

**FIFTH ANNUAL
INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION
MOOTING COMPETITION**

**27 JULY – 2 AUGUST 2014
HONG KONG**

TEAM: 806R

REPRESENTATION PLAN FOR RESPONDENT

ON BEHALF OF:
Real Quik Convenience Stores Ltd.

AGAINST:
Conglomerated Nanyu Tobacco Ltd.

RESPONDENT

CLAIMANT

Representation Plan on behalf of Real Quik Convenience Stores Ltd.

Facts and Nature of the Dispute

Real Quik Convenience Stores Ltd. (hereinafter 'Real Quik') has been the largest and most important distribution channel of Conglomerated Nanyu Tobacco Ltd. (hereinafter 'Nanyu') in Gondwana since 2000. The last Distribution Agreement (hereinafter 'the Agreement') was signed on 14 December 2010 for the duration of 10 years. On 1 January 2013, the Bill 275 was enacted in Gondwana, rendering the performance of the Agreement illegal. Having initiated renegotiation of the Agreement without success, on 1 May 2013, Real Quik notified Nanyu the termination of the Agreement effective from 1 June 2013. Consequently, Nanyu demanded liquidated damages of USD75,000,000.00 pursuant to Clause 60 of the Agreement. However, Real Quik argues it was exempted from paying any damages under Article 79 of CISG. The nature of the dispute is therefore both legal and commercial. In particular, the Parties are divergent on whether Real Quik's liabilities should be exempted. While Nanyu is concerned with its losses accumulated in the past year as a result of the termination of the Agreement, Real Quik is unwilling to accept any legal liabilities after the implementation of Bill 275 or to continue its performance of the Agreement.

Interest of the Parties

Real Quik

1. Avoiding or minimizing financial liability for the termination of the Agreement
2. Avoiding any violation of the Bill 275 and future mandatory laws in Gondwana
3. Restoring business partnership with Nanyu Tobacco
4. Exploring future business opportunities

Nanyu Tobacco

1. Receiving appropriate compensation for the loss suffered to date
2. Recouping investment already made in the products
3. Restoring business partnership with Real Quik
4. Exploring future business opportunities

Negotiation Strategy and Responsibility Sharing

In the opening statement, Mr. Mancuso will outline his perception of the issues and the respective interests of the parties. In particular, he will emphasize that Real Quik was forced to terminate the Agreement because of the implementation of Bill 275. During the negotiation phase, Real Quik will propose to renegotiate certain terms of the Agreement, in particular the branded merchandise, price premium, and minimum order quantity. Secondly, Mr. Mancuso will discuss the new packaging and display requirements under the Bill 275. Should Nanyu be willing to comply with those requirements and bear the relevant costs, Real Quik is willing to discuss new promotional strategies for Nanyu's products in Gondwana. To show its goodwill and in line of its interest to resolve this dispute amicably, Real Quik is willing to discuss the amount of compensation with Nanyu. Finally, regarding the arbitration clause, Real Quik would like to include a new dispute resolution clause in the new agreement.

Mr. Mancuso will conduct the negotiation with the support of his Counsel. Mr. Mancuso will focus on the financial and business aspects of the issues while the Counsel will be in charge of the legal framework of any arrangements and play a subsidiary role in the mediation process. The Counsel will also ensure Mr. Mancuso remains open-minded and observes the spirit of the mediation by refraining from being too adversarial or positional. Mr. Mancuso and his Counsel will work together to explore all possible options to resolve the dispute amicably in mediation.