

Oracle Racing Inc.
2269 Chestnut Street, PMB 689, San Francisco, CA 94123 - USA

CONFIDENTIAL (See Note below)

24 August 2009

Mr. Göran Petersson
President
International Sailing Federation
Ariadne House, Town Quay
Southampton, Hampshire
SO14 2AQ
United Kingdom

Dear Göran,

On behalf of Golden Gate Yacht Club ("GGYC") and BMW ORACLE Racing, GGYC's racing representative for the 33rd America's Cup, I write with respect to the Agreement between the International Sailing Association ("ISAF") and Société Nautique de Genève ("SNG") dated 5th June 2009 and signed on behalf of ISAF by Jerome Pels and David Kellett (the "Agreement").

As you know, GGYC is a member in good standing of US SAILING, the National Authority for the United States of America, and is the Challenger for the 33rd America's Cup. BMW ORACLE Racing represents GGYC in its Challenge.

The purpose of this letter is to inform you formally and directly of the concerns we have with respect to the terms of the Agreement (our objections are itemized in Attachment A to this letter), and to seek your help in resolving these issues in a fair manner so that the 33rd America's Cup can go forward as a proper event.

Throughout our Challenge and this litigation, we have relied on the fact that ISAF and its rules will provide protection to us as a competitor, by virtue of its neutrality and the fact that it traditionally sits above the competitors. However, the Agreement skews that balance and abrogates all of the protections that ISAF normally provides. Specifically, the Agreement gives special rights and privileges to SNG, which is both the organizing authority for and a competitor in the 33rd America's Cup, and to its affiliate AC Management SA. The result is a situation which is grossly unfair to GGYC as one of the two competitors, and which has the potential to bring the sport of sailing into disrepute.

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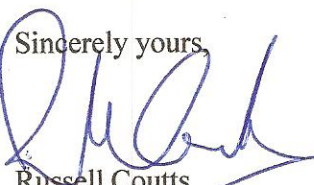
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It has been said that the Agreement is similar to prior agreements between America's Cup organizers and ISAF. However, a premise of the prior agreements has always been a closely negotiated agreement between the Defender and Challenger called the Protocol, which provided very specific terms to ensure fairness in the competition and was in place before any ISAF agreement was finalized. See Attachment B. Without those underpinnings, the IASF/SNG agreement simply transfers all of the control of the regatta, its rules and its officiating to one competitor, without any of the normal protections that ISAF provides to competitors. This is not consistent with past practices, and it is not consistent with the principles of ISAF or good sportsmanship. Although the Court in NY recently ruled that SNG can make changes to the rules, this was with the Court's understanding (from representations in court by SNG's counsel) that normal ISAF procedures and the resulting protections for the competitors, would be in place. Moreover, it is a secret agreement with obvious potentials for abuse, all with the authorization and authority of ISAF.

If the Agreement has not yet been approved by the Executive Committee, we request that our concerns be considered and addressed prior to such approval. On the other hand, if the Agreement has already been properly approved by the Executive Committee, we ask that the Executive Committee reconsider that approval in light of these concerns. In either case, we ask that we be given an opportunity to make a presentation to the Executive Committee at or before your September meeting. We respectfully request your prompt response as to whether the Agreement has been approved by the Executive Committee and whether we can make a presentation regarding our concerns.

Additionally, we respectfully request that the confidentiality restrictions on disclosure of the Agreement, which SNG has represented to the New York Court are in response to ISAF's concerns, be removed. This provides transparency of the ISAF processes and allows us to discuss all our concerns with ISAF officials involved in the Match without risk of breaching the court order. At the very least, the Agreement should be made public when it finally has been approved, if that has not already occurred.

In the meantime, we stand ready to work with you or any members of the Executive Committee to resolve this matter in a fair manner. Our highest priority is to race the 33rd America's Cup with fair rules and a competitive playing field.

