

November 2014

**HIGHER RIGHTS OF AUDIENCE ASSESSMENT**

**IN RESPECT OF CIVIL PROCEEDINGS**

**THE PRACTICAL ASSESSMENT**

**TRIAL BUNDLE FOR INTERIM APPLICATION AND MINI-TRIAL**

**CLAREMONT CLOTHING LTD and DYEFAST FABRICS LTD**

## Pleadings

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NUMBER 234 OF 2013

-

~~BETWEEN~~

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

STATEMENT OF CLAIM

The Parties

1. The Plaintiff is a company which owns and operates a chain of clothing shops trading under the name of 'South Sea Bob' in Hong Kong, Macau, Singapore and Malaysia.
2. The Defendant is (and was at all material times) a manufacturer and supplier of textiles and garments to the retail market.

The Contract

3. On 18 February 2013, Clive Cussler, the Operations Director of the Plaintiff, visited the offices of the Defendant in Shatin, New Territories, to discuss the supply of polo T shirts with Diana Dalkia, the Director of the Defendant's spun fabrics section.
4. At the meeting, Mrs. Dalkia showed a range of polo T shirts to Mr. Cussler and discussed their construction and price generally. In particular Mrs. Dalkia produced a sample of a polo T shirt in cotton pique fabric with a tortoise logo on the chest ("the Sample") and which could be manufactured in four different colours (blue, yellow, red and green).
5. By an oral contract made on 18 May 2013 and evidenced in emails passing between the Plaintiff and the Defendant on 28 May 2013 ('the contract') the Defendant agreed to manufacture 200,000 polo T shirts and supply them at the rate of 20,000 pieces per month commencing on or before the last day of June 2013 and the Plaintiff agreed to pay HK\$80 for each garment. The emails referred to, copies of which are attached marked (a) and (b), consist of an email from the Plaintiff to the Defendant at 11.30 a.m. and an email in reply at 11.45 a.m.
6. The following were, amongst others, express terms of the Contract, namely, that

- a. the polo T shirts to be supplied would correspond in quality, finish and appearance to the Sample referred to in paragraph 4 above; and,
  - b. they would be made of cotton pique.
7. Further and/or in the alternative, the Plaintiff and Defendant were each acting in the course of their respective businesses and therefore the following were implied terms of the Contract:
  - a. that, pursuant to the Sale of Goods Ordinance (Cap. 26), section 17(2), the polo T shirts would be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the Sample;
  - b. that, pursuant to section 16(2) of the above Ordinance, the polo T shirts to be supplied would be of satisfactory quality;
  - c. that, pursuant to section 16(8) of the above Ordinance, the polo T shirts would be reasonably fit for the Plaintiff's purpose which had been made known to the Defendant, namely, for retail resale to the public via the Plaintiff's shops; and,
  - d. that any qualifying debt created by the Contract would carry statutory interest under section 49(1) of the High Court Ordinance (Cap. 4).

### BREACH

8. The Defendant acted in breach of the above express and implied terms.

#### Particulars of breaches of contract

The polo T shirts:-

- a. were made of cotton interlock instead of cotton pique;
- b. had a dimensional stability (shrinkage tolerance ) of 10%;
- c. had oil staining;
- d. had a staining rating of 3 instead of 4;
- e. had collar and cuff colours which did not match the colour of the body fabric;
- f. were not finished in a satisfactory manner in that they had loose threads, badly sewn hems and badges which puckered; and,
- g. did not, in all the circumstances, correspond with the Sample.

### REJECTION

9. On 12 June 2013 the Plaintiff paid to the Defendant the sum of HK\$1,600,000 by way of advance payment for the first delivery. On 25 June 2013, in purported performance of the contract, the first delivery of 20,000 Polo T shirts was made by the Defendant to the Plaintiff.

10. Following an inspection of a selection of the garments so delivered, Mr.Cussler, in a telephone call to Mrs Dalkia made on 8 July 2013, rejected the garments on behalf of the Plaintiff and cancelled the remainder of the order with the Defendant.
11. As a result of the matters set out above, the Plaintiff has suffered loss and damage in the sum of HK\$1,600,000.
12. The Plaintiff is entitled to claim interest on such sum found due and at such rate and for such period as the Court deems fit pursuant to s. 49 of the High Court Ordinance

AND accordingly the Plaintiff claims;

1. return of the sum of HK\$1,600,000 or alternatively damages in such sum; and,
2. interest

*[Please assume that the signatory, service and statement of truth details are duly endorsed together with a backsheet]*

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NUMBER 234 OF 2013

-  
  
BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

DEFENCE AND COUNTERCLAIM

The Parties

1. The Defendant admits paragraphs 1 and 2 of the Statement of Claim.

The Contract

2. The Defendant admits paragraph 3 of the Statement of Claim.
3. As to paragraph 4 of the Statement of Claim:
  - a. the Defendant admits that Mrs. Dalkia showed Mr. Cussler, amongst other garments, a sample of a polo T shirt which had a tortoise logo on the chest and which could be manufactured for HK\$80 per garment in the four colours mentioned in the Statement of Claim;
  - b. the Defendant denies that such polo T shirt was made of cotton pique; it was made of cotton interlock which fact Mrs. Dalkia informed Mr. Cussler of at the time;
  - c. the Defendant avers that Mrs. Dalkia fully explained to Mr. Cussler by reference to the particular polo T shirt, the nature and quality of the finished product which he could reasonably expect for HK\$80 per garment.
4. The Defendant admits paragraph 5 of the Statement of Claim.
5. The Defendant admits paragraph 6a of the Statement of Claim insofar as the sample being referred to is the sample mentioned in paragraph 3 above.
6. The Defendant denies paragraph 6b of the Statement of Claim for the reason set out in paragraph 3b above.
7. Further, the Defendant avers that the Contract is and was severable because the garments were to be delivered in monthly instalments and each instalment was to be separately paid for at the rate of HK\$1,600,000 per instalment of 20,000 garments.

8. The Defendant admits paragraph 7 of the Statement of Claim.

Breach

9. The Defendant denies that it acted in breach of any express and implied terms whether as alleged in paragraph 8 of the Statement of Claim or at all. As to the particulars of the alleged breaches and without in any way restricting the scope of such denial, the Defendant admits that the polo T shirts:-

a. were made of cotton interlock because this had been agreed with the Plaintiff at the meeting of 18 May 2013;

b. had a dimensional stability (shrinkage tolerance ) of up to 10% because this had been agreed with the Plaintiff by agreeing to the sample referred to in paragraph 3 above;

c. And that with regard to less than 5% of the 20,000 garments delivered, the Defendant admits that they

d. had oil staining but not such as to warrant the rejection of the garments or to require any remedial action;

e. had a stain rating of 3 but this did not on its own warrant the rejection of the garments or require any remedial action;

f. had collar and cuff colours which did not match the colour of the body fabric but that the level of differential in this respect was reasonable and acceptable having regard to the price paid;

g. were not finished in that they had loose threads, badly sewn hems and badges which puckered but that this was reasonable and acceptable having regard to the price paid; and,

h. the Defendant avers that all 20,000 garments delivered did, in all the circumstances, correspond with the sample referred to in paragraph 3 above.

