "CTC's Ceylon" brand of Ceylon tea. Moreover, to overcome the possible non-acceptance of locally- grown tea leaves amongst consumers, the company took the move of using seeds obtained from Ceylon. The choice of Sri Lankan seeds was deliberate, in view of the reputation of Ceylon tea. The management then marketed "Sailor's Ceylon", giving the impression of the existence of a Ceylon Tea connection by giving the impression that the tea was grown under license from SLTB. "Sailor's Ceylon", which was grown in China, in reality had no Sri Lankan origin.

On the balance of probability shows a conscious use of ATC's logo and the word Ceylon on the front part of the packaging so as to give the impression of a link with Sri Lanka. In the circumstances of this case was not a bona fide use of the Respondents' corporate name and/or logo. There was a clear attempt to mislead.

**IV. THE USE OF THE ATC'S MARK BY ATC ON THE PACKAGING OF TEA BRANDED AS SAILORS'S CEYLON AMOUNTS TO BOTH PASSING OFF AND TRADEMARK INFRINGEMENT.**

ATC has been distributing tea products under the brand name SAILOR'S CEYLON in Malaysia since November 2012. It is submitted that such use of the ATC's constitutes the tort of passing off [4.1] and also amounts to trademark infringement [4.2].

**4.1. The use of the ATC's Mark constitutes the tort of passing off.**

Passing off is defined by the Black's Law dictionary as, "The act or an instance of falsely representing one's own product as that of another in an attempt to deceive potential buyers."<sup>38</sup>

Further, Lord Kingsdown in *The Leather Cloth Co v The American Cloth Co*<sup>39</sup>, stated the following: "*The fundamental rule is that one man has no right to put off his goods for sale as the goods of a rival trader, and he cannot therefore (in the language of Lord Lansdale in the case of Perry v Truefit (1843) 6 Beav. 66) be allowed to use names, marks, letters, or other indicia, by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person.*" Similarly, Lord Herschell in *Reddaway v. Banham*<sup>40</sup> remarked, "*I am unable to see why a man should be allowed in this way more than in any other to deceive purchasers into the belief that they are getting what they are not, and thus to filch the business of a rival.*" In *A. G. Spalding & Bros. v. A. W. Gamage Ltd.*<sup>41</sup> 'right the invasion of which is the subject of passing off actions as being the property in the business or goodwill likely to be injured by the misrepresentation' was identified.

In the famous case *Bollinger & Ors v Costa Brave Wine Co Ltd*<sup>42</sup> (hereafter '**Spanish Champagne case**'), the concept of passing of in extended form was recognised. For the first time the notion of protecting "collective goodwill" was given credence. Subsequently, the House of Lords in the seminal *Erven Warnink Besloten Vennootschap and Another v J. Townend & Sons (Hull) Ltd. and Another*<sup>43</sup> (hereafter '**Advocaat case**') eruditely discussed the concept and the test applicable. Lord Diplock went on to list five characteristics which must be present in order to create a valid cause of action for passing off namely:

*'(1) a misrepresentation;*

---

<sup>38</sup> Black's Law Dictionary (9th edn) 1233.

<sup>39</sup> *The Leather Cloth Co v The American Cloth Co* (1865) 11 H.L Cas. 538.

<sup>40</sup> *Reddaway v. Banham* [1896] A.C. 199 at page 211.

<sup>41</sup> *A. G. Spalding & Bros. v. A. W. Gamage Ltd* (1915) 84 L.J. Ch. 449.

<sup>42</sup> *Bollinger & Ors v Costa Brave Wine Co Ltd* [1960] 1 RPC.

<sup>43</sup> *Erven Warnink Besloten Vennootschap and Another v J. Townend & Sons (Hull) Ltd. and Another* [1979] AC 731.



(2) made by a trader in the course of trade;

(3) to prospective customers of his or ultimate consumers of goods or services supplied by him;

(4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence); and

(5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a *quia timet* action) will probably do so.’

