



Alfred Deakin International Commercial Arbitration Moot 2023

Moot Scenario

Note:

1. This is a hypothetical scenario. All the persons and places are fictitious except the involvement of Australia as the place of arbitration and as the home country of a third-party purchaser in Exhibit R2. No facts should be presumed or inferred from the real world except as specifically mentioned, e.g., where the law of certain countries might be identical to the law in the real world.
2. Only exhibits related to the formation of the Sales Agreement in dispute have been included. All other exhibits have been omitted. Please assume that the exhibits, including the witness statements, are generally consistent with the facts disclosed in the Problem.
3. Please also assume all descriptions of facts are accurate and supported by evidence unless there are clear omissions and inconsistencies in the materials provided by different parties.

Notice of Arbitration

In the Arbitration Proceedings

between

Trans-Pacific Import & Export Ltd

and

YTZ Shoes & Accessories Pte Ltd

Introduction

1. This Notice of Arbitration, together with Exhibits C1-C6, is submitted on behalf of Trans-Pacific Import & Export Ltd (hereinafter 'Trans-Pacific') according to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (the '**UNCITRAL Arbitration Rules**') against YTZ Shoes & Accessories Pte Ltd (hereinafter 'YTZ Shoes'), (hereinafter collectively referred to as the '**Parties**').

Part I: Parties

2. Trans-Pacific, the Claimant, incorporated in the Victoria Islands, is a distributor of various goods. Its main office is located at Level 5-7, 1001 Winford Road, Wentworth, Victoria Islands. Trans-Pacific also has offices in other major cities in the Victoria Islands as well as other countries in the Pacific Region. Trans-Pacific is wholly owned by the Pacific Fortune Company Group (hereinafter 'Pacific Group'). Its main business is to import goods from other continents and distribute them to various purchasers in the Pacific Region.
3. YTZ Shoes, the Respondent, incorporated in Ranan, Breynia, is a manufacturer and seller of generic unbranded budget-friendly shoes and accessories. YTZ Shoes headquarters is located at 5-9 Jelutung Rd, Ranan, Breynia. YTZ shoes supplies its generic unbranded budget-friendly shoes and accessories both domestically and internationally.

Part II. The Factual Basis

4. Trans-Pacific has a representative office located in Rocknesse, the capital city of Vago Republic. Vago Republic is geographically close to the Victoria Islands. The Rocknesse office was originally part of Rockdale Distributing Co Ltd (hereinafter 'Rockdale Distributing'), another company within the Pacific Group. However, due to the impact of the COVID-19 pandemic, the shareholders of Rockdale Distributing, mainly other companies within the Pacific Group, determined to dissolve Rockdale Distributing, closing down some parts of the business and re-allocating the remaining parts of the business to other companies within the Pacific Group in March 2021. As a result, Trans-Pacific took over the Rocknesse office, some staff, as

well as some existing business in Rocknesse. Rockdale Distributing was dissolved and de-registered on 25 June 2022.

5. Ms Stefanie Pajmon and her team were originally hired by Rockdale Distributing for the importing of shoes and accessories within the Pacific Group in the Pacific Region and purchased shoes and accessories from YTZ Shoes from time to time. Following an initial telephone inquiry, the first order was made by Ms Pajmon by a written purchase order attached to an email sent to Mr Dung Tran in October 2016 (Exhibit C1: Purchase Order 2016).
6. The same email template purchase order was used in three (3) subsequent transactions between Rockdale Distributing and YTZ Shoes between 2017 and 2021. However, in four (4) other transactions during the same period, the orders were made by telephone calls between Ms Pajmon and Mr Tran. Three (3) of these four (4) other transactions were subsequently confirmed by text messages instead of email template purchase orders. In all of these dealings Ms Pajmon clearly stated that the orders would be based on the same details as the previous orders (Exhibit C2: Witness Statement from Ms Pajmon).
7. Ms Pajmon's team included Mr Merlin (who commenced employment in mid-2018) and Ms Burt (who commenced employment in late-2019). Ms Pajmon, Mr Merlin, Ms Burt, and the rest of the team, were transferred to Trans-Pacific following the decision to dissolve Rockdale Distributing. The original physical office of Rockdale Distributing was closed, and they started work at a new premise in Rocknesse as the representative office of Trans-Pacific.
8. On 25 May 2022, Ms Pajmon called Mr Tran informing him of the changes in the Pacific Group corporate structure. She emphasised that, despite the dissolution of Rockdale Distributing, their purchase of shoes and accessories from YTZ Shoes would be maintained by the same team in the same manner, as the change was nothing but a "restructure of the business within the Pacific Group". She also said that a new order would be made in the next month or two, followed by more orders in early 2023 (Exhibit C2: Witness Statement from Ms Pajmon).
9. On 17 June 2022, Ms Pajmon telephoned Mr Tran regarding the purchase of girls' leather shoes. During this conversation the parties agreed on the following key terms of the purchase:
 - goods: girls' leather shoes, brown and black, sizes from Kids UK 10 – 6 or EU 28 – 39 (12 sizes);
 - amount: 1,000 pairs for each size and each colour, or 24,000 pairs in total;
 - price: USD30 dollars each pair, or USD720,000 in total, to be paid by international telegraphic transfer within 30 days of the shipment of the goods;
 - same product as in previous order No.1254 (ordered in March 2019), especially regarding the design, material and quality;
 - goods should be shipped FOB to Port Bleivio, Vago Republic, departing from Port Ching Kong no later than 15 August 2022;

