New Line Productions, Inc and Another v Aglow Video Pte Ltd and Others and Other Suits [2005] SGHC 118

Case Number : Suit 718/2003, 836/2003, 843/2003

Decision Date : 06 July 2005

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Wong Siew Hong and Teh Ee-Von (Infinitus Law Corporation) for the plaintiffs; Kirpal Singh (Kirpal and Associates) for the second and third defendants in S 718/2003 and the first to 30th and the 34th defendants in S 843/2003; Liaw Jin Poh (J P Liaw and Co) for the first defendant in S 718/2003, the defendants in S 836/2003 and the 31st to 33rd defendants in S 843/2003

Parties : New Line Productions, Inc; Alliance Entertainment Singapore Pte Ltd — Aglow Video Pte Ltd; TS Laser Pte Ltd; TS Entertainment Pte Ltd

Copyright – Incorporation of companies – Lifting of corporate veil – Owner of copyright suing web of separately incorporated companies and their directors for copyright infringement – Whether directors were directing minds of companies – Whether court should lift corporate veil and make directors personally liable

Copyright – Damages – Defendants infringing copyright through web of separately incorporated companies and under guise of legitimate parallel imports – Whether court should award additional damages under s 119(4) Copyright Act – Section 119(4) Copyright Act (Cap 63, 1999 Rev Ed)

Copyright – Infringement – Defendants importing and selling cinematograph films in video format – Whether videos genuine parallel imports or pirated copies – Whether defendants infringing copyright in films – Sections 31, 33 Copyright Act (Cap 63, 1999 Rev Ed)

6 July 2005

Tay Yong Kwang J:

1 These actions concerned copyright infringement of three cinematograph films entitled "Lord of the Rings – The Two Towers" ("TTT"), "Final Destination 2" ("FD2") and "Dumb and Dumberer – When Harry Met Floyd" ("D&D").

The case for the plaintiffs

2 The first plaintiff, a company incorporated under US laws, is in the business of producing and distributing cinematograph films. It is the producer and owner of the copyright comprised in the said three films. TTT was first screened and published in the US in 2002 while FD2 and D&D were first screened and published in the US in 2003. The first plaintiff is a qualified person within the meaning of the Copyright Act (Cap 63, 1999 Rev Ed) ("the Act"). By virtue of s 184 of the said Act read with reg 6 of the Copyright (International Protection) Regulations (Cap 63, Rg 2, 2002 Rev Ed), the films enjoy copyright protection in Singapore and the first plaintiff is the proprietor of the same here.

3 The first plaintiff licensed the exclusive rights to replicate and distribute the films in video format, including digital versatile disc ("DVD") and video compact disc ("VCD"), to New Line Home Entertainment, Inc, which in turn licensed the said rights in territories outside North America to New Line International Releasing, Inc. By an agreement dated 21 April 2003, New Line International Releasing, Inc, granted an exclusive licence to the second plaintiff to replicate and distribute the films in video format, including DVD and VCD, in Singapore. The second plaintiff is a company incorporated in Singapore. It is in the business of licensing and distributing cinematograph films in video format in

Singapore.

4 By reason of the above facts, the second plaintiff is the exclusive licensee in respect of replication and sale of the films in video format in Singapore. By virtue of s 123 of the Act, the second plaintiff therefore enjoys all rights and remedies here in respect of the films as if it were the copyright owner.

5 FD2 was released in video format by the second plaintiff in Singapore in July 2003 subject to some excisions required by the Films & Publications Board ("FPB") of the Media Development Authority ("MDA"), a body responsible for censorship of films here. TTT was scheduled for worldwide release in video format in late August 2003, while D&D was scheduled for such release in November 2003.

6 In Suit No 718 of 2003 ("S 718/2003"), the first defendant is Aglow Video Pte Ltd ("Aglow"), a company incorporated in Singapore which is engaged in the business of importing and distributing wholesale cinematograph films in various video formats, including video home system ("VHS"), DVD and VCD. The second and third defendants, TS Laser Pte Ltd and TS Entertainment Pte Ltd, are also Singapore companies. These two companies carry on business, in conjunction with a number of other companies and business entities, under the name and style "TS Group" and are involved in the retail of films in video format. The TS Group is one of the largest video retail chains in Singapore.

7 In Suit No 836 of 2003 ("S 836/2003"), the first defendant is again Aglow. The second and third defendants are its directors and shareholders, while the fourth defendant is its manager and shareholder.