Rejection

10. The Defendant admits paragraph 9 of the Statement of Claim except for the word "purported" which is denied. The delivery constituted full and proper performance of the first instalment under the Contract.

11. As to paragraph 10 of the Statement of Claim:

a. the Defendant neither admits nor denies that the Plaintiff inspected a selection of the garments delivered as alleged and requires this to be proved; and,

b. admits that Mr. Cussler, in a telephone call to Mrs. Dalkia made on 8 July 2013, rejected the garments on behalf of the Plaintiff and cancelled the remainder of the order with the Defendant but denies that such rejection and cancellation were lawful.

12. The Defendant denies that the Plaintiff was entitled to reject any polo T shirts supplied or to be supplied by the Defendant or to terminate the Contract because:

a. the Defendant was not in breach of the Contract whether as alleged or at all for the reasons set out above;

b. even if, which is denied, the Defendant was in breach of the Contract as alleged in the Statement of Claim:

i. The Plaintiff had lost the right (if any, which is denied) to reject the garments by failing to reject them within a reasonable time and/or by acting in relation to them in a manner inconsistent with the Defendant's ownership thereof, namely by repackaging them in their own brand bags and delivering them to 200 separate stores; and/or,

ii. The breaches were so slight that it was unreasonable for the Plaintiff to reject the garments and the Defendant avers that such breaches amount to a breach of warranty as opposed to a breach of condition under the Sale of Goods Ordinance, section 16; and/or,

iii. The Defendant avers that because the Contract was severable, the Plaintiff was only entitled to reject the first instalment of 20,000 polo T shirts and was bound to accept the further instalments outstanding at the date of the Plaintiff's purported cancellation. The Defendant denies that the Plaintiff was entitled to treat any conduct of the Defendant as a repudiation of the Contract as a whole.

13. By reason of the matters set out above, the Defendant denies that the Plaintiff has suffered loss and damage in the sum of HK\$1,600,000 , as claimed in paragraph 11 of the Statement of Claim, or any loss and damage at all.

14. Further, the Defendant denies that the Plaintiff is entitled to interest as claimed in paragraph 12 of the Statement of Claim or at all.

15. In the premises the Defendant denies that the Plaintiff is entitled to any monies whether as damages or otherwise from the Defendant.

16. Further or in the alternative, the Defendant will seek to set off in against of the Plaintiff's claim, such sums as it may recover under its Counterclaim set out below.

### **COUNTERCLAIM**

17. The Defendant repeats paragraphs 1 to 15 inclusive of its Defence.

18. By a telephone call made on 8 July 2013 the Plaintiff wrongfully and in breach of the Contract rejected the polo T shirts supplied thereunder and purported to terminate the Contract between it and the Defendant, thereby refusing to accept any further deliveries



of polo T shirts. In the premises the Plaintiff evinced an intention no longer to be bound by the Contract and has thereby wrongfully repudiated it.

19. The repudiation has been accepted by the Defendant by its conduct in arranging for the collection of the rejected polo T shirts and by not supplying further polo T shirts to the Plaintiff, alternatively such repudiation is hereby accepted.

20. As a result of the above breach of the Contract the Defendant has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

Price payable for 200,000 polo T shirts at HK\$80 each	HK\$16,000,000
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Additional cost of collection and warehousing of the rejected first delivery of 20,000 polo T shirts	HK\$50,000
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**Total - HK\$16,050,000**

The Defendant will give credit for the HK\$1,600,000 already paid by the Plaintiff and for any monies received upon re sale of the returned garments together with any expenses that would have been incurred in implementing the Contract but which have not in fact been incurred.

And accordingly the Defendant counterclaims;

1. Damages
2. Interest

*[Please assume that the signatory, statement of truth and service provisions are duly endorsed together with a backsheet]*

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED  
REPLY AND DEFENCE TO COUNTERCLAIM

Defendant

REPLY

1. Except as set out below, and except where it contains admissions, the Plaintiff requires the Defendant to prove the matters set out in the Defence.

The Contract

2. As to paragraph 3 of the Defence, the Plaintiff denies that the sample was indicative of the quality and finish to be expected for the price of HK\$80. The polo T shirt in question which Mrs Dalkia showed to Mr Cussler was valued by her at HK\$100. Following negotiations between them on 18 February 2013 and in particular having regard to the volume of the order to be placed by the Plaintiff, Mrs Dalkia agreed to produce polo T shirts based on the HK\$100 sample but at a reduced price of HK\$80.
3. As to paragraph 7 of the Defence, the Plaintiff denies that the Contract is and was severable because the garments were to be delivered in monthly instalments and each instalment was to be separately paid for at the rate of HK\$1,600,000 per instalment of 20,000 garments. The Plaintiff avers that in all the circumstances the Contract is and was an entire contract and that therefore the Defendant's breach amounted in law and fact to a total breach and the Plaintiff was entitled to reject all of the 200,000 garments pursuant to the Sale of Goods Ordinance (Cap. 26), section 33.

Rejection

4. As to paragraph 12 (b)(i) of the Defence, the Plaintiff denies that it had lost the right to reject the garments by failing to reject them within a reasonable time. They were delivered on 25 June and rejected 13 days later on 8 July 2013. This was the first opportunity which the Plaintiff had to inspect the garments. Further, the Plaintiff denies that the acts mentioned in paragraph 12 (b)(i) are or were inconsistent with the Defendant's ownership of the goods as alleged.
5. As to a paragraph 12 (b)(ii) of the Defence the Plaintiff denies that the breaches were so slight that it was unreasonable for the Plaintiff to reject the garments. The latent and patent defects in the garments prevented the Plaintiff from selling them in its shops other than as "seconds" and the Plaintiff's policy is not to sell any such

goods because it devalues its brand image. If, however, which is denied, the defects were so slight as alleged, the Plaintiff is entitled to and claims damages for breach of warranty in the sum of \$15 per garment being the difference between the price paid and their actual wholesale value.

6. As to paragraph 12 (b)(iii) of the Defence, for the reasons set out above in paragraph 3, the Plaintiff avers that the Contract was not severable as alleged and therefore it was entitled to reject not only the first instalment of 20,000 polo T shirts but also the further instalments.

#### **DEFENCE TO COUNTERCLAIM**

7. The Plaintiff repeats paragraphs 1 to 6 inclusive of its Reply and the whole of its Particulars of Claim.
8. In the circumstances, the Defendant is not entitled to the relief sought or to any relief at all.

