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ICC Dispute Resolution Services – ADR

5th ICC International Commercial Mediation Competition – Final

A TRAGEDY OF EPIC PROPORTIONS

GENERAL INFORMATION

SARKHAN EARTHQUAKE KILLS 11,000+

The world has recently been gripped by the tragedy that has devastated an entire nation. People around the globe have been glued to their television sets and watching for any updates on survivors in the country of Sarkhan. A powerful earthquake, measuring 8.1 on the Richter scale, claimed the lives of more than 11,000 people and the toll is climbing daily. Relief agencies are doing all they can but accessing many regions is still considered very dangerous as after-shocks continue to ripple through. Navigating in and around the areas hardest hit by the quake makes any efforts to help extremely difficult and many are feeling helpless.

Money is trickling in to finance rescue, recovery, medical and survival needs. Massive rebuilding will be required and several thousand families have been displaced from their homes. Even though this is a region that is susceptible to earthquakes, this particular episode has touched hearts and minds everywhere due to the catastrophic loss of lives and unfathomable destruction that remains.

The nearby country of Ambrosia has always been a supportive neighbour of Sarkhan. They have enjoyed a relatively unprotected border for centuries. This tragedy is especially felt by Ambrosians as thousands of them are still looking for or have lost loved ones in the earthquake. Whereas the devastation is being felt worldwide, for all intents and purposes, people in Ambrosia reacted to the news as though it had happened within their own borders.

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Immediately after the earthquake, the government of Ambrosia offered Sarkhan financial and humanitarian aid on behalf of its people. The Duchess/Duke of Ambrosia (or “Frankie” as s/he was known as to the media and friends alike) proposed to the royal family that s/he could perhaps do more to help. The Duchess/Duke promptly started to co-ordinate the resources necessary to put on a benefit concert with proceeds to go to the earthquake relief fund.

Izzy Starr reached out to the Duchess/Duke as they were old friends and s/he wanted to work alongside Frankie on the benefit concert. The Duchess/Duke trusted Izzy as they had known one another very well over a period of years. It also seemed like a mutually beneficial business opportunity since Izzy is the child of global music legends and had all the industry connections necessary to make the concert of global appeal and success. Izzy’s family name was synonymous with musical genius and there likely wasn’t a person on the planet that didn’t know of them, especially since Izzy’s siblings were also successful recording artists in their own right.

As time was of the essence, Izzy and Frankie met within three days of the earthquake and set a date for the concert at 8 weeks later (March 10, 2010). It was a very ambitious timeline but they both knew that funds were desperately needed by the people in Sarkhan and there was no time to waste.

Izzy and Frankie worked well as a team during the initial days of coming together. Based on their personal history, a "handshake" and follow up email from Frankie to Izzy sealed their deal as follows:

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FROM: THE DUCHESS/DUKE OF AMBROSIA

TO: IZZY STARR

Re: Concert for Sarkhan Earthquake Relief Fund - Co-Executive Producers

DATE: January 13, 2010

Izzy, I cannot believe my good fortune to have caught up with you once again and for you to have the time and interest in helping me put on this concert for the people of Sarkhan. As I mentioned, this is a neighbouring country and the government and monarchy are keenly interested in doing everything reasonably possible to help the people so devastated by this natural calamity that has befallen them.

Just to confirm our handshake agreement, this is our understanding:

~ Any and all decisions pertaining to: date/time, location, venue, booking musical or other talent, productions, photography, media and network coverage and merchandising are to be made at my sole discretion as Duchess/Duke of Ambrosia, without question.

~You and I will be the event's co-executive producers. You will perform all tasks specifically assigned to you by me, including all matters related to: technical and support staff, logistics, security, insurance, meals, transportation, lodging, permits, licenses, dealing with agents and other administrative duties as they arise.

~ As compensation for your services, since this is a charitable event, you have agreed to be paid 5% of the gross sales of concert tickets and 2% of the sale of all officially licensed merchandise sold within 12 months of the March 10, 2010 concert date. All sales after 12

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months will have 100% of net profits going to the Sarkhan Relief Fund or whatever charity as shall be decided by me or by any other official of the royal family of Ambrosia.

I am so happy that you have agreed to take on this special project and look forward to working with you to help raise funds for the people of Sarkhan.

Best regards,

Frankie

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Izzy and Frankie were overwhelmed with requests to perform at the concert and narrowed down the list to 40 acts from over 400. They likely only had the capacity to use 25 of them on the day of the concert. Seven of the 40 acts listed included groups that Frankie did not approve of as s/he was concerned about the royal family's perception of their controversial lyrics and personalities. Frankie expressed her/his disapproval to Izzy directly regarding the seven groups but Izzy said that they would be major attractions for concert-goers. Frankie listened to Izzy as a music industry expert but continued to feel that having them perform would be a mistake given the royal family's commitment and connection to the concert.

