

**DC Cakes Inc  
and  
The Kiev Confectionery Company**

A mock Online Dispute Resolution case  
Set up for delegates

at

USAID New Justice Conference  
Kiev 19-20<sup>th</sup> September 2017



**ODRtraining.com**

ODR since 2007

---

# DC Cakes Inc and The Kiev Confectionery Company

## SCENARIO

Dmytro Nikolaeva owns **The Kiev Confectionery Company** which specialises in Gingerbread Men and other novelty cakes and biscuits.

Donald McDonald owns **DC Cakes Inc** who have been buying products from TKCC for 5 years with no problems arising.

TKCC invited DCC to buy a new range of Christmas gingerbread men. DCC ordered, paid for and took delivery of 100,000 items at a total price of \$30,000.



# DC Cakes Inc and The Kiev Confectionery Company

## SCENARIO

Ronald writes to make clear to Dmytro that the last date for him to receive the items in order to distribute to his agents and franchisee shops in time for Christmas was November 15<sup>th</sup> 2016. Dmytro acknowledges and says 'I will do my best'.

**TKCC'S** Terms state that whilst they will do their best to deliver in time, 'time is not of the essence'.

The formal order was made with a delivery date for November 15<sup>th</sup> 2016.

Due to shipping issues and through no fault of TKCC, the gingerbread men arrived on December 18<sup>th</sup>. It was too late for Ronald to distribute in time. DCC had not insured for delivery risk.



# DC Cakes Inc and The Kiev Confectionery Company

## SCENARIO

Ronald asks Dmytro to reimburse the payment.

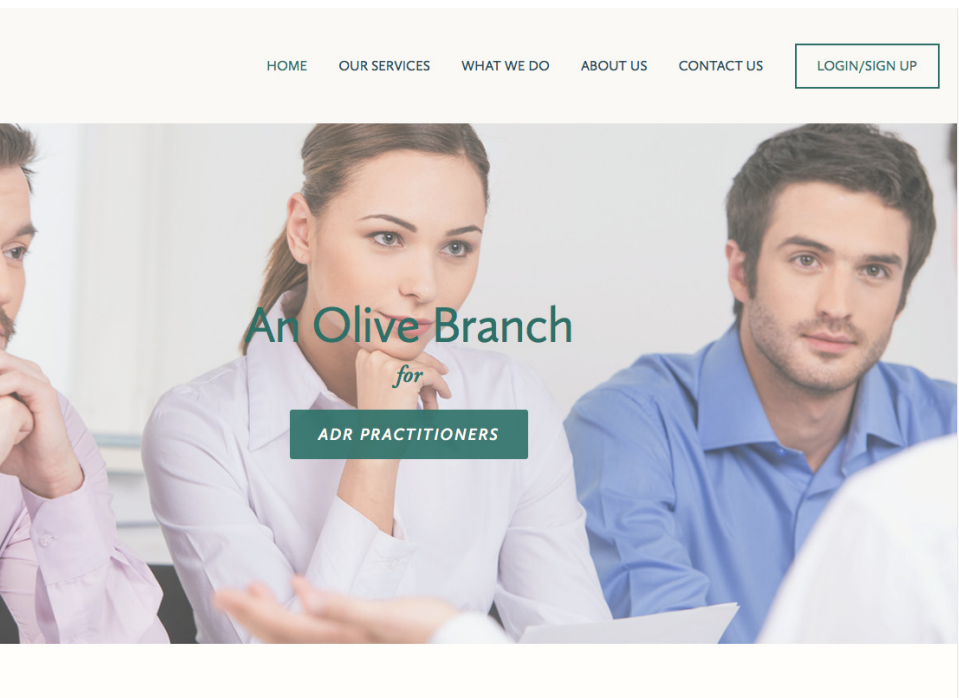
Dmytro refuses pointing out the 'time is not of the essence' clause and that Ronald should have insured for late delivery. He suggests Ronald could still find a market post Christmas. Christmas shops that remain open all year round and websites selling all year round are not uncommon.

