



CAM - MILAN (MILAN CHAMBER OF ARBITRATION)

CAM - Milan Case No. 17/00120

PRADA S.P.A. V. CAPORICCI USA CORP.

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FINAL AWARD

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30 January 2019

Tribunal:

[Andrew G. Paton](#) (Sole arbitrator)

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# Final Award

## Introduction

1. The Claimant, an Italian company, filed a request for arbitration against the Respondent, a US company, claiming compensation for the alleged breach by the Respondent of a Purchase Agreement dated 25 September 2015 ("**Agreement**"). The object of the Agreement was the sale of alligator hatchlings by Respondent to Claimant, through the procurement of alligators' eggs from trappers, their incubation and hatching, and the care of the hatchlings at Respondent's farm prior to their transfer to the Claimant. The Claimant required a supply of alligator skins for its leather products.
2. This Award contains a number of defined terms. Where such terms are used for the first time, the definition has been added in bold between round brackets.

## I. The Parties

3. The Claimant is PRADA S.P.A., a company incorporated under the laws of Italy, with its registered office at Via Antonio Fogazzaro n. 28, 20135, Milan, Italy (VAT No. 10115350158) ("**Claimant**" or "**Prada**").
4. The Claimant is represented by its legal counsel, Professor Lotario Benedetto Dittrich ([l.dittrich@lsalaw.it](mailto:l.dittrich@lsalaw.it)), Mr Michele Curatola ([m.curatola@lsalaw.it](mailto:m.curatola@lsalaw.it)) and Ms Federica De Luca ([f.deluca@lsalaw.it](mailto:f.deluca@lsalaw.it)) and is electively domiciled in their offices in Via Andegari n. 4/a, 20121, Milan, pursuant to a Power of Attorney attached to its Request for Arbitration dated 1 December 2017.
5. The Respondent is CAPORICCI U.S.A. CORP., with registered office in Florida (USA), Miami, 9401 NW 106th, Suite 105 (US company no. 02-0689599) ("**Respondent**" or "**Caporicci**").
6. The Respondent is represented by its legal counsel, Mr. Edoardo Enrico Artese ([edoardo.artese@ac-legal.eu](mailto:edoardo.artese@ac-legal.eu)), and is electively domiciled at his offices in Via Fontana n. 2, 20122, Milan, pursuant to a Power of Attorney attached to its Statement of Defence dated 9 January 2018. In this Award, Claimant and Respondent, together, are referred to as the "**Parties**".

## II. Arbitral Tribunal

7. The Arbitral Tribunal consists of a sole arbitrator, Mr. Andrew Garnett Paton ([a.paton@dejalex.com](mailto:a.paton@dejalex.com)) ("**Tribunal**"), a partner of law firm De Berti Jacchia Franchini Forlani, with offices at Via Vincenzo Bellini, 24, Rome, appointed by the Arbitral Council on 23 January 2018 and confirmed by the

### **III. The arbitration agreement**

8. The reference to arbitration is based on an arbitration clause included in Article 7.2 of the Agreement which provides as follows:

*"The Parties agree that all disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of the Chamber of National and International Arbitration of Milan (The "Rules"). The arbitration panel shall consist in a sole arbitrator appointed pursuant to the Rules. The arbitration panel shall decide in accordance with the rules of law of Italy. The seat of such arbitration shall be Milan and the language of the arbitration shall be English".*

### **IV. Arbitration seat, language and procedural law applicable to the Arbitral proceedings**

9. In the minutes of the first hearing held on 29 March 2018 signed by the Tribunal and by the counsel for both Parties for approval and agreement to the provisions thereof, the Tribunal made orders regarding the seat, language and procedural law applicable to the present arbitration, in accordance with the provisions contained in Article 7 (Applicable law and jurisdiction) of the Agreement. In particular:

#### **Seat and language**

10. Pursuant to the above mentioned arbitration clause (Article 7.2), the seat of the arbitration is Milan and the language of the arbitration is English.

#### **Procedural law**

11. The Parties confirm that the arbitration proceedings be carried out in accordance with the Arbitration Rules of the Milan Chamber of Arbitration which entered into force on 1 January 2010 (the 'Rules'). Furthermore, the proceedings are governed by mandatory Italian procedural law on arbitration (Articles 806 *et seq.* of the Code of Civil Procedure), as supplemented by the procedural rules contained in the minutes of the first hearing of 29 March 2018.

### **V. Applicable substantive law**

12. As to the substantive law applicable to the Arbitral proceedings, Article 7.1 of the Agreement reads that:

*"This Letter of Intent [rectius, Agreement] and the rights and obligations contained herein are regulated by Italian law"*

Furthermore, as already indicated, the arbitration clause also provides that:

*"The arbitration panel shall decide in accordance with the rules of law of Italy".*

Finally, the Parties in their legal submissions agreed to the application of Italian substantive law.

13. Accordingly, pursuant to Article 3, para. 2 of the Rules, the Tribunal confirms that Italian law is applicable to the Agreement.
14. The ambit of Italian law also includes the substantive law contained in international conventions ratified by Italy. One such convention relevant to the dispute is the UN Convention on Contracts for the International Sale of Goods made in Vienna on 11.04.1980 ("Convention" or "CISG") and ratified by Italy pursuant to Law no. 765, dated 11 December 1985.
15. The present dispute concerns the sale of goods (alligator hatchlings<sup>1</sup>) and the supply of other services between parties having their registered offices in different countries (Italy and United States). The United States of America has also ratified the CISG. Therefore, for the purposes of determining the applicable substantive law of the dispute, it is also necessary to decide whether the present case falls within the ambit of application of the CISG.
16. The CISG does not contain a definition of *sales contract*. However, based on Articles 30 and 53 of the Convention, a sales contract may be defined as a contract in which a seller is obliged to deliver goods, transfer property and release any documents relating thereto and a buyer is obliged to pay the price and to take over the goods<sup>2</sup>.
17. In the present case, the Agreement includes not only the sale of goods but also the supply of services.
18. In particular, the obligations of the Parties as set out in the Agreement can be summarised as follows:
  - (i) Prada is to purchase from Caporicci all of the alligators' hatchlings born from the eggs (estimated to be 15,000 in number) to be procured by Caporicci (Article 2.1);
  - (ii) Caporicci is to provide for the capture, incubation, shipping, logistics, initial care, vaccine and feeding of the animals (Article 2.4);
  - (iii) Caporicci is to raise on its farm the hatchlings purchased by Prada for a minimum period of 12 months and until Prada decides to transfer them to a different farm or elsewhere (Article 2.5).

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<sup>1</sup> The concept of goods in the CISG includes live animals. See, by way of example, Oberlandesgericht Hamm, 30 November 2010, available at the webpage <http://www.cisg-online.ch/content/api/cisg/display.cfm?test=2217>; Landgericht Flensburg, 19 January 2001, available at the webpage <http://www.cisg-online.ch/content/api/cisg/display.cfm?test=619>; Cours d'Appel Paris, 14 January 1998, available at the webpage <http://www.unilex.info/case.cfm?pid=l&do=case&id=278&step=FullText>; TullText; Gerechtshof's Arnhem, 22 August 1995, available at the webpage <http://www.unilex.info/case.cfm?pid=l&do=case&id=156&step=FullText>.

<sup>2</sup> See Trib. Padova, Italy, 11 January 2005, in *Rivista di diritto internazionale privato e processuale*, 2005, page 791; Trib. Padova, 25 February 2004, in *Giurisprudenza italiana*, 2004, p. 104. See also F. Ferrari, *Trattato di Diritto Commerciale e di Diritto Pubblico dell'Economia*, Vol. XXI - *La Vendita Internazionale*, CEDAM, 2006, p. 119.

