



**YSLAC WRITING COMPETITION 2020**  
**COMPETITION MATERIALS**

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## STATEMENT OF AGREED FACTS

### The Parties

Huckleberry Corporation, the Claimant, is a company incorporated under the laws of England & Wales. It is one of the leading distributors of precious infinity jewels in Asia and has been a distributor of the Space Jewel, the Time Jewel, and the Power Jewel since 1999.

Narcissus International, the Respondent, is a company organized under the laws of the United Arab Emirates. Narcissus is one of the largest and most successful companies in the world which cuts and polishes infinity jewels for usage by customers.

### The Agreement

On 1 May 2012, Huckleberry and Narcissus entered into a non-exclusive distribution agreement (the “Agreement”). The main terms of the Agreement are as follows:

- a. Narcissus granted Huckleberry the non-exclusive right to distribute certain infinity jewels in Asia, namely the Space Jewel and Time Jewel (but not the Power Jewel).
- b. Huckleberry was authorized to sell these infinity jewels to any “Reseller” in Asia.
- c. The Agreement, Article 1 defines a “Reseller” as “any reseller whether or not it has executed a Narcissus Authorized Reseller Agreement.”
- d. Narcissus reserved the right, in its absolute and sole discretion, to determine whether to appoint a reseller as a “Narcissus Authorized Reseller.”
- e. “Narcissus Authorized Reseller” is a reseller who met the high standards set by Narcissus.
- f. Huckleberry was entitled to receive discounts and rebates, as may be set by Narcissus, for sales to Narcissus Authorized Resellers.

- g. Narcissus reserved the right, in its sole and absolute discretion, to appoint other distributors of its products in the same territory, as well as to sell its products directly to Resellers.
- h. Article 5 of the Agreement permitted Narcissus to terminate the Agreement at will, without reason.
- i. Article 10 of the Agreement provides that:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (‘SIAC Rules’) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The Tribunal shall consist of three arbitrator(s).

The language of the arbitration shall be English.

The Parties further agree to incorporate the IBA Rules on the Taking of Evidence in International Arbitration.”

- j. The governing law of the Agreement is the laws of England & Wales.

## **The Dispute**

When Narcissus entered into the Agreement with Huckleberry, it had a sole distributor in Asia, namely Geranium.

Between 1 May 2012 and 31 December 2012, Narcissus required each Narcissus Authorized Reseller to inform it of which distributor (Huckleberry or Geranium) it wished to designate as its preferred distributor for the first quarter of 2013, beginning 1 January, and for every subsequent quarter.

On 25 December 2012, Narcissus sent an email to Huckleberry informing it that G.E.M and Diamond Industries had selected Huckleberry as the preferred distributor for the first Quarter of 2013, and that the remaining resellers remained with Geranium. Through the first quarter of 2019, the rest of the resellers continued to remain with Geranium.

On 24 April 2019, Narcissus terminated the Agreement because of poor performance by Huckleberry. It stated that the termination would be effective 1 June 2019. Narcissus later confirmed that its notice was issued under Article 5 of

the Agreement, which permitted Narcissus to terminate the Agreement at will, without reason.

## **The Proceedings**

On 24 September 2019, Huckleberry issued a Notice of Arbitration to Narcissus. Huckleberry alleges that Narcissus pressured Resellers to choose Geranium as their preferred distributor rather than Huckleberry. Huckleberry says that this improperly restricted Huckleberry to sell Narcissus infinity jewels to the market in Asia in breach of the Agreement. Huckleberry is seeking damages accordingly.

In its Response filed on 8 October 2019, Narcissus denied that it had pressured Resellers to choose Geranium over Huckleberry. Narcissus argued that it allowed each Reseller freely to choose which distributor it wanted to work with for a particular quarter and each Reseller was free to switch the next quarter if it wanted. Narcissus asked the Tribunal to dismiss Huckleberry's claim in full.

On 5 January 2020, Huckleberry filed its Statement of Claim, which was accompanied by ten witness statements. One witness statement was from Mr Casper Americano, Manager of G.E.M. An extract of Mr Casper Americano's witness statement is enclosed.