8 In Suit No 843 of 2003 ("S 843/2003"), the first to 19th defendants are Singapore companies engaged in the retail of films in video format and which carry on business under the name and style "TS Group". They, together with TS Laser Pte Ltd and TS Entertainment Pte Ltd, all have a common registered office at 61 Lorong 17, Geylang, #04-01/02, Lam Leong Building. The 30th defendant, J&H Digital Laser Pte Ltd (now known as TS Digital Laser Pte Ltd), acted as a central purchasing agent for all the members of the TS Group. The first to 19th and the 30th defendants have common directors and shareholders in the sense that in any one of these companies, at least two of the 20th to 28th defendants would be directors and/or shareholders. The 20th to 23rd defendants are the principal directors and officers of the TS Group.

9 The 29th defendant is the company secretary of the first to 19th, 30th and 31st defendants. The 31st defendant, Speedy Video Distributors Pte Ltd ("Speedy Video"), is a Singapore company engaged in general wholesale trade while the 32nd and 33rd defendants are its directors. The 33rd defendant resides at the same residential address as the 21st defendant, one of the alleged principal directors and officers of the TS Group.

10 TTT was the second instalment of the cinematographic adaptation of J R R Tolkien's epic fantasy work, The Lord of the Rings, which has broken box office records worldwide. TTT was released in cinemas in December 2002 and was scheduled to be released in video format in late August 2003.

11 In June 2003, Aglow imported 3,000 copies of TTT in VCD format into Singapore and distributed them through the TS Group outlets. These 3,000 VCDs were said to have originated from a major video distributor in Thailand, Mangpong Co Ltd ("Mangpong"). Mangpong was the licensee for TTT in Thailand. Earlier that year, Aglow also purported to have imported VCDs of the James Bond movie, "Die Another Day", from Mangpong. However, Mangpong notified the video trade that the TTT and "Die Another Day" VCDs did not originate from it.

12 The plaintiffs then commenced S 718/2003 and obtained an interim injunction on 11 July 2003 prohibiting the defendants in that action from dealing with the infringing TTT VCDs and ordering delivery up of the remaining ones. The defendants eventually delivered up six copies of TTT. However, the TS Group outlets, save for the one at Suntec City, continued to sell TTT. It was only then that the plaintiffs realised that each outlet was operated by a different company, with all the companies allegedly independent from one another and maintaining their own accounts. TS Entertainment Pte Ltd operated only the Suntec City outlet.

13 The plaintiffs then issued letters of demand to all the companies in the TS Group but these companies refused the plaintiffs' offer that they abide by the terms of the injunction obtained earlier. Instead, they proceeded to obtain further supplies of another 7,000 TTT VCDs through Speedy Video. Accordingly, the plaintiffs commenced action against these companies in S 843/2003.

14 In the meantime, Aglow submitted two VHS videotapes, one of FD2 and the other of D&D, to the FPB for censorship, intending to import these films in VCD format once they had been censored. The second plaintiff was informed by the FPB of the submission for censorship. The plaintiffs therefore commenced S 836/2003 and obtained an injunction against Aglow and its officers. The said VHS videotapes were released to the second plaintiff by the FPB.

15 The three actions mentioned above were consolidated and tried together, with the plaintiffs seeking an injunction and damages or an account of profits for infringement of copyright in the three films in issue. The plaintiffs also sought additional damages pursuant to s 119(4) of the Act. They also sought to lift the corporate veil and make the directors and officers of the companies involved personally liable for the infringement.

16 The contention of the plaintiffs in all three actions was that the infringing VCDs and videotapes did not originate from Mangpong. Where FD2 and D&D were concerned, the licensee in Thailand was not even Mangpong but another company known as Right Beyond Co Ltd ("Right Beyond"). The plaintiffs contended that Aglow and Speedy Video had knowingly imported pirated copies of the said films for sale through the TS Group outlets and that the TS Group was aware of this.

17 Seven witnesses testified for the plaintiffs. Tan Poh Lam ("Tan"), the chief executive officer of the second plaintiff, was the main witness. He said that Aglow's registered office was at Peck Seah Street, the address of a corporate secretarial company. In its advertisements and letters, Aglow's address was stated as 179 Syed Alwi Road, #01-04. However, when staff of the second plaintiff visited this address, there was no signboard indicating Aglow's presence. Indeed, the premises were invariably found to be locked up. The said advertisements did not even state any telephone or fax number. Aglow's invoices showed that it was located at 20B Ann Siang Road at some time in the past.