With such a short time frame in which to plan and hold the concert, Izzy gave some advice to Frankie about merchandising opportunities. Everything had to be the appropriate balance between making money from the concert without the appearance of profiting directly from the royal families' ties to the event. Since it was a charitable event, Frankie wanted to maximize the potential for raising funds. Frankie had been to numerous charitable events, only as a guest, since childhood but was really lost about how to co-ordinate merchandising for the Sarkhan Relief Concert.

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Frankie allowed Izzy to guide him/her through the selection and purchasing process and Izzy and her/his team immediately started to contact suppliers on Frankie's behalf. Izzy got general parameters from Frankie about purchasing orders and they jointly decided on a supplier for the following items: t-shirts, flags, hats, key rings, scarves, and souvenir pint glasses. Most of the suppliers that they contacted couldn't complete such a large rush order. They were very fortunate to secure a contract with Super Stuff Inc. As both a manufacturer and direct distributor of products, this meant that the large volume of items being ordered were in stock and readily available to ship. As a sincere gesture toward the relief efforts, Super Stuff Inc. discounted their wholesale pricing on the entire order by 20% as they wanted to directly contribute to the relief efforts. Frankie gave Izzy permission to place the orders before leaving for Sarkhan.

The concert has recently sold out. The venue can accommodate 30,000 concert goers and providing security for more than this full-capacity number would be virtually impossible. The ticket sales generated 3,500,000 Euros. Sixteen major global television networks are under contract to air the live event on March 10th and there is great hope rallying around the concert.

The Duchess/Duke has no expectation of compensation for her/his time and efforts as co-executive producer. The bands are all generously donating their time and covering their own expenses to perform at the event. The stage, lighting, sound and other production equipment are also being donated by various music and concert organizations.

There are 250 volunteers in addition to 380 employees on the payroll. The salaries and expenses for the 380 employees for 8 weeks of work are capped at 760,000 Euros. To date, 380,000 Euros has been paid to the employees for work completed.

The outdoor venue is on royal property and comes at no expense to the event. Garbage and grounds clean up costs are estimated at 10,000 Euros (for which the royal family will cover).

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Super Stuff Inc., upon confirming instructions from Izzy Starr, has invoiced 188,750 Euros for the rush delivery of:

25,000 t-shirts at 5 Euros per item = 125,000 Euros;

2,500 flags at 6 Euros per item = 15,000 Euros;

7,500 bats at 3 Euros per item = 22,500 Euros;

3,500 key rings at 1.5 Euros per item = 5,250 Euros;

2,000 royal crest scarves at 8 Euros per item = 16,000 Euros; and

500 limited edition royal crest souvenir pint glasses at 10 Euros per item = 5,000 Euros.

All of the merchandise has one form or another of the royal image or crest imprinted on it.

Super Stuff Inc.'s invoices are due and payable within 30 days of delivery of the products as no deposit was paid in advance. The entire order was delivered on February 8, 2010.

Frankie went to Sarkhan approximately two weeks after the above email was sent to Izzy. Izzy reassured Frankie that everything would continue to run smoothly with the day-to-day operations and any future planning required.

Frankie was expected to be out of Ambrosia for approximately a week but it quickly turned into two as it was extremely difficult to move from place to place. Getting into and out of various regions would often required multiple overnight stays and caused significant delays in Frankie's official visit to Sarkhan. Cell phone and internet connections were intermittent. It was a disheartening and stressful experience all around. It only further motivated Frankie to do as much as possible to help.

When Frankie returned to Ambrosia, s/he wanted to go directly to the concert venue to find out what progress had been made. En route to the venue, Frankie read the local paper and

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was furious to see that the concert line-up included a band which s/he clearly told Izzy could not be considered for this event. Frankie immediately started trying to reach Izzy by phone, email and text.

Upon arriving on site, Frankie's driver was prevented access to the grounds as delivery trucks were blocking the roadway. Growing impatient, Frankie got out of the vehicle to determine what was going on. This was Frankie's first look at the merchandise Izzy had ordered for the event. The royal crest and/or image were all over the products and Frankie was shocked.

In a fit of rage, Frankie ordered everyone within sight to refuse the order and put everything back onto the delivery trucks. The truck drivers and concert employees alike were dumbfounded at the Duchess/Duke's seemingly irrational behaviour. Before anyone could react, as everything had been unloaded, the truck drivers locked up their trailers and immediately left the premises. Frankie began angrily demanding to see Izzy Starr as s/he shouted: "None of this is to be opened! It is all going back and we are not paying for any of it!!!!"

Shortly thereafter, the Duchess/Duke put a complete halt on the concert preparations. The next communication that Izzy Starr received was from Frankie's lawyer who suggests setting up a Mediation under the ICC ADR Rules. He suggests that this Mediation takes place in Paris and that the Mediator should be appointed by ICC, according to Article 3.1 of the Rules.

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