

UNAMIR

COLUMBUS TRADING COMPANY

20 APR - 9 SEPT 1995

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ORIGINAL ORDER

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INTEROFFICE MEMORANDUM

TO: Mr. Mtshana M. Ncube
Chief, Boards of Inquiry Unit

FROM: Ladan M. Rafii *LNR* DATE: 9 September 1995
Political/Legal Officer

SUBJECT: Correspondence on Columbus Trading Company

1. This morning I received a copy of the attached facsimile transmission from Columbus Trading Company regarding a notice of intention to institute legal proceedings against UNAMIR for recovery of the amount of \$ 195,089.03.
2. As this matter appears to be a mainly administrative issue, I am sending the correspondence received to your attention for any necessary action you deem appropriate.
3. Thank you.

cc: ED (w/o enc.)
CAO (w/o enc.)

Me Rafii

Reçu le - 9 SEP. 1995



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Columbus Trading Co.

P.O. Box 2265 Capetown 8000, South Africa.
Tel: 2721-252886 Fax: 2721-217209

European Office:
The Old Brew House, East Hill, Colchester, Essex, England.
Tel: 44-206-866611 Fax: 44-206-861758



FAX TRANSMISSION :

TO.....U.N.A.M.I.R. HEADQUARTERS - KIGALI

ATTENTION OF.....MS. SUSAN MATTHEW / CHIEF ADMINISTRATION
OFFICER

FROM.....JOHN DAWSON

DATE.....8th SEPTEMBER 1995.

NO OF PAGES.....10 (INCLUDING TRANSMISSION SHEET)

Copies to: { Chief Procurement Officer X
Chief Finance Officer
Chief Legal Officer ✓
Director of FALD / DPKO. UNHQ, New York, U.S.A.

CAD

WITHOUT PREJUDICE :

NOTICE OF INTENTION TO INSTITUTE LEGAL PROCEEDINGS, CLAIM FOR THE IMMEDIATE PAYMENT OF CAPITAL SUMS OWING ON FOOT OF LEGALLY BINDING AGREEMENTS, AND CLAIM FOR INTEREST ACCRUED AND ACCRUING ON SUCH OUTSTANDING CAPITAL SUMS AND ON ACCOUNTS PART PAID:

Dear Sirs,

I am instructed by the Board of Directors of Columbus Trading Company (hereinafter referred to as "the company") to inform you of the companys intention to institute immediate legal proceedings against your organisation in order to recover :

- a. All capital sums outstanding and lawfully due by virtue of contractual agreements entered into and evidenced in correspondence and Purchase Orders issued in favour of the company by your organisation, and more specifically referred to herin.
- b. Interest on all outstanding capital sums as aforementioned, together with interest on such capital sums as are further specified hereinafter as being paid after the contractually agreed due date for payment, such sums more specifically referred to herein.
- c. All reasonable costs associated with the attempts by the company to obtain payment in accordance with the contractual agreements for goods supplied to the organisation.
- d. Liquidated damages for breach of contract, and loss, damage and distress caused and arising from such breach of contract.
- e. Costs of the above mentioned proceedings.

I hereby formally place you on notice that it is the intention of the company to institute legal proceedings in the courts of civil jurisdiction of the State of New York, N.Y., U.S.A. on the first day of October 1995, or as soon as is practicable thereafter for the recovery of the afore mentioned monies, and such proceedings shall be stayed or discontinued by the company in the following circumstances only viz:

That all sums of money claimed herein and lawfully owing shall be paid in full, in US dollars, by telegraphic transfer to the company's account, by close of business on the thirtieth day of September 1995.

Before setting out the specific sums claimed and the associated details of each claim, it is proposed to summarise briefly the circumstances which gave rise to this claim, and which are the subject of extensive, prolonged and protracted correspondence, fax and phone messages, and personal contact between officers of this company and representatives of your organisation, which have caused considerable loss, damage, distress and injury to this company.

The then East African representative of Columbus Trading met with the Chief Procurement Officer of UNAMIR in his office in the UN complex in Nairobi, Kenya, in August and September of 1994, and expressed a desire to be considered as a potential supplier to UNAMIR. The company was invited to tender for a number of requirements, and was awarded a number of contracts to supply various medical, surgical and pharmaceutical items to UNAMIR by way of Purchase Orders signed and issued on behalf of UNAMIR by the Chief Procurement Officer.