18 For the reasons listed below, Tan argued that the videotapes for FD2 and D&D were infringing copies. As stated above, the exclusive licensee in Thailand for FD2 and D&D was not Mangpong but Right Beyond and the rights to these two films had not been sub-licensed to anyone. Accordingly, even if the VHS videotapes originated from Mangpong, which the plaintiffs denied, they would have been infringing copies anyway. These videotapes were intended to be "masters" from which VCDs would be made. Masters were copies delivered by the copyright owners to licensees for replication. For technical reasons, masters were not sent on VHS videotapes but on a different, technically superior format known as Betacam or Beta. This was because while VHS videotapes were acceptable for consumer distribution, they were not of sufficiently high quality to be used as masters. If the VCDs of these two titles originated from Thailand and were finished products intended for the Thai market, they would not have the excisions required by the FPB and therefore could not be imported

into Singapore. Further, it was a standard term of any licence agreement that the licensee for a particular territory was only permitted to replicate and sell the products within the licensed territory. It was not allowed to knowingly manufacture products for export to other territories. If Mangpong or Right Beyond had provided masters to Aglow for censorship here in order to manufacture VCDs later in compliance with the FPB's censorship requirements, it would be aware that the VCDs in question were intended for export in breach of its licence agreement. Since the VCDs would not be manufactured with the consent of the copyright owner, they would be infringing copies.

19 The videotape for FD2 showed a band with moving numbers across the middle when played. Such a band was a clear indication it was a pre-release copy not meant for general public viewing. There was also a distortion in the upper left corner of the screen because the identification number of the original tape had been erased. By checking the identification number, it would have been possible to track down the source of the original tape. The identification number had therefore been erased to prevent tracing of the source.

20 Where D&D was concerned, the first plaintiff confirmed that, as at August 2003, it had not even despatched the masters to Right Beyond in Thailand. The second plaintiff also did not get its masters until around October 2003.

21 Tan believed that the directors and officers of Aglow were the moving spirits behind Aglow, using the company to perpetrate a scheme whereby infringing copies of the said two films would be imported under the guise of legitimate parallel imports.

22 The plaintiffs had twice offered in writing to travel to Thailand to meet with the alleged suppliers of Aglow (a company known as Rungreang Film Co Ltd) and with Mangpong, together with the defendants, to confirm whether or not Mangpong supplied the infringing VCDs but such offer was not taken up.

23 Where TTT was concerned, when it was first released in December 2002, it was a major success at the box office and its release in video format was therefore also a major event accompanied by a great deal of publicity and advertisement. While the second plaintiff had the distribution rights to TTT in Singapore, the rights in Thailand were licensed by the first plaintiff to Mongkol Films Ltd which in turn sub-licensed them to Mangpong. The worldwide release in video format, scheduled for 26 August 2003, was co-ordinated by the first plaintiff as it was a premium product.

24 However, in June 2003, Aglow imported into Singapore copies of TTT purportedly manufactured by Mangpong. Tan had not seen the masters of TTT submitted for censorship here. On or about 5 July 2003, Tan was informed by his staff that Aglow was distributing TTT on VCD. He learnt later that Aglow had placed an advertisement in *The New Paper*, a tabloid circulated here, on 4 July 2003 claiming to have imported TTT (and "Die Another Day") and inviting trade enquiries. The Syed Alwi Road address was stated but there was no contact telephone or fax number in that advertisement.

25 It was illogical to launch TTT on VCDs ahead of the DVD version as the VCD version would affect sales of the more profitable DVD version. Having examined a copy of the VCD of TTT distributed by Aglow, Tan was of the view that the VCDs were infringing copies for the following reasons. The quality of the artwork on the insert was poor and did not conform to the artwork stipulated and provided by the first plaintiff. There was also no source identification ("SID") number on the disc to identify the place of manufacture, thereby indicating that the disc was pirated. SID numbers were code numbers issued by the International Federation of Phonogram Industries, the

international anti-piracy body of the music industry, to optical disc manufacturers to track where CDs are manufactured in the event of piracy. The copyright markings at the back of the case, where the copyright ownership details were set out, were erroneous or meaningless.

26 Tan's enquiries with his contacts in Thailand confirmed that Mangpong had not commenced replication of VCDs of TTT at that time. He was also told by the first plaintiff that the masters of TTT had not even been despatched to Thailand as at 5 July 2003.

