

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL
International Commercial Chamber
DIVISION 5 - CHAMBER 16

JUDGMENT OF 05 MARCH 2024

(No. 27/2024, 13 pages)

General directory entry number: **No. RG 23/00492 – No. Portalis 35L7-V-B7H-CG4NK**

Decisions referred to the Court:

- judgment of the Paris Commercial Court (1st chamber) delivered on 6 December 2022 under number RG J2022000595
- judgment of the Paris Commercial Court (1st chamber) delivered on 28 March 2023 under number RG J2022000595

APPELLANTS

Company GREAT EMPIRE DEVELOPMENT CO. LTD.

a company incorporated under Hong Kong law,
having its registered office at: [Address 3] (CHINA)
in the person of its legal representatives,

Company GREAT EMPIRE DISTRIBUTION CO. LTD.

A company incorporated under Chinese law,
[Address 4] (CHINA)
in the person of its legal representatives,

Represented, as counsel with right of audience, by Anne-Marie MAUPAS OUDINOT, of the PARIS Bar, locker: B0653

Represented, as trial counsel, by Jacques MIQUEL, member of the PARIS Bar, locker: C290

RESPONDENT

S.A.R.L. [L] [O] CONSEIL

having its registered office at: [Address 1],
in the person of its legal representatives,

Represented, as counsel with right of audience, by Stéphane FERTIER, of SELARL JRF AVOCATS & ASSOCIES, of the PARIS Bar, locker L0075

Represented, as trial counsel, by François MIRIKELAM, of the PARIS Bar

COMPOSITION OF THE COURT:

The case was heard on 09 January 2024, in open court, before the Court composed of:

Daniel Barlow, President
Ms. Fabienne SCHALLER, President
Ms. Laure ALDEBERT, Judge

who ruled on the case.

A report was presented at the hearing by Ms. Laure ALDEBERT under the conditions provided for by article 804 of the French Code of Civil Procedure.

Court Clerk at the hearing: Ms. Najma EL FARISSI

JUDGMENT:

- adversarial

- judgment made available at the Court Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by Mr. Daniel BARLOW, President, and by Ms. Najma EL FARISSI, Court Clerk to whom the judgment's original was delivered by the signatory judge.

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I/ FACTS AND PROCEDURE

1- The company [L] [O] CONSEIL, hereinafter referred to as "[L] [O]", formerly headed by its founder and manager [L] [O], is a French company engaged in marketing consultancy and the import-export of all French and foreign luxury products.

2- The company GREAT EMPIRE DISTRIBUTION CO, Ltd, hereinafter referred to as "GEDI", is a company incorporated under Chinese law and based in [Address 6] engaged in the distribution of food, cosmetic and chemical products in the Republic of China.

3- The company GREAT EMPIRE DEVELOPMENT Company Limited, hereinafter referred to as "GEDEV" is a company incorporated under Hong Kong law that buys and resells products from abroad in China, known as "cross border e-commerce".

4- These two companies have Mr. [P] [G] [I] as their common director.

5- Groupement des Laboratoires Français-G.L.F./Soras, hereinafter referred to as "Laboratoires Embryolisse", based in France, produces and markets cosmetic products under the Embryolisse brand.

6- The company JETLAG is a company incorporated under Hong Kong law operating on the Chinese market, in which Mr. [I] is a partner and with which he has signed a joint venture agreement.

7- In January 2017, [L] [O] introduced Mr. [I] to Laboratoires Embryolisse with a view to extending their business to the Chinese market.

8- It was in this context that, on 31 May 2017, Mr.[I], representing company “GED”, signed an Overseas Distribution Cooperation Agreement with Laboratoires Embryolisse, under which company GED was to distribute Embryolisse brand cosmetic products on a non-exclusive basis via e-commerce platforms located in mainland China, with reference being made to JETLAG for payments.

9- The distribution agreement was concluded for an initial period of two years, renewable by agreement of the parties for periods of one year.

10- In view of this agreement, [L] [O] signed a business provider agreement with GED for the distribution of Embryolisse brand products for the local Chinese market, under which GED would pay [L] [O] a commission of 4.20% on all invoices for Embryolisse goods relating to this market for a period of 3 years from 1st April 2017, expiring on 31 March 2020.

