



ROSENBERG
COMPETITION

XIII International Commercial Arbitration MOOT COMPETITION

MOOT CASE



BABI
МИНЭКОНОМРАЗВИТИЯ РОССИИ



Торгово-промышленная палата
Российской Федерации



The moot case was compiled by Professor **Nina Grigorievna Vilkova** based on the materials of arbitration practice of the ICAC at the Chamber of Commerce and Industry of the Russian Federation.

The Organizing Committee acknowledges the following contributions of its members:

A. A. Dergachev - design of the moot case materials;

S. V. Ustinova - preparation of the English version of the moot case;

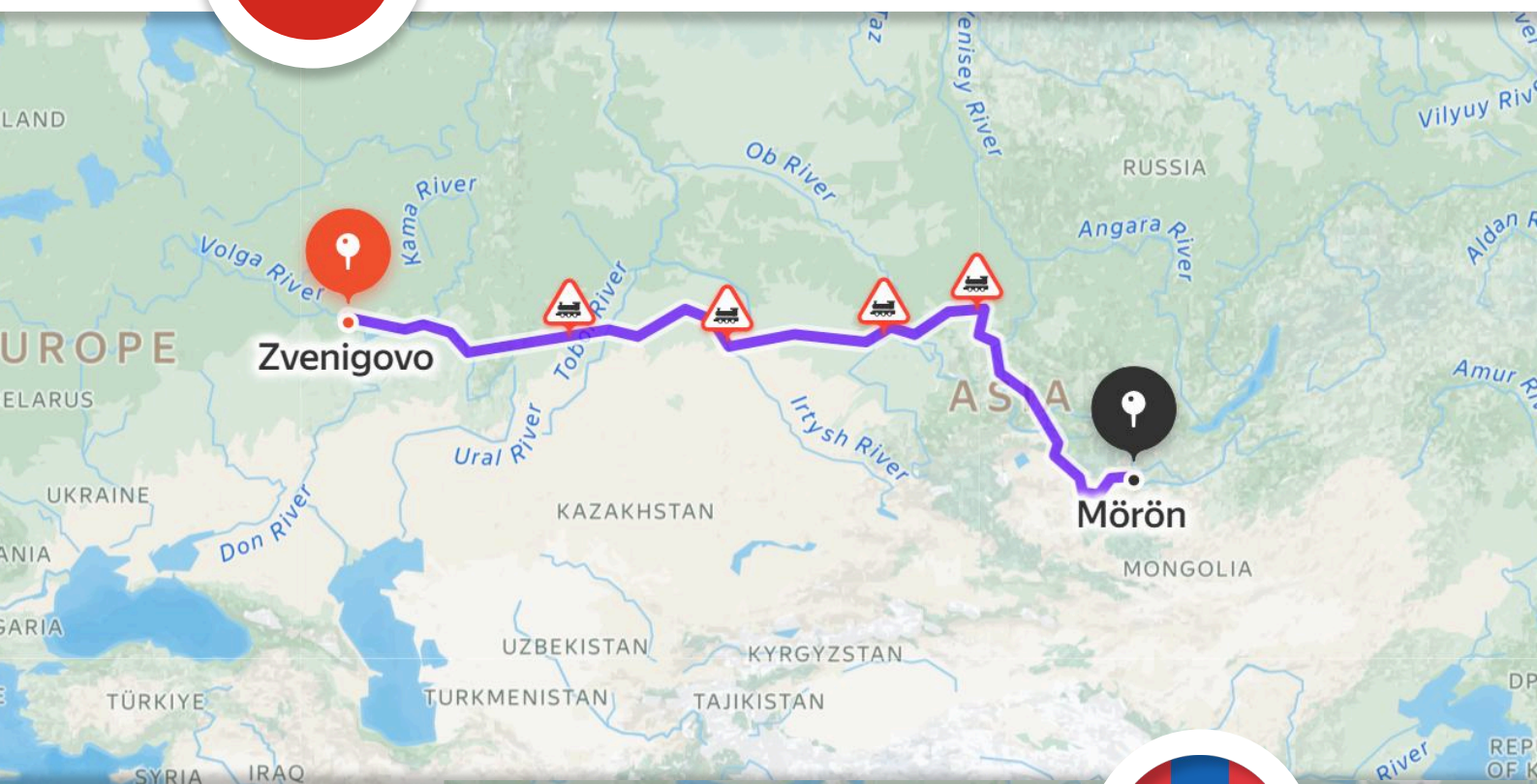
Yu. A. Drozdova - preparation of the French version of the moot case;

