

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2025] SGHCR 35

Suit No 600 of 2020 (Assessment of Damages No 4 of 2025)

Between

- (1) Dr Who Waterworks Pte. Ltd. (formerly known as Cana Services Pte. Ltd.)
- (2) Dr Who Global Watertech (S) Pte. Ltd.
- (3) Dr Who Laboratories (S) Pte. Ltd. (formerly known as New Global Fluid Engineering & Machinery Pte. Ltd.)

... Plaintiffs

And

- (1) Dr Who (M) Sdn. Bhd.
- (2) Oo Tim Wee
- (3) Low Siew Eng
- (4) Dr Who (S) Pte. Ltd.

... Defendants

JUDGMENT

[Intellectual Property — Trade marks and trade names — Remedies — Damages — Account of profits]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS AND PARTIES.....	1
THE LEGAL PROCEEDINGS	6
ISSUES TO BE DETERMINED	8
ISSUE 1: WHAT ARE THE FIRST PLAINTIFF’S LOSS OF PROFITS IN RELATION TO THE FIRST DEFENDANT’S USE OF THE DR. WHO QUATREFOIL DEVICE SIGN AND THE “WWW.DRWHO.COM.MY” SIGN ON VEHICLE A?	9
(i) THE BOTTLED WATER THAT THE DEFENDANTS USED VEHICLE A TO TRANSPORT DID NOT CARRY THE MARKS	11
(ii) THE DEFENDANTS AND THE PLAINTIFFS HAD NOT NEGOTIATED A LICENSE FOR THE USE OF VEHICLE A AND THE DEFENDANTS COULD HAVE USED ANY OTHER VEHICLE TO DELIVER THOSE PRODUCTS	14
(iii) THE PLAINTIFFS DID NOT PROVE ANY LOSS OF SALES IN BOTTLED WATER RESULTING FROM THE USE OF THE MARKS ON VEHICLE A	15
(iv) THE PLAINTIFFS DID NOT PROVE THAT THE BOTTLED WATER SOLD BY THE DEFENDANTS WOULD OTHERWISE HAVE BEEN SOLD BY THE PLAINTIFFS.....	15
(v) SINCE THE PLAINTIFFS DID NOT PROVE ACTUAL LOSS OF PROFITS, THEY COULD NOT BE AWARDED ROYALTIES	15
(vi) THE USE OF THE MARKS ON VEHICLE A DID NOT ENHANCE THE ATTRACTIVENESS OF THE BOTTLED WATER THAT WAS TRANSPORTED INSIDE VEHICLE A.....	18
ISSUE 2: WHAT ARE THE PROFITS THE DEFENDANTS ARE TO ACCOUNT FOR IN RELATION TO THE FIRST DEFENDANT’S USE OF THE “WWW.DRWHO.ASIA” SIGN ON THE IKEA CARTONS?.....	19

(A) GENERAL OBJECTION.....	20
(B) DEDUCTION OF \$9,715.75 FOR RETURNED CARTONS	21
(C) DEDUCTION OF \$10,800 FOR DELIVERY CHARGES	27
MYR 1,006,093 DESCRIBED AS “TRANSPORT CHARGES”	29
ROAD TAX AND INSURANCE	30
ADMINISTRATIVE EXPENSES.....	31
(D) DEDUCTION OF \$1,884 PAID TO PICCO.....	32
ISSUE 3: WHAT ARE THE PROFITS THE DEFENDANTS ARE TO ACCOUNT FOR IN RELATION TO THE FIRST DEFENDANT'S DISPLAY OF THE DR.WHO QUATREFOIL DEVICE SIGN AND THE TWO META-TITLE SIGNS ON THE “WWW.DRWHO.COM.MY” AND “WWW.DRWHO.ASIA” WEBSITES?	33
ISSUE 4: WHAT ARE THE PROFITS THE DEFENDANTS ARE TO ACCOUNT FOR IN RELATION TO THE USE OF THE FOURTH DEFENDANT'S NAME “DR.WHO (S) PTE. LTD.”?	34
ISSUE 5: DO THE EXPERT’S FINDINGS ON ISSUE 3 MEAN THAT THERE IS NO LOSS OF PROFITS UNDER ISSUE 1 AND NO PROFITS TO BE ACCOUNTED FOR UNDER ISSUE 2?	35
CONCLUSION.....	36

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Dr Who Waterworks Pte Ltd and others

v

Dr Who (M) Sdn Bhd and others

[2025] SGHCR 35

General Division of the High Court — Suit No 600 of 2020 (Assessment of Damages No 4 of 2025)

AR Gan Kam Yuin

23 July 2025, 1 October 2025

28 October 2025

Judgment reserved

AR Gan Kam Yuin:

Introduction

1 The factual background to this matter and the parties to the matter have been fully set out in the Judgment of the Honourable Judge reported at *Dr Who Waterworks Pte Ltd and others v Dr Who (M) Sdn Bhd and others* [2023] SGHC 156 and I will recount them in this Judgment only in so far as they are necessary for the issues I have to decide.

Facts and parties

2 The first Plaintiff was engaged in the supply of 5-gallon bottled water, the leasing and placement of water dispensers, and initially also provided bottled water bearing its customer/s' mark. Mr Koh Tiong Gee ("**Mr Koh**") and his wife, Ms Tan Kim Peng ("**Ms Tan**"), were involved in the business of the

first Plaintiff. The second Plaintiff was in the business of supplying and distributing bottled water and took over the business of providing bottled water bearing the customer/s' mark from the first Plaintiff. The third Plaintiff, incorporated for the purposes of research and development, subsequently entered into the direct piping sector to support the Plaintiffs' other businesses.

3 The first Defendant, which was incorporated by the second Defendant Mr Oo Tim Wee (“**Mr Oo**”), engaged in the business of dealing in mineral and aerated water, and the provision of integrated logistics services. Mr Oo, Mr Oo’s wife the third Defendant Ms Low Siew Eng, Mr Koh, Ms Tan, and the first Plaintiff were the initial shareholders of the first Defendant. The first Plaintiff subsequently sold its shareholding in the first Defendant to the remaining shareholders. The fourth Defendant was incorporated by the second and third Defendants to engage in business activities including wholesale trade and transportation support.

4 In 2004, the first Plaintiff registered a mark “DR. WHO” (as shown below) in class 32 in Singapore for “Bottled water [not for medical purposes]; oxygenated water; drinking water; aerated water; waters [beverages] other than for medical purposes” (the “**DR. WHO goods mark**”).

DR. WHO

5 In 2012, the first Plaintiff registered a mark in Singapore (as shown below) comprising the term “DR. WHO” with four water droplets in a quatrefoil shape at its top right corner (“**the DR. WHO quatrefoil device mark**”) in class 11 for “Water treatment units” and in class 40 for “Treatment of water”.



6 In 2016, Mr Oo registered in Malaysia a mark (as shown below) containing the words “DR. WHO” with the quatrefoil-water droplet design element at its top right hand corner (“**the Malaysian DR. WHO quatrefoil device mark**”) in class 32 for “Mineral water; flavoured mineral water; mineralized water (for non-medical use); drinking water; flavoured waters; oxygenated water (for non-medical use); reverse osmosis water; aerated water; energy drinks”.



