

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

[2023] SGHC 203

Registrar's Appeal (State Courts) No 27 of 2022

Between

Nail Palace (BPP) Pte Ltd

... Appellant

And

Competition and Consumer Commission of
Singapore

... Respondent

In the matter of District Court Originating Summons No 285 of 2021

In the matter of Section 9 of the Consumer
Protection (Fair Trading) Act (Cap 52A)

Between

Competition and Consumer Commission of
Singapore

... Plaintiff

And

Nail Palace (BPP) Pte Ltd

... Defendant

Registrar's Appeal (State Courts) No 28 of 2022

Between

Nail Palace (SM) Pte Ltd

... Appellant

And

Competition and Consumer Commission of
Singapore

... Respondent

In the matter of District Court Originating Summons No 286 of 2021

In the matter of Section 9 of the Consumer
Protection (Fair Trading) Act (Cap 52A)

Between

Competition and Consumer Commission of
Singapore

... Plaintiff

And

Nail Palace (SM) Pte Ltd

... Defendant

JUDGMENT

[Commercial Transactions — Sale of services — Consumer protection —
Consumer Protection (Fair Trading) Act — Whether defendants had engaged in
unfair practices relating to fungal treatment packages]

[Commercial Transactions — Sale of services — Consumer protection —
Consumer Protection (Fair Trading) Act — Sections 9(1)(b) and 9(2) —

Relevant factors in the Court's exercise of its discretion to grant final injunctions to restrain unfair practices]
[Commercial Transactions — Sale of services — Consumer protection — Consumer Protection (Fair Trading) Act — Sections 9(1)(c) and 9(4) — Relevant factors in the Court's exercise of its discretion to grant accompanying orders — Appropriate duration of the accompanying orders]

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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.

Nail Palace (BPP) Pte Ltd
v
Competition and Consumer Commission of Singapore
and another appeal

[2023] SGHC 203

General Division of the High Court — Registrar's Appeals (State Courts)
Nos 27 and 28 of 2022
Goh Yihan JC
26 May 2023

28 July 2023

Judgment reserved.

Goh Yihan JC:

Introduction

1 There are two appeals before me, namely, HC/RAS 27/2022 (“RAS 27”) and HC/RAS 28/2022 (“RAS 28”). These appeals arise from the proceedings below that the Competition and Consumer Commission of Singapore (“the respondent”) brought against Nail Palace (BPP) Pte Ltd (“NPBPP”) and Nail Palace (SM) Pte Ltd (“NPSM”). NPBPP and NPSM are companies that provide, among other things, manicure and pedicure services, and foot-related treatments. For convenience, I will refer to NPBPP and NPSM collectively as the “appellants”. After considering the matter, I dismiss the appeals in their entirety for the reasons that follow.

2 By way of background, in the proceedings below, the respondent sought (a) declarations that the appellants had engaged in certain unfair practices in relation to fungal treatment packages, (b) final injunctions to restrain the appellants from engaging in such practices, and (c) various accompanying orders. The respondent had sought these reliefs under s 9 of the Consumer Protection (Fair Trading) Act 2003 (2020 Rev Ed) (“CPFTA”). In so far as relevant, s 9(1) provides as follows:

Declaration or injunction

9.—(1) Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the District Court or General Division of the High Court may, on the application of the Commission —

(a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice;

(b) grant an injunction restraining the supplier from engaging in the unfair practice; and

(c) if the District Court or the General Division of the High Court grants relief under paragraph (a) or (b), make in addition one or more of the accompanying orders mentioned in subsection (4).

3 In an admirably clear and comprehensive judgment (see *Competition and Consumer Commission of Singapore v Nail Palace (BPP) Pte Ltd and another matter* [2022] SGDC 171 (“the Judgment”), the learned District Judge Elaine Lim Mei Yee (“the DJ”) granted most of the reliefs sought by the respondent. In summary, the learned DJ granted the declarations, ordered the final injunctions, and also made various accompanying orders. Some of these accompanying orders form the subject matter of these appeals.

4 More specifically, in the present appeals before me, the appellants only appeal against the following accompanying orders that the learned DJ made

pursuant to s 9(1)(c) read with s 9(4) of the CPFTA (with the deadlines for compliance extended by the court):

(a) that each of the appellants publish, at their own expense, within twenty-one days from 2 September 2022, details of the declaration and injunction granted against them, by way of a full-page public notice in the Straits Times, Lianhe Zaobao, Berita Harian, and Tamil Murasu (“the Publication Order”);

(b) that each of the appellants must, before any consumer enters into a contract in relation to a consumer transaction with them during a period of two years from 2 September 2022:

(i) notify the consumer in writing about the declaration and injunction in force against that defendant; and

(ii) obtain the consumer’s written acknowledgement of receipt of the said notice.

(“the CNC Order”)

In *Nail Palace (BPP) Pte Ltd v Competition and Consumer Commission of Singapore and another matter* [2023] SGHC 111, I explained the circumstances as to why the appellants’ appeals are only confined to their respective Publication Order and the CNC Order. There is no need for me to revisit those circumstances except to emphasise that the present appeals are *not* against any other aspect of the learned DJ’s orders.

The appointment of a young *amicus curiae*

5 As the learned DJ noted in the Judgment at [3], because there are no reported local decisions on the relevant factors that a court should take into account in deciding whether to make accompanying orders (as well as to grant a final injunction) under the CPFTA, I appointed Ms Bethel Chan Ruiyi (“Ms Chan”) from Setia Law LLC as a young *amicus curiae* to assist me with the following questions:

(a) what are the factors/principles which a court should take into account when deciding whether to exercise its discretion to grant a final injunction restraining a supplier from engaging in an unfair practice under s 9(1)(b) read with s 9(2) of the CPFTA? In this connection, to what extent can reference to the Australian position be made despite some difference in the statutory provisions? (“Question 1”); and

(b) what are the factors/principles which a court should take into account when deciding whether to exercise its discretion to make accompanying orders under s 9(1)(c) read with s 9(4) of the CPFTA, and further, how should the court determine the appropriate duration of such orders? (“Question 2”)

6 While the subject matter of Question 1, that is, the grant of a final injunction, is not directly before me in the present appeals, I had asked Ms Chan to provide her views in case the factors or principles bearing on this Question affect those in relation to Question 2. In any event, and by way of guidance, I will still address the relevant factors that a court should consider in deciding whether to grant a final injunction under the CPFTA.

7 At the outset, I would like to express my deep gratitude to Ms Chan for her very helpful submissions, which were eloquently advanced at the hearing before me, and which greatly assisted me in the present appeals.

The parties

8 With the above introduction in mind, I turn to the parties. The respondent, as is already clear, is the entity entrusted with the administration of the CPFTA since 1 April 2018.

9 The appellants are Singapore companies in the business of providing, among other things, manicure and pedicure services, and foot-related treatments. More specifically, the appellant in RAS 27, NPBPP, provides such services at #04-02 Bukit Panjang Plaza Singapore 677743, whereas the appellant in RAS 28, NPSM, provides such services at #02-17 East Point Mall Singapore 528833. Since the appellants are separate corporate entities, it was necessary for the respondent to commence separate proceedings against each of them. However, like the learned DJ, I will deal with both appeals together as far as practicable.

10 Also, while the appellants are separate corporate entities, it is clear that Mr Kaiden Cheng (“Mr Cheng”) is the managing director of the appellants and other related companies providing similar services and products, all of which trade under the business name “Nail Palace” (collectively, the “Group”).¹ It is likewise clear that Ms Catherine Lai Pui Yee (“Ms Lai”) is the sole training manager for all employees in the Group. Ms Lai is in charge of training and

¹ 1st affidavit of Xie Junhao (Angus Xie) in HC/OSS 285/2021 (“OSS 285”) and HC/OSS 286/2021 (“OSS 286”) dated 17 December 2021 at para 9.

deciding the scope of training. She also has the autonomy to develop the relevant training curriculum and materials.

The proceedings below

11 In the proceedings below, the learned DJ identified two issues for determination. These were, first, whether the appellants had engaged in the alleged unfair practices; and second, if the appellants had engaged in such unfair practices, whether the court should exercise its discretion to grant the declarations, injunctions, and accompanying orders sought by the respondent.

The appellants were found to have engaged in unfair practices

12 With respect to the first issue on liability, the respondent claimed that each of the appellants had committed an unfair practice under s 4(d) of the CPFTA, read with para 3 of the Second Schedule, by making misleading representations to two consumers, Ms Cai Weiting Lynn (“Ms Cai”) and Ms Carine Tan Hwee Hong (“Ms Tan”), concerning the need for a fungal treatment package. In addition, the respondent also claimed that NPSM had committed an unfair practice under s 4(a) of the CPFTA by omitting to inform Ms Tan that certain products were included in the price of a treatment package, thereby resulting in her being misled. The appellants denied that they had committed the alleged unfair practices.

13 For completeness, s 4 of the CPFTA provides as follows:

Meaning of unfair practice

4. It is an unfair practice for a supplier, in relation to a consumer transaction —

- (a) to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) to make a false claim;
- (c) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer —
 - (i) is not in a position to protect his or her own interests; or
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or
- (d) without limiting paragraphs (a), (b) and (c), to do anything specified in the Second Schedule.

In turn, para 3 of the Second Schedule provides for “[m]aking a false or misleading representation concerning the need for any goods or services” as one of the specific unfair practices listed.

14 The learned DJ found for the respondent on the first issue of liability. She was satisfied that NPBPP had engaged in an unfair practice under s 4(d) of the CPFTA, read with para 3 of the Second Schedule. First, the learned DJ found that NPBPP had, through its employee Ms Chen Xiaoye (“Ms Chen”), represented to Ms Cai that: (a) based on her training from Nail Palace, she knew that Ms Cai had fungus on the toenails of her two big toes by looking at them; (b) a fungal treatment package was needed to treat the fungus (the “Fungus Treatment Package”); and (c) if Ms Cai did not undergo the Fungus Treatment Package, the fungal infection would worsen and spread to her other toenails. Second, the learned DJ found these representations to be misleading because Ms Chen had no grounds to conclude that Ms Cai had fungus on her toenails based purely on a visual inspection. Third, the learned DJ concluded that

Ms Cai relied on and was induced by these representations to purchase the Fungus Treatment Package.²

15 Similarly, the learned DJ was satisfied that NPSM had engaged in an unfair practice under s 4(d) of the CPFTA, read with para 3 of the Second Schedule. First, the learned DJ found that NPSM had, through its employee Ms Chong Sze Peng (“Ms Chong”), represented to Ms Tan that: (a) based on her training from Nail Palace, she knew that Ms Tan had fungus in one of her big toenails and some of her small toenails by looking at them; and (b) a revised fungal treatment package (the “Revised Treatment Package”), was needed to treat the fungus. Second, the learned DJ found these representations to be misleading because Ms Chong was not in a position to conclude that Ms Tan had fungus on her toenails based purely on a visual inspection. Third, the learned DJ concluded that Ms Tan was induced by these representations to purchase the Revised Treatment Package.

16 In addition, the learned DJ also found that NPSM had committed another unfair practice under s 4(a) of the CPFTA by omitting to mention that certain lip sticks and lip balms were included in the price for the Revised Treatment Package. Ms Tan did not need these lip sticks and lip balms as they had nothing to do with any nail fungal infection.³ As such, the learned DJ concluded that Ms Tan was misled into paying for these products that she did not want or need.

² 1st affidavit of Cai Weiting Lynn in OSS 285 dated 17 December 2021 at paras 4–15, 31–33.

³ 1st affidavit of Carine Tan Hwee Hong in OSS 286 dated 17 December 2021 at paras 40–65.

17 In the present appeals, the appellants do not dispute the learned DJ's findings of fact. Nor do they dispute her finding that both appellants had engaged in an unfair practice pursuant to the relevant sections in the CPFTA.

