



7th **LAWASIA** International Moot

RESPONSES FOR REQUESTS FOR CLARIFICATIONS



Organiser of the LAWASIA International Moot Competition

RESPONSES TO REQUESTS FOR CLARIFICATIONS

Including comments/suggestions from the Problem's author¹

A Dr Budiamman²

1a. Did Dr. Budiamman continue to work as a surgeon after he began operating the two franchise restaurants?

R: Yes.

1b. On average, how many hours per week did he spend with his patients both in his office and in hospital?

R: Generally, 20-25 hours per week – occasionally 40 or more.³

2. Had either Mr. Ji or Mr. Wang ever met or communicated with Dr. Budiamman before Mr. Wang met him in Changi Airport?

R: No.

3. Why was Dr. Budiamman – a respected surgeon - interested in the franchise agreement?

R: *In addition to his fond memories of working in a Chinese restaurant when in school and his love of Chinese food, he was considering reducing his surgical practice due to a mild form of glaucoma and needed something to “keep him busy.”*

¹ The fact that the Author has provided a Response to a particular Request should not be viewed as indicating that the Author necessarily believes that the information provided is irrelevant to any of the Issues raised in the Problem. One of the challenges that an attorney faces is the need to sort through large amounts of information to determine which are actually relevant to the issues she or his is confronting. Responding to “Requests” for information that the Author believes are extraneous adds a similar dimension to the Moot Problem.

² Organizing the Requests into categories is merely for convenience in locating the requested information. It is NOT intended to indicate or suggest how the information should be used in the Memorials or in the oral presentation or even that the information should be used at all.

³ Responses should be cited in Memorials by both letter and number, e.g., First Clarifications A-1b.

B. Wang Jianping and Xuefeng Wang

1. Were Mr. Ji and Mr. Wang aware that both restaurants were very successful before they terminated Dr. Budiamman franchise?

R. Yes, that had known of their success for several months.

2. When did Mr. Wang and Mr. Ji submit a Notice of Arbitration?

R. The question of its timeliness is NOT in issue in this Arbitration.

C. The Franchise Agreement

1. When Dr. Budiamman signed the Franchise agreement, was he fully aware that the agreement was initially intended for Mr. Bao Shan, the franchise owner of Singapore branches?

R. Yes, Mr. Wang explained that was the purpose of his visit to Singapore.

2. How much time elapsed from the time Mr. Wang handed the Franchise Agreement to Dr. Budiamman in the airport waiting room and, after signing it, he handed it back to Mr. Wang and left the waiting room for his flight,

R. Approximately 15 minutes.

2. Were any change made to the Franchise Agreement after it was signed?

R. No

3. Was it necessary for Jianping Ji to also sign the agreement as the Franchisor?

R. No - assume that the Franchise Agreement does not have to be signed by both partners – Mr. Ji and Mr. Wang – to be valid; the signature of either partner will bind both partners.

4. Did Dr. Budiamman pay the Initial Franchise Fee provided in Article V.A of the Agreement?

R: Yes

5. Did Dr. Budiamman also sign the contract written in Bahasa Indonesia?

R: No – he only read and signed the English version.

6. Was Dr. Budiamman aware that by signing the Franchise Agreement he had waived any rights and protections that might be provided through the law of Indonesia?

R: In a sworn (written) statement made after this arbitration was commenced, Dr. Budiamman stated that he did not read the entire Franchise Agreement before signing it and was not aware that the Franchise Agreement had such a provision.

In his sworn statement, Mr. Wang stated that as Dr. Budiamman was in a hurry to catch his flight, he [Mr. Wang] did not have the opportunity to explain the entire agreement in detail and did not recall whether there was any discussion of Article XII.⁴

7. Did Dr. Budiamman ask for permission or attempt to negotiate with Mr. Ji and Mr. Wang regarding the head scarves and/or the unauthorized menu items before Mr. Ji made an unannounced visit in late October 2011?

R: No

8. Are the obligations and the rights of the franchisees in Singapore, Malaysia, and Indonesia the same?

R: Yes all franchisees were required to sign franchise agreement virtually identical to the one signed by Dr. Budiamman.

9. Indonesian franchise law appears to require the franchisee to register the franchising agreement at the authorized office; did Dr. Budiamman do so in a proper and timely manner?

R: Yes.

10. In how much “detail” were the “fee arrangements” explained to Dr. Budiamman?

R. Mr. Wang carefully explained Paragraphs B, D, and F. of Article V and received Dr. Budiamman verbal assurance that he fully understood them, explaining that he had obtained an MBA prior to attending medical school and supervised all the billings in his office.

As they both had flights to catch, Mr. Wang did not go over other parts of the Franchise Agreement at the time but urged Dr. Budiamman to let him know if he had any questions regarding any of the other provisions of the Franchise Agreement. Dr. Budiamman did not seek further clarification or explanation.