B. B. Chuldum - preparation of the Chinese version of the moot case.

The geographical names cited in the moot case are authentic. All the circumstances of the case, the names and locations of the enterprises, as well as the names of the individuals mentioned in the case (with the exception of the Executive Secretary of the ICAC at the RF CCI), are fictional. Any resemblance to actual events, persons, or documents is purely coincidental. The economic indicators (prices, rates, calculations, etc.) are relative and have no bearing on the legal analysis of the materials in this case.



Russia, Republic of Mari El, Zvenigovo



Mongolia, Khövsgöl, Mörön City





**International Commercial Arbitration Court
at the Chamber of Commerce and Industry of the Russian Federation**

6/1 Ilyinka str., Moscow, 109012, Russia

Phone number: 8-495-62-0171

Fax: 8-495-620-0153

E-mail: mkac_arbitration@tpprf.ru

Claimant: Store Try It

25 Chinggis Khaan Street,

Mörön City¹, Mongolia

Respondent: OOO Factory of Deliciousness

1a, Veчеркина Street, Zvenigovo

Republic of Mari El, Russia

STATEMENT OF CLAIM

On **May 20, 2020**, OOO Factory of Deliciousness (the Seller) and OOO Store Try It (the Buyer) concluded a Contract of Sale pursuant to clause 1 of which the Buyer agreed to purchase, and the Seller agreed to sell, berry soufflé packed in branded boxes at a price of RUB 400 per box, for a total amount of RUB 8,000,000.00 (eight million Russian rubles), in the quantity of 20,000 boxes of soufflé.

The Goods were to be delivered during the period from January to December 2021 in two separate consignments of 10,000 boxes of soufflé per shipment; packaging: five-layer corrugated transport cartons, each loaded with 50 boxes of soufflé, amounting to 200 corrugated cartons per shipment.

The goods were delivered in two consignments on the basis of invoices as confirmed by the copies of payment documents and international consignment notes (CMR²) contained in the case file. The goods were paid for by the Buyer in full, which is confirmed by the payment documents and is not disputed by the parties.

Upon receipt by the Buyer of the **first shipment** on **February 2, 2021**, prior to the Tsagaan Sar holiday (Lunar New Year), defects in the quality of the delivered confectionery were discovered: out of 70 opened corrugated cartons, 3,500 boxes of soufflé failed to meet the required quality standards and were found to contain chemical impurities harmful to human health.

Upon completion of the Tsagaan Sar holiday, on **February 25, 2021**, the Buyer filed a claim against the Seller, demanding that 3,500 boxes of soufflé be supplied free of charge by May 27, 2021, as a replacement for substandard candies.

The Seller, in a letter dated **March 10, 2021**, acknowledged the breach, expressed regret to the Buyer, and undertook to meet the claim by supplying 3,500 new boxes of soufflé (as a replacement for the defective candy boxes) for a total amount of RUB 1,400,000.00 (one million four hundred thousand Russian rubles). In the same letter the Seller also expressed its willingness to compensate the Buyer for the losses incurred.

¹ Mörön is a city on the Delgermörön River and the administrative center of Khövsgöl (Khovsgol) Province in northern Mongolia

² Since there is no dispute between the parties as to the quantity of the Goods or the delivery dates, the CMR consignment notes are not submitted herewith

However, prior to the filing of the claim, neither the promised delivery of the candies nor the compensation for losses was provided. As a result, the Buyer suffered losses due to damage to its business reputation and a significant decrease in the store's customer traffic, as the soufflé had been in high demand among customers.

The delivery of the **second consignment** of soufflé was scheduled for **November 2, 2021**, taking into account that November 5, 2021 was Genghis Khan's birthday (Mongolia's Day of Pride). The goods in the quantity of 10,000 boxes of soufflé, packed into 200 corrugated cartons, arrived on November 2, 2021. However, during unloading of the goods from the truck, a shortage of 60 corrugated cartons was discovered, which were to contain 3,000 boxes of soufflé.

