Chocolate Case

<Issue 1>

-Backgrounds-
On December 10, 2013, CONTRACT (hereinafter "the Contract", Exhibit 6) was signed between Red Corp. (hereinafter "Red") and Blue Inc. (hereinafter "Blue") regarding Red's chocolate products (hereinafter "the Goods"). Subsequently, Blue promised some department stores in Arbitria to deliver the Goods to the stores on or before January 31, 2014.
In the Contract, the use of a letter of credit as a payment method, CFR (Incoterms ® 2010) as the trade term and the time of shipment (January 10, 2014) were agreed. However, due to mishandling by Negoland Bank, the letter of credit was not advised in time for the shipment, and Red could not perform its obligation.
On January 11, Blue requested that the Goods be delivered by air cargo instead, to which Red agreed and the contract was modified. Red made an arrangement with Negoland Air for two flights to transport the Goods. The first batch arrived in Arbitria safely. As for the second batch, the Goods were taken into the aircraft. However, due to a mechanical problem of the aircraft, the Goods were removed from the aircraft and taken into the cargo warehouse for storage, which was struck by unpredictable lightning, causing all the Goods to be damaged and lose its commercial value.

-Claim-
We hereby seek the following arbitral award:
Red Corp. is under no obligation to reimburse to Blue Inc. the amount Blue Inc. paid to its department store clients (i.e., US$1million in penalties)

-Legal Basis-
1. Blue cannot exercise its right to seek damages (US$1million) to Red.
UNIDROIT (hereinafter "U") 7.4.1 stipulates that "[a]ny non-performance gives the aggrieved party a right to damages". However, there exists no failure of performance of the obligations of the contract before modification (hereinafter "former contract") and the contract after modification (hereinafter "latter contract") by Red, and Blue cannot exercise this right to damages.

<u>1.1 Red does not bear any responsibility for non-performance of the obligation of the former contract.</u>
As Red's obligation, Article 3.2 of the former contract stipulates that "[s]hipping shall be made by the Seller by January 10, 2014 ". However, there was no obligation to be performed by Red because its prerequisite was not fulfilled. Thus, Red bears no responsibility for non-performance.

1.1.1 The obligation of Red had not accrued.

1.1.1.1 It should be interpreted that the advice of the letter of credit is the prerequisite for the performance of Red's obligation stipulated in Article 3.2, for the following reasons.

<u>(i) The fact that a letter of credit is used must be considered in interpreting Article 3.2.</u>
U4.4 stipulates that "[t]erms and expressions shall be interpreted in the light of the whole contract or statement in which they appear." In this case, Article 2 stipulates that the payment is to be done through a letter of credit, and we should consider that fact in interpreting the specific contents of the obligation.
<u>(ii) We must consider the nature and purpose of the contract, and usages of a letter of credit.</u>
Additionally, U 4.1 (2) stipulates that "the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances." Specifically, U 4.3 stipulates that "(d) the nature and purpose of the

contract", "(f) usages" have to be considered. In this case, "the nature and purpose of the contract" and "usages" of a letter of credit exempts the seller from performing the obligation as long as a letter of credit is not advised for the reasons below;

A. "Nature and purpose of the contract"

The Contract adopts a letter of credit as the way of payment. If we assume that the seller is obliged to perform its obligation even before the letter of credit is advised, the seller has to perform without any guarantee to be paid. If this assumption was true, the gist of a letter of credit is dissolved, which protects the seller from the malicious buyer. Therefore, the obligation of the seller accrues once the letter of credit is advised and this corresponds with "the nature and purpose of the Contract" which adopts a letter of credit.

B. "Usages" regarding a letter of credit

Court cases from many countries including Negoland, England and Japan, hold that if the seller and the buyer agree to use a letter of credit, the seller may refuse to perform its obligations until its advice. The fact that many countries support this notion makes it a usage.

From (i) and (ii), Article 3.2 can be interpreted to mean that the advice of the letter of credit is the prerequisite for the performance of this obligation by the seller.