The appellants were subjected to several reliefs prayed for by the respondent

18 As a result of her finding that the appellants had engaged in unfair practices, the learned DJ granted several reliefs against the appellants on 8 August 2022. In summary, these reliefs are:

- (a) a declaration that each of the appellants has engaged in an unfair practice within the meaning of s 4(d), read with para 1B of the Second Schedule to the CPFTA, by making a misleading representation concerning the need for fungal treatment(s) or fungal treatment package(s);
- (b) a declaration that NPSM has also engaged in an unfair practice within the meaning of s 4(a) of the CPFTA, by omitting to inform a consumer that certain products were included in the price of a treatment package, thereby resulting in the consumer being misled;
- (c) that NPBPP be restrained from engaging in the unfair practice referred to in subparagraph (a) above;
- (d) that NPSM be restrained from engaging in the unfair practices referred to in subparagraphs (a)–(b) above;
- (e) that each of the appellants publish, at their own expense, within 14 days from the date of her decision, details of the declaration and

injunction granted against them, by way of a full-page public notice in the Straits Times, Lianhe Zaobao, Berita Harian, and Tamil Murasu;

(f) that each of the appellants must, before any consumer enters into a contract in relation to a consumer transaction with them during a period of two years from the date of this decision:

(i) notify the consumer in writing about the declaration and injunction in force against that defendant; and

(ii) obtain the consumer's written acknowledgement of receipt of the said notice; and

(g) that each of the appellants must, for a period of two years from the date of her decision, notify the respondent in writing within 14 days of the occurrence of any of the following events:

(i) a change in the premises or number of premises at which the appellant carries on its business as a supplier;

(ii) the conversion of the appellant from a private company to a limited liability partnership under s 21 of the Limited Liability Partnerships Act 2005 (2020 Rev Ed);

(iii) the appellant undergoing any arrangement, reconstruction or amalgamation under Part 7 of the Companies Act 1967 (2020 Rev Ed);

(iv) an order being made under s 71 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") approving a compromise or an arrangement between the appellant and its creditors;

- (v) the appellant being subjected to receivership under Part 6 of the IRDA;
- (vi) the appellant being subjected to judicial management under Part 7 of the IRDA;
- (vii) the appellant being subjected to winding up under Part 8 of the IRDA;
- (viii) a change in the appellant's name or the name under which the appellant is carrying on business;
- (ix) any arrangement by the appellant to participate in a trade fair;
- (x) if the appellant adopts for its business a new name, symbol or design, any arrangement by the appellant to carry out any activity for the purpose of identifying its business with that new name, symbol or design;
- (xi) a change in the board of directors of the appellant or a change in the person or persons who hold directly or indirectly 15% or more of the total voting power or total issued shares in the appellant; or
- (xii) any shareholder of the appellant entering into an arrangement under which that shareholder holds on behalf of another person any profits, gains or dividends derived from the carrying on of the appellant's business.

19 Thereafter, before the learned DJ, the appellants made further arguments in relation to the learned DJ's grant of a consumer notification and

consent order and a publication order in respect of each appellant (*ie*, items (e) and (f) in the preceding paragraph), which she heard and dismissed on 2 September 2022. The learned DJ ordered, among others, that an extension of time be granted for the appellants to comply with the aforementioned orders. The date of her orders was stated to run from 2 September 2022. These resulting orders, which are the subject of the present appeals, have been termed as the CNC Order and the Publication Order at [4] earlier.

20 With the above background in mind, I turn to the parties' respective cases in the present appeals.

The present appeals

The parties' general cases

21 The appellants' general case against the Publication Order and the CNC Order begins with a broad agreement with the learned DJ's reasoning that the legislative intent behind these orders is to plug the gaps in the injunction process under the CPFTA and to ensure that consumers are aware of the unfair business practices that are being used by errant businesses. However, the appellants say that even though the learned DJ correctly stated this broad intent, she erred by speculating on the appellants' potential future conduct with the injunctions in place. The appellants assert that since the commencement of these proceedings, there have been no further reports of misleading conduct made against them. As such, this shows that the appellants have taken the proceedings below seriously. Given that the appellants have not even been given the opportunity to comply and implement the injunctions, they argue that the learned DJ was not entitled to speculate as to the possibility of breach and impose the Publication Order and the CNC Order as a result.

22 The appellants then refer to the case of *Competition and Consumer Commission of Singapore v Triple Lifestyle Marketing Pte Ltd and another* DC/OA 105/2022 (6 March 2023) (“*Triple Lifestyle*”). The appellants say that the respondent had received 649 complaints from consumers between January 2018 to October 2022 in that case. It was in that context that Triple Lifestyle was ordered to publish the orders made against it in the newspapers, as well as to inform consumers of those orders for a period of three years. The appellants submit that while the orders made in *Triple Lifestyle* are similar to the ones in the present appeals, there are only two complaints here. As such, the appellants say that the Publication Order and the CNC Order, which they characterise as “onerous”, are not necessary in the present case.

23 In short, the appellants argue that the injunctions ordered against them would have been sufficient, and there was no need for the learned DJ to have gone further to order the Publication Order and the CNC Order against them. These would, so the appellants say, “severely cripple [their] business”.

24 In response, the respondent’s general case is as follows. To begin with, the respondent submits that – and the appellants do not disagree – that the legislative intent behind accompanying orders, such as the Publication Order and the CNC Order, is to ensure that the consumers are aware of the unfair business practices that are being used by errant businesses.

25 To further support this, the respondent cites various Australian authorities which interpreted ss 86C(2) and 86D(2) of the (Australian) Trade Practices Act 1974 (Cth) (“TPA”). These provisions, similar to s 9(4) of the CPFTA, allowed the Australian courts to grant “publicity order[s]” in favour of the Australian Competition and Consumer Commission. These publicity

orders operate similarly to the Publication Order and the CNC Order, in that they require the person so ordered to disclose, in the way and to the persons specified in the order, such information as is so specified. In particular, the respondent points out that in the Australian decision of *Australian Competition and Consumer Commission v TPG Internet Pty Ltd (No 2)* [2012] FCA 629 (“*TPG*”), the Federal Court of Australia granted publicity orders under the TPA. In doing so, the court explained at [154] that “it is unlikely that the declarations and orders [the court] make[s] will come to sufficient public attention unless an adverse publicity order is made”. In this regard, the court also emphasised that “it is important ... that members of the public are alerted to the declarations and orders so that they better understand prohibited conduct and are vigilant in bringing such conduct to the attention of the [Australian Competition and Consumer Commission]”. Further, the court explained that it was important that the primary orders will come to sufficient public attention so that “competitors in the market ... have an understanding of the orders, in large part because it will operate ... as a general deterrent”.

26 With the above rationales behind the Publication Order and the CNC Order in mind, the respondent submits that the appellants’ appeals ought to be dismissed because, first, the appellants have disregarded the relevant orders for more than one-third of the effective duration of the said orders, even though no stay of execution has been granted. More broadly, the respondent argues that the Publication Order and the CNC Order would, among others, serve to *raise consumer awareness* of the appellants’ unfair practices. The orders would bring the outcome of the proceedings to public attention and alert consumers as to the existence and terms of the declaration and injunction granted against the appellants, in relation to the unfair practice of making a misleading representation concerning the need for fungal treatments or fungal

treatment packages. Accordingly, the respondent says that the public interest would be protected by imposing the orders, as this would protect potential consumers from being misled by the appellants.

27 Apart from informing consumers, the respondent also argues that the Publication Order and the CNC Order would strengthen the declarations and injunctions ordered by the learned DJ because consumers can then alert the authorities if the appellants do not comply, which would enable consumer protection agencies, including the respondent, to be able to better *monitor* the appellants and take swift enforcement action accordingly. Relatedly, the orders would also have a specific *deterrent* effect on the appellants, as well as the Nail Palace Group, thereby reducing the risk of repetition of future unfair practices. On this point, the respondent objects to what it says is the appellants’ belated attempt to introduce new evidence (without a formal application) that there have been no complaints against them since the earlier proceedings. Instead, the respondent has tendered evidence below before the learned DJ that there were still complaints being made to the Consumer Association of Singapore (“CASE”) by customers about unfair practices by the Nail Palace Group. Finally, the orders would act as a general deterrent and send a signal to other competitors and suppliers who may be contemplating or engaging in such unfair practices.

28 In addition to arguing for the Publication Order and the CNC Order to remain, the respondent argues for the duration of the orders to be extended from two years to four years, starting from the date on which the learned DJ made the orders (*ie*, 2 September 2022). First of all, the respondent says that in view of the learned DJ’s finding that the appellants’ unfair practices were “of moderate severity” and “committed deliberately”, the appropriate effective duration of the

sanctions should be at least three years. As such, the duration of the order, starting from the date of the learned DJ’s decision, should be four years, taking into account that the appellants have allegedly not complied with the learned DJ’s orders for close to a year. Second, and in any event, because the appellants have not complied with the orders for close to a year since the learned DJ’s orders were made, it would be appropriate to extend the duration of the orders to at least three years, so as to “make up” for the one year of non-compliance. Third, the respondent also asks, in the event that I affirm the learned DJ’s decision to grant the CNC Order and/or the Publication Order, that any orders arising from these appeals be backdated to the date of the learned DJ’s decision.

The relevant issues

29 From the parties’ general positions as set out above, there are broadly two issues to consider:

- (a) first, whether the learned DJ erred in ordering the Publication Order and the CNC Order, and
- (b) second, if the learned DJ did not err in ordering the Publication Order and the CNC Order, whether the duration of these orders should be extended beyond two years.

30 In dealing with these issues, I will also consider more generally the relevant principles that a court should follow in granting the Publication Order and the CNC Order. Even more broadly, I will consider the relevant principles that a court should follow in granting injunctions. However, I do so against the

background that the injunctions against the appellants are not the subject of the appellants' appeals.

Whether the learned DJ erred in ordering the Publication Order and the Consumer Notification and Consent Order

The applicable principles in relation to the court's discretion to grant the Publication Order and the Consumer Notification and Consent Order

31 I turn first to consider the applicable principles in relation to the court's discretion to grant the Publication Order and the CNC Order. I will structure my discussion of these principles in the following manner. First, I will consider the relevant sections of the CPFTA and the legislative intention behind accompanying orders. Second, I will outline the relevant considerations in deciding whether to grant an accompanying order. Third, I will explain the relevant considerations in deciding the duration of an accompanying order.

The relevant sections of the CPFTA

32 To begin with, s 9(1)(c) of the CPFTA provides that if the court grants a declaration or an injunction under ss 9(1)(a) or 9(1)(b), the court may, in addition, make one or more of the accompanying orders mentioned in s 9(4), read with the Consumer Protection (Fair Trading) (Notifiable Events) Regulations 2016 ("2016 Regulations"). These accompanying orders include orders such as the Publication Order and the CNC Order. More precisely, ss 9(4)(a) and 9(4)(b), which give the bases for the Publication Order and the CNC Order, provide as follows:

(4) The accompanying orders for the purposes of subsection (1)(c) are as follows:

(a) an order that the supplier must periodically publish, at the supplier's expense, for a specified period that the

supplier continues to be a supplier, the details of the declaration or injunction in the form and manner and at the intervals as will secure prompt and adequate publicity for the declaration or injunction against the supplier;

(b) an order that the supplier must, before any consumer enters into a contract in relation to a consumer transaction with the supplier during a specified period —

(i) notify the consumer in writing about the declaration or injunction against the supplier; and

(ii) obtain the consumer's written acknowledgment of the notice in sub-paragraph (i);

...

33 As the learned DJ pointed out, most of the accompanying orders prescribed by s 9(4) may only last for a “specified period”, which is defined in s 9(7) of the CPFTA to mean “a reference to such period specified by the District Court or General Division of the High Court, not exceeding 5 years or any other period that the Minister may prescribe in place of the 5 years”. In addition, pursuant to s 9(6), where the court makes two or more accompanying orders mentioned in ss 9(4)(a), 9(4)(b), 9(4)(c), and 9(4)(d) against a supplier, the specified period in respect of each of the other orders must be the same.

