

The Audience Motivation Company Asia Pte Ltd v AMC Live Group China (S) Pte Ltd  
[2015] SGHC 77

**Case Number** : Suit No 677 of 2013  
**Decision Date** : 20 March 2015  
**Tribunal/Court** : High Court  
**Coram** : Lee Seiu Kin J  
**Counsel Name(s)** : Michael Moey (Moey & Yuen) for the plaintiff; Ng Chee Weng Max and Amira Nabila Budiyo (Gateway Law Corporation) for the defendant.  
**Parties** : THE AUDIENCE MOTIVATION COMPANY ASIA PTE LTD — AMC LIVE GROUP CHINA (S) PTE LTD

*Trade Marks and Trade Names—Infringement*

*Tort—Passing Off*

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 71 of 2015 was allowed by the Court of Appeal on 21 April 2016. See [\[2016\] SGCA 25.](#)]

20 March 2015

Judgment reserved.

**Lee Seiu Kin J :**

## **Introduction**

1 The plaintiff claims against the defendant for (a) infringement of two registered trade marks and (b) passing off. The defendant denies both claims.

## **Facts**

### ***Parties to the dispute***

2 The plaintiff is The Audience Motivation Company Asia Pte Ltd, a company incorporated in Singapore on 2 August 2000. [\[note: 1\]](#) The plaintiff is in the business of events management, assisting clients in meeting their marketing objectives through one or a series of activities such as corporate sales kick offs, partner conferences, media launches, partner incentive programs, special events (eg, gala or anniversary dinners), exhibitions, corporate road shows, CEO summits and concerts (as part of an event). [\[note: 2\]](#)

3 The defendant is AMC Live Group China (S) Pte Ltd (formerly known as AMC Group China (S) Pte Ltd), a company incorporated in Singapore on 20 January 2012. [\[note: 3\]](#) The defendant carried on the business of providing event and concert organisation services. [\[note: 4\]](#) The defendant avers that its business in Singapore is an “extension” of its business in Chengdu, China, where its operations were first established in or around 2007. [\[note: 5\]](#) At present, the defendant’s business is headquartered in Chengdu, China, with operations in Singapore, China, Taiwan, Hong Kong and Malaysia. [\[note: 6\]](#) According to the defendant, the operations are managed in the following manner:

- (a) the defendant manages the business in Singapore; [\[note: 7\]](#)
- (b)  ("Sichuan Dahong") manages the business in Chengdu, China; [\[note: 8\]](#)
- (c)  ("Dahong Yazhou") manages the business in Taiwan; [\[note: 9\]](#)
- (d) AMC Live Concerts (M) Sdn Bhd manages the business in Malaysia; [\[note: 10\]](#) and
- (e) no company has been incorporated for the business in Hong Kong.

### ***Background to the dispute***

4 The plaintiff is the registered proprietor of the following trade marks (collectively "the Plaintiff's Marks"): [\[note: 11\]](#)

5 The plaintiff filed their applications to register the Plaintiff's Marks on 31 August 2012, and the applications were approved in January 2013. [\[note: 12\]](#) The Plaintiff's Marks are registered in Classes 35, 41 and 42 under the following specifications: [\[note: 13\]](#)

- (a) Class 35: Advertising; event management services (organisation of exhibitions or trade fairs for commercial or advertising purposes); consultancy relating to public relations; public relations; brand creation services; publicity; promotional advertising services; promotional marketing; sales promotion services; hiring of advertising space; dissemination of advertising and publicity material.
- (b) Class 41: Event management services (organisation of educational, entertainment, sporting or cultural events).
- (c) Class 42: Design of brand names; design of publicity material.

6 There is some doubt over the dates on which the plaintiff first used the Plaintiff's Marks. The plaintiff initially stated that it had used the AMC Asia Mark since 2009 and the Human Exclamation Mark since 2010. [\[note: 14\]](#) Later, the plaintiff said that those dates were wrong, and that it should have been January 2011 for the AMC Asia Mark and 23 May 2006 for the Human Exclamation Mark. [\[note: 15\]](#) At trial, however, the plaintiff appears to revert to its initial position. [\[note: 16\]](#) As the dates are pertinent to one of the issues, it will be discussed in greater detail later ([118] below).

7 The Plaintiff's Marks were allegedly used in trade publications, awards, recruitment advertisements, electronic direct mail, official correspondence, invoices, corporate gift premiums and

others. [\[note: 17\]](#) The plaintiff also claims that it had used marks that were similar to the AMC Asia Mark since it was incorporated (*ie*, 2 August 2000), [\[note: 18\]](#) even though those marks were never registered. [\[note: 19\]](#)

8 Further, the plaintiff points out that:

- (a) The plaintiff won numerous marketing-related awards. [\[note: 20\]](#)
- (b) The plaintiff had widely advertised and promoted their services under and by reference to the Plaintiff's Marks (with annual marketing expenditure on such advertisement for the past five years at an average of \$20,000 per annum). [\[note: 21\]](#)
- (c) The plaintiff registered the domain name, "amcasia.com", since November 2006, and has used the website extensively in Singapore, Malaysia, Thailand and China. [\[note: 22\]](#)
- (d) The plaintiff had promoted and made available to the public its services under the Plaintiff's Marks on its website on 10 February 2007. [\[note: 23\]](#)

9 The plaintiff alleges that the defendant, in providing event and concert organisation services, had used the following marks which are similar to the Plaintiff's Marks (collectively "the Defendant's Marks"): [\[note: 24\]](#)

10 The defendant denies the allegation that it has infringed upon the Plaintiff's Marks or that it is passing off its services as those of the plaintiff or otherwise connected to or associated with the plaintiff.

11 The defendant asserts that it had engaged the professional assistance of Yap Soo Mei ("Betty Yap"), a "personal friend" of Leong Seng Chet ("Leong"), the chief executive officer of the defendant, [\[note: 25\]](#) to design and conceive the Defendant's Marks in or around 2008, [\[note: 26\]](#) and that they were independently conceived to represent its business concept (*ie*, a cross-border artiste and concert management company primarily engaged in bringing quality musical performances to the masses). [\[note: 27\]](#) According to the defendant, the underlying idea for "AMC" was "A Music Company". [\[note: 28\]](#)

12 The defendant avers that the Defendant's Marks are registered in China (and Taiwan [\[note: 29\]](#)), and widely used in China in promotional materials for music festivals and concerts since 2008. [\[note: 30\]](#)

[30\]](#) In addition, the defendant highlights that it had worked with Singaporean artistes and their staff, and built up and maintained links with them throughout the course of business. [\[note: 31\]](#) The Defendant's Marks have also allegedly been used on documents for transactions and/or collaborations with organisations from China and Singapore since 2008. [\[note: 32\]](#) The defendant, which was incorporated in Singapore on 20 January 2012, similarly used the Defendant's Marks in Singapore on various promotional materials for concerts and artistes' meeting sessions with fans in Singapore. [\[note: 33\]](#) Apart from Singapore and China, the defendant also claims that the Defendant's Marks have been used widely in Malaysia, Taiwan and Hong Kong as well. [\[note: 34\]](#)

13 The defendant had lodged its application to register the AMC Group Mark in Classes 35 and 41 under the specifications "promotion (advertising) of concerts" and "management of concerts" respectively. [\[note: 35\]](#) Even though the defendant filed its application on 14 February 2012, [\[note: 36\]](#) it was opposed by the plaintiff and is currently pending registration. [\[note: 37\]](#)

14 Sometime in 2013, the defendants stopped using the name "AMC Group", the AMC Group Mark as well as the website "www.amcgroup-china.com". [\[note: 38\]](#) As part of its move to update its branding, the defendant had changed its name to "AMC Live Group China (S) Pte Ltd" at the end of 2013. [\[note: 39\]](#) Consequently, the defendant now refers to itself as "AMC Live" or "AMC Live Group", [\[note: 40\]](#) and uses the domain name "www.amclive-group.com". [\[note: 41\]](#) According to the defendant, it had also started using the AMC Live Mark instead of the AMC Group Mark. [\[note: 42\]](#)

### **Plaintiff's case**

15 The plaintiff's case is based on trade mark infringement and passing off. The plaintiff claims that the defendant had infringed the Plaintiff's Marks under ss 27(2)(a), 27(2)(b) and 27(3) of the Trade Marks Act (Cap 332, 2005 Rev Ed) ("TMA").

16 I should point out at this juncture that the plaintiff had not, in its submissions, addressed the issues of identical or well-known marks. Instead, the plaintiff had limited its claim to trade mark infringement of similar marks under s 27(2)(b) of the TMA, in the following manner: [\[note: 43\]](#)

- (a) That the defendant's use of the Defendant's Marks infringes the plaintiff's AMC Asia Mark.
- (b) That the defendant's use of the trading name "amc", "AMC", "AMC Group" and/or the domain name "www.amcgroup-china.com" infringes the plaintiff's AMC Asia Mark.
- (c) That the defendant's use of the slogan "to create, entertain and inspire" (which appears in the AMC Group Mark and the AMC Live Mark) infringes the Plaintiff's Human Exclamation Mark.

17 As for the claim in passing off, the plaintiff's case is that:

- (a) The "amc" name is distinctive of the services provided by the plaintiff, and the members of the public had associated the name "amc" with the services provided by the plaintiff, such that the plaintiff had acquired goodwill in the name "amc" when used in relation to the said services. [\[note: 44\]](#)
- (b) The defendant's use of the name "amc" or "AMC Group China" misrepresents to the members of the public (and in particular, the actual and potential consumers of the plaintiff and

the defendant) that the defendant's services are that of the plaintiff and/or connected to or associated with the plaintiff. [\[note: 45\]](#)

(c) The defendant's use of the name "amc" or "AMC Group China" was calculated to deceive or likely to deceive and/or lead members of the public to believe that the defendant's services are that of the plaintiff and/or otherwise connected to or associated with the plaintiff. [\[note: 46\]](#)

(d) The plaintiff suffered or would suffer damage under the following heads as a result of the defendant's use of "amc" or "AMC Group China":

- (i) inferiority of the defendant's services;
- (ii) loss of licensing/franchising opportunity or income;
- (iii) likelihood of damage should the defendant get into financial, legal or other trouble;
- (iv) misappropriation of the plaintiff's goodwill and reputation;
- (v) restriction on the plaintiff's natural expansion into providing a greater range of event and concert organisation services;
- (vi) loss of exclusivity and the erosion of distinctiveness of the Plaintiff's Marks; and
- (vii) dilution of the goodwill attached to the Plaintiff's Marks.

## **Defendant's case**

18 The defendant's case is that there is no trade mark infringement because:

- (a) The Defendant's Marks are not identical/similar to the Plaintiff's Marks, and there is no likelihood of confusion. [\[note: 47\]](#)
- (b) The Plaintiff's Marks are not well known. [\[note: 48\]](#)
- (c) The defendant is entitled to rely on the defence under s 28(1)(a) of the TMA ("the own name defence"). [\[note: 49\]](#)
- (d) The defendant is entitled to rely on the defence under s 28(2) of the TMA ("the prior use defence"). [\[note: 50\]](#)
- (e) The defendant is entitled to rely on the defence under s 28(3) read with s 9 of the TMA ("the honest concurrent use defence"). [\[note: 51\]](#)

19 In addition, the defendant avers that there can be no claim in passing off because:

- (a) The plaintiff does not enjoy goodwill in the name "amc". [\[note: 52\]](#)
- (b) The defendant had not misrepresented its services as that of the plaintiff. [\[note: 53\]](#)

(c) The defendant's acts were not calculated to deceive and/or lead members of the public to believe that the defendant's services are that of the plaintiff and/or otherwise connected to or associated with the plaintiff. [\[note: 54\]](#)

(d) The plaintiff did not suffer any damage as a result of the misrepresentation (if proven). [\[note: 55\]](#)

(e) There is honest concurrent use (as a common law defence). [\[note: 56\]](#)

20 The honest concurrent use defence was eventually abandoned.

### **Issues before this Court**

21 The issues before this Court can be classified into two categories: first, issues that arise out of the claim in trade mark infringement and second, issues that arise out of the claim in passing off.

22 The issues that arise out of the claim in trade mark infringement are as follows:

- (a) Whether the Defendant's Marks are similar to the Plaintiff's Marks.
- (b) Whether the Defendant's Marks are used in relation to similar services.
- (c) Whether there is a likelihood of confusion.
- (d) Whether the defendant is entitled to any defences under the TMA.

23 The issues that arise out of the claim in passing off are as follows:

- (a) Whether the plaintiff enjoys goodwill in the name "amc", the Plaintiff's Marks and the domain name "amcasia.com".
- (b) Whether the defendant had misrepresented its services as that of the plaintiff's services, and/or whether the defendant's acts were calculated to deceive or mislead the members of the public to believe that the defendant's services are that of the plaintiff and/or otherwise connected to or associated with the plaintiff.
- (c) Whether the plaintiff's interests have been damaged as a result of the defendant's misrepresentation.
- (d) Whether there is any defence to the claim in passing off.

24 I will address them in turn.

### **First claim: Trade mark infringement**

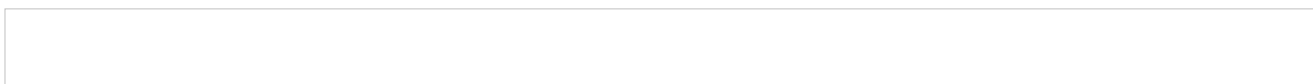
#### ***Issue 1: Similarity of marks***

25 The principles governing the comparison between marks for similarity are well-established: see *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd and another and another appeal* [2013] 2 SLR 941 ("*Hai Tong*") at [40]. As such, I will not repeat them here.

26 I would only add that the Court of Appeal in *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc and another and another appeal* [2014] 1 SLR 911 (“*Staywell*”) observed at [24]–[25] that technical distinctiveness (*ie*, capacity of a mark to function as a badge of origin) can either be inherent *or* acquired through use, and it is “an integral factor in the marks-similarity inquiry”. A mark which has greater technical distinctiveness “enjoys a high threshold before a competing sign will be considered dissimilar to it”: *Staywell* at [25], citing *Sarika Connoisseur Café Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 (“*Sarika*”) at [36]. Specifically, the Court of Appeal noted at [26] that the comparison of similar marks must be “based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant *components*” [emphasis added]. However, the Court of Appeal reiterated at [30] that distinctiveness is “a factor *integrated into* the visual, aural and conceptual analysis as to whether the competing marks are similar” [emphasis in original], and not a separate step of the inquiry. With this in mind, I proceed to compare the various marks.

#### *Comparing AMC Asia Mark with AMC Group Mark*

27 For convenience, I shall reproduce the marks in question below:



28 The analysis begins with the distinctiveness of the “amc” component of the AMC Asia Mark. The relevance is that, as highlighted in *Sarika* at [36], the greater the distinctiveness, the easier it is for a competing mark to be found to be similar despite modifications. It should nevertheless be borne in mind the cautionary words of *Staywell* at [29] that the distinctiveness of a particular component of a mark is only one of the factors that goes towards the overall analysis.

29 The plaintiff claims that the dominant aspect of the AMC Asia Mark is the “amc” component. According to the plaintiff, the “amc” component is inherently distinctive as it is purely inventive or fancy in the sense that it is made up and has no meaning at all, and is arbitrary in the sense that it has nothing relevant to say about the goods in question themselves. [\[note: 57\]](#) In addition, I understand the plaintiff to be saying that the “amc” component has acquired distinctiveness through its extensive use. [\[note: 58\]](#) The defendant, on the other hand, appears to be disputing the distinctiveness of the “amc” component of the AMC Asia Mark. The defendant highlights that, first, the acronym “amc” is common in Singapore, and second, the plaintiff had always used the AMC Asia Mark together with its name, in the following manner: [\[note: 59\]](#)



30 In my view, the “amc” component of the AMC Asia Mark is inherently distinctive as it consists of three letters that do not connote any meaning at all. Even though it is undisputed that “amc” is a “common acronym” in Singapore, [\[note: 60\]](#) I do not think that it would, on the facts of the present case, be sufficient to negate the inherent distinctiveness of “amc”. The fact that it is a common acronym does not render “amc” any less capable of being used as a mark or badge of origin of the service (see *Hai Tong* at [29]; *Staywell* at [24]). Given that the “amc” component of the AMC Asia

Mark is inherently distinctive, it would not be necessary to consider if "amc" had acquired distinctiveness through use.