27 Where the TS Group was concerned, Tan disputed the defendants' assertion that it was a loose group of independent companies which had come together on a very loose arrangement. He believed instead that it was a very tightly knit group having common directors, officers and shareholders including Lau Tiate Leng ("Clement Lau"), Lau Chak Hou (his brother, also known as Tiger Lau), Koh Beng Choo Linda (his wife) and Toh Choon Hui ("Joseph Toh") (the 20th to 23rd defendants in S 843/2003) ("the four directing minds"). This was because the TS Group traded under a common name and used the same logo. A single membership card was issued which was honoured at all the outlets of the group. Further, all the outlets were listed on the stationery and on the plastic carrier bags. In a newspaper article dated 1 June 2004, Joseph Toh was described as the group marketing manager of the TS Group.

28 Tan also believed that TS Laser Pte Ltd was the co-ordinating and controlling entity in that group. The business cards of Clement Lau, Tiger Lau and Joseph Toh, showed them as managing director, production and purchasing manager, and marketing manager of TS Laser Pte Ltd, with the TS Group outlets listed at the back of the said cards.

29 Accordingly, he believed that the TS Group should be treated as a singular entity and that the directors and officers of the various companies comprising the TS Group should be held personally accountable for the acts of those companies.

30 Speedy Video came into the picture only after Aglow had been served with the injunction in these proceedings. There is a very large and reputable video distribution chain in Malaysia called Speedy Video Distributors Sdn Bhd with which Speedy Video here had absolutely no connection. Tan believed that the choice of name was deliberate in order to cash in on the good name of that Malaysian company. Speedy Video shares the same corporate secretary as the TS Group and was able to supply the same goods to the TS Group after Aglow had been stopped from doing so by the injunction. This led Tan to the conclusion that Speedy Video was merely another company in the TS Group used for importing the TTT VCDs in place of Aglow.

31 Tan also said that Aglow had been involved with one Sim Kay Teck of Dallas Entertainment Pte Ltd and Spin Video Pte Ltd which were under investigation for suspected copyright piracy. Aglow was in turn linked to the TS Group and they were all part of a network importing infringing VCDs disguised as parallel imports. He believed that the choice of Mangpong as the alleged source of the VCDs in question was calculated to take advantage of the language and legal differences which would hinder the plaintiffs' efforts to protect their rights. As the infringing activities were calculated, flagrant and contumacious, showing no regard for the law and orders of court, he urged the court to award additional damages under s 119(4) of the Act in order to deter like-minded infringers.

32 Nestor Nieves ("Nestor"), Executive Vice-President (Sales) of New Line International Releasing, Inc, testified via video-conference from the US. He confirmed that the first plaintiff was the owner of the copyright in TTT, FD2 and D&D. The first plaintiff assigned its distribution rights in the said films to New Line International Releasing, Inc, for territories outside the US and Canada. By the International Video Rights Distribution Licence Agreement dated 21 April 2003 ("the licence

agreement"), New Line International Releasing, Inc, sub-licensed the exclusive video rights to replicate and distribute the said films in the VHS, DVD and VCD formats in Singapore to the second plaintiff. Nestor also confirmed that such rights in respect of TTT in Thailand were granted to Mongkol Cinema Co Ltd ("Mongkol") and that Mongkol sub-license the same to Mangpong with his approval. For FD2 and D&D, the exclusive video licence for Thailand was granted to Right Beyond which did not sub-license its rights to any other party in Thailand.

33 In early July 2003, Nestor received a telephone call from Tan enquiring whether the video masters of TTT had been released to the licensee in Thailand. He told Tan they had not been released yet. The masters were despatched by courier to Thailand only on 1 August 2003 under the code name "Two Faces" for security purposes. The assigned "street date" (or the official release date) for TTT was 26 August 2003.

34 Around August 2003, he was again told by Tan that Aglow had submitted VHS videotape copies of FD2 and D&D for censorship in Singapore. However, masters of the films were not provided on VHS videotapes. The masters for FD2 were sent to Right Beyond on 23 June 2003, while the masters for D&D were sent on 16 September 2003.

35 Nestor was asked whether the second plaintiff had the rights to reproduce VHS copies of FD2 and D&D under the licence agreement since only DVD and VCD rights were mentioned in the licence agreement. He confirmed that although VHS rights were not specifically mentioned, such rights fell within the ambit of "video rights" and that if the second plaintiffs did not have the said VHS rights, then no one in Singapore did. Tan mentioned earlier under cross-examination that VHS rights were also conferred on the second plaintiff but that format was no longer used commercially in Singapore.

36 Chukiat Charoenpipatsin ("Chukiat"), the sales manager of United Home Entertainment Co Ltd in Bangkok ("United"), testified via video-conference from Thailand. He said that United was a Thai company engaged in the business of licensing and distributing films on video format in Thailand. United was granted the exclusive sub-licence to distribute TTT in Thailand for home rental. United is one of the largest players in the home video market in Thailand.