7 There were disputes between the parties over the period 2013 to 2016 which I need not go into for the purposes of this Judgment. It will suffice to say that the parties entered into a Deed of Settlement in 2017 which envisaged a parting of ways and also governed the intellectual property held by the respective entities.

8 Around 2018 to 2019, the Plaintiffs discovered that the first Defendant was using a truck with vehicle registration number JTF 7514 bearing a trailer (“**Vehicle A**”) in Singapore. On Vehicle A was the sign “DR. WHO” with four water droplets in a quatrefoil design on its top right corner (“**the DR. WHO quatrefoil device sign**”), followed by the first Defendant’s contact details, e-mail “drwho@drwho.com.my” and website www.drwho.com.my, as illustrated in the photographs below.



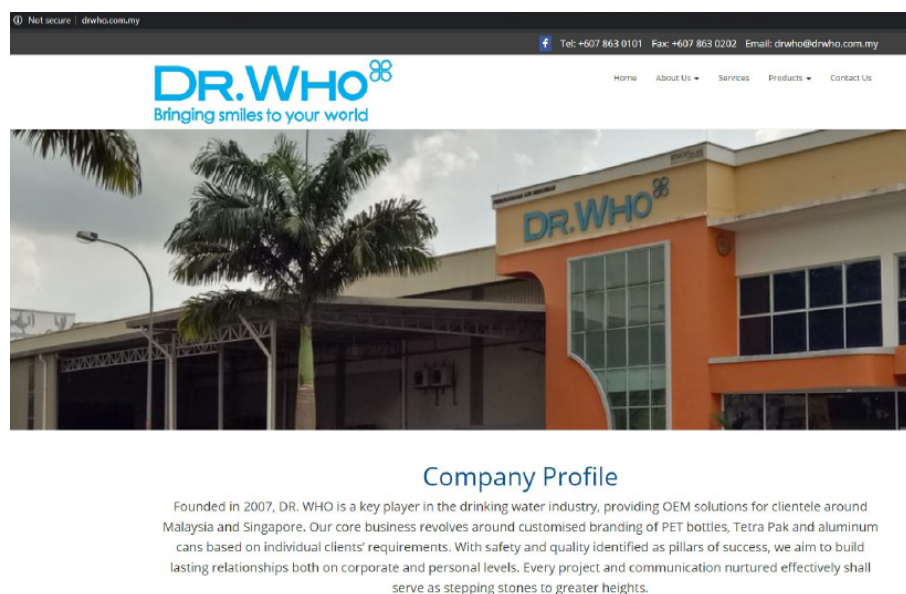
9 In 2020, the Plaintiffs learnt that the IKEA stores in Singapore were selling 500ml cartons of drinking water bearing the sign “DRICKSVATTEN” (“**the IKEA Cartons**”). The IKEA Cartons also bore, as illustrated in the photograph below, the sign “Dr. Who (M) Sdn Bhd”, the first Defendant’s

address in Malaysia, the first Defendant’s telephone number, fax number and e-mail, and the “www.drwho.asia” website.



10 In 2020, the Plaintiffs accessed the “www.drwho.com.my” website and discovered that it contained, amongst other things, the title “DR. WHO (M) Sdn Bhd”, a banner which bore the DR. WHO quatrefoil device sign, an image of a building bearing the DR. WHO quatrefoil device sign, the first Defendant’s contact details and address, and a link to the first Defendant’s Facebook page which in turn contained a link to another website belonging to the Defendants, “www.drwho.asia”.

11 The “www.drwho.asia” website had a similar design to the “www.drwho.com.my” website, save that its meta-title bore the name of the fourth Defendant and had, at the bottom of the webpage, the following notice: “© 2020 DR. WHO (S) PTE LTD”. Meta-titles do not “appear” in the content of the webpage itself but they set out the “topic” of the webpage and often appear as text in the “tab” of a web browser and as part of search engine results. The home pages of both websites were identical and are illustrated in the screenshot below.



The legal proceedings

12 The Plaintiffs started these legal proceedings against the Defendants in 2020, claiming, amongst others, trade mark infringement under section 27(2) of the Trade Marks Act 1998 (“TMA”) and passing off.

13 The Honourable Judge found that:

- (a) the first Defendant's use of the DR. WHO quatrefoil device sign and the "www.drwho.com.my" sign on Vehicle A constituted infringement of the DR. WHO goods mark under section 27(2) of the TMA;
- (b) the first Defendant's use of the "www.drwho.asia" sign on the IKEA Cartons was an infringement of the DR. WHO goods mark;
- (c) the first Defendant's display of the DR.WHO quatrefoil device sign and the use of the two meta-title signs "DR. WHO (S) PTE LTD" and "DR. WHO (M) SDN. BHD." on the "www.drwho.com.my" and "www.drwho.asia" websites amounted to infringement of the DR. WHO goods mark; and
- (d) the use of the fourth Defendant's corporate name "DR WHO (S) Pte Ltd" constituted infringement of the DR WHO goods mark.

14 In addition to the above four findings of trade mark infringement, the Honourable Judge found that the Plaintiffs succeeded in their claim for passing off regarding the same acts of the Defendants.

15 Interlocutory judgment was entered in favour of the Plaintiffs for damages to be assessed or, at the Plaintiffs' election, an account of profits, in relation to the four acts of infringement set out at [13] above. Interlocutory judgment was also entered for damages to be assessed arising from the passing off, but only for damages beyond that which the Plaintiffs would claim under the trade mark infringement.

16 The decision was taken on appeal and the orders below were varied but the Honourable Judge's findings concerning trade mark infringement and

passing off were not reversed on appeal. The parties then came before me for an assessment of damages and an account of profits, as the case may be.

17 The Plaintiffs called Ms Tan as their witness of fact and Mr Kon Yin Tong (“**Mr Kon**”) as their expert witness. The Defendants’ sole witness was Mr Oo.

18 The Plaintiffs’ expert, Mr Kon, testified in support of the Expert Report that he had previously issued, which was dated 22 October 2024, and which was affirmed in his Affidavit of Evidence-in-Chief (“**AEIC**”) filed for the proceedings before me. I will refer to this as the Expert Report.

19 As set out in his AEIC, Mr Kon is a qualified Chartered Valuer and Appraiser and Chartered Accountant with more than 35 years of experience in the public accounting profession who has acted as an expert witness or as an assessor to the Court for numerous valuation and financial matters. The Defendants did not challenge Mr Kon’s qualifications or his expertise. The Defendants did not adduce evidence from any expert to rebut the Expert Report.