31 As mentioned earlier ([29] above), the defendant appears to be challenging the distinctiveness of "amc" in the AMC Asia Mark on the basis that the acronym "amc" is common in Singapore and the plaintiff had always used the AMC Asia Mark together with its name. In support of its contention, the defendant cites *The Polo/Lauren Co, LP v Shop In Department Store Pte Ltd* [2006] 2 SLR(R) 690 ("*Polo/Lauren*") at [23]–[24], which states:

23 In the present case, as stated before, the appellant had never used the word mark "POLO" *simpliciter*, on its products. Instead, the appellant's products bore its other registered trade marks *eg*, "POLO BY RALPH LAUREN" and "POLO RALPH LAUREN & polo player device". There was simply no evidence before the court to show that the word "polo" *per se* is distinctive. Indeed, the word "polo" is an ordinary English word meaning a game played on horseback. It is also used to describe a type of T-shirt with a collar. Moreover, there is no rigid principle that the first syllable of a word mark is more important. We recognise that some marks are inherently distinctive because they consist of inventive words without any notional or allusive quality. An example would be "Volvo". "Polo" is certainly not an inventive word and could claim no inherent distinctiveness. Where common words are included in a registered mark, the courts should be wary of granting a monopoly in their use: see *The European Limited v The Economist Newspaper Limited* [1998] FSR 283 at 289–290 and "*FRIGIKING*" *Trade Mark* [1973] RPC 739 at 753. Any alleged distinctiveness must be acquired through use. Thus, the question of distinctiveness must be determined in the light of all the circumstances of the case. No authority has been cited to substantiate the assertion that the fact of registration is conclusive as to the distinctiveness of a mark. Neither does it follow that the incorporation of an entire registered word mark would automatically lead to infringement. The appellant even boldly contended that "POLO" should stand on the same footing with marks such as "Rolex" or "Cartier". This is an overstatement of monumental proportion, a bare assertion without foundation. While "Rolex" and "Cartier" are established distinctive names, the appellant had yet to begin to show that "POLO" has acquired a similar distinction. Even the appellant's witness in cross-examination said that the appellant's most distinctive marks are the "polo player device" and "Polo Ralph Lauren" name.

24 Bearing in mind that "polo" is a common English word, we are unable to see how it could be said that the sign "POLO PACIFIC" with its special font and design is similar to the mark "POLO" except in the broadest of sense that one word is common. In any event, for the purpose of determining similarity under s 27(2) of the Act, one must look at the mark and the sign as a whole (see *In the Matter of an Application by the Pianotist Company Ltd for the Registration of a Trade Mark* (1906) 23 RPC 774 ("*Pianotist*") and *Cooper Engineering Company Proprietary Limited v Sigmund Pumps Limited* [1952] 86 CLR 536 ("*Cooper*")) and, bearing in mind the actual differences between the two, we cannot see how it can be said that the trial judge was wrong when he held that the sign and the mark are not similar. All the more so when the appellant was not even claiming a monopoly of the word "polo". Accordingly, we agree with the judge that the two are visually, aurally and conceptually different.

32 However, the defendant's contention is misconceived. In *Polo/Lauren*, the Court of Appeal found the word "POLO" is a "common English word" that is not inherently distinctive. It was in this context that the Court of Appeal said that any distinctiveness therefore must be acquired through use and that there is no such evidence of such use. In the present case, it is beyond doubt that "amc" is inherently distinctive and as such, there is no need for the plaintiff to show that it had acquired distinctiveness through use.



33 I turn to consider the visual similarity of the AMC Asia Mark and the AMC Group Mark.

34 The plaintiff contends that the distinctive and dominant element would be the “amc” component. [\[note: 61\]](#) The plaintiff further argues that the exclamation mark device in the AMC Asia Mark and the microphone device in the AMC Group Mark are visually similar, taking into account the imperfect recollection of the average consumer. [\[note: 62\]](#) According to the plaintiff, the word “asia” in the AMC Asia Mark and the words “Group China” in the AMC Group Mark are highly descriptive and generic such that they are of negligible significance because the average consumer would not pay much attention to them. [\[note: 63\]](#) The plaintiff also submits that the words “to create, entertain and inspire” in the AMC Group Mark are in very small font and has very little visual impact. [\[note: 64\]](#)

35 On the other hand, the defendant submits that a “side-by-side comparison” of the AMC Asia Mark and the AMC Group Mark would reveal that they are not visually, aurally or conceptually similar. [\[note: 65\]](#) The defendant examines the individual components of the respective marks in detail and points out specific differences, including:

- (a) the letters “amc” in the AMC Group Mark are “conjoined” and in bold, while the letters “amc” in AMC Asia Mark are not; [\[note: 66\]](#) and
- (b) there is a “very prominent” exclamation mark device in the AMC Asia Mark, and there is a classic microphone device in the AMC Group Mark. [\[note: 67\]](#)

Nevertheless, the defendant agrees that the words “to create, entertain and inspire” are in very small font and would not be as prominent. [\[note: 68\]](#)

36 In my view, the AMC Asia Mark and the AMC Group Mark have some degree of visual similarity. First of all, the defendant’s conclusion is flawed insofar as it adopted a “side-by-side comparison”. It is trite law that marks should not be compared side-by-side as the imperfect recollection of the consumer must be taken into account (see *Sarika* at [18]). A close scrutiny of the two marks would undoubtedly reveal differences that would not have been apparent otherwise ([35] above). In the present case “amc” is the distinctive and dominant element in the AMC Asia Mark. The AMC Group Mark is similar to the AMC Asia Mark because they share the identical letters “amc” and are both in lower case and similar font. Moreover, both marks use the double-storey letter “a” as opposed to a single-storey letter “a”. The reference to “asia” and “China”, in my view, would not offset the visual similarity. Neither would the reference to “AMC Group” render the two marks visually dissimilar. In this respect, the present case is similar to *Doctor’s Associates Inc v Lim Eng Wah (trading as Subway NICHE)* [2012] 3 SLR 193 (“*Subway*”), where Judith Prakash J found at [34] that the addition of the word “niche” did not offset the visual similarity given the distinctiveness of the subway mark. In fact, the present case is even more compelling than *Subway* given that the generic descriptive words like “asia”, “China” and “Group” would, in all likelihood, not leave much of an impression with a consumer, bearing in mind the imperfect recollection. In addition, the microphone device in the AMC Group Mark bears some similarity with the exclamation mark device in the AMC Asia Mark. In any event, the devices are relatively insignificant because they would not draw any significant attention away from the distinctive and dominant “amc” component. A consumer trying to recall the mark would more likely recall “amc” rather than the devices, and neither the exclamation mark nor the microphone devices would serve as a point of distinction between the marks. This is akin to the flower device in *Hai Tong*. In *Hai Tong* at [65], the Court of Appeal held that the flower device was relatively insignificant because, *inter alia*, (a) the textual component of the mark was distinctive as the words “Lady Rose” conveyed no meaning and had no notional or allusive quality, (b) the flower was not a feature that

drew any significant attention away from the words, (c) a consumer trying to recall the mark would more likely recall the textual component rather than the device component, and (d) if the textual component were found to be substantially similar, it was unlikely that the simple stylised rose in the mark would serve as a point of distinction.

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While the AMC Group Mark has the words “to create, entertain and inspire” which are absent from the AMC Asia Mark, it is undisputed that they are in very small font and would not be as prominent. As such, the words “to create, entertain and inspire” would have limited visual impact on the consumers. However, I should add that the AMC Group Mark does look more complicated than the AMC Asia Mark. I therefore find that there is some degree of visual similarity between the AMC Asia Mark and the AMC Group Mark.

37 I now consider the aural similarity of the AMC Asia Mark and the AMC Group Mark.

38 The plaintiff submits that the distinctive and dominant component of the two marks, that is, “amc”, would be aurally similar given that both require the three letters to be read out individually. [\[note: 69\]](#) The defendant contends that there is no aural similarity, essentially because there are words in the AMC Group Mark which do not appear in the AMC Asia Mark. [\[note: 70\]](#)


39 In *Staywell* at [31], the Court of Appeal noted that the trial judge had compared “ST. REGIS” and “PARK REGIS” and considered the word “Regis” to be the dominant and distinctive component of both marks when read out. The Court of Appeal agreed with the trial judge’s approach. The Court of Appeal observed that “Regis” enjoys a substantial degree of technical distinctiveness, as well as distinctiveness in the non-technical sense because it will stand out in the imperfect recollection of the customer. Having said that, the Court of Appeal went on to find at [33] that there is a high degree of aural similarity between the competing marks given the distinctiveness of the common “Regis” component in both the technical and non-technical senses.

40 In the present case, the dominant and distinctive component of both marks when read out would be “amc”. It is not only technically distinctive ([30] above), but also distinctive in the non-technical sense because, like the “Regis” component in *Staywell*, it is the part which will stand out in the imperfect recollection of the customer. It is also pertinent to note that “amc”, being the first three syllables of both marks, are pronounced in an identical manner. While the AMC Group Mark has other words that are not present in the AMC Asia Mark, I do not think that this would drastically reduce the aural similarity of the two marks. In *Subway*, Prakash J considered at [36] that the common feature of the word “SUBWAY” in both marks renders the marks aurally similar notwithstanding the inclusion of “niche” in the offending mark. Likewise, the additional words “to create, entertain and inspire” in the AMC Group Mark would not reduce the obvious aural similarity between the dominant and distinctive component of the marks which are pronounced in an identical manner. In this regard, it is pertinent to note that the Court of Appeal in *Staywell* at [32] considered that the quantitative assessment (*ie*, whether the competing marks have more syllables in common than not) was an *alternative* approach.

41 I move on to conceptual similarity.

42 The plaintiff submits that there is conceptual similarity because both marks share the "amc" component which has no particular conceptual meaning. [\[note: 71\]](#) The defendant contends that the two marks are conceptually dissimilar. According to the defendant, the idea behind the AMC Group Mark is music and entertainment, and this is manifested in the microphone device as well as "amc" which stands for "A Music Company". [\[note: 72\]](#) On the other hand, the defendant says that the idea behind AMC Asia Mark is the plaintiff's desire to excite and motivate its audience and customers, and this is reflected in the exclamation mark device and "amc", which is the acronym for "Audience Motivation Company". [\[note: 73\]](#)

43 It is well accepted that the inquiry as to conceptual similarity is directed at "the ideas that lie behind or inform the marks or signs in question": *Hai Tong* at [70]; *Sarika* at [34]. However, it must be an idea that manifests in the look and feel of the mark, and not something that is known only to its creator: *Sarika* at [34], citing *Hyundai Mobis v Mobil Petroleum Company, Inc* [2007] SGIPOS 12. Contrary to the plaintiff's submission, the marks in question cannot be conceptually similar because the common "amc" component has no conceptual meaning. In particular, it should be noted that both marks are composite marks with textual as well as device components. In *Sarika*, the Court of Appeal found at [34] that the words "Nutello" and "Nutella" are not conceptually similar because they are invented and meaningless with no particular idea underlying each of them. The Court of Appeal distinguished *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 ("*Festina*") on the basis that the "Nutello" sign and "Nutella" mark do not have a device element which evoke ideas. In contrast, the "Festina" and "J.Estina" marks comprised of invented words as well as a crest device and a crown device respectively. The judge in *Festina* found that the crest and crown devices indicated a sense of "class" and "status" and thus concluded that there was conceptual similarity between the marks. In addition, the discussion of the Court of Appeal in *Staywell* at [35] clearly explains why the plaintiff's approach is flawed:

First, the Judge gave weight to the Opponents' argument that the competing marks shared the underlying connotation of royalty, since the "Regis" component of the marks was dominant. As we have already noted, the Judge was entitled to conclude that "Regis" was the distinctive component from an aural perspective. However, we do not agree that "Regis" was a dominant component on a *conceptual* analysis. Unlike the aural analysis, which involves the utterance of the syllables without exploring the composite meaning embodied by the words, the conceptual analysis seeks to uncover the ideas that lie behind and inform the understanding of the mark as a whole (*[Bently and Sherman, Intellectual Property Law (Oxford University Press, 3rd Ed, 2009)]* at p 866). Greater care is therefore needed in considering what the *conceptually* dominant component of a composite mark is, because the idea connoted by each component might be very different from the sum of its parts. The case of *Vedial SA v OHIM - France Distribution (HUBERT)* (Case C-106/03 P) [2004] ECR I-9573 is illustrative. There, the European Court of Justice upheld the Court of First Instance's finding that the  mark for which registration was sought was visually, aurally and conceptually dissimilar to the earlier word trade mark "SAINT-HUBERT 41". At [57] the Court of First Instance in *Vedial SA v OHIM - France Distribution (HUBERT)* (Case T-110/01) [2002] ECR II-5275 stated that:

With regard to conceptual analysis of the marks in question, it must be observed that the ideas suggested by the terms 'SAINT-HUBERT' and 'HUBERT' are different. The combination of the terms 'SAINT' and 'HUBERT' with a hyphen between them creates a concept and logical unit that is distinct from those of its components. Thus the words 'SAINT-HUBERT' form an inseparable whole which is likely to evoke in the mind of the targeted public a saint of the Catholic religion or a name of a place. The word 'HUBERT', on the other hand, corresponds to a common masculine French Christian name.

[emphasis in original]

44 Coming back to the present case, while it may be true that the common “amc” component of the two marks in question do not, on its own, evoke any ideas in the minds of the customer, they cannot be taken in complete isolation. Unlike the visual and aural analysis, the “amc” component is not the conceptually dominant component of the composite marks. Instead, the AMC Asia Mark, with the exclamation mark device, would probably connote excitement and surprise. It is unlikely, however, for the customer to realise by simply looking at the AMC Asia Mark that the “amc” component was meant to refer to Audience Motivation Company. On the other hand, the AMC Group Mark which has a microphone device next to the “amc” component would likely evoke ideas of music and entertainment. This is supported by the words “to create, entertain and inspire”. However, it would not have been obvious when one sees the AMC Group Mark that the “amc” component was meant to convey the idea of “A Music Company”.

45 This view is consistent with the case law. The present case is unlike *Festina*, where the device component of the marks evoked the same idea of “class” and “status” (see *Festina* at [45]), or *Staywell*, where the marks share a tendency to connote a place or location or building which are linked by the common reference to “Regis” (see *Staywell* at [37]). As shown above, the marks in the present case evoke totally different ideas. The reasoning in *Sarika*, where the invented words “Nutella” and Nutello” were unaccompanied by any device component (see *Sarika* at [34]), is also inapplicable in the present case given the differences in the facts.

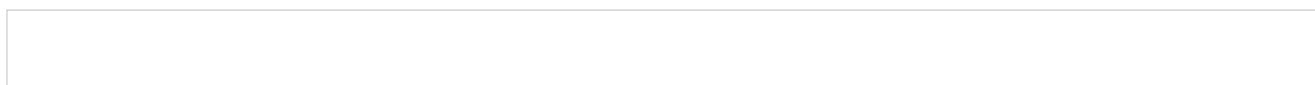
46 For the foregoing reasons, I find that there is no conceptual similarity between the AMC Asia Mark and AMC Group Mark.

47 On the whole, taking into account the visual, aural and conceptual analysis, I find that the AMC Asia Mark and AMC Group Mark do bear some degree of similarity.

48 I move on to consider the AMC Asia Mark and the AMC Live Mark.

#### *Comparing AMC Asia Mark with AMC Live Mark*

49 For convenience, I reproduce again the marks below:



50 As discussed earlier ([28]–[32] above), the “amc” component of the AMC Asia Mark is inherently distinctive. The same applies here. The parties’ arguments are substantially similar to the earlier issue concerning the similarity of the AMC Asia Mark and the AMC Group Mark, [\[note: 74\]](#) and insofar as they are similar, I will not repeat them below. With that, I proceed to examine the similarity of the two marks, starting with visual similarity.

51 In my view, there is some degree of visual similarity between the AMC Asia Mark and the AMC Live Mark. Like before, the “amc” component of the AMC Asia Mark is the distinctive and dominant element of the AMC Asia Mark, and the reasoning at [30] applies equally here. The AMC Live Mark adds the word “live” after the “amc” component, and notably, in the same size and font type. There is also a slanted microphone device on the right side of the AMC Live Mark. However, I do not think that the addition of the word “live” would draw any significant attention away from the distinctive

and dominant “amc” component. Also, the location of the slanted microphone, which is less prominent than the “amc” component in the AMC Live Mark, would not likely offset the visual similarity between the two marks. The words “to create, entertain and inspire” is in very small font and would have limited visual impact on the consumers. As such, I find that the AMC Asia Mark and the AMC Live Mark have some degree of visual similarity.