*[Please assume that the signatory, statement of truth and service provisions are duly endorsed together with a backsheet]*

**Plaintiff's Witnesses**

**[Please assume that the headings and formalities for each statement comply with the relevant Practice Direction]**

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

WITNESS STATEMENT OF CLIVE CUSSLER

I, Clive Cussler, of 5/F Claremont House, 200 Lockhart Road, Wanchai, say as follows:

1. I am employed by the Plaintiff as Operations Director. I have held this position since coming to Hong Kong in February 2011. I entered retail after university in England, specializing in clothing. And, at the time of my recruitment by Claremont Clothing I had been in the business for 20 years. I was recruited from Harrods in London.
2. Claremont Clothing Limited is the company through which its chain of stores trades. The stores however go under the name 'South Sea Bob'. We specialize in beach wear and casual wear of all kinds.
3. On 18 May 2013, I visited the offices of the Defendant in Shatin to discuss the supply of polo T shirts with Diana Dalkia. Normally this job would have been undertaken by the Director of the Clothes Division, Jane Tang. However, she had been taken ill and I had to step into the breach. Jane had told me beforehand that we needed to act quickly to get in stock for our spring/summer market. But T shirts of course are not restricted to any one season. My brief was to arrange for the rapid supply of 200,000 garments at 20,000 per month, the price to be no higher than HK\$80.
4. When I went out to Shatin, I was accompanied by Sally Tang, Jane's daughter. The Tangs have had a long association with Claremont. I understand they are the biggest single group of shareholders. Sally was working in our stockroom in order to gain some experience. But she was getting pretty bored and I told Jane that I would take her along with me. I understand that Sally has some learning difficulties. On the car journey to Shatin I had 2 or 3 small spoonfuls of cough syrup which I kept in my briefcase. At the time I had a pretty bad cold.

5. At the meeting, Ms. Dalkia showed me a range of polo T shirts and discussed their construction and price generally. In particular I distinctly recall that she produced a sample of a polo T shirt in cotton pique fabric with a tortoise logo on the chest and which could be manufactured in four different colours (blue, yellow, red and green). I had no idea of the difference between cotton pique and interlock but I recall her saying that interlock was more hardwearing than pique but that pique had a softer, stretchier feel and was very suitable as ladies-wear. As we are an upmarket store, selling high-range and have a majority of female customers, I said that we would want to order cotton pique.
6. I looked at the colours of the various shirts which were being shown to me and Ms Dalkia talked at length about colour shading and continuity. I noticed that some of the shirts had a slightly mismatched appearance in that their collar and cuffs were slightly different from the body fabric. She explained that this is quite common but could be overcome if great care was taken when putting the two together to achieve a good match. Ms Dalkia also explained the concept of colour continuity at length. She said that it consisted of ensuring that each batch of fabric is consistent with the previous dyebatch. In usual circumstances, she explained, several dye batches are required to dye the total quantity needed and even though the same dye recipe is repeated time after time slight variations in conditions of the cotton or the water supply can occur. She assured me that her company had a strong system of control in this respect.
7. I impressed upon her the need for speed and it was at this point that she said that the ordering process could be shortened if we dispensed with the need for a signed sealed sample. She told me that she would normally make up three samples based on a customer's specifications and that the customer would test and examine these. It would then be signed and sealed if acceptable as the template for the quality and finish of the bulk production. She assured me that we could proceed without such a signed sealed sample and that this would not cause any problems if I knew what I wanted in terms of finish and quality. I replied that I was particularly taken with the cotton pique with the tortoise logo on the chest.
8. She told me that the cost of this particular design and quality of polo T shirt was normally HK\$100 per garment and that the price reflected its low shrinkage rate of 5%. This low rate was, she informed me, due to prewashing and pre shrinking the fabric and then tumble drying it prior to manufacture. However, I said that I was looking for something in the region of \$80 and I asked if she could supply at this price having regard to the size of the order. She eventually agreed to reduce the price to \$80. We shook hands on the deal then and there. Then Sally and I left. I said that I would send a confirmatory email to record the deal.
9. In fact, I was on holiday the next week. My two boys are at boarding school in England and it was their half term. We went to Thailand. On my return, I remembered the need for an email and sent it on 28 May 2013.
10. On 12 June 2013, I paid the sum of HK\$1,600,000 as an advance payment for the first 20,000 garments.

11. On 25 June 2013, the first 20,000 T shirts were delivered to our warehouse in Sheung Wan. They were repackaged in our own brand bags and then distributed to our stores in the region. Speed of distribution is very important in the clothing business. People like to see new lines in the shops.
12. On 8 July 2013, I went to the stockroom in our offices to check the polo T shirts. Sally Tang was still working there. I saw a selection of the T shirts and I was shocked. They looked cheap and nasty and nothing like the quality I was expecting. I was furious and immediately made a call to Ms Dalkia.
13. During the telephone call (which I made in loudspeaker mode so that Sally could listen in and learn) I informed Ms Dalkia that her company had manufactured and delivered sub standard garments and that they looked to be of very poor quality for the price which we had paid. She was apologetic and said that she would ensure that any problems could be sorted out for future deliveries and that the current batch of 20,000 could be taken back and re-worked to rectify the problems which were present. She further stated that there could be a price re-negotiation to take account of the problems and defects. However, I was incensed and thought that we had been treated in a very shabby manner. Accordingly I rejected the garments on behalf of the Plaintiff and cancelled the remainder of the order with the Defendant. I told her that the garments could be collected by her company from the various stores to which they had been distributed and that I would be charging her storage fees until they were so collected.
14. As a result of this debacle we are out of pocket to the tune of HK\$1,600,000 plus HK\$25,000 for storage costs and wasted distribution expenses. Luckily, Jane Tang was able to secure replacement polo T shirts within two weeks at a price of only HK\$65 per garment.

I believe that the facts stated in this witness statement are true.

Signed Clive Cussler

Dated 3 October 2013

CC1

E MAIL FROM Clive Cussler to Diana Dalkia dated 28 May 2013

Hi Diana,

Please accept this on behalf of Claremont as an order for 200,000 polo T shirts at HK\$80 each with the tortoise logo as shown to me on 18 May. To be delivered by you at the rate of 20,000 per month commencing before the end of June 2013. I note that you require payment for each tranche upfront and therefore I will make arrangements for the first payment of HK\$1,600,000 to be made into your company's bank and I note you have already provided me with the relevant details in this respect.

Regards  
Clive Cussler

Operations Director  
For and on behalf of Claremont Clothing Limited



HCA 234/2013

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

WITNESS STATEMENT OF Sally Tang

I, Sally Tang, of 72 Prince of Wales Road, Sheung Wan, Hong Kong say as follows:

1. I am currently unemployed and have no qualifications. However, during May to July 2013 I was employed by the Plaintiff on a full time temporary basis as a stockroom assistant. I am 26 years old and single. My mother got me the job with the Plaintiff where she is the Director of the Clothes Division.
2. I recall that on 18 May 2013 I visited the premises of the Defendant in Shatin with Clive Cussler, one of my mother's work colleagues. He said it would be interesting for me rather than being stuck in a stockroom all day counting boxes. He told me that he was going to discuss the supply of polo T shirts with Diana Dalkia, the Director of the Defendant's spun fabrics section. Normally this visit, he said, would have been undertaken by my mother. However, she was off work due to her breast cancer getting worse and he had been "dropped in it" by the Board. He did not seem very happy and during the train journey he drank 3 or 4 whiskies. He told me it was for medicinal purposes. On the train he also told me that my mother had informed him that he needed to act quickly to get stock in for the Spring/Summer market and that she had arranged to see Ms Dalkia to discuss the manufacture and supply of polo T shirts. He kept saying that the whole thing had been allowed to slip and that now someone had to sort it out quickly. I must admit I was very tired during the journey because of my medication.
3. At the meeting Diana seemed very nice. She showed us lots of polo T shirts; there were at least 20 different designs and styles. They all looked the same to me but I do remember a polo T shirt in cotton with a tortoise badge on it. The tortoise looked cute and I recall she said its name was "Peek" which I thought was a bit strange. On the train journey home I remember that Mr. Cussler said he really liked "Peek" and I said that I thought "Peek" was cute. At the meeting Diana also kept talking about "in the lock" which I did not really understand and said "in the lock" came in four different colours (blue, yellow, red and green). Mr. Cussler looked confused as well at the meeting.