20 Mr Kon explained at the outset of his Expert Report that to avoid double-counting of damages, his expert opinion on each of the categories of damages or profits, as the case may be, included both trade mark infringement and passing off as the financial impact resulting from trade mark infringement and passing off would overlap.¹

Issues to be determined

21 The issues before me are:

¹ Expert Report para 1.21

- (a) What are the first Plaintiff's loss of profits in relation to the first Defendant's use of the DR. WHO quatrefoil device sign and the "www.drwho.com.my" sign on Vehicle A ("**Issue 1**")?
- (b) What are the profits the Defendants are to account for in relation to the first Defendant's use of the "www.drwho.asia" sign on the IKEA Cartons ("**Issue 2**")?
- (c) What are the profits the Defendants are to account for in relation to the first Defendant's display of the DR.WHO quatrefoil device sign and the two meta-title signs on the "www.drwho.com.my" and "www.drwho.asia" websites ("**Issue 3**")?
- (d) What are the profits the Defendants are to account for in relation to the use of the fourth Defendant's name "DR.WHO (S) Pte. Ltd." ("**Issue 4**")?
- (e) Do the expert's findings on Issue 3 mean that there is no loss of profits under Issue 1 and no profits to be accounted for under Issue 2 ("**Issue 5**")?

Issue 1: What are the first Plaintiff's loss of profits in relation to the first Defendant's use of the DR. WHO quatrefoil device sign and the "www.drwho.com.my" sign on Vehicle A?

22 Mr Kon explained that he was applying a methodology known as the Relief From Royalty ("**RFR**") method to derive the first Plaintiff's loss of profits from Vehicle A.² I understand that the RFR method asks the question of what royalties the first Plaintiff would have earned if it had granted the first Defendant a license to use the DR. WHO quatrefoil device sign and the

² Expert Report para 4.2; Section 5

“www.drwho.com.my” sign (the “**Marks**”) on Vehicle A. As the first Defendant did not have such a license but used the Marks nonetheless (thereby infringing the first Plaintiff’s trade mark, which was a finding made by the Honourable Judge), the first Plaintiff is to be put back in the same position as if it had earned royalties from such a license, as it was entitled to do.

23 Mr Kon considered the length of time that Vehicle A had displayed the Marks and calculated how much in sales the Defendants had earned for deliveries made using Vehicle A during the infringing period (this was termed the “**royalty base**”). He derived a median royalty rate of 3% from 17 comparable licensing transactions provided to him by an international third party royalty rate database. He then applied the royalty rate to the royalty base to compute the lost royalties. Mr Kon opined that the fair value of the first Plaintiff’s loss of profits from the lost royalties attributable to the use of the Marks on Vehicle A was \$9,000, rounded to the nearest thousand.³

24 The Defendants did not adduce competing expert evidence to show that Mr Kon was wrong to use the RFR method or that the RFR method was inapplicable in the present situation or that there was a more appropriate method than the RFR method to use or that Mr Kon’s assumptions and computations in his application of the RFR method were flawed. The Defendants also did not adduce competing expert evidence to show that Mr Kon was wrong in deriving the median royalty rate of 3% from the comparable licensing transactions provided by the international third party royalty rate database.

³ Expert Report para 4.4; Section 5; Section 9

25 However, the Defendants raised six arguments against Mr Kon’s opinion, directed principally at the royalty base which Mr Kon had used, and I will deal with each argument in turn.

26 First, the bottled water that the Defendants used Vehicle A to transport did not carry the Marks.⁴ Secondly, the Defendants and the Plaintiffs had not negotiated a license for the use of the Marks on Vehicle A and the Defendants could have used any other vehicle to deliver those products.⁵ Thirdly, the Plaintiffs did not prove any loss of sales in bottled water resulting from the first Defendant’s use of the Marks on Vehicle A.⁶ Fourthly, the Plaintiffs did not prove that the bottled water sold by the first Defendant would otherwise have been sold by the Plaintiffs.⁷ Fifthly, since the Plaintiffs did not prove actual loss of profits, they could not be awarded royalties.⁸ Finally, the use of the Marks on Vehicle A did not enhance the attractiveness of the bottled water that was transported inside Vehicle A, and they reiterated that the bottled water so transported did not bear the Marks.⁹

(i) The bottled water that the Defendants used Vehicle A to transport did not carry the Marks

27 The Defendants’ first argument is that because the bottled water that the Defendants used Vehicle A to transport did not carry the Marks, therefore the sales of the (other brands of) bottled water transported using Vehicle A cannot

⁴ Closing submissions para 10

⁵ Closing submissions para 11

⁶ Closing submissions para 12

⁷ Closing submissions para 13-14

⁸ Closing submissions para 15

⁹ Closing submissions para 16

be used as the royalty base to compute the royalties which the first Plaintiff lost.¹⁰

28 This argument fails to recognize that the RFR method assesses how much royalties the owner (in this case, the first Plaintiff) of legally protected intellectual property could have earned if the infringer (in this case, the first Defendant) had paid the owner royalties to allow the infringer to use the owner's intellectual property (in this case, to use the Marks on Vehicle A). Instead, the argument wrongly conflates the concept of the promotional material (*ie*, the infringing Marks) displayed on the canvas of Vehicle A with the packaging of the bottled water which Vehicle A was carrying.

29 Mr Kon explained that

“The RFR method is frequently used for valuing intangible assets that are legally protected and which could be licensed to or from a third party. The 1st Plaintiff's Marks are legally protected and it can be licensed to a third party. This method values the 1st Plaintiff's Marks by reference to the amount of royalty the licensee of the 1st Plaintiff's Marks would have had to pay in an arm's length licensing agreement to secure access to the same right, assuming that the licensee does not own the 1st Plaintiff's Marks.”¹¹

It bears repeating that the Defendants did not call expert testimony to dispute Mr Kon's explanation.

30 I would illustrate this distinction between what was displayed on the canvas of Vehicle A on the one hand, and the packaging of the bottled water which Vehicle A was carrying on the other hand, by using an analogy which I advanced to Mr Kon during the trial and he agreed with¹². Marketing material or promotional material may be employed in or applied on a wide variety of

¹⁰ Closing submissions para 10, para 32

¹¹ Expert Report para 5.2

¹² Notes of Evidence p55 line 7-32; p96 line 24-p97 line 19

things. For example, an airline could paint images of Elsa and Anna on the outside of their aeroplanes, or a fast food chain could adorn their take-away boxes with pictures of Hello Kitty. In order to do so without infringing intellectual property rights, the airline would need to first pay royalties to The Walt Disney Company for a license to paint those images, or the fast food chain would need to first pay royalties to Sanrio Company Ltd for a license to print those pictures, respectively.

31 This obligation to pay royalties for the use of the images or pictures is independent of and unrelated to whatever the aeroplane carries or whatever food is in the take-away box. In other words, the obligation to pay royalties exists even if the aeroplane transports cargo and goods that do not also bear images of Elsa and Anna, and even if the take-away box contains food that is not also stamped with a picture of Hello Kitty. The Defendants' point that the bottled water that the Defendants used Vehicle A to transport did not carry the Marks therefore does not assist them.

32 I accept that the Defendants' revenue from the sales of (other brands of) bottled water delivered using Vehicle A is correctly used as the royalty base, or income stream, attributable to the Marks, because the Defendants used Vehicle A during the infringement period with the Marks displayed on the outside of Vehicle A, to transport (other brands of) bottled water.

