

Case 1. *New Challenge* Case

Issue 1: Did Blue Inc. breach its contractual obligation to Red Corp. in relation to the joint production of “*Designer Zero - New Challenge*”?

Blue’s argument

I . The March 2019 *New Challenge* Co-Production Agreement (Ex. 7 pp. 27-31) does not expressly oblige Blue Inc. (“Blue”) to inquire into the Arbitrian movie review organization’s view on the likely classification if a cigarette is depicted.

II . Even if the NPA does oblige Blue to inquire into the Arbitrian movie review organization’s view, Blue fulfilled this obligation by sending an email to the organization.

I . The March 2019 the *New Challenge* Co-Production Agreement (Ex. 7 pp. 27-31) does not expressly oblige Blue Inc. (“Blue”) to inquire into the Arbitrian movie review organization’s view on the likely classification if a cigarette is depicted.

1. In the *New Challenge* Co-Production Agreement (“NPA”) (Ex. 7 pp. 27-31), there is no express obligation for Blue to inquire into the view of the Arbitrian movie review organization on the likely classification of *New Challenge* if a cigarette is depicted.

II . Even if the NPA does oblige Blue to inquire into the Arbitrian movie review organization’s view, Blue fulfilled this obligation by sending an email to the organization.

2. Even if the NPA does oblige Blue to inquire into the organization’s view, Blue was only in a supporting role in the production of the movie for the following reasons:

- i. Art. 3(b) of the NPA (Ex. 7 p. 27) states that “Red shall have authority to make the final decision with respect to “creative matters” in the event of a disagreement.” This means that Red has more power than Blue concerning matters like the depiction of characters;
- ii. Art. 4(a) of the NPA (Ex. 7 p. 28) states that “Red shall control the production of the Picture [*New Challenge*]”. Meanwhile, Art. 5(a) of the NPA (Ex. 7 p. 28) states that “Blue shall have control over all decisions relating to the marketing, promotion, publicity, advertising and distribution of the Picture [*New Challenge*]” except in Negoland. This means that Blue and Red had different roles and Blue’s roles were focused on getting the movie to the market.

3. As Blue was merely in a supporting role, Blue could do no more than make requests to Red regarding creative and production matters (¶13 and ¶16 p. 4).

4. This process of making requests took place in the production phase when Red was making final decisions on production matters and Blue’s only role was ancillary.

5. Such an obligation would not require Blue to obtain the actual view of the Arbitrian movie review organization. At most, Blue would be obliged to inquire into the organization’s view and Blue fulfilled this obligation by sending an email to the organization asking for their view.

6. PICC 1.7 emphasizes “each party must act in accordance with good faith and fair dealing in international trade.”

7. So far as Blue knew, if cigarettes were depicted, *New Challenge* would certainly be classified as “for adults”, and box-office revenue would decrease by half (Blue email to Red, Aug 6, 2019, Ex. 10 p. 38).

Accordingly, Blue acted in good faith to protect mutual profits in asking Red to change the cigarette to candy.

Specifically:

- i. This was clear from the past trends (Ex. 16 Line 8-9 and 16);
- ii. Although there had been a change in the internal policy, this was completely unexpected, even unthinkable from Blue's perspective, as the Arbitrian people showed such strong concern about the health hazards of cigarettes (Ex. 16 Line 7-8).

8. When Red asked Blue to check with the Arbitrian movie review organization (Red email to Blue, Aug 2, 2019, Ex. 10 p. 38), Blue promptly sent an email to the organization asking about the likely classification of the movie (Ex. 16 Line 18-19). At this point, Blue had fulfilled Red's request.

9. Further, when Blue did not receive any response from the Arbitrian movie review organization, Blue asked Red if they or Minna Friends ("Friends"), the original work's author, wished to renegotiate with the organization (Blue email to Red, Aug 6, 2019, Ex. 10 p. 38).

10. However, Red did no more than talk with Friends (Email, Red to Blue, Aug 7, 2019, Ex. 10 p. 38). Moreover, although it is clear that Red, a prosperous sophisticated company, could have asked Mr. Nomura, the CEO of the movie review organization directly or hired a specialist law firm to confirm likely classification Red also failed to do these things.