11- The business provider agreement - hereinafter referred to as the “Convention” - was duly executed until 27 October 2017, the date on which Mr. [I] informed [L] [O] of the serious difficulties he had encountered with JETLAG, which was no longer paying Embryolisse invoices, and of the lawsuit he was bringing against it in Hong Kong.

12- On 12 July 2019, as it was no longer receiving purchase invoices for Embryolisse products, [L] [O] sent GED formal notice by international registered letter to pay, within 30 days of the date of receipt, the sums of €9,122.40 and €4,332.89 corresponding to the amounts of the two unpaid invoices, referenced HK.06 and I-IK.07-1 Air, and to notify it of the amount of goods purchased by it or any other of its companies from Laboratoires Embryolisse since 1st October 2017.

13- There has been no response to this formal notice.

14- In August 2020, [L] [O] brought an action against companies GEDI and GEDEV before the Nanterre Commercial Court, which, in a ruling dated 2 July 2021, declared that it had no territorial jurisdiction.

15- By deeds dated 23 November and 23 December 2021, [L] [O] brought an action against companies GEDI and GEDEV before the Paris Commercial Court, seeking enforced performance of the business provider convention and payment of the sums it considered due under the agreement.

16- On 20 June 2022, [L] [O] brought into the proceedings GLF/SORAS (Laboratoires Embryolisse) to disclose the invoices relating to orders placed by GED between 27 October 2017 and 31 March 2020.

17- In a judgment dated 6 December 2022, the Paris Commercial Court:

Combined cases RG 2021062201, RG 2021062205 and RG 2022029779;

Declared CPC’s claim against GEDI admissible and dismissed GEDI’s plea of inadmissibility;

Declared that the forced impleading of SORAS in the proceedings is admissible

Declared that GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION have jointly committed serious breach for which they are liable by ceasing, with effect from 27 October 2017 and until 31 March 2020, to perform the business provider convention entered into with CPC and by continuing their business relationship with SORAS on their own;

Ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION *in solidum* to pay CPC invoices HK.06 and HK.07 in the amount of €9,122.40 and €4,332.89, plus interest at the legal rate from 27 August 2020 until full payment.

- By interlocutory ruling, orders SORAS to produce all sales invoices for Embryolisse products issued by it under the distribution agreement entered into with “GED Company” on 31 May 2017:
 - o regardless of the name of the recipient, GREAT EMPIRE DEVELOPMENT, GREAT EMPIRE DISTRIBUTION, GED, GED Company or other;
 - o regardless of the address used for the recipient;
 - o issued between 27 October 2017 and 31 March 2020 or later, in the case of orders placed before that date;
 - o with a certificate of compliance from a chartered accountant;
 - o subject to a penalty of 500 euros per day of delay at the end of a period of one month from the date of notification of this decision and for a period of 60 days, at the end of which period a ruling will be rendered;
- Invited the parties to make submissions on damages and referred them to the hearing of the case with the judge assigned to the supervision of the case on 6 March 2023;
- Declared that the parties will receive individual summonses from the court clerk’s office at a later date.
- Ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* the costs of the proceedings.

18- By judgment dated 28 March 2023, the Paris Commercial Court:

- Ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* SARL [L] [O] CONSEIL the sum of 686,294.07 euros, plus legal interest from 27 August 2020;
- Dismissed SARL [L] [O] CONSEIL’s claims for damages for loss of opportunity and unlawful resistance;
- Ordered GREAT EMPIRE DISTRIBUTION and GREAT EMPIRE DEVELOPMENT to pay *in solidum* SARL [L] [O] CONSEIL the sum of 25,000 euros under Article 700 of the French Code of Civil Procedure
- Dismissed GREAT EMPIRE DISTRIBUTION and GREAT EMPIRE DEVELOPMENT’s application to set aside provisional execution
- Ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* the costs of the proceedings, including the costs to be recovered by the clerk’s office, in the amount of €111.02 including €18.29 VAT.