On **November 20, 2021**, the Buyer filed a claim against the Seller, demanding the refund of the cost of the 60 missing corrugated cartons with 3,000 boxes of soufflé, in the total amount of RUB 1,200,000.00 (one million two hundred thousand Russian rubles) to be paid by February 1, 2022. The Buyer reserved the right to claim any additional losses incurred, which it intends to assert at a later date.

In the letter dated **December 27, 2021**, the Seller expressed regret and promised to meet the Buyer's claim and supply 60 corrugated cartons containing 3,000 boxes of soufflé in replacement of the missing candy boxes.

Despite these assurances, the Respondent has failed to take any practical measures to remedy the situation, as requested by the Claimant in the claim dated November 20, 2021.

The Claimant emphasizes that the Respondent failed to fulfil the promise to replace the goods and did not deliver the goods prior to the filing of the claim either in response to the first claim (dated February 25, 2021) or the second claim (dated November 20, 2021). Therefore, the Claimant has finalised its demands regarding the aforementioned claims and hereby requests in this statement of claim:

1) to order the Respondent to deliver 6,500 boxes of soufflé to the Claimant within one month from the date of the arbitral award;

2) to award the Claimant damages in the amount of RUB 2,600,000 (two million six hundred thousand Russian rubles) for lost profits resulting from the Respondent's failure to comply with the contractual obligations under Delivery № 1 and Delivery № 2, as well as damages in the amount of RUB 2,400,000 (two million four hundred thousand Russian rubles) for the reputational harm caused by the Respondent to the Claimant, the total amount of damages claimed being RUB 5,000,000 (five million Russian rubles).

The damage caused to the Claimant's business reputation consists in the fact that the improper delivery of the soufflé generated significant public attention in the city, negative coverage on television and in local print media, and accusations against the Claimant of insufficient business competence – including poor supplier selection. This has led to a substantial decline in the store attendance, resulting in the loss of its competitiveness and a significant reduction in profits.

The Parties have agreed in the Contract that substantive and procedural law of the Russian Federation shall apply to resolve any disputes arising out of or in connection with this Contract. Therefore, the Claimant considers it appropriate to present its arguments for recovering damages for reputational harm in accordance with the law and judicial practice of the Russian Federation.

The Claimant draws attention to the fact that Article 7.4.2 of the UNIDROIT Principles (Full Compensation) provides that: 1) the injured party is entitled to full compensation for the damage resulting from non-performance; 2) the damage subject to compensation may be non-material including but not limited to physical injury or moral harm.

Paragraph 21 of the «Review of Judicial Practice of the Supreme Court of the Russian Federation» No.1 (2017)³ acknowledges that in case of impairment of a legal entity's reputation, such entity has the right to protect its interests by filing a claim for compensation for the damage to its reputation. The entry into force on October 1, 2013, of the new version of Article 152 of the Civil Code of the Russian Federation which excluded the possibility of compensating moral harm in cases of impairment of the business reputation of legal entities does not prevent the protection of the violated right through a legal entity's claim for compensation for the damage caused to its business reputation.

This conclusion follows from the Ruling of the Constitutional Court of the Russian Federation dated December 4, 2003, No.508-O, which states that the absence of a direct reference in the law to a method of protecting the business reputation of legal entities does not deprive them of the right to assert claims for compensation for the losses, including non-material losses, caused by damage to their business reputation, or for non-material harm that has its own distinct content (different from the content of moral harm inflicted upon an individual). This content derives from the nature of the infringed intangible right and the character of the consequences of such violation, pursuant to paragraph 2 of Article 150 of the Civil Code of the Russian Federation. This conclusion is based on the provisions of Article 45 (Part 2) of the Constitution of the Russian Federation, according to which everyone has the right to protect their rights and freedoms by all means not prohibited by law.