33 I also accept that the royalty rate is 3% for the reasons explained in the Expert Report¹³ and this should be applied to that income stream to derive the royalty payment stream which the first Defendant avoided paying by using the

¹³ Expert Report para 5.16-5.19

Marks on Vehicle A without a license. This is the loss of profit from royalties which the first Plaintiff must be compensated for.¹⁴

(ii) The Defendants and the Plaintiffs had not negotiated a license for the use of Vehicle A and the Defendants could have used any other vehicle to deliver those products

34 This argument does not advance the Defendants' case. It is precisely because the first Defendant did not have a license, but used the Marks nonetheless, that caused it to infringe the first Plaintiff's rights and that made it necessary for the Plaintiffs to engage Mr Kon to derive the amount which the first Plaintiff should have earned but did not earn from the first Defendant in license fees.

35 As for saying that the Defendants could have used any other vehicle, this is irrelevant. Whilst the Defendants could indeed have done that, it is equally true, and they accept, that they did not in fact do that and instead they chose to use Vehicle A which bore the Marks, and they thereby infringed the first Plaintiff's rights. If the Defendants are asking the Court to let them off because they could have used, but did not use, an unmarked vehicle to transport their (other brands of) bottled water, this argument cannot be accepted.

¹⁴ Expert Report para 5.20

(iii) The Plaintiffs did not prove any loss of sales in bottled water resulting from the use of the Marks on Vehicle A

(iv) The Plaintiffs did not prove that the bottled water sold by the Defendants would otherwise have been sold by the Plaintiffs

(v) Since the Plaintiffs did not prove actual loss of profits, they could not be awarded royalties

36 I will deal with these three arguments together as they are similar. In essence, the Defendants are saying that the Plaintiffs should not be awarded loss of profits because their own sales of bottled water did not diminish due to the Defendants’ use of Vehicle A and/or whatever (other brands of) bottled water the Defendants sold using Vehicle A would not have been sold by the Plaintiffs anyway. The Defendants submitted that

“The burden of proof lies with the Plaintiffs to prove that it suffered losses but for the infringement. There is no evidence that the Plaintiffs suffered loss of profits for the claim but for the infringement for 1st Defendant’s use of the DR. WHO quatrefoil device sign and the “www.drwho.com.my” sign on vehicle A.”¹⁵

37 The Defendants referred to the decision of *TOWA Corp v ASMPT Singapore Pte Ltd and another* [2024] SGHC 163 (“**TOWA**”).¹⁶ TOWA sold various products, including a moulding machine. The first defendant manufactured and sold moulding machines known as the IDEALmould machine which were found to constitute infringements of a patent owned by TOWA. The Court awarded TOWA loss of profits arising from lost sales of its moulding machines. In order to calculate the loss of profits, the hypothetical number of sales of the moulding machines that TOWA would have made but for the first defendant’s infringement had to be determined (the “But-for

¹⁵ Closing submissions para 32

¹⁶ Opening Statement last para

Scenario”). This corresponded to the maximum number of sales that TOWA could have possibly made but for the sale of the infringing IDEALmould machines (the “But-for Sales”) – which corresponded to the first defendant’s record of sales of the relevant infringing IDEALmould machines – adjusted to reflect TOWA’s market share.¹⁷

38 However, in *TOWA*, the issue of the first defendant using marketing material or promotional material which belonged to TOWA did not arise and thus TOWA was awarded loss of profits arising from lost sales of its moulding machines. The “But-for Scenario” and the “But-for Sales” which *TOWA* espoused are inapplicable to the proceedings before me and do not help the Defendants to counter the Plaintiffs’ claim for loss of profits arising from lost royalties.

39 The concept of profits and loss of profits is not limited to the scenario of what is earned or not earned on selling the bottled water. I accept Mr Kon’s testimony under cross-examination where he made it clear that loss of profits from the sale of bottled water is one way, *but not the only way*, to calculate loss of profits, and that the RFR method is an *accepted methodology* appropriately applied to the use of the Marks on Vehicle A in this case:

“...Loss of profits, in many cases, involve loss of revenue from the inability to sell goods, to sell their own goods. For example, through diversionary business or usurp---usurpation, for example. So, that’s normally how loss of profits are calculated. But in the case of trademark infringements and passing off, very often you don’t see goods sold or the goods---you---you can’t quantify the loss of profits from goods that were not sold. That’s normally quite---that’s quite common in the cases of trademark infringements and passing off. The relief from royalty rate---relief from royalty method, is an accepted method of calculating damages from trademark infringements and passing off...”¹⁸

¹⁷ *TOWA* at [5]

¹⁸ Notes of Evidence p38 line 20-line 29

“Yah, I mean, like I said, there are---there are two---two ways to calculate---... --
-profits from---from infringement of trademarks, inability to supply or the---the-
--the royalties that could have been paid to---if there had been authorised use of
the trademark.”¹⁹

“...the loss of profits, like I said earlier, Your Honour, could be calculated on the
basis of goods that could have been sold but were not because of the infringement
or the royalties that the defendant, Mr Oo, would have---have to pay to benefit
from the trademark, to benefit from the goodwill (indistinct) trademark and so--
-so those loss of profits is not just limited to goods that were not sold. Relief from
royalty, like I said, is an established method to---to assess damages arising from
trademark infringements and passing off.”²⁰

40 A holder of intellectual property rights is entitled to claim damages for infringement (by way of a notional licence) even though there is no drop in its sales. For example, in cases involving counterfeit goods, even if the customers buying the counterfeit goods are unlikely to belong to the same class of customers who would buy the originals, this does not mean that no damages should be awarded.

41 In *Watson, Laidlaw & Co Ltd v Pott, Cassels and Williamson* (1914) 31 RPC 104 which concerned a patent infringement, the infringers made the argument that the patent owner had not lost any sales which it could have obtained because the patent owner would not have been able to sell its products in a particular geographical market anyway. This argument is similar to the Defendants’ third, fourth and fifth points. The House of Lords held at 120:

... in such cases it appears to me that the correct and full measure is only reached by adding that a patentee is also entitled, on the principle of price or hire, to a royalty for the unauthorized sale or use of every one of the infringing machines in a market which the patentee if left to himself, might not have reached. Otherwise that property which consists in the monopoly of the patented articles granted to the patentee has been invaded, and indeed abstracted, and the law, when appealed to, would be standing by and allowing the invader or abstracter to

¹⁹ Notes of Evidence p40 line 25-line 29

²⁰ Notes of Evidence p39 line 30-p40 line 4

go free. In such cases a royalty is an excellent key to unlock the difficulty, and I am in entire accord with the principle laid down by Lord Moulton in *Meters, Limited*. Each of the infringements was an actionable wrong, and although they may have been committed in a range of business or of territory which the patentee might not have reached, he is entitled to hire or royalty in respect of each unauthorized use of his property. Otherwise the remedy might fall unjustly short of the wrong.