On 10 March 2020, Narcissus filed its Statement of Defence, which was accompanied by five witness statements. One was submitted by Ms Caprice Marvellous, ex-President of G.E.M. An extract from Ms Caprice Marvellous' witness statement is enclosed.

In addition, the Respondent submitted a five-page witness statement from Mr Diamond, CEO and Founder of Diamond Industries which is enclosed.

There were no subsequent submissions made by the Parties.

The Tribunal fixed the hearing date for 13 April 2020. However, due to COVID-19 and the circuit-breaker in Singapore, the hearing was postponed until a later date, when a physical hearing would be possible. Both Parties agreed that an in-person hearing was preferable.

Following the end of the circuit breaker, the Parties agreed to schedule an in-person hearing for 12-16 October 2020. However, issues have arisen in relation to the attendance of three witnesses. Enclosed is the relevant correspondence.

## WITNESS STATEMENT

of  
Mr Casper Americano

### *Extracts*

1. My job was to purchase infinity jewels on behalf of G.E.M for the purpose of resale in Asia.
2. In the beginning, Narcissus was the only company with one distributor in Asia, until it entered into an agreement with Huckleberry and started direct distribution of infinity jewels itself.
3. When Huckleberry became a distributor, Narcissus imposed a system under which a retailer had to buy from just one distributor - either Geranium or Huckleberry, or buy from Narcissus directly. A retailer could switch distributors on a quarterly basis, but it is a hassle, and there is not much incentive to switch, because Narcissus effectively sets the prices.
4. When Huckleberry began distributing Narcissus infinity jewels, there was no reason to switch because G.E.M had a long history with Geranium.
5. When G.E.M notified Narcissus that it was interested in switching to Huckleberry, Narcissus senior management told us that Narcissus was not in favour of the switch. In person and over telephone calls, Narcissus consistently resisted G.E.M's decision to switch to Huckleberry. Narcissus told G.E.M that Huckleberry had financial problems. I then called Huckleberry and asked them if this was true, and they told me that it was not.
6. Nonetheless, G.E.M did due diligence, and eventually switched to Huckleberry. Even then, Narcissus was asking persistently "Are you sure"?

**WITNESS STATEMENT**  
**of**  
**Ms Caprice Marvellous**

*Extracts*

1. Prior to 2010, G.E.M had frequent contact with Narcissus and with Geranium. As Narcissus expanded its presence in the market, those communications became more formal and structured. I was very involved in G.E.M's relationship with Narcissus and attended the majority of strategy and planning meetings with Narcissus over the years. During my time at G.E.M, Mr Casper Americano, G.E.M's regional manager at the time, who focused on product management reported to me. I was ultimately responsible for making decisions regarding G.E.M's arrangements with Narcissus and distributors.
2. Narcissus shifted to a multi-distributor environment in mid-2012, appointing Huckleberry as its second distributor in Asia. Initially, G.E.M purchased Narcissus infinity jewels from both Huckleberry and Geranium, although the majority from the latter. Narcissus explained to us at the time that it would be implementing a process whereby we would be asked to choose one distributor as our "preferred" distributor for a quarter. If the preferred distributor was out of stock, we notified Narcissus before sourcing from another distributor. Narcissus was reasonable in this respect and would discuss our needs with us in order to resolve the matter favourably for all parties. I believe that the reason Narcissus implemented such a process was because of the importance Narcissus places on forecasting. Forecasting is common practice in this industry, but it is done by Narcissus rigorously.
3. The way the process was explained to G.E.M was that we could change our preferred distributor nomination each quarter. The switching process was straightforward and was managed by G.E.M: all we had to do was notify Narcissus and we were switching by a certain deadline within the quarter, explaining our reasons for the switch.
4. I understand that it has been suggested in the arbitration that switching distributors was a hassle. I disagree with this. Switching distributors was not a hassle, as switching distributors is common in a retail environment. We simply decided to do so and informed Narcissus.

