



HAO & ASSOCIATES LAW FIRM

Address: 16 Mac Dinh Chi – Phuoc Tien ward – Nha Trang city – Khanh Hoa province

Phone number: 058 – 3513988 **Fax:** 058 – 3513858 **Hotline:** 0914 086 292

Website: www.LawyerConsultant.net

www.VuNhuHao.com

YM: hao_vunhu@yahoo.com

Skype: vu.nhu.hao

E - mail: LawyerVuNhuHao@gmail.com

ARGUMENT FOR RESPONDENT’S DEFENSE

PART I: SUMMARY OF DISPUTES

1. The Litigants:

- **Claimant:** ALBERT ZIPS HK LIMITED
- **Respondent:** NHA TRANG GARMENT ACCESSORIES JOINT STOCK COMPANY (ISE. CO)
- Protector of the respondent’s legitimate rights and interests: Lawyer **VU NHU HAO**
Belonging to Hao & Associates Law Firm – Khanh Hoa Provincial Bar Association

2. Disputes content:

Dispute about contract No. 502/KH07 revise 1 on the sale and purchase of zippers.

Disputed value at the claimant’s request: 81,874 USD ~ 1,890,470,660 VND

3. Competence:

The parties have agreed to choose a dispute settlement agency which is the Vietnam International Arbitration Center (VIAC).

4. Summary of the dispute’s content:

- On 11/4/2019, Nha Trang Garment Accessories Joint Stock Company (Seller) and Albert Zips HK Limited (Buyer) signed Contract No. 502/KH07 revise 1 on the sale and purchase of zippers model N3IZ.T1, quantity: 10,757 pieces, value: 628.36 USD ~ 14,508,832 VND.
- The parties completed the delivery on 21/4/2019 with the agreed delivery condition EXW (Ex Works).
EXW: Delivery at the factory/warehouse. Risk transfer from the time goods are delivered (Incoterm 2020).
- On 31/10/2019, the Buyer complained about the zippers having an error after the Buyer supplied the third Party (Carmel Clothing), the third Party supplied the fourth Party (Sainsbury's) and the zippers was sewed on "dresses". Details of the complaint reporting process are as follows:
 - + On 30/10/2019, Sainsbury's emailed Carmel Clothing with the content reporting an issue related to a faulty zipper on the "dresses" product: *“We have received*



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a number of complaints in regards to the the zips on this style is faulty/broken. I have checked these samples against the gold seal and they are not representative to what we have signed off.”

- + On 31/10/2019, Carmel Clothing emailed Abert Zips HK Limited to report a defect on a zipper order FN14358 and request an Oeko-Tex certificate, test report and invoice for these zippers.
- + On 01/11/2019, ISE Company have sent the internal inspection report of contract 502/KH07 item code FN14358 to Abert Zips HK Limited.
- + On 13/11/2019, Carmel Clothing emailed Abert Zips HK Limited to claim a total compensation amount of £78,300.66.
- + On 13/12/2019, Abert Zips HK Limited sent a document to ISE Company to claim the amount of compensation of 81,874 USD.
- ISE Company do not agree with the claim of Abert Zips HK Limited because they finds that this is completely baseless and unreasonable. After many unsuccessful attempts to negotiate on their own, on 19/10/2020, Abert Zips HK Limited filed a request for arbitration to the Vietnam International Arbitration Center (VIAC) - Ho Chi Minh City Branch to initiate a lawsuit with ISE Company.
- The dispute was handled by the Vietnam International Arbitration Center (VIAC) - Ho Chi Minh City Branch at No. 114/20 HCM on November 17th, 2020.



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PART II: LEGAL POINTS

Dear Arbitration Council!

The Claimant and the Respondent!

I am Lawyer **VU NHU HAO** at Hao & Associates Law Firm belonging the Bar Association of Khanh Hoa Province. At the request of the Respondent – Nha Trang Garment Accessories Joint Stock Company (ISE Company) and with the consent of your agency, I participate in the dispute case No. 114/20 HCM at the Vietnam International Arbitration Center (VIAC) – Ho Chi Minh City Branch as the protector of the legitimate rights and interests of the Respondent against the claims of the Claimant – Abert Zips HK Limited.

After studying the case file, I would like to give my opinion based on the analysis and arguments to protect the legitimate rights and interests of the Respondent as follows:

The Claimant's claim to compel the Respondent to pay compensation totaling 81,874 USD ~ 1,890,470,660 VND is baseless and unreasonable for the following reasons:

1. Considering based on implementation Contract No. 502/KH07 revise 1 dated 11/4/2019 between ISE Company and Abert Zips HK Limited:

- ISE Company have properly and fully performed their obligations and responsibilities in Contract No. 502/KH07 revise 1 dated 11/4/2019.