The legislative intention behind accompanying orders

34 Having set out the sections in the CPFTA that are relevant to accompanying orders, I turn to consider the legislative intention behind their introduction.

(1) The relevant parliamentary debates

35 As the learned DJ pointed out, when s 9(1)(c) was introduced in its original form in the Consumer Protection (Fair Trading) Act 2003 (Act 27 of 2003) (“2003 Act”), it only permitted the court to “make a further order requiring the supplier to advertise to the public ... particulars of any declaration or injunction granted against the supplier under paragraph (a) or (b)”. Thus, the court did not have the power under the 2003 Act to make any other type of accompanying order that the court is now empowered to do under s 9(4) of the CPFTA read with the 2016 Regulations.

36 In 2016, ss 9(4) to 9(14) of the CPFTA were introduced. Section 9(1)(c) was also amended to allow the court to grant “one or more of the accompanying orders mentioned in subsection (4)” (“the 2016 Amendments”). At the Second Reading of the Consumer (Fair Trading) (Amendment) Bill in 2016, which drove the 2016 Amendments, the then Minister of State for Trade and Industry, Dr Koh Poh Koon (“Dr Koh”) said as follows (see *Singapore Parliamentary Debates, Official Report* (13 September 2016), vol 94 (Dr Koh Poh Koon, Minister of State for Trade and Industry) (“*Second Reading Speech*”):

The review [of the CPFTA conducted by the Ministry of Trade and Industry in 2015] found that there is a gap in the current injunction process. So among the whole spectrum, we identified a gap in the injunction process. It is slow as CASE and STB have no investigation and enforcement powers, and hence face operational difficulties in gathering evidence to submit their applications to the Courts to file an injunction. Some errant businesses have also side-stepped injunctions by closing their businesses and setting up new ones.

...

[L]et me now move on to the other main amendments. These relate to additional measures which may be imposed by the Courts on errant businesses as part of the injunction orders.

The Courts may make injunction orders which restrain errant businesses from engaging in unfair practices. Clauses 4 and 5 provide for the additional measures or accompanying orders that a court may take or may make in addition to an injunction order. These accompanying orders serve to raise consumer awareness of errant businesses, both business entities and individuals, who are under injunction orders. They also make it harder for errant businesses to side-step injunction orders by closing business and setting up new ones under another person's name. Taken together, the additional measures that the Courts may impose will enable SPRING to monitor these errant businesses, and take swift enforcement action if the orders are not complied with.

For entities, clause 4 allows the Courts to require businesses to comply with additional measures.

Firstly, the Courts may require entities to publish notices of the injunction orders at their own cost in the form, manner, and the frequency over a specified period. These can include notices to be put up at the shop fronts or on the landing pages of their websites.

Secondly, the Courts may require entities to notify consumers in writing of the injunction orders they are under, and obtain their written acknowledgement of the customers of that notice, prior to them entering into a transaction. Entities that breach such accompanying Court orders will be required to refund consumers who cancel their contracts within six months of the transaction.

Thirdly, all invoices issued by these entities may be required to incorporate the notice of the injunction.

Fourth, the entities may be required to inform SPRING within 14 days of any changes to the business such as number of premises, and addresses at which the entities operate – new branches for example. This will enable SPRING to monitor them as part of the enforcement efforts and take timely action if they do not comply with the court orders.

Fifth, entities may be required to reimburse SPRING for costs incurred to publish notices to raise consumer awareness of the commencement of injunction action or injunction order.

These are all aimed at raising consumers' awareness of a business under injunction.

...

Taken together, the requirements for errant retailers to publicise the injunction orders and notify consumers of the injunction order prior to entering into a transaction, as well as SPRING working with CASE to publish injunction orders will serve to raise consumers' awareness of retailers who are under injunction. Consumers can then decide if they still want to purchase from the retailer. This goes back to the principle of "caveat emptor", buyers beware, with consumers exercising their choice and making informed purchasing decisions.

...

I hope that the strengthening of the injunction will move more cases towards the front end of the spectrum – towards education, towards awareness, towards mediation and towards voluntary compliance agreements. So, this should send a signal to businesses who are even contemplating engaging in egregious behaviour to stop immediately and to go into voluntary compliance. This is what we hope to achieve.

(2) The learned DJ's conclusions and the parties' submissions

37 From the *Second Reading Speech* that I have reproduced above, the learned DJ discerned the legislative intention behind to be threefold, namely, (a) to raise consumers' awareness of suppliers who are under injunctions so that they can make informed purchasing decisions, (b) to enable the relevant authority (at present, the respondent) to monitor suppliers which are under injunctions and to take swift enforcement action if the injunctions are not complied with, and (c) to move cases towards the front end of the spectrum, *ie*, towards education, mediation, and voluntary compliance agreements. In the learned DJ's view, purpose (c) tells us that "the accompanying orders are meant to have a deterrent effect on errant businesses who are either contemplating or already engaging in unfair practices" (see the Judgment at [72]).

38 The parties do not dispute these three broad purposes as identified by the learned DJ. However, in relation to the purpose of deterrence, Ms Chan

argued at the hearing that the deterrent function of accompanying orders is tied to the first purpose of raising consumer awareness. Her point is that raising consumer awareness of the unfair practices of errant suppliers will have a general deterrent effect on other suppliers as well. In contrast, Ms Chan points out that neither the *Second Reading Speech* nor s 9(4) of the CPFTA suggest that accompanying orders are intended to serve a *punitive* purpose. This may be contrasted with s 86D of the TPA, which is titled “Punitive orders – adverse publicity”. However, Ms Chan emphasises that s 9(8) of the CPFTA may show that Parliament intended for accompanying orders to serve at least a partly punitive purpose. Section 9(8) provides as follows:

(8) If a supplier fails to comply with an order mentioned in subsection (4)(a), (b), (c) and (d) accompanying a declaration or injunction made under subsection (1), the District Court or General Division of the High Court which made the declaration or injunction may, on the application of the Commission, extend the specified period in the order to any time not exceeding the maximum period specified in subsection (10).

39 Referring to this specific situation, Ms Chan suggests that the extension of the “specified period”, to a supplier which has not complied with an accompanying order at first instance, may have been intended to serve a partly punitive purpose. However, apart from this specific situation, Ms Chan submits that there is nothing to suggest that the accompanying orders were intended to serve a punitive purpose when they are issued in the first instance. Accordingly, in her view, the grant of accompanying orders should not be used to *punish* errant retailers.

(3) My conclusion: the accompanying orders are meant to inform consumers, enhance monitoring, and deter

40 In my view, as can be discerned from the *Second Reading Speech*, the legislative intention behind the introduction of the accompanying orders is to

achieve three purposes: (a) to inform consumers, (b) to enhance monitoring, and (c) to (generally) deter errant suppliers. I now explain my reasons for concluding as such.

41 First, it is clear that accompanying orders, which include the Publication Order and the CNC Order, are primarily aimed at raising consumers’ awareness of suppliers who are under injunctions so that they can make informed purchasing decisions. This much is clear from the *Second Reading Speech*, where Dr Koh said that the additional measures introduced by the 2016 Amendments, including the accompanying orders that are now set out in ss 9(4)(a), 9(4)(b), and 9(4)(c) of the CPFTA, are “all aimed at raising consumers’ awareness of a business under injunction”. These accompanying orders require the supplier to publicise or notify consumers of the declaratory and/or injunctive relief made against the supplier.

42 Second, it is also clear that the accompanying orders are meant to enable the agency concerned to monitor errant suppliers. This is achieved by an accompanying order made pursuant to s 9(4)(d) of the CPFTA read with the 2016 Regulations. This is clear from Dr Koh’s statement in the *Second Reading Speech* that an order under s 9(4)(d) (as proposed at that time) would enable “the administering agency to monitor and prevent the errant retailer from side-stepping injunction orders by closing the business and setting up a new business under a different name while persisting with the unfair practice”.

43 Third, I accept that it does not appear that the accompanying orders are meant to have a punitive function, with the exception of the specific situations prescribed by ss 9(8) and 9(9), which provide that the duration of the accompanying orders may be increased where a supplier or individual fails to

comply with an accompanying order. However, although they are not punitive, I am of the view that one purpose of accompanying orders is to have a deterrent effect. More specifically, I find that the accompanying orders introduced by the 2016 Amendments go beyond deterring the specific supplier which is the subject of such orders from persisting in unfair practices, but also serve to *generally* deter other suppliers from engaging in unfair practices. In developing this point, it is helpful to set out what Dr Koh had said in the *Second Reading Speech*:

I hope that the *strengthening of the injunction will move cases towards the front end of the spectrum* – towards education, towards awareness, towards mediation and towards voluntary compliance agreements. So, this should send a signal to businesses who are even contemplating engaging in egregious behaviour to stop immediately and to go into voluntary compliance.

...

Let me illustrate this with the Mobile Air incident, the Jover Chew case, and how it would be handled under the CPFTA after the amendments are passed. An errant retailer like Mobile Air who repeatedly carries out unfair practices and ignores the request from CASE to sign a voluntary compliance agreement would be surfaced by CASE to the administering agency, in this case, SPRING, for further investigation. And under the new amended Act, SPRING will have the power to gather evidence, which would be submitted to the courts. The courts may then issue an injunction order against a recalcitrant retailer, and we will have the means to take this injunction action and this investigation action much quicker.

As part of the injunction order, the errant retailer may be required to publicise its injunction status, such as putting up notices within the shop premises and notifying potential customers of the injunction order, prior to them making a purchase, and thereby, stopping other tourists from falling prey. This raises consumers' awareness and then consumers, be they tourists or locals, can decide if they still want to purchase from this particular errant retailer. The individuals who are involved in engaging in unfair practices may also have injunction orders issued against them, and may be required to

similarly publicise their injunction status. This would prevent them from side-stepping the injunction orders.

SPRING will also work with CASE to publicise the injunction orders issued by the courts on errant retailers. Taken together, these measures will stop errant retailers from existing and unfair practices and raise consumers' awareness of such retailers. Should errant retailers not comply with the court orders, the administering agency has a power to take enforcement action.

The amendments send strong deterrent signal to the small number of businesses which engage in unfair practices, for which they show a lack of respect for the law. I would like to reassure Mr Lim Biow Chuan that it does not mean that criminal action would no longer be taken against errant retailers. If during SPRING's investigations for the injunctions, SPRING finds that errant retailers may have engaged in activities that are criminalised under the Penal Code, SPRING will refer the case to Police and escalate it for further investigation.

[emphasis added]

44 In my view, when Dr Koh referred to the “amendments” sending a “strong deterrent signal to the small number of businesses which engaged in unfair practices”, he must have been making the point that the *fact* of the 2016 Amendments, which included specific measures such as the CNC Order, would send a deterrent signal to would-be errant suppliers notwithstanding that such suppliers may not have an accompanying order made against them. Such a conclusion coheres with Dr Koh's statement that the 2016 Amendments would “move cases towards the front end of the spectrum – towards education, towards awareness, towards mediation, and towards voluntary compliance agreements”, in contrast to more draconian alternatives such as the imposition of an accompanying order on the errant supplier. This can only happen if such suppliers are deterred by the prospect of having an accompanying order imposed on them such that they are incentivised to cease unfair practices and willingly go into voluntary compliance. As such, I agree with the learned DJ that the

legislative intention behind the introduction of the accompanying orders is meant to have a general deterrent effect.

45 Accordingly, I conclude that the legislative intention behind the introduction of the accompanying orders is to achieve three purposes: (a) to inform consumers, (b) to enhance monitoring, and (c) to (generally) deter errant suppliers.