19- In a statement dated 20 December 2022, Great Empire Development and Great Empire Distribution appealed the judgment rendered on 6 December 2022. The case was registered under number RG 23/00492.

20- In a statement dated 3 April 2023, they appealed the judgment rendered on 28 March 2023 before this court. The case was registered under number RG 23/06449.

21- Laboratoires Embryolisse, which submitted the invoices requested at first instance, are not involved in the appeal.

22- The proceedings of both cases were closed on 19 December 2023.

23- The hearings of both cases were held on 9 January 2024.

24- On that date, the parties did not object to the Court's decision to combine the two cases and to rule by a single case.

II/ CLAIMS OF THE PARTIES

• Regarding the appeal against the judgment dated 6 December 2022

25- According to their latest submissions, sent electronically on 2 November 2023 (RG 23/00492), **Great Empire Development and Great Empire Distribution** asked the Court, under Articles 789 and 861 of the Code of Civil Procedure, articles 31, 32 and 122 of the Code of Civil Procedure, articles 1231-1 *et seq.* of the Civil Code, articles 514, 514-1, 514-3 *et seq.* of the Code of Civil Procedure and articles 1186 and 1187 of the Civil Code, to:

- DECLARE their appeal admissible and well-founded,
- REVERSE the judgment dated 6 December 2022 insofar as it:
 - declared that [L] [O] CONSEIL's claim against GREAT EMPIRE DISTRIBUTION was admissible and dismissed the latter's plea of inadmissibility,
 - declared that the companies GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION have jointly committed a serious breach incurring their liability by ceasing, as from 27 October 2017 and until 13 March 2020, the performance of the business provider convention concluded with the company [L] [O] CONSEIL and by continuing alone their business relationship with SORAS,
 - ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* [L] [O] CONSELL invoices HK 06 and H K 07 in the amounts of 9,122.40 euros and 4,332.89 euros, plus legal interest, from 27 August 2020 until full payment,
 - ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* the costs of the proceedings.

Consequently, to rule again and:

- DECLARE that SARL [L] [O] has neither interest nor standing to bring an action against the company GREAT EMPIRE DISTRIBUTION,
 - DECLARE, consequently, that the summons dated 23 November 2021 issued by SARL [L] [O] CONSEIL, and all of its claims, requests and submissions, are inadmissible against GREAT EMPIRE DISTRIBUTION,
 - DECLARE that the business provider convention of [L] [O] CONSEIL lapsed on 13 November 2017,
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- JUDGE consequently that GREAT EMPIRE DEVELOPMENT has not committed any serious breach by not performing a contract that has lapsed,
- DISCHARGE the defendants from any judgment adversely affecting them,
- DECLARE that SARL [L] [O] CONSEIL has not fulfilled its contractual and commercial undertakings to provide regular support to GREAT EMPIRE DEVELOPMENT and JETLAG in their relations with Laboratoires EMBRYOLISSE, and is therefore not entitled to claim payment of its commissions,

In any event,

- DISMISS the request by SARL [L] [O] CONSEIL to order the appellants to pay the sum of 25,000 euros under Article 700 CPC.
- ORDER SARL [L] [O] CONSEIL to pay GREAT EMPIRE DISTRIBUTION the sum of 10,000 euros under Article 700 of the Code of Civil Procedure,
- ORDER SARL [L] [O] CONSEIL to pay all the costs, in accordance with the provisions Article 699 of the CPC.

26- In response according to its latest submissions, sent electronically on 1st December 2023 (RG 23/00492), [L] [O] asked the Court, under Articles 1103, 1104, 1217, 1222, 1231 *et seq.* of the Civil Code and Article 46 of the Code of Civil Procedure, to:

- CONFIRM the judgment rendered on 6 December 2022 by the First Chamber of the Paris Commercial Court in its entirety

Consequently,

- DISMISS GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION of all their claims

In counterclaim,

- ORDER GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* SARL [L] [O] CONSEIL the sum of €25,000 under Article 700 of the French Code of Civil Procedure,
- ORDER GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* all the costs of the proceedings at first instance and on appeal, which will be recovered directly by SELARL JRF & ASSOCIES represented by Maître Stéphane FERTIER in accordance with the provisions of Article 699 of the CPC.