+ *Sales obligations such as delivery of the correct model, specifications, quantity:*

According to Article 2 of the contract, the parties agreed on the purchase and sale of zipper samples N3IZ.T1 including 03 types:

Size / color	YKK580	Unit	Quantity	Price per unit (USD)	Amount (USD)
20 cm	3,656	pc	3,656	0.0579	211.68
21 cm	6,293	pc	6,293	0.0586	368.77
22 cm	808	pc	808	0.0593	47.91
Total			10,757		628.36

~14,508,832 VND

The goods delivered by the seller to the buyer all satisfy the conditions on design, specifications and quantity mentioned above.



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+ *Obligation to produce goods in accordance with quality standards committed to the buyer:*

During the production of goods, ISE Company have organized the management according to the international standard system ISO 9001, the production stages are strictly controlled according to the prescribed standards. Goods are all quality zippers BS 3084 (UK standard) and EN 16732:2015 (European standard). The quality indicators for zippers N3IZ.T1 have been tested annually by Intertex Company and before being shipped, they will be tested again. Comparing the inspection results of Intertex Company with the zipper model N3IZ.T1 in 2019 and the results of the re-inspection before shipment of the contract 502/KH07 revise 1 showed that the zipper model met the standards and had parameters that are still superior to the initial inspection results:

BS 3084 STANDARD			
Test Description	Inspection results of Intertex Company	Results of re-inspection	BS 3084's requirement
Strength of puller Attachment	98.4 N	13 kg (127 N)	80 N
Strength of Close-End	63.6 N	8 kg (78 N)	60 N
Strength of Top Stop	120.1 N	8.3 kg (81.3 N)	70 N
Resistance to Reciprocation	> 500 cycles	> 500 cycles	500 cycles
Lateral Strength of Fastener	447.0 N	38.5 kg (377 N)	200 N
Strength of Slider Locking Device	135.3 N	3.8 kg (37.2 N)	15 N

Article 5 of the contract clearly stipulates the responsibility of the buyer that: *“The buyer is responsible for checking the goods before setting into production. In case there is any complaint about the quality, the buyer should inform the seller to have solution as soon as possible.”*

And the seller's responsibility is: *Giving the solution for the complaint within 03 days after getting the official complaint in written from the buyer: replacing or compensating on real value of the damaged goods that was supplied by the seller with quantities is over >1% per style of purchase order; The seller have no responsibility if the zippers have been sewed on the garment.*

Before ordering, Abert Zips HK Limited also thoroughly researched the goods and agreed with the specifications and quality of the goods they wanted to buy (through Intertex's inspection), then ISE Company proceeded mass-production to deliver to the buyer. Abert Zips HK Limited received the goods from 21/4/2019 but then they did not have any feedback



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on the quality of the product and it was not until 6 months later (31/10/2019), they complained that the product does not guarantee quality and is damaged, while Abert Zips HK Limited are not the direct user of the product.

When the zipper is sewn into the garment, it means that the conditions have been met to be put into use. One question is that other companies like Carmel Clothing and Sainsbury's buy zippers from Abert Zips HK Limited, do they not test the goods before putting them into use? Then the responsibility is theirs, can not blame ISE Company. ISE Company are only responsible to Albert Zips HK Limited based on the signed contract, without commitment of liability to a third party and when the zipper has been sewn into the finished product.

From the above content, it can be seen that ISE Company do not violate the contract.

2. Considering based on the provisions of law on the basis for arising liability for damage compensation:

- The 2005 Commercial Law provides for compensation for damage in Articles 302, 303 as follows:

+ Damages means a remedy whereby the breaching party pays compensation for the loss caused by a contract-breaching act to the aggrieved party.

+ The value of damages covers the value of the material and direct loss suffered by the aggrieved party due to the breach of the breaching party and the direct profit which the aggrieved party would have earned if such breach had not been committed.

+ The grounds giving rise to the liability to compensate for damage must fully satisfy the following elements: (1) Breach of the contract; (2) Material loss; (3) Act of breaching the contract is the direct cause of the loss.

- The 1980 Vienna Convention provides for the arising of liability for damages in Article 74: Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

- The UNIDROIT Principles on International Commercial Contracts 2016 refer to Article 7.4.1 on the right to claim compensation for damage arising when: Any non-performance gives the aggrieved party a right to damages either exclusively or in



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conjunction with any other remedies except where the nonperformance is excused under these Principles.