Relevant considerations in deciding whether to grant an accompanying order

46 As the learned DJ points out, the court should be guided by the legislative intention behind the introduction of the accompanying orders in deciding whether to make any such order. In this regard, I deal with two specific considerations that have come about in the present appeals: whether (a) the fact that the underlying injunction has not been breached, and (b) the detrimental effect that an accompanying order can have on a supplier's business, are factors to be considered in the grant of an accompanying order. After dealing with these specific considerations, I will set out the general considerations that should be taken into account in deciding whether to grant an accompanying order.

- (1) Accompanying orders can be granted even if an injunction has not been breached

47 For ease of reference, I first reproduce s 9(1) of the CPFTA, which is the relevant provision:

Declaration or injunction

9.—(1) Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the District Court or General Division of the High Court may, on the application of the Commission —

- (a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice;
- (b) grant an injunction restraining the supplier from engaging in the unfair practice; and
- (c) if the District Court or General Division of the High Court grants relief under paragraph (a) or (b), make in addition one or more of the accompanying orders mentioned in subsection (4).

48 The appellants submit that accompanying orders, such as the Publication Order and the CNC Order, can only be granted if the appellants had breached the injunctions. In as much as this accurately captures the essence of the appellants' argument, I hold that accompanying orders are not reserved for cases where an existing order for an injunction has been breached for the following reasons.

49 First, I agree with Ms Chan that s 9(1) of the CPFTA plainly does not make the imposition of accompanying orders contingent on a breach of an injunction. Instead, the only precondition to the making of accompanying orders is that prescribed by s 9(1)(c), and this is that such orders must merely accompany the grant of a declaration or injunction.

50 Second, I also agree with Ms Chan that s 9(1) of the CPFTA contemplates the court making accompanying orders simultaneously together with the grant of a declaration or an injunction. In other words, s 9(1) does not contemplate that the court can make accompanying orders only subsequently, perhaps upon a separate application by the respondent that an injunction that was previously granted has been breached by the supplier. Accordingly, it must follow that the grant of accompanying orders cannot be predicated on a prior breach of an injunction.

- (2) The court’s decision to grant accompanying orders should take into account their detrimental effect on a supplier’s business

51 Turning then to the relevance of the detriment effect that an accompanying order can have on a supplier’s business, the learned DJ did not regard this to be relevant in the grant of an accompanying order. She had said that “[t]hose who commit unfair practices must face the consequences of their actions” (see the Judgment at [76]). However, I respectfully disagree with the learned DJ and find that the court’s decision to grant accompanying orders should take into account their detrimental effect on a supplier’s business.

52 In this regard, I agree with Ms Chan that it should be borne in mind that accompanying orders, especially those like the Publication Order and the CNC Order, which call for publicity and notification to both the supplier’s potential and existing consumers, will inevitably have adverse effects on the supplier’s business. That being said, I also agree with Ms Chan that the consideration of the detriment suffered by a supplier’s business does not mean that a court should decline to make an accompanying order by the mere fact that there may be detriment. It is therefore for a court to consider whether the grant of an accompanying order is *proportionate* in the circumstances. Indeed, the cardinal principle of proportionality is well-entrenched in our legal system (see, eg, the Court of Appeal decisions of *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 at [66]; *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2018] 2 SLR 799 at [17]; and *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 at [112]). Unless it is mandatorily ruled out by legislation – and it has not been done so by the CPFTA – then this is a principle that a court should keep in mind and apply.

53 The principle of proportionality in the present context means that a balance must be struck between the ends that are sought to be achieved and the means by which such ends are accomplished. Put more concretely, the accompanying orders made should be *necessary* to address the harm caused by the unfair practices in question and they must be a *reasonable* means of achieving these purposes (for a similar test, see, albeit in a different context, James Leong, “Proportionality – Cost-Effective Justice?”, presented at the 22nd Annual Conference of the Australasian Institute of Judicial Administration (17–19 September 2004) at para 4, cited in the High Court decision of *VV and another v VW* [2008] 2 SLR(R) 929 at [21]).

54 Accordingly, in my view, the test for assessing reasonableness is whether the effect of the accompanying orders significantly exceeds what is necessary to address the harm in question. This means that accompanying orders should take into account the detrimental effect they may have on a supplier’s business. The effect of such in each case would depend on the particular facts. Ultimately, it bears emphasis that the assessment of reasonableness in every case is a fact-centric exercise and that much would depend on the circumstances of the case.

- (3) General considerations to be taken into account when deciding whether to grant an accompanying order

55 Having addressed the two specific points above, I turn to the general considerations to be taken into account when deciding whether to grant an accompanying order.

- (A) A MORE CAREFUL APPROACH IS NEEDED FOR ACCOMPANYING ORDERS IN
SS 9(4)(A) TO 9(4)(C) OF THE CPFTA

56 To begin with, it should be noted that the accompanying orders that can be granted in s 9(4) differ in their type and effect. As such, it is not appropriate to approach each of them with the same considerations. In general, there are two types of accompanying orders prescribed by s 9(4): (a) orders specified in ss 9(4)(a) to 9(4)(c) to notify *consumers* (such as the Publication Order and the CNC Order), and (b) orders specified in ss 9(4)(d) to 9(4)(f) to notify the *respondent* (*ie*, the Competition and Consumer Commission of Singapore). I have left out s 9(4)(g) in this characterisation, as it is really akin to an adverse costs order against the supplier in relation to publishing costs incurred by the respondent. It is obvious that the former type of orders will have a far greater reach than the latter type.

57 As such, accompanying orders which oblige the supplier to notify the *respondent* of certain events (*ie*, orders made under ss 9(4)(d) to 9(4)(f)) are less prejudicial to suppliers and can be more readily granted. I agree with Ms Chan that even if such orders inconvenience a supplier, that inconvenience is likely to be readily outweighed by the public interest in letting the respondent monitor errant businesses and to take enforcement action against them if necessary. In other words, concerns of proportionality are less likely to be engaged for orders made under ss 9(4)(d) to 9(4)(f). In contrast, accompanying orders which oblige the supplier to notify *consumers* of any declaration or injunction made against the supplier (*ie*, orders made under ss 9(4)(a) to 9(4)(c)) are potentially more prejudicial to suppliers. As concerns of proportionality are more strongly engaged for such orders, these should be granted more judiciously, according to the circumstances of each particular case. In my view, the following

considerations should be taken into account when deciding whether to grant an accompanying order pursuant to ss 9(4)(a) to 9(4)(c).

(B) THE RISK OF HARM AND RISK OF REPETITION OF THE UNFAIR PRACTICE

58 First, if there is a high risk of harm caused by the unfair practice, then this would weigh in favour of the grant of an accompanying order pursuant to ss 9(4)(a) to 9(4)(c). However, if there is a low risk of harm, whether because the contravening conduct was an isolated incident or the supplier in question has since implemented strong corrective compliance measures, an accompanying order pursuant to ss 9(4)(a) to 9(4)(c) may be less warranted. In contrast, where there is evidence that a supplier has not complied with previous court orders in the past, or *is* persisting in unfair practices, this may indicate to the court that more severe measures are necessary in order to address the harm caused by the unfair practices in question.

(C) THE EXTENT OF THE PUBLIC’S AWARENESS OF THE SUPPLIER’S UNFAIR PRACTICE

59 Second, if there has already been a large amount of publicity about the supplier’s conduct and the sanctions imposed by the court, then a further accompanying order pursuant to ss 9(4)(a) to 9(4)(c) may not be warranted, especially if its effect is detrimental to the supplier’s business. In considering whether the amount of publicity is sufficiently large, a court may consider the extent of the coverage in the press, as well as the accuracy of the information reported.

60 Thus, in the Federal Court of Australia decision of *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* [2000] FCA 1893, French J did not order the respondent to carry out corrective

advertising. The learned judge observed at [10] that: “In considering [the Australian Competition and Consumer Commission’s proposal for a publication order] I take judicial notice of the fact that the outcome of the proceedings was in fact quite adequately reported. There is no particular benefit to be derived from the insertion of the public notice beyond the reannouncement of a win for the ACCC”. This suggests that where the purposes of the accompanying order(s) in question are already met, granting such accompanying orders may not be a proportionate response to the supplier’s unfair practices as those orders would be unnecessary to address the harm caused by such practices.

61 Further, given the potential overlap in publicity achieved by an accompanying order issued pursuant to ss 9(4)(a), 9(4)(b) and 9(4)(c), respectively, it may also be relevant for a court to consider if ordering multiple accompanying orders pursuant to more than one of these subsections is warranted in the circumstances. For example, if the supplier has already been ordered to publish a notice in a newspaper, then it may be questioned whether the supplier should *also* be required to notify its consumers in every consumer transaction for a specified period. Again, this ties back to the requirement of proportionality – given that these accompanying orders are likely to have a detrimental effect on the supplier’s business, the court must be satisfied that granting *multiple* orders is a *necessary* means of achieving the purposes of these orders. By parity of reasoning, if those purposes can be achieved by only granting *one or some* of the accompanying orders sought, then granting *all* of the accompanying orders under ss 9(4)(a) to 9(4)(c) would be unnecessary and therefore disproportionate to the purposes sought to be achieved.

(D) THE PROPORTIONALITY OF IMPOSING A BLANKET CONSUMER NOTIFICATION
AND CONSENT ORDER

62 Third, it is relevant to consider the proportionality of imposing a blanket consumer notification and consent order to *every* consumer transaction that the supplier enters into during the specified period, beyond the particular area of business that the supplier was found to have engaged in unfair practice. In this regard, it does not appear that a court has power under ss 9(4)(b) and 9(4)(c) to limit the scope of the consumer notification and consent provisions to apply to only some of the supplier’s transactions. To illustrate this, I set out ss 9(4)(b) and 9(4)(c) as follows:

(4) The accompanying orders for the purposes of subsection (1)(c) are as follows:

...

(b) an order that the supplier must, before *any consumer* enters into a contract in relation to a consumer transaction with the supplier during a specified period —

(i) notify the consumer in writing about the declaration or injunction against the supplier; and

(ii) obtain the consumer’s written acknowledgment of the notice in sub-paragraph (i);

(c) an order that the supplier must include in *every invoice or receipt issued by the supplier* to a consumer during a specified period, a statement that the District Court or General Division of the High Court has granted a declaration or injunction against the supplier; ...

[emphasis added]

63 As can be seen, the ambits of these provisions are broad – s 9(4)(b) applies in respect of “*any consumer*” [emphasis added] with which the supplier enters into a consumer transaction during a specified period, and s 9(4)(c)

applies to “*every invoice or receipt* issued the supplier to a consumer during a specified period” [emphasis added]. This contrasts with s 86C(2)(d) of the TPA, which provided:

86C Non-punitive orders

(2) The orders that the Court may make in relation to the person are:

...

(d) an order requiring the person to publish, at the person’s expense and in the way specified in the order, an advertisement *in the terms specified in, or determined in accordance with, the order.*

[emphasis added]

The difference between s 86C(2)(d) of the TPA and ss 9(4)(b) and 9(4)(c) is that s 86C(2)(d) allowed the court to specify or determine the terms of an order made under this provision, whereas words to the same effect are absent in ss 9(4)(b) and 9(4)(c). As such, s 86C(2)(d) empowered the Australian courts to order a more targeted form of corrective advertising.

64 This is illustrated by the Federal Court of Australia decision of *Australian Competition and Consumer Commission v Singtel Optus Pty Ltd (No 3)* (2010) 276 ALR 102, where the respondent was found to have engaged in misleading advertising in the sale of its broadband plans. Perram J found at [29] that it would have been disproportionate to require the respondent to undertake corrective advertising on *all* the homepages of its websites. This is because the respondent operates in markets that have nothing to do with the broadband internet business. Instead, the learned judge held that it was not disproportionate to require a notice only on those pages dealing with broadband internet, which he ordered.