Sincerely yours,

Russell Coutts
Skipper

cc: Members, ISAF Executive Committee
Jerome Pels, ISAF Secretary/General, Managing Director

Note: As an exception to the secrecy provisions in the Agreement and the Court ordered Confidentiality Stipulation that requires confidentiality, we are communicating you pursuant to the authorization of Simpson Thacher & Bartlett LLP, SNG's Counsel, as follows:

“Nevertheless, and without waiver of SNG's rights under the confidentiality agreement or its right to set the applicable rules of the 33rd Cup, SNG will not object to GGYC's specific request to communicate with the ISAF executive committee concerning the ISAF Agreement. The ISAF Agreement shall remain confidential under the terms of the confidentiality agreement and order of the Court.”

Attachment A

GGYC Comments on Certain Provisions of the ISAF/SNG Agreement

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From ISAF/SNG Agreement	GGYC Comments
<p>5. <u>Application of ISAF rules</u> As the organizing authority for the 33rd America's Cup, SNG and/or ACM will be entitled to issue the notice of race for the Deed of Gift Match <u>and any further instructions or interpretations</u> as may be required from time to time to organize the Deed of Gift Match.</p> <p>In the Notice of Race, SNG and/or ACM may and will refer to the ISAF RRS and to any relevant ISAF regulations to the extent its standard notices of race and sailing instructions usually contain such reference.</p> <p>For the sake of clarity, it is acknowledged and agreed that SNG and/or ACM may:</p> <ul style="list-style-type: none">(a) <u>amend the ISAF RRS and their interpretations as permitted in the ISAF RRS, and given the Match is a specific international event ISAF authorises any changes required by SNG and/or ACM under RRS 86.2 and shall provide SNG on request the letter required by RRS 86.2.</u>(b) <u>amend the ISAF RRS and other ISAF regulations to the extent necessary to comply with the Deed of Gift provisions.</u>	<p>A. ISAF gives SNG (or ACM) authority unilaterally to interpret the race documents to its advantage, which will be binding on the Jury. There would be no independent review of any such actions available to GGYC.</p> <p>B. SNG (or ACM) is given full authority to amend any ISAF interpretations, including revising or completely eliminating the ISAF Call Book and the ISAF Case Book, with no independent review of any such actions available to GGYC.</p> <p>C. SNG (or ACM) is given blanket advance approval of any change in any of the racing rules which SNG (or ACM) unilaterally decides to change at any time, without any review by ISAF or the Executive Committee, and without recourse to the Jury according to Section 7 of the Agreement. ISAF has authorized SNG to make whatever rules changes it desires without any further ISAF approval. This violates the requirements of Regulation 31.1.3, which only allows changes to the racing rules if the changes are "of clear necessity or pressing importance and requires action by the Executive Committee and consultation with the chairman of the Racing Rules Committee. This is an important process that is completely gutted by this provision. This provision might be appropriate if there were a requirement that GGYC approve changes to the racing rules (as was required by past Protocols), but approving in advance a blank check for SNG (or ACM) is unfair and unseemly for a body like ISAF.</p>