1.1.1.2 The letter of credit was not advised by the due time. It had to be advised by January 8 for the scheduled shipment, but the actual advice was on January 10, two days overdue. (¶31) Thus, Red's obligation had not accrued.

1.1.2 Therefore, Red bears no responsibility for non-performance.

<u>1.2 Red performed its obligation of the latter contract and bears no responsibility for non-performance.</u>

In the latter contract, only the method of transport, due date, and the method of payment were modified while the trade term and the rest of the former contract remained unchanged. Thus, Red's new obligation was to deliver the Goods onto the aircraft under CFR so that the Goods could arrive by January 31, 2014. Red performed this obligation and bears no responsibility for non-performance.

1.2.1 The trade term was not modified, while the method of delivery, the due date, and the method of payment were modified.

1.2.1.1 The modification of the former contract was valid.

Article 9 stipulates that "(...) [n]o provision of this Agreement may be waived or amended, except by a writing signed by the parties hereto." However, U 2.1.18 stipulates that "a party may be precluded by its conduct from asserting [a clause requiring any modification or termination by agreement to be in a particular form] to the extent that the other party has reasonably acted in reliance on that conduct." Namely, Blue is precluded from asserting Article 9 to the extent that Red reasonably acted in reliance on Blue's conduct. In this case, there was a phone conversation, discussing the modification of the conditions of the former contract. It was "a reasonable act" for Red to trust Blue's new request and agree with the modification, considering that both Red and Blue thought the delivery of the Goods was essential. Thus, the modification of the former contract was valid.

1.2.1.2 Only the method of delivery, the due date and the way of payment were modified. During the phone conversation, only the method of delivery, the due date and the method of payment were discussed. Namely Article 3.2 was entirely modified, and Article 2 and 3.1 (method of payment and the place of shipment) were partially modified. Therefore, no other part was changed including the trade term, meaning CFR was still used after the modification (¶32).

[Summary of the modifications]

Article	Content	Former contract	Referred	Latter contract
2	Amount of payment	US$3million	×	No change
2	Method of payment	Letter of credit	○	Remittance
3.1	Trade term	CFR	×	No change
3.2	Method of transport	Ship	○	Air
3.4	Partial shipment	Prohibited	○	Permitted
1, 4~9	−	−	×	No change

1.2.2 Red performed its obligation under CFR.
CFR stipulates that "the seller delivers the Goods on board the vessel at the port of the shipment" as an obligation of the Seller, thus Red's obligation was to deliver the Goods onto the aircraft. In this case, Red had already delivered the Goods on board on January 15 and 17, hence performed its obligation (¶33).

1.2.3 Therefore, Red bears no responsibility for the failure of the obligation.

2. Even if it is deemed that Red failed to perform its obligation in the latter contract, Red is not liable due to force majeure and does not bear responsibility.

2.1 Red's failure of performance was attributable to force majeure and Red is not liable for the failure.
Article 6 stipulates that "neither party shall be liable for failure to perform (...) any obligation (...) to the extent that such failure (...) is attributable to (...) causes (...) which are beyond the reasonable control of the party affected." In this case, the cause was a lightning, which is impossible to control. Moreover, lightning's damage to the Goods in storage was beyond reasonable control, given that Red had already paid decent attention to the selection of the airline company and thus the warehouse was of standard strength and facilities (¶33).

2.2 Therefore, Red does not bear any responsibility for the non-performance of its obligation.

<Issue 2>

-Backgrounds-
In accordance with the latter contract mentioned in Issue 1, Red made an arrangement with Negoland Air for two flights to transport the Goods. The freight charge cost US$500,000 in total, and Red paid this to Negoland Air. The first batch arrived in Arbitria safely, and upon receiving the Goods, Blue paid US$1.5million to Red. For the second batch, the Goods were taken into the aircraft. However, the expense for this second batch has not been paid to Red.