• **Regarding the appeal against the judgment dated 28 March 2023**

27- According to their latest submissions, sent electronically on 2 November 2023 (RG 23/06449), **Great Empire Development and Great Empire Distribution** asked the Court, under articles 789 and 861 of the Code of Civil Procedure, articles 31, 32 and 122 of the Code of Civil Procedure, articles 1231-1 *et seq.* of the Civil Code, articles L134-1 *et seq.* of the Commercial Code, articles 514, 514-1, 514-3 *et seq.* of the Code of Civil Procedure and articles 1186 and 1187 of the Civil Code, to:

- DECLARE their appeal admissible and well-founded,
- REVERSE the judgment dated 28 March 2023 insofar as it:
 - ordered the companies GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* SARL [L] [O] CONSEIL the sum of 686,294.07 euros, plus legal interest from 27 August 2020,
 - ordered GREAT EMPIRE DISTRIBUTION and GREAT EMPIRE DEVELOPMENT to pay *in solidum* SARL [L] [O] CONSEIL the sum of 25,000 euros under Article 700 of the French Code of Civil Procedure,
 - ordered GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* the costs of the proceedings, including the costs to be recovered by the clerk's office, in the sum of €111.02 including €18.29 VAT.

Consequently, to rule again:

- DECLARE that SARL [L] [O] CONSEIL has not fulfilled its contractual and commercial undertakings to provide regular support to GREAT EMPIRE DEVELOPMENT and JETLAG in their relations with Laboratoires EMBRYOLISSE, and is therefore neither entitled nor justified in seeking payment of its commissions in the amount of 686,294.07 euros,
- DISCHARGE the appellants from any order adversely affecting them, both in the main proceedings and under Article 700 and the costs,
- CONFIRM in part the judgment dated 28 March 2023 only in so far as it dismissed SARL [L] [O] CONSEIL's claims for damages for loss of opportunity and unlawful resistance,
- ORDER SARL [L] [O] CONSEIL to pay GREAT EMPIRE DISTRIBUTION the sum of 10,000 euros under Article 700 of the French Code of Civil Procedure,

In any event,

- DISMISS the request by SARL [L] [O] CONSEIL to order the appellants to pay the sum of 25,000 euros under Article 700 CPC.
- ORDER SARL [L] [O] CONSEIL to pay all the costs in accordance with the provisions of Article 699 of the CPC.

28- In response, according to its latest submissions, sent electronically on 1st December 2023 (RG 23/06449), [L] [O] asked the Court, under Articles 1103, 1104, 1186, 1217 and 1222 of the Civil Code, Articles 1231 *et seq.* of the Civil Code and Article 46 of the Code of Civil Procedure, to:

- CONFIRM the judgment of the First Chamber of the Paris Commercial Court dated 28 March 2023 in all its provisions

Consequently,

- DISMISS GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION of all their claims

In counterclaim,

- ORDER GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay *in solidum* SARL [L] [O] CONSEIL the sum of €25,000 under Article 700 of the French Code of Civil Procedure,
- ORDER GREAT EMPIRE DEVELOPMENT and GREAT EMPIRE DISTRIBUTION to pay in solidum all the costs of the proceedings at first instance and on appeal, which will be recovered directly by SELARL JRF & ASSOCIES represented by Maître Stéphane FERTIER in accordance with the provisions of Article 699 of the CPC.

III/ REASONS FOR THE DECISION

Regarding the plea of inadmissibility

29- The appellants argue that GEDI based in China is not a party to the business provider convention entered into only between GEDEV based in Hong Kong and [L] [O] in May 2017.

30- They argue that although Mr. [I] is the manager of the two companies, they are two separate entities with different activities, as evidenced by GEDEV's *business licence* and GEDI's Dun&Bradstreet Report.

31- In this respect, they point out that GEDEV is the only company involved in the distribution of Embryolisse brand western products in China, because it is located abroad and engages in cross-border e-commerce.

32- In response, [L] [O] points out that the two companies have identical activities and the same manager, who is deliberately creating confusion between them.