- the goods are to be sold to Triumph GmbH & Co (hereinafter 'Triumph'), the company owning the largest supermarket chain in the Victoria Islands for its end-of-year sale.
 - Ad hoc arbitration should be used in case of any dispute (the "Agreement").
10. As this was not the first time Ms Pajmon had purchased similar goods from YTZ Shoes, and as the details were similar to some of the previous dealings, she did not send a formal purchase order via email. She insisted that she had sent a text message to Mr Tran regarding this dealing on 20 June 2022, in which she mentioned both that the contract details would be "as usual" and that Trans-Pacific still preferred ad hoc arbitration in case a dispute arose. She also insisted that Mr Tran replied to her message and confirmed the details (Exhibit C2: Witness Statement from Ms Pajmon).
 11. Trans-Pacific had organised the payment of USD600,000 of the total amount. The goods arrived at Port Blevio, Vago Republic on 30 August 2022. The goods were subsequently transferred to Port Wentworth, Victoria Islands, by sea by a carrier organised by Triumph.
 12. Triumph inspected the goods in September 2022 and found that some of the goods did not match the goods they previously ordered from YTZ Shoes. They sent an email to YTZ Shoes, and copied Trans-Pacific, regarding this issue on 12 September 2022 (Exhibit C3).
 13. On 15 October 2022, Triumph's staff further informed Ms Pajmon by telephone that there were significant quality issues with the shoes, such as scuff marks and cracks, and that the goods could not be released onto the market. This was followed by a formal letter of complaint in which Triumph stated that they would reject all the shoes. The goods were then left at the Port Wentworth. Trans-Pacific was still in the process of solving the paralleling dispute between Triumph and Trans-Pacific.
 14. Trans-Pacific's staff took four (4) pairs of shoes from the shipment at Port Wentworth and sent them to a third-party quality supervision and testing agency ('the agency') in Atlantis (another country) for further testing and assessment. The agency produced a report ('the report') in November 2022 which found that the leather used in three (3) out of the four (4) samples was of low quality and not suitable for the manufacture of shoe products. In addition, the testing agency reported that in two (2) of the pairs of shoes sent for inspection and assessment, the rubber soles were of low quality which might severely affect its durability (Exhibit C4).
 15. Based on the report, Ms Pajmon sent a formal email disputing the quality of goods, rejecting the goods, and claiming a refund on 23 November 2022 (Exhibit C5).

16. To Ms Pajmon's surprise, Mr Tran did not respond to the email. Ms Pajmon called Mr Tran several times daily, however Mr Tran only answered the telephone on 11 December 2022 and in a brief conversation stated that the goods had already been accepted, and denied any quality issues with the goods. Instead, Mr Tran requested Trans-Pacific to pay the remaining amount by Feb 2023 (Exhibit C2: Witness Statement from Ms Pajmon).

Part III Legal Analysis

17. The Claimant brings the claims detailed below on the basis of the following arbitration clause in previous orders made by Ms Pajmon on behalf of Rockdale Distributing: "Melbourne arbitration, UNCITRAL Rules". The orders also referred to the General Terms and Conditions available at the website of Rockdale Distributing, which provides,
- "Dispute Resolution**
Arbitration in Melbourne, Australia, UNCITRAL Rules."
18. As previously stated in paras. 5-10, this dealing is subject to the detailed clauses provided by the template purchase order used in previous dealings between Ms Pajmon and Mr Tran since 2016. Thus, the arbitration clause in this template binds both parties in the Agreement.
19. A sale of goods agreement was duly formed following the telephone conversation and the text message communication between Ms Pajmon and Mr Tran. The Claimant had duly performed its obligation to pay the majority of the amounts under the Agreement.
20. The Claimant inspected the goods in a reasonable manner and successfully exercised its right to reject the goods that failed to meet the requirement imposed by the contract or merchantable quality. Due to the unique purpose of the goods, which had been made known to the Respondent, the Claimant is entitled to terminate the contract, and receive a full refund plus relevant interest and other losses.

Part IV Relief Sought

21. The Claimant seeks that the tribunal render:
- a) termination of the contract;
 - b) refund of the payment and interest incurred;
 - c) any losses suffered, including but not limited to losses for failure to perform the contract with Triumph, the costs of this arbitration, and any attorney's costs incurred.

Exhibits (Exhibits C2 and C4 omitted)

Exhibit C1 Purchase Order in 2016 (The parts manually filled in appear in italics)

Purchase Order No. 0813

Date: 10 Oct 2016

To: YTZ Shoes and Accessories, 5-9 Jelutong Rd, Ranan, Breynia

Please find the following order on behalf of Rockdale Distributing:

Item	Description	Quantity	Price per unit	Amount
1	<i>Women Leather Shoes, Black Sizes EU35-43</i>	<i>1,000 for each size, or 9,000 in total</i>	<i>USD20</i>	<i>USD180,000</i>
Total				<i>USD180,000</i>

Specific Terms

Delivery:

FOB Port Blevio, Vago Republic, Departing no later than 5 November 2016

Payment Terms:

International telegraphic transfer, within 30 days of the shipment of the goods

Samples and Technical Specifications:

Not applicable

Please confirm receipt of this purchase order and ensure timely delivery of the above items. If you have any questions or concerns regarding this order, please contact us immediately.

Signature

Stefanie Pajmon

Title

Senior Procurement Officer

Rockdale Distributing Co Ltd, Pacific Company Group

Lv 27, 225 Osborn Rd, Rocknesse Industrial Park, Rocknesse, Vago Republic

Tel: +34 7 2319 2748 Email: procurement@rockdaledistributing.com.vp

Attention: This purchase order is subject to Rockdale Distributing's General Terms and Conditions: Quality warranty/Penalties for late performance/Force majeure clause/Melbourne arbitration, UNCITRAL Rules

Please check <http://www.rockdaledistributing.com.vp/Termsandconditions> for full T&Cs.

Exhibit C3 Email from Triumph

From: pat.mccormick@triumph.vi
To: tran@ytzshoes.com.by
Cc: s.pajmon@transpacific.vi
Subject: Urgent - Girls Leather Shoes: YTZ Shoes, Breynia
12:31:34 12 September 2022

Dear Mr Tran (copying Ms Pajmon),

I am writing regarding the girls' leather shoes we procured recently which are manufactured by your company. After inspecting the goods at Port Wentworth yesterday, we had some concerns regarding the quality of the shoes. Contrary to what we had instructed Ms Pajmon regarding this purchase that the goods should be similar to the goods previously supplied by your company in 2019 regarding its design, material and quality, the shoes supplied this time, especially the leather and the rubber used, were significantly different from the previous products. Please find two photos below.

Given the seriousness of this matter, we will run further tests and assessments on the goods, and reserve the right to reject the goods and to seek proper remedies.

Kind regards,
Patrick McCormick

Manager - Procurement & Quality Control
Triumph Regional Office - Victoria Islands (Procurement and Distribution)
Level 35, 340 Harbour Road, Port Wentworth, Victoria Islands
(+81) 2319 5610

Where Your Shopping Triumph Begins!