65 This decision may be compared with the Singapore context, where such an outcome would not be permitted by the broad wording of ss 9(4)(b) and 9(4)(c). As such, a court should be more circumspect in granting an accompanying order under ss 9(4)(b) and 9(4)(c) because a blanket consumer notification and consumer order on *all* of a supplier’s business, when such a supplier operates across distinct areas of commercial activity, might result in detriment to that supplier which is disproportionate to what is necessary to address the harm in question. In this connection, I would also respectfully urge the relevant authorities to reconsider the broad wording of ss 9(4)(b) and 9(4)(c) so that the court may tailor the reliefs contained therein to respond to the specific facts of each case.

Relevant considerations in deciding the duration of an accompanying order

66 Turning now to the duration of an accompanying order, s 9(6) provides that where a court makes “2 or more accompanying orders mentioned in subsection (4)(a), (b), (c) and (d) against a supplier, the specified period in respect of each of the orders must be the same”. Also, as I mentioned above, s 9(7) prescribes the “specified period” to be no longer than five years, although this can be extended to no longer than 10 years, as provided for by s 9(10) read with ss 9(8) and 9(9).

67 Where only one accompanying order is made under ss 9(4)(a), (b), (c) and (d), then the duration of such an order should last only as long as necessary to accomplish the intended purpose. This is a matter for a court to decide based on the circumstances of each case.

68 However, where more than one accompanying order is made under those subsections, then this general approach is complicated by the requirement in

s 9(6) that the specified period for each of the orders must be the same. As Ms Chan rightly suggests, the various accompanying orders may serve different purposes, and the length of time it would take for each order to accomplish the purpose for which it is designed may vary. Accordingly, it may be that the provision in s 9(6) may result in a particular accompanying order being too long in duration, but which is necessitated because another accompanying order requires a longer time before its purpose can be fulfilled.

69 Parenthetically, I would respectfully urge the relevant authorities to rectify the way in which s 9(6) is framed. I understand from the *Second Reading Speech* that the purpose of s 9(6) is to prevent a supplier from escaping compliance with an accompanying order under ss 9(4)(a) to 9(4)(c) by simply opening a new company. Section 9(4)(d) achieves this by obliging the supplier to inform the respondent of, among others, any change in its corporate status. Thus, it makes sense to tie the duration of the specified period in s 9(4)(d) to the accompanying orders made pursuant to ss 9(4)(a) to 9(4)(c). However, because of the way in which s 9(6) is framed, the anchoring provision is *not* s 9(4)(d). Thus, it is possible for a court to be bound by s 9(6) when it has not made an order under s 9(4)(d) but made more than one order pursuant to ss 9(4)(a) and 9(4)(b). In that case, there may not be any good reason to mandate that the specified period for each of these two orders be the same.

70 Be that as it may, given the way that s 9(6) is framed, a court should anchor its analysis by considering which of the various accompanying orders it has been asked to issue should take precedence in the public interest, and fixing the “specified period” with reference to the time it would take for that accompanying order to achieve the intended purpose. This may mean that some

of the accompanying orders may have to be longer in duration than necessary, and this is a result mandated by s 9(6).

71 In considering the length of the specified period in this manner, the following factors would be relevant: (a) the severity of harm caused by the unfair practice; (b) the level of public awareness in relation to the errant supplier's conduct; (c) the size and scale of the supplier's business; and (d) the supplier's trading cycles. These factors are largely self-explanatory, but it may be observed that a longer period for consumer notification and consent order may be justified for a supplier who enters into fresh transactions with new consumers less frequently. This is to ensure that a proportionately sufficient number of consumers are notified.

Summary of relevant principles in relation to accompanying orders

72 In summary, the following are the principles that should be applied when a court is considering whether to make an accompanying order pursuant to s 9(4) of the CPFTA:

- (a) The legislative intention behind the introduction of the accompanying orders is to achieve three purposes: (a) to inform consumers, (b) to enhance monitoring, and (c) to (generally) deter errant suppliers. In deciding whether to make an accompanying order, a court should strive to give effect to this legislative intention.
- (b) Accompanying orders can be granted even if the underlying injunction has not been breached.
- (c) Accompanying orders should be granted by taking into account the detrimental effect on a supplier's business such that a proportionate

response is made in relation to the supplier's unfair practice. In this regard, the accompanying orders made should be *necessary* to address the harm caused by the unfair practices in question and they must be a *reasonable* means of achieving these purposes, in the sense that the effect of the accompanying orders must not significantly exceed what is necessary.

(d) Given that the accompanying orders in ss 9(4)(d) to 9(4)(f) which oblige the supplier to notify the respondent of certain events are less prejudicial to it, the courts may grant such orders more readily.

(e) In contrast, given that the accompanying orders in ss 9(4)(a) to 9(4)(c) which oblige the supplier to notify its consumers can be more prejudicial to it, concerns of proportionality are more strongly engaged for such orders and these should be granted more judiciously, according to the circumstances of each particular case. The following factors can be considered in deciding whether to do so:

- (i) the risk of harm and risk of repetition of the unfair practice;
- (ii) the extent of the public's awareness of the supplier's unfair practice; and
- (iii) the proportionality of imposing a blanket consumer notification and consent order.

(f) As for the duration of the accompanying orders, subject to the requirement in s 9(6), the appropriate duration should be to enable the purpose behind the order to be met. The relevant factors include: (a) the severity of harm caused by the unfair practice; (b) the level of public

awareness in relation to the errant supplier's conduct; (c) the size and scale of the supplier's business; and (d) the supplier's trading cycles.

My decision: the learned DJ was correct in granting the Publication Order and the Consumer Notification and Consent Order

73 Having set out the relevant principles, I come to the facts of this case.

It is irrelevant whether the injunction was breached

74 To begin with, I disagree with the appellants' argument that the learned DJ erred by making the Publication Order and the CNC Order because she was not entitled to make them unless the underlying injunction which she decided to grant had first been breached. As I have explained above, the granting of the accompanying orders is not dependent on whether the underlying injunction was breached.

75 However, this is not the end of the appellants' case in relation to these accompanying orders. As an alternative basis, they argue that the learned DJ's decision to grant the Publication Order and the CNC Order was a disproportionate response to the unfair practices they have committed. This is an issue to which I will now turn.

The Publication Order and the Consumer Notification and Consent Order are not disproportionate in the present case

76 In my judgment, I agree with the learned DJ that the Publication Order and the CNC Order are not disproportionate in the present circumstances, for reasons which I now explain.

77 As a preliminary point, while the learned DJ did not expressly state as such, I observe that the effect of the Publication Order appears to be that each of the appellants is required to publish the details of the declaration and injunction granted against them *once in each of the four specified newspapers* within 14 days of her decision (*ie*, to publish a total of four times for each appellant). This may be discerned from her order itself, which I reproduce below (see the Judgment at [100(e)]):

(e) that each of the defendants publish, at their own expense, within fourteen days from the date of this decision, details of the declaration and injunction granted against them, by way of a full page public notice in the Straits Times, Lianhe Zaobao, Berita Harian, and Tamil Murasu;

78 This raises the question of whether, given that s 9(6) provides that the duration of the Publication Order and the CNC Order needs to be the *same*, the learned DJ was correct to make the Publication Order on terms that would effectively cease to have effect once the appellants complied with the order within 14 days of her decision. In other words, was the learned DJ allowed by the terms of the CPFTA to make the Publication Order on these terms even though it would, *in effect*, not be in force for the same period of time as the CNC Order?

79 That this question arises illustrates why s 9(6) may need to be redrafted. Be that as it may, I am of the view that the learned DJ was correct in making the Publication Order on these terms. In this regard, s 9(4)(a) provides that the court may make:

(a) an order that the supplier must periodically publish, at the supplier's expense, for a specified period that the supplier continues to be a supplier, the details of the declaration or injunction in the form and manner and at the intervals as will secure prompt and adequate publicity for the declaration or injunction against the supplier;

Importantly, s 9(4)(a) simply stipulates that the publication must be “at the intervals *as will secure prompt and adequate publicity*” [emphasis added]. The provision does not mandate what the intervals must be. Therefore, in my respectful view, a court is entitled to make a publication order under s 9(4)(a) at any interval as long as that stated purpose is secured. Indeed, given that publicity must be “prompt”, it does not make sense to require the intervals of the publications to be spread over a long period of time. Thus, in the present case where the specified period in question is *two years*, it is understandable why the Publication Order only required each of the appellants to publish the details of the declaration and injunction once in each of the four newspapers specified within 14 days of the learned DJ’s decision.

80 I turn now to the question of whether the Publication Order and the CNC Order are disproportionate in the present case. In this regard, the learned DJ found that the two occasions of unfair practice (one against each appellant) are “moderately severe” (see the Judgment at [78]). She concluded thus because Ms Chen and Ms Chong, who were employees of the appellants, had deliberately misled Ms Cai and Ms Tan into believing that they had a fungal infection on their toenails. Further, the learned DJ concluded that there was a real risk that the appellants might commit similar contraventions in the future because: (a) the two complaints against the appellants had occurred nine months apart, which showed that the initial incident, which was reported to CASE and communicated to NPSM, did not prevent a similar incident several months later; (b) the appellants had not adduced any evidence to show that effective measures have been taken by the Nail Palace Group to prevent the occurrence of such unfair practices; and (c) the appellants were uncooperative after Ms Tan and Ms Cai complained about the unfair practices committed against them.

81 Applying the relevant principles that I have outlined, I accept that there is a need to make an accompanying order in this case. In this regard, I agree with the reasons of the learned DJ at [88]–[89] of the Judgment. First, there is indeed a need to inform consumers of the appellants’ unfair practice as the two occasions in question were deliberate attempts at misleading consumers which, in the words of the learned DJ, made the nature of the contraventions “moderately severe” (see the Judgment at [78]). This is so that they can protect themselves, especially in the light of the repeated instance of unfair practice at NPBPP several months after the initial instance at NPSM. In my view, an accompanying order is all the more necessary when one takes into account the appellants’ deliberate non-compliance with the learned DJ’s orders. While counsel for the appellants, Mr Navinder Singh, argued during the hearing before me that complying with the orders would render the appeals unnecessary because the detriment would already have been occasioned, it was still incumbent on the appellants to make a stay application as it is trite that an appeal itself does not function as a stay. The appellants did not do this until 8 November 2022, and, in any case, their stay application was dismissed by the learned DJ on 20 June 2023. Second, there is a need to enhance monitoring, both in terms of an order under s 9(4)(d) but also one which enables the respondent to know if the appellants have breached any terms of their injunctions. Third, there is a need to specifically deter the appellants in so far as they have not been compliant with the orders made by the learned DJ despite not having applied for a stay. There is also a need to generally deter other businesses so that future cases will be resolved at the front end of the spectrum, in the terms outlined by Dr Koh in the *Second Reading Speech*. Accordingly, I am of the view that an accompanying order should be made.

82 I then turn to the question of what the *appropriate* accompanying orders are. In my view, the Publication Order and the CNC Order are appropriate in this present case because the unfair practices in question relate to the appellants' misleading representations to consumers. The Publication Order and the CNC Order directly addresses this conduct by *informing* consumers about the declaration and injunction against the appellants.

83 Further, I am of the view that the detrimental effect of these orders on the appellants do not significantly exceed what is necessary to inform consumers. In this regard, the appellants' *own* evidence clearly shows that adherence to the accompanying orders has not been significantly detrimental to them. For instance, Mr Cheng, the managing director of the appellants, gave evidence in his third affidavit for the stay of execution application at the District Court below that the appellants have supposedly complied with the CNC Order in September 2022.⁴ However, in the *same* affidavit, he also stated that he was preoccupied with opening a new outlet in November 2022, *after* the alleged compliance.⁵ Leaving aside the point that this evidence may not have been properly adduced, taking the appellants' own evidence that they had supposedly complied with the CNC Order, this suggests that their businesses have *not* been adversely affected by the CNC Order to any significant extent such that Mr Cheng could still find the resources to open a new outlet. In any event, even discounting the appellants' evidence on this point, it remains that, taken holistically, the detrimental effect of the CNC Order does not significantly exceed the need to inform consumers and fulfil other purposes of the CPFTA.