33- It adds that GEDEV is a simple mailbox, currently without activity, having been set up only to meet the requirements of cross-border e-commerce for the marketing of Embryolisse brand products in mainland China.

ON THIS MATTER,

34-Pursuant to Article 32 of the Code of Civil Procedure, any claim made by or against a person who does not have the right to bring an action is inadmissible.

35- Pursuant to Article 122 of the same Code, any plea that seeks to have the opponent's claim declared inadmissible without consideration of the merits, on the grounds of lack of entitlement to bring an action, such as lack of standing, constitutes a plea of inadmissibility.

36-In the matter at hand, the appellants maintain that GEDI is not a party to the business provider convention of May 2017 which, according to them, was entered into between [L] [O] and the Hong Kong company GEDEV.

37- Although it is common ground that GEDI and GEDEV are established separately in China and Hong Kong, it is clear from the documents submitted to the court that they both market cosmetic products in China, that their common manager is Mr. [I], who refers to them in his dealings as GED, using a single e-mail address, gedcompany.com, without distinguishing which company he is acting for.

38- It appears from the convention of May 2017, which Mr. [I] does not contest having drafted, that he:

- indicated the acronym GED in the contracting party without indicating whether GEDI or GEDEV was the signatory to the agreement;
- mentioned the address of the GED company in China, suggesting that it was GEDI.

39- However, it is clear from all the documents produced that Mr. [I] usually refers to the address of GEDI in [Address 6], China, as being that of GEDEV in Hong Kong, which is the case in particular for the distribution agreement, which mentions the name of the Hong Kong company, followed by GEDI's address as follows:

“PARTY A: EMBRYOLISSE, a company incorporated under French law, having its registered office at 16, rue DANTON 92130 Issy-les-Moulineaux France (hereinafter referred to as the “Supplier”).

PARTY B: GED Company. A company established and existing under the laws of Hong Kong, having its registered office at [Address 5] (hereinafter referred to as the “Distributor”) (emphasis added by the Court)

40- There is sufficient evidence from the foregoing that the manager of GEDI and GEDEV deliberately maintained confusion between these two entities in his dealings with his partners and the contracts he entered into with them, using the acronym “GED” indiscriminately, so that he cannot claim that only GEDEV was liable.

41- Accordingly, the Commercial Court rightfully held that the action brought by [L] [O] against GEDI was admissible.

42- The decision will therefore be upheld in this respect.

On the merits

43- [L] [O] claims, on the basis of the business provider convention, that by ceasing as from 1st October 2017 to provide it with information concerning the amount of purchases of Embryolisse products, while continuing to place orders with Laboratoires Embryolisse on its own, the GED companies committed a serious breach giving rise to a right to compensation in the amount of the commissions that it should have received.

44- It maintains that the end of the partnership between GED and JETLAG, which was not essential to the continuation of the business relationship between the parties, did not result in the termination of the distribution agreement with Laboratoires Embryolisse, which continued until 31 December 2021, and that the conditions for the lapse alleged by the appellants have therefore not been met.

45- It concludes that the liability of the DGE companies, insofar as it cannot be determined with which of them it signed the Convention, is contractual and extra-contractual, and that they must be ordered jointly to pay the loss suffered, one having been the accomplice of the other.

46- On the basis of Articles 1217 and 1222 of the Civil Code, it is seeking to enforce the Convention by upholding the provisions of the first judgment, which ordered GED to pay two unpaid invoices, referenced HK.06 and HK.07-1, which are not in dispute, plus the amount of its commission calculated pursuant to the Convention on the basis of product sales invoices submitted under the distribution agreement with GED, i.e. the principal sum of 686,294.07 euros set out by the court in its final judgment.

47- In response, the GED companies point out that the business provider convention was terminated due to the difficulties encountered with JETLAG, which led to the immediate termination of its sales commercial agreement at the initiative of Laboratoires Embryolisse on 13 November 2017 and the termination of the distribution agreement.