19. The fact that the Agreement includes the provision of services does not exclude *per se* the possibility of the Agreement falling within the ambit of the CISG, as long as the supply of services does not constitute the "*preponderant part*" of the obligations of the party which furnishes the goods (Article 3, paragraph 2, CISG). On the other hand, if the services are preponderant, the application of the CISG is excluded.
20. In order to determine whether the obligations of the seller consist predominantly in the supply of labour and/or services, it has been suggested as a main test that a comparison needs to be made between the economic value of the obligations relating to the supply of labour and services vis-a-vis the economic value of the obligations regarding the supply of the goods, as if two separate contracts had been made<sup>3</sup>. Where a clear comparison between the value of the goods and of the services covered by a contract is not possible, alternative criteria have also been used, such as the circumstances surrounding the conclusion of the contract and an examination of the purpose of the contract<sup>4</sup>.
21. In the case at hand, the Parties have agreed in their Purchase Agreement that Prada would pay a price of 100,00 USD for each of the hatchlings born from the eggs procured by Caporicci (Article 2.1) and that such price would include a list of services to be provided by Caporicci (Article 2.4). The list of services included the procurement of alligator eggs from trappers, transport of the eggs, their incubation and hatching, the care of the hatchlings born live, their breeding for a minimum of 12 months and until their transfer to another farm upon Prada's order.
22. Based on the number and consistency of the services to be provided over a period of one year or more, it appears reasonable to conclude that the value of the services to be provided by Caporicci well exceeded the value of the goods (alligator hatchlings) to be supplied, also considering the agreed price for each hatchling of US\$100.00. Therefore, such services constitute the preponderant part of Caporicci's obligations under the Agreement.
23. In light of the above, the Tribunal determines that the CISG is excluded from application to this case, pursuant to Article 3, para. 2, of the Convention.

## VI. History of the Arbitration Proceedings

24. On 1 December 2017, the Claimant filed its Request for Arbitration ("**Request**") and supporting exhibits with the Milan Arbitration Chamber (also "**Milan Chamber**"). The Request was served by the Milan Chamber on the Respondent on 11 December 2017.
25. On 9 January 2018, the Respondent filed with the Milan Chamber its Reply to the Request, together with supporting exhibits, in compliance with the time limit allowed by the Rules.

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<sup>3</sup> Schelechtriem, *Uniform Sales Law. The UN Convention on Contracts for the International Sale of Goods*, p. 31; also F. Ferrari, *op. cit.*, p. 148. In this sense, implicitly, see also Cour d'Appel de Paris, France, case no. 1998/38724, available at the webpage <http://www.unilex.info/case.cfm?id=76l>; Tribunal of International Commercial Arbitration at the Russian Federation, case no. 356/1999, available at the webpage <http://www.unilex.info/case.cfm?id=874>; Oberster Gerichtshof, Austria, case no. 4 Ob 179/05k, available at the webpage <http://www.unilex.info/case.cfm?id=1082>.

<sup>4</sup> See CLOUT case no. 346, Landgericht Mainz, Germany, 26 November 1998; Cass. Civ. Italy, 9 June 1995, no. 6499, *Foro Padano*. 1997, 2 ff

26. On 9 March 2018, the Chamber confirmed the appointment of Mr Andrew Paton as sole arbitrator in the arbitration proceedings, appointed directly by the Arbitral Council pursuant to [Article 14\(2\) of the Rules](#).
27. At the first hearing set down for 29 March 2018, held in the premises of the Milan Chamber, the Arbitral Tribunal was formally constituted as reported in the Minutes of the Hearing dated the same day and signed by the Tribunal and the Counsel for the Parties. At the same hearing, the Tribunal made orders regarding the seat, language and procedural law applicable to the arbitration proceedings and fixed additional procedural and evidentiary rules in consultation with counsel for the Parties. Finally, following further consultation, the Tribunal issued an agreed procedural timetable.
28. In accordance with the time limits in the procedural timetable, on 27 April 2018 Prada filed its detailed Statement of Claim, complete supporting documentation and a witness statement of Mr Franco Tani. On 28 May 2018, Caporicci filed its detailed Statement of Defence, complete supporting documentation but did not file any witness statement.
29. On 6 June 2018, the Tribunal held a case management conference that both Counsel for the Parties attended in teleconference. The purpose of the case management conference was to discuss the next procedural steps in the arbitration and decide an updated procedural timetable. The Tribunal also took note that Respondent had not filed any witness statement by the due term. Following discussion on this point, Counsel for Respondent advised that Respondent wished to present a witness statement(s) from one or both of Messrs Domenico and Francesco Caporicci, respectively CEO and Vice-President of the Respondent, and made an oral application to this effect..
30. Counsel for the Claimant objected with force to the Respondent's application, submitting that (i) a representative of a party cannot be called as a witness pursuant to the Italian Code of Civil Procedure, and that (ii) the relevant time limit for the Respondent to file witness statements pursuant to the Procedural Timetable had expired.
31. Further to that conference, by Procedural Order no. 2 dated 8 June 2018, the Tribunal granted each of the Parties a term to file short written memorials setting out their legal arguments as to the admissibility of Respondent's application to call, after the original deadline, one or both of Messrs Franco and Domenico Caporicci as fact witnesses in the proceedings.
32. By Procedural Order no. 3 dated 6 July 2018, following the filing by each Party of its memorial within the term allowed, the Tribunal granted Respondent's application for the filing of witness statement(s) for Messrs Franco and Domenico Caporicci and ordered the Respondent to pay the Claimant's reasonable legal costs involved in the preparation of its memorial dated 18 June 2018 that had been required due to Respondent's late application, such legal costs to be assessed at the conclusion of the arbitration proceedings.
33. In accordance with Procedural Order no. 3, on 20 July 2018 Respondent filed two witness statements of Mr Domenico Caporicci and Mr Franco Caporicci (including several exhibits).
34. On 24 July 2018, the Tribunal conducted a further case management conference by teleconference in which counsel of both Parties participated, for the purposes of setting a date for the hearing of

the witnesses and deciding any further procedural steps in the arbitration. Having heard the Parties, the Tribunal set down the date for the examination of the three witnesses on 2 October 2018 at the Milan Chamber and issued an updated procedural timetable.

35. On 2 October 2018, the factual witness hearing took place ("**Witness Hearing**") at the offices of the Milan Chamber. Prior to the taking of witness evidence, Counsel for each of the Parties presented opening oral submissions. Subsequently, Mr Franco Tani, a senior manager of Prada, gave evidence on behalf of the Claimant and Mr Franco Caporicci, President of the Claimant, gave evidence on behalf of the Respondent. The other witness called by the Respondent, Mr Domenico Caporicci, could not attend the hearing due to ill-health. Following discussion, counsel for the Respondent declared that he renounced to the taking of the testimony and to reliance on the witness statement of Mr Domenico Caporicci.
36. As requested by the Tribunal at the Witness Hearing, on 8 October 2018 Respondent filed supplementary documentation (the Annual Report for the year 2015 filed by Caporicci to the Florida Fish and Wildlife Conservation Commission<sup>5</sup>). Respondent also filed its 2016 Annual Report<sup>6</sup>, to which Claimant subsequently objected for the following reasons: (i) the 2016 report had not been specifically requested by the Tribunal at the hearing, and (ii) neither of the reports filed contained any official receipt stamp or signature of the Fish and Wildlife Conservation Commission that confirmed that they were copies of documents filed with the Commission. Therefore Respondent submitted that such documents were inadmissible.
37. As agreed by the Parties at the prehearing conference held on 24 July, a verbatim transcript was taken of the Witness Hearing. A draft of the verbatim transcript of the hearing was prepared and sent to the Parties by the Secretariat on 9 October for comment and correction. The final version of the transcript was made available to the Tribunal by counsel on 10 October 2018.
38. On 26 October 2018, within the time limit granted by the Tribunal at the Witness Hearing, both Claimant and Respondent filed their respective closing written submissions and submissions on costs ("**Closing Submissions**"), as well as consolidated lists of exhibits.
39. On 11 December 2018, the Parties consented to an extension of the time limit for the issue of the final award from 31 December 2018 to 31 January 2019, pursuant to [Article 32 of the Rules](#).