-Claim-
We hereby seek the following arbitral award:
A. Blue Inc. is under obligation to pay US$1.5million for the Goods.
B. Blue Inc. is under obligation to pay US$500,000 for the amount Red Corp. paid to Negoland Air to Red Corp.

-Legal Basis for A-
1. Red has the right to require Blue to pay the remaining US$1.5million.
U 7.2.1 stipulates that "where a party who is obliged to pay money does not do so, the other party may require payment". Blue is obliged to pay money but has not done so, thus Red may require the payment of US$1.5million to Blue."

1.1 Blue is obliged to pay money for the rest of the Goods, but has not paid yet.
Article 2 stipulates that "[t]he Buyer shall pay to the Seller US$3,000,000 for the Goods". This obligation of Blue was unchanged during the phone conversation. However, Blue has not paid for the second batch (US$1.5million) yet (¶33).

1.2 Therefore, Red may require payment (US$1.5million) to Blue.

2. Blue cannot terminate the contract for the second batch of the Goods.
U7.3.1(1) stipulates that "a party may terminate the contract where the failure of the other party under the contract amounts to a fundamental non-performance". However, in this case, Red did not fail to perform its obligation, and therefore U7.3.1 does not apply.

2.1 Red performed its obligation.
As shown in Issue 1, Red's obligation was to deliver the Goods onto the aircraft. In this case, Red had already delivered the Goods on board on January 15 and 17, hence performed its obligation.

2.2 Therefore, Red has performed its obligation and Blue cannot terminate the contract for the second batch.

-Legal Basis for B-
1. Red has the right to require Blue to reimburse the cost (US$0.5million) for the freight charge.
Article 5 of the Contract stipulates that "any other reasonable costs incurred by the Seller with respect to the Goods after the conclusion of this Contract, shall be for the account of the Buyer and shall be reimbursed to the Seller by the Buyer". In this case, the freight charge was included in the "costs" stipulated in Article 5.

1.1 The freight charge for air cargo was a cost incurred by the Seller with respect to the goods after the conclusion of the Contract.
The freight charge due to air cargo occurred after the former contract was concluded. Moreover, it is a cost incurred by the Seller, namely Red, with respect to the Goods.

1.2 The freight charge was a reasonable cost.
This freight charge for air cargo was a reasonable cost, since there was no other plausible way to deliver the Goods to Blue by January 31 and thus this was an essential expense for the delivery.

1.3 Therefore, the freight charge due to air cargo applies to the cost stipulated in Article 6, and Blue has the obligation to reimburse the US$500,000 paid to Negoland Air by Red.

M&A Case

<Issue 1>

-Backgrounds-
On December 15, 2012, Stock Purchase Agreement (hereinafter "SPA", Exhibit 5) was signed between Red and Blue regarding Blue Drink.
In Article 4, Blue represents and warrants that there is no basis for any administrative proceeding, except that which was A) notified by Blue to Red on the execution date through an official notice, and B) notified by Blue in writing until the Closing Date (January 15, 2013).
Complaints from consumers toward Blue Slim have existed and Arbitria's Ministry of Health and Welfare (hereinafter AMHW) has kept a close watch on it since before the Execution Date. But also there was a disclosure from Blue that the rigorous tests on it could not confirm any stomach-problem through overconsumption. Eventually Blue did not exclude the existence of the basis for the revocation from its representations and warranties on the execution date nor until the closing date of SPA.
Later, however, the government of Arbitria revoked the status and AMHW announced this fact on April 30, 2014 (¶38).

-Claim-
We hereby seek the following arbitral award:
Blue shall pay US$30million to Red Corp.

-Legal Basis-
1. Red has the right to seek damages (US$30million) to Blue.
Article 4.2 stipulates that "[i]n the event that RED raises a written claim against BLUE, for reason of a violation of the representations and warranties set forth in Paragraph 1 hereof (...), BLUE shall bear the responsibilities for such violation of the representations and warranties only for three (3) years from the Closing Date". In this case, Blue violated the representations and warranties of Paragraph 1 (Article 4.1), and thus bears responsibility for the damages.