37 Chukiat said he had been in the home video business in Thailand for about 15 years. In September 2003, he was asked by one of United's directors, Niti Thavonvanit to try to locate the business premises of Rungreang Film Co Ltd and Rungreang Entertainment Limited Partnership (collectively "Rungreang"). Niti had been asked by Tan to ascertain the genuineness of a statutory declaration made on 11 August 2003 by one Suvit Ngaugam of Rungreang Film Co Ltd. Chukiat checked the Thai telephone directory's business listing and the Yellow Pages but was unable to find any company with the said names. He had not heard of those two companies until then. Out of three addresses that he was given, he was able to locate only one ("the Rajbopit address") but that was a residential unit with no signboard. There did not appear to be any business activity there.

38 In cross-examination, Chukiat was asked to confirm that legitimate copies of TTT were sold openly in June 2003 in Bangkok. Initially, he said that was so. However, he added later that he could not remember the month in 2003 that TTT was released for sale in Thailand but that it was in the middle of 2003. United released TTT for rent at the same time that Mangpong released the same for sale.

39 Gilbert Lim, the executive vice-president of Sahamongkol Films International Co Ltd, also testified via video link from Thailand. He said that this company was one of the largest players in the home video business in Thailand. The company used to be called Mongkol Cinema Co Ltd until early 2004 when it changed its name. Mongkol was the exclusive licensee in Thailand for TTT. It sub-

licensed the distribution rights to TTT in video format in Thailand to Mangpong.

40 On 17 July 2003, in response to the second plaintiff's query, he replied by letter to confirm that Mongkol had not received the masters for TTT from the first plaintiff as at that date. It received the masters only sometime about 1 August 2003. It could not therefore have sent the masters of TTT to Mangpong or any other company to reproduce the film. Although the official release date was 26 August 2003, Gilbert Lim acknowledged that business competition could have resulted in legitimate copies being sold about a week before that date.

41 Viroj Prichavongwaikul, the managing director of Right Beyond, testified via video link from Thailand. He stated that his company was in the business of distributing pre-recorded films on DVD and VCD. It manufactured such films on VCD under licence in Thailand. He confirmed that Right Beyond was the exclusive licensee in Thailand for FD2 and D&D and that it had not authorised or licensed any other party to release these two films in Thailand. He had examined the two VHS video tapes submitted for censorship in Singapore and confirmed that they did not originate from Right Beyond.

42 Mdm Kityajai Tri-Ekvijit ("Kityajai") is the chief executive and managing director of Mangpong. The court was informed that she was unwell and under medical observation and that the operations director of Mangpong would be called in her place to testify on the same matters mentioned in her affidavit of evidence-in-chief. However, the Defence objected to the substitution of the witness. The Defence even engaged a private investigator, who was on his way to Bangkok for some other matters, to look into Kityajai's claim that she was not able to testify. It was reported to defence counsel soon thereafter that she had gone to the office despite her claim about being unwell. After it was clarified that Kityajai had a bad sore throat, I urged counsel for the plaintiffs to ask her to try to accommodate the court by testifying. She eventually did, also by video conference from Thailand.

43 Kityajai said that Mangpong, which was listed recently on the stock exchange of Thailand, was a major commercial chain in Thailand dealing in rental and sale of films on VCD, DVD and videotape. Such films could be finished products which Mangpong bought from other manufacturers or products which it manufactured under licence in Thailand. Mangpong had licensing arrangements with the first plaintiff for some of its films, including rights to TTT which it obtained through Mongkol.

44 She stated that Mangpong had no dealings with Rungreang, which she had not even heard of before these proceedings. Having examined a sample of the defendants' TTT VCDs, she confirmed that it was not Mangpong's product as the disc did not bear a SID number indicating the identity of the factory which manufactured it. She also asserted that the documents produced by the defendants to substantiate their claim that the products were from Mangpong, in particular, an invoice no 1001023785 purporting to have been issued by Mangpong to Rungreang, did not emanate from Mangpong.

45 Kityajai said that Mangpong received the masters of TTT sometime in the beginning of August 2003. The official release date for TTT was the same as that in the US. Mangpong had over 1,000 employees but its records did not show any employee named Prasong Iertdee ("Prasong"), a retail outlet manager from whom Rungreang claimed to have obtained the supply of VCDs. It was not possible in any event for a retail outlet manager to have authorised the production of thousands of VCDs without the company's knowledge. Neither was it possible for a customer to walk into a retail outlet and purchase a few thousand copies of any film. She maintained that Mangpong did not sell or deal in pirated products.