Attachment 1: Girls Leather Shoes Sample 31052019.jpg
Attachment 2: Inspection – Girls Leather Shoes 11092022.jpg

Exhibit C5 Email from Ms Pajmon

From: s.pajmon@transpacific.vi
To: tran@ytzshoes.com.by
Subject: Re: Girls Leather Shoes: YTZ Shoes, Breynia
09:26:56 23 November 2022

Dear Mr Tran,

Following our previous phone discussion in October, we have now heard back from the National Institute of Standards and Technology of Atlantis regarding the shoes manufactured and supplied by your company to us. The outcome is shocking. As you can see from the report attached, in the four samples we sent for inspection and assessment from the goods, three of them had serious issues with the leather used, and two of them had issues with the rubber soles. On that basis, we consider that the quality of the whole delivery is not acceptable and reject it in its entirety.

Further, as the purchaser of these shoes, we had made clear in the contractual negotiation that the purpose of this purchase is to resell them to Triumph for its end-of-year sale (which will start in one week), to which you had agreed. It is now too late for you to provide any substitute goods to achieve this purpose. Regrettably, we have to terminate this contract as its purpose is frustrated. We also demand the full refund of all payments made to you regarding this transaction (USD600,000 in total). We reserve the right to claim for other losses we suffered due to the substandard goods and are prepared to bring this matter before an arbitral tribunal should the refund be not duly paid in four weeks' time.

Stefanie Pajmon
Procurement Manager (Vago Republic Office)
Suite 064, Burk Boulevard, Rocknesse, Vago Republic
Trans-Pacific Import & Export Ltd
Tel: + 34 853 266 571

Response to the Notice of Arbitration
In the Arbitration Proceedings

between

Trans-Pacific Import & Export Ltd

and

YTZ Shoes & Accessories Pte Ltd

Introduction

1. This tribunal lacks the jurisdiction to hear this case.
2. Even if the tribunal has the jurisdiction to hear this case, the Respondent shall not be held responsible and shall be entitled to receive the remaining amounts due.

Statement of Facts

3. Mr Tran was the lead of the Respondent's marketing team since 2013 and had the authority to negotiate and conclude agreements on behalf of the Respondent. He had many previous dealings with Ms Pajmon when she was still working for Rockdale Distributing.
4. Regarding the dealings mentioned in the Notice of Arbitration, the Respondent submits that the purchase order following the same template was used in only four (4) of them. These four (4) orders occurred in: October 2016 (Purchase Order No.0813), August 2017 (Purchase Order No.0912), October 2017 (Purchase Order No.0957) and March 2019 (Purchase Order No.1254).
5. In addition to those four (4) orders, the other four (4) transactions were initially communicated by Ms Pajmon over the telephone. Among these four (4) dealings, three (3) of them were subsequently confirmed by text messages but only in one (1) of these dealings (Purchase Order No.983) did Ms Pajmon expressly mention that the order should proceed subject to the general terms and conditions in Purchase Order No.0957. In the two (2) other text-confirmed dealings, the text message merely said the dealings were subject to "general terms" without express reference to any particular contract (Exhibit R1: text message communication).
6. In addition to the dealings mentioned in the Notice of Arbitration, there had been three (3) other dealings communicated by Ms Pajmon to Mr Tran between 2017 and 2021. In these dealings, Ms Pajmon ordered the goods but specified that the goods should be directed to the ultimate buyers, or the orders were placed on behalf of the ultimate buyer. In these three (3) dealings the Purchase Order template of Rockdale

Distributing was not used. Instead, communications following the phone call from Ms Pajmon would usually be circulated between Rockdale Distributing to the Respondent and the ultimate buyer (Exhibit R2: Email from a third-party buyer to YTZ, copying Ms Pajmon).

7. On 25 May 2022, Mr Tran received a phone call from Ms Pajmon stating that she and her team would cease to work for Rockdale Distributing, which would be dissolved soon, and the team would commence working for the Claimant from then on. While she stated that she would maintain the long-term cooperation with the Respondent and make more orders in the following months, she also stated that this was a new start and she felt honoured to having the Respondent on board with the Claimant's new adventure. She also shared her new contact information (postal address, phone number and email) with Mr Tran via text message following the phone call (Exhibit R3: Witness Statement by Mr Tran).
8. On 17 June 2022, Mr Tran received a telephone call from Ms Pajmon regarding the purchase of girls' leather shoes. In the conversation Ms Pajmon mentioned that the goods would be similar to those ordered in March 2019 and that they would "trust YTZ's ability to provide the right products Triumph would need". It was also clearly stated that the goods were ordered for Triumph and that further details of payment and logistics would be followed up by Triumph. Mr Tran admitted that there was a brief mention of ad hoc arbitration, but he did not think there had been a definite choice of the dispute resolution method, and neither had there been a selection of the place of arbitration (Exhibit R3: Witness Statement by Mr Tran).
9. Contrary to what is stated in the Notice of Arbitration, Mr Tran never received any text message from Ms Pajmon as further confirmation of the contract details of this order. The subsequent communication regarding this deal was initiated by Triumph confirming the details of this transaction on 28 June 2022, copying Ms Pajmon. Mr Tran replied to this email (Exhibit R4: Triumph emails).
10. The Respondent arranged for the shipment of goods from Port Ching Kong, Breynia to be delivered to Port Blevio, Vago Republic on 10 August 2022, and passed the bill of lading to the Claimant. The goods were duly packed and shipped, and the subsequent transport of goods was organised by Triumph. The Respondent was notified on 30 August 2022 that the goods had arrived at Port Blevio and were duly transferred.
11. The goods were partially paid in three (3) instalments. Two (2) payments were made under the name of Trans-Pacific on 15 August 2022 (USD120,000) and 30 August 2022 (USD200,000), while the other payment was made by Triumph on 25 August 2022 (USD280,000). Ms Pajmon told Mr Tran in a telephone communication that the residual amount of USD120,000 would be paid when all goods were received and accepted. She did not inform the Respondent whether the payment would be made by the Claimant or by Triumph (Exhibit R5: receipts of payment and Exhibit R3: Witness Statement by Mr Tran).