3) The Claimant also demands that the Respondent be ordered to reimburse the costs of the registration and arbitration fees in the total amount of USD 10,555 (ten thousand five hundred fifty-five) (equivalent to RUB 968,679.85 (nine hundred and sixty-eight thousand six hundred and seventy-nine rubles, eighty-five kopecks) at the Central Bank exchange rate on the date of the statement of claim). This request is justified by the fact that, despite acknowledging the validity of the claims and promising to address them, the Respondent failed to deliver replacement goods or compensate the Claimant's losses.

Article 7 of the Contract stipulates that the Parties agree that disputes arising out of or in connection with this Contract shall be governed by the substantive and procedural law of the Russian Federation, the United Nations Convention on Contracts for the International Sale of Goods (1980), and the UNIDROIT Principles of International Commercial Contracts (2016).

The arbitration agreement is set forth by the Parties in Article 6 of the Contract: All disputes and disagreements arising between the Parties in the course of Contract performance shall, where possible, be resolved through negotiations. If the Parties fail to reach an agreement, disputed matters shall be referred to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow, in accordance with the Rules for Arbitration of International Commercial Disputes.

The Claimant appoints Altan Amarsanaa as the principal arbitrator and Dambadarjaa Naranbaatar as the deputy arbitrator.

Oktay Borzhigin
Director
Store Try It

November 27, 2024

³ Approved by the Presidium of the Supreme Court of the Russian Federation on February 16, 2017 (as amended on April 26, 2017) // SPS Consultant Plus.

Appendix C 1



КОНТРАКТ

гор. Звенигово 20 мая 2020 г.

ООО Фабрика вкусов, Республика Марий Эл, гор. Звенигово, ул. Вечеркина, 1а, юридическое лицо созданное и функционирующее в качестве юридического лица российского права, и именуемое в дальнейшем «Продавец», в лице директора Фабрики Тумай Мокшаева, с одной стороны, и

Магазин Попробуй, Республика Монголия, гор. Мурэн ул. Чингисхана, 25, юридическое лицо, созданное и функционирующее в качестве юридического лица монгольского права, именуемое в дальнейшем «Покупатель», в лице директора Октя Боржигин, действующего на основании устава общества, с другой, стороны, совместно именуемые Стороны, заключили настоящий контракт о нижеследующем

Статья 1. Предмет и цена контракта

Продавец поставляет, а Покупатель оплачивает суфле в количестве 20 000 (двадцать тысяч) коробок на сумму 8 000 000 (восемь миллионов) российских рублей.

Статья 2. Условия оплаты товара

Оплата за товар производится в форме прямого банковского перевода на счет Продавца. Валютой платежа по контракту является российский рубль.

CONTRACT

Zvenigovo city 20 May 2020

ООО Factory of Deliciousness, located at 1a Vecherkina St., Zvenigovo, Republic of Mari El, a legal entity incorporated and operating under Russian law, hereinafter referred to as the "Seller", represented by the Director Mr. Tumai Mokshaev, on the one hand, and

ООО Store Try It, located at 25 Chinggis Khaan Street, Mörön City, Mongolia a legal entity incorporated and operating under Mongolian law, hereinafter referred to as the "Buyer", represented by its Director Mr. Oktay Borjigin, acting on the basis of the bylaws of the Store, on the other hand, jointly referred to as the "Parties", have concluded this Contract as follows.

Article 1. Subject and Value of the Contract

The seller supplies, and the buyer pays for 20,000 (twenty thousand) boxes of soufflé in the amount of 8,000,000 (eight million) Russian rubles.

Article 2. Payment

The payment for the goods is to be effected by a direct bank transfer to the Seller's account. The contract payment currency is Russian rouble.

Оплата товара производится не позднее 30 календарных дней с даты вывоза товара с таможенной территории ЕАЭС. Датой вывоза товара считается дата в штампе «Выпуск разрешен» Таможенной декларации на товары.

В случае несвоевременной оплаты товара Покупатель уплачивает Продавцу пеню в размере 0,1% стоимости неоплаченного товара за каждый день просрочки.

Статья 3. Условия поставки

Поставка товара осуществляется на условиях **DPU Инкотермс 2020**. Датой экспорта считается дата в штампе «Выпуск разрешен» таможенной декларации.