4. I liked the colours of the various shirts which were being shown to us and Diana talked a lot about colour shading and mentioned another word which I did not understand but sounded like “tin you it ee”. She said that her company could control “tin you it ee” very well. Mr. Cussler said to her that some of the shirts had a slightly mismatched appearance in that their collar and cuffs were slightly different from the rest of the shirt. She explained to us that this was quite common and depended on the light and stitch used.
5. I was worried about my mother’s breast cancer and I was feeling even more tired at the meeting than I had on the train. Mr. Cussler said to Diana that he had to act quickly. Diana looked a little concerned and replied that it was “a pair of teeth” to have a signed sealed sample. She explained to us that that she would normally make up three samples based on what the customer wanted and that the customer would test and examine these. It would then be signed and sealed if acceptable. At this point I remember Mr. Cussler telling her that he preferred “Peek” and that he did not have time to go through the usual procedure.
6. I remember hearing Diana say that the cost of the polo T shirt which Mr. Cussler liked was normally HK\$100 per garment. She also said that this price was quite high because of the fact that the T shirt did not really get any smaller when it was washed because it was already washed at the factory. Mr. Cussler said that HK\$100 was too much and that he was only prepared to pay up to HK\$80 per garment. I wandered off at this point to see some more of the brightly coloured T shirts at the other end of the room. When I came back a few minutes later Diana and Mr. Cussler were shaking hands and Mr. Cussler said HK\$80 it is then and that he would send her an e-mail when he got back to the office.
7. The next thing I remember about the polo T shirts happened on 8 July 2013. Mr. Cussler was visiting the store in Sheung Wan where I was working in the stockroom. He told me that he had come to see the polo T shirts which he had ordered from Diana. I took him to where they were piled up waiting to be put out on the shop floor. He was shocked at what he came across. He shouted that they looked cheap and nasty and nothing like the quality he was expecting. He was furious and immediately went to the store manager’s office to make a telephone call to Ms Dalkia. He told me to accompany him to the office because I had been at the factory when the order had been agreed.
8. During the telephone call (which he made on the loudspeaker – but it was difficult to hear everything Diana was saying on the other end), Mr Cussler informed Ms Dalkia that her company had manufactured and delivered sub standard garments and that they looked to be of very poor quality for the price which had been paid. I think she said that she was sorry and said that she would ensure that any problems could be sorted out for future deliveries and that the current batch of 20,000 could be taken back and improved. She also said something about the price but I cannot recall exactly what. I do recall Mr. Cussler shouting that he had been treated in a very shabby manner and that she would have to come and collect the polo T shirts.

9. When my mother went back to work she told me later that Mr. Cussler had paid far too much and that she had managed to find a replacement supply of polo T shirts within two weeks at a much better price of HK\$65 per garment.

I believe that the facts stated in this witness statement are true.

Signed Sally Tang

Dated 1 October 2013

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO. 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

**FINAL EXPERT REPORT OF CLEO COUSINS FOR THE HIGH COURT**

**1. Qualifications and experience**

1.1 I am Cleo Cousins of Textiles International PLC ("TI"), International House, 8 The Broadway, Hong Kong. I am employed in the role of Technical and Sourcing Director. I am educated to degree level in business studies from North Staffordshire Polytechnic (as it then was). I have no professional qualifications in the textile industry but this is not necessarily unusual in my chosen career path of buying/sourcing.

1.2 I have worked in the textile industry for the last 18 years in various sourcing and product development roles. Throughout my career I have had extensive experience of the retail, mail order, corporate, manufacturing and sourcing sectors.

1.3 I have been in my current position for the last 5 years. TI has a turnover of \$60 million worldwide and employs 1,400 people. I have a staff of 20 people at the head office. In my current role I am responsible for all technical specifications and the sourcing of garments including polo shirts for various global sportswear brands. TI is a manufacturer and sourcer of knitted apparel with interests in both India and HK. Our sourcing interests are worldwide. My main responsibility is to ensure that my technical team are able to identify sources of manufacture (either external or internal) and prepare full garment and fabric specifications, negotiate contracts, secure advantageous prices and delivery terms, and monitor production. Polo shirts are among the types of garments I deal with and represent on average about 1% (or 10,000) of the 10 million garments we deal with per annum for both the retail and corporate market.

**2. Basis of report: material instructions**

2.1 In compiling this report I have seen the following;

- a. the witness statement of Clive Cussler
- b. three polo T shirts from the first instalment of 20,000 delivered to the Plaintiff

2.2 I have prepared this report for the benefit of the High Court at the request of the solicitors acting for the Plaintiff. I have been asked to express my opinion on the following matters which I understand are in issue between the Plaintiff and the Defendant:

- a. whether the polo T shirts delivered by the Defendant are cotton pique or interlock fabric;
- b. is the amount paid by the Plaintiff for each garment (namely, HK\$80) more indicative of an intention to sell/buy cotton pique/interlock or vice versa;

c. are the polo T shirts supplied to the Plaintiff in the first instalment of satisfactory quality / fit for purpose having regard to the price paid, acceptable industry standards, and the Plaintiff's purpose of retail re sale to the public; and,

d. if the polo T shirts are not of satisfactory quality/fit for purpose, are the defects so slight that a buyer would nonetheless have accepted them.

### **3. Cotton interlock or pique?**

3.1 The three polo T shirts I have seen which I understand came from the first batch of 20,000 were all made from 100% pure cotton. To the untrained eye pique and interlock are very difficult to distinguish. Cotton pique could be seen to be more hardwearing than a similar weight/quality cotton interlock. Pique is more practical and has much more widespread use in the polo shirt garment field. It is more often used in the corporate and retail markets than cotton interlock. Cotton interlock is a more delicate fabric to wear than cotton pique. It has soft handling, slightly stretchy properties and lends itself, although not exclusively, to widespread use in the ladies-wear market. Cotton interlock is less stable than cotton pique in terms of dimensional stability (it shrinks more). Also because of the different knit structure of cotton pique to interlock, it knits slower and uses slightly more yarn, as a result it usually has a price premium. Based on the agreed price of HK\$80 paid by the Plaintiff for each garment (which is \$10-\$20 lower than the market price for interlock) I would say that the intention was to buy and sell cotton pique. However, the three from the first batch are cotton interlock; they are marginally softer and stretchier than typical pique fabric. It is, however, strange to say the least, that the Defendant would manufacture and deliver a product which is more expensive for them to produce; they are delivering the more expensive interlock at pique prices.