From ISAF/SNG Agreement	GGYC Comments
<p>6. Anti-Doping Rules</p> <p>(a) <u>SNG will establish, in consultation with ISAF, anti-doping rules similar to those applied in the 32nd America's Cup and subsequently amended.</u></p> <p>(b) These anti-doping rules will be based either on the World Anti-Doping Code of the World Anti-Doping Agency (WADA) or on the ISAF specific regulations.</p> <p>(c) These anti-doping rules will provide jurisdiction to the Jury referred to under clause 8(a) below with respect to their violation.</p> <p>(d) ISAF undertakes to provide similar support, assistance and services to the anti-doping program of the 33rd America's Cup as it did for the 32nd America's Cup, and shall meet all costs of anti-doping testing and all other anti doping measures and obligations.</p>	<p>The Anti-Doping Rules should be established by ISAF, not one of the competitors. Even though they are to be "similar" to those applied in the 32nd America's Cup and "based" on the WADA or ISAF regulations, there is latitude to make changes which will not be known to GGYC until the NOR is published and may unfairly benefit SNG. It should be noted that the Anti-Doping Rules for the 32nd America's Cup were the result of extended negotiations involving the competitors and the Regatta Director</p>
<p>7. Conflict of Rules</p> <p>The Umpires, the Measurers, the Jury and all officials appointed for the 33rd America's Cup shall be bound by the Notice of Race and the relevant documentation issued by SNG. The officials shall in no circumstance be entitled to modify the Notice of Race, the applicable sailing instructions or other relevant documentation.</p> <p><u>Any conflict between the provisions of the ISAF RRS and other ISAF Regulations and the provisions of the Deed of Gift, shall be decided by SNG exclusively, who will keep at all times the right to modify the relevant documentation to comply with the Deed of Gift provisions.</u></p> <p><u>SNG and/or ACM may - at its sole discretion - request confidential opinions of officials before issuing the documentation.</u></p>	<p>A. SNG, and not a Jury or another independent body, determines whether or not there are conflicts with the Deed of Gift, and can modify any documents any time where it asserts there is a conflict, without any review or appeal available to GGYC.</p> <p>B. SNG (or ACM), and not GGYC, can obtain opinions from officials (including the Jury, umpires, race officials, measurers, etc.) , giving SNG a significant advantage of knowing how they will be applied.</p> <p>C. As the rulings are confidential, only SNG will know how they will be applied.</p>

From ISAF/SNG Agreement	GGYC Comments
<p data-bbox="164 126 363 157">8. <u>Race officials</u></p> <p data-bbox="253 196 529 227">(a) Jury and Umpires</p> <p data-bbox="253 265 837 948">ISAF shall appoint the members of the Jury, and the Umpires (if Appendix C of the RRS Is used), under the terms of the ISAF Regulations. Given the differing nationality of the competing clubs and the differing languages spoken by both clubs, unless otherwise agreed by ISAF and SNG <u>all members of the Jury shall be fluent in both English and French languages</u>, and given the nature of the Match at least two members of the Jury shall be practicing lawyers and two members shall be experienced in being a jury member for multi-hull racing. No member of the Jury or Umpire shall be a national of Switzerland or the US (including any territory, dependency or other associated nation, state or country of the US such as by way of example Guam, Marianas, American Samoa, Porto Rico, US Virgin Islands), nor shall any person be appointed having a direct or indirect interest In the outcome of the Match.</p> <p data-bbox="253 988 837 1359"><u>ISAF shall advise SNG of all its nominations of the Jury and Umpires and SNG shall confirm whether or not in its opinion such nominee meets the appointment criteria set out in this Agreement. If the parties cannot agree whether a nominee meets the criteria the parties shall resolve the difference pursuant to clause 12 of this Agreement. Once SNG or the arbitrator under clause 12 of this Agreement, confirms the nominee meets the criteria, they shall be appointed.</u></p> <p data-bbox="253 1398 837 1562"><u>ISAF and SNG shall implement strict rules to prevent the canvassing of (other than in the normal course of official hearings), or the private entertainment, of members of the Jury or Umpires by or on behalf of any competitor.</u></p> <p data-bbox="253 1601 837 1665"><u>Any Umpires appointed shall have officiated as umpires in an Americas Cup Match.</u></p> <p data-bbox="253 1705 837 1804">The terms and conditions of each appointment shall be negotiated directly between ISAF and the appointed Jury members and Umpires.</p>	<p data-bbox="862 167 1471 331">A. English is the official language of ISAF (Constitution Article 29). The requirement for fluency in French limits the pool of jury candidates considerably and means ISAF cannot provide its best jury.</p> <p data-bbox="862 339 1471 779">B. SNG effectively has a veto over Jury nominees by being able to block an appointment by insisting on arbitration in Switzerland under the auspices of the Court of Arbitration for Sport. This is not only is an issue of fairness in jury selection (GGYC is not even consulted, much less having a veto), it also could create an unnecessary delay in seating a Jury so that pre-race matters can be determined expeditiously. The result would likely be more litigation in the New York Courts which could be avoided if a properly constituted Jury were available.</p> <p data-bbox="862 787 1471 986">C. Prohibition on “canvassing” the Jury: while it would be fair if both parties access to the Jury were equally restricted, in fact SNG has the ability secretly to obtain confidential opinions from the Jury under Section 7 of the Agreement.</p> <p data-bbox="862 994 1471 1255">D. If there is a desire to have umpires that have experience in the America’s Cup context, umpires that have served in Louis Vuitton Cup matches should also be qualified. Restricting it to umpires who have officiated in America Cup matches means a very limited pool with which SNG (Alinghi) is particularly familiar.</p>