11. Blue neither told Red nor implied that the Arbitrian movie review organization would classify the movie as "for adults" (Red email to Blue, Aug 10, 2019, Ex. 10 p. 37). Accordingly, when Red exercised their right under the NPA to replace the cigarette with candy, Red alone was responsible for that decision.

12. Therefore, even if Blue had an obligation to make an inquiry, Blue has fulfilled its obligation.

Issue 2: If Blue breached their obligation to inquire into the Arbitrian movie review organization's view, is Blue fully liable to Red for damages?

Blue's argument

I . Even if Blue failed to perform the obligation to inquire into the view of the Arbitrian movie review organization, Blue is not liable for damages as there is no causal link between Blue's non-performance and the harm.

II . Even if Blue breached their obligation to inquire into the Arbitrian movie review organization's view, Blue is not liable to Red for damages because the drop in box-office revenue in Negoland was not foreseeable.

I . Even if Blue failed to perform the obligation to inquire into the view of the Arbitrian movie review organization, Blue is not liable for damages as there is no causal link between Blue's non-performance and the harm.

13. According to PICC Comments, there has to be "a causal link between the non-performance and the harm" for Red to be entitled to full compensation (pp. 271-272).

14. A loss of USD 20 million arose due to the drop in the sales of *New Challenge* in Negoland and a further USD 0.25 million was lost from apparel revenue in Negoland. Therefore, Red lost a total of USD 20.25 million which would not have occurred but for Red replacing the *New Challenge* cigarette with candy.

15. Our position is that there is no causal link between Blue's non-performance and Red modifying the depiction of cigarettes to candy in *New Challenge*. It follows that there is no causal link between Blue's non-performance and the total monetary harm of USD 19.25 million that is Red claiming.

16. Red is a major Negoland company which "produce[s], distribute[s], and present[s] movies and animations" (¶13 p. 1). Red has been in the movie industry for over 80 years, and has full exposure to the Negoland movie market. Moreover, Red is the company which has relationship with Friends and Red is likely to know Friends' world-building and fan base well. Therefore, Red could easily have expected *New Challenge* to receive unfavorable reviews in Negoland if they replaced Santa's cigarette with a candy.

17. In addition to Red controlling the production phase, Red had control over all decisions relating to distribution in Negoland. Therefore, Red made the ultimate decision of modifying the depiction of cigarettes in *New Challenge* distributed in Negoland while Blue had limited influence.

18. Moreover, when Red consulted the peer movie review organization in Negoland, it confirmed that "keeping the scenes with the cigarette will cause no problem" (Red email to Blue, Aug 7, 2019, Ex. 10 p. 38). Consequently, Red was aware that keeping the depiction of cigarettes would not affect the profit of *New Challenge* in Negoland.

19. In addition, Blue never offered Red any advice about the movie's classification in Negoland. Blue only expressed its views about the possible classification in Arbitria (Blue email to Red, Aug 1, 2019, Ex. 10 p. 39).

20. Therefore, there is no causal link between Blue's non-performance and Red modifying the depiction of cigarettes to candy in *New Challenge*.

21. Red's decision alone caused the decrease in Negoland's box office revenue; this was independent of any of Blue's non-performance.

II . Even if Blue breached their obligation to inquire into the Arbitrian movie review organization's view, Blue is not liable to Red for damages because the drop in box-office revenue in Negoland was not foreseeable.

22. According to PICC 7.4.1 through 7.4.4, there are 6 requirements for damages to be awarded.

- (1) The existence of obligation ("non-performance" PICC 7.4.1)
- (2) The existence of non-performance ("non-performance" PICC 7.4.1)
- (3) The existence of harm ("harm" PICC 7.4.2)
- (4) Certainty of harm ("certainty of harm" PICC 7.4.3)
- (5) Foreseeability of harm ("foreseeability of harm" PICC 7.4.4)
- (6) Causal link ("there must be a causal link between [the harm and the non-performance]" Vogenauer, p. 980)

23. The issue concerning Red's claim is foreseeability. While the box office revenue of *New Challenge* in Negoland dropped by 40% due to Red's decision to change the cigarettes to candy, and this led to losses of USD 20 million, this was not foreseeable.