46 Kityajai had affirmed a statutory declaration on 26 May 2003 wherein she stated that

"Mangpong has not at any time entered into any arrangements to manufacture or distribute Video-CDs of cinematograph films owned or distributed by the member studios of the MPA or any of their subsidiaries". She was then questioned about a number of films sold at various Mangpong outlets which were titles produced by studios of the Motion Pictures Association ("MPA"). She explained that Mangpong had sub-licensed some of these films from distributors like Mongkol and that Mangpong did not manufacture the VCDs for some of the titles. It was therefore true that Mangpong had not made any direct agreements with the MPA to manufacture its members' VCDs.

The case for the defendants and their counterclaims

47 In so far as the personal liability of the individual defendants was concerned, the relevant defendants (save for Joseph Toh) elected to call no evidence as they were of the view that there was no case to answer on the plaintiffs' evidence. The Defence therefore adduced evidence in respect of the corporate defendants only.

48 By consent, an affidavit of Leong Jin Chiew ("Leong"), the former solicitor for Aglow, was admitted into evidence without cross-examination. Leong had taken ill and could not testify in court within the scheduled trial dates. He used to practise in the firm of M/s Yu Sarn Audrey & Partners and was the lawyer having conduct of Aglow's matter.

49 Leong made a trip to Bangkok pursuant to Woo Bih Li J's suggestion made at a hearing on 7 October 2003 that the lawyers travel to Thailand to verify the existence of Aglow's suppliers there. Leong said that the English translation of the Thai certificate of registration (obtained by Aglow from Rungreang Film Co Ltd) of the business known as Rungreang Entertainment Limited Partnership showed one Rungkitti Chantasatanont ("Rungkitti") and a lady called Patcharee Saetung as business partners.

50 Leong travelled to Bangkok on 16 October 2003 where he met Rungkitti who identified himself by way of his Thai identity card and his business card. He prepared an affidavit for Rungkitti to affirm and accompanied him to the Singapore Embassy in Bangkok for this purpose. Rungkitti brought Leong to a shopping mall called "The Mall Department Store" and informed Leong that he had bought the VCDs of TTT from Prasong, the manager of the Mangpong outlet there. Leong took and produced a photograph of Rungkitti standing outside the said outlet. Rungkitti also brought Leong to the Rajbopit address (the one located by Chukiat) and told him that address was more commonly used for the receipt of correspondence and delivery of goods. Due to Rungkitti's constant travels and his reliance on his mobile telephone, that address was "seldom actively used". A few photographs of the surrounding area and of the exterior of the premises there were produced.

51 While in Bangkok, Leong managed to purchase from a Mangpong outlet three VCDs of TTT, all with different artwork on the covers.

52 Rungkitti, who was originally not listed as a defence witness, came to Singapore to testify on behalf of the Defence. He stated he was a director and manager of Rungreang Entertainment Limited Partnership. The company also did business as Rungreang Film Co Ltd, an unregistered entity. He had been in the Thai film industry for more than ten years. He acknowledged that the major players in the Thai film industry included Mongkol, Right Beyond, Mangpong and United, with which he had no dealings save for Prasong of Mangpong.

53 Rungreang was in the business of operating mobile film screening services outside Bangkok, screening Indian movies, cartoons and the like at weddings and other functions. It also dealt with the sale and distribution of films. The business was known by the name "Rungreang" in the traditional Thai

script. The difficulties in translation led to different renditions of the name in English, such as "Rungruang" and "Rung Ruang". The company had ten employees, all of whom were usually stationed outside Bangkok. When Rungkitti was travelling to the provinces in Thailand, his staff member, Suvit Ngaugam, would assist him with the sale and distribution of films. The registered address (the Rajbopit address) was the home of Rungkitti's mother-in-law and it was used as a mailing address. The named business partner was his sister-in-law who left the managing of the business to him. Initially, Rungkitti said Rungreang had two retail outlets selling discs of films but clarified later that they were only stalls by the roadside.

54 Rungkitti met Aglow's Zakir Muhamed bin Abu Bakar ("Zakir") in 1999 or 2000 when he was asked to collect some Indian movies from Aglow. He also met Prasong at the Mangpong outlet in The Mall Department Store around that time. He had previous dealings with Prasong. Upon learning about the availability of TTT through his industry contacts, Rungkitti contacted Prasong who confirmed that he could arrange the sale of VCDs of TTT to him. He then proceeded to look for buyers.