52 As for aural similarity, I find that there is a high degree of aural similarity between the AMC Asia Mark and the AMC Live Mark for the same reasons stated at [40]. The addition of the word “live” after the distinctive and dominant “amc” component would not render the two marks aurally dissimilar.

53 I move on to conceptual similarity. I find that there is no conceptual similarity between the AMC Asia Mark and AMC Live Mark for the same reasons stated at [44]. The addition of the word “live” in the AMC Live Mark is consistent with the ideas of music and entertainment.

54 Accordingly, I find that the AMC Asia Mark and the AMC Group Mark do bear some degree of similarity.

#### *Comparing AMC Asia Mark with the defendant’s trading name and domain name*

55 As mentioned earlier, the plaintiff contends that the defendant’s trading name and domain name infringe the AMC Asia Mark. As a preliminary issue, it must be considered if the trading name and domain name were used “in relation to” goods or services (s 27(2) of the TMA). This is a prerequisite for infringement. The learned authors of James Mellor *et al*, *Kerly’s Law of Trade Marks and Trade Names* (Sweet & Maxwell, 15th Ed, 2011) (“Kerly”) at paras 14-033 and 14-034 explained it as follows:

Use in relation to goods or services must be use for the purposes of distinguishing goods or services as originating from a particular undertaking ...

In [*Robelco NV v Robeco Group* (C-23/01) [2003] ETMR 52], use of a sign as a trade name or company name but not for the purpose of distinguishing goods or services as originating from the defendant was held not to be use “in relation to” goods or services. However in [*Celine SARL v Celine SA* (C-17/06) [2007] ETMR 80] it was held that the use of a company or trade name in such a way that a link is established between the trade name and the goods or services supplied would constitute use of the sign in relation thereto, presumably on the basis that such use would serve to denote the origin of the goods or services in question. The issue of how the use of the sign will be perceived by the relevant public is a matter for the court to assess on the evidence. It seems unlikely that use purely as a company or trade name will be established to be infringement in many cases.

56 The discussions of the Court of Justice of the European Union (“CJEU”) in *Celine SARL v Celine SA* (C-17/06) [2007] ETMR 80 at [21]–[23] is also helpful:

21 The purpose of a company, trade or shop name is not, of itself, to distinguish goods or services ... The purpose of a company name is to identify a company, whereas the purpose of a trade name or a shop name is to designate a business which is being carried on. Accordingly, where the use of a company name, trade name or shop name is limited to identifying a company or designating a business which is being carried on, such use cannot be considered as being “in relation to goods or services” within the meaning of Art.5(1) of the Directive.

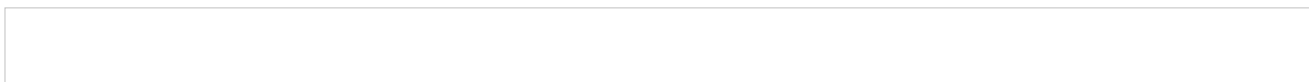
22 Conversely, there is use “in relation to goods” within the meaning of Art.5(1) of the

Directive where a third party affixes the sign constituting his company name, trade name or shop name to the goods which he markets ...

23 In addition, even where the sign is not affixed, there is use “in relation to goods or services” within the meaning of that provision where the third party uses that sign in such a way that a link is established between the sign which constitutes the company, trade or shop name of the third party and the goods marketed or the services provided by the third party.

57 In the present case, the use of “amc” in the defendant’s trading name and domain name would not only identify the company or designate its business but also denote the origin of the services provided by the defendant. It follows that the use of “amc” in the defendant’s name and domain name, in the present case, would suffice as use “in relation to” goods or services under s 27(2) of the TMA.

58 Having dealt with the preliminary issue, I proceed now to examine whether the defendant’s trading name and domain name are similar to the plaintiff’s AMC Asia Mark. For convenience, I shall set them out below:



59 The plaintiff’s case in this respect is that the defendant’s trading name and domain name comprise primarily of the dominant and distinctive “amc” component of the AMC Asia Mark and would therefore be visually, aurally and conceptually similar. [\[note: 75\]](#) In fact, the plaintiff claims that the defendant’s trading name and domain name are even more similar given that they do not have any significant modifications to distinguish itself from the “amc” component of the AMC Asia Mark. [\[note: 76\]](#)

60 I begin the analysis with visual similarity. In my view, the defendant’s trading name and domain name are visually similar to the AMC Asia Mark. As mentioned earlier, “amc” is the dominant and distinctive component of the AMC Asia Mark. The defendant’s trading name and domain name bear a significant degree of visual similarity to the AMC Asia Mark on account of the distinctiveness of the “amc” component. This is notwithstanding minor differences like the exclamation mark device or the word “Group”. The reference to “asia” and “china” are generic and would not likely offset the visual similarity.

61 As for the aural similarity, the “amc” component is still the dominant and distinctive component both in the technical and non-technical senses (see *Staywell* at [33]). As such, I find that the defendant’s trading name and domain name are aurally similar to the AMC Asia Mark.

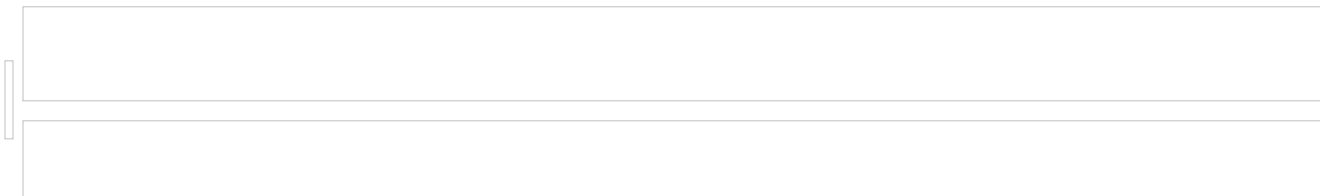
62 I move on to conceptual similarity. I have mentioned earlier that the AMC Asia Mark evokes ideas of excitement and surprise ([44] above). However, the defendant’s trading name and domain name are simply meaningless and have no particular idea underlying each of them. As such, I find that there is no conceptual similarity between the AMC Asia Mark and the defendant’s trading name and

domain name.

63 On the whole, I find that the AMC Asia Mark and the defendant's trading name and domain name are similar.

#### *Comparing Human Exclamation Mark with the Defendant's Marks*

64 The last comparison would be between the Human Exclamation Mark and the Defendant's Marks, which I reproduce below for convenience:



65 The plaintiff appears to be suggesting that the comparison should be made between the Human Exclamation Mark and the words "to create, entertain and inspire", which appears as part of the Defendant's Marks. [\[note: 77\]](#) In my view, this is wrong, and the comparison should be done between the Human Exclamation Mark and the Defendant's Marks as a whole. The plaintiff had not shown that the defendant used the words "to create, entertain and inspire" on its own as a trade mark. Rather, it appears that the words "to create, entertain and inspire" have only been used as an integral part of the Defendant's Marks. As such, the alleged acts of infringement cannot be the use of the words "to create, entertain and inspire" on its own but must be the use of the Defendant's Marks as a whole. I therefore proceed on this basis.

66 The plaintiff contends that the textual component of the Human Exclamation Mark is the distinctive and dominant element of the mark. The plaintiff contends that the device component is merely decorative and calls for attention towards the words, and it does not denote the commercial origin of the goods in question. [\[note: 78\]](#)

67 The Court of Appeal in *Staywell* at [23]–[24] explained distinctiveness in the technical and non-technical senses as follows:

23 Distinctiveness in the ordinary and non-technical sense simply refers to what is outstanding and memorable about the mark. Such components tend to draw the consumer's attention, bearing in mind the imperfect recollection of the average customer. This reflects the reality that the average consumer "only rarely has the chance to make a direct comparison between the different marks and must place his trust in the imperfect picture of them that he has in his mind" (*Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97) [1999] 2 CMLR 1343 ("Lloyd") at 1358 and *Ozone Community* ([18] *supra*) at [50]). The distinctive (in the non-technical sense) and memorable components of the mark are those that tend to stand out in the consumer's imperfect recollection. That is why the court is entitled to have special regard to the distinctive or dominant components of a mark, even while it assesses the similarity of the two marks as composite wholes.

24 Distinctiveness in the technical sense on the other hand, usually stands in contradistinction to descriptiveness. Where the latter connotes words that describe the goods or services in question, or of some quality or aspect thereof, the former refers to the capacity of a mark to

function as a badge of origin. Distinctiveness can be inherent, usually where the words comprising the mark are meaningless and can say nothing about the goods or services; or acquired, where words that do have a meaning and might well say something about the good or services, yet come to acquire the capacity to act as a badge of origin through long-standing or widespread use (see *Windsurfing Chiemsee Produktions- und Vertriebs GmbH v Boots- und Segelzubehör Walter Huber and Franz Attenberger* [1999] ETMR 585 (ECJ), *Love & Co Pte Ltd v The Carat Club Pte Ltd* [2009] 1 SLR(R) 561 at [98]-[100] and *[Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd and another and another appeal* [2013] 2 SLR 941] at [32]-[33]).

68 In the present case, the textual component of the Human Exclamation Mark (*ie*, to excite . to impress . to inspire) is completely descriptive. It is neither inherently distinctive nor has evidence been adduced to show that it has acquired distinctiveness through use. It is also not the distinctive (in the non-technical sense) or dominant component of the Human Exclamation Mark which stands out in the imperfect recollection of the consumer. In my view, the statement “to excite . to impress . to inspire” is not the distinctive and dominant component of the Human Exclamation Mark.

69 I now proceed to consider whether the Defendant’s Marks are similar to the Human Exclamation Mark.

70 The Human Exclamation Mark features three human figures which are obviously absent in the Defendant’s Mark. On the other hand, the Defendant’s Marks bear the words “amc” and “amc live” which are nowhere to be found in the Human Exclamation Mark. The only component that bears some resemblance would be the words “to excite . to impress . to inspire” in the Human Exclamation Mark and the words “to create, entertain and inspire” in the Defendant’s Marks. However, the words in the Human Exclamation Mark and the Defendant’s Marks are in very small font and can hardly be considered as prominent. I am of the opinion that, on the whole, there is no visual similarity.

71 I also hold that there is no aural similarity. Even leaving aside the fact that the words “amc” and “amc live” do not appear in the Human Exclamation Mark, there is still no aural similarity between the words “to excite . to impress . to inspire” in the Human Exclamation Mark and the words “to create, entertain and inspire” in the Defendant’s Marks. Only the first and last words –“to” and “inspire” –are the same and all the other words in between are different. Further, the words in the Human Exclamation Mark appear to have pauses in between them, whereas the words in the Defendant’s Marks would normally be read in a continuous fashion. These factors increase the aural dissimilarity between the marks in question.

72 Finally, I find there is barely any conceptual similarity between the Human Exclamation Mark and the Defendant’s Marks. The three human figure devices in the Human Exclamation Mark, together with the textual component, evoke ideas of excitement and surprise. This is different from the Defendant’s Marks. As I have elaborated earlier, the Defendant’s Marks would evoke ideas of music and entertainment ([44] and [53] above).

73 Accordingly, I hold that there is no similarity between the Human Exclamation Mark and the Defendant’s Marks.

## **Issue 2: Similarity of services**

74 I next consider if there is similarity of services.

75 The plaintiff contends that the defendant has used the Defendant’s Marks as well as the defendant’s trading name and domain name in relation to the business of organising and advertising of



events and concerts, and this falls directly within the scope of services for which the Plaintiff's Marks are registered for, namely, Classes 35 and 41. [\[note: 79\]](#) On the other hand, the defendant argues that there is no similarity of services, notwithstanding that the defendant had sought to register the Defendant's Marks under the same International Classification of Goods and Services ("ICGS") classes, because the actual items in each class as claimed by the parties are different. [\[note: 80\]](#)

76 In my view, the proper approach is to compare, on the one hand, the actual services for which the allegedly infringing marks have been used and, on the other hand, the specification for which the trade mark has been registered. The starting point is s 27(2)(b) of the TMA, which reads:

A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, he uses in the course of trade a sign where because the sign is similar to the trade mark and is used in relation to goods or services identical with or similar *to those for which the trade mark is registered*, there exists a likelihood of confusion on the part of the public. [emphasis added]

77 The plain language of the provision suggests that only the specification of the registered trade mark is relevant. However, the Court of Appeal in *Sarika* appears to have added a gloss over s 27(2)(b) of the TMA. The Court of Appeal explained at [45]–[47] and [51] that the service for which the allegedly infringing mark has been used must be compared to not only the specification for which the trade mark was registered but also its actual use:

45 Section 27(2)(b) TMA requires similarity between the goods and services for which the offending sign is used and "those for which the trade mark is registered". In *[Bently and Sherman, Intellectual Property Law (Oxford University Press, 3rd Ed, 2009) ("Bently & Sherman")]* (at p 869), the learned authors state that in an infringement action, *courts usually compare the defendant's goods (here, the Appellant's goods) as they have been used with the goods in the claimant's specification (here, the Respondent's specification)*. In doing this, the court has to interpret the specification and then characterise the defendant's goods or services (here, the Appellant's goods) to see if they fall within the specification. ...

46 ... we need to point out that under the express terms of our s 27(2)(b) TMA, which is substantially similar to s 10(2) of UK TMA 1994, the comparison to be made is not between the alleged infringing goods and the actual goods of the trade mark owner but between the alleged infringing goods and the products in respect of which the trade mark is registered for. This is also the view of *Bently & Sherman* (see above at [45]). *To say that in determining similarity one should only look at the alleged infringing goods and the actual goods of the trade mark owner and not at the specifications would be to take a view inconsistent with the express terms of the provision*. If that were to be the correct view, what protection is there left for the trade mark owner in respect of goods which are within the specifications of the registered mark, but in respect of which the owner has yet to embark upon actual production? ...

47 ... Therefore, we are in agreement with the Judge that *to determine similarity of goods in the present case, one must not only compare the goods of the offending party with the actual product of the owner but also with the specification of the mark*. As such we are unable to accept the Appellant's contention that the comparison ought to be made with the registered specification of the "Nutella" word mark as interpreted by its use in practice in the form of the Nutella spread, as this is in substance tantamount to submitting that the comparison ought to be made with the actual Nutella spread product itself.

...

51 The Judge held that since the “Nutello” drink was a beverage falling within Class 30 ICGS (which is the same class as that for which the “Nutella” mark was registered), he was persuaded therefore to find that there was a similarity of goods. *While this appears to have a certain logical attractiveness, it should not be determinative - consideration should also be given to the factors enumerated by Jacob J in [British Sugar plc v James Robertson & Sons Ltd [1996] RPC 281 (“British Sugar”)]* (see above at [48]). Indeed, in *Bently & Sherman* (at p 784), the learned authors have stated that the purpose of the classification process is primarily administrative, viz, to facilitate searching for earlier competing marks. That was also seemingly the view of Jacob J. As regards the factors set out in *British Sugar* ([14] *supra*), ultimately, the weight which ought to be accorded to each factor is for the trial judge to ascribe after assessing all pertinent factors. In other words, it is not a numbers game.

[emphasis added]

78 At this point, I pause to note that the Court of Appeal in *Staywell* at [58] appear to have implicitly taken a step back from the position in *Sarika*, suggesting that the focus lies *solely* with the specification for which the trade mark is registered, and not the actual good or service for which the trade mark is used:

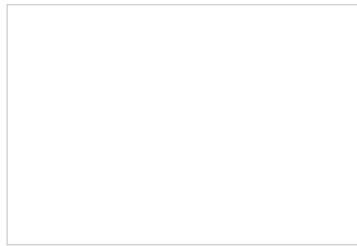
... The proprietor is entitled to sue for infringement if anyone uses an identical or similar sign on goods which are identical or similar to goods or services falling within the specification for which his mark is registered, *even if he does not actually supply that good or service at the material time* (see *Sarika* ([18] *supra*) at [46]-[47], see also *[Compass Publishing BV v Compass Logistics Ltd [2004] RPC 41]* at [22] extracted at [50] *supra*). ... [emphasis added]

79 Pertinently, for this proposition the Court of Appeal in *Staywell* cited *Sarika* at [46]-[47] which clearly suggest that actual use is relevant. However, a look at *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 (“*Compass*”) at [22] would clarify the point:

... It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also. *In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.* [emphasis added]

80 In view of those decisions of the Court of Appeal, there are two possible approaches. First, notwithstanding the observation in *Staywell*, which is *obiter dicta*, this Court remains bound by the unwieldy approach laid down in *Sarika*. Second, *Sarika* may be construed in the light of *Staywell* and the issue approached on the basis that actual use of the registered trade mark is not relevant to the question of similarity of goods and services. I would prefer the latter approach. The fact that there is similarity in the actual uses of the competing marks may be sufficient but should not be necessary for finding similarity of goods and services. Such a requirement would be inconsistent with the monopoly right conferred upon the trade mark proprietor. If that is the case, then to assess for similarity in the actual uses of the competing marks would be pointless and confusing. In considering similarity of

goods and services, the plaintiff would only need to show that there is a similarity between the actual use by the allegedly infringing mark and the specification for which the trade mark was registered:



81 For completeness, however, I proceed to analyse the facts in the present case on the *Sarika* approach, that is, compare both actual use as well as the specification of the registered trade mark.