24. Neither Blue nor Red could have predicted that changing Santa's cigarettes to candy would be so unpopular that it would cause a massive 40% decrease in box office revenue. Once again the question of good faith is crucial. PICC 1.7 states "each party must act in accordance with good faith and fair dealing in international trade." Blue had a genuine belief based on many decades of industry experience, that not changing the cigarettes would decrease profits (Blue email to Red, Aug. 6, 2019, Ex. 10 p. 38).

25. In addition, Red has deep expertise in the movie market in Negoland and has successfully distributed the “Designer Zero” movie series. Moreover, Red has close contact with Friends while Red was making the decision about the cigarette and Friends said they would find a creative story to protect the profit of *New Challenge*. In the circumstances, Blue, who was not responsible for creative decisions could never have imagined the harm which occurred. Blue trusted the final decision Red made to modify the depiction after understanding the possible outcomes (Red email to Blue, Aug. 10, 2019, Ex. 10 p. 37).

Case 2. Blue Land Case

Issue 1: Did Red breach its contractual obligation to Blue concerning the delivery of clothes to Blue Land?

Blue’s argument

I . Red breached its contractual obligation in Art. 4 of the Manufacturing and Supply Agreement (Ex. 12 p. 42).

II . Red cannot apply PICC 7.1.2 to reject Blue's claim because Blue’s act of introducing Black Inc. to Red did not cause the harm Blue suffered.

I . Red breached its contractual obligation in Art. 4 of the Manufacturing and Supply Agreement (Ex. 12 pp. 42-43).

26. Art. 4 of the Manufacturing and Supply Agreement (“MSA”) (Ex. 12 p. 42) states “Supplier must manufacture and supply the Products in accordance with this Agreement...”. Therefore, Red is bound by all the MSA provisions.

27. Firstly, MSA Art. 8 (Ex. 12 pp. 42-43) provides that “Supplier warrants that the Products will be manufactured...in compliance with all governmental and environmental regulations”. It is reasonable to literally include Arbitrian laws in “all governmental ... regulations” in Art. 8 since the Arbitrian government establishes Arbitria's laws.

28. Secondly, it is also reasonable to conclude that Arbitrian laws are included in “all governmental...regulations”, if we consider the purpose of MSA. We know from PICC 4.1 (2) that a contract should “be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances”.

29. PICC 4.3 lists the factors to consider in applying PICC 4.1, including “(d) the nature and purpose of the contract”. The purpose of the MSA is to manufacture and supply apparel sold in Blue Land in Arbitria. This is clear from the fact that, during preliminary negotiations, Blue proposed producing and selling *Designer Zero* apparel in Blue Land and Red agreed (¶18 p. 5).

30. The MSA’s purpose would be frustrated if Red were permitted to ignore the Arbitrian regulations and supply products that cannot be sold in Arbitria. Hence, it is reasonable to interpret “All governmental and environmental regulations” in MSA Art. 8 to include Arbitria’s regulations.

31. In Arbitria, there is a law prohibiting sales of any products manufactured with child labor and forced labor (“Modern Slavery”) in violation of international human rights standards, such as the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) (Blue email to Red, Jan 20, 2022, Ex. 18 pp. 53-54).

32. In early 2021, Red subcontracted the manufacturing of the apparel to Black Inc. (“Black”) in NegoAbu. Black delivered the products on August 20 and Blue began to sell them in Arbitria from September 1 (¶21 p.6). By December 21, news broke that Black used Modern Slavery to manufacture and supply the products to Blue Inc (¶26 p.7). Blue and Red confirmed the facts soon after (¶28 p.8).

33. Since Arbitrian law prohibits selling products made using Modern Slavery, Red breached its obligation to manufacture and supply the products in compliance “with all governmental and environmental regulations” (Ex. 12 pp. 42-43).

II . Red cannot rely on PICC 7.1.2 to reject Blue's claim because Blue's act of introducing Black to Red did not cause the harm Blue suffered.

34. PICC 7.1.2 states that a party cannot claim that the other party failed to fulfill their obligation if an act of the first party caused the non-performance of the other party.