### **4. Satisfactory quality**

4.1 In the textile industry, a specification is the blue print for the construction of a garment. The finished look of merchandise can be dealt with in the garment specification. Sometimes a quality specification is supplied by the buyer which states the actual manufacturing tolerances that need to be met as well as what kind of visual appearance is acceptable to the customer. Unfortunately, this did not happen in this case. However, the best way of dealing with the appearance of a finished garment is to seal it. In this way you can visually and physically set the exact standard you as the buyer are prepared to accept with the full compliance of the supplier.

4.2 A sealed sample is a sample of the garment sealed by the buyer accepting that the sample is actually representative of the product that the buyer is prepared to accept in terms of delivery. Normal practice is for the seller to provide a minimum of three garments as sealed samples to the buyer. These should be thoroughly inspected and tested by the buyer. Once the buyer has decided that the garments satisfy his standards and needs, he seals and signs the garments. He returns one to the supplier which is also signed, and keeps one for his own reference. It is highly unusual to proceed to production without a sealed sample in place. It is possible for a garment to be constructionally adequate in terms of the specification but it may not have the desired quality of finish which is best indicated by the sealed sample. In the absence of such a sample the quality of finish and overall appearance becomes a much more subjective matter.

4.3 Doing the best I can, in the absence of a sealed sample for reference purposes and in the absence of any specifications, I would comment on the garments supplied as follows.

4.4 *[for the assessment please assume that all tests were carried out properly and in accordance with accepted methodology]*

a. Shrinkage.

Following dimensional stability tests I concluded that the polo T shirts shrank by up to 10%. Having regard to the price paid I would have expected a shrinkage factor of 5% to a maximum of 7%. To achieve this kind of performance the fabric would need to have been pre washed/preshrunk and tumble dried prior to manufacture. It did not appear that the fabric had been treated in this way.

b. Staining

Oil staining can be caused by a number of different circumstances. It can occur during knitting where lubricating oil from the knitting machine can drip onto the fabric as it is being knitted, undetected. Oil can also occur during the sewing process from the lubrication found in some kinds of sewing thread, and also from the sewing machines themselves if they are not maintained in a rigorous manner. Oil staining is part and parcel of garment making. As in all issues regarding quality, the physical positioning of the problem and the frequency of the problem dictate the severity of the action required to rectify the issue. I noticed that oil staining appeared on the bottom seam of the polo T shirts tested and appeared to be random. In relation to staining a test figure of 4 or above is considered in the industry to be acceptable and I recorded a figure of 3.

c. Colour shading

Colour shading in a garment is where there is a difference in shade in the various panels that make up the garment resulting in a mismatched appearance. If this happens, it is usually between body and sleeves caused by the body and sleeves being separated at some point in the sewing process. Another kind of shade variation occurs when the collar and cuffs are dyed separately from the body fabric; great care has to be taken when putting the two together to achieve a good match. I have examined the samples supplied in a light box. Colour is a very subjective area but I would say under lightbox conditions the mismatch between the collar and cuffs and the body fabric was markedly noticeable.

d. Overall finish

I noticed that there was poor workmanship on the hem of all three samples and the embroidery on the badges of two of them was puckered. The care label in all three was in an unusual position (inside the cuff of the left arm) and each garment had loose threads. The fabric felt hard and flimsy. Although I did not carry out a weight check (because my machine was awaiting repair) it just did not feel heavy enough for the price paid. It did not feel as though it weighed 170/gms per square metre which is the weight I would have expected for the price.

## **5. Conclusion**

Having regard to the problems which I have identified above relating to shrinkage, staining, colour shading, and overall finish, I would have paid no more than HK\$65 per shirt of this low quality at a factory price excluding shipment and duty. In the circumstances I therefore conclude that they were not of satisfactory quality or fit for the buyer's purpose at the price of HK\$80 each. In my view the defects were not so slight that the buyer, or indeed any buyer, would have proceeded with the purchase even after having agreed a suitable reduction in the price.

## **6. Declarations**

6.1 I understand my duty to the court and have complied and will continue to comply with it. I have acted in accordance with the Code of Practice for Experts. I have read the Code of Conduct set out in Appendix D of the Rules of the High Court (Cap. 4A) and O. 38 and agree to be bound by it.

6.2 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed Cleo Cousins

Dated 16 October 2013

**Defendant's Witnesses**

**[Please assume that the headings and formalities for each statement comply with the relevant Practice Direction]**



IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO. 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

WITNESS STATEMENT OF DIANA DALKIA

I, Diana Dalkia, of Dyefest House, 8 -12 Lowry Road, Shatin, New Territories, say as follows:

1. I am employed by the Defendant as the Director of its spun fabrics section. I have held this position for the past eight years. The Defendant was established in Shatin as a supplier and manufacturer of textiles in 1968. It deals with a wide range of textile production from fabric through to readymade garments (of all types). In my role I am responsible for the management and negotiation of contracts in spun fabric. Prior to this I had a number of other jobs in the textile industry for the past 15 years; most recently as the General Manager of the Textile Division of Fruit of the Loom PLC which sold products to the retail consumer market, as well as to the industrial promotion and corporate industry.
2. I recall that on 18 May 2013 Clive Cussler visited the premises of the Defendant in Shatin to discuss the supply of polo T shirts with me. I had been expecting their Director of the Clothes Division, Jane Tang. However, I was told that she had been taken ill and that he was stepping into the breach at the last minute. He was accompanied by Mrs. Tang's daughter, Sally Tang. Sally seemed very tired and disinterested throughout the meeting and kept wandering off to look at items around the studio. In fact Mr. Cussler did not seem very keen to be there and he kept coughing and spluttering. I do not think he was very well. Also present at the meeting was David Dewhurst. David has learning difficulties. He runs simple errands for me and makes teas and coffees.
3. At the meeting I showed Mr Cussler a wide range of polo T shirts and discussed their construction and price generally. Several of our designs have a tortoise logo on the chest and he was very taken with this. I explained to him that the logo could be put on any quality and finish of garment; it really all depended on how much he wanted to pay. I informed him that all of the shirts could be manufactured in four different colours (blue, yellow, red and green). I recall him saying that he had no idea of the difference between cotton pique and interlock. So I explained to him at great length the difference between the two. I told him that pique was more practical and hardwearing and that interlock is perceived to be a more delicate fabric to wear than cotton pique. I also pointed out that interlock was more expensive due to the fact that it took more yarn to produce it. He insisted that he

wanted to keep the price as low as possible but he said that the majority of his customers were female who would probably prefer interlock if given the chance and that menswear was a small part of his operation. In the circumstances, I am fairly sure that he said that he would want to order interlock.