(vi) The use of the Marks on Vehicle A did not enhance the attractiveness of the bottled water that was transported inside Vehicle A

42 The Defendants put forward this assertion in their closing submissions because the Defendants disagree with Mr Kon’s statement that:

“...the value of a trademark extends beyond its direct application on the products. The presence of the 1st Plaintiff’s Marks on Vehicle A enhances the perceived value and trustworthiness of the products within, as consumers/customers associate the Vehicle A with the 1st Plaintiff’s Marks, even if the products themselves do not bear the 1st Plaintiff’s Marks.”²¹

43 If the Defendants are asserting as a *fact* that the use of the Marks on Vehicle A did not enhance the attractiveness of the bottled water that was transported inside Vehicle A, they should have adduced evidence from consumers or customers to dispute that the presence of the Marks on Vehicle A had any such effect on them. The Defendants did not adduce such evidence. On the other hand, if the Defendants are saying that an *expert* would disagree with Mr Kon about the effect of the presence of the Marks on Vehicle A, they should have called such an expert to testify. The Defendants did not do so. Finally, the Defendants did not challenge Mr Kon on this point during the trial. As he was not given the opportunity to explain or defend his statement, the rule in *Browne v Dunn* (1893) 6 R 67 would also preclude the Defendants from taking this point by way of closing submissions.

²¹ Expert Report para 5.18

44 In conclusion, I reject all six arguments put forward by the Defendants. Coming back to the point that the Defendants did not call an expert to testify for them, the Court was essentially left with Mr Kon’s Expert Report and opinion. While “the court is not obliged to unquestioningly accept expert evidence, even if it is unchallenged, the court would be slow to substitute its views for those of the expert’s in the absence of good grounds” (*Abhilash s/o Kunchian Krishnan v Yeo Hock Huat and another* [2019] 1 SLR 873 at [88]). If the Court finds the evidence, which is unchallenged, is based on sound grounds and supported by the basic facts, “it can do little else than to accept the evidence” (*Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 at [26]).

45 I agree that the RFR method is an accepted method for assessing damages for infringements of intellectual property rights (*Kickapoo (Malaysia) Sdn Bhd and another v The Monarch Beverage Co (Europe) Ltd* [2010] 1 SLR 1212 at [55]; *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1975] 2 All ER 173 at 177-178).

46 I have reviewed the application, reasoning and analysis of the RFR method which were set out in the Expert Report and further supported by Mr Kon’s testimony before me. I see no basis to disagree with Mr Kon and I find that the fair value of the first Plaintiff’s loss of profits from Vehicle A is \$9,000.

Issue 2: What are the profits the Defendants are to account for in relation to the first Defendant's use of the “www.drwho.asia” sign on the IKEA Cartons?

47 Mr Kon was asked to opine on the profits which the Defendants earned from the sale of the IKEA Cartons. He used the amount of \$93,456 being the Defendants’ total sales from IKEA Cartons, as the starting figure. He deducted incremental costs, including delivery charges of \$1,421 incurred to the first

Defendant, and arrived at a fair value of profits to be accounted for from the IKEA Cartons of \$20,000, rounded to the nearest thousand. Incremental costs are those costs that the Defendants would have incurred in connection with the generation of revenue from the IKEA Cartons and would include direct operating expenses such as purchase cost, delivery charges, air freight and wrapper design fees.²²

48 The Defendants said that the amount of the profits was only \$2,890.25.²³ They raised four objections to Mr Kon’s approach and I will deal with each objection in turn.

(a) General objection

49 The Defendants asserted that no confusion had been caused by the use of the “www.drwho.asia” sign on the IKEA Cartons.²⁴ If this is an attempt to re-argue the Defendants’ case or to go behind the Honourable Judge’s finding (which I have set out at [13(b)] above) that the first Defendant’s use of the “www.drwho.asia” sign on the IKEA Cartons had led to a likelihood of confusion (and was an infringement of the DR. WHO goods mark), I cannot entertain it. Also as already recounted at [16] above, His Honour’s decision on this issue was not reversed on appeal.

50 The Defendants further argued that

“By seeking to elevate the Plaintiffs’ claim to a portion of the profits which Defendants were supposed to have made from the sale of the carton packs to IKEA, the Plaintiffs are seeking to gain a share of an interest which rightly belonged to the Defendants and not to the Plaintiffs, as the Plaintiffs never

²² Expert Report para 4.7; Section 6; Section 10

²³ Mr Oo’s AEIC p355

²⁴ Mr Oo’s AEIC para 29-42; para 46; Closing submissions para 22

supplied carton paks in Singapore or to IKEA for the carton paks period of time.”²⁵

51 The basis of this argument seems to be that forcing the Defendants to account for the profits they earned from the IKEA Cartons is unfair because the Plaintiffs themselves would never have sold the IKEA Cartons to IKEA anyway. This argument appears to invoke the “But-for Scenario” and the “But-for Sales” principle as set out in *TOWA*. However, *TOWA* did not deal at all with the remedy of an account of profits. Further, interlocutory judgment was entered against the Defendants for an account of profits to be taken in relation to this act of infringement. Section 31(2) of the TMA prescribes that in an action for trade mark infringement, the types of relief that the Court may grant include *both* damages *and* an account of profits, subject of course to section 31(4) of the TMA which says that damages and an account of profits are *mutually exclusive* remedies. The Plaintiffs are *not* trying to claim both damages and an account of profits in respect of the IKEA Cartons; rather, they elected to claim an account of profits in respect of the IKEA Cartons.

52 I do not accept the Defendants’ arguments.

(b) Deduction of \$9,715.75 for returned cartons

53 The account of profits from the IKEA Cartons was to be decided by reference to the infringement period for the IKEA Cartons, which was 13 December 2019 to 29 July 2020.²⁶ The Defendants’ position was that 1,470 cartons plus 25 carton paks (the “**Returned Cartons**”) had been returned and/or exchanged from IKEA to the fourth Defendant during the material period, the

²⁵ Closing submissions para 37

²⁶ Expert Report para 4.5; Mr Oo’s AEIC para 38

value of the Returned Cartons was \$9,715.75, and therefore \$9,715.75 should be deducted from the Defendants' total sales from IKEA Cartons.²⁷

54 The parties went through discovery for the assessment of damages proceedings, including an application by the Plaintiffs for specific discovery upon which the Defendants were ordered in June 2024 to disclose, amongst others, "Documents containing financial information – specifically, sales figures, sales quantities, cost of sales, gross profits, administrative expenses, selling and distribution expenses, operating expenses, other variable costs, nett profits – relating to the [IKEA Cartons] that were sold to IKEA in Singapore from January 2019 to August 2020."²⁸

55 The Defendants did not produce any credit notes for the return of the Returned Cartons during either general discovery or pursuant to the order for specific discovery. I would have thought that credit notes would have been documents falling within the ambit of the order for specific discovery, being (at least) documents containing financial information about sales quantities and/or cost of sales relating to the IKEA Cartons.