The company's representative, by way of verbal notification and the handing over of a copy of the company's general conditions of sale, informed the Chief Procurement Officer and his colleagues, and subsequent correspondence referred specifically to the fact that any and all agreements entered into between the company and UNAMIR were subject to the company's general conditions of sale, which included inter alia the following specific terms which are paraphrased here viz:

- a. That payment in respect of goods delivered in accordance with the terms of the Purchase Order would be made within thirty days following delivery of the goods.
- b. That all accounts remaining unpaid after the due date for payment as contractually agreed would attract a surcharge of interest on the unpaid amount from the thirty first day after the due date of payment calculated at the rate of 12.5% per month, until the actual date on which payment was received in the manner specified in the Purchase Order.
- c. That any discrepancy, shortage, damage or distress to the goods delivered, or which were referred to on the company's delivery documentation as having been delivered, must be notified to the company in writing within ten days of the date of delivery of the goods, and the company would not accept any responsibility for any alleged discrepancy, shortage etc, not so notified to the company.

In addition, it is clear from the specific provisions of the Purchase Orders that an essential term of the contract was the fact that payment would be made within thirty days of the delivery of the goods in accordance with the terms of the Purchase Order.

The company is of the opinion that the reason why discrepancies and shortages are alleged is because of a failure on the part of UNAMIR to properly carry out an inspection of the goods on delivery, and it is obvious that these goods which were required most urgently were moved to the end user and wholly or partly utilised before any meaningful accurate R. & I. procedure could be carried out. The R. & I. procedure is a matter of internal organisation which is completely under UNAMIR's control and direction, and this company cannot be responsible for any failure to have R. & I. procedure carried out, as this was a matter over which the company had no control.

It is suggested that one example of how your R. & I. section operated, and which is well documented may prove instructive. In brief, an urgently required consignment was delivered (at no additional expense to UNAMIR, although at considerable expense to the company), to your offices in Nairobi by company courier. The courier requested a receipt for the goods and was given a copy of the R. & I. report in respect of the delivered goods, which was completed in Nairobi following an inspection of the goods by one of your staff, and which accurately reflected the fact that all goods ordered were delivered and properly documented. Subsequently, after the usual intolerable delay and numerous enquiries to UNAMIR, it was alleged by UNAMIR that only part payment would be made, and this assertion was supported by a "second R. & I. report, hopelessly out of date, allegedly completed some five weeks after the goods were originally delivered, and which alleged that there was considerable shortfalls and discrepancies on the delivery. UNAMIR eventually, and after further delay, agreed to pay the correct original invoiced amount after we furnished you with a copy of the original correct R. & I. report. It became apparent from discussions with your staff that considerable difficulties existed with your R. & I. section due to alleged staff shortages, and it is clear that in this specific instance a

"second" R. & I. report was completed without the goods having been properly inspected, and in fact it would have been impossible to inspect them at the time this second inspection was allegedly carried out, as undoubtedly a considerable amount of the delivery was already utilised. The company is in possession of full documentary evidence of this occurrence, and your files would also contain details of this incident.

This is not the only example of documented occasions where conflicting R. & I. reports were received, and where amended and conflicting reports were received without any explanation, many weeks and months after the goods were delivered, and only after repeated requests from the company for payment. On numerous occasions we have been promised copies of the completed R. & I. reports, but to date we have not received these despite many requests by us to secure same.

It is hereby stated that the company does not and will not under any circumstances accept that deliveries to UNAMIR in accordance with the Purchase Orders, were deficient or short shipped, because of your failure to comply with the essential contractual requirement of notifying any alleged discrepancies to the company within the agreed ten day period after delivery of the goods, such a time frame being fair and reasonable to both parties to the contract.

In addition, it is again reiterated in the strongest possible terms, as we have consistently done in the past, that all goods which were shown on the delivery dockets as forming part of a consignment were in fact delivered, and that only such goods as were actually delivered were invoiced.

This has been verified by us in the first instance from personal observation by the senior manager of this company who personally supervised the carriage of the consignments in question from our warehouse through the freight handling agents, through to your warehouse in Kigali. This will be attested to on affidavit by the manager responsible, and will be used to ground our case. In addition it is clear from a mass of correspondence and data regarding weights of individual pieces of cargo, when consolidated in respect of each consignment, that the aggregate weight of the consignment as a whole as verified independently by our shipping agents and air freight carriers confirm that a full consignment as per our delivery documentation and invoices was always delivered.

The following specific claims are hereby made and are shown in table form for ease of identification:

It is further claimed that the company suffered actual damage, loss and considerable expense arising solely from and as a direct result of UNAMIR's failure to honour its contractual obligations arising from the aforementioned Purchase Orders.

The company estimates that it has suffered considerable direct quantifiable loss and damage, particularly in respect of additional personnel costs attributable solely to attempts to resolve this situation, and to the additional costs of secretarial services and telephone and fax communications which are substantial. The company hereby claims the sum of thirty thousand US dollars in compensation for the aforementioned losses.

The total amount claimed therefore in respect of the aforementioned transactions is:

a. Capital sums due	: 150,238 . 42
b. Interest to 31st August 1995	: 14,850 . 61
c. Costs	30,000 . 00

Total Amount Due \$ 195,089 . 03

Please note that with reference to Table B, you are hereby notified that interest on the short payments outstanding from the first day of September 1995 continues to accrue until such time as the account is settled in full. Interest is accruing at the rate of \$51.45 per day, which must also be added to the above mentioned figure on date of payment in order to clear this account.