55 He bought a total of 10,000 VCDs of TTT and one VHS copy each of FD2 and of D&D from Prasong at the outlet in question. While obtaining the products, he received various documents from Mangpong (which he passed to Aglow and Speedy Video) confirming that the VCDs and the VHS videotapes were from Mangpong. One of these documents, an invoice purportedly from Mangpong, showed that 3,000 VCDs of TTT were sold to Rungreang at 160 baht per VCD on 27 June 2003, making a total of 480,000 baht. Another invoice dated 25 July 2003 indicated that another 7,000 VCDs of TTT at 130 baht each were sold to Rungreang, making a total of 910,000 baht. The letters confirming the sales bore the signature of Prasong.

56 Rungreang also produced its invoices to Aglow. One dated 28 June 2003 indicated that 3,000 VCDs of TTT were sold to Aglow at 160 baht each. This lot was sold at cost to Aglow as Rungkitti was facing cash flow difficulties then and Aglow was willing to pay only 160 baht per set. Another invoice dated 25 July 2003 stated that 7,000 such VCDs were sold to Speedy Video at 160 baht each. There was also a letter dated 16 August 2003 from Rungreang's Suvit Ngaugam confirming that Rungreang had provided Aglow with VHS videotapes of FD2 and D&D obtained from Mangpong. Another letter of the same date from Mangpong's Prasong to Rungreang confirmed that FD2 and D&D (and two other titles) had been sub-licensed to Mangpong.

57 Rungkitti said that Kityajai's denial of the authenticity of the above documents and of any dealings with Rungreang was to be expected.

58 Rungkitti testified that Prasong told him that it was possible to buy movies from Mangpong for export. Over the last four to five years, Rungreang had obtained around 200,000 sets of VCDs of more than 100 titles from Mangpong for sale to Aglow. Rungkitti never met any of Prasong's superiors and did not visit Mangpong's headquarters. Rungreang did not have a trading account with Mangpong. Its dealings with Mangpong, like those with Aglow and Speedy Video, were all on cash terms.

59 Whenever Rungkitti wanted to order a particular film, he would go to see Prasong at the outlet and place an order orally. Prasong would supply him a VHS copy of the film in question and he would then mail or ship it to Aglow which would in turn submit it for censorship in Singapore. With the cutting letter from the censors, Aglow would place its order for the requisite number of VCDs of that title. Rungkitti would then hand the letter to Prasong who would arrange for the manufacture of the VCDs edited in accordance with the cutting letter.

60 When the goods were ready, Rungkitti would drive a pick-up to the said outlet to collect them from Prasong. The VCDs were packed in spindles. He would pay Prasong in cash. He would then

hand the VCDs to a shipping company for shipment to Singapore. Sometimes the artwork cover and the jewel case for the VCDs were sent separately, as was the case with TTT. This was because the shipping company had informed him that there was not sufficient space. Upon receipt of the goods, Aglow's Zakir would go to Thailand to pay Rungkitti in cash.

61 After Mangpong was listed on the Thai stock exchange, Prasong was transferred to another outlet. Although Rungkitti had Prasong's mobile telephone number, he could not contact Prasong and had not purchased any more titles from Mangpong. He did not introduce Prasong to Leong (the Singapore lawyer) although they had gone to the outlet where Prasong used to work.

62 Zakir, a director of Aglow, testified that the 3,000 VCDs of TTT and the VHS videotapes of FD2 and D&D were purchased from Rungreang which had informed Aglow that they were bought from Mangpong and that Mangpong was licensed by the copyright owners to reproduce and distribute the films. They were therefore genuine parallel imports and not infringing copies. The 3,000 VCDs were sold to various TS Group outlets in Singapore.

63 He claimed that the release date of 26 August 2003 for TTT applied only to DVDs and not to VCDs, as evidenced by a printout from one of the Internet websites on the subject. The DVD format could be sold at a different time from the VCD format because the DVD format could come in many versions such as wide screen, full screen and platinum versions. It was not uncommon for DVD versions of a film to be sold later than the VCD versions. In any event, DVDs of TTT were available on websites such as vcdmoviebox.com as early as in March 2003. In fact, the second plaintiff also released for sale VCDs and DVDs of TTT well before 26 August 2003. Zakir produced evidence of a purchase made on 21 August 2003 of one VCD and one DVD of the film.