56 Be that as it may, if the Defendants' position was correct, this would reduce the starting figure of \$93,456 for the sales of the IKEA cartons to \$83,740.25 ($\$93,456 - \$9,715.75 = \$83,740.25$).²⁹

57 Mr Kon's Expert Report pointed out that since the Defendants did not provide credit notes for the Returned Cartons, Mr Kon assumed that the sales of

²⁷ Mr Oo's AEIC para 43-45

²⁸ HC/ORC 3423/2024

²⁹ Mr Oo's AEIC para 43-45

the Returned Cartons were not reversed and accordingly he did not reduce the starting sales figure by \$9,715.75.³⁰

58 In the Supplementary Statement of Claim (Assessment of Damages) (“**SOC-AD**”) dated 23 October 2024, the Plaintiffs pleaded the figure of \$93,456 for the total sales from IKEA Cartons and annexed Mr Kon’s Expert Report.³¹ SOC-AD was served on the Defendants on 23 October 2024.

59 The Supplementary Defence (Assessment of Damages) (“**D-AD**”) dated 19 November 2024 did not plead in response that the Defendants’ total sales from IKEA Cartons should be reduced from \$93,456 to \$83,740.25 because of the Returned Cartons or at all.

60 Finally, when the AEICs were exchanged for the assessment of damages proceedings, Mr Oo exhibited three credit notes at pages 334 to 336 of his AEIC to support the Defendants’ case that the Returned Cartons had been returned and/or exchanged. The credit notes at pages 334 to 336 of Mr Oo’s AEIC were disclosed for the first time in Mr Oo’s AEIC.

61 Since Mr Kon had not had the benefit of those three credit notes when he issued his Expert Report, I permitted the Plaintiffs to adduce evidence from Mr Kon as to the impact, if any, of those three credit notes on his opinion.³²

62 Mr Kon pointed out that the three credit notes all bore the same date (14 August 2020), which seemed to him to be a bit contrived. Also, he said that if one were to add up the total number of packets or cartons for which the three

³⁰ Expert Report para 6.11

³¹ SOC-AD para 8-9

³² Notes of Evidence p24 line 1-p27 line 6; p32 line 22-p36 line 7; p60 line 1-line 10

credit notes were supposedly meant to account, they did not add up to the Returned Cartons. He added that in any event those three credit notes all stated that they were meant to effect set-offs against invoices which fell outside the time frame of the IKEA Cartons. What Mr Kon meant was that in the body of each of the three credit notes was the phrase “This following are the knock-off documents”, followed by a list of invoices dated between 5 August 2020 to 21 August 2020, whereas the infringement period for the IKEA Cartons was 13 December 2019 to 29 July 2020. He also found it incredulous that credit notes dated 14 August 2020 could purport to take effect against events that happened later such as on 21 August 2020. Mr Kon maintained that \$9,715.75 should not be deducted for returned and/or exchanged cartons.³³

63 I turn now to Mr Oo’s explanation of the three credit notes. Mr Oo testified that IKEA did not give the Defendants any credit notes and IKEA did not ask the Defendants to issue any credit notes. Rather, IKEA had performed a direct deduction from their accounts when the cartons were returned and/or exchanged, so as to effect the deduction. He also said that he had generated or created the three credit notes, after checking the Defendants’ computer system, to respond to the point made in Mr Kon’s Expert Report that the Defendants did not provide credit notes for the Returned Cartons. Mr Oo elaborated that whilst preparing his AEIC in February 2025, he realised there was insufficient information and so he wanted to look for more information to prove that the cartons were returned and/or exchanged. He maintained that the three credit notes were generated or created for purposes of accounting only whereas IKEA had already effected the deduction for the Returned Cartons directly in their

³³ Notes of Evidence p35 line 1-p36 line 6; p67 line 5-p68 line 6; p71 line 29-p79 line 26

accounts.³⁴ Finally, Mr Oo accepted that the Defendants had not put before the Court any evidence of IKEA's payment for the Returned Cartons.³⁵

64 The onus of proving that the Returned Cartons had been returned and/or exchanged by IKEA for a value of \$9,715.75 rests on the Defendants. Section 105 of the Evidence Act 1893 provides that

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person”

and section 108 of the Evidence Act 1893 further provides that

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person”.

It is obviously in the Defendants' interests to bring forward the requisite evidence of the Returned Cartons, so as to reduce the starting figure of the Defendants' total sales from IKEA Cartons and consequently to cut down the amount of the profits for which they are to account to the Plaintiffs. It is also obvious that as between the Plaintiffs and the Defendants, the knowledge of the alleged return and/or exchange of the Returned Cartons is within the Defendants' province rather than the Plaintiffs'. I find it surprising that despite all this, the Defendants did not produce the three credit notes until Mr Oo's AEIC was filed.

65 It is also for the Defendants to show that because of the Returned Cartons, IKEA had, whether by way of set-off or otherwise, and whether as reflected in the accounts maintained between IKEA and the fourth Defendant

³⁴ Notes of Evidence p149 line 1-p151 line 14; p155 line 1-line 18

³⁵ Notes of Evidence p151 line 15-line 24

or otherwise, not paid the fourth Defendant a sum of \$9,715.75 such that the Defendants' total sales from IKEA Cartons should be reduced from \$93,456 to \$83,740.25.

66 As mentioned at [60] above, the three credit notes which the Defendants relied on for this point were only disclosed in Mr Oo's AEIC, and as set out at [63] above, Mr Oo admitted that he had generated or created the three credit notes in February 2025. The Defendants have also not explained how the three credit notes, even if taken at face value, which state that they are meant to be "knocked off" against invoices dated between 5 August 2020 to 21 August 2020, should mean that the value of the three credit notes should be set off against sales during the infringement period of 13 December 2019 to 29 July 2020.

67 In other words, despite being given fair notice in October 2024 through the Plaintiffs' pleaded case that the Plaintiffs' position was that \$93,456 was the starting figure for the total sales from IKEA Cartons, the Defendants waited more than three months until February 2025 to provide a specific response to that position. Even then, the response they provided came in the form of documents generated or created by Mr Oo. And even then, Mr Oo's documents did not assist them.

68 The Defendants have also not explained, in the alternative, why they could not provide a printout from the accounts with IKEA at the point in time when IKEA effected the deduction for the Returned Cartons. I find it difficult to believe that IKEA would have done so without that showing up in some way in the accounts. It might have needed some effort to track down in the accounts or required some analysis of the accounts, but the onus is on the Defendants to

do that and I do not agree that it is more acceptable for the Defendants to instead generate or create new evidence.

69 I do not accept that the total sales from IKEA Cartons should be reduced from \$93,456 to \$83,740.25 because of a deduction of \$9,715.75 for the Returned Cartons.

(c) Deduction of \$10,800 for delivery charges

70 As mentioned at [47] above, Mr Kon had deducted delivery charges of \$1,421 from the total sales figure for the IKEA Cartons, as that was one of the items of incremental costs, or direct operating expenses, that were incurred in order to generate those sales. Incremental costs are deducted from sales before the profits for which the defaulting party is to account are derived.³⁶

71 The first Defendant bought the cartons from an entity known as Linaco Manufacturing (M) Sdn Bhd (“**Linaco**”) and then sold and provided the cartons to the fourth Defendant, who further sold the cartons to IKEA. Delivery of the sold cartons to IKEA, on behalf of the fourth Defendant, was undertaken by another entity known as Picco Enterprise Pte Ltd (“**Picco**”). However, for the stage of the process where the first Defendant sold and provided the cartons to the fourth Defendant, the Defendants did not give Mr Kon the delivery charges incurred, if any.³⁷ Mr Kon therefore had to estimate the delivery charges.