Thus, according to the above provisions, in case Abert Zips HK Limited initiate a lawsuit to request ISE Company to compensate for damage, Abert Zips HK Limited have the responsibility to prove the relevant contents. However, Abert Zips HK Limited have not yet produced any documents, evidence and grounds for their claim. Most importantly, Abert Zips HK Limited have not yet met the 03 conditions prescribed by law which are:

- + There is a breach of contract;
- + There is actual damage done;
- + Acts of breach of contract are the direct cause of damage.

- ***Firstly, about the breach of contract.*** As stated in part 1., the sales of ISE Company to Abert Zips HK Limited have been complied by ISE Company in accordance with the commitments in Contract 502 regarding delivery time, models, quantities, parameters, and quality standards, etc. of the products that ISE Company distribute to Abert Zips HK Limited. Before the zipper product is mass-produced to be delivered to Abert Zips HK Limited, the representative of Abert Zips HK Limited have also checked each type, agreed with that type of zipper, then ISE Company proceed with the similar manufacturing process. Before the goods are delivered to the buyer, ISE Company also conducted a final inspection to ensure that the delivered goods meet the quality standards of BS 3084 and even EN 16732 that Abert Zips HK Limited request later. ISE Company have absolutely no breach of contract with respect to sales to Abert Zips HK Company.

Because Abert Zips HK Limited believe that ISE Company violate the contract related to the quality of zipper goods, so they have to prove that “*How do ISE Company violate sales commitment? How do they violate the quality and under what standards?*”. At the same time, with their presentation, Abert Zips HK Limited must provide documents related to the appraisal that have been certified by the competent authority for the zippers that are said to be damaged in order to determine the cause and extent of the damage, thereby imputing responsibility to ISE Company for breach of contract. The company Abert Zips HK Limited have not yet provided evidence for these.

- ***Secondly, about the actual damage.*** Abert Zips HK Limited have not proved the actual damage corresponding to the amount claimed is 81,874 USD ~ **1,890,470,660 VND** and what is its specific damage?



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Sainsbury's asked Carmel Clothing to pay 77,646 USD, Carmel Clothing only asked Abert Zips HK Limited to pay 77,054 USD including lost profits of 33,792 USD. ISE Company do not know how Abert Zips HK Limited, Carmel Clothing Ms. Sainsbury's resolve the issue of compensation with each other, but one more problem is raised that each company claims a different level of compensation, which also includes lost profits. This is unreasonable and unfounded.

In business, when a company launches a new product line, there is no certainty about how much product will be sold and how much profit will be earned, it is all just an estimate. Meanwhile, the success or failure of a product is also related to many factors such as model, design, quality, and also partly comes from the tastes of customers. The zipper attachment on the product has only a very small contribution value.

The email complaint filed by Sainsbury's or Carmel Clothing concerns only one product, not the whole. Their withdrawal of the entire item on the market may be because they feel that the product is not successful, potentially affecting their reputation and fame. However, it is not an exception when they make an excuse for a defective product to withdraw the whole thing and then ask the accessory seller to compensate them, both without having to sell products and ensuring profits.

This is the case with branch such as Sainsbury's or Carmel Clothing, who may experience damage resulting from product recalls. However, for Abert Zips HK Limited, they have not proved that they have suffered any specific damages (*material damage, income ...*), while we also do not know if they directly use our zipper product or not. If Abert Zips HK Company said that their damage is the amount that they have to compensate for Carmel Clothing, it is also necessary to consider whether that compensation has anything to do with ISE Company or not because the amount of money that Abert Zips HK Limited claim from ISE Company does not match the amount Carmel Clothing required them to compensate.

- ***Thirdly, the causal relationship between the breach of contract and the actual damage occurred.***

As I analyzed above, Abert Zips HK Limited have not proven that ISE Company have violated the contract or not as well as Abert Zips HK Limited have not clarified their specific damages. It is almost impossible to prove a cause-and-effect relationship between the breach of contract and the actual damages.



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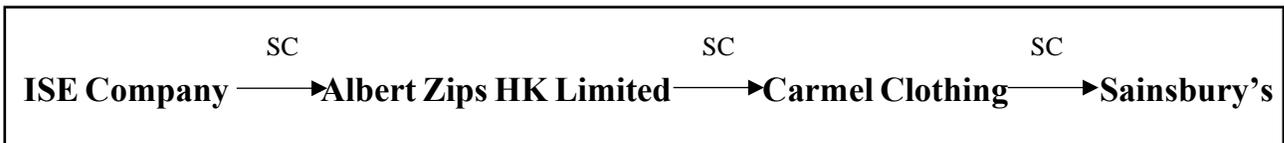
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Abert Zips HK Limited also do not provide any documentation showing that the zipper sewn to the Sainsbury's dresses in the image Sainsbury's emailed was the zipper distributed by ISE Company to Abert Zips HK Limited.