12. Mr Tran received an email from Triumph on 12 September 2022, copying the Claimant (see Exhibit C3). In this email Triumph stated that the goods were not quite similar to the previous order but did not identify any quality or non-conformity issues, nor did it express any intention to reject the goods.
13. On 23 November 2023, almost two months after the arrival of goods at its ultimate destination, Wentworth, Victoria Islands, Ms Pajmon sent the Respondent an email stating that they, as the purchaser of the goods in this transaction, intended to reject the goods and terminate the contract on the basis of the alleged quality issues.
14. The Respondent is confident about the quality of the goods delivered in this transaction and refutes the groundless claims. This was clearly conveyed to the Claimant in a telephone conversation with Ms Pajmon on 11 December 2022. The Respondent also demanded the payment of the remaining amount by February 2023. Whilst the Respondent was preparing materials and samples for goods sold in this transaction to bring a formal claim for the remaining amount before the court, it received the Notice of Arbitration. The Respondent has not made a separate claim for the remaining amount owed by the Claimant.

Legal Analysis

Jurisdictional challenge

15. The Respondent rejects the jurisdiction of this tribunal despite the submissions on the merits below.
16. The rejection of the tribunal is based on the fact that this contract of sale of goods is between Triumph and the Respondent, and not between the Claimant and the Respondent, based on the factual grounds listed in paras. [6]-[11] above. The Claimant, and Ms Pajmon as its employee, was merely acting as the ostensible or actual agent of Triumph in the negotiation of the contract. While it is reasonably possible to assume the formation of the contract, there is no arbitration agreement between Triumph and the Respondent, as there was no meeting of minds on the arbitration clause.
17. Alternatively, even if this dealing is between the Claimant and the Respondent, it should be distinguished from, and have no connection to, the previous dealings between Rockdale Distributing and the Respondent, based on the factual grounds listed in paras. [4]-[9]. Thus, the arbitration clause in Rockdale Distributing's previous orders could not bind the dealing between the Claimant and the Respondent.
18. In any case, there is no written contract between the Parties. Thus, no arbitration agreement could be formed.
19. Based on the facts and analysis above, the tribunal has no jurisdiction to hear this case.

Substantive claims

20. There is no choice of law clause in this contract. Victoria Islands, Vago Republic and Breynia are all Contracting States of the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). Thus, the CISG applies to resolve this dispute.
21. In the unlikely case that the contract was formed between the Claimant and the Respondent, the Claimant failed to inspect the goods and give the Respondent timely notice regarding the potential issues arising from the goods. Thus, the Claimant has waived its right to reject the goods.
22. Further, evidence included in the Notice of Arbitration is not sufficient to prove the existence of any non-conformity or quality issues. There was no evidence that the goods covered by the Report (Exhibit C4) were goods sold by the Respondent, nor did the four (4) samples included in the Report appropriately reflect the quality of all 24,000 pairs of shoes.
23. Contrary to the allegations in the Notice of Arbitration, the Respondent submits evidence that the materials used in the manufacturing of the goods were of good quality (Exhibit R6: YTZ's Internal Materials - Data and Certificates).
24. The Respondent requests the arbitral tribunal to decline its jurisdiction to hear this case on the basis of the lack of a valid arbitration agreement between the Parties.
25. Alternatively, should the tribunal uphold its jurisdiction, the Respondent requests the arbitral tribunal to:
 - reject all substantive claims raised by the Claimant on the basis that the Claimant has waived its right to reject the goods and failed to prove the existence of any quality issues; and
 - order the Claimant to pay the residual amounts and any interest incurred under the Agreement; and
 - order the Claimant to bear the costs incurred in this arbitration proceeding.

Exhibits (Exhibits R3, R5 and R6 Omitted)

Exhibit R1 Text message communications extracted from Mr Tran's Phone

From: Stefanie Pajmon (Rockdale) + 34 853 266 571

12:36:30 30-01-2017

Purchase Order No.865: Toddler's PU leather sandals, EU Sizes 15-29, 7,500 pairs, USD 15pp, Total amount USD112,500 payable 60 days after contract, EXW collectable by 28/02/2017, General terms apply.

To: Stefanie Pajmon (Rockdale) + 34 853 266 571

13:10:04 30-01-2017

Order 17-0012 Confirmed.

From: Stefanie Pajmon (Rockdale) + 34 853 266 571

19:11:13 25-02-2018

Purchase Order No.983: Mens' Black Leather Shoes, EU Sizes 39-46, 5000 pairs, design as discussed, USD 40pp, Total amount USD200,000 payable 30 days after shipment, FOB destination TBC, to be shipped by 15/04/2018, General terms and conditions apply (same as Order No.0957).

To: Stefanie Pajmon (Rockdale) + 34 853 266 571

09:32:42 26-02-2018

Order 18-0031 Confirmed.

From: Stefanie Pajmon (Rockdale) + 34 853 266 571

11:51:19 03-04-2018

Purchase Order No.1032: Kids' unisex black school shoes, EU Sizes 25-34, 20,000 pairs, USD 30pp, Total amount USD600,000 payable 60 days after contract, EXW collectable by 01/07/2018, General terms apply.

To: Stefanie Pajmon (Rockdale) + 34 853 266 571

09:00:13 04-04-2018

Order 18-0053 Confirmed.

Exhibit R2 Email received by YTZ, copying Ms Pajmon

From: r.corrigan@maximart.com.au
To: tran@ytzshoes.com.by
Cc: procurement@rockdaledistributing.com.vp
Subject: Confirmation of Order – Women leather boots - YTZ Shoes
18:20:05 10 Feb 2019

Dear Mr Tran,

I hope this email finds you well.

I am writing to confirm the key terms of our purchase from your company, following the telephone call between Ms Pajmon (Rockdale Distributing) and you on 8 Feb 2019.

Description of goods:

Women leather shoes, black and brown, 8000 pairs (UK sizes 4-11), sample provided

Price and Payment:

Price USD50/pp, USD400,000 in total, payable 60 days after contract

Delivery:

FOB Melbourne, Australia, shipped no later than 15 April 2019

Ms Pajmon informed us that you prefer international telegraphic transfer and domestic dispute resolution methods in Breynia. We are happy to accept both terms. Should you suggest any further adjustments, please do not hesitate to let us know.