4. I pointed out to him that it was very common to find that the shirts had a slightly mismatched appearance in that their collar and cuffs were slightly different from the body fabric. I explained that, to a degree, this was acceptable in the industry but obviously the more he was willing to pay the greater the steps which we could take to achieve a good match. I also explained the concept of colour continuity at length which he seemed to be particularly interested in. I assured him that our company had a strong system of control in this respect.
5. He was very anxious that the whole ordering, production and delivery process should be as quick as possible. At this point I explained to him what would ordinarily be involved in the process, namely: I would be given a set of specifications at the start of an enquiry by the customer and then would make up three samples to comply with these requirements, having regard to the price which the customer was willing to pay. Thereafter, the customer would examine the three samples and, if satisfied, we would all sign and seal the three and then bulk production would start on the basis of the agreed standard of finish, appearance and quality. It would be highly unusual to start manufacturing until sealed samples had been agreed.
6. Mr. Cussler could not be persuaded to proceed on the basis of a sealed sample despite my insistence that it would save time in the long run. He was adamant that we started production almost immediately because of his time constraints and he reiterated that he was particularly taken with the cotton interlock with the tortoise logo on the chest.
7. At this point he picked up one of our best quality shirts which we had produced for a high end fashion retailer and said he wanted exactly the same. I told him that the cost of this particular design and quality of polo T shirt was normally HK\$100 per garment and that the price reflected its low shrinkage rate of 5%. This low rate, was said, due to prewashing and pre shrinking the fabric and then tumble drying it prior to manufacture which added significantly to the price. He then said that he was looking for something in the region of HK\$80 per garment and asked me if I could supply what he wanted at this rate. I replied that he would be looking at a shrinkage rate of 7% to 10% for that price and that the quality of the finish would not be as good as the garment which he had just picked up. I pointed out a cotton interlock shirt with the tortoise logo on it of the standard which he could expect to receive for the price of HK\$80 and he nodded as if to indicate "ok". In fact the shirt which I pointed out would normally have sold at \$100 per garment but I had already mentally reduced this price to take account of the size of the order which he was willing to place.
8. Obviously the quantity of garments ordered has a great effect on the price charged per item and if there are large quantities involved then the price per garment is likely to be far less. An order for 200,000 pieces is a medium sized order for the Defendant company. I do recall Mr. Cussler raising the size of the order which he would place and the likelihood of further orders in the future and that such volume warranted a discount. However, he was referring to the HK\$80 quality shirt which I

had just shown to him. I said that I had already reduced the price having regard to the volume of business which was being placed by him. We shook hands there and then and Mr. Cussler and Sally left. Before leaving he said that he would send a confirmatory email to record the deal. In fact I did not receive the promised email until the morning of 28 May. I replied to him on the same day by email [DD1].

9. On 12 June 2013 he arranged for HK\$1,600,000 to be paid to the Defendant for the first instalment. Following which, the first delivery of 20,000 polo T shirts was made by the Defendant on the 25 June 2013 to the Plaintiff's central distribution warehouse. I understand that here the garments were then repackaged in the Plaintiff's own brand bags and distributed to their stores.
10. On 8 July 2013 I received a telephone call from Mr. Cussler at my studio in Shatin. David Dewhurst was with me at the time. Mr. Cussler obviously had me on loudspeaker at his end (I could hardly hear what he was saying) so I did the same to him. I always think it is very rude to speak to people in loudspeaker mode unless others have to hear the conversation. He said that my company had manufactured and delivered sub standard garments and that they looked to be of very poor quality for the price which he had paid. I replied that I was sorry that he thought that but he had got the quality and finish which was commensurate with the price he had been willing to pay. I said that if he wanted to increase the quality this could be done for future deliveries but that we would have to renegotiate the price. I also pointed out that the current batch of 20,000 could not be taken back. He said that he wanted them to be re-worked to rectify the problems which were present. He shouted that he had been treated in a very shabby manner and that he was rejecting the garments on behalf of the Plaintiff and cancelling the remainder of the order with the Defendant. I could not get a word in edgeways. He then said that the garments could be collected by my company from the various stores to which they had been distributed and that he would be charging us storage fees until they were so collected. At that point he slammed the telephone down on me.
11. As a result of the wrongful termination of this contract we have lost the remaining HK\$14,400,000 which was due to be paid for the next 180,000 polo T-shirts which the Plaintiff had agreed to buy. In addition, it has cost us HK\$25,000 to collect the 20,000 already delivered and to store them in our own premises pending a decision as to their fate.

I believe that the facts stated in this witness statement are true.

Signed Diana Dalkia

Dated 7 October 2013

DD1

EMAIL FROM Diana Dalkia to Clive Cussler dated 28 May 2013

Dear Clive,

Many thanks for your email earlier today and for confirming on behalf of Claremont your order for 200,000 polo T shirts at HK\$80 each with the tortoise logo, as shown to you on 18 February. To be delivered by us at the rate of 20,000 per month commencing before the end of June 2013. Production will commence once the first payment of HK\$1,600,000 is made into our company's bank.

Best wishes

Diana Dalkia

Director of Spun Fabrics  
For and on behalf of Dyefast Fabrics Limited

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO. 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

WITNESS STATEMENT OF DAVID DEWHURST

I, David Dewhurst, of Dyefest House, 8-12 Lowry Road, Shatin, Hong Kong say as follows:

1. I am employed by the Defendant as an assistant to Diana Dalkia, the Director of its spun fabrics section. I have held this position for the past five years. I run errands for Diana and make tea and coffee. She calls me her "General Factotum". She is very nice to me and was the only person willing to give me a job.
2. I recall that on 18 May 2013 a lady called Sally visited our studio in Shatin. She was with a man called Clive who was discussing the supply of polo T-shirts with Diana. We had been expecting just one older lady called Jane Tang so I had to get an extra cup and saucer. I had only arranged for one extra cup and saucer for Jane but now that there were two people I had to go down to the kitchen and find another cup and saucer but it took a while to find a cup and saucer which matched with the others. I heard Clive tell Diana that Jane had been taken ill and that he was stepping into the breach at the last minute and that Sally was Mrs. Tang's daughter. Sally kept yawning and touching things all over the studio. She would not stay still in one place for long. Clive seemed to be in a rush and he kept coughing and spluttering. I do not think he was very well.
3. At the meeting Diana showed him lots of different polo T-shirts and discussed how they were made and what they cost. He seemed to like the tortoise badge on the chest. I had to keep checking that Sally was not breaking anything around the studio so I had to leave Diana with Clive at numerous points. I did however hear a lot of the conversation between them. Diana likes me to listen because she forgets things because she is so busy and I can remind her of what was said. She says that I am like her human tape recorder.
4. I heard her explain to him that the badge could be put on any quality and finish of shirt and that it really all depended on how much he wanted to pay. She informed him that all of the shirts could be manufactured in four different colours (blue, yellow, red and green). I recall him saying that he had no idea of the difference between cotton pique and interlock. Sally kept laughing whenever Clive or anyone else said "pieque". So Diana explained to him at great length the difference between

the two. To be honest they both look the same to me. After Clive had left I had to remind Diana about which one Clive wanted. I am fairly sure he said interlock.