According to the contents that Abert Zips HK Limited sent to ISE Company, they believe that the zipper purchase and sale of the parties takes place in the following order:



Thus, in addition to providing a sales contract with ISE Company, Abert Zips HK Limited must at least provide the sales contract between them and Carmel Clothing and collect the sales contract between Carmel Clothing and Sainsbury's to clarify the content: whether the zipper that Sainsbury's sewed into the "dresses" is indeed the goods supplied by the ISE Company or not? According to information provided by Abert Zips HK Limited before, they also buy similar products from Bangladesh and the brand name belongs to Albert (A).

3. Considering about the reasonableness for a claim for the amount of 81,874 USD ~ 1,890,470,660 VND:

Abert Zips HK Limited did not determine the cause of the damage, but they assumed that the damage was due to the fault of ISE Company. In fact, there are many objective or subjective reasons for this damage, such as:

- Errors may arise due to the buyer's transportation and preservation process.
- Errors may arise in sewing techniques (*design, machinery, workmanship, etc.*) of a third party sold by Abert Zips HK Limited for zipper products.
- Errors may arise from customers using the product "skirt".

It should be made clear whether damaged zippers are caused by quality defects or by other factors.

Sainsbury's email dated 30/10/2019 reads: *"We have received a number of complaints in regards to the the zips on this style is faulty/broken. I have checked these samples against the gold seal and they are not representative to what we have signed off."*



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Whereas Sainsbury's is a customer of Carmel Clothing, ISE Company have no relation whatsoever to their commitment to sell to Sainsbury's or Carmel Clothing in terms of the quality standards they offer or the designs and styles they require. Therefore, ISE Company are not responsible for being " *they are not representative to what we have signed off* " in the opinion of Sainsbury's.

As I stated above, Abert Zips HK Limited do not provide the sales contract between Abert Zips HK Limited and Carmel Clothing or between Carmel Clothing and Sainsbury's. The problem is that between them really exist other sales commitments than the contract between Abert Zips HK Limited and ISE Company. Therefore, it is not except for the case that Abert Zips HK Limited delivered the incorrect goods to the other companies with "promises" about compensation if the product is defective. The fact that Abert Zips HK Limited violate their commitments with other companies, it must be responsible for compensation. This is the business principle.

Abert Zips HK Limited asked ISE Company to pay an amount of 81,874 USD ~ **1,890,470,660 VND** but did not specify "the degree of fault of ISE Company" or "this amount is to compensate for which damage items, the extent of which damages" is completely groundless and unreasonable, while the contract between the two parties is only worth 628.36 USD ~ **14,508,832 VND**.

4. Considering about the reason why Albert Zips HK Company is denied warranty:

According to the email content on 02/12/2019, Ms. Reese Kwok said that the insurance party refused the warranty claim of Abert Zips HK Limited. In this regard, we can explain as follows, to be accepted for warranty, the buyer also needs to meet certain conditions, not all cases will be covered by the warranty.

- **Firstly**, the price of the zipper goods on the contract is very small and does not include insurance and warranty costs. ISE company have also informed about the case that customers want them to warrant for the value of their garments, they need to buy insurance and the contract value including insurance will then be much higher than the original purchase price. Abert Zips HK Limited have chosen to only sign the contract with the current value, this price does not include insurance.

- **Secondly**, in order to be compensated and supported by the insurance party, the buyer must meet all the conditions set forth by the insurance party at the outset when the two parties agree on the purchase of insurance. In particular, the issue of actual damage as a basis for determining insurance is the most important factor. As described in section 2., Abert



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Zips HK Limited have not proven the actual damage they has suffered. On the other hand, in order to receive compensation from insurance party, it is necessary to have a complete claim file, not just send an email to be compensated by the insurance party.

In summary, there are not enough grounds for Abert Zips HK Limited to sue and request ISE Company to compensate for damage because ISE Company are not at fault for breach of contract. ISE Company have fully fulfilled its commitments and obligations to Abert Zips HK Limited for the goods delivered in accordance with the categories agreed upon by the two parties in advance. Abert Zips HK Limited did not prove the actual damages that they suffered and they did not clarify that ISE Company's breach of contract was the cause of damage to Abert Zips HK Company.

With the above argument and analysis, I respectfully request the Arbitration Council to consider and reject all of the Claimant's claims in order to have a fair, reasonable, in accordance with the provisions and precedents of the law.

Ho Chi Minh city, January 18th, 2022

Lawyer Vu Nhu Hao