72 To do so, Mr Kon considered the first Defendant’s distribution costs to revenue ratio extracted from its audited accounts for financial year (“FY”) ended 31 March 2019 to 31 March 2022 as a proxy. He used the distribution

³⁶ Expert Report paras 6.14-6.16

³⁷ Expert Report para 6.19

costs to revenue ratio for FY2020 to estimate the relevant delivery charges. He chose FY2020 as being the closest period to the infringing IKEA Cartons. He then computed the delivery charges to be \$1,421.³⁸

73 Mr Oo's AEIC asserted that instead of delivery charges amounting to \$1,421, the delivery charges should be \$10,800.³⁹ He said that if the delivery charges were \$1,421 as Mr Kon said, that would work out to be about \$0.10 to deliver a carton from Batu Pahat in Johor, Malaysia to Singapore whereas the correct market rate was about \$0.76 per carton. He said that his reasons were set out in his AEIC at page 494.

74 However, page 494 of Mr Oo's AEIC contained no reasons to justify these delivery charges save for his bald assertion that the transport charges from Batu Pahat to Singapore including custom levy, custom form, forwarding charges, were \$1,800 per trip and his calculation of six trips totalling a delivery cost of \$10,800 (*ie*, \$1,800 x 6 trips = \$10,800). Mr Oo's AEIC contained no documents to support his assertion that the market rate was about \$0.76 per carton and no documents to evidence custom levy, custom form or forwarding charges, and no breakdown or further justification or documents for the figure of \$1,800 per trip.

75 Under cross-examination, Mr Oo testified that he had prepared page 494 of his AEIC to correct Mr Kon and he elaborated that Mr Kon had wrongly not taken into consideration the figures for operating cost, maintenance, salary for

³⁸ Expert Report para 6.19(b)

³⁹ Mr Oo's AEIC paras 52-53; p494

the drivers and so on, which were set out in the audited accounts, when Mr Kon arrived at the delivery charges.⁴⁰

76 I turn now to consider Mr Kon’s responses to the Defendants’ questions about the items from the audited accounts which they said he had wrongly failed to take into account when he calculated the delivery charges.

MYR 1,006,093 described as “Transport charges”

77 Mr Kon was asked whether he had taken into account the figure of MYR 1,006,093 described as “Transport charges” under the header “Factory Overheads” in the first Defendant’s audited accounts. He said that he had not done so because that item of “Transport charges” was captured under “Factory Overheads” which were in turn part of “Cost of Manufacturing” in the page of the audited accounts that was headed “Manufacturing Account”. Accordingly, that page showed the cost of manufacturing whatever goods the first Defendant manufactured, such as bottled water. The items on that page were the cost of producing those goods. So transport charges in that context would be costs incurred, for example, to bring in the raw materials to manufacture the goods. The manufacturing account is the costs of manufacturing goods such as bottled water, before delivery outwards, and does not include distribution costs or delivery costs after manufacturing.⁴¹

78 Counsel for the Defendants said that he was instructed that MYR 1,006,093 was the transport charge for the first Defendant to buy the cartons from Linaco but accepted that the first Defendant did not perform any manufacturing on the cartons. The Court asked counsel why the transport

⁴⁰ Notes of Evidence p151 line 29-p154 line 32

⁴¹ Notes of Evidence p86 line 6-p89 line 3; Agreed Bundle of Documents vol II p958-p960

charges to buy the cartons would be itemised under the “Factory Overheads” in the “Manufacturing Account” if the first Defendant was not performing manufacturing on the cartons. Counsel replied to inform the Court that the first Defendant’s accounts were such that they included the overheads for the factory but at the same time for the purchase of the cartons.⁴²

79 I find the Defendants’ explanation difficult to accept as it appears to contradict the presentation of their audited accounts. It also begs the question of why, if the first Defendant had documents to show that all or part of the “Transport charges” of MYR 1,006,093 under the “Factory Overheads” figure in the “Manufacturing Account” was actually the transport charge for the first Defendants to buy the cartons from Linaco, they did not provide those documents to Mr Kon in the first place rather than compel him to estimate the delivery charges.

Road tax and insurance

80 Mr Kon was asked whether he had taken into account the figures for road tax and insurance in the first Defendant’s audited accounts. His reply was that it would be part of the delivery charges under “Distribution Costs”.⁴³ He explained that after manufacturing goods in a factory, they need to deliver the goods and he referred to the page headed “Distribution Costs” in the audited accounts. That page gave a breakdown of the distribution costs, including items such as “Upkeep of motor vehicles”, “Petrol and toll”, “Road tax and insurance”, and so on.⁴⁴

⁴² Notes of Evidence p89 line 7-p90 line 23

⁴³ Notes of Evidence p90 line 25-line 28; Agreed Bundle of Documents vol II p960

⁴⁴ Notes of Evidence p86 line 24-line 30; Agreed Bundle of Documents vol II p960

Administrative expenses

81 Mr Kon was asked whether he had taken into account the figures for administrative expenses in the first Defendant’s audited accounts. He said that he had not done so because administrative expenses are not incremental costs, meaning they are not direct operating expenses that were incurred in order to produce the IKEA Cartons.⁴⁵

82 The Defendants’ position was that some of the items under administrative expenses should have been taken into account because that would cover labour costs and insurance for the workers, which all went towards the cost of delivering the IKEA Cartons.⁴⁶

83 The “Administration Expenses” in the first Defendant’s audited accounts include separate line items for “Insurance” and “Salaries, allowances and bonus”.⁴⁷ However, there are also line items for “Road tax and insurance” under “Distribution Costs”, “Insurance” under “Factory Overheads” and “Wages and allowance” under “Direct Labour”.⁴⁸ The Defendants did not explain whether they were saying that all those line items were equally applicable to the delivery of the IKEA Cartons. Also, although the supply of the IKEA Cartons is not the entire business that the first Defendant engaged in, the Defendants did not explain what portion of the administration expenses should be allocated to the cost of delivering the IKEA Cartons.