## WITNESS STATEMENT

of

**Mr Diamond**

### *Extracts*

1. Narcissus introduced Huckleberry as a second distributor of Narcissus products in Asia and we were then given the option of purchasing Narcissus products from either Geranium or Huckleberry. Narcissus introduced a process whereby, as I understood it, but I am the CEO so don't quite know details, each retailer would choose its preferred distributor of Narcissus products for a particular quarter and it would then source primarily from that distributor. It would, however, still be able to purchase products from the other distributor when needed.
2. When we were first given the option of purchasing Narcissus products from either Geranium or Huckleberry as our preferred distributor, we considered very carefully whether to select Geranium as our preferred distributor and use Huckleberry for stocks as and when needed or whether to choose Huckleberry as our preferred distributor and use Geranium as and when needed. We knew Huckleberry well, because we dealt with them extensively in relation to other products. Geranium and Huckleberry competed intensely for our business. It was our business decision as to who we picked.

**From: Respondent's Counsel**  
**To: Tribunal**  
**CC: Claimant's Counsel**

**17 June 2020**

Dear Members of the Tribunal,

We would like to draw the Tribunal's attention to one issue that has arisen in preparation for the hearing.

Ms Caprice Marvellous and Mr Diamond have informed us that they are unable to attend the hearing in person and have requested permission to give evidence by video-conference.

Ms Caprice Marvellous is the Chief Executive Officer of Kaplan Enterprises, based in Dubai. Her company is currently in the process of launching a new movie, which will take place upon receipt of government approvals that are currently pending and are now expected to be received between 10 October and 20 October 2020. During this period, her professional commitments require that she remain in Dubai.

Similarly, Mr Diamond is the Chief Executive Officer of Diamond Industries based in London. His company is currently in the urgent R&D of a type of smart virus-proof mask that is expected to significantly reduce a wearer's chance of contacting coronavirus. As Mr Diamond's knowledge is indispensable for the R&D, he is required to remain in London.

Both Ms Caprice Marvellous and Mr Diamond are ready and willing to make themselves available for cross-examination by video-conference.

We have written to the Claimant's counsel seeking their agreement to the cross-examination of Ms Caprice Marvellous and Mr Diamond via video-conference. Claimant's counsel has objected to our request.

We request that, in accordance with paragraph 9.6 of the Pre-Hearing Procedural Order, the Tribunal permit Ms Caprice Marvellous and Mr Diamond to attend the hearing for cross-examination via video-conference.

Your faithfully,

Counsel for the Respondent

**From: Claimant's Counsel**  
**To: Tribunal**  
**CC: Respondent's Counsel**

**19 June 2020**

Dear Members of the Tribunal,

We write in response to Respondent's request that two of its witnesses be allowed to give testimony by video-conference. We cannot agree to this request, and we seek the Tribunal's permission to make written submissions on this issue.

We would also like to raise with the Tribunal that Mr Casper Americano has affirmed to Claimant that his witness statement was truthful. However, he has advised Claimant that he lost his job because he submitted his witness statement in this proceeding against Narcissus. As a consequence, Mr Casper Americano, needing a new job, had to pack up and move his family. He is now working in a position where again his employer has business relationships with Narcissus. For these reasons, he has advised Huckleberry that he fears that he will jeopardize his current position if he appears to testify. A copy of an email we received from Mr Casper Americano is attached for reference.

On this basis, Claimant reserves the right at the conclusion of the hearing, and after all the evidence is in, to request the Tribunal to consider his witness statement as evidence for good cause.