35. Red may claim that Blue's act, introducing Black to Red, caused Red's non-performance. While Blue did introduce Black to Red (Blue email to Red, Jan 18, 2022, Ex. 18 p. 44), this mere courtesy, done in good faith to help Red, did not cause a sophisticated international company like Red to recklessly contract with Black with no due diligence concerning Modern Slavery. Blue did not state nor guarantee that Black was free of human rights problems (Ex. 13 January 18 and 20, 2021 p. 45).

36. Moreover, Blue did not force Red to subcontract to Black (Ex. 13 January 18 and 20, 2021 p. 45). The apparel was not indispensable. Blue Land could have opened without the apparel. Red could have chosen not to subcontract to Black after investigating properly. By December, White was available to make the apparel (¶28 p. 8). Accordingly, Red cannot rely on PICC 7.1.2.

37. In addition, Art. 3 of the MSA states that the “Supplier may subcontract the manufacture of the Products without the prior written consent of Buyer”.

38. PICC 4.1(2) provides that a contract provisions like Art. 3 should “be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances”. Accordingly, a reasonable interpretation is that Red, the supplier, should be wholly responsible for its subcontracting decisions. This is commercially reasonable as Red enjoyed the right to freely choose subcontractors without Blue's consent.

39. Red took this responsibility lightly, conducting only a quick visit and superficial conversations at Black's factory (¶21). The OECD has criticized these kinds of brief checks as meaningless.¹ Therefore, it is Red's lack of due diligence that caused the harm.

40. In addition, Red should have been more careful when subcontracting with Black as they had never done business before (Ex. 13 Jan 19, 2021 p. 45). Moreover, there was a risk that the contract might become long-term as the MSA was to be automatically renewed every 3 years (Art. 10, Ex. 12 p. 43).

41. Therefore, it is Red's non-performance that caused the harm while Blue's act is irrelevant.

Issue 2: If Red breached its obligation, does it have to pay Blue damages, and if so, how much?

Blue's argument

¹ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, available at: <https://www.oecd-ilibrary.org/docserver/9789264290587-en.pdf?expires=1667627692&id=id&accname=guest&checksum=C874960E8802681549B60528C7481D5E>

I . Red breached its obligation to manufacture and supply products without Modern Slavery and therefore must compensate Blue for USD 21.13 million.

II . Red cannot seek to reduce Red’s damages by claiming under PICC 7.4.7 that Blue’s act of introducing Black to Red partly caused the harm.

III . Blue acted swiftly to mitigate the harm as much as possible.

I . Red breached its obligation to manufacture and supply products without Modern Slavery and therefore must compensate Blue for USD 21.13 million.

42. According to PICC 7.4.1 through 7.4.4, there are 6 requirements for damages to be awarded.

- (1) The existence of obligation ("non-performance" PICC 7.4.1)
- (2) The existence of non-performance ("non-performance" PICC 7.4.1)
- (3) The existence of harm ("harm" PICC 7.4.2)
- (4) Certainty of harm ("certainty of harm" PICC 7.4.3)
- (5) Foreseeability of harm ("foreseeability of harm" PICC 7.4.4)
- (6) Causal link ("there must be a causal link between [the harm and the non-performance]" Vogenauer, p. 980)

(1) The existence of obligation is covered above under Issue 1.

(2) The existence of non-performance is covered above under Issue 1.

(3) The existence of harm is established.

43. Blue suffered a total of USD 21.13 million in damages as follows (Ex. 18 Jan 20, 2022 pp. 53-54)

- USD 15 million from the closure of Blue Land from Dec 23, 2021 to Jan 4, 2022.
- USD 0.8 million from handling returns of apparel.
- USD 5.33 million from the decrease in the number of views of *Friendship* on Blue Net.

(4) Certainty of harm is established.

44. The losses from the closure of Blue Land and handling apparel returns have already occurred. The lost Blue Net profit is certain as there would have been 4 million monthly views without Modern Slavery (Ex. 11 p. 40).

(5) Foreseeability of harm is established.

45. Red should have known that Arbitria, the country where Red would supply the products, is a country with a high awareness of human rights violations (¶27 pp. 7-8). In fact, in a short period of time after 2020, there have been three cases in Arbitria in which a company was targeted by boycotts or forced to close its stores after doing business with a foreign supplier whose working environment ignored basic human rights (¶27 pp. 7-8). Therefore, it was foreseeable for Red that if Blue sold apparel in Blue Land that was made using Modern Slavery, this was likely to lead to Blue Land temporarily closing, the return of apparel and a drop in the number of *Friendship* views.