Yours Sincerely,

Royce Corrigan
Director & Procurement Manager
MaxiMart Co Ltd
342 Collingwood Hwy, Warragul 3820 Victoria, Australia
+61 3 2089 7321

Exhibit R4 Emails between YTZ and Triumph on 28 June 2022

From: pat.mccormick@triumph.vi
To: tran@ytzshoes.com.by
Cc: procurement@rockdaledistributing.com.vp
Subject: Procurement - Girls Leather Shoes: YTZ Shoes, Breynia
15:05:36 28 June 2022

Dear Mr Tran (copying Ms Pajmon),

I am writing to check the status of the purchase of the girls' leather shoes with the assistance of Ms Pajmon. We are glad to have your products on our shelves again! We have already paid a deposit to Ms Pajmon's company, whose company will pass it on to you in due time.

In addition to what Ms Pajmon had communicated to you, we would like to emphasise that we would like the same or identical goods to the previous supply in 2019 for our end-of-year sale. I look forward to receiving your excellent products soon!

Kind regards,
Patrick McCormick

Manager - Procurement & Quality Control
Triumph Regional Office - Victoria Islands (Procurement and Distribution)
Level 35, 340 Harbour Road, Port Wentworth, Victoria Islands
(+81) 2319 5610

Where Your Shopping Triumph Begins!

From: tran@ytzshoes.com.by
To: pat.mccormick@triumph.vi
Cc: procurement@rockdaledistributing.com.vp
Subject: Re: Procurement - Girls Leather Shoes: YTZ Shoes, Breynia
18:21:09 28 June 2022

Dear Mr McCormick,

Thank you for choosing us!

We are glad to confirm the details of your order, as we had already informed Ms Pajmon. We guarantee that the goods will be properly manufactured and shipped by 15 August 2022 from Port Ching Kong. Feel free to give me a call for any further communication.

Kind regards,
Dung Tran

YTZ Shoes and Accessories
5-9 Jelutong Rd, Ranan, Breynia
Primary Contact (Mobile): + 571 9 7134 7820

Procedural Order No.1

27 June 2023

1. The 3-member tribunal was duly established on 28 April 2023 in accordance with the UNCITRAL Rules.
2. Following the virtual meeting with the participation of both Parties, the tribunal takes note of the following facts:
 - a. Victoria Islands, Vago Republic and Breynia are all Contracting States of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
 - b. Vago Republic made an Art 96 reservation to the CISG regarding the written format of the international sale of goods contract in 1998, well before its domestic law removed the requirement of written contracts for sale of goods transactions in 2015. While the requirement no longer exists in domestic law, its government has not yet withdrawn the reservation. Victoria Islands and Breynia have made no reservation to the CISG.
 - c. Vago Republic's domestic law of contract is identical to Australian common law. Its domestic law has a separate statute governing sale of goods contracts (the law once had a written contract requirement which has been removed). The statute contains a provision governing the buyer's right to examine goods, which is a verbatim adoption of Section 41 of the Goods Act 1958 (Vic).
 - d. Breynia's domestic law of contract is a verbatim adoption of the UNIDROIT Principles of International Commercial Contracts (PICC). Its Commercial Code has a provision which is a verbatim adoption of Section 277 of the German Commercial Code (HGB) regarding the buyer's inspection of goods.
 - e. It is common practice in Breynia for business between small or medium-sized enterprises to be concluded orally or via text messages without formal written contract.
 - f. Ms Pajmon is now working for Trans-Pacific's office in Vago Republic, which is registered as a representative office of Trans-Pacific (a company incorporated in the Victoria Islands) running business in Vago Republic. The representative office is not an independent company.
 - g. Ms Pajmon was not aware of the existence of the email communications between Triumph and YTZ on 28 June 2022 (Exhibit R4) due to the inclusion of her Rockdale Distributing email address, instead of her Trans-Pacific email address, in that communication. She asked Trans-Pacific's IT expert to set up the email address to the effect that all emails sent to her old account should be automatically forwarded to her new account, but there seems to have been some technical issues that randomly prevented her from receiving forwarded emails which she only discovered a few weeks after the 28 June 2022 email was sent.
 - h. The dispute between Triumph and Trans-Pacific is ongoing. A written order was sent by Triumph to Trans-Pacific via text message as an attachment. The order

stated, “dispute resolution: litigation in Victoria Islands, local law applies.” The parties were still in negotiation and no formal case was filed before the courts of Victoria Islands yet.

3. The tribunal also acknowledges the following matters raised before and after the establishment of the arbitral tribunal:
 - a. The alleged message sent by Ms Pajmon to Mr Tran to confirm the details of this transaction on 20 June 2022 was conveyed during her business trip in Gagetown (another country). She admitted that she had purchased a local SIM card for local use in Gagetown, and might have mistakenly used the local SIM card, instead of her usual contact number in Vago Public, to send the details, but insisted that she had included enough detailed information to make sure that Mr Tran would notice this would be the details for this transaction, and Mr Tran did reply to her message. Unfortunately, both her cell phone and her laptop where she stored the phone backups were stolen later on the same day during this business trip in Gagetown, which caused the loss of all her records relating to that number.
 - b. Based on the above fact, and taking into account the difficulty and costs to retrieve Ms Pajmon’s number used in Gagetown and request for access to the archived message from the cellular operator, the Claimant made a Request to Produce on the basis of IBA Rules on the Taking of Evidence in International Arbitration, requesting the Respondent to provide Mr Tran’s text message record during that period, and indicated that they were preparing the application for the issuance of a subpoena to the relevant court.
 - c. The Respondent objected to the Request to Produce, insisting that no text message communication existed. It also submitted that the tribunal should not be bound by the IBA Rules on the Taking of Evidence, and that the Respondent should not bear the onus of providing evidence supporting the Claimant’s claim under the applicable evidentiary rules. Further, the Respondent informed the Claimant and the arbitral tribunal that Mr Tran had quit his job in March 2023 for personal health reasons. He provided a witness statement (Exhibit R3) but was not willing to be further involved in the arbitration proceeding due to his rapidly deteriorating health, and the fact that he was currently receiving medical treatment overseas.
4. In light of the facts and procedural items listed above, the arbitral tribunal makes the following orders:
 - (1) That, in the oral hearings taking place at Melbourne, Australia, in September 2023, the Parties should address only the following issues:
 - A. Should the tribunal order the Respondent to produce Mr Tran’s text message history and draw adverse inferences from the Respondent’s objection to the Request to Produce, or should it hold this as the Claimant’s failure to meet the standard of proof in proving the

existence of the text messages regarding this transaction in the absence of the production of such evidence?