Статья 4. Приемка товара

Качество поставляемого товара должно соответствовать ТУ предприятия-изготовителя. Гарантийный срок на товар составляет 12 месяцев с даты отгрузки.

При выявлении дефектов, недостачи и/или некомплектности поставленного товара и после предъявления претензии Покупателем Продавец производит замену дефектного товара и/или доукомплектование товара.

Статья 5. Форс-мажор

При наступлении форс-мажорных обстоятельств стороны освобождаются от своих обязательств до окончания указанных обстоятельств, если сторона, для которой они наступили, в течение 5-ти дней в письменной форме уведомляет другую сторону о причинах невыполнения контракта с предоставлением документов, заверенных Торговой палатой Российской Федерации / Республики Монголия.

Под форс-мажорными обстоятельствами следует понимать обстоятельства непреодолимой силы или чрезвычайного характера, которые стороны не могли предвидеть и предотвратить, в частности, землетрясения, наводнения, пожары, стихийные бедствия, запретительные действия властей, военные действия. В этом случае контракт считается продленным на период действия форс-мажорных обстоятельств.

Payment for the goods is to be effected no later than 30 calendar days from the date of export of the goods from the EAEU customs territory. The export date is deemed to be the date of the stamp "Release permitted" on the Customs Declaration for the Goods.

In case of late payment for the goods the Buyer shall pay the Seller a penalty of 0.1 % of the value of the unpaid goods for each day of delay.

Article 3. Terms of Delivery

The goods are delivered on **DPU terms (Incoterms 2020)**. The export date is considered to be the date in the stamp «Release Permitted» on the customs declaration.

Article 4. Acceptance of the Goods

The quality of the supplied goods shall comply with the technical specifications (TS) of the manufacturer. The guarantee period for the goods is 12 months from the date of shipment.

If defects, shortages, or incomplete deliveries are identified, and after the Buyer submits a claim, the Seller shall replace the defective goods and/or complete the missing components of the shipment.

Article 5. Force Majeure

In the event of force-majeure circumstances, the Parties shall be released from their obligations until such circumstances cease, provided that the Party affected by them notifies the other Party in writing within 5 (five) days of the reasons for non-performance of the contract. The notification must be accompanied by supporting documents certified by the Chamber of Commerce and Industry of the Russian Federation or the Chamber of Commerce and Industry of Mongolia.

Force majeure circumstances shall be understood as irresistible force or emergency circumstances that the parties could neither foresee nor prevent, including, but not limited to earthquakes, floods, fires, natural disasters, prohibitive actions by authorities, and military operations. In such cases, the Contract shall be deemed extended for the duration of the force majeure circumstances.

В случае если форс-мажорные обстоятельства будут продолжаться свыше 6-ти месяцев, любая сторона вправе в одностороннем порядке расторгнуть контракт без возмещения.

Статья 6. Порядок урегулирования споров

Все споры и разногласия, возникшие между сторонами в ходе выполнения контракта, разрешаются, по возможности, путем переговоров. При недостижении согласия между сторонами спорные вопросы подлежат рассмотрению в Международном коммерческом арбитражном суде при Торгово-промышленной палате Российской Федерации в г. Москве в соответствии с Правилами арбитража международных коммерческих споров.

Место рассмотрения спора - г. Звенигово, Республика Марий Эл.

Избираемые сторонами или назначаемые МКАС при ТПП РФ арбитры должны обладать знаниями производственного процесса изготовления суфле и требований по составу суфле.

Статья 7. Применимое право

Стороны согласны с тем, что для решений их споров, возникших из настоящего контракта или по его поводу, будет применяться материальное и процессуальное право Российской Федерации, Конвенция ООН о договорах международной купли-продажи товаров 1980 г., Принципы международных коммерческих договоров УНИДРУА 2016 г. Язык разбирательства – английский.

Статья 8. Язык контракта и корреспонденции

Настоящий контракт составлен и подписан в двух экземплярах на русском и английском языках, имеющих одинаковую юридическую силу. Каждой стороне принадлежит по одному экземпляру.

Вся переписка по поводу настоящего контракта ведется на английском языке.

Should the duration of the force-majeure circumstances exceed 6 months, each party will have the right to unilaterally terminate the Contract without compensation.