82 In *Sarika*, the Court of Appeal first applied the factors in *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 (commonly referred to as the “British Sugar factors”) in the comparison between the two actual products, *ie*, the Nutella spread and the Nutello beverage (at [52]). Having done so, the Court of Appeal observed at [53] that “many of the *British Sugar* factors may not be applicable as they were premised on comparing two actual products”. The Court of Appeal observed that the specification of the “Nutella” mark extends to products which have not yet been produced by the respondent, and as a result, the *British Sugar* factors “may not be entirely helpful” in the similarity analysis. Consequently, the Court of Appeal felt that the question that must ultimately be answered is whether the Nutello beverage can be considered a “chocolate product”, that is, the specification for which the “Nutella” mark is registered for.

83 In my analysis, I follow the framework relied upon by the Court of Appeal in *Sarika* in analysing the similarity of goods and services, beginning with the comparison of the actual services using the *British Sugar* factors:

( a ) *Uses*: There is some degree of similarity in the uses. The plaintiff provides events management services and has organised concerts as part of an event, [\[note: 81\]](#) while the defendant provides concert management services. [\[note: 82\]](#)

(b) *Users*: There is no similarity in the users. The users of the plaintiff’s services would usually be corporate entities seeking to advance its marketing objectives. [\[note: 83\]](#) On the other hand, the users of the defendant’s services are the members of the public.

(c) *Physical nature*: This factor is not applicable on the facts of the present case.

( d ) *Trade channels*: The trade channels of the respective services are different. Unlike the defendant which sells concert tickets directly to the members of the public, [\[note: 84\]](#) the plaintiff does its sales pitch with the representatives of interested corporate entities. [\[note: 85\]](#)

( e ) *Substitutability*: There is some degree of substitutability in the services provided by the parties. The plaintiff organises non-ticketed concerts and performances on behalf of its corporate clients, [\[note: 86\]](#) but would be able to organise ticketed concerts and performances as well. Likewise, the defendant would be able to organise other events when requested. [\[note: 87\]](#) In fact, the evidence suggests that the defendant has represented in its brochure that it was able to do so (even though it may not be true; see [186]–[187] below), [\[note: 88\]](#) and appears to have

actually done so outside Singapore, eg, Formula One promotional events in Chengdu, China. [\[note: 89\]](#)

84 Next, I proceed to compare the services for which the defendant had actually used the Defendant's Marks and defendant's trading name and domain name with the specifications for which the plaintiff had registered the Plaintiff's Marks. If the approach in *Staywell* is the correct one (see [80] above), then this is the only comparison that needs to be done.

85 The defendant applied for registration of the Defendant's Marks under Class 35 and Class 41 (see [13] above). This is the same as the Plaintiff's Marks (see [5] above). As observed by the Court of Appeal in *Sarika* at [51], the fact that the services fell within the same class in the ICGS classification system is indicative, but not determinative, that the services are similar. The Court of Appeal in *Staywell* reiterated at [82] that, on similarity of goods and services in the infringement context, it would be permissible to have regard to the classification in which the allegedly infringing goods or services would have been inserted if the alleged infringer sought registration of its mark.

86 In addition, the specification *within* the classes are largely similar:

ICGS	Plaintiff's Marks	Defendant's Marks
Class 35	Advertising; event management services (organization of exhibitions or trade fairs for commercial or advertising purposes); consultancy relating to public relations; public relations; brand creation services; publicity; promotional advertising services; promotional marketing; sales promotion services; hiring of advertising space; dissemination of advertising and publicity material	Promotion (advertising) of concerts
Class 41	Event management services (organization of educational, entertainment, sporting or cultural events)	Management of concerts

87 More importantly, the defendant has *actually* used the Defendant's Marks and defendant's trading name and domain name in relation to its concert management services. [\[note: 90\]](#) There is no dispute about this.

88 The key question here is whether the management of concerts (*ie*, actual use of the Defendant's Marks and defendant's trading name and domain name) can be considered as falling within the "advertising" and "event management services" specification (*ie*, the specification of the Plaintiff's Marks). In *Sarika*, the Court of Appeal considered at [53] that the "chocolate product" specification is not restricted to the traditional solid form of chocolate products but encompasses all forms or textures. Specifically, the Court of Appeal found that products like chocolate-based beverages are simply further particularisation of "chocolate products" and would therefore be similar to "chocolate products". The same reasoning would apply here as well. The "event management services" specification is not restricted to non-ticketed events or events commissioned by corporate entities for non-paying guests. In particular, the plaintiff specified the organisation of entertainment events, among others. In my view, concerts are a sub-set of "entertainment events", and therefore, it follows that "management of concerts" would be similar to the organisation of "entertainment events". The fact that their revenue model is different (*ie*, the plaintiff charges the corporate clients who organises the event, whereas the defendant charges the guests going for the concerts) should not matter.

89 On the analysis above, I hold that there is similarity of services.

### **Issue 3: Likelihood of confusion**

90 The next step in the inquiry would be to assess the likelihood of confusion.

91 The plaintiff submits that there is a likelihood of confusion, having regard to, *inter alia*, the high degree of similarity between the marks and the services. [\[note: 91\]](#) In addition, the plaintiff contends that the evidence of actual confusion points towards a finding that there is likelihood of confusion. [\[note: 92\]](#) The defendant claims otherwise, namely that the plaintiff had failed to prove that a substantial number of the relevant public would be confused. [\[note: 93\]](#)

92 The likelihood of confusion must relate to the *origin* of the goods or services by virtue of the similar/identical marks and services. The Court of Appeal in *Hai Tong* at [74] explains the two aspects to the element of confusion:

Indeed, the authorities are clear that there are at least two specific aspects to the element of confusion. The first is mistaking one mark for another, so that the perception of the relevant segment of the public is that the allegedly infringing mark is in fact the same as the registered mark. In short, in this context, the relevant segment of the public may not even perceive that there are two distinct marks. *The second is where the relevant segment of the public may well perceive that the contesting marks are different, but may yet remain confused as to the origin which each mark signifies and may perceive that goods bearing the earlier registered mark and those bearing the later allegedly infringing mark emanate from the same source that has chosen to diversify its range of marks for any of a multitude of marketing or promotional reasons or that the two sets of goods emanate from sources that are economically linked or associated.* [emphasis added]

93 The likelihood of confusion as to the origin of the goods or services is not only in relation to actual use but also the other uses which the Plaintiff's Marks are registered for. In this respect, the case of *Compass*, which has been cited in *Staywell*, is instructive. In that case, Laddie J considered at [22]–[25] that:

22 It is frequently said by trade mark lawyers that when the proprietor's mark and the defendant's sign have been used in the market-place but no confusion has been caused, then there cannot exist a likelihood of confusion under Art.9.1(b) or the equivalent provision in the Trade Marks Act 1994 ("the 1994 Act"), that is to say s.10(2). So, no confusion in the market-place means no infringement of the registered trade mark. This is, however, no more than a rule of thumb. It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. *Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also.* In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. *In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.*

23 This is of significance in this case because, as noted above, there is no suggestion that there has been any confusion in the market place between the activities of the defendant under the sign "COMPASS LOGISTICS" and the claimant, or any other member of the Compass Group, under the mark "COMPASS". Mr Wyand relies on this as being a good indication that there is no likelihood of confusion. *But in my view Mr Purvis is right when he argues that the question of infringement has to be answered by assessing the likelihood of confusion were the claimant to use the mark "COMPASS" in a normal way in respect of all services covered by the registration, including for business consultancy services in the field of logistics, that is to say the same specialist field the defendant operates in.*

24 The test for likelihood of confusion has been considered in a number of ECJ decisions ... if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion.

25 ... there can be little doubt that a likelihood of confusion exists between the defendant's use of the sign or mark "COMPASS LOGISTICS" in relation to its business consultancy services and *the notional use of the mark "COMPASS" used in relation to business consultancy services, including those in relation to which the defendant specialises.* The dominant part of the defendant's mark is the word "compass". For many customers, the word "logistics" would add little of significance to it. It alludes to the type of area of consultancy in which the services are carried out. This is consistent with the way in which "COMPASS" is used alone in some of the defendant's written material and Mrs Bell's evidence, referred to above. Even were one to assume that the claimant restricted its use of the mark to non-logistics consultancy services, there would be the same outcome. It is likely that a significant section of the public would consider that "COMPASS LOGISTICS" represents the logistics branch of the "COMPASS" service.

[emphasis added]

94 The following two points are clear from the extract of Laddie J's decision in *Compass* reproduced above:

(a) First, the question of whether there is a likelihood of confusion should be assessed on the basis that the registered trade mark has been used in respect of all the services covered by the registration.

(b) Second, the court may find that there is a likelihood of confusion between the actual use of the allegedly infringing mark and the notional use of the registered trade mark in relation to the services for which the trade mark is registered for.

95 On the facts of the present case, the likelihood of confusion would have to be assessed in relation to the concert management services (as opposed to events in general).

96 In the circumstances of the present case, the relevant public under s 27(2)(b) of the TMA would be the general public. It is oft-said that where a product is commonly available and purchased by the general public, the average consumer would be the general public: *Sarika* at [59] citing *City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* [2010] 1 SLR 382 ("*City Chain*") at [56]. Here, in relation to concert management services, the average consumer would be the general public.

97 In assessing whether there is a likelihood of confusion, the Court of Appeal in *Staywell* set out at [96] some of the non-exhaustive factors. The factors can be summarised as follows:

- (a) Factors relating to the impact of mark-similarity on consumer perception:
  - (i) degree of similarity of the mark themselves;
  - (ii) the reputation of the marks;
  - (iii) the impression given by the marks; and
  - (iv) the possibility of imperfect recollection of the marks.
- (b) Factors relating to the impact of goods-similarity on consumer perception:
  - (i) the normal way in or the circumstances under which consumers would purchase goods of that type;
  - (ii) the price of the goods (as opposed to the price disparity between the competing goods);
  - (iii) the nature of the goods and whether they would tend to command a greater or lesser degree of fastidiousness and attention on the part of prospective purchasers; and
  - (iv) the likely characteristics of the relevant consumers and whether they would or would not tend to apply care or have specialist knowledge in making the purchase.

98 In the present case, there is a likelihood of confusion as a result of the defendant's use of the Defendant's Marks and the defendant's trading name and domain name. As mentioned earlier, the dominant and distinctive component of the Plaintiff's Mark is "amc". The words like "asia", "Group China" and "live", as well as the devices, would not reduce the likelihood of confusion, bearing in mind the imperfect recollection of the average consumer. The average consumer would understand "amc live" and "AMC Group China" to represent the plaintiff's concert organising branch and its China office respectively. In addition, the nature of the service in question (*ie*, concerts) is such that the average consumer would in all likelihood focus more on the artistes and performance than on the organisers. Bearing in mind the nature of concert tickets, it is also unlikely that an average consumer would be fastidious and pay close attention to the marks. As such, I find that there is a likelihood of confusion.

99 In addition, the plaintiff had called witnesses to testify on the likelihood of confusion. While the evidence of actual confusion may be helpful, the question of whether there is a likelihood of confusion is "ultimately one for the court rather than for witnesses": *Hai Tong* at [99]–[100].

100 The essence of the evidence from the plaintiff's witnesses on this issue (consisting of one former employee, two suppliers and two customers) is that they were confused by the Defendant's Marks as a result of their similarity with the Plaintiff's Marks. Apart from the former employee, Wang Qifen ("Wang"), the rest of the four witnesses thought that the defendant was a subsidiary of the plaintiff. [\[note: 94\]](#) Wang, on the other hand, thought that the Defendant's Marks refers to the plaintiff. [\[note: 95\]](#) The defendant's objection was primarily based on the lack of evidence to support the bare assertions of the witnesses. However, I find the objection to be baseless since the witnesses are testifying on their state of mind (*ie*, confusion), and there is no need for the witnesses to have acted upon their confusion (*Hai Tong* at [101]).

101 I should add that while the plaintiff had also called Simon Low Ai Kai ("Low") to give evidence,

this was omitted from its submissions. [\[note: 96\]](#) I should point out that the defendant contends that Low is not independent given his close ties and substantial business dealings with the plaintiff. [\[note: 97\]](#) Since the plaintiff had not submitted on it, I will not deal with it here.

102 Having dealt with the evidence on actual confusion generally, I will now deal with the witnesses individually below, starting with Wang, the former employee.

103 Wang, who worked with the plaintiff between 2004 and 2009, testified that she came across the defendant's office in March 2013 and thought that the plaintiff had moved. [\[note: 98\]](#) According to her, it was because of the similarity in the marks. [\[note: 99\]](#) The defendant did not challenge Wang's evidence.

104 Anders Erik Kager ("Kager"), who was formerly working for Nokia Solutions Networks, one of the plaintiff's clients, gave evidence that he was confused when he saw the AMC Group Mark and thought that the plaintiff had incorporated a new subsidiary. [\[note: 100\]](#) Like Wang, he explained that the confusion was due to the similarity in the marks. [\[note: 101\]](#) He also added that because of the distinctiveness of "amc" as well as the similarity in the font type and style, the addition of "live" would not make a difference in his mind. [\[note: 102\]](#) The defendant submits that Kager's evidence has limited value given that he had not adequately explained or provided any corroborative evidence as to why he would be confused. [\[note: 103\]](#) I do not agree. Kager's evidence is clear, and the fact that he is a self-proclaimed "brand fanatic" does not mean that he would not be confused by the Defendant's Marks. It might well mean that even a person who pays close attention to marks in general would be confused by the Defendant's Marks given their similarity to the AMC Asia Mark.

105 Ang Chun Heng ("Ang"), the sales coordinator of Shotech Press Pte Ltd, one of the plaintiff's suppliers, also testified that he thought that the plaintiff had incorporated a new subsidiary when he saw the AMC Group Mark. [\[note: 104\]](#) The defendant contends that Ang's evidence has limited value because he had not exhibited any evidence in his AEIC. [\[note: 105\]](#) Again, I find the defendant's contention to be without merit; the question of confusion relates to the state of mind of the witness and no objective evidence is necessary to establish that. Moreover, there is no need to show that Ang had acted upon his confusion (see *Hai Tong* at [101]) to establish the likelihood of confusion.

106 Lyndsey Lam Yenn Jinn ("Lam"), the senior manager of EMC International SARL, who was one of the plaintiff's clients, testified that he heard the radio advertisement for a concert said to be presented by "amc live" and thought that it was organised by the plaintiff. [\[note: 106\]](#) He was surprised when he heard the advertisement and wondered if the plaintiff went into organising concerts. [\[note: 107\]](#) He called Bernard Oh ("Oh"), the chief executive officer of the plaintiff, to check and found out that it was not the plaintiff. [\[note: 108\]](#) He explained that there is a likelihood of confusion given the similarity of the marks. [\[note: 109\]](#) The defendant challenged the evidence of Lam on the basis that his confusion was ultimately dispelled and that he had only provided bare assertions. [\[note: 110\]](#) However, the defendant's contention is misplaced. The fact that Lam's confusion was eventually cleared because he was able to check with Oh did not mean that there was no likelihood of confusion in relation to the average consumer.