<u>1.1 "Responsibilities" stipulated in Article 4.2 are equivalent to liability to damages.</u>
Here, the term "responsibilities" mean liability to damages when consulting U4.1(2) "the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances." and 4.3(e) "the meaning commonly given to terms and expressions in the trade concerned". Meaning commonly given to the term "responsibilities" in representations and warranties is the liability to repair the damages caused by trusting the matters represented and warranted which turned out to be false. In this case, the most appropriate way of reparation is a compensation for monetary damages considering the fact that there is no other such option to restore the damages Red suffered.

<u>1.2 Blue violated the representations and warranties.</u>

1.2.1 Blue represented and warranted that there was no basis for any administrative proceeding against Blue Drink.
In Article 4.1, "BLUE hereby represents and warrants to RED the correctness of the matters described in the items below as of the execution of this Agreement, except as set forth in the notice delivered by BLUE to RED on the date hereof." Item (xii) of Article 4.1 represents and warrants that "[t]here are no (...) administrative (...) proceedings (...) against TARGET. There is no basis for any such action".

1.2.2 Such basis for an administrative proceeding did exist, but Blue did not exclude it at any of the required moments of the contracting process.

AMHW announced the revocation of the "Designated Health Food" status of Blue Slim on April 30, 2014. The reasons for the revocation had existed since the time the business was under Blue.
(i) According to AMHW's announcement, the status was revoked based on its "finding that overconsumption of the product may prevent the correct functioning of the stomach." (¶38) As the content of Blue Slim had not changed since the time Blue Drink was under Blue, the basis of revocation existed when Blue owned Blue Drink.
(ii) Constant complaints about Blue Slim's effect on health caused AMHW to keep a close watch on the situation, which eventually produced the cause of the revocation. Blue had already received such complaints when it owned Blue Drink (¶39).
Therefore, the basis for the revocation existed during the days Blue Drink was under Blue.

However, Blue did not exclude these matters through a written notice on the execution date nor until the Closing Date.

1.2.3 Therefore, Blue violated the representations and warranties.

<u>1.3 The damages occurred as a result of Blue's violation, with certainty.</u>
There was US$30million profit loss for Red due to the revocation of the status.
Red faced the loss of sales of US$300million (= profit of US$30million), as a result of the revocation of the "Designated Health Food" status by the Arbitria government. The revocation was due to Blue's violation as shown in 1.1.2 (i) (ii) (¶38,39).
Moreover, as U 7.4.3 (1) stipulates, "[c]ompensation is due only for harm, including future harm, that is established with a reasonable degree of certainty." In this case, the harm (profit loss of US$30million) was certainly caused by the revocation of the status and there was no controversy over the amount (Exhibit 17). Therefore, the amount of US$30million according to Exhibit 17 is reasonably the subject of the compensation by Blue.

<u>1.4 Red raised a written claim against Blue within three years. (Exhibit 14)</u>
Red sent a letter to Blue on June 10, 2014, which is within three years of January 15, 2013, the Closing Date.

For the reasons above, Red has the right to seek damages (US$30million) to Blue.

<Issue 2>

-Backgrounds-
In Article 9 of the SPA, Blue covenants and agrees that "for a period ending on the 5th anniversary of the Closing Date, Blue shall not and Blue shall not allow its affiliates to: directly or indirectly own, manage, operate, control, participate in, perform services for, or otherwise carry on, a business similar to or competitive with the business conducted by the TARGET in Arbitria or Negoland."
However, upon Arbitria Coffee's decision to research and develop a new diet coffee with effects similar to Red Slim, Blue offered to help the R&D by investing US$5million and permitting Arbitria Coffee's use of the research facility of Blue's Central Research Center. Blue also sent a non-executive board member to join Arbitria Coffee's board of directors.