Respectfully submitted,

Counsel for the Claimant

~~~~~ATTACHMENT TO 19 JUNE 2020 EMAIL FROM CLAIMANT'S  
COUNSEL~~~~~

**From: Mr Casper Americano**  
**To: Claimant's counsel**

1 June 2020

Dear counsel

I know you have been trying to contact me about the arbitration hearing dates. It is very unfortunate, but I have to let you know that I cannot testify against Narcissus.

About a month after I signed my witness statement for you, I was terminated with immediate effect from my job at G.E.M (without any notice or compensation, I might add). No reasons were given in the termination letter, but when my boss Mr N. Fastidio handed the letter to me, he said, "You've caused trouble for G.E.M with Narcissus. You know Narcissus doesn't take this kind of thing lying down. You really should have known better than to play hero and stick your neck out for other people."

It was quite clear to me that Mr N. Fastidio could only have been referring to the arbitration and my witness statement, which I had never told him about before.

I was really upset about losing my job and it wasn't easy finding a new one. I even had to move my whole family. My wife Peggy also gave me a real earful. Now, my new employer also has business dealings with Narcissus. I don't know if what Mr N. Fastidio said to me was true or if he was just finding excuses (we've had our differences too), but I cannot risk my job again by testifying in your arbitration. I am sorry that I cannot be of any further help - what I said to you in my witness statement was 100% true.

I am going to change my mobile number and email, so please do not try to contact me anymore. I wish you all the best, but I want to put this behind me and move on with my life.

Regards,

Casper Americano

**From: Respondent's Counsel**  
**To: Tribunal**  
**CC: Claimant's Counsel**

**21 June 2020**

Dear Members of the Tribunal,

This is the first time we have heard of Mr Casper Americano's reported loss of employment and alleged concerns regarding his present position. Needless to say, Narcissus rejects any suggestion that it has retaliated in any way against Mr Casper Americano as a result of this arbitration.

In this case, the requirements of section 9.3 of the Pre-Hearing Procedural Order have not been met, and his evidence should be excluded.

Yours faithfully,

Counsel for the Respondent

**From Tribunal**  
**To: Claimant's and Respondent's Counsel**

**25 June 2020**

Dear Counsel,

We refer to the following:

- the email dated 17 June 2020 from Respondent's Counsel;
- the email dated 19 June 2020 from Claimant's Counsel;
- the email dated 21 June 2020 from Respondent's Counsel.

The Tribunal invites the Parties to file written submissions by 31 August 2020 on the two issues before the Tribunal: *a)* whether the Tribunal should excuse the attendance at the hearing of the Claimant's witness unwilling to testify and *(b)* whether the Tribunal should allow for the Respondent's two witnesses to testify via video-conference.

Yours faithfully,

Members of the Tribunal

## Pre-Hearing Procedural Order

### *Extracts*

9.1 At the hearing, witnesses may be examined in-chief for only ten minutes, without prior express permission from the Tribunal. The Tribunal may allow a longer examination-in-chief if a Party seeks leave from the Tribunal to have a witness address new evidence or allegations raised in the final submissions or evidence of the opposing Party which they did not have a previous opportunity to address. This is not intended to permit a Party to withhold or split its evidence which should have been submitted previously.

9.2 In addition, a Party may request that a witness not requested to attend for cross-examination be heard by the Tribunal at the hearing for good cause.

9.3 On or before 10 September 2020, each Party shall notify the other of the names of witnesses (both factual and expert) who they wish to have made available for cross-examination. Failure to make a witness available for cross-examination will result in the exclusion of that witness's evidence, absent extraordinary circumstances or a showing of good cause as determined by the Tribunal. In addition, any request for a witness not called for cross-examination to testify at the hearing must be notified by 13 September 2020. Any such request shall specify the grounds for the request and describe the subject of the proposed testimony of the witness in question.

9.4 Waiver by a Party of its right to cross-examine a witness shall not imply acceptance of the content of the corresponding witness statement. When a Party has waived its right to cross-examine a witness, the Tribunal will assess the witness' evidence in its discretion.

9.5 The Tribunal shall decide whether or not to apply any national law rules of evidence as to the admissibility, relevance or weight of any material tendered by a Party on any matter of fact or expert opinion. The Tribunal may exclude from evidence, whether at the request of a Party or on its own motion, any document, statement, oral testimony or inspection which lacks sufficient relevance to the issues in dispute or materiality to the outcome of the case, or for reasons of procedural economy, proportionality, fairness or equality of the Parties the Tribunal finds to be compelling.

9.6 The Tribunal may make provision for the examination and cross-examination of a witness or witnesses by video-conference for good cause shown.