Ronald has bought over \$3m worth of items from TKCC over the previous years

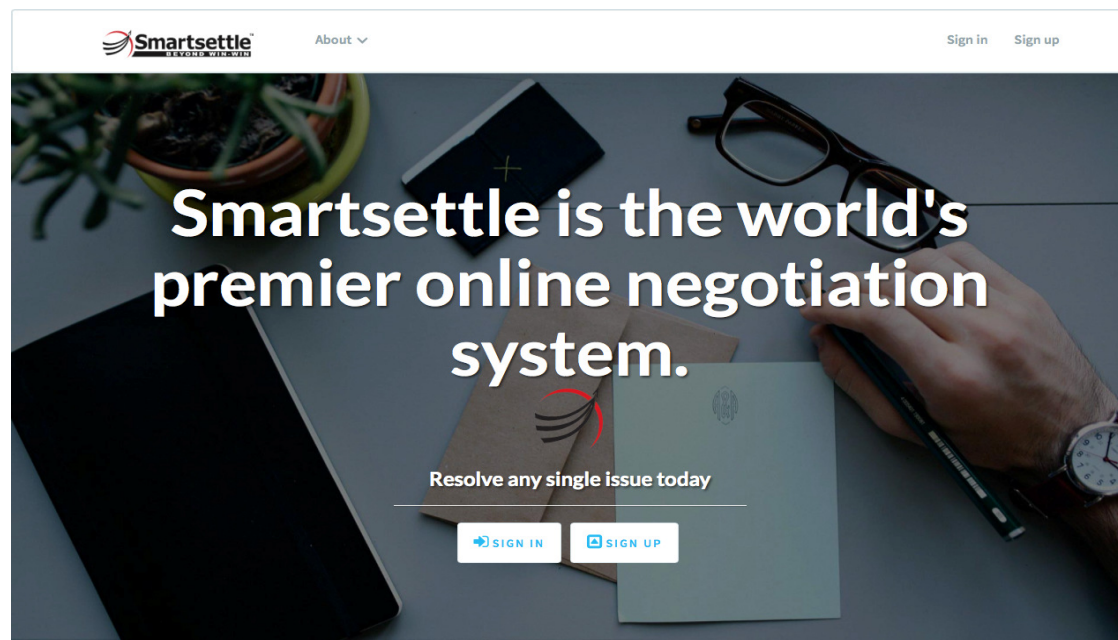
Dmytro is prepared to repay some but not all of the monies. He does not want to lose such a good and regular customer as his losses will be much greater. They try but do not come to an agreement and have decided to use ODR



# Branding by OliveBranch.com



# Visual Blind Bidding by Smartsettle.com



[Show Popup Again](#)

## Donald's first draft

Hi, Donald



I'm furious with you, Dmytro! You know full well that I'm not been able to make a penny out of these gingerbread men and this is purely because you delivered so late in the day. I have had all my franchisees ringing in worried about when they would arrive and now they know they'll arrive too late they also are going to be suffering losses of business. Congratulations but you have ruined Christmas for a lot of good people. A decent businessman would not treat his customers in that way. After all these years we've known each other, and I have to say as friends, I can't believe you're refusing to return my monies. I had enough and I'm instructing my lawyers in the next seven days to recover these monies. This will be the end of our friendship and business association. You will make no more money from me. There are plenty of other people I can buy gingerbread men from. I will also see to it that your refusal is made known to others in this industry to avoid them suffering in the same way.

[Previous](#)

## The re-framed claim as drafted by by a mediator on An Olive Branch's panel

Dmytro, I write to you not just as a business associate but as a personal friend of five years standing. You have always been a great host on my visits to Kiev and I hope you feel I reciprocated on your and your wife's visit last year to my home. But I want you to understand how upset I have been with your refusal to repay. I have a whole network of shop owners who were themselves reliant on receiving their gingerbread man in good time to fulfil orders and sell off the counter. I know you say the it would still be possible to find people to buy after Christmas but, in reality, very few were sold. Please remember that I have been a regular customer of your company for the past five years. Please understand that if you do not repay I'm clearly not going to buy any more gingerbread man from your company. There are plenty of other suppliers. I would ask you to do the maths and work out how much profit you're going to lose out. This is clearly going to be far more than the \$30,000 I am asking you to pay me back. If it helps, I can tell you the I will do my best to find some outlet for the stock and I'm prepared to work with you to try and meet an agreement that involves you not repaying the full amount. If I if we do reach agreement and I don't have therefore the task of suing you then I confirm I will continue to be a regular buyer from your company and also on a personal note I hope it will enable our friendship to continue. I hope you can respond positively



Show Popup Again

## Dmytro's first draft

Hi, Dmytr



I'm very upset with you Donald. I thought you were a decent and wise businessmen, not someone out to make a buck at every turn. This delay was not my fault. You knew that you knew that could not give you any guarantee. It was for you to plan for the contingency of delay which clearly you failed to do. You know full well that our terms make it clear that time is not of the essence and slippage out of my control does not cancel the contract. I have a cast-iron defence. Further our agreement means that you have to sue my company in a Ukrainian court. I am confident that I will win. You will just be throwing good money after bad. Additionally that will be the end of friendship. Don't be surprised if your wife should learn what you were up to on your last trip over here!