From ISAF/SNG Agreement	GGYC Comments
<p data-bbox="164 132 440 161">9. <u>Other commitments</u></p> <p data-bbox="164 167 821 232">Subject to the terms and conditions of this Agreement, ISAF hereby:</p> <p data-bbox="164 244 212 265">....</p> <p data-bbox="212 271 841 472">(d) Acknowledges and confirms SNG's and/or ACM right as the organizing authority to require event advertising on the competing boats in accordance with Regulation 20, and to declare the Match to be a Category A or category C event under Regulation 20.</p>	<p data-bbox="862 132 1463 472">Regulation 20 has been revised, and there is no reference to Category A or C. Under the current Regulation 20, for specified events (including the America's Cup), prior agreement with ISAF is required either to display Advertising (of the competitor) or to require competitors to display event advertising. Under this provision, all of these rights appear to have been delegated in advance to SNG (or ACM), to the benefit of one competitor over another, which is unfair.</p>

Attachment B

From the Protocol for the 32nd America's Cup

These agreements predated and were the underpinnings of the ISAF/ACM Agreement in 2003, under which ISAF gave broad authority to the race organizers with respect to the racing rules, racing officials and the Jury. In contrast, the 2009 ISAF/SNG agreement secretly gives unilateral powers over these critical issues to one of the two competitors, without the other competitor having any say or right of appeal, a situation which could bring the sport of sailing into disrepute.

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1.1 In the interpretation of this Protocol:

...

(b) **ACC Rules** means version 5.0 of the Rules Governing America's Cup Class yachts approved by the Defender and the Challenger of Record as interpreted and amended from time to time, and also includes, where stated, version 4.0 of the Rules Governing America's Cup Class Yachts as that version has been interpreted and amended from time to time;

...

3.5 Terms of Challenge

...

(b) The Terms of Challenge may be amended by the Event Authority provided such amendment complies with Article 5.9 ("Neutral Management") and subject to the following additional requirements:

- (i) with the consent of the Defender and Challenger of Record at any time; or
- (ii) without the consent of the Defender and Challenger of Record, provided:
 - (A) it does not materially affect a Competitor's rights under the Protocol or the Terms of Challenge; and
 - (B) such amendments proposed by the Event Authority shall be notified to the Defender and Challenger of Record at least four days prior to the proposed effective date, during which time the Defender or Challenger of Record may file an application with the Jury asking it to determine whether or not such proposed amendment complies with Article 5.9 ("Neutral Management") and/or Article 3.5(b)(ii)(A) above; if no such application is made, the amendment shall become effective four days after such notification; if an application is made the amendment shall become effective only if and when the Jury determines such proposed amendment so complies, unless on the request of ACM in an emergency situation the Jury determines the proposed amendment can become provisionally effective before the Jury has rendered a decision.

...

5. NEUTRAL REGATTA MANAGEMENT

5.1 Regatta Director: The Defender and the Challenger Commission shall appoint, and shall be entitled to remove and re-appoint, a Regatta Director who shall be responsible for ensuring fair races are conducted at the Venue in the format and at the times specified.

...

5.2 Appointment of Regatta Officials (other than the Jury and the Technical Director): The Regatta Director shall appoint:

...