(6) Causal links are established.

46. There was a causal link between Red’s non-performance and all three types of loss. But for Red supplying apparel through Modern Slavery, the Blue Land closure, the apparel return, and the drop in the number of *Friendship* views would not have occurred.

47. There was direct causal link between Red's non-performance and Blue Land closure, after the public learned that the apparel was made using Modern Slavery, an angry crowd went to Blue Land and Blue received bomb threats (¶27 pp. 7-8). This meant it was reasonable to close Blue Land as the public safety was at stake.

48. There was also a direct causal link between Red's non-performance and the monetary harm caused by the returned products. Blue had to accept the apparel return under Arbitrian law requiring this for products made in violation of international human rights standards (Ex. 18, January 20, 2022 pp. 53-54).

49. Finally, there was a direct causal link between Red's non-performance and the harm caused by the drop in *Friendship* views. The *Designer Zero* apparel and *Friendship* are the closely related products. It is reasonable that *Friendship* views would decrease once Arbitrian society rejected the apparel.

50. Accordingly, there is a causal link between Red's non-performance and all relevant harms. Therefore, Red is liable to compensate Blue for these harms in the amount of USD 21.13 million due to the Red's non-compliance with contractual obligation.

II. Red cannot seek to reduce Red's damages by claiming under PICC 7.4.7 that Blue's act of introducing Black to Red partly caused the harm

51. According to PICC 7.4.7, "where the harm is due in part to an act or omission of the aggrieved party or to another event for which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties."

52. As stated in ¶ 35 above, Blue introduced Black to Red. However, this act of Blue was unrelated to the harm. The intervening and proximal cause for the harm was Red's lack of due diligence regarding Modern Slavery in breach of Red's obligation of MSA. Consequently, Red cannot invoke PICC 7.4.7 to reduce its obligation.

III. Blue acted swiftly to mitigate the harm as much as possible.

53. PICC 7.4.8 (1) states "The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps". Blue temporarily closed Blue Land on December 23, 2021 (¶27) and in only one week swiftly investigated Black, verified the facts and outsourced manufacturing the apparel to White (¶28). By January 4, 2022, the President of Blue had already announced that Blue Land would reopen on January 5.

54. Red may claim that Blue reopening Blue Land earlier would have constituted "reasonable steps" under PICC 7.4.8 to further mitigate the harm. However, Blue's position is it would have been unreasonable to reopen Blue Land before public anger settled.

55. Moreover, crisis management experts in Arbitria have stated that the Blue Land closure was generally an appropriate response to the demonstrations and threatening emails (¶30). Therefore, it would not have constituted "reasonable steps" to reopen Blue Land any earlier.

56. Accordingly, the requirements of PICC 7.4.8 have not been satisfied, and the amount of the damage must not be reduced.

Case 3. Card Case

Issue 1: Does the arbitral tribunal have jurisdiction in relation to the Card Case?

Blue's argument

I . If there is no doubt regarding the validity of Tiered Dispute Resolution (“TDR”) clause in the NPA, the arbitral tribunal clearly does not have jurisdiction over the Card Case.

II . Even if the validity of the TDR is in doubt, and even if the criteria to confirm the validity of TDR clauses vary from country to country, the TDR clause in the NPA (Ex. 7 pp. 30-31) meets all possible criteria.

I . If there is no doubt regarding the validity of Tiered Dispute Resolution (“TDR”) clause in the NPA, the arbitral tribunal clearly does not have jurisdiction over the Card Case.

57. Art. 21(f) of the NPA (Ex. 7 pp. 27-31) states that Blue or Red may apply for arbitration if mediation does not settle the dispute or the dispute remains unresolved for a period of six months.

58. Assuming the TDR will be upheld as valid, then what has happened so far does not satisfy the TDR. There were negotiations but there was no mediation concerning this dispute before this application for arbitration by Red (Blue email to Red, Jun 25, 2022, Ex. 19 p. 55). Further, 6 months have not passed since Jun 1, 2022, when this case arose. The arbitral tribunal does not have jurisdiction, given the dispute resolution process carried out so far does not satisfy all tiers.