Previous



[Show Popup Again](#)

## The re-framed response as drafted by a mediator on An Olive Branch's panel

Hi, Dmytr



Donald, let me firstly set out clearly some important points. Firstly, our terms of contract made it clear that time is not of the essence and so the delivery date was not fixed. I also never said to you that I would guarantee the delivery date. I was personally very upset with what has happened even before you asked for a repayment. I say this because we've come to know each other as friends and I was upset for you personally that you were not given timely delivery. However, I have to protect my company. We paid out a lot of money to make and deliver the gingerbread men. Given the circumstances of the delay and the fact that I did all I could to avoid it, I hope you all will agree that it would not be right for my company to not recover what it has paid out. Profit is another matter and I can see some way to negotiating on that element so the return of some monies might be appropriate. I say this notwithstanding that I'm confident, from what my lawyers tell me, that no court would order me to repay a single dollar. However not only would I wish to preserve our friendship I can see the sense of preserving your company as a regular customer of my business. If we can reach agreement and we continue our business relationship then I think we both have to gain in future years a lot more than this dispute is worth. Do you agree

[Previous](#)

# As Donald sees it



## Gingerbread Refund (ID #513) ⚙️

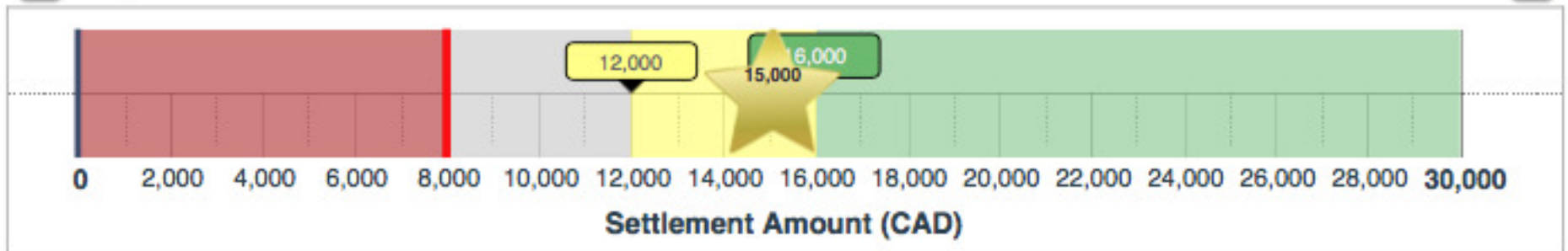


**Congratulations! An agreement has been reached.**

[VIEW AGREEMENT →](#)

**Dmytro**

**Donald**



[CHECK FOR AGREEMENT](#)

[DECLARE FINAL SESSION](#)

[DECLARE ALL DONE](#)

Negotiations have ended with an agreement

# As Dmytro sees it



## Gingerbread Refund (ID #513) ⚙️

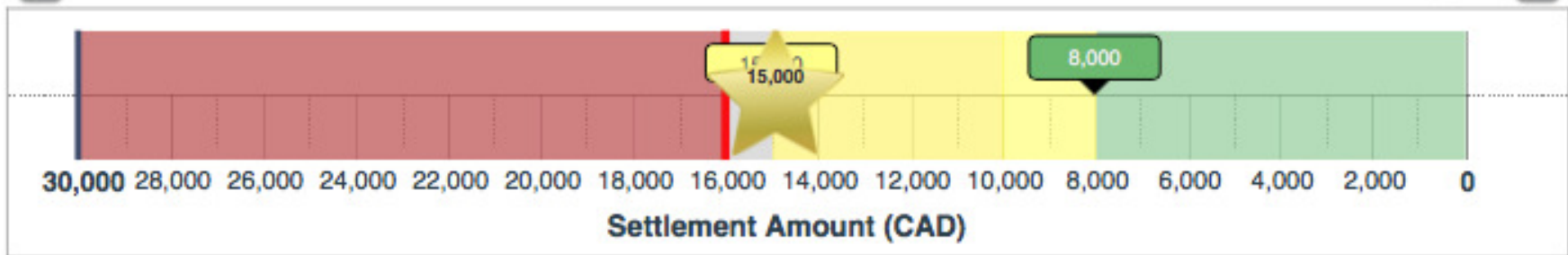


**Congratulations! An agreement has been reached.**

[VIEW AGREEMENT →](#)

Donald

Dmytro



[CHECK FOR AGREEMENT](#)

[DECLARE FINAL SESSION](#)

[DECLARE ALL DONE](#)

Negotiations have ended with an agreement