The company has instructed me to inform you that it is the company's intention to prosecute this action most vigorously to a successful conclusion, and that no further notice will be given.

National Westminster Bank,
25 High St., Colchester Essex COL 1KG. England.
Account No. 04180941/140 Sort Code 60.06.06

Please acknowledge receipt as soon as possible.

COLUMBUS TRADING CO.,

UNAMIR-KIGALI RWANDA
:95-9-8 : 10:50 :
→
COMCEN: # 8

Table A						
UNAMIR Purchase Order No.	DATE goods delivered	DATE 2+1 Report Completed	Payment Due on	Invoice Amount \$	Amount Paid	DATE Paid
1. ME 5-1218	27 April	2/9	27 May	179,383.33	169,925.01	5 July
2. ME 5-1419	26 April	2/9	26 May	73,810.00	36,280.00	5 SEPT
3. ME 5-1419	18 May	2/9	18 June	73,908.70	61,697.30	5 SEPT
1. ME 5-1572	25 May	2/9	25 June	241,720.46	202,182.16	5 SEPT
5. ME 5-1573	12 May	2/9	18 June	131,537.55	85,937.75	5 SEPT
Total \$				150,238.45		

Capital
Amount
Outstanding @ 219/95.

Table B						
UNAMIR Purchase Order No.	DATE Due for Payment	DATE Paid	SHORT Payment	Days Overdue for Payment	Interest @ 12 1/2% to 31/8/95	Interest @ 12 1/2% on Short payments to 31/8/95
1. ME 5-1218	27 May	5 July	15,958.32	38 Days	2,334.34	311.51
2. ME 5-1219	26 May	5 SEPT	36,930.60	97 "	4,451.93	12.65
3. ME 5-1219	18 May	5 SEPT	4,211.40	74 "	1,873.03	4.18
1. ME 5-1572	25 June	5 SEPT	39,538.30	67 "	5,546.32	13.54
5. ME 5-1573	18 June	5 SEPT	45,599.80	74 "	3,333.48	15.62
Total \$					15,539.10	51.45
Total \$					12,850.61	

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UNAMIR

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Cover Sheet Classification UNCLASSIFIED	Enclosure Classification UNCLASSIFIED
UNITED NATIONS ASSISTANCE MISSION FOR RWANDA	NATIONS UNIES MISSION POUR L'ASSISTANCE AU RWANDA
Out Going Fax No: 407/95	Page 1 of 3 File 6500-1-1
TO: Mr N. GOERANSSON SAO UNAMIR NAIROBI	FROM: MR A.H. GOLO OIC ADMINISTRATION UNAMIR, KIGALI RWANDA
ATTN: Maurice O'Donoghue Procurement	DATE 20 APR 95
FAX NO: Fax No: 254 2 622 065	PHONE: INT + 250 84270 Ext 11116
INFO: OL 62268	FAX NO: INT + 250 88877
Internal dist: CILM, CISS, MOVCON KIGALI	DRAFTED BY: MAJ R.P. Wiltshire G4 Med Log
Subject: PURCHASE ORDERS FOR COLUMBUS TRADING (LISTS FIVE AND SEVEN)	
REFERENCE: PO # MR 5-1372 AND MR 5-1373	

PRIORITY

AAA ATTACHED PLEASE FIND COMPLETED PURCHASE ORDERS FOR THE TWO COLUMBUS TRADING LISTS - FIVE AND SEVEN.

BBB APPRECIATE IF YOU COULD PASS THESE TO COLUMBUS. PLEASE EMPHASISE THAT THESE MEDICAL STORES ARE REQUIRED AT THE EARLIEST, AND THAT IF AIR MOVEMENT IS A DELAYING FACTOR, UNAMIR SHOULD BE APPROACHED.

CCC IN REGARD TO CONSIGNMENTS DUE FOR DELIVERY THIS FRI/SAT. APPRECIATE IF COLUMBUS SHIPPING AGENTS COULD STILL ATTEMPT TO PLACE ON SABINA FLIGHTS. SUPPLY SITUATION IS AT SUCH A LOW LEVEL THAT THE DELAY ARRIVAL TO MON EVENING (AND THE THREAT THAT THIS PLACES ON REFRIGERATED STORES) MAY BE SIGNIFICANT. IN THIS SITUATION, PLACEMENT OF CARGO ON SEPARATE FLIGHTS IS ACCEPTABLE (COLD STORES PRIORITY).

Releasing Officer's Name	Signature	Rank/Appointment	Date

CHIEF LEGAL OFFICER

(CONFIDENTIAL)