⁴ Both statements can be considered part of the record in this arbitration.

11. Is there a typographical error in Article 5 of the Business Franchise Guide? (It seems that one reference to “franchisee” in the first sentence should read “franchisor.”
*R: It is quite possible that there is.. It is – unfortunately – not uncommon for important legal documents to contain such errors.*⁵

D. The GWNS Restaurants⁶

1. How many franchised Great Wall Noodle Shop restaurants were there and how many were run by Mr. Ji’s or Mr. Wang’s relatives?

R: There were 35 restaurants of which 18 were franchised to relatives of Mr. Ji or Mr. Wang.

2. Have there been any other breaches or violations of the terms of the Franchise Agreement in other GWNS restaurants which resulted in the franchise being terminated?

R: Yes. Three were terminated when the restaurant failed two consecutive cleanliness inspections; two were terminated when an audit revealed that the franchisee has understated sales and profits.

E. The Franchised Restaurants⁷

1. Were the two restaurants successful due, at least in part, to the unauthorized Indonesian menu items?

R: Yes, although there is no evidence as to the degree that the availability of Indonesian dishes contributed to their success.

2. When the two restaurants were reopened “Under new Management,” was wearing of a Hijab and/or serving Indonesian specifically authorized?

R: No, The same Franchise Agreement was signed by the new franchisee as had been signed by Dr. Budiamman.

3. What is the number of employees in each restaurant in Indonesia and what is the ratio of male employees and female employees?

R: There were 10 – 15 workers (excluding management) in each of them – some only part time (less than 30 hours per week); 70-80% were women. Almost all servers (waiters and waitresses) ~ 90% were women.

⁵ There may be other - as yet undiscovered - typographical errors in the Franchise Agreement.

⁶Excluding those franchised to Dr Budiamman.

⁷The ones franchised to Dr Budiamman.

4. How many of the employees were Muslim?

R: The actual number is unknown as Dr. Budiamman did not inquire about the religious affiliation of his employees but he assumed that most were Muslims.

5. Appropriately what percentage of the customers at both restaurants were Muslim?

R: No data was collected on the ethnicity or religious affiliation of the customers at either restaurant but Dr. Budiamman estimates that about 75% of the customers in Jakarta and 90% of them in Medan were Muslim. Neither party disputes these estimates.

6. Were Indonesian dishes or Chinese dishes more popular in each of the two restaurants?

R: Chinese dishes were much more popular in both.

7. Who became the new manager [“Under new management”] after the restaurants were reopened? Was he/she friend or relative of Mr. Ji or Mr. Wang?

R: Mr. Wang’s son. He had been involved in the GWNS operation for several years and currently served as CFO of the Partnership. He had previously had managed two or three of the restaurants for short periods of time when they were not being managed by the franchise owner of his/her representative.

F. Clothing/Uniforms

1. Why didn’t Dr. Budiamman ask for permissions before authorizing his women employees to wear a Hijab?

R: He did not believe he was required to obtain permission from the Franchisors.

2. After receiving an email from Mr. Ji on November 4, 2011, did Dr. Budiamman prohibit women employee from wear hijab or merely instruct them to wear something that wasn’t as noticeable?

R: He selected the white hijab shown in the Problem and advised female employees that it was the only hijab they could wear at work.

3. How many female employees did not ask permission to wear a Hijab?

R. Three or four female employees at the Medan Restaurant initially approached Dr. Budiamman and told him that “most of the women” would like to wear a hijab at work. He did not question them individually but when he gave permission, nearly all the female waitresses wore the red hijab. When he – without their request – also gave the female employees at the Jakarta restaurant permission to wear the red hijab only three or four did on a regular basis. When he subsequently changed to the white hijab he asked all female employees at both restaurants to wear it “for uniformity” and most of did so. However three employees at the Medan restaurant (some of the ones who had initially requested permission to wear a hijab) quit saying that then new (white) ones didn’t look like a hijab to them.

4. Are female Muslim employees of the Great Wall Noodle Shops in Singapore and Malaysia allowed to wear Hijab?

R. No employees in these franchise locations have ever worn or requested permission to wear a hijab at work.

5. Are female Muslim employees in Indonesia generally allowed to wear Hijab in other international franchise restaurants?

R. The wearing of a hijab by waitresses is relatively rare in Jakarta but somewhat more common in other parts of Indonesia, such as Medan. Most franchised restaurants have required uniforms for employees (as GWNS does) which might prohibit the wearing of a hijab. It is not known if this has been a problem in other franchises in Indonesia.⁸

G. Menu Items & Food Preparation

1. Why didn’t Dr. Budiamman ask for permissions to serve Indonesian food?

R: He did not believe he was required to obtain permission from the Franchisors.