B. In case the existence of the text messages is not proved, does the tribunal have the jurisdiction to hear this matter? This should include submissions on the applicable law governing the formation and formality requirement of the arbitration agreement.

C. In case the existence of the text messages is not proved, had a sale of goods contract been formed between the Claimant and the Respondent? This should include submissions on the applicability of the CISG.

D. If the contract was formed between the Claimant and the Respondent, would the Claimant's rejection of the goods be upheld?

(2) The submissions are to be made in accordance with the Rules of the Moot. For the submissions, the following Procedural Timetable shall apply:

a. Claimant's Submission: no later than **Tuesday, 1 August 2023, at 11:59PM Melbourne Time (AEST)**;

b. Respondents' Submission: no later than **Wednesday, 9 August 2023, at 11:59PM Melbourne Time (AEST)**.

(3) In the event that the Parties need further information, Request for Clarification must be made in accordance with Rule 5 of the Rules of Moot no later than **Tuesday, 11 July 2023, at 11:59PM Melbourne Time (AEST)** by emailing **deakin-ica-moot@deakin.edu.au**.

(4) Both Parties are invited to attend the virtual hearing scheduled for **4 and 5 September 2023**, Melbourne, Australia. The details concerning the virtual hearing will be provided to the Parties in due time.

4 July 2023

Ms Presiding Arbitrator

Procedural Order No. 2

20 July 2023

CORRECTIONS

1. Notice of Arbitration para.1, "C6" should read "C5".
2. Response to the Arbitration, para.13, "November 23, 2023" should read "November 23, 2022".
3. Procedural Order No.1., Para 2.d, the reference to section "277" of the HGB should read section "377".

CLARIFICATIONS

Only selected questions are answered. Some questions have already been addressed in the original scenario. Others are intentionally omitted for your research or left open for your discussions and submissions.

Please assume that the omitted exhibits, including the witness statements and communications, are generally consistent with the facts disclosed in the Problem.

Applicable law and procedural matters

1. What would be considered the domestic law of contract for the Victoria Islands?

The contract law in Victoria Islands is identical to English common law. It also has a Sale of Goods Act that is identical to the Sale of Goods Act 1979 (UK), and in particular, contains a provision that is a verbatim adoption of section 34 of that law regarding the buyer's right of examining the goods.

2. What is the formal validity of an agreement to arbitrate in the Vago Republic?

Vago Republic adopts the UNCITRAL Model Law and chooses Option I for article 7.

3. Does Vago Republic currently have any contractual form requirements in force post-2005 in its domestic law?

There is no general rule on contract formality in Vago Republic's contract law, but there is a requirement on the written format of the contract in sales of real property.

4. Why has Vago Republic's government not yet withdrawn the reservation?

There had been calls for the withdrawal of the art 96 reservation to the CISG made by various practitioners and scholars, but the Vago Republic government had not made the move and did not expressly respond to this matter.

5. Is the Request to Produce Tran's text message history being made in accordance with the latest 2020 version of the IBA rules?

The Claimant based its Request in accordance with the IBA Rules (2020).

Transition from Rockdale Distributing to Trans-Pacific

6. What was the exact date when Ms. Stefanie Pajmon commenced working for Trans-Pacific?

According to her witness statement, Ms Pajmon was informed of the change of company structure in December 2021 and started to work as a representative of Trans-Pacific on 2 May 2022.

7. When did Rockdale Distributing's operation end unofficially?

Rockdale Distributing's staff ceased to work for Rockdale Distributing during the period between March and June 2022. Its website only displayed an announcement regarding the de-registration of the company after 25 June 2022.

8. Did Trans-Pacific commence operating with the former Rockdale Distributing team in the former Rockdale Distributing office in Rocknesse prior to its closure? Or did Trans-Pacific only take over once the new premises in Rocknesse were opened as the Trans-Pacific representative office? On what date did the old office close and the new office open?

The office where Ms Pajmon used to work at was taken over by Trans-Pacific in April 2022. Ms Pajmon and her team worked at that office till 29 April, and they started to work at the new office rented by Trans-Pacific on 2 May (30 April and 1 May were the weekend). The Trans-Pacific staff moved their assets to the new office and clean up the old office by 15 June 2022. The old office was then renovated for other purposes by Trans-Pacific.

9. Was the website that contained the T&C's shut down when Rockdale Distributing was dissolved? If not, who was hosting the domain name?

The website displayed an announcement of the de-registration of the company shortly after 25 June 2022. The announcement also included links to other companies in the Pacific Group, including Trans-Pacific. Other web pages displaying information relating to Rockdale Distributing were archived and can still be visited at the end of June 2023.

The domain name was paid by Rockdale Distributing till June 2023 before its de-registration. When dissolving Rockdale Distributing, Pacific Group determined not to maintain this domain name after June 2023 but move the archived pages to the website of the Pacific Group. Thus, while the link to the General Terms and Conditions of Rockdale Distributing would not work, you would still visit the archived pages, including such General Terms and Conditions, from Pacific Group's website.

10. Was the entire Rockdale office and operation transferred to Trans-Pacific or just Ms Pajmon's team?

The businesses transferred to Trans-Pacific included Ms Pajmon's team and a few other teams. Some other teams were transferred to other companies within the Pacific Group. Some businesses were terminated.

11. How big was Ms Pajmon's team in Rockdale and in Trans-Pacific?

Ms Pajmon's team included Mr Merlin (who commenced employment in mid-2018) and Ms Burt (who commenced employment in late-2019) and herself as the core members. There were also two junior employees and one intern before the transition. Ms Pajmon, Mr Merlin, Ms Burt, and the rest of the team, were transferred to Trans-Pacific following the decision to dissolve Rockdale Distributing. The intern finished her internship soon after the transition, and one junior employee was re-allocated to another team in the same office in September. Another junior employee was recruited in November 2022 to fill the vacancy.

12. Was Ms Pajmon's technical issues suffered by her team at Trans-Pacific or was it only her?

Ms Pajmon was the only person who reported the technical issue.

13. Was the Rockdale distribution email address left unchecked? If so, why?

The initial setting of the automatic forwarding service was that the emails would only appear in Ms Pajmon's new mailbox. It means that her Rockdale distributing email account did not have a copy of the emails.

14. When exactly did Ms Pajmon discover the technical issue? How long did it take Ms Pajmon to ask IT to rectify the situation?