-Claim-
We hereby seek the following arbitral award:
A. Blue Inc. shall pay US$0.5million to Red Corp.
B. Blue Inc. shall revoke the investment of US$5million to Arbitria Coffee.

-Legal Basis for A-

1. Red has the right to seek the liquidated damages of US$0.5million.

Article 9.2 stipulates that "[i]n the event BLUE violates any of its obligations under this Article 9, (...) RED is entitled to request BLUE to pay US$500,000 as liquidated damages." In this case, Blue violated its obligations in Article 9.1, and thus Red has the right to seek the liquidated damages of US$0.5million.

1.1 Blue breached its covenant of non-competition.

SPA Article 9.1 stipulates that "BLUE shall not and BLUE shall not allow its affiliates to directly or indirectly own, manage, operate, control, participate in, perform services for, or otherwise carry on, a business similar to or competitive with the business conducted by the TARGET in Arbitria or Negoland".

1.1.1 Arbitria Coffee's diet coffee business is similar to or competitive with Red Drink's Red Slim.

Using U4.1 and 4.3 to interpret the words "similar" and "competitive", the word "similar" can be deemed to mean that a business is generally accepted as resembling other certain businesses, and the word "competitive" can be deemed to mean that a business appeals to the same market as other businesses and takes away some of their consumers.

1.1.1.1 The new diet coffee business is similar to Red Drink's diet drink business.

There are three critical points in which the new diet coffee and Red Slim are similar;

(a) both belong to the refreshment beverage industry,
(b) both have similar diet effects (¶36),
(c) prices are similar (¶36).

1.1.1.2 The new diet coffee business is competitive with Red Drink's Red Slim. In this case, there is a great possibility that the new diet coffee will take away Red Slim's consumers because;

(a) both target consumers who wish for diet effects (¶12, 36),
(b) their diet effects are of the same kind,
(c) prices are similar.

1.1.2 Arbitria Coffee is Blue's affiliate and owns the business similar to and competitive with Red Slim.

1.1.2.1 To interpret the word "affiliate" in Article 9.1, we consult U4.1 (1) "[a] contract shall be interpreted according to the common intention of the parties". Here, "the common intention" of Red and Blue was to be bound by the Companies Act of Arbitria.

The definition of "affiliate" does not exist in SPA nor the Companies Act of Negoland, and exists only in the Companies Act of Arbitria. The fact that Red and Blue included a clause on affiliates when its definition only exists in the Companies Act of Arbitria demonstrates "the common intention" to be bound by the Companies Act of Arbitria.

The Companies Act of Arbitria defines the term "affiliate" as a "company on which another company may exercise substantial influence over financial and business policy decisions"(¶37). In this case, Blue holds 20% of Arbitria Coffee's share and has a non-executive board of director at Arbitria Coffee although there were originally only five directors. Furthermore, Blue can exercise a great influence on Arbitria Coffee since it played a big role in helping Arbitria Coffee avoid high interest rate for a loan from AbuAbu Bank, and it allowed Arbitria Coffee to use its Central Research Center facility to begin its R&D (¶36).

Therefore, it is clear that Blue has substantial influence over Arbitria Coffee's financial and business policies and thus Arbitria Coffee is Blue's affiliate.

1.1.2.2 Arbitria Coffee directly owns a business similar to and competitive with Red Slim.

1.1.3 Blue participates and performs services for Arbitria Coffee's diet coffee business.
Blue's following three actions are "participat[ing] in" and "perform[ing] services for" Arbitria Coffee:

(i) The investment of US$5million (¶36) is indirectly participating in Arbitria Coffee's business in that Blue made the creation of the diet coffee possible.
(ii) Sending a non-executive board member to join Arbitria Coffee's board of directors is indirectly participating in its business in that Blue gained voting power on Arbitria Coffee's decision.
(iii) Permitting Arbitria Coffee to use Blue's Central Research Center facility (¶36) is performing services for Arbitria Coffee in that Blue made creation of the diet coffee possible.