48 In support of their claims, they argue that:

- The commercial operation to distribute Embryolisse products in China was carried out in partnership with JETLAG, a party to the business provider convention and the distribution agreements, which had exclusive agent rights for Laboratoires Embryolisse to sell and distribute the products on all platforms (Tabao, Tmal, etc.);
- the head of JETLAG, Mr. [N], embezzled funds and did not pay his taxes to the Hong Kong tax authorities;
- a dispute arose in Hong Kong between GEDEV and JETLAG as a result of which Laboratoires Embryolisse terminated JETLAG's rights to act as exclusive agent with immediate effect on 13 November 2017.

50- They maintain that, in this context, the distribution agreement between GEDEV, JETLAG and Laboratoires Embryolisse was terminated, and that they continued their commercial relations alone by means of a new distribution agreement concluded with Laboratoires Embryolisse on 1 June 2019, in which [L] [O] did not take part.

51- They deduce from this that the termination of JETLAG's commercial agent agreement and the distribution agreement, with which they formed an indissociable contractual whole, caused the business provider convention to lapse pursuant to article 1186 of the Civil Code.

52- Failing that, should the court not find that the Convention lapsed, they would accuse [L] [O] which acted as a commercial agent, of having failed to fulfil its obligations.

53- In this respect, they argue that Mr. [O] was not in fact the sole initiator of the commercial relationship, without whom the contract would not have been concluded, and that he did nothing to support GEDEV in its relations with Laboratoires Embryolisse, underlining in this respect his inaction when relations with JETLAG were severed and his refusal to join the proceedings brought in Hong Kong against JETLAG.

54- The payment of commission is therefore not justified.

55- Lastly, they dispute having to pay invoice HK.07 in the amount of 4,332.89 euros, which corresponds to a cancelled order.

ON THIS MATTER:

56- For the reasons set out above, as the business provider convention is enforceable against the two companies GEDI and GEDEV, it is appropriate to examine the merits of the claim for enforcement of the business provider convention against them on the sole basis of contractual liability.

57- The parties agree to apply the French law on the basis of which they have entered into the agreement and which, in the absence of a choice expressed in the agreement, corresponds to the law of residence of the service provider [L] [O] in accordance with the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

58- Under article 1103 of the French Civil Code, legally formed contracts take the place of law for those who have made them.

59- Under article 1217 of the same Code, a party to whom an obligation has not been performed, or has been performed imperfectly, may pursue enforced performance in kind of the obligation.

60- In the matter at hand, it is clear from the Convention that the parties have agreed that:

The Company [L] [O] was instrumental in securing a distribution agreement between JETLAG/GED and EMBRYOLISSE for the local Chinese market (People's Republic of China) and supports JETLAG/GED in its dealings with Embryolissee.

Consequently, JETLAG/GED will pay a commission of 4.2% on all invoices for goods relating to this agreement, at ex-works value excluding advertising items.

Payment of commissions will be made monthly on settled invoices. JETLAG/GED will send [L] [O] Conseil a copy of the concerned invoices.

This agreement is concluded for the duration of the agreement between JETLAG/GED and Embryolissee, i.e. 3 years from 1st April 2017.

61- It is not disputed that as from October 2017 the GED companies stopped sending purchase invoices for Embryolissee products to [L] [O], which was no longer able to calculate or invoice its commissions under the Convention.

62- To oppose the request for enforced performance of the business provider convention, the appellants argue that following the difficulties encountered with JETLAG, which was no longer involved in the operation from October 2017, the distribution agreement was terminated so that the Convention lapsed.

63- If this assumption were not accepted, they argue that [L] [O] does not justify having fulfilled its obligations in order to claim payment of its commissions.

□ *On lapse*

64- According to article 1186 of the Civil Code, *a validly formed contract becomes null and void if one of its essential elements disappears.*

Where the performance of several contracts is necessary for the performance of the same transaction and one of them ceases to exist, the contracts whose performance is rendered impossible by that cessation and those in respect of which the performance of the disappeared contract was a determining condition of the consent of a party shall lapse. However, the contracting party against whom the lapse is invoked must have been aware of the existence of the overall transaction when it gave its consent.

65- In support of their reasoning, the GED companies assume that the contractual relationships between them, JETLAG, [L] [O] and Laboratoires Embryolissee were indivisible and that the distribution agreement was terminated as a result of the difficulties encountered with JETLAG.