Article 6. Dispute resolution procedure

All disputes and disagreements arising between the Parties in the course of Contract performance shall, whenever possible, be resolved through negotiations. If the Parties fail to reach an agreement, disputed matters shall be referred to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow, in accordance with the Rules for Arbitration of International Commercial Disputes.

The arbitration shall be held in Zvenigovo city, Republic of Mari El.

Arbitrators elected by the Parties or appointed by the ICAC at the CCI of the Russian Federation must have expertise in the production process of soufflé manufacturing and knowledge of the requirements concerning soufflé composition.

Article 7. Applicable Law

The Parties agree that any disputes arising out of or in connection with this Contract shall be governed by the substantive and procedural law of the Russian Federation; the United Nations Convention on Contracts for the International Sale of Goods (1980); the UNIDROIT Principles of International Commercial Contracts (2016). The language of the proceedings shall be English.

Article 8. Language of contract and correspondence

This Contract is made in two copies, each in Russian and in English, both texts having equal force. Each party owns one copy.

All correspondence in respect of this Contract shall be conducted in English.

Статья 9. Вступление контракта в силу

Настоящий контракт вступает в силу с даты его подписания и действует до исполнения сторонами обязательств.

Статья 10

Все изменения и дополнения к настоящему контракту действительны, если они составлены в письменной форме и подписаны обеими сторонами.

/ ЮРИДИЧЕСКИЕ АДРЕСА СТОРОН /

Продавец:

ООО Фабрика вкусностей

/ подпись /

Директор: **Тумай Мокшаев**

Покупатель:

Магазин Попробуй

/ подпись /

Директор: **Октай Боржигин**

Article 9. Entry into force

This Contract comes into force as of the date of its signing and shall remain in effect until the Parties have fulfilled their obligations.

Article 10

All amendments and addenda to this Contract shall be valid only if made in writing and signed by both Parties.

/ LEGAL ADDRESSES OF THE PARTIES /

Seller:

ООО Factory of Deliciousness

/ signature /

Director: **Tumai Mokshaev**

Buyer:

ООО Store Try It

/ signature /

Director: **Oktay Borzhigin**

**International Commercial Arbitration Court
at the Chamber of Commerce and Industry of the Russian Federation**



September 20, 2024

Case No. 238/2024-186

Respondent: OOO Factory of Deliciousness

1a Vecherkina Street, Zvenigovo,
Republic of Mari El

Claimant: OOO Store Try It

25 Chinggis Khaan Street
Mörön, Mongolia

We hereby inform you that the Claimant, **OOO Store Try It**, has filed a claim against **OOO Factory of Deliciousness** seeking recovery of RUB 500,000.00 (five million Russian rubles) (please, see the Attachment hereto).

Pursuant to the Rules of the ICAC at the RF CCI you are hereby invited to notify the Court of your appointment of an arbitrator and to submit your statement of defense.

Yours faithfully,

V. A. Frolochkin
Executive Secretary
ICAC at the RF CCI

**International Commercial Arbitration Court
at the Chamber of Commerce and Industry of the Russian Federation**

6/1 Ilyinka str., Moscow, 109012, Russia

Phone number: 8-495-62-0171

Fax: 8-495-620-0153

E-mail: mkac_arbitration@tpprf.ru

Respondent: OOO Factory of Deliciousness

1a, Veчеркина Street, Zvenigovo

Republic of Mari El, Russia

Claimant: Store Try It

25 Chinggis Khaan Street,

Mörön City, Mongolia

STATEMENT OF DEFENSE

We have received the Statement of Claim filed by the Claimant, OOO Store Try It. Having reviewed this document, the Contract, the circumstances of the goods transportation, the applicable law and other relevant materials, we consider it necessary to state the following.

According to Clause 7 of the Contract, disputes arising out of or in connection with this Contract shall be resolved in accordance with the substantive and procedural law of the Russian Federation, the United Nations Convention on Contracts for the International Sale of Goods (1980) (the Vienna Convention), the UNIDROIT Principles of International Commercial Contracts (2016) (the UNIDROIT Principles).