⁴ 3rd affidavit of Kaiden Cheng Kai Teng in DC/SUM 3465/2022 dated 25 April 2023 at paras 11–12.

⁵ 3rd affidavit of Kaiden Cheng Kai Teng in DC/SUM 3465/2022 dated 25 April 2023 at para 9.

As for the Publication Order, given that each appellant is only required to publish the details of the declaration and injunction granted against them *once in each of the four specified newspapers*, I do not think that this is significantly excessive.

84 Accordingly, I dismiss the appellants' appeal and affirm the learned DJ's order for the CNC Order in respect of NPBPP and NPSM in RAS 27 and RAS 28, respectively.

Whether the duration of the Publication Order and the Consumer Notification and Consent Order should be extended

85 Given that I have affirmed the learned DJ's decision to grant the CNC Order and the Publication Order, I turn to consider whether the duration of these orders should be extended beyond two years to four years, and whether the starting date of my resulting orders should be backdated to the date on which the learned DJ made these orders (*ie*, 2 September 2022). Thus, the respondent is effectively asking this court to enhance the duration of the orders from two years to three years, since close to a year has passed since the learned DJ's orders were made and the appellants have not complied with them.

86 Having considered the issue, I do not think that it is necessary to enhance the duration of the orders. While it is true that the appellants had deliberately not complied with the learned DJ's order, I am of the view that it would be disproportionate to extend the duration of the accompanying orders by one year in response, without any indication that the purposes of granting accompanying orders would be better achieved by that extension. As such, I find no reason to disturb the decision of the learned DJ in this regard. However, I do hold that the

two-year duration of the CNC Order shall run from the date of this decision, as opposed to the date of the learned DJ’s orders. This is because the appellants have not complied with the CNC Order even up to now. Thus, if the two-year duration still started on the date of the DJ’s orders, the appellants would effectively have “gotten away” with non-compliance for close to a year.

The applicable principles in relation to the court’s discretion to grant an injunction under ss 9(1)(b) and 9(2) of the CPFTA

The relevant issues

87 Having dealt with the issues on appeal in RAS 27 and RAS 28, I now come to address the applicable principles in relation to the court’s discretion to grant an injunction under ss 9(1)(b) and 9(2) of the CPFTA. While the appellants are not appealing against the injunctions ordered against them, I take this opportunity to set out some observations.

88 I begin by identifying the relevant issues. First, I will discuss the purposes of an injunction in the context of the CPFTA. Second, I will consider whether, based on the CPFTA, an injunction is to be granted presumptively once a declaration is made that a supplier has engaged in an unfair practice or is engaging in an unfair practice. Finally, I will set out the relevant factors that a court should consider in deciding whether to grant an injunction under ss 9(1)(b) and 9(2).

The purposes of an injunction in the context of the CPFTA

The relevant sections of the CPFTA and the relevant parliamentary debates

89 In answering these issues, it is relevant to first ascertain what the purpose of an injunction under ss 9(1)(b) and 9(2) is, which requires an examination of the relevant sections. In this regard, s 9(1)(b) provides as follows:

Declaration or injunction

9.—(1) Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the District Court or General Division of the High Court may, on the application of the Commission —

...

(b) grant an injunction restraining the supplier from engaging in the unfair practice; and

Thus, under s 9(1)(b), a court may grant an injunction against a supplier from engaging in an unfair practice, where it finds that the supplier has engaged, is engaging or is likely to engage in the said unfair practice. It should be observed that s 9(1) refers to three separate situations when an injunction may be granted: (a) where the supplier has *engaged* in the unfair practice, (b) where the supplier is *engaging* in the unfair practice, and (c) where the supplier is *likely to engage* in the unfair practice. Preliminarily, from these three situations, there should be a distinction drawn between an injunction that is imposed in response to previous or ongoing harm, and one that is imposed to prevent *future but likely*, harm.

90 The aforementioned distinction is contemplated by s 9(2) of the CPFTA, which provides as follows:

(2) Where an application is made to the District Court or General Division of the High Court for the grant of a declaration

or an injunction under subsection (1), the power of the District Court or General Division of the High Court to grant the declaration or injunction may be exercised —

(a) if the District Court or General Division of the High Court is satisfied that the supplier has engaged in the unfair practice, whether or not it appears to the District Court or General Division of the High Court that the supplier intends to engage again, or to continue to engage, in the unfair practice; or

(b) if the District Court or General Division of the High Court is satisfied that, in the event that a declaration or an injunction is not granted, it is likely that the supplier will engage in the unfair practice, whether or not the supplier has previously engaged in the unfair practice and whether or not there is any likelihood of irreparable harm to any consumer or class of consumers if the supplier engages in the unfair practice.

Broadly speaking, mapping the three scenarios in s 9(1)(b) to ss 9(2)(a) and 9(2)(b) results in the following two situations: (a) s 9(2)(a) contemplates a situation where the supplier has *engaged in or is engaging* in unfair practices, *ie*, past and present conduct, and (b) s 9(2)(b) contemplates future conduct.

91 Turning first to s 9(2)(a), the subsection clarifies that the grant of the injunction is *not* dependent on whether the supplier intends to continue engaging or will engage in the unfair practice again. Accordingly, the issuance of an injunction in the situation contemplated by s 9(2)(a) can be solely targeted at the supplier's *past conduct* in having engaged in an unfair practice. The injunction need not, in other words, be targeted at *preventing* future harm.

92 In contrast, s 9(2)(b) contemplates a situation where the supplier *may not have engaged* in the unfair practice but is likely to do so in the absence of an injunction. In this situation, the subsection clarifies that the grant of the injunction is *not* dependent on whether the supplier had previously engaged in the unfair practice, or whether there is any likelihood of irreparable harm to any

consumer or class of consumers. Accordingly, it is accurate to say that the issuance of an injunction in the situation contemplated by s 9(2)(b) can be wholly *preventive*, in that it is targeted at preventing *future but likely harm*. I will return to these observations when I consider the purposes of an injunction under the CPFTA.

93 The sections of the CPFTA that empower a court to grant an injunction can be traced back to ss 9(1)(b) and 9(2) of the 2003 Act. It is not necessary to set out the older sections, save to say that they are substantively identical with the present sections. As such, the parliamentary debates that underlined the older sections are equally indicative of the legislative intention behind the present ss 9(1)(b) and 9(2) of the CPFTA. In this regard, during the Second Reading of the Consumer Protection (Fair Trading) Bill in 2003, the then Minister of State for Trade and Industry, Mr Raymond Lim Siang Keat (“Mr Lim”), briefly explained the purpose behind ss 9(1)(b) and 9(2) of the 2003 Act in the following terms (see *Singapore Parliamentary Debates, Official Report* (10 November 2003), vol 76 at col 3354):

Some traders may persist in unconscionable practices which are detrimental to consumers and the reputation of our retail sector. Clause 9 of the Bill therefore provides for a District Court or a High Court, on the application of a specified body, to grant an injunction against a trader. CASE and the Singapore Tourism Board will be appointed as specified bodies under the Act to look after the interests of local consumers and tourists respectively. Before filing an injunction, the specified bodies must obtain the endorsement of an Injunction Proposals Review Panel. This Panel will review whether there is a public interest to be safeguarded through the injunction, and serve as an objective and independent check on the specified bodies.

Mr Lim’s comments indicate that the court’s power to grant an injunction under the CPFTA *safeguards the public interest* by responding to unconscionable practices “which are detrimental to consumers and the reputation of

[Singapore’s] retail sector”. Indeed, this suggests that the specific purposes of a *statutory* injunction under the CPFTA may go beyond the purpose of an *equitable* injunction that is typically granted between a small number of disputing parties to restrain a person from some specified conduct. I will return to this point subsequently after making a general point.

The purposes of a statutory injunction may be broader than that of an equitable injunction

94 The general point is that the purposes of a statutory injunction may be broader than that of an equitable injunction. To start with, equitable injunctions have primarily served to prevent the infringement of public or private rights, either temporarily before the right had been ascertained, or permanently after it had been ascertained (see John Duns, “The Statutory Injunction: An Analysis” (1989) 17 Melbourne University Law Review 56 (“*The Statutory Injunction: An Analysis*”) at 60). In this regard, the English High Court similarly opined in *Carlton Illustrators and another v Coleman & Company, Limited* [1911] 1 KB 771 at 782 that an injunction is different from other sanctions in that it “is not a remedy for the past breach, but is a means for preventing further breaches”. These statements illustrate the purpose of an equitable injunction as a means of preventing future harm.

95 In contrast to an equitable injunction, statutory injunctions may serve *more* purposes that are in addition to the prevention of future harm. For instance, it has been said that a statutory injunction may also serve the educative purpose of marking the court’s disapproval. This is illustrated by the Federal Court of Australia decision of *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* (2006) 232 ALR 478 (“*Humane Society*”). In that case, an environmental organisation commenced an action and sought, among other

reliefs, an injunction against a Japanese whaling company, alleging that that company breached the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (“EPBC Act”) by unlawfully killing, injuring, taking, or dealing with Antarctic minke whales in the Australian Whale Sanctuary. This sanctuary was adjacent to the Australian Antarctic Territory, a territory which Japan did not recognise Australia’s claim to sovereignty over. As the Federal Court could only exercise *in personam* jurisdiction over the Japanese whaling company if the environmental organisation was granted leave to serve the originating process on the company in Japan, the environmental organisation applied to the Federal Court for such leave. At first instance, the action was regarded as futile because of “the difficulty, if not impossibility, of enforcement of any court order” in the Australian Whale Sanctuary, where Australia’s sovereignty was internationally contested (see *Humane Society* at [4]). The learned judge therefore refused leave for the environmental organisation to serve the application out of jurisdiction on the Japanese whaling company.

96 On appeal by the environmental organisation, a majority of the Full Federal Court allowed the appeal. In considering the issue of futility, the majority found it relevant that the injunctive relief that the environmental organisation sought was by way of a *statutory* injunction (at [18]). The majority observed that the EPBC Act empowered the court to grant an injunction restraining a person from engaging in conduct whether or not it appears to the court that the person intends to engage again in conduct of that kind and, even, whether or not there is a significant risk of injury or damage to the environment if the person engages or continues to engage in conduct of that kind (see *Humane Society* at [20]). The majority also observed, among others, that a statutory injunction under the EPBC Act has a “public interest character”, and that such an injunction may have a purpose that is “entirely educative”,

especially in situations where the restrained behaviour that is the subject of the injunction has ceased and there is little likelihood of repetition. In other words, it was not futile to grant a statutory injunction because it might still serve the purpose of marking the court's disapproval of the restrained behaviour (see *Humane Society* at [21]–[24]). Thus, on the specific facts of the case, the Full Federal Court granted leave for the environmental organisation to serve the originating process on the Japanese whaling company out of jurisdiction.

97 Accordingly, *Humane Society* illustrates that a statutory injunction may, *in addition to* preventing future conduct, serve other purposes, including marking the court's disapproval of the restrained conduct. In this regard, it is also worth noting that, in reaching their decision, the majority in *Humane Society* relied on other Australian decisions on the granting of the statutory injunction provided for in s 80(4) of the TPA (at [23]–[24]). Transposed to the present case, this raises a preliminary question of the extent to which a Singapore court can refer to Australian cases, particularly those which interpreted the TPA, to ascertain the purpose of an injunction under the CPFTA.

The court may refer to Australian cases in ascertaining the purpose of an injunction under the CPFTA

98 In my view, it is helpful to refer to Australian cases to ascertain the purpose of an injunction under the CPFTA. All of the parties, including the appellants, do not dispute the relevance of Australian cases, and this must be correct for the following reasons.