Even the Federal Court of Malaysia in *Maestro Swiss Chocolate Sdn. Bhd. & 3 Ors v Chocosuisse Union Des Fabricants Suisses De Chocolate & 2 Ors & Another Appeal*<sup>44</sup> elucidated, “Indeed it should be noted that basically there is only one tort of passing off based on the recognition that misrepresenting one's own goods as the goods of someone else is not a separate genus of actionable wrong but a particular species of wrong included in a wider genus.”<sup>45</sup>

Finally the law was consolidated by Lord Oliver in the House of Lords Case of *Rekitt & Colman v Borden*<sup>46</sup> (hereafter “**Jif Lemon case**”). The pre-requisites for an action of passing off were laid down. The same have been affirmed by the Supreme Court of Sri Lanka in *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc*<sup>47</sup>.

To prove an action of passing of it is required to prove the following:

(1) The Claimant’s mark has goodwill;

---

<sup>44</sup> *Maestro Swiss Chocolate Sdn. Bhd. & 3 Ors v Chocosuisse Union Des Fabricants Suisses De Chocolate & 2 Ors & Another Appeal* FCCA No. 02(f)-97-12-2012(W).

<sup>45</sup> *Maestro Swiss Chocolate Sdn. Bhd. & 3 Ors v Chocosuisse Union Des Fabricants Suisses De Chocolate & 2 Ors & Another Appeal* FCCA No. 02(f)-97-12-2012(W) at 39.

<sup>46</sup> *Rekitt & Colman v Borden* (1990) 1 WLR 491.

<sup>47</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc* S.C (C.H.C) Appeal No. 41/2014.

(2) The Respondent has made a misrepresentation that is likely to deceive the public; and

(3) The said misrepresentation has caused damage.

It is argued that the ATC's use of the ATC's mark satisfies the conditions stipulated for an action of passing off.

*4.1.1. The Claimant's mark has goodwill as required*

The party prosecuting the claim has to show that it has developed a reputation and understanding with the public sufficient to establish goodwill in the distinguishing mark in respect of which the protection of the law is sought. The importance in proving this goes to the root of passing off, viz. that the action is predicated on the misappropriation of goodwill developed amongst the public as a result of a signature mark.<sup>48</sup>

Further, it must be proven by the party prosecuting that by deceiving the public as to the source of the goods they are purchasing, it is the goodwill generated by the labels and/or bottles and/or other distinguishing features of the prosecuting party's get-up that is being misappropriated by the Appellant. In order to do so, it is fundamental for the Respondent to provide in evidence proof of the goodwill they are seeking to protect.<sup>49</sup>

The goodwill can belong to individual or multiple producers. Multiple producers generally own goodwill in cases where the singularity of a product is shared by a group of traders, usually a result of the region that they operate in.<sup>50</sup> Courts have recognised goodwill in relation to Champagne<sup>51</sup>, Sherry<sup>52</sup>, Scotch Whisky<sup>53</sup>, Advocaat<sup>54</sup>, Swiss Chocolate<sup>55</sup>, Vodka<sup>56</sup>

---

<sup>48</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; *L'Oreal v Bellure* [2006] EWHC 2355 Ch.

<sup>49</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; also refer to *Hodgkinson Corby Limited and Another v Wards Mobility Services Limited* [1995] F.S. 169 at paragraphs 174-175.

<sup>50</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (4<sup>th</sup> edn, OUP 2014) 845.

<sup>51</sup> *Bollinger & Ors v Costa Brave Wine Co Ltd*, [1960] Ch 262; *Tattinger v Allbev* [1994] 4 All ER 75.