## VII. Summary of relevant facts

40. The facts in this arbitration were introduced into evidence through the production by the Parties of historical documents filed with their written submissions and in accordance with the Tribunal's procedural orders and timetable. The documentary evidence was confirmed and supplemented by the written statements and oral testimony of two witnesses of fact, Mr Franco Tani (called by Prada) and Mr Franco Caporicci (called by Caporicci). The two witnesses gave oral evidence at the Witness Hearing and were questioned by the respective counsel for the Parties and by the Tribunal.

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<sup>5</sup> See doc. R-7.

<sup>6</sup> See doc. R-8.

41. This dispute has its origins in 2013 when Gianandrea Pezzoli of the company GNP Pelli, an expert tanner of reptile skin hides operating in Italy, contacted Mr Domenico Caporicci, owner and President of White House Alligator Farm LLC and of Caporicci USA Corp. (the Respondent herein) seeking his advice and assistance to enter the market of American alligator hides. The initial contact was followed by letter dated 2 January 2014<sup>7</sup> to Caporicci confirming that GNP Pelli had formed a strategic alliance with Prada and other well-known fashion leaders for the purposes of expanding its hides business by the introduction of American alligator hides.
42. Subsequently, in May 2014, Prada was introduced to Caporicci through GNP Pelli and Prada confirmed its interest in obtaining a supply of American alligator hides for use in its leather products.
43. The Parties continued their discussions regarding the possible supplies and forms of collaboration in achieving this and, on or about 28 May 2015, signed a Letter of Intent ("**Letter of Intent**")<sup>8</sup> for the purchase by Prada from Caporicci of American alligator hatchlings.
44. The terms of the Letter of Intent, to be transformed by the Parties into a contract within 60 days, provided, *inter alia*, that:
- "*Caporicci will procure to Prada around 15.000 alligator's eggs from the authorized trappers within the end of June 2015.*" (Article 1, letter a))
  - "*Prada will purchase from Caporicci all the alligator's hatchlings born from the eggs at 100.00USD each one, considering the hatchlings mortality rate around 15%.*" (Article 1, letter b))
45. The Letter of Intent also provided (Article 1, letter e)) that Prada would immediately fund Caporicci for the purchase of the alligator eggs from trappers to the tune of US\$1,200,000, to be paid in three equal installments at monthly intervals, commencing from the following day, 29 May 2015 and with the last installment on 24 July 2015. Caporicci was to use the funds to procure alligators' eggs for Prada during the 2015 harvest season.
46. Notwithstanding its name, the Letter of Intent also expressly provided (Article 2) that its terms were binding on the Parties.
47. Prada made the advance payments to Caporicci as foreseen in the Letter of Intent<sup>9</sup>.
48. The final Purchase Agreement was entered into on 25 September 2015<sup>10</sup> (several months after the date of the Letter of Intent) and, save for the requirement to procure the alligators' eggs by the end of June 2015, confirmed the main commercial terms as set out in the Letter of Intent.
49. In particular, the Agreement confirmed that its subject matter  
*"is the purchase by Prada of the alligator's hatchlings born from the around 15,000 eggs which*

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<sup>7</sup> See doc. R-5

<sup>8</sup> See doc. C-3.

<sup>9</sup> See doc. C-11.

<sup>10</sup> Doc. C-2.

*Caporicci bought from authorized trappers, and their raising by Caporicci for a minimum period of 12 months."* (Article 1.1)

50. No express reference was made in the Agreement as to whether Caporicci had actually procured the eggs within the term required in the Letter of Intent. However, the Agreement (Article 2.1) confirmed Prada's obligation to purchase from Caporicci "*all the alligator hatchlings born from the eggs referred to in point F of the premises....*", that is, around 15,000 alligators' eggs procured by Caporicci for Prada pursuant to the Letter of Intent, also taking into consideration a projected hatchling mortality rate of around 15%.
51. The Agreement provided (Articles 2.3 and 2.6) that Prada was the owner of the alligators' eggs from the moment of their purchase by Caporicci and that Caporicci could not sell to third parties the eggs acquired for Prada. In this regard, Caporicci was to notify Prada in writing, not later than 15 October 2015, of the number of hatchlings born alive which shall be the subject of the purchase (Article 2.2). The Agreement did not provide for a minimum number of live hatchlings to be the subject of the purchase, the obligation consisting for Caporicci to sell and Prada to purchase any and all hatchlings born alive from the eggs procured by Caporicci pursuant to the Letter of Intent.
52. Under the Agreement (Articles 2.4 and 2.5). Caporicci was required to supply services related to the procurement/capture, incubation, shipping, logistics, initial care, vaccination and feeding of the hatchlings and to raise the hatchlings in its farm for a minimum period of 12 months and until Prada would decide to transfer the hatchlings to a different farm, and to ensure that they would be in good condition at the time of the transfer.
53. Pursuant to the Agreement, by note dated 15 October 2015 entitled "Progress Report / Corrective Action Plan"<sup>11</sup>. Caporicci notified Prada that there had been a "*lower than expected yield of eggs and hatchlings during the past season*", and also provided some detailed reasons for this that are not relevant here. Caporicci also explained that some of the funds provided by Prada had been used for Caporicci's (and its affiliated company, White House Alligator Farm's) future infrastructure needs. Caporicci therefore hoped to extend the contract period for the procurement of the eggs and hatchlings into the 2016 season so that the total order (as already funded by Prada) could have been fulfilled.
54. By letter dated 12 November 2015<sup>12</sup>, Prada rejected Caporicci's proposal to extend the Agreement to the 2016 season and also rejected Caporicci's other proposals to enter into a kind of partnership or joint venture for the future procurement of alligator hatchlings. In its letter, Prada pointed out that, pursuant to the Letter of Intent, Caporicci had undertaken to procure and purchase, by the end of June 2015, around 15,000 alligators and that, taking into consideration an average mortality rate of 15%, had "*guaranteed the delivery of about 12,750 hatchlings which our company had undertaken to purchase at a price of USD 100.00 each.*" The letter went on to say "*...considering that the hatchlings born from purchased eggs are 4,487 (as far as we can see and unless otherwise specified by you), the amount our company owes you to date pursuant to our agreement is USD 448,700.*" Prada then requested the reimbursement of the difference (USD 1,200,000 advanced by it less USD 448,700 being the agreed value of the hatchlings transferred) amounting to USD 751,300 and also

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<sup>11</sup> See doc. C-4.

<sup>12</sup> See doc. C-5.

proposed to Caporicci a repayment plan. In short, Prada agreed with Caporicci that the latter had procured 4,487 hatchlings but rejected Caporicci's proposal to extend the Agreement into the 2016 season.