5. Clive noticed that some of the shirts had a slightly mismatched appearance in that their collar and cuffs were slightly different from the body fabric. Diana explained to him that this could be caused by various reasons but that we took great steps to achieve a good match. She also explained the concept of colour continuity at length which he seemed to be particularly interested in and assured him that our company had a strong system of control in this respect.
6. Diana told me afterwards that Clive was very anxious that the whole ordering, production and delivery process should be as quick as possible and that she had gone to great lengths to explain the nature of signed, sealed samples to him. Normally Diana would produce three samples to comply with the customer's requirements, having regard to the price which the customer was willing to pay. Then, the customer would examine the three samples and if satisfied we would all sign and seal the three and then bulk production would start on the basis of the agreed standard of finish, appearance and quality. It is very rare to start manufacturing until sealed samples had been agreed.
7. Diana told me, shortly after he and Sally had left, that Mr. Cussler could not be persuaded to proceed on the basis of a sealed sample despite her insistence that it would save time in the long run and that he was adamant that we started production almost immediately because of his time constraints.
8. I was present when Clive said that he was particularly taken with the cotton interlock with the tortoise badge on the chest. At this point he picked up one of our best quality shirts which we had produced for a high end fashion retailer and said he wanted exactly the same. Diana told him that the cost of this particular design and quality of polo T-shirt was normally HK\$100 per garment and that the price reflected its low shrinkage rate of 5%. This low rate was, she said, due to prewashing and preshrinking the fabric and then tumble drying it prior to manufacture which added significantly to the price. He then said that he was looking for something in the region of HK\$80 per garment and asked her if she could supply what he wanted at this rate. At this point Sally had wandered off again so I had to go and check what she was up to at the other end of the studio. When we returned to Clive and Diana they were shaking hands and Clive was saying HK\$80 it is then. Mr. Cussler and Sally then left. Before leaving he said that he would send an e mail to record the deal.
9. On 8 July 2013 Diana received a telephone call from Mr. Cussler at our studio in Shatin. Mr. Cussler sounded as if he was talking from inside a box which was a long way away and I could hardly hear what he was saying. Diana pressed a button on her telephone and wandered around the room shouting at the telephone. He said that our company had manufactured and delivered sub standard garments and that they looked to be of very poor quality for the price which he had paid. Diana replied that she was sorry that he thought that but he had got the quality and finish which was commensurate with the price he had been willing to pay. She went on to say that if he wanted to increase the quality this could be done for future deliveries but that we would have to renegotiate the price. She also pointed out that the current batch of 20,000 could not be taken back. He said that he wanted them to be re-worked to rectify the problems which were present. He shouted that he had been treated in a

very shabby manner and that he was rejecting the garments on behalf of the Plaintiff and cancelling the remainder of the order with the Defendant. Diana could not get a word in edgeways. He then said that the garments could be collected by our company from the various stores to which they had been distributed and that he would be charging us storage fees until they were so collected. At that point he slammed the telephone down on Diana.

I believe that the facts stated in this witness statement are true.

Signed David Dewhurst

Dated 10 October 2013

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION,  
COURT OF FIRST INSTANCE  
HIGH COURT ACTION NO. 234 OF 2013

BETWEEN

CLAREMONT CLOTHING LIMITED

Plaintiff

and

DYEFEST FABRICS LIMITED

Defendant

**FINAL EXPERT REPORT OF DEEPAK DHARMA FOR THE HIGH COURT**

**1. Qualifications and experience**

1.1 I am Deepak Dharma of Fabric Contract Consultants Limited, Carter House, Shatin, New Territories. I am the owner/manager of this company which I set up 4 years ago when I took early retirement from the Defendant in this case. I advise companies on the manufacture, pricing, sourcing and quality control in relation to fabrics. My clients are typically large organisations with no experience in the fabric industry who are seeking to purchase large numbers of garments for their workforce. I will act as an interface between them and the manufacturer/supplier. Sometimes I act in this capacity for my clients where the Defendant is the manufacturer/supplier. In my experience of corporate wear the factors that have a significant influence on selection of vendor are price, quality, and consistency of supply in terms of delivery quality and reliability. Often the buyers of corporate wear have little experience of the textile world, as they are usually responsible for a large diversity of product, and this is where my company has found its niche, in providing the expertise that they in fact lack.

1.2 During the last 38 years I have gained a wide range of experience in textiles. I spent my first two years in the Defendant's factory in Preston in the cotton yarn section. I then went into their men's shirts department for eight years where I learnt all about cotton fabrics and continued to gain experience in the cotton yarn trade. The next 18 years were spent dealing with print fabric, yarn dyed fabric, household fabric and generally increasing my experience of the fabric trade. The last 6 years (prior to my retirement 4 years ago) were spent working at the Defendant's Head Office covering all kinds of textile business. I was the Managing Director of the spun fabric section of the Defendant responsible for garment import/export and the management of spun fabric contracts. I have no formal qualifications in textiles/fabrics but this is not unusual in this industry.

**2. Basis of report : material instructions**

2.1 In compiling this report I have seen the following;

a. the witness statement of Diana Dalkia

b. 50 polo T-shirts from the first instalment of 20,000 delivered to the Plaintiff

2.2 I have prepared this report for the benefit of the High Court at the request of the solicitors acting for the Defendant. I have been asked to express my opinion on the following matters which I understand are in issue between the Plaintiff and the Defendant:



- a. whether the polo T-shirts delivered by the Defendant are cotton pique or interlock fabric;
- b. is the amount paid by the Plaintiff for each garment (namely, HK\$80) more indicative of an intention to sell/buy cotton pique/interlock or vice versa;
- c. are the polo T-shirts supplied to the Plaintiff in the first instalment of satisfactory quality / fit for purpose having regard to the price paid, acceptable industry standards, and the Plaintiff's purpose of retail re sale to the public; and,
- d. if the polo T-shirts are not of satisfactory quality/fit for purpose, are the defects so slight that a buyer would nonetheless have accepted them.

### **3. Cotton interlock or pique?**

3.1 The 50 polo T-shirts I have seen which I understand came from the first batch of 20,000 were all made from 100% pure cotton. Polo shirts can be made from a variety of different fabric types including cotton pique, cotton interlock and cotton jersey. All of these fabrics can use the same yarn. The composition of the yarn is one of the variable elements in any fabric production. The major difference between pique, interlock and jersey, given that they are all produced on circular knitting machines, is the kind of stitch and machine configuration used in production. It is the variation of the stitch that creates the different types of fabric. Cotton pique could be seen to be more hardwearing than a similar weight/quality cotton interlock. Also because of its different knit structure cotton interlock knits slower and uses up more yarn; thus it is slightly more expensive. It (interlock) is often used for ladies wear because it has a slightly softer finish than pique. The sample of 50 polo T-shirts which I examined was definitely made of cotton interlock having regard to their soft, stretchy feel and stitch configuration. I would normally advise a client that they would have to pay up to \$10-\$20 more for interlock per garment (as opposed to the same garment in pique) and I am not surprised that these polo T-shirts were being sold for HK\$80 each. This is about the price that I would have recommended for the interlock version of the garment in question, although I accept that so many variables feed in to make up the price that this is arguable to some extent. Based only upon the price paid I would have said that the purchaser was buying an interlock cotton garment; pique would have been marginally cheaper.