107 Chong Yuen Hwa ("Chong"), the director of Dezin Format Pte Ltd, one of the plaintiff's suppliers, testified that he was confused by the AMC Group Mark and thought that the plaintiff had incorporated a new subsidiary. [\[note: 111\]](#) This was because the marks were similar, and the words



"Group China" and the microphone device did not indicate to him that it was a different, unrelated entity. [\[note: 112\]](#) The defendant submits that Chong's evidence should be given little weight in light of the inconsistencies. [\[note: 113\]](#) In particular, the defendant highlights that Chong had said that he would not be confused if he knows the nature of the company's business, and that he said he would not be confused by the words "AMC LIVE HOUSE". [\[note: 114\]](#) It is difficult to see where the inconsistency lies. Chong was shown the picture of a sign with "amc" and "Arcon Marketing Communications" written below that. [\[note: 115\]](#) He said that he was not confused as he knew that it was a different company doing "design and exhibition". [\[note: 116\]](#) He also testified that if the mark reads "AMC Renovation" or "AMC Investment" he would not be confused. [\[note: 117\]](#) Thereafter, he was asked if the words "AMC LIVE HOUSE" is confusing, and he said no because he knew that the defendant is a concert and events management planning company. [\[note: 118\]](#) It appears that the evidence of Chong was relatively consistent and truthful. He is merely saying that he is not confused given that he had found out that the defendant is actually a different, unrelated entity.

108 At this juncture, I should deal with the defendant's point about the doctrine of initial interest confusion. The defendant argues that the witnesses are aware of the plaintiff and the Plaintiff's Marks such that there would not be any confusion "at least beyond any initial and preliminary confusion". [\[note: 119\]](#) Having said that, the defendant points to *Staywell* where the Court of Appeal rejected the doctrine of initial interest confusion. [\[note: 120\]](#) In my view, the defendant's contention is misconceived. Undoubtedly, the witnesses would have checked with the plaintiff and therefore dispelled their confusion. This must be the case; otherwise, they would not be giving evidence in court on behalf of the plaintiff. However, this has absolutely no bearing on the question of whether there is a likelihood of confusion, which must be assessed based on the average consumer.

109 I should also address the defendant's point that the plaintiff had not led any impartial evidence showing any likelihood of confusion. [\[note: 121\]](#) In particular, the defendant points out that the plaintiff had not adduced any survey evidence. [\[note: 122\]](#) However, there is no reason why the absence of survey evidence should necessarily mean that there cannot be a finding of likelihood of confusion. In *Hai Tong* at [100], the Court of Appeal noted that absence of evidence of actual confusion should not be accorded undue significance. The same applies for survey evidence. There are various reasons why a trade mark proprietor might not have obtained survey evidence and some of them are perfectly justified, *eg*, costs. It would be quite different if it is a case where a survey was done but was not adduced as evidence before the court because of the results.

110 I therefore consider that the evidence of the witnesses, which has not been undermined by the defendant's unmeritorious objections, support the finding that there is a likelihood of confusion and so hold.

#### **Issue 4: Defences**

111 The defendant claims that it is entitled to rely on two defences against the plaintiff's claim of trade mark infringement, namely:

- (a) the prior use defence under s 28(2) of the TMA; and
- (b) the own name defence under s 28(1)(a) of the TMA.

#### ***Prior use defence***

112 I begin with the prior use defence. Section 28(2) of the TMA states as follows:

Notwithstanding section 27, a person does not infringe a registered trade mark by using an unregistered trade mark that is identical with or similar to the registered trade mark in relation to goods or services identical with or similar to those for which the trade mark is registered if he, or he and his predecessor in title, have continuously used in the course of trade the unregistered trade mark in relation to those goods or services from a time before —

(a) the date of registration of the registered trade mark; or

(b) the date the proprietor of the registered trade mark, or a predecessor in title, or a person who was a registered user of the trade mark under the repealed Act, first used the trade mark,

whichever is the earlier.

113 The defendant argues that it had, through its predecessors and Leong, used the AMC Group Mark as early as 2008. [\[note: 123\]](#) The defendant claims that it had therefore used the allegedly infringing mark before the date of registration of the AMC Asia Mark (*ie*, 31 August 2012), as well as the date of the plaintiff's first use of the AMC Asia Mark. [\[note: 124\]](#) The defendant also claims that because the AMC Live Mark is "merely an update" of the AMC Group Mark, the prior use defence would apply to the AMC Live Mark as well. [\[note: 125\]](#) The plaintiff, on the other hand, claims that the defendant had not used the Defendant's Marks before the plaintiff's first use of the AMC Asia Mark. [\[note: 126\]](#)

114 To begin, it should be pointed out that only the use of the marks in Singapore would be relevant for the purpose of the prior use defence. In *Subway*, Prakash J considered at [59] that the proprietor's use of the trade mark prior to registration must have been used in Singapore:

... With regard to s 28(2)(b), some consider it unclear if "the date the proprietor ... first used the trade mark" refers to (a) first use of the trade mark *in Singapore* or (b) first use of the trade mark *generally*. As the purpose of the Act is to provide trade mark protection in Singapore for marks which are registered under the Act, it appears to me to be clear that s 28(2)(b) contemplates *local* use of the trade mark. Accordingly, the date referred to must be first use of the trade mark in Singapore. ...

115 Further, the Court of Appeal in *Future Enterprises Pte Ltd v McDonald's Corp* [2007] 2 SLR(R) 845 ("*Future Enterprises*") implicitly accepted at [11] that the use of the allegedly infringing mark must also be in Singapore:

Before discussing the merits of the appellant's contentions, there is a threshold question as to whether the appellant had in fact acquired the right to the use of the unregistered "MacCoffee" mark for instant coffee mix. The appellant relied on two arguments to establish this right. First, the appellant argued that it had been selling instant coffee mix abroad and in Singapore for many years, but principally abroad, and that it had extensively advertised such sales, as confirmed by the documentary evidence produced. A perusal of the documentary evidence revealed that the advertisements in question related primarily to marketing efforts in Russia and other East European countries, a substantial percentage of which highlighted the composite mark rather than the word mark. Moreover, it is pertinent to note that the appellant's motivation for using the eagle device as part of its marketing strategy was to convey the impression of a "sophisticated, western, capitalistic 'American' taste". *In relation to its alleged use in Singapore, we are of the*

*view that the appellant's adduced invoices are insufficient to surmount the threshold of proving use of the word mark "MacCoffee" in relation to instant coffee mix in Singapore during the material period so as to entitle it to protection on the basis of prior use. [emphasis added]*

116 Bearing this in mind, I proceed to consider the evidence of the use of the respective marks in question, starting with the AMC Asia Mark.

117 The AMC Asia Mark was registered on 31 August 2012. As such, only use of the AMC Asia Mark before 31 August 2012 would be relevant for the present purpose. The plaintiff submits that the AMC Asia Mark was first used in 2009. [\[note: 127\]](#) As mentioned earlier (see [6] above), there is some doubt over the date on which the plaintiff first used the AMC Asia Mark. In its statement of claim, the plaintiff states that it had used the AMC Asia Mark since 2009. [\[note: 128\]](#) This was supported by Oh's evidence in his AEIC. [\[note: 129\]](#) However, the plaintiff stated in its answer to the defendant's first request for further and better particulars ("F&BP") that the date was wrong and it should have been January 2011 instead. [\[note: 130\]](#) It was also stated that the statement of claim would be amended to reflect this. [\[note: 131\]](#) No such amendment was made. When Oh was cross-examined on this point, he insisted that the date of first use was 2009, and that he was unaware of the change in the answer to the F&BP. [\[note: 132\]](#)

118 On the evidence, however, the plaintiff could only prove that the AMC Asia Mark was first used on 1 July 2011. [\[note: 133\]](#) I note that Oh had failed to produce tax invoices (which would show the plaintiff's trade mark in use at that period of time) for 2009 and 2010, even though he had exhibited tax invoices from 2005 to 2008 as well as 2011. [\[note: 134\]](#) In fact, the plaintiff had not adduced *any* documentary evidence to show the use of the AMC Asia Mark in 2009 and 2010. [\[note: 135\]](#) As such, I find that the plaintiff's first use of the AMC Asia Mark was on 1 July 2011.

119 As between the date of registration (*ie*, 31 August 2012) and the date of the plaintiff's first use (*ie*, 1 July 2011), the latter is earlier. Hence, for the defendant to rely on the prior use defence, it will have to show that it had used the AMC Group Mark as well as its trading name and domain name before 1 July 2011.

120 The defendant was incorporated on 20 January 2012, and thus could not have used the AMC Group Mark before that. Leong accepts this. [\[note: 136\]](#) However, the defendant claims that the AMC Group Mark had been used by its predecessors. [\[note: 137\]](#) Specifically, the defendant identified two concerts where the AMC Group Mark was used prior to 2012. [\[note: 138\]](#)

121 The first concert is the "onelove the music festival" in 2008. [\[note: 139\]](#) The plaintiff produced a poster which was supposedly used to promote the concert. [\[note: 140\]](#) The poster shows a variant of the AMC Group Mark without the words "AMC Group China" to the right. [\[note: 141\]](#) Two points are worth noting here. First, the event was held in Chengdu, China and not Singapore. [\[note: 142\]](#) Second, the AMC Group Mark was *not* used; only a variant was used. Put simply, the poster does *not* show that the defendant first used the AMC Group Mark in Singapore in 2008.

122 For completeness, I should comment that there is a dispute over the authenticity of the poster exhibited in Leong's AEIC. During the hearing, the defendant tendered another version of what appears to be the same poster, except that the variant of the AMC Group Mark is replaced by a mark that reads "The Concept Company" ("the TCC Mark"). [\[note: 143\]](#) Leong explained on cross-

examination that he was previously operating under the name The Concept Company, [\[note: 144\]](#) and that while the poster initially used the TCC Mark, it was later changed to reflect the variant of the AMC Group Mark when Betty Yap gave him the first draft. [\[note: 145\]](#) I note that The Concept Company is listed as one of the “event organizers”. [\[note: 146\]](#) It is odd that Leong would change the TCC Mark to the variant of the AMC Group Mark and keep the name listed under “event organizers” as The Concept Company. However, this is immaterial given that the poster does not show that the AMC Group Mark was used in Singapore in 2008 (at [121]).

123 The second concert is Stephanie Sun’s “The Answer Is ...” concert in 2009. [\[note: 147\]](#) The poster exhibited in Leong’s AEIC clearly shows that the concert was held in Chengdu, China. [\[note: 148\]](#) In addition, the poster also shows a variant of the AMC Group Mark without the words “AMC Group China” to the right. [\[note: 149\]](#) Accordingly, the poster also does not show that the defendant had first used the AMC Group Mark in Singapore in 2009.

124 The defendant also produced documents such as the Contract Services Agreements with Silk Air (Singapore) Pte Ltd and Overseas Ticketing Partnership Agreement with Singapore GP Pte Ltd, [\[note: 150\]](#) but they do not show that the defendant had used the AMC Group Mark in Singapore before 2011. In *Future Enterprises* at [11], the Court of Appeal found that the invoices adduced were insufficient to “surmount the threshold of proving use” so as to constitute prior use defence. I find that the same applies here as well.

125 It appears from the evidence that the AMC Group Mark was first used in Singapore only in 2012. [\[note: 151\]](#) In particular, the evidence shows that the AMC Group Mark was first used in relation to the Sandy Lam Concert held on 6 April 2012, [\[note: 152\]](#) as well as the promotional activities on 4 February 2012. [\[note: 153\]](#)

126 Since the defendant is unable to show that it had used the AMC Group Mark before 1 July 2011, which is the date on which the plaintiff first used the AMC Asia Mark, it follows that the defendant would not be entitled to rely on the prior use defence under s 28(2) of the TMA in relation to the use of the AMC Group Mark.

127 As for the use of its trading name (*ie*, “amc”, “AMC” or “AMC Group China”) and domain name, there is no evidence that they have been used in Singapore prior to 2012 as well. It follows that the defendant would likewise not be entitled to rely on the prior use defence under s 28(2) of the TMA in relation to the use of the trading name and domain name.

#### *Own name defence*

128 I move on to the defendant’s second defence. Section 28(1)(a) of the TMA states:

**28.—**(1) Notwithstanding section 27, a person does not infringe a registered trade mark when —

(a) he uses —

(i) his name or the name of his place of business; or

(ii) the name of his predecessor in business or the name of his predecessor’s place of business;

...

and such use is in accordance with honest practices in industrial or commercial matters.

129 The defendant submits that the Defendant's Marks were conceived and used to reflect its name and this was done in accordance with honest practices in commercial matters. [\[note: 154\]](#) The plaintiff contends that the defendant was not using the Defendant's Marks in accordance with honest practices in industrial or commercial matters. [\[note: 155\]](#)

130 This defence gives rise to three issues in the present case, namely:

- (a) Whether the defence extends to use of the name as a trade mark?
- (b) Whether the defence extends to use of a company's name, and if so, whether it extends to the use of the full corporate name or the name in which the company is commonly known to the public?
- (c) Whether the threshold requirement (*ie*, that the use is in accordance with honest practices in industrial or commercial matters) can be established?

(1) Use of name as a trade mark

131 The last point is whether s 28(1)(a) of the TMA applies to the use of one's own name as a trade mark.

132 I start by observing that the plain language of s 28(1) of the TMA does not state that it allows the use of a name as a trade mark. This can be contrasted with s 28(2) of the TMA which specifically states that "a person does not infringe a registered trade mark *by using an unregistered trade mark ...*" However, in my view, the lack of specificity on the possible uses under s 28(1) is neutral and capable of a wide reading to encompass not only use as an unregistered trade mark but other uses. A similar view is expressed in Susanna H S Leong, *Intellectual Property Law of Singapore* (Academy Publishing, 2013) ("*Susanna Leong*") at para 29.063.

133 The English courts take a broad reading of the own name defence as well. In *Reed Executive plc v Reed Business Information Ltd* [2004] RPC 40 ("*Reed*"), the English Court of Appeal considered at [125] that:

... it would make no sense to exclude trade mark use from the own name defence. For when a man uses his name in connection with his goods or services he *is* using it as a trademark—to tell you "This comes from me—John Doe". Sometimes people think that use of a name on goods or for services is not use as a trade mark. They contrast use as a trade mark with use "just as a name". But use of a name in connection with goods or services, even in small print, *is* trade mark use, though not of the upfront in-your-face kind the subject of vast advertising spend.

134 In my view, this should not prevent a company from raising s 28(1)(a) of the TMA as a defence (assuming the requirements are met).

(2) Use of a company's name

135 In order to avail itself to the own name defence, the defendant must first show that the defence extends to the use of a company's name, as opposed to a natural person's name. There is no

local authority directly on point. However in my opinion, there are good reasons why the defence should extend to the use of a company's name. The language used in s 28(1)(a) of the TMA is wide enough to cover the use of a company's name. Further, the Court of Appeal in *Rainforest Coffee Products Pte Ltd v Rainforest Café, Inc* [2000] 1 SLR(R) 725 ("*Rainforest*") at [51]–[55] proceeded on the basis that the *bona fide* use of name defence was available to a company under the s 52(a) of the Trade Marks Act (Cap 332, 1992 Rev Ed) ("TMA 1992") (see Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, Rev Ed, 2009) ("*Ng-Loy*") at paras 24.1.3–24.1.4 for a discussion). In the same vein, the English cases have held that the defence under s 11(2)(a) of the UK Trade Marks Act 1994 (c 26)(UK) ("UK TMA 1994") (which is in *pari materia* with s 28(1)(a) of the TMA) extends to companies: see, eg, *Scandecor Development AB v Scandecor Marketing AB* [2002] FSR 7 at [54]; *Euromarket Designs Inc v Peters and Crate & Barrel Ltd* [2001] FSR 288 ("*Euromarket*") at [30]; *Reed* at [116]. In addition, common sense would dictate that s 28(1)(a) of the TMA be construed as extending to companies. As explained by Jacob J in *Euromarket* at [31]:

There is good reason in some circumstances to give immunity to company names used in accordance with honest practices. A company may well have built up a business honestly under its name. It is then rather stuck with its name in a similar way as an individual is stuck with his. For a registration to interfere with the use of that name in those circumstances would be a strong thing. It might well involve destruction of goodwill. English law regards goodwill as property. So do most businessmen. It is unlikely that the goodwill in a personal name would be protected but not that of a company, assuming of course that in both cases that the use is in accordance with honest practices.

136 The learned author in *Susanna Leong* at para 29.057 takes the same view and said:

... There appears no sensible reason why the "own name defence" should not also apply to the names of a company or a firm and in fact, English courts have pointed out that there are good reasons to extend the "own name defence" to company names which are used in accordance with honest practices.