55. At that point, the communications between the Parties suffered an abrupt standstill and there were no other documents of relevance exchanged by the parties for several months'. However, following Mr Franco Caporicci's oral testimony and at the request of the Tribunal, Caporicci produced an official Alligator Farm Annual Report signed by Mr Domenico Caporicci for Whitehouse Alligator Farms for the year ending 31 December 2015 which had been filed with the Florida Fish and Wildlife Conservation Commission in Ocala Florida. That report showed the grand total number of live alligators (including hatchlings) on Caporicci's farms as of 31 December 2015 was 4,238<sup>13</sup>.
56. During the early part of 2016, Caporicci continued to raise the hatchlings on its farms. Then, on or about 18 May 2016, Prada engaged Donald Farms (company originally introduced to GNP Pelli and Prada by Caporicci) to take delivery from Caporicci of a maximum number of approximately 1,500 alligator hatchlings from the 2015 year class and 100 hatchlings from the 2014 year class. On 20 May, Prada took delivery through Donald Farms of 700 2015 year class hatchlings and 26 non-hatchling Alligators of 2014 year class<sup>14</sup>. The value agreed between the Parties amounted to a total of US\$116,000 apparently calculated on the size of the alligators, including transportation and handling cost<sup>15</sup>.
57. Caporicci subsequently invoiced GNP Pelli for the 726 alligators delivered to Donald Farms<sup>16</sup> in apparent contradiction with Prada's ownership of the alligators pursuant to the Agreement. During the course of the proceedings, Caporicci agreed that the delivery was carried out pursuant to the Agreement and that the sum should be subtracted from the amount to be reimbursed. Accordingly, Caporicci confirms that the 726 alligator hatchlings transferred to Prada on 20 May 2016 were already the property of Prada at the time of transfer<sup>17</sup>.
58. Also during 2016, as partial reimbursement of the funds anticipated by Prada, Caporicci assigned to Prada a receivable payable to it by GNP Pelli in the sum of US\$74,686.66<sup>18</sup>.
59. The Parties corresponded with each other and also met on at least one occasion between the transfer of the hatchlings on 20 May 2016 and the commencement of this arbitration but were unable to resolve their differences<sup>19</sup>.
60. Unless otherwise indicated, the facts set out above are facts that have been agreed by the Parties to these proceedings.

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<sup>13</sup> Page 6 of 2015 Annual Report - doc. R-7.

<sup>14</sup> See doc. C-13.

<sup>15</sup> See doc. C-7.

<sup>16</sup> See doc. C-7.

<sup>17</sup> Page 23, Sect. 3 of Respondent's Closing Submissions.

<sup>18</sup> See doc. C-6

<sup>19</sup> See docs. C-14-C-23

## VIII. Applications of the Parties

61. In its Request for Arbitration, Prada claimed that Caporicci had committed breaches of the Agreement. In particular, Prada complained that Caporicci had not procured all of the hatchlings (around 15,000) in accordance with the Letter of Intent and with the Agreement and that it had not performed its obligation to pay back to Prada the difference between the USD 1,200,000.00 advanced by Prada and the monetary value of the hatchlings that had been delivered to it by Caporicci.

62. Accordingly, Prada sought the following relief, as set out in its Closing Submissions dated 26 October 2018, as follows:

To render an award:

*(i) "declaring that the documents filed by Caporicci USA, Corp, on October 8, 2018, are inadmissible*

*(ii) declaring that Caporicci USA, Corp, breached the Contract entered into by the Parties on September 25, 2015;*

*(iii) ordering Caporicci USA. Corp. to pay US\$1,009,313.34 to Prada S.p.A. pursuant to Articles 2.2 and 2.7 of the Contract;*

*(iv) declaring that Prada S.p.A. is the exclusive owner of the 726 hatchlings that were transferred to Donald Farms, and thus ordering Caporicci to immediately cease claiming payment for, and or disposing of, the hatchlings in question;*

*(v) ordering Caporicci USA. Corp. to pay interest on any sum awarded Prada S.p.A. as per (iii) above or (vi) and (viii) below, on the basis of the applicable interest rate, from October 25, 2015 until the date of the final award in this arbitration;*

*in the alternative to (iii) above and on a subordinate ground:*

*(vi) ordering Caporicci USA, Corp. to pay US\$ 843,813,34, or any other higher amount to be determined on an equitable basis, to Prada S.p.A. pursuant to Articles 2.2 and 2.7 of the Contract, and thus*

*(vii) ordering Caporicci USA, Corp, to make immediately available to Prada S.p.A. 2,232 alligators of the 2015 class, and/or*

*(viii) ordering Caporicci USA, Corp, to pay US\$ 100,00 to Prada for each of the 2,232 alligators of the 2015 class that Caporicci is not able to make available to Prada;*

*in any case:*

*(ix) imposing all costs of these arbitral proceedings upon Caporicci USA. Corp;*

*(x) awarding Prada S.p.A. its costs of legal representation and assistance for an amount of no less than € 59,059.29 plus € 7,295.60 as reasonable legal costs involved in the preparation of its memorial dated June 18. 2018; and*

*(xi) ordering Caporicci USA. Corp to pay interest on any sum awarded to Prada S.p.A., on the basis of the applicable interest rate, from 15 days after the service of the final award in this arbitration until full payment is received by Prada".*

63. Respondent, in its Statement of Defence, opposed Prada's claims and contested having committed any breaches of the Agreement.

64. In summary, Respondent argues that: (i) based on the express wording of the Agreement, Caporicci's obligation to repay the advance payment to Prada operates only in the event that it had procured to Prada live hatchlings in a number below 1,200 (and not 12,000 as, instead, asserted by Prada in its Memorials); (ii) Caporicci did in fact procure to Prada, at the time of the relevant facts, more than 1,200 live hatchlings; (iii) any deadlines in the Agreement are not to be considered essential as the final aim of the Parties was that of building a long-term collaboration; and that (iv) the Agreement is not a simple purchase agreement because its object was not only the sale but mainly the raising of the alligator hatchlings for at least one year.

65. Respondent confirms that, as at the date of its Closing Submissions dated 26 October 2018, it has the capacity to deliver about 9,950 animals<sup>20</sup>.

66. Therefore, in the Respondent's Closing Submissions, Respondent sought the following relief:  
*"... that the Tribunal render an award:*

*(1) dismissing and rejecting the requests for relief sub (i)-(vii) formulated in the Statement of Claim dated 27th April 2018 filed by Prada:*

*(2) dismissing and rejecting the new request sub (iii) formulated in the Statement of Claim dated 27th April 2018 filed by Prada:*

*In case the sole Arbitrator does not dismiss and reject the request sub (1) and (2):*

*(3) ordering the parties to perform their obligations pursuant to the Agreement with Caporicci providing hatchlings or yearlings or young alligators of a value of 336.263.34 USD or of the different value the sole Arbitrator will determine at the end of this arbitral proceeding, and Prada accepting those alligators and paying for transportation: or,*

*(4) determining the amount to be reimbursed to Prada according to the criteria indicated by Respondent (see par. X, page 16 of Statement of Defence of 28th May 2018 and par V.2 page 19 and 20 of the Statement of Defence of 09th January 2018) and reject all other requests for relief : or*

*(5) determining the amount to be reimbursed to Prada according to the criteria determined by the Arbitrator (evaluating the expenses for the breeding the animal for 3 years):*

*In any case*

*(a) dismissing the requests for relief sub (v)-(vii):*

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<sup>20</sup> See Respondent's Closing Submissions, page 15, line 10.

