

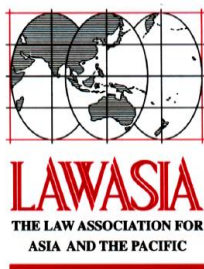


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# 11<sup>th</sup> LAWASIA International Moot

## MOOT PROBLEM 2016

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Organiser of the LAWASIA International Moot Competition

# MOOT PROBLEM

## THE BACKGROUND

1. The Sri Lankan Tea Board ('**SLTB**') is a fully government-owned statutory institution established by Act of Parliament on 1 January 1976. According to its website, the SLTB is "*the apex regulatory and administrative body of the Sri Lankan tea industry. It comprises representatives from both private and government bodies involved in the industry, including cultivators and manufacturers, traders, exporters and plantation employees*". The primary objects of the SLTB are threefold – development of the tea industry in Sri Lanka, promotion of the Ceylon Tea globally and implementing relevant regulations related to the industry.
2. The Chelsea Tea Company ('**CTC**') is a company incorporated in Sri Lanka whose registered address is at Lot 14, Dawson Street, Colombo 00202, Sri Lanka. Established in 1965, CTC is a manufacturer of "Ceylon tea" under the brand name '**CTC CEYLON**'. Marvan Ranatunga is the Chairman of the Board of Directors of CTC. He is a committed tea enthusiast and trader whose vision is to make CTC CEYLON a globally renowned Ceylon tea brand.
3. CTC CEYLON teas bear the famous heraldic lion insignia below:



(the '**Lion Logo**')

4. The Lion Logo is affixed onto the labels or packaging of tea grown and manufactured entirely in Sri Lanka by approved traders that conform to the quality standards set by the SLTB, which has obtained trade mark registrations for the Lion Logo in many jurisdictions worldwide.
5. SLTB is also the registered trademark proprietor of the Lion Logo in Malaysia. A condition of the registration of the Lion Logo imposed by the Intellectual Property Corporation of Malaysia is such that SLTB has no exclusive rights over the words 'CEYLON TEA' and 'SYMBOL OF QUALITY' contained in the Lion Logo.
6. Ranatunga goes to Malaysia often for holidays. He recognised the promising potential of the Malaysia tea market. As such, Ranatunga ensured that CTC obtained the permission of SLTB to use the Lion Logo on CTC CEYLON tea products in Malaysia, and is a registered user of the Lion Logo in Malaysia.
7. Philip Chan is a former Singaporean ship captain who has ventured into the tea manufacturing and distribution business in his home country and in Malaysia. He is now the Managing Director of the Almond Tea Company ('ATC'), a company incorporated in Singapore whose registered address is at Suite 18-1, Katong Tower, 87 Ceylon Road, Singapore 429665. Chan is also an avid golfer who used to play professionally for a short period of time.

## **THE FACTS**

8. In 2008, during a leisure visit to Cameron Highlands in Malaysia, Ranatunga stayed at the Smokehouse Hotel. During a visit to the BOH Tea Plantation there, he met Philip Chan. Ranatunga and Chan decided to have a cup of tea together there. Thoroughly inspired by Chan's stories at sea and his impressive knowledge of the Malaysian tea industry, Ranatunga decided that he wanted to appoint ATC as the exclusive distributor of CTC CEYLON in Malaysia. Chan was not keen to accept the offer, as Ranatunga wanted ATC to cease the sale of all other tea products in Malaysia. Ranatunga tried very hard to persuade Chan to change his mind.

9. Sensing that Ranatunga would not give up easily, Chan challenged him to a game of golf where he would accept Ranatunga's offer if Ranatunga can beat him. Ranatunga accepted the challenge and they met up the next day at the golf course near the Smokehouse Hotel for their game. Chan won the game easily and Ranatunga reluctantly accepted Chan's rejection.
10. One month later, a fungal disease devastated the tea plantations from which ATC sourced its tealeaves. Seeing this as the perfect opportunity to convince the forlorn Singaporean to accept his offer, Ranatunga took this opportunity to contact Chan again.
11. After protracted negotiations, the CTC and ATC agreed upon a nominal monetary consideration, and entered into a distribution agreement on 20 October 2008 (the **'Agreement'**)<sup>1</sup>.
12. The following clause appears in the Agreement:  
  
*"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."<sup>2</sup>*
13. Tapping on Chan's considerable market expertise, CTC CEYLON developed a strong consumer base in Malaysia under ATC's distributorship. The total profits from the sales of CTC CEYLON in Malaysia increased from year to year, exceeding targets set by CTC, and in 2012 constituted approximately 35% of the global nett revenue of CTC. The Agreement was not renewed upon its expiry on 20 October 2013 as CTC had then set up its Southeast Asian headquarters in Kuala Lumpur to promote and distribute CTC CEYLON tea in the region, in line with Ranatunga's aspirations for global dominance.

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<sup>1</sup> A copy of the Agreement is attached herewith as "Appendix A"

<sup>2</sup> Clause 4.2 of the Agreement

14. In March 2015, it came to CTC's attention that ATC has been growing and manufacturing tea in China, and distributing such tea products under the brand name 'SAILOR'S CEYLON' in Malaysia since November 2012. The following mark is also affixed onto the packaging of SAILOR'S CEYLON teas:



(the 'ATC's Mark')

15. CTC then wrote to ATC immediately asking that ATC pay damages for breach of the Agreement. CTC also demanded that ATC should stop using the ATC's Mark on the package of their tea and to not use the word "Ceylon" to describe their tea.
16. ATC replied by denying that it has breached the Agreement and therefore they will not accede to CTC's demands. ATC contends that they have every right to use the word "Ceylon" on their tea products. They also are of the view that it is well within their legal rights to use the ATC's Mark on their tea packages.
17. As parties could not come to an agreement, CTC and ATC finally decided to settle the matter by arbitration in accordance to clause 22 of the Agreement.

## **THE ARBITRATION**

18. Parties have agreed that the arbitration will be limited to the following issues:
- (a) What is the applicable law that should be referred to in this dispute;
  - (b) Whether or not ATC has breached the Agreement by distributing SAILOR'S CEYLON affixed with the ATC's Mark in Malaysia;
  - (c) Whether or not ATC's use of the word 'CEYLON' in respect of its tea products is misleading; and
  - (d) Whether or not ATC's use of the ATC's Mark amounts to trademark infringement and/or passing off.
19. The Claimant seeks the following relief:
- (a) Payment of damages to be determined by the profits of ATC made by the sale of SAILOR'S CEYLON in Malaysia;<sup>3</sup>
  - (b) An order that parties can only refer to tea grown and manufactured entirely in Sri Lanka as 'Ceylon Tea';
  - (c) An order directing ATC to stop 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; and
  - (d) An order directing ATC to discontinue the sale of its products described as 'Ceylon tea' and to recall all such products from the market.
20. The arbitration has been fixed for hearing on the 12 – 15 August 2016. It will be held at Colombo, Sri Lanka in accordance with the Agreement.

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<sup>3</sup> Parties have agreed that if the Arbitral Panel rules that ATC is to pay damages to CTC, the amount of damages will be determined in a separate hearing.