Just as an individual may have honestly built up a business and the goodwill associated with the business, a company may also have expended substantial resources to build up its own goodwill and business. There does not appear any logical distinction between goodwill in a personal name and goodwill in a company name and both deserve equal protection in law. In the author's view, the extension of the "own name defence" to companies and associations accords with common sense and should be supported.

137 The next question is whether the defence only applies to the registered corporate name (with or without the words "Pte Ltd") or the trading name by which it is commonly known to its customers.

138 I start with the English cases. *Euromarket* dealt with s 11(2)(a) of the UK TMA 1994. In that case, the second defendant is an Irish company by the name of Crate & Barrel Ltd. It operated a store called "Crate & Barrel" in Dublin. The plaintiff, who operates a successful chain of stores under the registered trade mark "Crate & Barrel" in the United States commenced infringement proceedings against the second defendant. Jacob J considered at [39] that the omission of the word "Ltd" would not prevent the second defendant from relying on the defence.

139 Subsequently, Jacob LJ reiterated in *Reed* at [115] that "it matters not that the word 'Ltd' or some other indication of incorporation is added".

140 *Asprey and Garrard Ltd v WRA (Guns) Ltd (t/a William R Asprey Esquire)* [2002] FSR 31

("Asprey and Garrard") was a case concerning the family name "Asprey". The plaintiff was formed by the merger of Asprey Ltd, a family run company, and Garrard Ltd. As a result, it became the registered proprietor of the trade mark "ASPREY". William Asprey was a member of the Asprey family who, after the takeover of Asprey Ltd by Garrard Ltd, left to start WRA (Guns) Ltd. Among other things, the defendant had the full name "William R Asprey, Esquire" running across the top of the store. The plaintiff sued for trade mark infringement. The Court of Appeal held at [42] that the defendant's own name was WRA (Guns) Ltd and the fact that it had chosen to adopt the trading name of William R Asprey, Esquire did not entitle it to rely on the own name defence. However, the Court of Appeal went on to explain at [43] that, *inter alia*, a trade name other than the company's own name, newly adopted by the company, cannot entitle the company to the own name defence as it would otherwise be a route to piracy.

141 A few months later, Chadwick LJ, who was on the bench of *Asprey and Garrard*, delivered the judgment for another appeal which concerns, *inter alia*, the own name defence. In *Premier Luggage and Bags Ltd v Premier Company (UK) Ltd* [2003] FSR 5 ("*Premier Luggage*"), the plaintiff was a supplier of luggage and travel goods using "Premier" as a brand name. It was the registered proprietor of the trade mark "PREMIER". The defendant was formerly a dormant subsidiary of Premier plc, a company owned or controlled by the Mahtani family. It was acquired by Mr Mahtani and others, with the intention of using it as a vehicle for importing luggage and travel goods so as to tap on the established connections and reputation of his family company. The plaintiff commenced proceedings against the defendant for, *inter alia*, infringing the "PREMIER" trade mark. Chadwick LJ held at [44] that the own name defence did not apply:

That cannot be said in relation to the self-introduction by sales staff as being from "Premier", or from "Premier Luggage" or "Premier Luggage Company". The own name defence provided by s.11(2)(a) is not available because the name used was not the name "The Premier Company (UK) Limited"; it was an abbreviation or adaption of that name.

142 *Asprey and Garrard* and *Premier Luggage* appear to refuse to extend the own name defence to cover trading name. However, these two cases must now be read in light of the decision of the English Court of Appeal in *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2010] RPC 16 ("*Cipriani*").

143 In *Cipriani*, the first defendant had used its trading name "Cipriani London" or "Cipriani" instead of its registered corporate name, and wanted to rely on the own name defence. Lloyd LJ, with whom Stanley Burnton and Jacob LJ agreed, held at [72] that the own name defence may be available in respect of a trading name as well as the registered corporate name of a company, but added that "it will depend on (a) what the trading name is that has been adopted, (b) in what circumstances it has been adopted and (c), depending on the relevant circumstances, whether the use is in accordance with honest practices". Lloyd LJ also explained why *Asprey and Garrard* and *Premier Luggage* do not stand for the proposition that a trading name cannot fall with the own name defence. In particular, he observed at [64]–[66] that:

64 Mr Purvis Q.C., for the respondents, submitted that these two decisions, both of which are binding on us, show that the only phrase for which the first defendant could avail itself of the own name defence is "Cipriani Grosvenor Street", because anything else is not the name of the company. Arnold J. held that the own name defence was not available to a company in respect of any name other than its true corporate name, and that a trade name would not qualify for this purpose.

65 The *Premier Luggage* case decided that The Premier Company (UK) Ltd could not use

Premier, Premier Luggage or the Premier Luggage Company with impunity under s.11(1)(a) because these were abbreviations or adaptations of the company's name. *There was no indication that it had adopted any of these words or phrases as a trading name, in the way in which WRA (Guns) Ltd had adopted the trading name William R. Asprey Esq. It was not a case of a company which had both a formal name and a separate trading name, and sought to use the latter rather than the former.* Therefore it does not seem to me that this case is authority to the effect that a company which does have a separate trading name cannot defend the use of that under s.11(1)(a) or, in the case of the CTMR, Art.12(a).

66 In *Asprey & Garrard*, however, the question did arise of a separate trading name, adopted by a newly formed company so as to be applied to a new business. Mr Purvis' submission is that Peter Gibson L.J.'s words in his para.49 (see para.[61] above) amount to a decision that a company can only rely on the defence in respect of its correct corporate name. I do not agree that the decision goes so far as that. I note that in para.43, also quoted above, Peter Gibson L.J. said that a trade name "newly adopted by a company" would not suffice. *That suggests that if the company's trade name had not been newly adopted, but had been used in business for some time, the defence might be available. If so, the rule that a company can only rely on its corporate name is not absolute. It seems to me that this is, and ought to be, correct.* By comparison, in principle an individual ought to be able to use the defence in relation to an adopted name by which he or she is known for business purposes or generally, for example an actor's stage name or a writer's nom de plume. That being so, I find it difficult to see why a corporate entity should not be able to do so, if it can show that it uses a distinct name for trading purposes. To take one example, a company, even a newly formed company, might acquire an existing business carried on under a trade name and wish to carry it on under the same name. I do not see why it should not do so, nor why, if it did so, that trading name should not be eligible for the protection of Art.12(a).

[emphasis added]

144 From the above cases, it is clear that the English position is that a company is entitled to rely on either its registered corporate name (without the indications of incorporation like "Ltd" or "Pte Ltd") or its trading name as a defence to trade mark infringement.

145 The Singapore courts have not yet had the chance to address s 28(1)(a) of the TMA. Nevertheless, I should mention the Court of Appeal decision in *Rainforest*. As mentioned earlier, *Rainforest* concerned s 52(a) of the TMA 1992, which reads:

No registration of a trade mark shall interfere with—(a) any bona fide use by a person of his own name or of the name of his place of business, or of the name or of the name of the place of business, of any of his predecessors in business; ...

146 The Court of Appeal in *Rainforest* considered at [54] in relation to s 52(a) of the TMA 1992 that only the full corporate name would suffice. At this juncture, it is pertinent to consider the English treatment of s 8(a) of the UK Trade Marks Act 1938 (c 22)(UK), which is *in pari materia* with s 52(a) of the TMA 1992. Laddie J in *Mercury Communications Ltd v Mercury Interactive (UK) Ltd* [1995] FSR 850 ("*Mercury*") at 861–862 opined that a company might be entitled to raise the own name defence if it was generally known by a name, which is not its registered corporate name. Regrettably, the Court of Appeal in *Rainforest* was not referred to Laddie J's views in *Mercury*. In any event, *Rainforest* deals with s 52(a) of the TMA 1992 and not s 28(1)(a) of the TMA. Therefore it can be distinguished.



147 In relation to s 28(1)(a) of the TMA, I accept that the scope of the defence extends not only to its registered corporate name (without the indications of incorporation like "Ltd" or "Pte Ltd") but also its trading name. However, in the latter situation, the courts must not only decide if the use was "in accordance with honest practices" but also the nature of the trading name as well as the circumstances under which it was adopted.

148 In the present case, Leong gave evidence that the AMC Group Mark, which later became its registered corporate name when the defendant was incorporated in 2012, was independently conceived based on the idea of "A Music Company". [\[note: 156\]](#) Given that its corporate name was formerly "AMC Group China (S) Pte Ltd", it was natural for the defendant to use "amc", "AMC" and "AMC Group" as its trading name. The same applies when the defendant changed its name to "AMC Live Group China (S) Pte Ltd".

149 The plaintiff tried to cast doubts on the *bona fides* of the defendant's choice of name and suggested that it was trying to ride on the success of the plaintiff. [\[note: 157\]](#) However, there is no evidence to support this. There was evidence adduced to show that the acronym "amc" is used by a number of companies in Singapore. [\[note: 158\]](#) The fact that the defendant (and its predecessors) had chosen "amc" as its trading name does not, in itself, link that choice to the plaintiff. The plaintiff also suggested that it is strange that the name "amc" did not correspond with the registered corporate name of the defendant's predecessor. [\[note: 159\]](#) However, this does not advance the plaintiff's case as well. A company may not necessarily operate with a trading name that is consistent with its registered corporate name. It is also not unusual for Leong to decide to incorporate the defendant in Singapore with a name that corresponds to its predecessors' trading name. Pertinently, I note that Peng Jiaen Joshua ("Peng"), the private investigator engaged by the plaintiff, stated in his report his encounter with one of the defendant's staff, who recounted to Peng that Leong came up with the name "amc", which stands for "A Music Company", because they are in the concert business. [\[note: 160\]](#) This was on 1 November 2012, [\[note: 161\]](#) prior to the filing of the statement of claim (on 26 July 2013). This evidence contradicts the plaintiff's assertion. I therefore find that the defendant's choice of name was *bona fide*.

### (3) Use in accordance with honest practices

150 I move on to the requirement under s 28(1)(a) of the TMA that the use of the company's own name is "in accordance with honest practices in industrial or commercial matters".

151 As mentioned earlier, there are no cases on s 28(1)(a) of the TMA. However, the English cases on the equivalent of the own name defence under s 11(2)(a) of the UK TMA 1994 are helpful. This is particularly so given that the English (as well as the European) position also requires that the use is "in accordance with honest practices in industrial or commercial matters".

152 The test set out in s 28(1)(a) of the TMA is an objective one, see: *Reed* at [131]–[132]; see also *Susanna Leong* at para 29.087. The learned authors of *Kerly* at para 15-006 gave the following formulation of the test in the UK:

... would reasonable members of the trade concerned say, upon knowing all the relevant facts that the defendant knew, that the use complained of is honest? Although somewhat simplistic, there is much to be said for this approach, as long as all relevant factors are taken into account.

153 Arnold J in *Samuel Smith Old Brewery (Tadcaster) v Lee (t/a Cropton Brewery)* [2012] FSR 7

at [114]–[120] helpfully summarised the English and European position as follows:

114 First, the requirement to act in accordance with honest practices in industrial or commercial matters “constitutes in substance the expression of a duty to act fairly in relation to the legitimate interests of the trade mark proprietor ...

115 Secondly, the court should “carry out an overall assessment of all the relevant circumstances”, and in particular should assess whether the defendant “can be regarded as unfairly competing with the proprietor of the trade mark” ...

116 Thirdly, an important factor is whether the use of the sign complained of either gives rise to consumer deception or takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark. If it does, it is unlikely to qualify as being in accordance with honest practices ...

117 Fourthly, a mere likelihood of confusion will not disqualify the use from being in accordance with honest practices if there is a good reason why such a likelihood of confusion should be tolerated. ...

118 In applying these principles in [*Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd*] [2008] EWHC 3032 (Ch) , [*Och-Ziff Management Europe Ltd v Och Capital LLP*] [2011] F.S.R. 11 and [*Datacard Corp v Eagle Technologies Ltd*] [2011] R.P.C. 17 , it can be seen that I have treated the following factors as material:

- i) whether the defendant knew of the existence of the trade mark, and if not whether it would have been reasonable for it to conduct a search;
- ii) whether the defendant used the sign complained of in reliance on competent legal advice based on proper instructions;
- iii) the nature of the use complained of, and in particular the extent to which it is used as a trade mark for the defendant’s goods or services;
- iv) whether the defendant knew that the trade mark owner objected to the use of the sign complained of, or at least should have appreciated that there was a likelihood that the owner would object;
- v) whether the defendant knew, or should have appreciated, that there was a likelihood of confusion;
- vi) whether there has been actual confusion, and if so whether the defendant knew this;
- vii) whether the trade mark has a reputation, and if so whether the defendant knew this and whether the defendant knew, or at least should have appreciated, that the reputation of the trade mark would be adversely affected;
- viii) whether the defendant’s use of the sign complained of interferes with the owner’s ability to exploit the trade mark;
- ix) whether the defendant has a sufficient justification for using the sign complained of; and
- x) the timing of the complaint from the trade mark owner.

119 I do not intend to suggest that this list is exhaustive. In other cases there may be other factors that are also relevant. An issue which arises in this case is whether it is material that the defendant had infringed, or at least acted in disregard of, third party intellectual property rights. Counsel for Samuel Smith submitted that it was. ...

120 I do not accept this. In *CA Sheimer (M) Sdn Bhd's Trade Mark Application* [2000] E.T.M.R. 1170 (Note); [2000] R.P.C. 484 at 500 Geoffrey Hobbs QC sitting as the Appointed Person said

"I do not think that section 3(6) [of the Trade Marks Act 1994] requires applicants to submit to an open-ended assessment of their commercial morality..." .

Likewise I do not consider that the proviso to art.6(1) requires defendants to submit to an open-ended assessment of their commercial morality. On the contrary, the Court of Justice has made it clear that the focus of the enquiry is whether the defendant has acted fairly in relation to the trade mark owner. ...

154 Two points are worth elaborating upon. First, the defence may apply even if there is a likelihood of confusion, but the extent to which it would be tolerated is a matter of degree. It may be relevant to consider if the defendant has set out to cause confusion or taken reasonable steps to avoid confusion: *Kerly* at para 15-010. In *Gillette Co, Gillette Finland Co OY v LA-Laboratories Ltd OY* (C-228/03) [2005] ETMR 67 ("*Gillette*"), the CJEU noted at [46] that, in deciding if the use was in accordance with honest practices, the court should take into account, *inter alia*, the circumstances in which a distinction is made between the marks of the parties, and the efforts to ensure that consumers can distinguish between the products of the parties. Second, the court must also take into account the strength of the plaintiff's trade mark and the extent to which the defendant ought to have been aware of that: *Kerly* at para 15-007.

155 It might also be helpful to consider use of a trade mark which would *not* be in accordance with honest practices in industrial or commercial matters. Some examples were given by the CJEU in *Gillette* at [49]:

- (a) It is done in such a manner as to give the impression that there is a commercial connection between the third party and the trade mark owner.
- (b) It affects the value of the trade mark by taking unfair advantage of its distinctive character or repute.
- (c) It entails the discrediting or denigration of that mark.
- (d) Where the third party presents its product as an imitation or replica of the product bearing the trade mark of which it is not the owner.

156 In its submissions, the plaintiff contends that a company trading under a newly adopted trading name which conflicts with a registered trade mark cannot rely on the own name defence. [\[note: 162\]](#) In this regard, the plaintiff points out that it has been trading since 1995, whereas the defendant was only incorporated in 2012. [\[note: 163\]](#) However, the plaintiff's argument is flawed. The plaintiff's argument is premised on *Cipriani*. In that case, Lloyd LJ explained at [66]–[67] that a company cannot rely on the own name defence to justify using a newly adopted trading name which conflicted with a registered trade mark. Here, the AMC Asia Mark was only registered on 31 August 2012, at which time the defendant was already incorporated (on 20 January 2012). Furthermore, the

defendant had, through its predecessor, used the AMC Group Mark (which reflects its name) as early as 2011. In other words, the defendant's trading name was not adopted in order to circumvent the Plaintiff's Marks (which was registered *after* the defendant adopted its trading name). It follows that the present facts do not fall within the circumstances envisaged by Lloyd LJ in *Cipriani*.