*(b) imposing all costs of the arbitral proceeding upon Prada S.p.A.*

*(c) in case request sub (b) is not accepted, imposing that the cost of the arbitral proceeding is to be splitted equally between the two parties:*

*(d) ordering Prada to pay all costs of legal representation and assistance of Caporicci as attached."*

## **IX. Preliminary Issues**

### **A. United States Court Proceedings**

67. On 1 December 2017, Caporicci filed a Complaint in the Florida Circuit Court against Prada against GNP Pelli and against Donald Farms claiming tortious conduct and/or conduct damaging Caporicci allegedly carried out by each of the Defendants<sup>21</sup>. On 10 April 2018, Prada and GNP Pelli filed a joint motion to compel arbitration and stay the court proceedings<sup>22</sup>. On 7 May 2018, the US District Court for the Southern District of Florida stayed the US legal proceedings in order *"to allow the parties to arbitrate Plaintiff's [that is, Caporicci's] claims"*<sup>23</sup>.
68. The jurisdiction of this arbitral Tribunal based on the arbitration clause contained in the Agreement has not been challenged by the Parties, either in these proceedings brought by Prada against Caporicci nor in the US proceedings brought by Caporicci against the three parties named above (including Claimant) for alleged tortious conduct. In any event, on 7 May 2018 the US Court stayed the US proceedings in favour of the present arbitration based on the arbitration clause in the Agreement between Caporicci and Prada.
69. Accordingly, the US Proceedings do not in any way affect or influence the jurisdiction of this Tribunal.

### **B. Admissibility of Documents produced by Caporicci on 8 October 2018**

70. In its Closing Submissions dated 26 October 2018, Prada contested the admissibility of two documents filed by Caporicci in the Arbitration on 8 October 2018. The documents were referred to in the oral testimony of Mr Caporicci on 2 October. The documents are the official annual alligator inventories of Caporicci's alligator farm, White House Alligator Farm LLC, for the years ending 31 December 2015 and 31 December 2016, filed with the Florida Fish and Wildlife Conservation Commission (hereinafter, "FFWC")<sup>24</sup>.

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<sup>21</sup> See doc. R-3(a),(b),(c).

<sup>22</sup> See doc. C-26.

<sup>23</sup> See doc. C-27.

71. The Applicant contests the production of the documents on the grounds that they do not contain an official filing stamp of the FFWC. Further, the 2016 report was not signed nor specifically requested by the Tribunal. However, the witness made reference to the obligation he had to file a declaration with the FFWC on the 31 December of each year<sup>25</sup>. Upon the Tribunal's request for the 2015 annual report, the Respondent produced the annual reports for both the 2015 and 2016 calendar years. In the Tribunal's view, the witness was open and reliable in his testimony and voluntarily made reference to the reports that Caporicci had filed. Further, the Claimant had the opportunity to comment on the content of the reports filed and did so at some length in its Closing Submissions<sup>26</sup>. The Claimant was not prejudiced by the late filing and there is no basis to believe that the reports are not exact copies of what the Respondent filed with the FFWC. For these reasons, the Tribunal admits the two documents (R-7 and R-8) into evidence.

## C. Characterisation of the Agreement

72. The Parties disagree as to the characterization of the Agreement under Italian law. In particular, Prada submits that the Agreement is a sales contract pursuant to Article 1470 of the Civil Code<sup>27</sup>, even if it also provides for the supply of ancillary services. On the other hand, Caporicci initially submitted that the Agreement was to be qualified as a *soccida* pursuant to Article 2170 of the Civil Code<sup>28</sup>. However, in his Closing Submissions, Respondent's counsel did not pursue this legal argument but more generally argued that, despite the name of "purchase agreement" used by the Parties, *"it is difficult to categorize this contract, but there is no doubt that it is not a simple purchase agreement"*<sup>29</sup>.

73. The Tribunal considers that, under Italian law, the Agreement can be considered a mixed contract (*contratto misto*), that is, one that does not fall within any single contract type defined in the Civil Code but consists of elements of more than one contract type. A mixed contract has a unique cause, in which the elements of different contract types are combined<sup>30</sup>.

74. In the present case the Agreement includes the elements of a sales contract (the sale/purchase of live hatchlings born from alligator eggs procured by Caporicci) and also those of a services contract (the capture, incubation, shipping, logistics, initial care, vaccine, feeding and raising of the animals for at least 12 months). Clear evidence was exhibited in the proceedings that the Parties did not enter into the Agreement to pursue a joint venture or other form of association<sup>31</sup>. On the facts of the case, the exact characterization of the Agreement does not need to be decided in this arbitration, as it is sufficient for the Tribunal to determine whether there were any breaches of the express contractual obligations contained in the Agreement pursuant to the relevant applicable provisions of Italian law.

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<sup>24</sup> Docs. R-7 and R-8.

<sup>25</sup> See Transcript of Witness Hearing, page 51, lines 5-9.

<sup>26</sup> pages 16-18 of Claimant Closing Submissions.

<sup>27</sup> Pages 8 and ff. of Claimant Closing Submissions.

<sup>28</sup> Page 5 of Respondent's Statement of Defence.

<sup>29</sup> Page 16 of Respondent's Closing Submissions.

<sup>30</sup> For a definition of mixed contract, see, by way of mere example, Supreme Court of Cassation, Section II, n° 22828 of 12 December 2012.

<sup>31</sup> See doc. C-28; see also Article 8.3 of the Agreement, which reads *"This Agreement shall not be deemed to create any agency, partnership, or employment relationship within the parties"*.

## X. The issues in dispute

### A. The correct interpretation of Article 2.2; the obligation of Caporicci to return to Prada any excess sums advanced by Prada and not used

75. Having regard to the written submissions and final applications of the Parties, a central issue to be decided concerns the meaning of the last phrase of Article 2.2 of the Agreement. Article 2.2 reads: *"It's understood that if the hatchlings born alive are less than 1.200 units. Caporicci shall pay back to Prada the amount paid in excess."*
76. The Parties disputed whether the figure of 1,200 units was a typographical error and was intended to be 12,000 units (Prada's position) or whether the 1,200 units was correct and reflected the true intention of the Parties (Caporicci's position).
77. Based on the number as written and on the wording, Caporicci submitted that, if the hatchlings born alive were more than 1,200 units, then it could clearly be implied from the Agreement that Caporicci was not required to pay back any part of the advance payment that exceeded the monetary value of the eggs and hatchlings procured by Caporicci for Prada.
78. The advance payment made by Prada of US\$1,200,000 was calculated as the price for 12,000 live hatchlings at the contractual rate of US\$100.00 each ( $US\$100.00 \times 12,000 = US\$1,200,000$ ), and not 1,200. This squares with the fact that, taking into consideration a hatchling mortality rate of 15% as provided in the Agreement, the approximate likely number of hatchlings that the Parties had foreseen for transfer to Prada was around 12,750 ( $15,000 \times 85\% = 12,750$ ).
79. No explanation was provided by Caporicci during the course of the arbitration as to the legal or contractual grounds on which Caporicci could be entitled to keep the advance payment made in excess of 1,200 hatchlings, in the event that the total hatchlings were less than 12,000 (Caporicci reported that there were in fact 4,487 hatchlings on 15 October 2015<sup>32</sup>). Caporicci submitted that the advance payment was to be considered a kind of investment by Prada for the development by Caporicci of its new alligator farm and was connected to discussions between the Parties for a longer term project between them. It could therefore be inferred that the difference in the number of hatchlings could be made available later, in 2016. However, there was no clear evidence submitted to support the submission. On the contrary, even before the Letter of Intent was entered into, Franco Tani of Prada had clarified to Franco Caporicci by email dated 24 November 2014 that Prada could not participate in Caporicci's alligator farm development project because considered too ambitious for a project in such an early phase<sup>33</sup>, and no evidence to the contrary that Prada later changed its mind came out. Prada had confirmed however that it was still interested in the hides.