(c) a Chief Umpire, who shall be approved by the Defender and the Challenger Commission, and such other umpires as may be reasonably required to umpire races of the Event, approved by the Chief Umpire; the Chief Umpire and other Umpires may be the Chairman of the Jury or members of the Jury; ...

5.7 Notice of Race and Sailing Instructions: The Regatta Director shall, as soon as practicable, in consultation with the Event Authority, the Defender and Challenger Commission, prepare and publish the Notices of Race as well as Sailing Instructions governing the Event regattas consistent with the provisions of this Protocol and meeting the commercial requirements of the Event Authority.

.....

12.1 Applicable documents: The Event shall be governed by:

- (a) the Deed of Gift;
- (b) this Protocol;
- (c) version 4.0 of the ACC Rules for regattas held prior to 31 December 2004, and version 5.0 of the ACC Rules for regattas held on or after 1 January 2005; and
- (d) the Terms of Challenge;
- (e) the applicable Notice of Race;
- (f) the applicable Sailing Instructions;
- (g) racing rules including match racing rules, as agreed by the Defender and the Challenger Commission; and interpretations (calls and cases) issued in accordance with the Notice of Race. (a) (b)

...

14.11 Interpretation

The Technical Director shall consult with the Defender and the Challenger Commission and the Measurement Committee shall issue an interpretation of Article 14 setting out clear technical guidelines on the application of this Article. This interpretation, when issued, shall be deemed to constitute part of Article 14.

...

18. AMENDMENTS

18.1 Amendments: SNG and the Challenger of Record may, from time to time, by mutual agreement, amend this Protocol and mutually determine such other terms and conditions as they agree are necessary or desirable for the Event.

18.2 Amendments required by authority: SNG may, after providing notice to the Defender and the Challenger Commission, modify this Protocol to meet the requirements of any authority having jurisdiction over the Deed of Gift as to the manner in which SNG is to administer the Deed of Gift.

...

20.5 **Technical Director:** The Technical Director shall be appointed, and may be replaced, by agreement of the Defender and the Challenger of Record.

21. DISPUTE RESOLUTION AND JURY

21.1 (a) **Selection:** A Jury shall be established whereby SNG and the Challenger Commission shall by agreement appoint five members of the Jury including one of those five to be the chairman by 15 December 2003 or such earlier date as may be reasonably required by SNG or the Challenger Commission. In the event of deadlock or non-selection, the Chairman of the International Jury for the 31st America's Cup match shall appoint the Jury and the Chairman, who may select himself to be Chairman or a member of the Jury.

(b) **Pool of Jurors may be established:** SNG and the Challenger Commission may appoint more than five persons to be members of the Jury. In such circumstances, the Chairman of the Jury shall select a Jury from the persons appointed for any particular matter based on their availability, experience and knowledge.

(c) **Size of the Jury:**

...

(iii) If on 31st July 2006 there are less than five appointed members of the Jury, and the Defender and Challenger Commission have not agreed on the appointment of the required additional members, the Jury shall appoint the required additional comprised of five appointed members by applying as far as possible the following criteria;

- (A) they are a resident of Europe;
- (B) they have a legal background;
- (C) they can attend the remaining Pre-regattas and the Regatta;
- (D) have no real or perceived conflict of interest;
- (E) meet the requirements listed in Article 21.2.

21.5 **Replacement of Jury Members:** The Challenger Commission and SNG may by agreement replace at any time Jury members including the Chairman.

...

21.7 **Procedure:** The Jury, in consultation with the Event Authority, the Defender and the Challenger Commission, shall establish its rules of procedure consistent with the rules of natural justice and due process which shall apply to all proceedings of the Jury unless an alternative procedure is specified in an applicable document.

21.8 Counsel: The Jury may, if it believes it requires expert assistance, engage independent counsel approved by the Event Authority, the Defender and the Challenger Commission to assist the Jury and provide legal advice from time to time. Terms of engagement shall be agreed with the proposed counsel and approved by the Event Authority and the Jury.

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