66- The Court noted, however, that the GED companies did not provide evidence of the termination of the distribution agreement after the disappearance of JETLAG, or of JETLAG's essential role in the marketing of Embryolissee cosmetic products in China, to justify the intervention of a lapse.

67- It is clear from the invoices submitted by Embryolisse at first instance that the business relationship with Embryolisse continued uninterrupted, notwithstanding the disappearance of JETLAG in October 2017 and regardless of the signing of a new agreement on 1st June 2019, which took place much later.

68- Moreover, although its name was indicated next to the acronym GED, JETLAG was not a party to the business provider convention, which was signed only by representatives of GED and [L] [O]. The reference to JETLAG was only made in the distribution agreement for the payment of invoices.

69- Lastly, the termination of the exclusive agent agreement granted to JETLAG, which was terminated separately by Embryolisse because the invoices were no longer being paid, did not make it impossible to continue doing business with GED, which, as indicated above, continued, as evidenced by the supporting documents for product purchases by GED in 2017, 2018, 2019 and 2020.

70- It follows from the above that the lapse of the business provider convention has not been established, so that [L] [O] is well-founded in its claim for enforced performance of the convention.

□ *On the plea of non-performance*

71- The GED companies claim that [L] [O] is a commercial agent without drawing any clear conclusions.

72- However, it is clear from the content of the abovementioned contractual provisions that the agreement in question is a business provider convention giving rise to remuneration and not a commercial agent agreement.

73- GED, which acknowledged in the business provider convention the role played by [L] [O] in setting up the distribution agreement with Laboratoires Embryolisse, and which paid commission on invoices for purchases until October 2017, have no grounds for questioning the existence of the service provided.

74- Moreover, no evidence of any default has been brought forward by the GED companies, which have not made any claim against [L] [O] in respect of the performance of its support obligations prior to this dispute.

75- Accordingly, on these grounds and those considered by the first instance judges, the judgment should be upheld in which it was held that the companies GED jointly committed a serious breach giving rise to liability by ceasing, with effect from 27 October 2017 and until 31 March 2020, to perform the business provider convention entered into with the company [L] [O] and by continuing their business relationship with the Laboratoires Embryolisse on their own.

□ *On invoices HK.06 and HK.07-1*

76- The GED companies dispute the invoice HK 07-1 Air dated 25 October 2017, which they claim corresponds to an order that has been cancelled.

77- However, it is clear from the documents that the cancelled order is HK 07-2, which is not the order corresponding to the invoice in question.

78- The judgment dated 6 December 2022 ordering the GED companies to pay two invoices will therefore be upheld.

□ *On the amount of the commissions*

79- There is nothing to call into question the amount of commission that GED should have paid as calculated by the first instance judges on the basis of the purchase invoices produced by Laboratoires Embryolisse for the period in question, by applying the percentage of commission provided for in the agreement.

80- This provision of the judgment of 28 March 2023 should therefore be confirmed.

81- In view of all these elements, the provisions of the judgments rendered on 6 December 2022 and 28 March 2023 are confirmed in their entirety.

82- The unsuccessful GED companies will be ordered to pay *in solidum* the costs of the appeal.

Costs and expenses

83- Under Article 700 of the Code of Civil Procedure, their claims will be dismissed and they will be ordered jointly and severally to pay [L] [O] the sum of 25,000 euros.

IV/ DECISION

On these grounds, the Court:

1) Combines the proceedings RG 23/00492 and RG 23/06449;

2) Confirms the judgments rendered on 6 December 2022 and 28 March 2023 by the Paris Commercial Court in their provisions submitted to the Court;

3) Orders the companies Great Empire Development Co, LTD and Great Empire Distribution Co, LTD to pay *in solidum* the costs of the appeal, which will be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure by SELARL JRF & ASSOCIES represented by Maître Stéphane FERTIER;

4) Orders the companies Great Empire Development Co, LTD and Great Empire Distribution Co, LTD to pay *in solidum* [L] [O] Conseil the sum of 25,000 euros under Article 700 of the French Code of Civil Procedure.

THE COURT CLERK,

THE PRESIDENT,