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<sup>32</sup> This number of 4,487 hatchlings is indicated in Prada's letter of 12 November 2015 (doc. C-5), which was sent in reply to Caporicci's letter of 15 October 2015. These figures are not contested by Caporicci.

<sup>33</sup> See doc. C-28.

80. As set out in the relevant facts. Prada had agreed with Caporicci that the latter would procure around 15,000 alligator's eggs from authorised trappers and that Prada would purchase the alligator hatchlings born alive from those eggs at a price of US\$100.00 each. Caporicci would ensure that the eggs procured by it for Prada were incubated, hatched, vaccinated, fed and then reared on Caporicci's breeding farm. The hatchlings would then be collected by Prada from Caporicci's alligator farm for transfer to another farm or elsewhere pursuant to Article 2.5 of the Agreement.
81. If Caporicci procured less live hatchlings than 12,000, then the contractual value of those hatchlings would have been less than the sum advanced by Prada of US\$1,200,000. In that case, it was important for the Parties to regulate how the excess sum was to be dealt with, for example, the Parties could have agreed that Caporicci retain the difference of the advance payment to be used in the next (2016) season, or could have required Caporicci to deliver to Prada other alligators that it had on its farm, including yearlings and larger alligators. However, there is no other provision in the Agreement as to how the Parties would regulate the excess of the advance payment, other than the clause referring to the 1,200 units.
82. If the indication of 1,200 hatchlings had reflected the true intention of the Parties, it is difficult to explain why the Parties failed to add any provision as what would happen to the advance payment in the event that Caporicci delivered a number of hatchlings between 1,200 and 12,000, as actually occurred. This is especially so in consideration of the expression "*it's understood that*" which has a confirmatory connotation, similar to other frequently used expressions in legal drafting such as "for the avoidance of doubt". In other words, the Parties wished to put beyond doubt that Caporicci was required to return to Prada that part of the advance that was not used to procure the hatchlings for Prada at the cost of US\$100.00 per hatchling.
83. Italian law lays down numerous rules for the interpretation of contracts. Primary importance must be given by the interpreter to establishing the common intention of the Parties, without being limited by the literal meaning of the words used<sup>34</sup>. To this end, it is also necessary to take into consideration the parties' overall behaviour, including after the contract has been entered into. The contract must also be read as a whole<sup>35</sup>. Summarising the prevailing jurisprudence in the words of the Italian Supreme Court of Cassation, "*The interpretation of a contract from a logical point of view is not a straight path (commencing from the text and finding the intention) but is a circular path, which requires the interpreter to analyse the text, understand thereby the intention of the parties and then verify if the hypothetical intention formulated on the text is coherent with the rest of the contract and with the conduct of the parties.*"<sup>36</sup>
84. The Italian Civil Code (Article 1433) specifically regulates situations in which there are errors due to mistaken formulae, or errors in drafting or the transcription of factual elements. The need to conserve the validity of contracts foresees that the interpreter must identify the effective and real intention of the parties in order to identify a real and effective agreement on all of the essential elements, above all, regarding the object<sup>37</sup> of the contract.

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<sup>34</sup> See Article 1362, 1st para., Civil Code.

<sup>35</sup> See Article 1362, 2nd para., Civil Code.

<sup>36</sup> Supreme Court of Cassation, Section III, no. 9380 of 10.05.2016, in *Ciustizia Civile Massimario* 2016. Rv 639900. See also Supreme Court of Cassation, Section III, no. 25840 of 09.12.2014.

<sup>37</sup> See Supreme Court of Cassation, Section III, no. 6116 of 12.03.2013.

85. For all these reasons, the Tribunal concludes that the number indicated in the Agreement of 1,200 units could not reflect the common intention of the Parties and was a typographical error in that the clause should have read 12,000 units. In other words, the Tribunal finds that the Parties intended the advance of US\$1,200,000 to be treated as an advance payment for the hatchlings calculated on the basis of the agreed cost of €100 per hatchling and that the Agreement provided that, in the event that Caporicci procured less than 12,000 live hatchlings, then Prada was entitled to be paid back the difference with respect to the amount it had advanced for the purchase of the alligators eggs and their rearing.

## B. The Parties' respective obligations regarding the delivery of the hatchlings to Prada

86. It is not in dispute that, on 15 October 2015, Caporicci notified Prada that it had on its farm 4,487 live alligator hatchlings from the eggs procured pursuant to Prada's order.
87. By letter dated 12 November 2015, Prada contested Caporicci's breach of the Agreement in that the number of hatchlings was far less than the estimate of 12,750 (15,000 less 15%) provided in the Agreement. In the same letter, Prada did not contest the number of hatchlings indicated by Caporicci that it had procured for Prada. In fact, Prada acknowledged that the sum *payable to Prada for those hatchlings amounted to US\$ 448,700, that is, "... US\$ 100.00 for each hatchling born alive."*<sup>38</sup>
88. In fact, pursuant to the terms of Article 2.2, Prada *"shall pay the price of the hatchlings, according to the number communicated..."*. In other words, Prada was already the owner of the eggs and was required to pay for those eggs from which live hatchlings had been born, having subtracted from the final payment the amount of US\$1,200,000 already advanced.
89. The Agreement did not provide for a final payment term for payment by Prada following notification by Caporicci of the number of hatchlings that it had procured but nothing turns on this because, in the circumstances, Caporicci never requested a further payment from Prada. What is important is that Prada acknowledged the number of eggs in its letter dated 12 November and there is no evidence to put that number count in doubt. In fact, Prada clearly set out in its letter that Caporicci was required to return to Prada the difference in the sum of of US\$ 751,300. This, however, Caporicci did not do.
90. For several months, there was no further communication between the Parties of relevance to these proceedings. Finally, in May 2016, Prada arranged for Donald Farms to pick up alligator hatchlings on its behalf.
91. On 20 May 2016, Donald Farms took delivery of 726 alligators (only) that were described by Caporicci in its invoice to GNP Pelli as alligator yearlings and 4 feet alligators. The remaining hatchlings that Caporicci had procured for Prada remained on Caporicci's farm.
92. The Agreement provided that Caporicci was to rear the hatchlings purchased by Prada on its farm for a minimum period of 12 months and until Prada will decide to transfer the hatchlings to a

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<sup>38</sup> Doc. C-5, page 1, 3rd para..

different farm. In fact, the hatchlings are still to be delivered to Prada that has never arranged to collect them.