<u>1.2 Therefore, Red is entitled to seek the liquidated damages of US$0.5million.</u>

-Legal Basis for B-

1. Red has the right to seek the revocation of its investment of US$5million to Arbitria Coffee.
Article 9.2 stipulates that "[i]n the event BLUE violates any of its obligations under this Article 9, RED (...) shall be entitled (...) to a temporary restraining order and to preliminary and final injunctive relief against BLUE or such affiliate of BLUE to prevent any violations of this Article 9". In this case, Blue violated its obligation of Article 9.1 and thus Red has the right to seek the revocation of the investment as a final injunctive relief.

<u>1.1 Blue breached its covenant of non-competition.</u>
As proven in the Legal Basis for Claim A, Blue's action was a breach of its covenant of non-competition stipulated in Article 9.

<u>1.2 Blue's revocation of the investment of US$5million to Arbitria Coffee is an equivalent to "preliminary and final injunctive relief against BLUE (...) to prevent any violations of this Article 9".</u>
With US$5million investment, Blue made Arbitria Coffee its affiliate, and Arbitria Coffee's business is similar to and competitive with Red Slim. Even if Arbitria Coffee is not deemed to be Blue's affiliate, the investment by Blue is deemed to be indirectly performing services for Arbitria Coffee's diet coffee business. Thus, the revocation of the investment is an injunctive relief to prevent further violation of Article 9.

<u>1.3 Therefore, Red is entitled to seek the revocation of its investment of US5$million to Arbitria Coffee.</u>

<Issue 3>

-Backgrounds-
Before the SPA was executed, Red and Blue had a disagreement over the purchase price. As a solution, both companies agreed that Red shall pay a contingent payment if EBITDA exceeds US$110,000,000. Red also covenanted that it would not harm Blue's interest in the contingent payment through unreasonable business judgments.
After the deal was closed, Red selected Nego Drink as a distributor. The conditions of Nego Drink and Negoland Bottlers, another offeror, had their own pros and cons, and after reasonable consideration, Nego Drink was chosen as the distributor. (¶25,26)
Soon after, Bob Orange, the head of the R&D department, resigned. Orange requested Joe Lee, CEO of Red Drink, to extend the deadline and increase the budget for the research in order to achieve his preferable taste. Lee reasonably refused, and Orange resigned on his own will as a result.
Revocation of the "Designated Health Food" status also occurred, but Red had no possibility to notice that there was a threat of administrative proceeding, and it was reasonable that Red did not take special measures. (¶39, Exhibit 13)

-Claim-
We hereby seek the following arbitral award:

-Legal Basis-
1. Blue cannot exercise its right to seek damages (US$200million).
U7.4.1 stipulates that "[a]ny non-performance gives that aggrieved party a right to damages". However, there exists no failure of performance by Red, and Blue cannot exercise this right to damages.

1.1 Red fulfilled its duty to operate based on reasonable judgment, and bears no responsibility.
SPA Article 8 stipulates that Red "shall not operate (...) the TARGET in such manner as may materially harm the interest of BLUE in the additional payment as stipulated in Article 2". However, it also states as an exception that Red "may make any reasonable business judgment to operate the TARGET". Therefore, so long as Red's judgments are reasonable, it can be said that Red is fulfilling the duty stipulated in Article 8.
To interpret the word "reasonable business judgment", we consult U4.1 and 4.3 (a) preliminary negotiations between the parties". Considering the remarks in the process of contracting such as "I hope you won't manipulate operating results just because better performance means higher contingent payments", the definition of "reasonable business judgment" is "a judgment which cannot be deemed as decreasing the profit intentionally". In this case, Blue's three judgments below are based on reasonable decisions that had no intention of decreasing the profit, and thus Red performed its obligation of Article 8.