1. The Respondent respectfully draws the attention of the Arbitral Tribunal to the fact that the Claimant filed the claim after missing the three-year limitation period established by Article 196 of the Civil Code of the Russian Federation. The contract was concluded on May 20, 2020. The goods were to be delivered in two shipments between January and December 2021.

The **first shipment** was received by the Claimant on **February 2, 2021**. As stipulated in Article 200 of the Russian Civil Code, the limitation period begins to run from the day when a person learned or should have learned of the violation of their right and of who the proper respondent in a claim to protect that right is. The limitation period for this claim began to run from February 2, 2021, the date when the Claimant received the first shipment of candies.

The **second shipment** was received by the Claimant on **November 2, 2021**. From the moment the second shipment of goods was received, the statute of limitations for the listed deliveries began to run.

The statement of claim is dated November 27, 2024 – more than three years after the receipt of the second shipment on November 2, 2021. The Respondent respectfully requests the Arbitral Tribunal to apply the statute of limitations in the present case and, pursuant to paragraph 2 of Article 199 of the Civil Code of the Russian Federation, to dismiss the claim.

2. Should the Arbitral Tribunal reject the Respondent's argument for applying the statute of limitations, the Respondent considers it necessary to explain its position regarding the claims asserted by the Claimant.

The Claimant seeks to recover from the Respondent:

- the losses in the form of lost profits due to the Respondent's failure to comply with the contractual obligations for shipment 1 and shipment 2, amounting to RUB 2,600,000 (two million six hundred thousand Russian rubles);
- the losses due to damage to reputation, amounting to RUB 2,400,000 (two million four hundred thousand Russian rubles);
- the costs of payment of the registration fee (USD 1,000) and arbitration fee (USD 9,555), totalling USD 10,555 (ten thousand five hundred and fifty-five), which equals RUB 968,679.85 (nine hundred and sixty-eight thousand six hundred and seventy-nine rubles, eighty-five kopecks) at the Russian Central Bank exchange rate as of the date of the statement of claim.

3. The Respondent's position regarding the Claimant's claim for compensation for losses in the amount of the value of the missing goods

The Respondent notes that, pursuant to Article 74 of the Vienna Convention, damages cannot exceed the loss that the breaching party foresaw or ought to have foreseen at the time of conclusion of the contract as a possible consequence of its breach, taking into account the circumstances that it knew or ought to have known. Similarly, Article 7.4.4 of the UNIDROIT Principles provides that the non-performing party is liable only for the damage that it foresaw or could reasonably have foreseen at the time of conclusion of the contract as a probable consequence of its non-performance.

Since the Respondent could not have foreseen, at the time of entering into the Contract, the attacks on transportation while delivering the goods to the Buyer, the Respondent requests the Arbitral Tribunal to deny the Claimant's claims for compensation for the lost profits.

Under Article 3 of the Contract, the parties agreed upon the delivery of goods on the **DPU term Incoterms 2020 (Delivery at Place Unloaded)**. According to clause A4 of DPU, the Seller is obligated at its own expense to conclude or arrange for the conclusion of a contract of carriage to the named place of destination: Mörön, Republic of Mongolia. The Respondent duly fulfilled its obligations: it entered into a contract of carriage with a reliable carrier, dispatched the well-packaged and inspected goods in a timely manner as stipulated by the Contract, and unloaded them at the Claimant's store. While accepting the first shipment, the Buyer identified quality defects in 3,500 boxes of soufflé. In the second shipment, 3,000 boxes were found to be missing.

The Respondent acknowledged the quality defects in 3,500 boxes of soufflé in the first shipment and expressed willingness to supply replacement goods. The Respondent is ready to deliver the said goods and requests that this be noted in the arbitral award.

As to the second shipment, there was no breach of contract on the Respondent's part. As stated above, the Respondent entered into a carriage agreement with a reliable carrier, shipped the goods in a timely manner, ensured they were properly packed and inspected as required by the Contract, and unloaded them at the Claimant's store. However, while unloading, defects were identified that had occurred during transportation as a result of a criminal attack on the vehicle transporting the goods.

As provided in Article 74 of the Vienna Convention, damages for breach of contract by one party amount to the loss, including loss of profit, suffered by the other party as a result of the breach. Since there was no breach of the Contract by the Respondent, the Respondent maintains

that the damages claimed by the Claimant regarding the second shipment are not subject to compensation by the Respondent.