93. It is underlined that, based on the Agreement, the number of hatchlings that were effectively picked up by Prada at the time of delivery was not relevant to the calculation of the sum that had to be reimbursed by Caporicci. Prada could not pick and choose the hatchlings that it wanted to collect and pay for. Pursuant to the Agreement, the number of hatchlings had already been determined based on the notification of 15 October 2015. From that point on, the requirement of Caporicci was to keep them in good condition pursuant to the terms of the Letter of Intent and Article 2.5 of the Agreement and make them available to Prada when Prada advised that it wanted to transfer them to another farm.
94. If any of the 4487 hatchlings were not in good condition or were missing at the time of delivery, then it was up to Prada or its representative to raise objections either at the time or after the delivery. This Prada did not do. On the other hand Mr Franco Caporicci, in his oral testimony, confirmed that at the time of the transfer of the hatchlings by Donald Farms, Caporicci had many more hatchlings available for transfer to Prada than the 726 picked-up by the latter<sup>39</sup>.
95. It is also noted that neither the Letter of Intent nor the Purchase Agreement foresaw any separate consideration for the raising of the hatchlings over the 12 month period, nor was a final term foreseen for those services expressly foreseen. Article 2.4 stated that the price *"...includes the following services provided by Caporicci: cost related to the capture, incubation, shipping, logistics, initial care, vaccine and feeding per animal."*
96. There is clearly a cost attached to raising hatchling alligators into fully grown reptiles and the evidence shows that the value increases as the size increases<sup>40</sup>.
97. No evidence was provided to the Tribunal by either of the Parties as to the number of alligators still present on Caporicci's farm either at the time Donald Farms took delivery or following the expiration of the minimum period of 12 months. There was evidence that Caporicci had lost a number of hatchlings due to illness but that this problem had been resolved when chlorine was added to the drinking water<sup>41</sup>. Data was made available to the Tribunal on the number of alligator hatchlings in the Annual Reports to the Florida Department of Wildlife and Fisheries<sup>42</sup>. This showed that, during 2015, 483 hatchlings died between the time of hatching and 31 December 2015, although the number of deaths pre and post 15 October 2015 was not made available to the Tribunal.

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<sup>39</sup> See Transcript of Witness Hearing, page 51, lines 19-23: WITNESS CAPORICCI: *"I was encouraging him [Donal Farm] to take some [alligator hatchlings], because we did not have space to raise them bigger. The reason he chose what he chose, and how he chose them... to my knowledge I wish he would have taken a lot more. It would have been easier for us... but for whatever reason that was all he could take, maybe he did not have buildings free. I do not know"*. See also page 52, lines 8-9; page 53, lines 7-15.

<sup>40</sup> See doc. C-7.

<sup>41</sup> See Transcript of Witness Hearing of 2 October 2018, page 58. SOLE ARBITRATOR: *"You mentioned that some alligators died when they were very- young, approximately how many?"*; WITNESS CAPORICCI: *"It should be in the annual report. I do not remember, but we lost close to a thousand I would say, or in the vicinity, could be 900. 800, but it was a lot. It was quite sad"*. SOLE ARBITRATOR: *"This was in which period?"*. WITNESS CAPORICCI: *"Probably just before they came to visit. They were new-borns, could have been end September, beginning of October, they were few inches long, they just came out of the egg. That is why it was so sad. it was so scary, it was like something that no other expert could put their finger on, that was the best part. Finally, somebody told us, put chlorine in your well", and it stopped overnight"*. (page 58, lines 10-21)

<sup>42</sup> See doc. R-7.

## C. Calculation of the reimbursement due by Caporicci to Prada and of the number of alligator hatchlings to be transferred by Caporicci to Prada

### Reimbursement

98. Based on the above reasoning, it is clear to this Tribunal that Caporicci has a contractual obligation to repay to Prada, pursuant to Article 2.2 of the Agreement, the difference between the contractual value of 12,000 hatchlings and the number communicated to Prada, being 4,487 hatchlings, at the price of US\$ 100.00 per hatchling, equal to US\$ 448,700.
99. From the amount due, the sum of US\$ 74,686.66 should also be deducted, as Caporicci assigned to Prada a receivable due to it by GNP Pelli<sup>43</sup> for this sum in part payment of the debt.
100. In addition to these sums, Caporicci transferred to Prada 726 hatchlings for an agreed value of the higher amount of US\$ 116,000<sup>44</sup> rather than at US\$ 100 per hatchling amounting to US\$ 72,600. Therefore, US\$ 116,000 less US\$ 72,600 = US\$43,400. Therefore the sum that Caporicci shall repay to Prada is calculated as follows:
- US\$ 1,200,000. less US\$ 448,700, less US\$ 74,686.66, less US\$ 43,400 = **US\$ 633,213.34**.
101. With respect to the 726 hatchlings that were transferred, Prada claimed that it owned the hatchlings pursuant to the Agreement and Prada's ownership of those 726 hatchlings was confirmed by Caporicci in its Closing Submissions<sup>45</sup>.

### Interest on the sum to be reimbursed

102. In relation to the determination of interest on the sums payable, Prada requested the payment of interest at the "*applicable interest rate*", to be calculated from 28 October 2015, without making any submissions as to what that interest rate was or how it should be determined. Nor did Caporicci make any submissions on the applicable interest rate. Article 2.8 of the Purchase Agreement provides for the payment of interest at the rate of 1% per day. Such interest rate amounts to an annual interest rate of 365% and is clearly null and void for exceeding the level of usury fixed from time to time by Decree of the Italian Ministry for the Economy. In fact the Parties did not make any reference to the contractual interest rate in their applications for relief. Pursuant to Article 1419, 2nd paragraph, of the Civil Code, the nullity of the clause does not give rise to the nullity of the entire contract and the clause can be substituted by mandatory law.

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<sup>43</sup> See doc. C-6.

<sup>44</sup> See doc. C-7.

<sup>45</sup> *Ibid* fn. 17 *supra*.

103. Article 1284, 1st and 2nd paragraphs of the Civil Code provides that, when the parties have not determined the interest rate in their agreement, the interest rate to be applied is fixed annually by decree of the Ministry of the Economy and Finance and published in the Official Gazette. However, pursuant to the 4th paragraph of Article 1284, from the date on which a judicial application has been presented, the applicable interest rate is that foreseen by Legislative Decree no. 231 of 9 October 2002 regarding delayed payments in commercial transactions<sup>46</sup>.
104. As stated above, the debt payable by Caporicci arises from the obligation to return to Prada part of an advance payment made by Prada for the purchase of alligator's eggs. On 15 October 2015, Caporicci advised Prada of the number of eggs that it had procured and which had produced live hatchlings. In its communication, Caporicci proposed to Prada to retain the advance payment for the 2016 season. By letter dated 12 November 2015 also sent to Caporicci by fax or email, Prada refused the offer and required the return of the balance of the advance payment, in the sum of US\$ 751,300, within 7 days of receipt of the letter. However, Caporicci did not return the advance payment by the deadline.
105. Accordingly, on the sum that the Tribunal has ordered Caporicci to repay to Prada, interest shall accrue commencing 10 working days from 12 November 2015, that is, from 26 November 2015 until the date of effective payment. The rate of interest to be applied shall be the legal interest pursuant to Article 1284 between 26 November 20125 and 30 November 2017, and delayed payment interest for commercial transactions pursuant to Legislative Decree n. 231/20037 from 1 December 2017 to the effective date of payment.

## Transfer of Alligator Hatchlings

106. In addition to the financial reimbursement as above, Caporicci has submitted that it presently has available over 9,000 alligator hatchlings and small alligators that are available for transfer to Prada<sup>47</sup>. Accordingly, Caporicci shall make available for transfer to Prada, to take place at Caporicci's farm, the difference between the number of alligator hatchlings notified by Caporicci to Prada on 15 October 2015 (4,487 units) and the number transferred to Donald farms on 20 May 2016 (726 units):  $4,487 - 726 = 3,761$  alligator hatchlings. The hatchlings shall be of the equivalent age as those to be made available pursuant to the Agreement (that is, approximately 12 months old) with an agreed value of US\$ 100.00 per alligator or, if a sufficient number of hatchlings is not available, alligators of higher value may be transferred by agreement at the current market value.

## XI. Costs and expenses of the arbitration

### Claimant's position and applications

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<sup>46</sup> *Commercial transactions* are defined in Legislative Decree no.231 of 9 October 2002, Article 2, para. 1 lett a), as "...contracts. however named, between companies or between companies and public administrations, which involve, exclusively or prevalently, the delivery of goods or the provision of services against the payment of a price".