<sup>52</sup> *Vine Products v Mackenzie* [1969] RPC 1.

and Greek Yoghurt<sup>57</sup> a number of cases. It should be noted that existence of goodwill should be proved when the offending product appears in the market.<sup>58</sup> Goodwill can be proved when the product has a reputation that is discrete from other teas that are grown. This standard was considered adequate in *Chocosuisse v Cadbury*<sup>59</sup>. The claim of goodwill can be strengthened further by proving the following factors - existence of badge of quality; country of origin imposed strict guidelines; manufacturing processes were unique because of local conditions.<sup>60</sup>

In the instant case, the goodwill of the Lion Logo was collective in nature. The use of the Lion Logo was regulated by SLTB. SLTB stipulated the standard according to which the tea leaves had to grown, blended, stored, fermented and packaged. The flavour of the tea was itself a result of the tea growing up in a specific climate. The flavour was unique and was itself a part of the goodwill. It is because of the unique flavour of the tea that a dedicated base of customers existed. The Lion logo was indication to customers of the flavour and unique qualities of the tea and the customers consequently, trusted the logo and purchased Ceylon Tea. The tea was discrete from other types of tea and the same can be considered as goodwill (as was held *Chocosuisse v Cadbury*<sup>61</sup>).

4.1.2. The Respondent has made a misrepresentation that is likely to deceive the public; and

---

<sup>53</sup> *John Walker and Sons v Henry Ost* [1970] 2 All ER 106.

<sup>54</sup> *Erven Warnink v Townend* [1979] AC 731.

<sup>55</sup> *Chocosuisse v Cadbury* [1998] RPC 117.

<sup>56</sup> *Diaego North America v Intercontinental Brands* (ICB) [2010] EXCA Civ 920.

<sup>57</sup> *Fage UK v Chobani UK* [2013] EWHC 630 (Ch.).

<sup>58</sup> *Diaego North America v Intercontinental Brands* (ICB) [2010] EXCA Civ 920 at 81.

<sup>59</sup> *Chocosuisse v Cadbury* [1998] RPC 117

<sup>60</sup> *Diaego North America v Intercontinental Brands* (ICB) [2010] EXCA Civ 920 at 81.

<sup>61</sup> *Chocosuisse v Cadbury* [1998] RPC 117

According to the Supreme Court of Sri Lanka<sup>62</sup>, to prove misrepresentation three points, as identified by *United Biscuit (UK) Ltd v Asda Stores*<sup>63</sup>, have to be considered. They are as follows:

- (1) the subjective intentions of the Respondent;
- (2) the quality of the suggestion (conveyed by the get-up of the Respondent's goods) of association or connection with the claimant's goods; and
- (3) the degree to which it is necessary for the respondent's name to be known to the general public as the owner of the business whose goodwill and reputation are threatened by any misrepresentation.<sup>64</sup>

*The subjective intentions of the respondent are not innocent.*

It is not a pre-requisite to establish liability to prove the intent of the defendant to pass off the goods as those of the claimants.<sup>65</sup> However, the same would further assist the Claimant and has therefore been proved below.

ATC had not used the name 'Ceylon' on its tea products before 2008.<sup>66</sup> Only after acting as distributors for CTC did ATC realise the potential of the word 'Ceylon'. ATC was aware of the potential and therefore started to utilise the ATC's Mark in 2012 itself in violation of the agreement of the two parties.

---

<sup>62</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; also refer to *L'Oreal v Bellure* [2006] EWHC 2355 Ch.

<sup>63</sup> *United Biscuit (UK) Ltd v Asda Stores* [1997] RPC 513.

<sup>64</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; also refer to *L'Oreal v Bellure* [2006] EWHC 2355 Ch.

<sup>65</sup> *Chocosuisse v Cadbury* [1998] RPC 117.

<sup>66</sup> Question 5, Clarifications to the Moot Problem.

To be effective, a disclaimer must be “*bold, precise and compelling as the trade description itself and must be brought to the notice of the person to whom the goods may be supplied.*”<sup>67</sup>

The disclaimers concerning the country of origin are given in *fine print*<sup>68</sup> and are therefore ineffective. Therefore, intentions of the respondent are not innocent.