157 This is an unusual case. Both parties decided to use the same acronym "amc", with certain suffixes, as their trading name. There is evidence that "amc" was a common acronym in Singapore. There is no evidence that they knew that each other existed when they first decided to use "amc". It naturally follows that the defendant did not know that the use of "amc" might be a source of confusion (as well as a confusion of source). The plaintiff started in Singapore and expanded into the region, whereas the defendant began in China and expanded to, *inter alia*, Singapore. The plaintiff started with events management and has plans to go into organising concerts, while the defendant started with concerts and appears to have expanded into events management (at least in China). On hindsight, it is clear that the parties were set on a collision course and they eventually did in 2012. The plaintiff started using the AMC Asia Mark on 1 July 2011 and applied for registration (which was approved) on 31 August 2012. At the start of 2012, the defendant was also using its trading name, domain name and AMC Group Mark in Singapore. The defendant tried to register the AMC Group Mark in February 2012 (which was earlier than the plaintiff's date of registration) but this is pending as a result of the plaintiff's opposition.

158 On the facts, I find that the defendant had acted in accordance with honest practice in industrial or commercial matters because:

- (a) The defendant started using the "amc" name, domain name and the AMC Group Mark in Singapore around the same time that the plaintiff started using the AMC Asia Mark.
- (b) The defendant started using the "amc" name, domain name and the AMC Group Mark in Singapore well before the AMC Asia Mark was registered.
- (c) The defendant did not know about the existence of the plaintiff at the material time.
- (d) The defendant did not know that there was a likelihood of confusion.
- (e) The defendant had not provided events management services (which is the plaintiff's field of business) under the "amc" name or the Defendant's Marks in Singapore.
- (f) The fact that they both decided to use a common acronym "amc" as their trading name, albeit with different suffixes, is a good reason why the likelihood of confusion should be tolerated.
- (g) The defendant undertook a rebranding of the company (including its name, domain name and trade mark) which appears to be an attempt to avoid any confusion.

In these circumstances, I find that reasonable members of the trade would conclude that the defendant's use of its trading name, domain name as well as the Defendant Marks was honest.

159 Accordingly, I find that the defendant is entitled to rely on the own name defence under s 28(1)(a) of the TMA.

### **Second claim: Passing off**

160 The plaintiff also brought a claim in passing off. This involves an examination of the classic

trinity of goodwill, misrepresentation and damage, and whether they have been satisfied on the facts. For the reasons that follow, I find that the plaintiff has failed to make out its claim.

### ***Issue 1: Goodwill***

161 The plaintiff's case is that it has acquired goodwill in the "amc" name, the Plaintiff's Marks and the domain name "amcasia.com". [\[note: 164\]](#) In particular, the plaintiff relies on (a) its extensive use, (b) its increasing sales, (c) the awards that it had won and (d) the efforts and expenses that it has put into advertising and promoting its services under the Plaintiff's Marks. [\[note: 165\]](#) The defendant contends that the plaintiff had not adduced sufficient evidence to establish goodwill. [\[note: 166\]](#)

162 The first step is to inquire on the specific sector of the public and the type of business in which goodwill exists.

#### *The specific sector of the public to be considered*

163 While the plaintiff asserts that it has goodwill in the "amc" name, the Plaintiff's Marks, and the "amcasia.com" domain name, it is not clear whether the goodwill existed in the minds of the general public in Singapore, or only a specific section of the public. There is nothing in the pleadings or the submissions on this. In *Novelty Pte Ltd v Amanresorts Ltd and another* [2009] 3 SLR(R) 216 ("Amanresorts") at [41], the Court of Appeal stated that it is important to identify the specific section of the public which the plaintiff claims goodwill exists. This was reiterated by the Court of Appeal in *City Chain* at [74]. The burden lies with the plaintiff to identify the specific section of the public which, it alleges, has goodwill towards its business. The plaintiff in this case failed to do so. On this alone, the plaintiff's claim in passing off should fail.

164 Nevertheless, for completeness, I proceed on the assumption that the plaintiff is contending that goodwill exists amongst Singapore-based companies (which, it appears, form the actual and potential customers of the plaintiff).

#### *The type of business in respect of which goodwill exists*

165 In the present case, the plaintiff avers that the goodwill extends to the events management services, and in particular, the organisation of one or more activities to assist clients in meeting their marketing objectives. [\[note: 167\]](#)

#### *Establishing goodwill*

166 As stated earlier, the plaintiff is relying on its extensive use, sales volume and profits, its efforts at advertising and promoting its services, and the awards that it had won to show that it had acquired goodwill in the words "amc" and "AMC", the Plaintiff's Marks and the "amcasia.com" domain name. However, the plaintiff's claim is not only unsupported by the law, but also not sustained on the evidence.

#### **(1) The "amcasia.com" domain name**

167 There are some doubts as to whether the mere fact that a plaintiff had used its website which features its name and marks would suffice as proof that goodwill exists. As noted by the learned author in *Susanna Leong* at para 35.057:

... the mere existence of domain names and websites featuring the name or mark in which goodwill is asserted would not *per se* be sufficient proof that the name or the mark has gained the requisite exposure for a conclusion that goodwill in fact subsists. Some active steps beyond merely facilitating or enabling others to have access to the name or mark concerned are necessary to establish the existence of an identifiable and sizable customer base on the Internet. A simple and straightforward test suggested is to ascertain the number of "hits" the domain name or website has received and of these "hits" how many originated from internet users situated in the jurisdiction in which goodwill is asserted.

168 A similar view was expressed by V K Rajah JA in *Amanresorts* at [52] and [54]:

52 With regard to the 20 domain names which have been registered for the Respondents' "Aman" websites, no weight should be placed at all on the fact that those domain names were registered here – that is a purely technical matter which does not influence the extent of exposure of the "Aman" names. More importantly, it must be noted that although the Internet has the potential to be used for giving goods, services and businesses instant exposure across the entire world, it does not follow that any small dinky business can set up a website and then claim that it has gained worldwide recognition. The Internet's power of exposure is only a *potential* power. ...

...

54 It follows that evidence of the existence *per se* of domain names and websites featuring the name in which goodwill is said to exist will ordinarily be insufficient as proof of exposure of that name; something in addition to proof of the mere existence of such domain names and websites must be shown in order to establish that there has been sufficient exposure of the name in question. ...

[emphasis in original]

169 It is clear from the above that a plaintiff must adduce evidence apart from the mere existence of the domain name to support its case that there is goodwill. In the present case, the plaintiff had not adduced any evidence apart from the mere existence of the domain name "amcasia.com". This does not advance the plaintiff's case at all.

(2) The Plaintiff's Marks and the "amc" name

170 In *City Chain* at [62], the Court of Appeal reiterated the observation made in *Amanresorts* at [39] that the two essential features of goodwill are that "it is the association of a good, service or business on which the plaintiff's mark, name, labelling, etc ... has been applied with a particular source" and "this association is an 'attractive force which brings in custom'". It explained that proving goodwill is a question of fact, and the relevant factors include advertising, trading, volume of sales and whether it has been registered. The learned author of *Ng-Loy* also explained at paras 17.1.4–17.1.5 that:

Since the test for goodwill focuses on the level of the public's awareness of the plaintiff's mark and association of the mark with the plaintiff's goods or services, *the plaintiff usually discharges his burden of proving goodwill by tendering evidence of his sales volume, and/or the extent and amount of advertisement and media coverage of his business conducted under that mark, and/or market surveys.*

The evidence does not have to show that the public knows the name or identity of the plaintiff as the manufacturer or supplier of these goods of [*sic*] services. For example, if the issue arises as to whether there is goodwill in the *Sprite* soft drink, it is not necessary to show that the public identifies this drink with Fraser & Neave (F&N) Ltd. *It is sufficient if the evidence shows that the public identifies the Sprite drink with a particular business or source which is in fact F&N Ltd.*

[emphasis added]

171 I start with the plaintiff's assertion that there has been extensive use of the Plaintiff's Marks as well as the "amc" name such that it has acquired goodwill in them. The evidence, however, suggests otherwise. The evidence shows that the plaintiff had been using various marks bearing the words "amc!" or "AMC!" since it was incorporated in 2000. [\[note: 168\]](#) However, it had only started using the AMC Asia Mark on 1 July 2011 ([118] above) and the Human Exclamation Mark since 23 May 2006. [\[note: 169\]](#) Further, the Plaintiff's Marks were registered only on 31 August 2012. It also appears from the evidence that the AMC Asia Mark has always been used together with the full corporate name of the plaintiff. [\[note: 170\]](#) Moreover, it appears from the design of the AMC Asia Mark, with the way in which the letter "m" is cut off, that it was intended to be used together with the full name of the plaintiff: [\[note: 171\]](#)

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172 Furthermore, the plaintiff highlights the following factors in its attempt to establish goodwill:

- (a) The plaintiff's revenue and profits from 2008 to 2012 have been healthy, with profit before tax in the region of \$500,000 and \$2.5m. [\[note: 172\]](#)
- (b) The plaintiff had won a number of marketing-related prizes, including the Singapore Prestige Brand Award and the Promotion Marketing Awards of Asia. [\[note: 173\]](#)
- (c) The plaintiff had advertised and promoted its services under and by reference to the AMC Asia Mark and the annual expenditure for the past five years averaged about \$20,000 per annum [\[note: 174\]](#), and that the promotional efforts were "magnified" by the fact that the plaintiff is a marketing company and was able to maximise the money spent. [\[note: 175\]](#)

173 However, the evidence does not support the plaintiff's case.

174 To begin, I note that there is no evidence as to the proportion of the plaintiff's revenue which was generated by customers based in Singapore. The Court of Appeal in *Amanresorts* at [56] explained that sales generated by customers based overseas are entirely irrelevant for the purposes of establishing if there is goodwill in Singapore, and the extent thereof. Oh had given evidence that the plaintiff has business in other countries including Malaysia, Thailand, Hong Kong, Korea and China. [\[note: 176\]](#) Specifically, Oh says that the plaintiff had organised large scale events overseas, such as Hawaii and Bali. [\[note: 177\]](#) Since the plaintiff had not adduced evidence on the proportion of the revenue which was generated in Singapore, it would be difficult to give any weight to it.

175 Next, the plaintiff had not proven that it had spent \$20,000 per annum in the past five years to advertise and promote its services under the AMC Asia Mark. The defendant argues that there is insufficient evidence of sales and/or advertising expenditure to prove that the plaintiff had acquired goodwill. [\[note: 178\]](#) In particular, the defendant points out that even though Oh had claimed that the promotional efforts were “magnified” by the fact that the plaintiff is a marketing company, he was unable to give a specific figure on how much more an ordinary company would have to spend to achieve the same results. [\[note: 179\]](#) However, the real issue, it appears to me, is more fundamental than that, namely, that the plaintiff had failed to adduce evidence to show that it had actually spent any money on advertising and promotions. There is no evidence, apart from Oh’s bare assertion in his AEIC, that the money was spent and that the advertisements and promotions were done. At the hearing, Oh accepted that he had not produced any documentary evidence to show that the plaintiff had expended \$20,000 per year on advertising and promotions. [\[note: 180\]](#) This was notwithstanding that he insisted that he had those documents. [\[note: 181\]](#) I therefore find that the plaintiff had not proved that it had expended \$20,000 per year on advertising and promotional efforts.

176 As for the numerous marketing-related awards won by the plaintiff, the defendant submits that the awards were not in relation to the Plaintiff’s Marks. [\[note: 182\]](#) However, the defendant is missing the point. The marks *per se* do not need to be award-winning in order for there to be goodwill. In my view, the difficulty lies with the fact that most of the awards identified the plaintiff as “amc asia!” or “amcasia!” (which is different from the plaintiff’s AMC Asia Mark which reads “amc!asia”). Significantly, *none* of the awards actually identify the plaintiff as either “amc” or “AMC”.

177 On the evidence before me, I find that the plaintiff had failed to prove that it has the goodwill for its claim in passing off.

## ***Issue 2: Misrepresentation***

178 The plaintiff’s case is that the misrepresentation is such that “the defendant’s services are that of the plaintiff and/or connected to or associated with the plaintiff”. [\[note: 183\]](#) In other words, the misrepresentation relates to the source/origin (as opposed to the quality) of the service. In particular, the plaintiff avers that the misrepresentation is such that it would deceive or mislead the members of the public (or the actual and potential consumers of the plaintiff’s services) to believe that “the Defendant is the Plaintiff’s holding company or head office or that the Plaintiff has incorporated an office in China as a holding company of the Plaintiff and the Plaintiff’s subsidiaries or related companies”. [\[note: 184\]](#)

### ***Perspective from which misrepresentation must be analysed***

179 The question of whether there is misrepresentation must be analysed from the perspective of those with goodwill in the plaintiff’s name, mark or get-up: *City Chain* at [73]. In this regard, the Court of Appeal noted at [74] that it is important to identify the specific section of the public where goodwill exists. As stated earlier ([163] above), the plaintiff failed to do so. Nevertheless, I proceed on the assumption that the goodwill exists in Singapore-based companies (as the plaintiff’s actual and potential customers). I will therefore analyse misrepresentation from this perspective.

### ***Misrepresentation leading to confusion***

180 The plaintiff contends that misrepresentation is clearly established given that the defendant had used the name “amc” as well as the Defendant’s Marks in relation to the advertisement,



promotion and organisation of concerts, [\[note: 185\]](#) and that it was calculated to deceive or likely to deceive and/or lead the members of the public to believe that the defendant's services are that of the plaintiff and/or otherwise connected to or associated with the plaintiff. [\[note: 186\]](#)

181 In the present case, the word "amc" appears in the names, marks and domain names of both parties. It is distinctive (as a fancy term not descriptive in nature) and used by the defendant with only slight modifications. The differences might give the impression that the defendant is in some way related or associated to the plaintiff. These differences, like in *The Singapore Professional Golfers' Association v Chen Eng Waye and others* [2013] 2 SLR 495 at [60]–[61], would not displace but would in fact aggravate the likelihood of confusion. Moreover, as discussed earlier ([100] above), the plaintiff had adduced evidence of actual confusion.

182 Notwithstanding that, it can be argued that there is no misrepresentation to the relevant section of the public, because:

- (a) The AMC Asia Mark is meant to be and has always been used together with the plaintiff's full name. [\[note: 187\]](#)
- (b) The nature of the services provided by the plaintiff (*ie*, events management) is such that potential customers, who would be representatives of companies, would be highly discerning and careful.
- (c) Peng, the private investigator, testified that he did not think that the defendant was claiming to be affiliated to the plaintiff. [\[note: 188\]](#)

183 I find, on balance, that the element of misrepresentation is established on the facts.

### **Issue 3: Damage**

184 In the statement of claim, the plaintiff stated that it had suffered or would suffer damage as follows:

- (a) inferiority of the defendant's services;
- (b) loss of licensing/franchising opportunity or income;
- (c) likelihood of damage should the defendant get into financial, legal or other trouble;
- (d) misappropriation of the plaintiff's goodwill and reputation;
- (e) restriction on the plaintiff's natural expansion into providing a greater range of event and concert organisation services;
- (f) loss of exclusivity and the erosion of distinctiveness of the Plaintiff's Marks; and
- (g) dilution of the goodwill attached to the Plaintiff's Marks.

185 However, the plaintiff only addressed two points in its submissions, namely:

- (a) the restriction of a natural expansion of its business; [\[note: 189\]](#) and

(b) the possible diversion of sales as a result of the likelihood of confusion. [\[note: 190\]](#)

As such, I will only address these two points.

#### *Possible diversion of sales*

186 The plaintiff claims that the defendant is in the same field of business as the plaintiff, *ie*, events management, and that there might be a possible diversion of sales as a result of the likelihood of confusion. In support of its contention, the plaintiff points out that the defendant's brochure (obtained *via* Peng, the private investigator) states that: [\[note: 191\]](#)

Being a Singapore base company in Western China, AMC Group China has a team of dedicated and experience professionals to ensure a well-designed, tightly organized with effective cost managed program that translate your business objectives into meaningful and intriguing events with lasting impression.

Our Divisions-

CONCERTS & ARTISTE MANAGEMENT

EVENTS MANAGEMENT

MICE & SPECIAL PROJECTS

TECHNICAL SYSTEM HARDWARE

187 Even though the brochure states "AMC Group China", which is the former name of the defendant, it lists the address of the China office at the back of the brochure. [\[note: 192\]](#) According to Seah Yan Ling ("Seah"), the defendant's chief operating officer, the brochure is meant for its China operations. [\[note: 193\]](#) She explained that the name "AMC Group China" was used for the English brochures of the defendant's affiliated companies in China, [\[note: 194\]](#) and that the defendant is not engaged in the events management business in Singapore. [\[note: 195\]](#) She also added that the brochure was used when the Singapore office was first established in January 2012. [\[note: 196\]](#) In this case, the brochure was obtained by Peng on 1 November 2012. [\[note: 197\]](#) I should also point out that Peng had stated in his report that he was informed that the defendant "only organises concerts". [\[note: 198\]](#)

188 The plaintiff also points out that Seah had testified that the defendant has the expertise to go into events management if it wishes to. [\[note: 199\]](#) The plaintiff nevertheless has not shown anything further than that. In fact, Peng's incognito interaction with the defendant's staff suggests that the defendant had not gone into events management in Singapore.