<sup>47</sup> Respondent's Closing Submissions, page 15, line 10.

107. Claimant included a written submission in its Closing Submissions dated 26 October 2018 seeking the payment of all of its legal fees and the arbitration costs, plus interest on the total amount of the fees and costs from the date of the Final Award until the date of effective payment.
108. In particular, Claimant sought an order for the payment by Respondent of the following legal and arbitration costs, prepared in accordance with the Ministerial Decree no. 55 of 10 March 2014:
- (a) Legal fees and expenses (representing Claimant in arbitration<sup>48</sup>): €48,485.37 + VAT
  - (b) Legal fees (submissions on admissibility of Claimant witnesses): €5,980 + VAT, for a total of € 54,465.37 + VAT<sup>49</sup>.
109. Furthermore, Claimant anticipated to the Milan Arbitration Chamber the entire requested advance on Arbitration costs in the amount of €45,1 18.40<sup>50</sup>.

## **Respondent's Position and Applications**

110. Respondent filed a written submission on costs dated 26 October 2018 seeking payment of all costs of legal representation and the arbitration costs or, in the alternative, that the arbitration costs be split equally between Claimant and Respondent.
111. In particular, Respondent sought recovery of the following legal costs calculated in accordance with the table of lawyers fees for disputes valued from €1 million to €2 million:
- Legal fees and expenses (representing Respondent in arbitration): €32, 744,09 + VAT<sup>51</sup>

## **Decision as to payment of Arbitration Costs and Legal Fees**

112. The arbitration proceedings were brought by the Claimant seeking the return of part of the advance payment made to Respondent in 2015 for the purchase of alligator's eggs and for the breeding of alligator hatchlings. There was no dispute that Claimant made the advance payment to Respondent, nor of the fact that Respondent procured far less alligator hatchlings than it had promised to procure and that had been paid for through the advance.
113. On 12 November 2015, Claimant advised Respondent by registered letter that it required the return of the difference between the sum advanced and the value of the alligator hatchlings acquired by Respondent and held by it for Claimant. Respondent did not return any part of the advance payment. The Parties attempted to resolve their differences amicably but did not succeed. By December 2017, Claimant felt it had waited long enough and appeared to have no alternative but to commence the arbitration proceedings in order to determine its claims.

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<sup>48</sup> Claimant's Closing Submissions, Sect. VI, para 1, point 102, page 21.

<sup>49</sup> Claimant's Closing Submissions, Sect. VI, para 3, point 106, page 22.

<sup>50</sup> Claimant's Closing Submissions. Sect. VI, para 2, point 103, page 21.

<sup>51</sup> Respondent's Submissions on Legal Costs and Expenses of 26 October 2018, page 1.

114. On this basis, although Claimant did not ever provide a clear explanation as to why it only picked up 726 hatchlings from Caporicci and never obtained the transfer of a larger number of the hatchlings procured for it, Claimant was forced to bring this arbitration in order to recover large sums of money due to it. The Tribunal therefore considers it entirely reasonable for the Claimant to recover the entire costs of the arbitration as determined by the Milan Chamber, and to recover its reasonable legal fees and expenses, including for the interlocutory procedural application that resulted in Procedural Order no. 3 dated 6 July 2018. In its discretion, the Tribunal reduces the legal fees and expenses as quantified in the Claimants submissions from € 54,465.37 plus VAT to a total of €50,000 (inclusive of expenses and social security taxes), plus VAT if applicable.

## Orders

For the reasons set out in this Final Award, the Tribunal:

### A. Jurisdiction

1) Finds that it has jurisdiction to decide the dispute based on the arbitration clause contained in Article 7.2 of the Purchase Agreement.

### B. Merits

2) Finds that Caporicci breached Article 2.2 of the Agreement by not refunding the balance of the advance payment to Prada as provided by the Agreement.

3) Orders the Respondent to repay to the Claimant the sum of US\$ 633,213.34 (six hundred and thirty three thousand, two hundred and thirteen US dollars and thirty four cents) that Respondent had received as an advance payment for goods and services not supplied by Respondent.

4) Orders the Respondent to make available for transfer to Prada, at Respondent's farm, 3,761 (three thousand seven hundred and sixty one) alligator hatchlings of an equivalent size and value to the hatchlings that were to be procured and transferred to Claimant pursuant to the Purchase Agreement dated 25 September 2015. If Respondent does not have a sufficient number of hatchlings of equivalent size, then smaller or larger alligators may be transferred by agreement as to their market value, equal to a total value of US\$ 376,100 (three hundred and seventy six thousand, one hundred US dollars).

5) Orders that the transfer of the alligator hatchlings pursuant to Order no. 4 above shall take place not later than 31 July 2019.

6) In the event that, pursuant to Order no. 4, Respondent refuses or fails to make available the alligator hatchlings on a date to be agreed by the Parties between the date of this Final Award and 31 July 2019, orders Respondent to pay to Claimant the said amount of US\$ 376,100, within 10 days of the date of Respondent's refusal or failure to transfer the alligator hatchlings.

7) In the event that, pursuant to Order no. 4 above, Claimant fails to pick up and take away the alligator hatchlings from Respondent's farm by 31 July 2019, orders that Claimant shall definitively lose its right to receive the alligator hatchlings pursuant to this Award and shall also lose any right to receive back part of the advance payment in the sum of US\$ 376,100 from the Respondent.

8) Orders the Respondent to pay interest to the Claimant:

(a) on the sum of US\$ 633,213.34 indicated in Order no 3 above, calculated as follows: (i) commencing from 26 November 2015 up to 30 November 2017, at the applicable rate pursuant to Article 1284, para 1 of the Civil Code, and (ii) commencing from 1 December 2017 up to the effective date of payment, at the applicable rate pursuant to Article 1284, paras 4 and 5 of the Civil Code;

(b) on the sum of US 376,100 indicated in Order no 6 above, calculated commencing from the date of Respondent's refusal or failure to supply the alligator hatchlings by 31 July 2019 up to the effective date of payment, at the applicable rate pursuant to Article 1284, paras 4 and 5 of the Civil Code.

9) Declares that the Claimant is the exclusive owner and has all related rights over the 726 alligators that were transferred from Respondent's farm to Donald Farms in May 2016.

10) Orders the Respondent to pay to the Claimant the full costs of the arbitration that were entirely advanced by Claimant to the Milan Arbitration Chamber, totalling € 51,044.63, set by the Arbitral Council's decision No. 2016/4 issued on 6 November 2018, and made up of the following items: (i) costs of Milan Chamber: €18,000, plus VAT if applicable; (ii) fees of sole arbitrator: €31,200, plus VAT if applicable; (iii) reimbursement of expenses of Milan Chamber and of sole arbitrator: € 1,332.63 plus VAT if applicable; (iv) reimbursement of fiscal stamps for minutes of the hearings and procedural orders: €128,00 (no VAT); (v) reimbursement of fiscal stamps for three original copies of the arbitral award: €384,00 (no VAT).

11) Orders the Respondent to pay the Claimant's reasonable legal costs and expenses of the arbitration, assessed by the Tribunal in the sum of €50,000 inclusive of expenses and social Security contributions, plus VAT if applicable.

12) Orders the Respondent to pay interest on the sums set out in Orders 10) and 11) above, to be calculated from the date 21 calendar days from the date of this Final Award, at the rate pursuant to Legislative Decree no. 231 of 2002, up to the date of effective payment.

13) Declares that all other applications and claims of the Parties are rejected.