99 First, ss 9(1)(b) and 9(2) of the 2003 Act, which are substantively identical to the present ss 9(1)(b) and 9(2), were adapted from s 326 of the Securities and Futures Act (Cap 289, 2002 Rev Ed), s 28 of the Hazardous

Waste (Control of Export, Import and Transit) Act (Cap 122A, 1998 Rev Ed), and ss 149 and 150 of the Fair Trading Act 1999 (Vic) (“the Victorian Act”). Sections 149 and 150 of the Victorian Act are in turn modelled after s 80 of the TPA. Section 80 of the TPA is now s 232 of the (Australian) Competition and Consumer Act 2010 (Cth) (“CCA”). Given this lineage, it is clear that the Australian cases interpreting s 80 of the TPA and s 232 of the CCA will be relevant in interpreting ss 9(1)(b) and 9(2) of the CPFTA.

100 Second, the wordings of ss 9(1)(b) and 9(2) of the CPFTA are substantively similar to those in ss 80(1) and 80(4) of the TPA, as well as ss 232(1) and 232(4) of the CCA. In this regard, ss 80(1) and 80(4) of the TPA provide as follows:

(1) Subject to subsections (1A), (1AAA) and (1B), where, on the application of the Commission or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of any of the following provisions:

(i) a provision of Part IV, IVA, IVB or V;

...

the Court may grant an injunction in such terms as the Court determines to be appropriate.

...

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

As can be seen, despite the slight differences in which ss 80(1) and 80(4) of the TPA are framed when compared to the ss 9(1)(b) and 9(2) of the CPFTA, the substantive effect of both sets of provisions is the same. Thus, much of the Australian cases on the ss 80(1) and 80(4) of the TPA, as well as ss 232(1) and 232(4) of the CCA, must be relevant to a Singapore court interpreting ss 9(1)(b) and 9(2) of the CPFTA.

The purposes of an injunction under ss 9(1)(b) and 9(2) of the CPFTA include marking the court's disapproval of the unfair practice, along with punishment and deterrence

101 Bearing in mind the relevant parliamentary debates as indicative of the legislative intention, as well as the relevant Australian cases interpreting equivalent provisions in their system, I find that the purposes of an injunction under ss 9(1)(b) and 9(2) of the CPFTA include both the customary purpose of an injunction to prevent future harm caused by an unfair practice, as well as the specific purposes of signalling the court's disapproval of the unfair practice, along with punishment and deterrence.

102 To begin with, it is clear that one purpose of an injunction under ss 9(1)(b) and 9(2) of the CPFTA is to prevent future harm, as the Federal Court of Australia observed in the seminal case of *Re ICI Australia Operations Pty Ltd v Trade Practices Commission* (1992) 110 ALR 47 (“*ICI*”) at 56–57. As Duns elaborates, the injunction primarily serves to prevent the infringement of public or private rights, either temporarily before the right had been ascertained, or permanently after it had been ascertained. As such, he explains that the preventive nature of the injunction distinguishes it from other sanctions employed in the TPA. In this regard, sanctions such as fines, pecuniary penalties, and civil damages are preventive in that their imposition may have a

deterrent effect. But those sanctions are not inherently preventive in the way that an injunction is (see *The Statutory Injunction: An Analysis* at 60).

103 However, is this the only purpose of the injunction in the context of the CPFTA? In this regard, Ms Chan argues cogently that due to the inherently preventive nature of the injunction, the only principled use of it is only as a tool of prevention against future harm. She submits that it is only when the injunction under ss 9(1)(b) and 9(2) of the CPFTA is used in this manner that there is coherence between the purpose it is intended to serve and what the injunction purports to do. It follows from this that Ms Chan advocates against using the injunction to signal of the court's disapproval of past contravening conduct. In so far as the learned DJ referred to Lockhart J's judgment in *ICI* (at 54–55) – which in turn cited *Trade Practices Commission v Mobil Oil Australia Ltd* (1984) 4 FCR 296 – as support that an injunction might be granted to mark the court's disapproval, Ms Chan suggests that Lockhart J's view is merely one against other Australian cases which have suggested otherwise (see, eg, the Federal Court of Australia decision of *Unilever Australia Ltd v Goodman Fielder Consumer Foods Pty Ltd* [2009] FCA 1305 at [56]).

104 Despite Ms Chan's able argument, I am unable to agree that the *only* purpose of an injunction under ss 9(1)(b) and 9(2) of the CPFTA is to prevent future harm. As I prefaced above, I find that an injunction under the CPFTA can also have the purpose of marking the court's disapproval of the unfair conduct. I say this for several reasons.

105 First, the fact that there is disagreement among the Australian cases as to whether an injunction under the TPA/CCA also serves the purpose of marking the court's disapproval proves the very point that this is an unsettled

issue. Apart from the fact that these Australian cases are not binding on the Singapore courts, the disagreement amongst the Australian cases shows that it is open to the Singapore courts to interpret the purposes of the injunction under ss 9(1)(b) and 9(2) of the CPFTA under our own terms.

106 Second, unlike an equitable injunction, a statutory injunction under ss 9(1)(b) and 9(2) of the CPFTA has a “public interest character”, in the words of the Federal Court of Australia in *Humane Society* at [21]. This can be discerned not only from Mr Lim’s speech reproduced at [93], but also from the Long Title of the CPFTA, which states, among others, that it is “to protect consumers against unfair practices”. Indeed, the public interest character of the injunction is all the more evident following the 2016 Amendments, which contained a suite of new measures to “strengthen” the injunction so as to serve the public interest purposes of raising consumer awareness, enabling monitoring and swift enforcement, and moving cases towards education, mediation and voluntary compliance agreements (see [40] above). In contrast, an equitable injunction is typically confined to the narrower purpose of protecting the rights of the parties involved in the dispute in question. Therefore, it cannot be assumed that the purpose of a statutory injunction will be confined to that of an equitable injunction, *ie*, to prevent future harm.

107 On the contrary, a statutory injunction under ss 9(1)(b) and 9(2) of the CPFTA serves the *additional* purpose of marking the court’s disapproval. Indeed, this is clear from s 9(2)(a), which provides that an injunction may be granted whether or not the supplier intends to continue engaging or will engage in the unfair practice again. This means, as I observed earlier at [91], that the issuance of an injunction can be *solely* targeted at the supplier’s *past* conduct. As s 9(2)(a) is backward looking in this sense, the purpose of granting an

injunction would not serve the purpose preventing *future* conduct. Instead, granting an injunction on the basis of the supplier's past conduct, even where there is no risk of the supplier engaging in unfair practices in the future, must, in my view, serve the purpose of marking the court's disapproval of the unfair practice given the public interest character of the injunction. As the Federal Court of Australia opined in *Australian Competition and Consumer Commission v 4WD Systems Pty Ltd and Others* (2003) 200 ALR 491 at [217], the purpose of an appropriately drafted injunction may be merely to reinforce to the marketplace that the restrained behaviour is unacceptable, which is in the public interest. Accordingly, I find that a statutory injunction under ss 9(1)(b) and 9(2) can serve, *in addition to* the purpose of preventing future harm, the purpose of marking the court's disapproval of the unfair conduct.

108 Third, and in furtherance of the last-mentioned point, there are important differences between the CPFTA and the TPA/CCA that warrant reading into the injunction in our context an additional purpose as a tool of punishment and deterrence. As the learned DJ mentioned, there are a myriad of sanctions available under the TPA and CCA against unfair practices. In contrast, under the CPFTA, injunctions and accompanying orders are the only practical reliefs that of any real consequence to restrain unfair practices. Indeed, unlike the TPA or the CCA, the CPFTA does not prohibit unfair practices, criminalise unfair practices, or give the court the option of imposing pecuniary penalties or non-punitive orders on suppliers who commit unfair practices. In view of these differences, I agree with the learned DJ that the injunction under ss 9(1)(b) and 9(2) of the CPFTA may be granted not only to restrain a likely future unfair practice, but also to deter a supplier from repeating the unfair practice or to mark the court's disapproval of the unfair practice. This will further the protection of

the public interest, a point highlighted by Mr Lim in the speech reproduced above.

109 Fourth, as is clear from my analysis above at [90], the text of s 9(2) contemplates the imposition of an injunction in two situations, one of which contemplates that an injunction can be solely targeted at the supplier's *past conduct* in having been engaged in an unfair practice. If so, then the only purpose of the injunction in this situation must be to punish and to deter. There is no future conduct to prevent. As such, even on a textual analysis of s 9(2), I am satisfied that one purpose of the injunction within the CPFTA must be to punish and to deter, as well as to signal the court's disapproval of past conduct of unfair practices.

110 Finally, and fundamentally, it must be remembered that where the injunction under ss 9(1)(b) and 9(2) of the CPFTA is directed at *past* conduct, its practical effect is to prevent the supplier from engaging in what has *already* been proved to be an unfair practice. While it is true that the imposition of an injunction carries with it the risk of criminal liability if it is breached, it must be recalled that the very essence of the CPFTA is to protect consumers from unfair trade practices. If this is so, I cannot see why there can be any objection against an order which, put simply, prevents a supplier from doing a wrong thing. Surely the supplier cannot argue that it is open to it to commit an unfair practice in the absence of an injunction. Further, as I alluded to above, it must also be remembered that the injunction in the context of CPFTA is aimed not only at protecting the rights as between two private individuals but is squarely aimed at protecting the rights of consumers as a general class. This aim can only be effective if the effect of the injunction is felt not only against the errant supplier

in question but also against other would-be errant suppliers who are deterred from doing the same.

111 Accordingly, I find that the purposes of an injunction under ss 9(1)(b) and 9(2) of the CPFTA include signalling the court’s disapproval of the unfair practice, as well as to punish and deter. This specific purpose is in addition to the more customary purposes of an injunction, such as to prevent the risk of future harm caused by an unfair practice.

An injunction can be granted as the norm alongside a declaration under the CPFTA

112 It follows from the preceding point that I also find that an injunction can be granted as the norm alongside a declaration or a finding that the supplier concerned has committed an unfair practice or is engaging in an unfair practice. I therefore respectfully disagree with Ms Chan’s able submission that an injunction should not be granted presumptively once it has been established that a supplier has engaged in an unfair practice or is engaging in an unfair practice.

113 Ms Chan’s primary argument is that the text of ss 9(1) and 9(2) of the CPFTA is permissive and therefore does not mandate the court to impose an injunction presumptively. In respect of this argument, while Ms Chan concedes that the Australian cases are not aligned on this issue, she urges the court to adopt the reasoning of the Federal Court of Australia in *ICI* (at 57) which, on appeal, rejected the notion that the court should grant an injunction presumptively when an unfair practice has been found. Additionally, Ms Chan’s secondary argument is that the potential criminal sanction imposed for the breach of such injunctions is inconsistent with Parliament’s decision not to create criminal offences under the CPFTA in respect of unfair practices. In this

regard, Ms Chan cites the Federal Court of Australia decision of *Australian Competition and Consumer Commission v Dataline.Net.Au Pty Ltd* (2007) 161 FCR 513 (“*Dataline*”) at [110], where the court opined that “if Parliament has not provided for imprisonment in connection with a contravention, it may not be appropriate for a court to enjoin such conduct simply in order to create the possibility of imprisonment”.