II . Even if the validity of the TDR is in doubt, and even if the criteria to confirm the validity of TDR clauses vary from country to country, the TDR clause in the NPA (Ex. 7 pp. 30-31) meets all possible criteria.

59. Judicial views on whether TDR clauses affect the jurisdiction of an arbitral tribunal vary depending on the country; there is no international consensus on when TDR clauses are valid.

60. For instance, in Switzerland, where the courts often recognize the validity of TDR clauses, the following three elements are required for validity:

- i. “The wording of the clause must indicate that the parties' intent was to make the pre-adjudicatory dispute resolution steps mandatory;”
- ii. “The wording of the clause must make it clear exactly when the pre-adjudicatory tier is satisfied;”
- iii. “A party invoking the non-compliance of [a TDR clause] must do so in good faith. In practice this means that a party has to, at the very least, propose the commencement of pre-arbitral steps before invoking the counter party's non-compliance with the clause.”²

61. First, the TDR clause in Art. 21(f) of the NPA (Ex. 7 pp. 30-31) is different from those in other contracts, such as Art. 21(f) of the Friendship Production Agreement (Ex. 4 pp. 17-21), Art. 9 of the February 2016 Friendship Copyright Agreement (Ex. 5 pp. 22-23) and Art. 20(f) of the Distribution Agreement (Ex. 8 pp. 32-34). It is reasonable to infer that both Blue and Red had an intention to make the steps before arbitration mandatory.

62. Second, the TDR clause in Art. 21(f) of the NPA (Ex. 7 pp. 30-31) provides the exact timing when mediation or arbitration is to commence.

63. Third, Blue offered to start negotiation before invoking non-compliance with the TDR clause (Blue email to Red, Jun 6, 2022, Ex. 19 pp. 57). Moreover, Red is the one responsible for terminating those negotiations by claiming that negotiation cannot take place unless Blue stops both Internet distribution

² *The Enforceability of Multi-Tier Dispute Resolution Clauses* (2021, J Westerlund), pp. 35-36

and sales of cards (Red email to Blue, Jun 30, 2022, Ex. 19 pp. 56). Accordingly, at this point, it seems that Red lacked good faith. Considering the facts above, Art. 21(f) of the NPA (Ex. 7 pp. 30-31) satisfies all three elements and is valid according to the Swiss criteria.

64. It is true that, in some countries like the UK, the validity of TDR clauses depends on certainty. Nevertheless, our position is that the TDR clause in the NPA (Ex. 7 pp. 30-31) is precise enough to have sufficient certainty. It meets all the criteria regarded by courts in various jurisdictions for the validity of TDR clauses.

65. Since the TDR clause in the NPA (Ex. 7 pp. 30-31) is valid and its conditions have not been met yet, the arbitral tribunal does not have jurisdiction.

66. Our position is that the TDR clause in the NPA (Ex. 7 pp. 30-31) is exemplary. It meets all the criteria regarded by courts in various jurisdictions for the validity of TDR clauses.

Issue 2: If the arbitral tribunal has jurisdiction over the Card Case, does Blue have the right to distribute *New Challenge* through Blue Net, and to sell cards at Blue Land? Should Blue pay Red part of the revenue from the distribution of *New Challenge* and the sale of the cards? Should the arbitral tribunal issue an injunction ordering Blue to cease the distribution of *New Challenge* and the sale of the cards?

Blue's argument

Blue has the right to distribute *New Challenge* through Blue Net and to sell cards at Blue Land.

I . Blue has the right to distribute *New Challenge* through Blue Net.

II . Blue has the right to sell cards at Blue Land on which famous scenes of *Friendship* and *New Challenge* are printed (¶ 33 p. 9).

III . Blue has an obligation to pay 1/3 of the amount Blue receives for each viewing and 1/2 of the revenue that Blue earns from the sales of the cards in Blue Land.

IV . Red Corp's motion seeking an injunction prohibiting the distribution of *New Challenge* through Blue Net must be rejected.

V . Red Corp's motion seeking an injunction prohibiting the sale of cards in Blue Land must be rejected.

I . Blue has the right to distribute *New Challenge* through Blue Net.