Furthermore, Article 74 of the Vienna Convention sets a limit on liability: such damages may not exceed the loss that the breaching party foresaw or ought to have foreseen at the time of conclusion of the contract as a possible consequence of its breach, given the circumstances that it then knew or ought to have known.

At the time of entering into the Contract, the Respondent could not have foreseen that the vehicles transporting the goods would be subject to a criminal attack, resulting in a loss of quantity and quality of the goods. On the contrary, the Respondent contracted a reliable carrier with whom it has worked for several years, selected appropriate transportation, and appointed a trustworthy driver. Therefore, the damages claimed by the Claimant are not attributable to any breach of the Contract by the Respondent, nor could or should the Respondent have foreseen such an event (i.e., an attack on the transport) at the time of contracting.

However, although the losses incurred by the Claimant due to the failure to receive the ordered goods in full cannot be recovered under Article 74 of the Vienna Convention, the Respondent is willing to accommodate the Claimant, in order to preserve commercial relations, and compensate for the loss and damage to the relevant portion of the goods. In doing so, the Respondent relies on Article 5.1.3 of the UNIDROIT Principles, which stipulate that each party must cooperate with the other party where such cooperation is reasonably expected in connection with the performance of the obligations. The Respondent considers that it is cooperating with the Claimant and wishes to compensate for the Claimant's losses.

Regarding the **first shipment**, the Respondent admitted the breach and, in a letter dated March 10, 2021, expressed regret to the Claimant and promised to honour the claim. After inspecting the condition of the goods, the Respondent acknowledged that it had shipped 3,500 boxes of soufflé of unsatisfactory quality. At present, the Respondent is ready to supply the Claimant with 3,500 boxes of high-quality soufflé and requests that this commitment be recorded in the award.

Regarding the **second shipment**, upon unloading, it was recorded that 3,000 boxes of soufflé were missing. The loss occurred during transportation through the territory of Russia. During the investigation, the Respondent found out that while the goods were being transported through the territory of Russia, the driver was attacked by criminals who stole 3,000 boxes of soufflé. The Respondent is currently negotiating with the carrier company, which acknowledges the driver's fault and is prepared to compensate the Claimant for the value of the stolen candies – RUB 1,200,000.00 (one million two hundred thousand Russian rubles). After receiving the said sum from the carrier, the Respondent is ready to transfer this amount to the Claimant's account and requests the arbitrators to include this in the award.

4. The Respondent's Position on the Claimant's Request for Damages as Compensation for Reputational Harm in the Amount of RUB 2,400,000.00 (two million four hundred thousand Russian rubles).

The Respondent respectfully draws the Arbitral Tribunal's attention to the fact that Articles 74 and subsequent articles of the Vienna Convention do not provide for the recovery of damages as compensation for reputational harm. Similarly, Articles 152 and 15 of the Russian Civil Code do not provide for compensation of reputational harm: paragraph 11 of Article 152 states that the provisions of this article on the protection of an individual's business reputation (excluding provisions on compensation for moral harm) apply accordingly to the protection of a legal entity's **business reputation**. Compensation for reputational harm is not provided for.

Therefore, the Claimant's request should be dismissed, as it contradicts the provisions of the Russian Civil Code and the Vienna Convention.

5. Regarding the Qualification Requirements for Arbitrators (as Agreed in Article 6 of the Contract) and since neither the Claimant nor the arbitrators appointed by the Claimant have provided any explanations regarding their qualifications, the Respondent challenges the principal arbitrator Altan Amarsanaa, and the deputy arbitrator, Dambadarjaa Naranbaatar.

6. The Respondent nominates:

Principal arbitrator: Pyotr Anatolievich Spravedlivy, Ph.D. in Law,

Deputy arbitrator: Nikita Valeryevich Nepristupny

Both arbitrators have confirmed that they possess expertise in the production process of soufflé manufacturing and knowledge of the required soufflé composition standards.

Yours faithfully,

Tumai Mokshaev
Director
OOO Factory of Deliciousness

January 25, 2025

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