⁸It is quite possible that similar issues have arisen in other restaurant franchises in Indonesia and/or other countries. Teams are encouraged to try to determine if it has ever been a problem and if so, how it was resolved. They may use the information in their Memorials (and in their oral presentations) provide the information is publically available information and clearly cited so that other Teams may also locate and use the information. However, if the information is NOT publically available but is verifiable, it can only be included in its Memorial if the information is sent to the LAWASIA Moot Secretariat at least 30 days prior to the deadline for filing the Claimant’s Memorial and subsequently distributed to all other teams.

2. In Indonesia, how often are Indonesian dishes included in the menu at Chinese restaurants?

R: The author is not aware of any published or otherwise available surveys of “Chinese restaurants” located in Indonesia⁹ – a very large and very diverse country – but it can be assumed for purposes of this Moot, that restaurants which advertise themselves as “Chinese restaurants” serve primarily or even exclusively Chinese dishes. However, many Indonesian restaurants – especially those located in large hotels – have both Indonesian and Chinese dishes on their menus and it is not uncommon to find restaurants in Indonesia that served both Chinese and Indonesian food.

3. After receiving the November 4 2011eMail, did Dr. Budiamman stop serving lamb as a substitution for pork?

R: No.

4. Do the Great Wall Noodle Shops in Singapore and Malaysia offer exactly the same menu or are there any slight differences of menu variety offered in each country?

R: The menu is identical but there are some difference is the use of spices to accommodate local tastes; all were approved by Mr.Ji and/or Mr. Wang. There are also occasions when certain items are not available.

5. Are the “local dishes” such as “maize cake, wild vegetable cake, millet gruel...” alternative names for the dishes on the authorised menu or totally different dishes?

R: They are not alternate names for authorized items; they are Indonesian dishes – the “authorized menu” is limited to Chinese dishes.

6. Are “local dishes” served at the Singapore or Malaysia locations as well?

R: No

7. In Indonesia, how often are Indonesian dishes included on the menu at Chinese restaurants in Indonesia?

R: The author is not aware of any published or otherwise available surveys of “Chinese restaurants” located in Indonesia – a very large and very diverse country – but it should be assumed for purposes of this Moot, that restaurants which advertise themselves as “Chinese restaurants” serve primarily or even exclusively Chinese dishes. However, many Indonesian restaurants – especially those located in hotels – have both Indonesian and Chinese dishes on their menus and it is not uncommon to find restaurants in Indonesia that served both Chinese and Indonesian food.

⁹ It is quite possible that such information does exist and if located by the members (not the coach or faculty representative) of a Team it may be used provided the source of the information is clearly identified.

H. Applicable Law

1. Does the term "*inherent warranty of good faith and fair dealing*" refer to a rule under the general principles of equity?

R. Yes. *[However, it is now included in the Uniform Commercial Code [US] Section 1-304 and the American Law Institute's Restatement (Second) of Contracts Section 205].*¹⁰

X. Other Requests

1. Is there any proof of damage to the reputation of the Great Wall Noodle Shops resulting from the alleged failure of Dr. Budiamman to comply with the terms of the Franchise Agreement?

R. No, not at this time. *Such issues could be considered at a later time.*

2. Why was Mr. Bao Shan, the franchise owner of Singapore branches, not interested in opening GWNS restaurants in Indonesia?

R. *He indicated that he "already had more than enough to do" and didn't want to try to manage a franchise in another country*

3. When Dr. Budiamman signed the Franchise agreement, was he fully aware that the agreement was initially intended for Mr. Bao Shan, the franchise owner of Singapore branches?

R. Yes.

4. When did Wang and Ji submit the Notice of Arbitration to KLRCA?

R. *The question of its timeliness is NOT in issue in this Arbitration.*

5. When did Dr. Budiamman file a counterclaim for the breach of the franchise agreement and damage to the reputation of the Great Wall Noodle Shops?

R. *The question of its timeliness is NOT in issue in this Arbitration – nor is his counterclaim. See Response to Response X-1 above.*

6. When was the Case Management Meeting held?

R. *The question of its timeliness is NOT in issue in this Arbitration.*

¹⁰ There is nothing in the Problem which indicates that US law – either the UCC or the Restatement – constitutes governing law in this dispute.

Additional Comments from the Author

Some Requests for Clarifications have sought *factual information* which Mooters should be able to obtain on their own. For example:

1. How strict are the religious rules to wear the Hijab?

It was not clear whether the question referred to general Islamic principles found in the Qur'an and other sources of Islamic Law or those generally followed in Indonesia. [It is quite possible that the application of Islamic law varies substantial in different parts of the country.] Such information should be available with a reasonable effort.

2. Which international treaties relating to employment regulation have been adopted in Indonesia?

Multinational treaties typically list the countries which have acceded to or ratified them. Reasonable research should reveal the answers to such questions.

3. Are there any law or regulations in Indonesia regarding the serving of pork in restaurants?

It is the responsibility of the Mooters themselves to discover relevant laws and regulations.

The Author respectfully has declined to answer such questions.