### **4. Satisfactory quality**

4.1 It is highly unusual in the textile industry to proceed to production without a formally agreed specification and a signed sealed sample. I have come across this on a few occasions when speed was of the essence but it does cause problems subsequently. The best way of dealing with the expected appearance of a finished garment is to seal it: i.e, have the manufacturer produce a sample which is then signed and sealed by the purchaser before bulk production commences. In this way you can visually and physically set the exact standard you as the buyer are prepared to accept with the full compliance of the supplier.

4.2 I have seen the range of polo T-shirts which I am told were shown to Mr. Cussler prior to bulk production. However, this is of no assistance whatsoever to me as the polo T-shirts shown to him represented the complete spectrum of quality and appearance; from the cheap Primark standard right through to the upper end of the market such as Polo and Tommy Hilfiger. In between these two points there are some six levels of quality and finish and there is no way of telling which level had been agreed upon in this case. I have therefore made the assumption that, having regard to the price paid, the Plaintiff thought (or ought reasonably to have thought) that it was purchasing a mid level quality and finish of garment, along the lines of a Debenhams own brand standard. On this basis, there is no single test result (below) that I would take significant issue with if I was acting as the buyer's consultant.

4.3 On the basis of this assumption, in the absence of a sealed sample for reference purposes and in the absence of any specifications, I would comment on the garments supplied as follows.

4.4 *[for the assessment please assume that all tests were carried out properly and in accordance with accepted methodology]*

a. Shrinkage.

Being a natural fiber, cotton is porous. When the cotton is received by the manufacturer or processing mill it goes through various spinning processes. These include the general cleaning of its natural waste material and transforming it into cotton yarn. The yarn then goes through a circular knitting process under tension (as this is the nature of knitting). Once off the machine the yarn will relax. Next is the dyeing process. This is a series of wet processes where dye stuff is added to form the required colour. During the dyeing process the cotton fabric absorbs water forcing the cotton thread to expand and move closer together resulting in weight gain and a loss of overall volume, ie shrinkage. The next step is to dry and finish the fabric under a series of mechanical processes to fix the weight and width of the fabric to the required performance levels desired by the customer. In other words it is possible to manipulate mechanically (within certain parameters) the performance of the fabric to meet certain criteria in areas such as width, weight and shrinkage. Every type of knit construction has different stability levels.

Following dimensional stability tests I concluded that the polo T-shirts shrank by up to 10%. When I advise on the purchase of cotton pique I allow up to 10% shrinkage. However, I accept that this is my absolute threshold and I may be looking for improvements in production but I would not reject the goods upon this basis alone. It is my understanding that even Marks & Spencer do not set a shrinkage standard of 5% but accept up to 7%. Having regard to the price paid I would have expected a shrinkage factor of a maximum of 7% to 10%. To achieve 5% to 7% the fabric would need to have been pre washed/pre shrunk and tumble dried prior to manufacture. It did not appear that the fabric had been treated in this way. However, this process can add significantly to the costs of production and the garments would be in the region of HK\$100 each at the mid level which I am suggesting is the yardstick in this case. Because of the knit structure of pique fabric (it is looser in construction than say single jersey) it is very difficult in the real commercial world to work with such a tight tolerance of 5% shrinkage and succeed. If a customer tried to impose such stringent standards on me as supplier I would not accept them without fully explaining the high costs implications of producing such a fabric. Typically, such a buyer would be at the high end of the fashion market if they were willing to pay for this level of shrinkage.

b. Staining

Oil staining is virtually unavoidable during the manufacturing process but it is the physical positioning of the stains and how often they occur which is the important issue. For example, if the staining occurs across the front of the garment and is frequent at the very least you have to insist on remedial action or reject the shipment. It is a question of degree in every case. I found very small patches of oil staining on 3 of the 50 garments which I inspected mainly on the bottom of each polo T-shirt. Because of the location, the small size, and frequency (less than 5%) I would not have advised the buyer to insist on any remedial action or to have rejected the goods. I reported an overall test result for staining of 3 whereas 4 is the industry standard. However, this figure did not alarm me as it should not be looked at in isolation from the other test results. It is the overall picture which must be considered.

c. Colour shading

On examination I noticed that the collar and cuffs used a different knit construction to the body fabric. Often where this happens, optically they can present a difference in colour even if the dye batching and matching is scrupulously maintained as different fabric constructions reflect light differently. This results in optical colour difference even though the shades may be perfectly technically matched. Colour is a very subjective area and I would say that the match is acceptable for the price paid. Experienced buyers of textiles would know that the same colour can look different optically on different knit constructions and such buyers will allow some tolerance and accept small differences.

d. Overall finish

I noticed that there was poor workmanship on the hem of three of the 50 samples and the embroidery on the badges of two of them was puckered. The care label in all three was in an unusual position (inside the cuff of the left arm) and each garment had loose threads. However, 3 out of 50 is well below the industry accepted tolerance of a 7% returns rate and I would not have advised a client to reject the whole installment on this basis but would have advised merely to have mentioned the defects to the supplier so that they could tighten up on their quality control in future. The fabric weighed 170/gms per square metre which is the weight I would have expected for the price. Obviously, a heavier fabric would be more comfortable for the end user but this would cost more to produce.

## 5. Conclusion

Having looked at 50 of the shirts I would have accepted a shirt of this quality as an end buyer at the price of HK\$80 per garment. The sewing construction looks acceptable and the weight, although light, is appropriate for the price paid. I noted some differentials between the collar and cuff colour and that of the body fabric but this was tolerable. Oil staining was present but as I have mentioned it is a question of degree as to whether this is commercially acceptable. Having regard to its location and frequency I would have accepted the shirts and whilst I accept that a staining test result of 3 is below the industry standard this should not be looked at on its own. In fact the same fabric can produce different results with different testing laboratories. Whilst the testing process itself is scientific the interpretation of the data is done by people and this can result in slightly varying views. I have had experience of independent testing laboratories giving different results in respect of the same garment. With regard to the shrinkage figure of 10% this is within my own perceived tolerance of shrinkage, albeit at the top of the tolerance, and I would not commercially reject the garments as a result of such a test report figure although I may inform the manufacturer of my disappointment and make a request for steps to be made towards an improvement in this area.

## 6. Declarations

6.1 I understand my duty to the court and have complied and will continue to comply with it. I have acted in accordance with the Code of Practice for Experts. I have read the Code of Conduct set out in Appendix D of the Rules of the High Court (Cap. 4A) and O. 38 and agree to be bound by it.

6.2 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed Deepak Dharma

Dated 18 October 2013