*There is clear suggestion of association or connection with the claimant’s goods.*

The Sri Lankan Supreme Court approved the reasoning of the *Thomson Holidays v Norwegian Cruise Line*<sup>69</sup> suggests that the court is “*to adopt the attitude of the average reasonably well informed consumer of the products, who I also add, is reasonably observant and circumspect. Further, “If the impact is that the customer will be deceived as to the source of the goods, then this would amount to a misrepresentation. In this respect, it is fundamental in a claim for passing off, for a simple comparison to be made by placing side by side the mark of the Respondent and that of the Appellant, in order to establish whether there is a likelihood of confusion.*”<sup>70</sup>

In the instant case there is a likelihood of confusion because the ATC’s logo is too similar to the lion logo:

1. The figure of a lion occupies prominently the top half of both the logos. The Lion is a symbol of Sri Lanka.
2. The lower half of the logo consists of two lines of text.
3. The phrase “SYMBOL OF QUALITY” in capital letters appears on both logos.
4. The logos are rectangular with rounded edges with a thick black line running around the edges of the logo.

---

<sup>67</sup> *Allan v Redshaw* [2013] EXPC B1, [35-41].

<sup>68</sup> Question 6 and 19, Further Clarifications to the Moot Problem.

<sup>69</sup> *Thomson Holidays v Norwegian Cruise Line* [2002] IP&T 299.

<sup>70</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; also refer to *L’Oreal v Bellure* [2006] EWHC 2355 Ch at page 8.

In addition it should be noted that customers do not focus on the detail of the logo as much as the idea of the logo. In *United Biscuit (UK) Ltd v Asda Stores*<sup>71</sup>, the shared idea of a ‘seabird’ was a significant factor in that the defendant had passed off its PUFFIN biscuits as that of those of the claimant who sold biscuits under the name Penguin. Similarly, the Lion is symbolic of Sri Lanka and ATC by using the same in its ATC’s logo is passing off on the lion. Further, the ATC Mark and Lion Logo do not take up huge spaces on their respective packaging occupying 4 per cent of the surface<sup>72</sup> making it more difficult to spot minute differences in the case of the Lion logo and the ATC’s logo.

*The claimant’s name is well known amongst the public.*

The Lion Logo was a registered trademark in Malaysia and was distinctively associated with Ceylon Tea. Between 2008 and 2013, the CTC Ceylon (containing the Lion logo) was distributed by ATC and together, the products formed 30 per cent of the tea products sold in Malaysia<sup>73</sup>. Clearly, the Lion logo was well known among the tea-drinking public in Malaysia.

*4.1.3. The said misrepresentation has caused damage.*

The Sri Lankan Supreme Court stated that, “evidence of damage would be proof of the diversion of sales.”<sup>74</sup> ATC’s Mark appeared on tea products in Sri Lanka in November 2012. The agreement between ATC and CTC was terminated in October 2013. CTC experienced a decline in sale in 2013 of 30 per cent, of 15 per cent in 2014 and a marginal rise of 8 per cent

---

<sup>71</sup> *United Biscuit (UK) Ltd v Asda Stores* [1997] RPC 513.

<sup>72</sup> Question 21, Further Clarifications to the Moot Problem.

<sup>73</sup> Question 24, Further Clarifications to the Moot Problem.

<sup>74</sup> *Richard Pieris Arpico Finance Limited Vs. Arpico Finance Company Plc S.C (C.H.C) Appeal No. 41/2014* at page 4; also refer to *L’Oreal v Bellure* [2006] EWHC 2355 Ch.

in 2015.<sup>75</sup> The downward trend in sales after unexpected growth<sup>76</sup> can only be linked to the use of the ATC's logo.

Damage to the goodwill of the Lion logo has also occurred because it has been associated with Sailor's Ceylon. Sailor's Ceylon does not subscribe to the standards set by the SLTB. Therefore, consumers deceived by the ATC's logo would have consumed a product that would not have been accurate representation of tea grown in accordance with the directives of the SLTB, affecting the goodwill associated with the lion logo.