Ms Pajmon discovered the technical issue on 14 July 2022 and reported it to their IT staff immediately. The issue was not fixed until 18 July 2022.

15. Before the restructuring, what was the nature of Trans-Pacific's business?

Trans-Pacific is a distributor of various goods and its main business is to import goods from other continents and distribute them to various purchasers in the Pacific Region. Before the restructure it did not have significant business activities in Vago Republic.

16. Is the majority of Trans-Pacific's work conducted out of its representative office in Vago Republic or in the Victoria Islands where it was incorporated?

After the restructuring, Trans-Pacific's business in Vago Republic was managed through its office in Rocknesse (where Ms Pajmon now works at). Based on a rough estimation, the turnover of the business in Vago Republic business is about 25% of the total turnover of Trans-Pacific in the financial year between 1 July 2022 and 30 June 2023. The turnover of Ms Pajmon's team was about 15%-20% of Trans-Pacific's Vago Republic business during this period. Turnover of the Victoria Islands headquarter was the largest portion (40%); the other 40% was jointly contributed by its business in other countries and regions.

17. How closely held is Pacific Group and how interconnected are the subsidiaries? What is the legal/commercial relationship between Rockdale Distributing and Pacific Group?

Pacific Inc. is a publicly listed company in the US and the main parent company in the Pacific Group. It owns or substantially controls many subsidiaries, such as Pacific East Company, Pacific Ocean Logistics Corp., Pacific International Commodities Co., in different countries. Two founders and a few private investment funds substantially control Pacific Inc.

Before the dissolution, 50% of Rockdale Distributing's shares were held by Pacific East Company, 30% by Pacific Ocean Logistics Corp., and 20% by other subsidiaries with the

Group. Pacific East is 80% owned by Pacific Inc.; the remaining 20% of Pacific East's share is held by institutional and individual investors.

Trans-Pacific's shares were divided between Pacific International Commodities Co. (60%) and Pacific East Company (40%).

Pre-contractual conducts, negotiations, and contracts

18. Is there any avoidance clause mentioned in the general terms and conditions of Rockdale Distributing?

No.

19. Are there any confidentiality clauses in the general terms that prohibit the production of the text message communication?

No.

20. What are the general terms and conditions of Rockdale in terms of quality?

The General Terms and Conditions contain a clause called "Quality warranty", which stated, "The Seller guarantees that the Goods will be compliant with applicable legislation and safety standards and suitable for the use for which they are normally intended unless otherwise agreed by the parties."

21. Were the general terms and conditions of international commercial contracts drafted by Rockdale and Trans-Pacific similar?

Trans-Pacific did not publish any General Terms and Conditions on its website. It was submitted by the Claimant that there were no unified general terms across the company, but general terms and contract templates could be adopted in specific areas of business. They did not wish to submit any terms in unrelated transactions to the tribunal for confidentiality purposes.

22. Did YTZ Shoes raise any issues concerning the general terms and conditions of both businesses?

YTZ never disputed with Rockdale Distributing on the exact content of 'general terms' in past dealings.

23. Do representatives from large companies in Victoria Islands and Vago Republic often conclude business over text or telephone?

The tribunal takes note of the following facts: The use of phone calls in reaching commercial contracts between businesses is slightly more popular in Vago Republic than in Victoria Islands. The use of text messages was slightly more popular in Victoria Islands. However, email correspondence remains the most common practice in both countries. In both countries, there were cases upholding and negating the formation of contracts by phone calls and by text messages, depending on the fact of particular cases. The rulings in both countries are still developing and the standards/approaches are not quite consistent. Generally speaking, the courts in Vago Republic adopt a more flexible approach in finding the 'meeting of minds' without written evidence, and the courts in Victoria Islands prefer a more rigid approach in doing so.

24. Did Mr Tran use a personal phone or a business phone when communicating with Ms Pajmon in each communication?

According to the Respondent's submission, Mr Tran has only one cell phone and one sim card. He used it for all purposes until he went overseas for medical treatments. Since late March 2023, a voicemail message was set up directing anyone who called this number to turn to other staff at YTZ for business matters.

25. How long was Ms Pajmon in Gagetown?

Ms Pajmon planned to stay for two weeks exploring the local markets and attending a local fair, however due to the incident she had to return to Vago Republic early. She stayed in Gagetown for 5 days and returned to Gagetown to continue her business a month later.

26. Was Ms Pajmon's phone that was lost in Gagetown capable of using two SIM cards simultaneously?

Yes.

27. Has Ms Pajmon reported to the police station or not, after her phone and laptop were stolen to support the validity of her reason for miscommunication?

Yes, a police report had been issued to support the issuance of her temporary ID document before she was able to go back to Vago Republic. The police report stated that her phone and laptop were stolen.

28. What methods of dispute resolution are provided for in the domestic legal system of Breynia in Exhibit R2?

Litigation.

29. On page 9, paragraph 6 of the Response to Notice of Arbitration, the Respondent refers to three further dealings in which Ms Pajmon ordered the goods but specified that the goods should be directed to the ultimate buyers, or the orders were placed on behalf of the ultimate buyer. In these arrangements, was there any written agreement between Rockdale Distributing and the third-party purchasers?

The Respondent submitted that they did not have the knowledge of whether there were written agreements between Rockdale Distributing and the third-party purchasers in those dealings in addition to the correspondence they received, but the current correspondence would be enough to conclude that they have dealt with the buyers directly.

The Claimant submitted that they had received orders and purchase requests from those purchasers and believed they were dealing with the purchasers separately. They submitted that they need time to locate the written evidence archived during the transition and to clear the confidentiality concerns before they were able to submit those orders and purchase requests to the tribunal.

30. Page 3, para 6 states: "In all of these dealings Ms Pajmon clearly stated that the orders would be based on the same details as the previous orders." Does "all" refer to the 4 transactions made by telephone, or the 3 out of those 4 which were confirmed by text messages?

All 4 transactions made by telephone.

31. Concerning the statement that “Ms Pajmon clearly stated that the orders would be based on the same details as the previous orders” at page 3, para 6: what method of communication did Ms Pajmon use to make these clear statements?

This is what Ms Pajmon stated in her witness statement. She insisted that she clearly conveyed this information to Mr Tran over the phone on all occasions.

32. Did YTZ receive any direct communication from Triumph (prior to delivery of the goods) concerning whether the goods had to be “similar” or the “same”?