189 The Court of Appeal accepted in *Hai Tong* at [118] that there would be a real likelihood of damage given that there was a diversion of sales of the plaintiff's goods or services where the consumers of the relevant segment of the public were led to believe that the said goods or services were the goods or services of the plaintiff or were associated or connected with the plaintiff. In that case, the Court of Appeal found, *inter alia*, that the parties were in identical field of business activity giving rise to direct competition.

190 Here, the evidence shows that the parties are not in an identical field of business. I therefore find that the plaintiff had failed to establish that there is a possibility of diversion of business as a result of the likelihood of confusion.

#### *Restriction from natural expansion*

191 The plaintiff further argues that it would be restricted from organising concerts for the public which is a natural extension of its events management business. [\[note: 200\]](#) According to Oh's evidence, the plaintiff has intentions of going into the business of organising "stand-alone concerts" in the future. [\[note: 201\]](#)

192 The Court of Appeal in *Amanresorts* accepted at [117] that a plaintiff who has established goodwill in one form of commercial activity may be entitled to protection from passing off *vis-à-vis* another form of commercial activity which is a natural expansion of the first. However, the Court of Appeal explained that there must be a close connection between the two activities. In that case, it was held at [121] that the plaintiff's field of business (*ie*, high-end hotels and resorts) and the defendant's field of business (*ie*, residential accommodation) were closely connected in that both fields concern accommodation.

193 In the present case, I find that the defendant's field of business (*ie*, concert management) is closely connected to the plaintiff's field of business (*ie*, events management) given that they both concern organisation of events. It follows that the plaintiff would be restricted from entering into the concert management market, which is a natural extension of the plaintiff's business.

#### **Conclusion**

194 For the reasons given above, I dismiss the plaintiff's claims in their entirety.

195 I will hear counsel on the issue of costs.

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[\[note: 1\]](#) Statement of Claim ("SOC") at para 1.

[\[note: 2\]](#) SOC at para 2.

[\[note: 3\]](#) SOC at para 20.

[\[note: 4\]](#) SOC at para 21.

[\[note: 5\]](#) Defence at para 8(a); Leong Seng Chet's affidavit evidence-in-chief ("LSC's AEIC") at para 4.

[\[note: 6\]](#) Defence at para 8(a).

[\[note: 7\]](#) 2nd Further & Better Particulars ("F&BP") of Defence at para 1(b)(i).

[\[note: 8\]](#) 1st F&BP of Defence at para 1(a)(i).

[\[note: 9\]](#) 2nd F&BP of Defence at para 1(a)(iv).

[\[note: 10\]](#) 2nd F&BP of Defence at para 1(a)(iv).

[\[note: 11\]](#) SOC at para 6.

[\[note: 12\]](#) SOC at para 10.

[\[note: 13\]](#) SOC at paras 7-9.

[\[note: 14\]](#) SOC at para 10.

[\[note: 15\]](#) 1st F&BP on SOC at paras 4(a) and 4(b).

[\[note: 16\]](#) Notes of Evidence ("NE"), 14.10.14, p 98 line1.

[\[note: 17\]](#) 1st F&BP on SOC at para 4(c).

[\[note: 18\]](#) SOC at para 10.

[\[note: 19\]](#) 1st F&BP on SOC at para 4(g).

[\[note: 20\]](#) SOC at para 12.

[\[note: 21\]](#) SOC at para 14.

[\[note: 22\]](#) SOC at para 16. Contrast 1st F&BP at para 7, which states 26 June 2000.

[\[note: 23\]](#) SOC at para 33(e); 1st F&BP on SOC at para 15(d).

[\[note: 24\]](#) SOC at para 22.

[\[note: 25\]](#) 1st F&BP on Defence at para 1(b)(v); 2nd F&BP of Defence at para 1(b)(iii).

[\[note: 26\]](#) Defence at para 8(b).

[\[note: 27\]](#) LSC's AEIC at para 12.

[\[note: 28\]](#) Defence at para 8(b).

[\[note: 29\]](#) Defendant's opening statement ("DOS") at para 16; LSC's AEIC at para 18 and LSC-6.

[\[note: 30\]](#) Defence at para 8(c); LSC's AEIC at paras 18 and 23.

[\[note: 31\]](#) Defence at para 8(c).

[\[note: 32\]](#) Defence at para 8(d); LSC's AEIC at para 24.

[\[note: 33\]](#) Defence at para 8(e); SYL's AEIC at paras 31–39 and SYL-8 to SYL-15.

[\[note: 34\]](#) Defence at para 8(f); LSC's AEIC at para 25.

[\[note: 35\]](#) SOC at para 23; LSC's AEIC at para 21.

[\[note: 36\]](#) LSC's AEIC at para 21.

[\[note: 37\]](#) NE, 14.10.14, p 11 line 13.

[\[note: 38\]](#) NE, 24.10.14, p 47, lines 1-18.

[\[note: 39\]](#) DOS at paras 9–10; NE, 28.10.14, p 37 line 1920.

[\[note: 40\]](#) DOS at para 9; NE, 28.10.14, p 70 line 27.

[\[note: 41\]](#) DOS at para 14.

[\[note: 42\]](#) NE, 28.10.14, p 70 line 27.

[\[note: 43\]](#) Plaintiff's Written Submissions ("PWS") at para 23.

[\[note: 44\]](#) SOC at paras 40–41.

[\[note: 45\]](#) SOC at para 46.

[\[note: 46\]](#) SOC at para 48.

[\[note: 47\]](#) DOS at paras 23(b) and 23(c).

[\[note: 48\]](#) DOS at para 23(d).

[\[note: 49\]](#) DOS at para 23(e).

[\[note: 50\]](#) DOS at para 23(e).

[\[note: 51\]](#) DOS at para 23(j).

[\[note: 52\]](#) DOS at para 23(f).

[\[note: 53\]](#) DOS at para 23(g).

[\[note: 54\]](#) DOS at para 23(i).

[\[note: 55\]](#) DOS at para 23(h).

[\[note: 56\]](#) DOS at para 23(j).

[\[note: 57\]](#) PWS at paras 33–35.

[\[note: 58\]](#) PWS at para 37.

[\[note: 59\]](#) Defendant’s Written Submissions (“DWS”) at paras 24–29.

[\[note: 60\]](#) 4DA 1041–1047.

[\[note: 61\]](#) PWS at para 52.

[\[note: 62\]](#) PWS at para 52.

[\[note: 63\]](#) PWS at para 53.

[\[note: 64\]](#) PWS at para 54.

[\[note: 65\]](#) DWS at para 40.

[\[note: 66\]](#) DWS at para 40.

[\[note: 67\]](#) DWS at para 40.

[\[note: 68\]](#) DWS at para 40.

[\[note: 69\]](#) PWS at para 60.

[\[note: 70\]](#) DWS at para 43.

[\[note: 71\]](#) PWS at para 64.

[\[note: 72\]](#) DWS at para 43.

[\[note: 73\]](#) DWS at para 43.

[\[note: 74\]](#) PWS at paras 67–70; DWS at paras 42–44.

[\[note: 75\]](#) PWS at paras 72–74.

[\[note: 76\]](#) PWS at para 74.

[\[note: 77\]](#) PWS at para 75.

[\[note: 78\]](#) PWS at para 80.

[\[note: 79\]](#) PWS at para 85.

[\[note: 80\]](#) DWS at para 65.

[\[note: 81\]](#) BO's AEIC at paras 12 and 14.

[\[note: 82\]](#) LSC's AEIC at para 3.

[\[note: 83\]](#) BO's AEIC at para 12.

[\[note: 84\]](#) NE, 28.10.14, p 58 line22.

[\[note: 85\]](#) NE, 23.10.14, p 10 line8.

[\[note: 86\]](#) NE, 14.10.14, p 63 line26; p 72 line2.

[\[note: 87\]](#) NE, 24.10.14, p 66 line31.

[\[note: 88\]](#) Peng Jiaen Joshua's AEIC ("PJJ") at PJJ-1 (p 25); NE, 24.10.14, p 20 line 17; p 66 line 31.

[\[note: 89\]](#) SYL's AEIC at para 27 and SYL-6.

[\[note: 90\]](#) LSC's AEIC at para 3.

[\[note: 91\]](#) PWS at paras 102 and 103.

[\[note: 92\]](#) PWS at para 104.

[\[note: 93\]](#) DWS at para 75.

[\[note: 94\]](#) Anders Erik Kager's AEIC ("AEK's AEIC") at paras 8 and 10; Ang Chun Heng's AEIC ("ACH's AEIC") at paras 8 and 10; Lyndsey Lam Yenn Jinn's AEIC ("LLYJ's AEIC") at paras 8 and 10; Chong Yuen Hwa's AEIC ("CYH's AEIC") at paras 9 and 11.

[\[note: 95\]](#) Wang Qifen's AEIC ("WQ's AEIC") at para 7.

[\[note: 96\]](#) PWS at para 107.

[\[note: 97\]](#) DWS at para 78.

[\[note: 98\]](#) WQ's AEIC at para 6.

[\[note: 99\]](#) WQ's AEIC at para 9.

[\[note: 100\]](#) AEK's AEIC at paras 8 and 10.

[\[note: 101\]](#) AEK's AEIC at para 9.

[\[note: 102\]](#) NE, 15.10.14, p 4 lines 11-16.

[\[note: 103\]](#) DWS at para 79.

[\[note: 104\]](#) ACH's AEIC at paras 8 and 10.

[\[note: 105\]](#) DWS at para 80.

[\[note: 106\]](#) NE, 23.10.14, p 13 line26.

[\[note: 107\]](#) NE. 23.10.14, p 13 line26; p 14 line21.

[\[note: 108\]](#) NE, 23.10.14, p 13 line30.

[\[note: 109\]](#) NE, 23.10.14, p 17 line25; p 21 line; p 21 line19; p 25 line24.

[\[note: 110\]](#) DWS at para 81.

[\[note: 111\]](#) CYH's AEIC at paras 9 and 11.

[\[note: 112\]](#) CYH's AEIC at paras 10-12.

[\[note: 113\]](#) DWS at para 82.

[\[note: 114\]](#) DWS at para 82.

[\[note: 115\]](#) NE, 23.10.14, p 33 line1.

[\[note: 116\]](#) NE, 23.10.14, p 33 lines13-16.

[\[note: 117\]](#) NE, 23.10.14, p 35 line4.

[\[note: 118\]](#) NE, 23.10.14, p 35 lines12-23.

[\[note: 119\]](#) DWS at para 89.

[\[note: 120\]](#) DWS at para 94.

[\[note: 121\]](#) DWS at para 91.

[\[note: 122\]](#) DWS at para 91.

[\[note: 123\]](#) DWS at para 130.



[\[note: 124\]](#) DWS at para 131.

[\[note: 125\]](#) DWS at para 132.

[\[note: 126\]](#) PWS at para 143.

[\[note: 127\]](#) PWS at para 143(a).

[\[note: 128\]](#) SOC at para 10.

[\[note: 129\]](#) BO's AEIC at para 28.

[\[note: 130\]](#) 1st F&BP on SOC at paras 4(a).

[\[note: 131\]](#) 1st F&BP on SOC at paras 4(a) and 4(b).

[\[note: 132\]](#) NE, 14.10.14, 98/1.

[\[note: 133\]](#) BO's AEIC at pp 81–84.

[\[note: 134\]](#) BO's AEIC at pp 66 (2005), 7172 (2006), 75 (2007), 76 (2008) and 81 (2011).

[\[note: 135\]](#) BO's AEIC at OB-3.

[\[note: 136\]](#) NE, 28.10.14, p 48 line 9.

[\[note: 137\]](#) DWS at para 130.

[\[note: 138\]](#) DWS at para 130.

[\[note: 139\]](#) LSC's AEIC at para 8; SYL's AEIC at para 21.

[\[note: 140\]](#) LSC's AEIC at LSC-2 pp 19-20.

[\[note: 141\]](#) LSC's AEIC at LSC-2 pp 19-20.

[\[note: 142\]](#) LSC's AEIC at LSC-2 pp 19–20.

[\[note: 143\]](#) 1PE.

[\[note: 144\]](#) NE, 28.10.14, p 19 line 8.

[\[note: 145\]](#) NE, 28.10.14, p 19 line 12.

[\[note: 146\]](#) LSC's AEIC at p 20. See also p 19.

[\[note: 147\]](#) LSC's AEIC at para 9.

[\[note: 148\]](#) LSC's AEIC at p 22.

[\[note: 149\]](#) LSC's AEIC at p 22.

[\[note: 150\]](#) SYL's AEIC at SYL-2 to SYL-7.

[\[note: 151\]](#) DWS at para 130.

[\[note: 152\]](#) SYL's AEIC at para 35 and SYL-11 (p 489).

[\[note: 153\]](#) SYL's AEIC at SYL-11 (pp 489–501).

[\[note: 154\]](#) DWS at para 127.

[\[note: 155\]](#) PWS at para 153.

[\[note: 156\]](#) LSC's AEIC at para 12.

[\[note: 157\]](#) NE, 28.10.14, p 70 line 5.

[\[note: 158\]](#) 4DA 1040–1047.

[\[note: 159\]](#) PWS at para 178(b).

[\[note: 160\]](#) PJJ's AEIC at p 7 (para 8).

[\[note: 161\]](#) PJJ's AEIC at p 6 (para 4).

[\[note: 162\]](#) PWS at para 152.

[\[note: 163\]](#) PWS at para 153.

[\[note: 164\]](#) SOC at para 18.

[\[note: 165\]](#) SOC at paras 10–16.

[\[note: 166\]](#) DWS at paras 149, 150 and 152.

[\[note: 167\]](#) SOC at paras 36 and 41.

[\[note: 168\]](#) 1 PB 275; 1 PB 308–311.

[\[note: 169\]](#) BO's AEIC at p 72.

[\[note: 170\]](#) NE, 14.10.14, p 75 line11.

[\[note: 171\]](#) NE, 14.10.14, p 75 line7.

[\[note: 172\]](#) BO's AEIC at para 34.

[\[note: 173\]](#) BO's AEIC at para 35.

[\[note: 174\]](#) BO's AEIC at para 37.

[\[note: 175\]](#) NE 14.10.14, p 87 line 13.

[\[note: 176\]](#) BO's AEIC at para 38.

[\[note: 177\]](#) BO's AEIC at para 13.

[\[note: 178\]](#) DWS at para 150.

[\[note: 179\]](#) DWS at para 150; NE, 14.10.14, p 105 line 14.

[\[note: 180\]](#) NE, 14.10.14, p 87 line24.

[\[note: 181\]](#) NE, 14.10.14, p 87 line32.

[\[note: 182\]](#) DWS at para 152.

[\[note: 183\]](#) SOC at para 46.

[\[note: 184\]](#) SOC at para 46.

[\[note: 185\]](#) PWS at para 159.

[\[note: 186\]](#) PWS at para 159; SOC at paras 46, 49 and 50.

[\[note: 187\]](#) NE, 14.10.14, p 75 line7.

[\[note: 188\]](#) NE, 15.10.14, p 76 line31.

[\[note: 189\]](#) PWS at para 165.

[\[note: 190\]](#) PWS at para 164.

[\[note: 191\]](#) 1PB 534.

[\[note: 192\]](#) 1PB 540.

[\[note: 193\]](#) NE, 24.10.14, p 19 line15.

[\[note: 194\]](#) NE, 24.10.14, p 20 line14.

[\[note: 195\]](#) NE, 24.10.14, p 19 line12.

[\[note: 196\]](#) NE, 24.10.14, p 69 line12.

[\[note: 197\]](#) 1PB 515 (para 4)532;.

[\[note: 198\]](#) 1PB 516 (para 7).

[\[note: 199\]](#) NE, 24.10.14, p 66 line31.

[\[note: 200\]](#) PWS at para 165.

[\[note: 201\]](#) BO's AEIC at para 55.

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