114 While I appreciate Ms Chan’s arguments, I respectfully disagree for the following reasons. First, as regards Ms Chan’s primary argument, while ss 9(1) and 9(2) does not *mandate* the court to order an injunction presumptively, it similarly does not *prohibit* a court from granting an injunction as the norm. In other words, the permissive wording of ss 9(1) and 9(2) does not logically result in Ms Chan’s position. Moreover, the fact that the Australian cases are divided means that, whether an injunction is granted presumptively on the declaration or finding that the supplier has engaged in an unfair practice or is engaging in an unfair practice, is an open question. Indeed, I prefer Olney J’s view in the first instance decision of *Trade Practices Commission v ICI Australia Operations Pty Ltd and Others* (1991) 105 ALR 115. The learned judge opined, in relation to s 80 of the TPA, that an injunction should be granted as “the norm rather than the exception” (at 120):

Although the power to grant an injunction is expressed in discretionary terms, the discretion ought properly be regarded as a discretion to refuse to grant an injunction in an appropriate case. ... [T]he policy of the Act in general and the provisions of the section itself, particularly subs (4) and (5), indicate a positive legislative intention that the granting of injunctive relief should be the norm rather than the exception. ...

While the Federal Court of Australia in *ICI* disagreed that the language of s 80 of the TPA established any presumption in favour of the grant of injunctive

relief, that only shows that there is a division of opinion in the Australian context. In any event, the Australia decisions are not binding on me.

115 Furthermore, in as much as some Australian decisions contain statements that an injunction should not be granted as the norm, I agree with the learned DJ that such statements should be viewed with caution in light of the more extensive sanctions under the TPA and the CCA in Australia (see the Judgment at [59]). Specifically, under the TPA and the CCA, there are a myriad of sanctions available for unfair practices, such as monetary penalties, community service orders, and probation orders. Thus, in deciding that injunctions should not be granted as the norm, the Australian courts contemplated the *need* for such injunctions, the breach of which amounts to contempt of court, to supplement the sanctions that are already available (see, eg, the Federal Court of Australia decision of *BMW Australia Ltd v Australian Competition and Consumer Commission* (2004) 207 ALR 452 at [39], *per* Gray, Goldberg and Weinberg JJ). In contrast, under the CPFTA in Singapore, injunctions and accompanying orders are the *only* practical remedies available to restrain unfair practices. Therefore, it is likely that Parliament did not intend for injunctions under the CPFTA to be granted only in exceptional cases, given the already limited reliefs available under the CPFTA.

116 Turning now to Ms Chan's secondary argument, I disagree that the possibility of criminal sanctions for contempt of court arising from the breach of an injunction means that the court should not grant an injunction as the norm upon the finding of an unfair practice. First, even in other *civil* proceedings, an injunction is frequently granted. In such situations, although the breach of an injunction carries with it criminal penalties as well, it does not follow that the court should therefore be reluctant to grant it when it is appropriate to restrain

unlawful conduct. Second, in the *Second Reading Speech*, Dr Koh “assure[d] Members [of Parliament] that errant businesses who flout injunction orders are liable to be charged with contempt of court”. This suggests that Parliament was not averse to the possibility of criminal sanctions arising from the breach of an injunction, and accordingly, the court should not be reluctant to grant injunctions on the sole basis of that reason.

117 Instead, I prefer Olney J’s view that an injunction ought to be granted as the norm rather than the exception in the context of the CPFTA, I return to my analysis above that the injunction under ss 9(1)(b) and 9(2) of the CPFTA is essentially granted in three situations, namely, (a) where the supplier has *engaged* in the unfair practice, (b) where the supplier is *engaging* in the unfair practice, and (c) where the supplier is *likely to engage* in the unfair practice. Broken down more simply, these situations concern (a) where the supplier has already engaged in or is engaging in the unfair practice, and (b) where the supplier has not engaged in the unfair practice but is likely to do.

118 First, where a supplier is found to have engaged in or is engaging in an unfair practice, then an injunction should be granted as a norm rather than the exception. This is because, in its equitable form, an injunction is the primary remedy to restrain a tortfeasor from committing the tort in the future (see Andrew Burrows, *Remedies for Torts, Breach of Contract and Equitable Wrongs* (Oxford University Press, 4th Ed, 2019) at p 443). In the context of the CPFTA, an unfair practice is akin to a tort, exemplified by practices such as a misrepresentation or other misleading conduct. As such, once a supplier is found to have committed an unfair practice, or is in the course of doing so, then there ought to be little argument that the supplier should be prevented from persisting in that conduct. Indeed, in most cases, the public interest of protecting

consumers *as a class*, rather than the *particular* consumer who has been affected, would militate against the mere reward of damages, which the court is not empowered to do under the CPFTA in any case. As I said above, it makes little sense to say that, in the absence of an injunction, a supplier is free to continue in what has already been found to be an unfair practice. While the CPFTA does not strictly prohibit unfair practices, it would be a stretch to say that it is not concerned with the prevention of such practices. At the most, it might be said that the CPFTA does not prospectively deal with unfair practices. But once it has been shown that a supplier *has engaged in or is engaging in* an unfair practice, then it goes against the essence of the CPFTA to say that the errant supplier can continue with its conduct if the court does not impose an injunction.

119 Second, where a supplier is found likely to engage in an unfair practice in the future but has not yet engaged in such practice, then the court could be more circumspect in granting a final injunction. In torts, such an injunction is akin to a *quia timet* injunction in the prohibitory form, which can be granted to restraint the defendant's wrongful acts which have not yet been committed, although this discretion must be exercised cautiously (see the Privy Council's observations in *Mercedes Benz AG v Leiduck* [1996] AC 284 at 311–312). However, the court has the power to vary or discharge the injunction once it is shown that the wrongful conduct, which forms the factual basis of the injunction, will no longer be committed. As a learned academic commentator has observed, this power may be justified on the basis that the court's jurisdiction over the case and the parties does not come to a complete end even after the injunction has been granted. In this regard, the court retains the power to modify its orders when the defendant can show that an injunction places a severe burden on him and that the plaintiff is no longer entitled to injunctive

relief under the conditions prevailing when modification is asked for (see Charles B Blackmar, “Injunctions: Power of a Court to Modify a Final Permanent Injunction” (1947) 46 Michigan Law Review 241 at 242–243 and 252). In my view, this should similarly be the approach taken for an injunction granted under the CPFTA as well, as it balances the public interest of being protected against unfair practices against the fact that the supplier in question has not actually committed the said acts.

Relevant factors in deciding whether to grant an injunction under the CPFTA

120 Given my analysis above, my view is that if the supplier is found to have engaged in or is engaging in an unfair practice, then an injunction should be granted as a norm rather than the exception. On the other hand, where a supplier is (merely) found likely to engage in an unfair practice in the future, then a court needs to be more circumspect in granting an injunction.

121 In any case, to the extent that they may apply in a given case, a court may consider the following factors in deciding whether to grant an injunction: (a) the nature and extent of the contraventions at hand, (b) the underlying causes of contravention, and (c) the amount of harm that the contraventions may cause. I explain these factors in turn.

122 First, the more serious the nature and extent of the contraventions at hand, the more readily the court would grant an injunction. On this point, I agree with Ms Chan that this factor is relevant to the grant of injunctive relief for two reasons. For one, the more serious the nature and extent of the contraventions, the greater the potential harm arising from their repetition. As regards the second reason, the more serious the nature and extent of the contraventions at

hand, the stronger the inference that the supplier has no regard for the interests of consumers and/or the standards of fair trading, which would more strongly justify the need to prevent future harm. Indeed, the second aspect was considered by the Federal Court of Australia in *Dynamic Supplies Pty Limited v Tonnex International Pty Limited (No 2)* [2011] FCA 675 at [27], where the court found that “there has been a pattern of conduct by [the supplier] that show[ed] a somewhat cavalier approach to its legal obligation to adhere to the norms of conduct that ss 52 and 53 of the Trade Practices Act prescribe”. As such, the court granted an injunction against the supplier to “reinforce the need for [the supplier] to remain vigilant to ensure that its conduct does not again contravene ss 52 and 53 of the Trade Practices Act”. In my view, such considerations similarly apply to an injunction granted under the CPFTA where a supplier is found likely to engage in an unfair practice in the future.

123 Second, the underlying causes of contravention would be considered to determine if an injunction is appropriate. In this regard, I am of the view that where the causes of contravention can be easily remedied, the court may be slower to grant an injunction, especially if the supplier had co-operated with the authorities in their investigations. Similarly, the court would be slow to grant an injunction where the underlying cause of contravention was such the defendant is, at the time of judgment, no longer in a position where contravention is likely (see the Judgment at [56(c)]). Thus, in *POA Enterprises Pty Ltd, Parcour Pty Ltd and Malcolm Richard Anderson trading as Stratford Village Pharmacy v Chemist Warehouse Cairns & Anor* [2012] QSC 316, the Supreme Court of Queensland declined to grant an injunction when it found that (at [32]) there was no basis for inferring that the suppliers would not give regard to its judgment, and that the applicants for the injunction had not demonstrated that an injunction was reasonably required to prevent further contraventions.

Conversely, where the underlying cause of future contravention is the deliberate efforts by a supplier's controllers or senior management to mislead or take advantage of consumers, this would suggest a high risk of recalcitrance and harm, which would point in favour of the granting of an injunction.

124 Third, the court would consider the amount of harm which will be caused by the unfair practice. Indeed, it is evident that where the harm caused by the unfair practice may be potentially high, there is a greater need to grant an injunction to ensure that such conduct does not take place in the future, even if such conduct is improbable (see, in a similar context, *Dataline* at [108]). Moreover, even putting aside the question of the risk of the unfair practice eventuating, the court may also, as a mark of its disapproval, grant injunctive relief where the harm caused by the unfair practice, or its repetition, is severe. This was why the Federal Court of Australia granted injunctive relief in *Samsung Electronics Australia Pty Ltd v LG Electronics Australia Pty Limited (No 2)* [2015] FCA 477 even though it had found that the risk of repetition in respect of the unfair practice was “slight”. The court considered at [24] the seriousness of the damage that could be inflicted if the supplier were to repeat its misleading and deceptive representations, and it considered it preferable to eliminate that risk. Moreover, in the circumstances, the court also considered the granting of injunctive relief as a suitable means to mark the court's disapproval of the contravening conduct. Accordingly, this illustrates that where the seriousness of the harm caused by the unfair practice is high, an injunction may be granted notwithstanding that the unfair practice is unlikely to eventuate in future.

Summary of relevant principles in relation to injunctions granted under the CPFTA

125 In summary, the following principles are relevant in relation to injunctions granted ss 9(1)(b) and 9(2) of the CPFTA:

- (a) The purposes of an injunction include not only the prevention of future harm, but also include the marking of the court’s disapproval of the unfair practice, along with punishment and deterrence.
- (b) An injunction can be granted as the norm alongside a declaration under the CPFTA.
- (c) In the context of the three situations listed under ss 9(1)(b) and 9(2):
 - (i) where a supplier is found to have engaged in or is engaging in an unfair practice, then an injunction should be granted as a norm rather than the exception; and
 - (ii) where, however, a supplier is found to be likely to engage in an unfair practice in the future, then the court could be more circumspect in granting a final injunction.
 - (iii) to the extent that they may apply in a given case, a court, in deciding whether to grant an injunction, may consider factors such as the nature and extent of the contraventions at hand, the underlying causes of contravention, and the amount of harm that the contraventions may cause. The court may also vary or discharge the injunction once it is shown that the unfair practice, which forms the factual basis of the injunction, will no longer be committed.

Conclusion

126 For all the reasons above, I dismiss the appeals in RAS 27 and RAS 28. The appellants are to comply with the terms of the learned DJ’s CNC Order and Publication Order for two years, except that the starting date of these orders is to run from the date of my decision.

127 Unless the parties are able to agree, they are to write in with their submissions on the appropriate costs orders within 14 days of this decision, limited to seven pages each.

128 In closing, I would like to thank Ms Chan for her very helpful and thorough submissions. While I did not agree with all of her submissions, they were still immensely helpful in assisting me in my decision. I also thank both Mr Singh, as well as Mr Kenny Chooi, who appeared for the respondent, for all their helpful submissions both in writing and also orally before me.

Goh Yihan
Judicial Commissioner

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