There was no further direct communication between Triumph and YTZ regarding this purchase in addition to what had already been included in the Problem.

Testing

33. How far is Atlantis from Victoria Islands, Vago Republic, and Breynia?

Atlantis is not geographically close to either of the countries mentioned but is culturally close to Victoria Islands. Victoria Islands and Atlantis use the same official language, which is different from the official languages used in Vago Republic and Breynia.

34. Why would Trans-Pacific choose Atlantis over the other nations?

The Claimant submitted that they always choose this particular testing agency in their practice.

Atlantis is one of the leading countries regarding quality testing in general, but it is not the only option. At least three other countries/regions (not including any of the countries mentioned in the Problem) have leading testing authorities either providing comprehensive quality testing services or specific shoe-testing services and were able to offer cheaper or faster services.

35. What is the cost of testing for the 'low quality' shoes?

In this case, the tests cost USD1,000 in total. The reasonable costs would be between USD20-300 per pair of shoes, depending on the number of features to be tested and the urgency of the matter.

36. Were an equal number of black and brown leather shoes tested?

The report covers 3 pairs of black leather shoes and 1 pair of brown leather shoes.

37. Ms Pajmon states that the report describes "serious issues with the leather used" and "issues with the rubber soles". What are these issues?

Subject to more accurate evidence given by experts, the report listed the data collected from the tests regarding its main features (especially its durability) and concluded that the leather used in the 3 of the 4 pairs of shoes and the rubber used in 2 pairs of shoes failed to meet the technical standard for the purpose of being used in the manufacturing of shoes.

Post-contractual Matters and Communications

38. What date did the goods arrive in Port Wentworth, Victoria Islands, after they were picked up by the carrier organised by Triumph in Port Belvio, Vago Republic?

The goods arrived on 9 September 2022.

39. How long did the shoes remain at Port Wentworth prior to being collected and sent to 'the agency' for inspection by Trans-Pacific's staff?

The shoes were left at Port Wentworth since Triumph rejected them on 15 Oct 2022. The staff from Trans-Pacific checked the goods on 20 Oct 2022 and collected the 4 pairs of shoes as samples.

40. Who made the payment on behalf of Triumph on 25 August 2022?

Triumph's staff.

41. Were there any complications during the shipping of the goods throughout the 15-day shipment that could have resulted in damage?

No.

42. In Exhibit C5, Ms Pajmon makes reference to a "previous phone discussion in October" with Mr Tran. Did this conversation take place?

Yes, Ms Pajmon had a phone conversation with Mr Tran in early October. It was after Triumph's email on 12 September and before Triumph's formal complaints to Trans-Pacific on 15 Oct. Ms Pajmon's witness statement provided that she and Mr Tran briefly communicated on the issues arising from Triumph's email, during which Ms Pajmon questioned the quality issue of the shoes and expressed her concerns on the consequences, while Mr Tran reiterated that their goods were of good quality. No consent was reached between them. Mr Tran's witness statement described this conversation as "a brief talk in which [he] denied any groundless allegations against the quality of their products". There were no further phone calls between them till the email sent on 23 Nov 2022.

43. Other than Mr Tran's illness, did any other events arise that could more reasonably explain why he ceased communications from November 23, 2022, until December 11, 2022?

Mr Tran did not disclose this in his witness statement.

44. To what extent would Mr Tran's medical situation burden his ability to produce the text message communication?

The Respondent submitted that Mr Tran was receiving medical treatment overseas since March 2023 for a medical condition he did not wish to disclose. The Respondent has no direct access to communicate with him and has not had any chance to discuss the issue regarding the text message with him.

45. Did YTZ bring any legal proceedings against the Claimant other than attending this arbitration?

YTZ intended to bring a claim before the court in Breynia before receiving the notice of arbitration, but it did not initiate any legal proceedings other than raising the counterclaim in this arbitration.

Communication/Dispute between Triumph and the parties

46. Had Trans-Pacific and Triumph ever contracted separately with a different third party other than YTZ?

This is the first transaction in which Triumph procured goods from, or with the assistance of, Trans-Pacific.

Prior to this transaction, Triumph only ordered shoes once from YTZ via Ms Pajmon when she was working for Rockdale Distributing in March 2019, as disclosed in the Problem.

After this transaction, Triumph sent through an order for kids' toys in August 2022 and another one for books in April 2023 to Trans-Pacific. These transactions were handled by Trans-Pacific's Victoria Islands office. In the toy transaction, a written order was issued by Triumph, and signed and returned by Trans-Pacific's staff. That contract was duly performed by December 2022. In the book transaction, the contractual-related matters were mainly communicated by email and the details of this contract were not fully confirmed at the end of June 2023.

47. Does the paralleling dispute between the Triumph and the Claimant relate to quality, non-conformity of goods or any other relevant incident, and is it still ongoing?

The dispute is still ongoing. The Claimant does not wish to disclose any further details regarding the paralleling dispute due to confidentiality concerns.

48. Was the formal letter of complaint (Page 4, para 13) sent by Triumph to Trans-Pacific or to YTZ, and in either case was YTZ or Trans-Pacific cc'd in?

The formal letter of complaint was sent to Trans-Pacific, and YTZ was not included in this communication.

49. Is Triumph bringing, or have they brought, any proceedings against YTZ Shoes?

No.

Clarifications regarding the Competition Rules

50. Are laptops permitted to be used during arbitration for purposes other than joining the zoom meeting? Or must all materials be paper based?

Teams are permitted to use a combination of electronic and physical materials throughout their submissions.

Please note that if using electronic materials, electronic communication is only permitted between the members of the team. Electronic communication with the coach, or any other person, is not permitted: Rule 10(3)(a).

51. Procedural Order No. 1 para 4 states that in the oral hearings, parties should only address the issues listed A to D. Will the oral hearings be strictly confined to these topics? Can other submissions relating to the dispute be made? Does this rule also apply to the written submissions?

Teams should attempt to confine their arguments to the topics listed within the Procedural Order.

Please note the strict limitations regarding submissions, including a maximum of 4 pages for Written Submissions, and a maximum speaking time of 32 minutes per team for Oral Submissions: Rules 8(2) and 13(4).

Teams are not bound by the arguments contained within their Written Submissions for the purposes of their Oral Submissions: Rule 10(4).