67. Art. 9 of the NPA (Ex. 7 p. 29) provides, "The copyright... shall be jointly owned by Blue and Red on an undivided 50/50 basis." There are no words prohibiting the distribution of *New Challenge* on Blue Net. This means, in terms of copyright, Blue partly owns the right to distribute *New Challenge* on Blue Net.

68. Further, Blue has Red's approval to distribute the work. The Distribution Agreement (Ex. 8 pp. 32-34) is a contract concerning the distribution of "Designer Zero" through Blue Net. In Art. 2(1), it states "Blue may distribute the Work through Blue Net for a period of two years." This period of time, two years, is currently being prolonged since neither Blue nor Red gave notice before the expiry date (Art. 2(2)). This means it is still valid, and Red has approved. Blue has the right to distribute the Work through Blue Net.

(1) Blue has the right to distribute *New Challenge* based on the tenor of Art. 1 of the Distribution Agreement (Ex. 8 pp. 32-34).

69. The Distribution Agreement's preamble defines "the animated feature-length theatrical motion picture titled "Designer Zero" (the Work)" as the one which Blue can distribute through Blue Net. Specifically, Art. 1 permits Blue to distribute the Work through Blue Net.

70. Since there is no wording limiting the meaning of "the Work" to *Friendship*, Blue has the right to distribute not only *Friendship* but also *New Challenge* on Blue Net.

71. Further, the March 2019 New Challenge Copyright Agreement (NCA) (Ex. 9 pp. 35-36) is a contract between Red and Friends, who is the author of the original work of "Designer Zero". The purpose of this agreement was to secure permission from Friends to distribute a sequel to *Friendship* through Blue Net and the construction of attractions in Blue Land. In this Agreement's preamble, Red specifically mentions *Friendship*.

72. From this fact, it can be inferred that Red had an intention to use different terms between the Distribution Agreement (Ex. 8 pp. 32-34) and the NCA (Ex. 9 pp. 35-36). It is reasonable to regard the wording "Designer Zero" in the Distribution Agreement (Ex. 8 pp. 32-34) as referring to the entire "Designer Zero" series, not just *Friendship*.

73. In conclusion, Blue has a right to distribute *New Challenge* through Blue Net.

(2) Moreover, considering Blue's email to Red on Jan 10, 2019 (Ex. 6, Attachment, Art. 3 p. 26) which is the basis of the Distribution Agreement (Ex. 8 pp. 32-34), it is reasonable to expect "the Work" contains *New Challenge* as well as *Friendship*.

74. According to PICC 4.3(a), "preliminary negotiations between the parties" should be considered when applying PICC 4.1 to interpret a contract.

75. According to Blue's email to Red, Jan 10, 2019 (Ex. 6, Attachment, Art. 3 p. 26), Red basically agrees that Blue distributes not only *Friendship* but also the sequel through Blue Net with Friends' permission. Therefore, from this preliminary negotiation, Blue in essence has the right of distribution even in Negoland as long as it is with Friends' permission.

76. According to Blue's email to Red on Jun 3, 2022 (Ex. 19 p. 58), Blue obtained consent from Friends to distribute *New Challenge*.

77. In addition, according to PICC 4.4, "terms and expressions shall be interpreted in the light of the whole contract or statements in which they appear". Since the Distribution Agreement (Ex. 8 pp. 32-34) also mentions the construction of attraction featuring the Work in Blue Land, facts that relate to the attraction should also be considered when interpreting the Distribution Agreement.

78. The attraction is to be constructed based on the Designer Zero series (¶14), not just on *Friendship*. This also strengthens our argument that Blue has the right to distribute not only *Friendship* but also *New Challenge* on Blue Net.

II . Blue has the right to sell cards at Blue Land on which famous scenes of *Friendship* and *New Challenge* are printed (¶ 33 p. 9).

79. According to Art. 5 of the attachment to Blue's email to Red on Jan 16, 2016 (Ex. 3 p. 16), Blue and Red agreed that "Blue is responsible for Blu-Ray discs and DVDs and Red is responsible for guidebooks, related books and goods" as the premise of concluding the Friendship Production Agreement (Ex. 4 pp. 17-21).

80. Under this premise, Blue has the right to produce other media which promotional items like Blu-Ray, DVDs and cards. On the other hand, Red has the right to produce products which have value other than promotional items like guidebooks, related books and goods.