1.1.1 Red's decision to choose Nego Drink as the distributor in Negoland was reasonable.
1.1.1.1 There were two candidates, Nego Drink and Negoland Bottlers, and their respective conditions were as follows: (¶23,24)

[Table A]

Candidate	Unit wholesale price	Minimum purchase volume	Other factors
Nego Drink	40%	500,000	vending machine trust between CEOs
Negoland Bottlers	50%	400,000	supermarket

As can be seen from [Table A], Negoland Bottlers was superior in terms of profit. On the other hand, Nego Drink was superior in terms of large minimum purchase volume, strength in vending machine channels and the trust towards its CEO (¶23,25).
Strengths of Nego Drink were important in order to increase the name value and to make sure of good sales by trustful CEO's management, especially in the first stage of exploring the new market.

1.1.1.2 Moreover, there was no guarantee that holding a competition between the two companies, which would take a month, would result in a better outcome. Nego Drink was chosen for its superiority in certain factors, and there was no need to hold a competition for a month, which is a considerable amount of time.

For the aforementioned reasons, Nego Drink was chosen as the distributor and it can be said that the choice was reasonable.

1.1.2 Red's decision regarding Orange's resignation was reasonable.

1.1.2.1 Red's request to advance the deadline was reasonable. The first shipment of the product was scheduled from the beginning to go out in early 2014 (¶35), and in order to make it in time, the improvement had to be finished. The request was feasible considering the fact that it was not a request demanding a perfect result.

1.1.2.2 The decision not to increase the budget for research by 20% was reasonable. Although the increase in budget may seem reasonable from the researchers' point of view, judging from the fact that Blue Drink had failed to achieve strong sales growths due to large R&D expenditures before it was purchased (¶12), it was not desirable for Red to accept the increase in order to protect the sales growths.

For the reasons above, Orange's resignation was only a result of these reasonable judgments and Red is not responsible for its consequence.

1.1.3 Red's decision until the revocation of "Designated Health Food" status was reasonable.

1.1.3.1 Blue reported to Red that there were some complaints regarding the effect of drinking Blue Slim on stomach, but also reported that after their detailed testing, there was not such a possibility to cause health problems (¶39).

1.1.3.2 Red was unable to notice the threat to the status because; 1. Blue reported that there was no such problem with Blue Slim, and also warranted the integrity of Blue Slim through the contract, and 2. after the purchase of Blue Drink, the number and the extent of the complaints stayed the same.(¶39)

For the reasons above, it was reasonable for Red Drink to not take special measures to prevent the revocation of the designated status.

As mentioned above, Red made a reasonable business judgment considering all issues.
Therefore, Red did not violate the duty stipulated in Article 8 and bears no responsibility.

<u>1.2 Even if some of the judgments above were deemed unreasonable, Red is not obliged to pay the additional purchase price for the year 2014.</u>

Article 2.2 stipulates that "[i]n the case that the EBITDA of the TARGET in the fiscal year of 2013 and/or 2014 exceeds US$110,000,000, RED shall pay to BLUE the amount equals (EBITDA – US$110,000,000) ×8 as the contingent payment of additional purchase price".
Even if some of the judgments above were deemed unreasonable, EBITDA does not exceed US$110,000,000 in 2014, thus Red is not obliged to pay the additional price for that year.
Respective postulations and hypothetical EBITDA are shown in *[Table B]*

[Table B]

Postulations	Actual EBITDA	Increase	Hypothetical EBITDA
If one judgment was unreasonable	80million	+ 15million	= 95million
If two judgments were unreasonable	80million	+ 30million	= 110million
If all judgments were unreasonable	80million	+ 45million	= 125million

1.2.1 If at least one judgment is recognized as reasonable, the hypothetical EBITDA falls short of US$110,000,000.
In the year 2014, the actual EBITDA will be US$80million and the hypothetical increase of EBITDA for each judgment is US$15million. As can be seen from Table B, if at least one judgment is recognized as reasonable, the hypothetical EBITDA does not reach US$110,000,000.

1.2.2 Therefore, Red is not obligated to pay the additional price for the year 2014 even if one or two of the judgments were deemed unreasonable.