⁴⁵ Notes of Evidence p91 line 1-line 8

⁴⁶ Notes of Evidence p91 line 9-line 19

⁴⁷ Agreed Bundle of Documents vol II p960

⁴⁸ Agreed Bundle of Documents vol II p959-p960

84 I accept Mr Kon's explanations about the accounting treatment of the transport charges, road tax and insurance, and administrative expenses as shown in the first Defendant's audited accounts. There is no basis for me to conclude that I should prefer the Defendants' position that the transport charges, road tax and insurance, and administrative expenses should be taken into account. I add that even if I were to accept the Defendants' position, the Defendants did not, whether in Mr Oo's AEIC or otherwise, provide me with a recalculation, using their figures for transport charges, road tax and insurance, and administrative expenses, showing delivery charges of \$10,800. I accept that the delivery charges are correctly estimated at \$1,421.⁴⁹

(d) Deduction of \$1,884 paid to Picco

85 Mr Oo's AEIC asserted that the Expert Report also did not take into account that the fourth Defendant had paid Picco the sum of \$1,884 being transport, storage and service charges incurred when the Returned Cartons were collected from IKEA. He did not explain this apart from saying that the charges of \$1,884 were "as in the attached, being part of exhibit marked "TW-10"". ⁵⁰ Exhibit TW-10 was a table prepared by Mr Oo which set out his calculation of the fourth Defendant's account of profits for the IKEA Cartons. It included a deduction line item of \$1,884 described as "Collection return goods charges from Picco (see Annex E)". ⁵¹ Annex E was a Tax Invoice on Picco's letterhead for \$1,884 issued to the fourth Defendant and dated 28 August 2020. ⁵²

⁴⁹ Expert Report para 6.19(b)

⁵⁰ Mr Oo's AEIC para 51

⁵¹ Mr Oo's AEIC p355

⁵² Mr Oo's AEIC p492

86 Whilst I see that on its face the Tax Invoice was issued by Picco for service and delivery charges and storage and service charges for 1,384 cartons, Mr Oo did not explain how this Tax Invoice, dated 28 August 2020, related to the IKEA Cartons sold during the infringement period of 13 December 2019 to 29 July 2020. The same assertion was made in the Defendants’ Opening Statement and in their closing submissions, but without explanation or correlation to the infringement period.⁵³

87 In any event, Mr Kon was not questioned at all about Picco. As he was not given the opportunity to respond about the sum of \$1,884 supposedly paid to Picco, the rule in *Browne v Dunn* (1893) 6 R 67 would preclude the Defendants from taking this point by way of closing submissions.

88 I reject the Defendants’ four objections and find that the Defendants are to account for the fair value of profits from the IKEA Cartons which is quantified at \$20,000 and not quantified at \$2,890.25.

Issue 3: What are the profits the Defendants are to account for in relation to the first Defendant’s display of the DR.WHO quatrefoil device sign and the two meta-title signs on the “www.drwho.com.my” and “www.drwho.asia” websites?

89 Mr Kon’s Expert Report said that he could not quantify the fair value of profits from the Defendants’ websites which the Defendants had to account for. He gave his reasons for this, which included lack of information about the Defendants’ sales and the possible impact of the COVID-19 pandemic. Because of the constraints, he could not reliably quantify the financial impact of the first Defendant’s display of the DR. WHO quatrefoil device sign and the two meta-

⁵³ Opening Statement para 33; closing submissions para 26

title signs on the “www.drwho.com.my” and “www.drwho.asia” websites, on the Plaintiffs’ revenue.⁵⁴

90 The Plaintiffs’ position before me was that they accepted Mr Kon’s Expert Report.⁵⁵

91 On Issue 3, I accept Mr Kon’s opinion and I make no order as to any profits that the Defendants have to account for.

Issue 4: What are the profits the Defendants are to account for in relation to the use of the fourth Defendant's name “DR.WHO (S) Pte. Ltd.”?

92 Mr Kon’s Expert Report said that he could not provide an opinion on the fair value of profits from the fourth Defendant’s use of the name “DR.WHO (S) Pte. Ltd.” which the Defendants had to account for. He gave his reasons for this, which (similar to Issue 3) included lack of information about the fourth Defendant’s sales and the possible impact of the COVID-19 pandemic. Because of the constraints, he could not reliably quantify the financial impact of the fourth Defendant’s use of the name “DR.WHO (S) Pte. Ltd.” on the Plaintiffs’ revenue.⁵⁶

93 The Plaintiffs’ position before me was that they accepted Mr Kon’s Expert Report.⁵⁷

94 On Issue 4, I accept Mr Kon’s opinion and I make no order as to any profits that the Defendants have to account for.

⁵⁴ Expert Report para 4.8; para 7.1

⁵⁵ Ms Tan’s AEIC para 19; Notes of Evidence p106 line 1-16

⁵⁶ Expert Report para 4.8; para 7.4

⁵⁷ Ms Tan’s AEIC para 19; Notes of Evidence p106 line 1-16

Issue 5: Do the expert’s findings on Issue 3 mean that there is no loss of profits under Issue 1 and no profits to be accounted for under Issue 2?

95 Mr Kon had said that due to various constraints, he could not reliably quantify the financial impact of the first Defendant’s display of the DR. WHO quatrefoil device sign and the two meta-title signs on the “www.drwho.com.my” and “www.drwho.asia” websites, on the Plaintiffs’ revenue, and he could not provide an opinion on the fair value of profits from the Defendants’ websites.⁵⁸

96 Under cross-examination, both Ms Tan and Mr Kon were asked about the Defendants’ position that because the expert had not been able to give an opinion under Issue 3, and because Issue 3 concerned the same quatrefoil device sign and the same websites that were the subject of Issue 1 and Issue 2, therefore, the Plaintiffs also should not be awarded any loss of profits under Issue 1 and the Defendants should not have to account for any profits under Issue 2.⁵⁹

97 Ms Tan did not concede that the Defendants were correct and said that the Plaintiffs would rely on Mr Kon’s opinion. Mr Kon made it clear that the loss of profit under Issue 1 (being profits lost by the Plaintiffs from royalties which they should have earned from the Defendants’ displaying of the Marks on Vehicle A but which the Defendants did not pay), and the profits to be accounted for under Issue 2 (being profits earned by the Defendants from the sale of the IKEA Cartons bearing the “www.drwho.asia” sign) were separate heads of damage from any profits which the Defendants could have been made

⁵⁸ Expert Report para 4.8; para 7.1

⁵⁹ Notes of Evidence p107 line 6-p109 line 3; p116 line 3-p124 line 3; p46 line 9-p51 line 2; p52 line 6-p53 line 15; p58 line 27-line 31; p62 line 1-p65 line 30

to account for under Issue 3 (being profits in relation to the first Defendant's display of the DR.WHO quatrefoil device sign and the two meta-title signs on the “www.drwho.com.my” and “www.drwho.asia” websites).

98 I am of the view that the Defendants’ position conflates Issue 3 with Issue 1 and Issue 2 and does not recognize the legal and principled distinction between the compensation that is awarded under each of Issue 1, Issue 2 and Issue 3. I do not accept this position.

Conclusion

99 I award the Plaintiffs the sum of \$9,000 as the fair value of the first Plaintiff’s loss of profits from Vehicle A and I further award the Plaintiffs the sum of \$20,000 as the fair value of profits to be accounted for from the IKEA Cartons.

100 I will hear from the parties separately as to the costs of the proceedings before me. I thank counsel for their assistance.

Gan Kam Yui
Assistant Registrar

Rakesh s/o Pokkan Vasu, Gomez Winnifred (Gomez & Vasu LLC)
for the plaintiffs;
Anand s/o K Thiagarajan (AKT Legal Chambers) for the defendants.