TEAM 576R

Representation Plan on Behalf of Real Quik Convenience Stores Ltd

Facts and Nature of Dispute

On 14 December 2010, Conglomerated Nanyu Tobacco, Ltd. (the Claimant) and Real Quik Convenience Stores Ltd. (the Respondent), entered into a 10-year distribution agreement. The Claimant is the largest tobacco producer in Nanyu and the Respondent is a fast growing convenience store chain in Gondwana. The Claimant and the Respondent (the Parties) have a long lasting business relationship and entering into 10-year distribution agreements is common practise between the Parties. The nature of the agreement between the Parties is that the Claimant would supply tobacco and tobacco products, including merchandise to the Respondent for the Respondent to advertise and sell in their stores.

In 2001, the Gondwandan Government began to establish a series of different reforms and policies regarding tobacco products. On 14 March 2011, the Gondwandan Government introduced Bill 275. If implemented into law, the effect of Bill 275 would be to restrict the packaging of tobacco products, and place limitations on the marketing and advertising of tobacco products and branded merchandise. On 21 March 2011, the Respondent wrote to the Claimant, expressing concerns at the ramifications of Bill 275 becoming law, and suggested renegotiation of the Agreement. The Claimant subsequently dismissed the Respondent's concerns. Bill 275 was passed into law on 13 April 2012, taking effect on 1 January 2013.

The Respondent wrote to the Claimant on 11 March 2013, requesting a renegotiation of the Agreement, as Bill 275 had rendered some of their obligations under the Agreement illegal. The renegotiations between the Parties were unsuccessful. On 1 May 2013, the Respondent gave notice of termination of the Agreement. On 1 July 2013, the Claimant wrote to the Respondent, claiming the termination penalty provided for in cl. 60 of the Agreement.

On 26 September 2013, the Respondent wrote back to the Claimant, stating that they were not liable to pay the termination penalty, as they were forced to terminate the Agreement due to matters outside their control. The Claimant then applied to have the matter referred to arbitration.

Interest of the Parties

Real Quik Convenience Stores Ltd

The Respondent would like to not be bound to an Agreement that contravenes the tobacco laws of Gondwana. As the Agreement currently stands, the provisions on the sale of the promotional merchandise contravene those laws. The Respondent wishes to renegotiate the Agreement in order to comply with the tobacco laws.

Further, the respondent feels that the issue of the 20% premium needs to be addressed in light of recent circumstances. The newly implemented tobacco laws in Gondwana have had a direct impact on the intellectual property of tobacco products. Essentially, the tobacco products in Gondwana have become a commodity.

Overall, the Respondent wishes to continue the long-standing relationship with the Claimant, on terms viable to both parties.

Conglomerated Nanyu Tobacco Ltd

Conglomerated Nanyu Tobacco Ltd would like to keep their significant share of the Tobacco market in Gondwana. Ideally, they are interested in retaining their long-term commercial relationship with the Respondent, as they are a major holder of their market share in Gondwana. If there were a possibility of the Parties being able to renegotiate the agreement and re-enter into the contract on terms viable to both Parties, and to comply with the new laws, then the Claimant would be interested in continuing their commercial dealings.

The Claimant would like to seek liquidated damages due to any losses that the early termination of the Agreement has caused them.

<u>Negotiation Plan</u>

The Respondent would like to start by noting the long term and profitable nature of the commercial relationship between the Parties. The Respondent would point that they didn't accept the risk of the laws coming into effect. They weren't privy to these laws coming into effect, prior to the conclusion of the Agreement. As a result these changes were out of their control.

The Respondent is willing to negotiate on continuing the Agreement with the Claimant, but is concerned about two factors: first, the provisions of the Agreement that render certain obligations under the Agreement illegal, and secondly, the premium that they are required to pay. Should the Claimant be willing to renegotiate the Agreement on these two points, the Respondent is certain that the Parties will be able to continue their long standing relationship.

However, it should be noted that any renegotiation and continuing of the relationship between the Parties should be on the basis that any damages requested by the Claimant should be waived. The Respondent is willing to place the issues that the Parties have had up to this point to the past, in exchange for the loss that they will incur due to the build up of promotional stock, that they can no longer sell. The Respondent is willing to waive the losses they will suffer as a result of this.