81. In Art. 3(d)(i) of Ex. 4 and Ex. 7, Red has Merchandising rights and Blue has other Ancillary rights.

82. From the facts above, Blue has other Ancillary rights to produce other media which promote the movie itself. Red has Merchandising Rights to produce products which also have other value unrelated to the movie itself.

83. The cards which Blue produced depict famous scenes from *Friendship* and *New Challenge* (¶133 p. 9). Their primary function is to depict images of movies just as posters do. They are promotional products rather than products which also have other value unrelated to the movie itself. Therefore, Blue has the right to sell the cards which were produced in exercise of Blue's other Ancillary rights.

III. Blue has an obligation to pay 1/3 of the amount Blue receives for each viewing and 1/2 of the revenue that Blue earns from the sales of the cards in Blue Land.

84. According to Art. 2(3) of the Distribution Agreement (Ex. 8 pp. 32-34), Blue is to pay Red 1/3 of the amount paid to Blue for each view on Blue Net. According to Art. 8 of Ex. 4 and Ex. 7 (which are identical), net receipts are to be divided equally, including the revenue from the exploitation of all Ancillary Rights, which includes the sales of the cards. Therefore, Blue has an obligation to pay Red both 1/3 of the additional revenue from distributing *New Challenge* on Blue Net and 1/2 of the profit from selling cards in Blue Land.

85. It is true that Blue has not made the payment, but it does not necessarily mean at all that Blue contests the need to pay Red these amounts. The only thing preventing Blue from paying is Red's premature request for arbitration. With this hearing pending, Blue preserved the status quo in order to receive the Panel's ruling.

IV. Red Corp's motion seeking an injunction prohibiting the distribution of New Challenge through Blue Net must be rejected.

86. According to UNCITRAL Art. 26.3, the party requesting an interim measure shall satisfy the arbitral tribunal that "(a) Harm not adequately reparable by an award of damage is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted" and "(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination."

87. If there is harm to Red, due to the distribution of *New Challenge* via Blue Net, that harm can be compensated by a certain amount of money.

88. According to Ex. 11, the number of views of *New Challenge* has been 2 million views per month. Each view of *Friendship* on Blue Net generates USD 2 (Ex. 6 Attachment Art. 3 p. 26). Therefore, the total revenue per month is estimated to be worth USD 4 million. It is reasonable to expect that each view of *New Challenge* on Blue Net will generate a similar amount of money.

$\text{USD 4 million} = 2 \text{ million views} \times \text{USD 2 per view}$

89. If the profit distribution ratio was the same as for *Friendship*, one third of the profit (USD 1.33 million) would be going to Red monthly. At the moment, Red is not receiving this income. However, if an injunction is ordered, Blue would lose USD 4 million monthly for the duration of the injunction.

90. Therefore, condition (a) for an injunction is not fulfilled, because the harm is fully reparable if damages are paid, and the harm doesn't outweigh the harm that Blue would suffer if the measure is granted.

91. Given that Blue has the right to distribute *New Challenge*, there is no “reasonable possibility” that Red's argument will be accepted. Therefore, condition (b) for an injunction is also not fulfilled.

92. In conclusion, Red's motion for an injunction ordering Blue to cease the distribution of *New Challenge* through Blue Net must be denied.

V. Red Corp's motion seeking an injunction prohibiting the sale of cards in Blue Land must be rejected.

93. If there is harm to Red due to the sale of cards in Blue Land, that damage would be compensated by a certain amount of money.

94. According to Art. 8 of the NPA (Ex. 7 pp. 27-31), all the revenue from the exploitation of Ancillary Rights is to be divided equally, with fifty percent (50 %) to Red and fifty percent (50 %) to Blue.

95. Therefore, condition (a) for an injunction is not fulfilled because the harm is fully reparable if damages are paid, and the harm doesn't outweigh the harm that Blue would suffer if the measure is granted.

96. Blue has the right to sell cards in Blue Land, and there is no reasonable possibility for Red's argument will be accepted. Therefore, condition (b) for injunctions is also not fulfilled.

97. In conclusion, Red's motion for an injunction ordering Blue to cease the sale of cards in Blue Land must be denied.