#### **4.2. The use of the ATC's Mark constitutes Trademark Infringement.**

Sri Lanka is a member of the World Trade Organization and is therefore bound by the Trade-Related Aspects of Intellectual Property Rights. It has also ratified a number of other international conventions on trademark.<sup>77</sup> The Lion logo is registered as a trademark under the Intellectual Property Act, No.36 of 2003 of Sri Lanka (hereafter "**Sri Lankan IP Law**").<sup>78</sup>

The registered owner or licensee of a trademark is granted the following rights under Sri Lankan IP Law (relevant portions extracted below):

" 121.

..

*(2) Without the consent of the registered owner of the mark third parties are precluded from the following acts :—*

---

<sup>75</sup> Question 10, Clarifications to the Moot Problem.

<sup>76</sup> Para 13, Moot Problem.

<sup>77</sup> Please refer to <http://www.wipo.int/wipolex/en/profile.jsp?code=LK>.

<sup>78</sup> Annual Report 2012, Sri Lanka Tea Board.

(a) *any use of the mark, or a sign resembling it in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered or for similar goods or services in connection with which the use of the mark or sign is likely to mislead the public ; and*

(b) *any other use of the mark, or of a sign or trade name resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark. ”*

The consequences of infringement are provided under Sections 170 and 184 of the Sri Lankan IP Law. Under Section 170, civil law sanctions, such as the granting of an injunction, awarding of damages and or the declaration that the registration of the mark be declared null and void and/or such other reliefs are available. The registered owner of a mark may institute an infringement action where “*any person is threatening to infringe or has infringed his rights or is performing acts which makes it likely to infringe a right under this Act*”. Under Section 184, any person who “*wilfully infringes the rights of any registered owner, assignee or licensee of a mark is guilty of an offence*” and is liable for criminal sanctions and fine.

In the instant case, only civil law sanctions are being considered and therefore the standard required to be met is actual infringement or likelihood or threat of infringement.

Further as rightly stated in *M.S. Hebtulabhoy and Co. Ltd. v Stassen Exports Ltd.*<sup>79</sup>, “*The fundamental issue is whether the impugned mark infringed the rights of the respondent under the Code. That is the law of the land which parliament has enacted, which none other person has the authority to detract from.*”

---

<sup>79</sup> *M.S. Hebtulabhoy and Co. Ltd. v Stassen Exports Ltd* C.A. Appeal No. 286/93 (F).



The rights provided under Section 121 of Sri Lankan IP Law (extracted above) have been violated. The ATC's logo is similar to the lion logo in a manner that is likely to mislead or deceive the public. The same has been discussed above in [4.1]. The goods produced by ATC and CTC are similar and are directly substitutable, both competing in the category of tea. The use of the ATC's mark is prejudicial to the interest of CTC as has been shown by the downward trend of sales of Ceylon tea from 2012. The same has been discussed above in [4.1].

Therefore, the use of ATC's trademark constitutes an infringement.

---

**PRAYER FOR RELIEF**

---

*In the light of arguments advanced and authorities cited, the Claimant humbly submits that the Arbitral Tribunal may be pleased to adjudge and declare that:*

1. Sri Lankan law is the applicable law in the present dispute.
2. ATC has breached the Distribution Agreement by distributing SAILOR'S CEYLON affixed with the ATC's Mark in Malaysia.
3. Parties can only refer to tea grown and manufactured entirely in Sri Lanka as 'Ceylon Tea';
4. ATC stops using the name 'SAILOR'S CEYLON', the ATC's Logo, or any other name or mark containing the word 'CEYLON' or a lion device if its tea does not originate from Sri Lanka;
5. ATC is to discontinue the sale of its products described as 'Ceylon tea' and to recall all such products from the market.

*Any other order as it deems fit in the interest of equity, justice and good conscience.*

*For This Act of Kindness, the Appellant Shall Duty Bound Forever Pray.*

Sd/-

(Counsel for the Claimant)