64 Although Aglow did not have any direct dealings with Mangpong, this was not the first time that it had purchased films reproduced and distributed by Mangpong. Referring to Kityajai's statutory declaration made in May 2003 in respect of the dispute concerning the film, "Die Another Day", Zakir said it was not true that VCDs of films released or distributed by the MPA studios were not available in Mangpong's retail outlets in Thailand. In June and July 2003, he did purchase VCDs of such films from Mangpong outlets, including "Die Another Day". Therefore, contrary to Kityajai's assertions, Mangpong was selling VCDs of movie titles which she said were not available in its outlets.

65 Similarly, despite Kityajai's denial about any knowledge of Rungreang, Zakir said he knew Mangpong had dealt with it on many occasions. Mangpong refused to deal with foreign buyers because it would then be in breach of its distribution agreement. It was strange that Mangpong did not take any action against Rungreang or Aglow if what Kityajai had said was true. Further, no police report was lodged by Mangpong despite its allegations about falsification of its documents.

66 The loss caused by the plaintiffs' actions to Aglow was substantial as Aglow had received further orders from J&H Digital Laser Pte Ltd for 30,000 VCDs of TTT which it could not meet. He exhibited two purchase orders dated 5 and 10 July 2003 respectively, each ordering 15,000 VCDs of TTT at $6 per VCD. Aglow therefore counterclaimed for damages to be assessed. Although Aglow also counterclaimed for damages in its pleading on the ground that it had ordered 2,000 VCDs each of FD2 and D&D prior to the injunction, no evidence was adduced on this.

67 Zakir lived in Johor Baru and had no residential address in Singapore. He confirmed that Aglow operated only from 179 Syed Alwi, Road #01-04, and that the premises had no signboard and were locked most of the time. Aglow was not listed in the telephone directory. In 1996, he gave an undertaking to the MPA on his own behalf and on behalf of Aglow (then Adham's Video Pte Ltd) that he would inform the MPA of the particulars of any new title he intended to import. He agreed that he

was in breach of that undertaking and that the MPA obtained judgment against Aglow and him as a result.

68 Zakir said he had been importing Mangpong products since 1998 although he had never met Prasong. He had assured Joseph Toh of the TS Group that such products were genuine. In July 2003, he even arranged for Joseph Toh to meet Rungkitti in Bangkok. They did not manage to meet Prasong. To further assure the TS Group that the products were genuine, Aglow took out an advertisement in *The New Paper* on 4 July 2003 stating it had imported originals of TTT (and "Die Another Day") and inviting trade enquiries. Although there were no contact details in that advertisement, those in that trade would know how to contact him.

69 Zakir also testified that the VCDs from Rungreang were imported in spindles and not in complete packaging. He sent the discs to a low-income family living in Pipit Road to have them assembled in boxes and affixed with the certificate from the censors. He then sent the box sets to the TS Group warehouse for them to be shrink-wrapped. The finished products were then distributed to the various TS Group outlets for sale. He travelled by air to Bangkok to pay Rungreang in cash, thereby saving on bank charges.

70 Andy Wee Boon Hoe ("Andy"), a director of Speedy Video, testified on behalf of the company only and not on his own behalf as the 32nd defendant in S 843/2003. In his affidavit of evidence-in-chief, he said that Speedy Video had purchased VCDs of many movies from Rungreang. On or about 30 June 2003, one Ravinder from Rungreang telephoned him to say that Rungreang was able to obtain VCDs of TTT from Mangpong and asked if Speedy Video was interested in purchasing any. As Rungreang was a reputable company in Thailand, Andy had no reason to doubt it. Subsequently, Speedy Video decided to purchase VCDs of TTT and on or about 24 July 2003, Speedy Video contacted Ravinder to finalise the price and then placed an order for 7,000 VCDs of the film. On 25 July 2003, Ravinder issued an invoice to Speedy Video. However, Andy admitted that he had no personal knowledge of all this and was merely repeating what he had learnt from his operations manager, Vincent Wang, who had left the employ of the company.

71 The 7,000 VCDs, which were legitimate parallel imports, were distributed to 28 retail outlets here. Speedy Video was not aware of the scheduled release date for TTT. Nestor, the plaintiffs' witness, did not specify which video format the release date of 26 August 2003 was for. In any event, the second plaintiff had released for sale VCDs of TTT before that date.

72 Speedy Video, Andy and Kelvin Quek ("Kelvin"), the 33rd defendant in the same suit, denied that they were related to the TS Group. They counterclaimed against the plaintiffs for losses incurred as a result of the injunction. Kelvin rented the flat at 56 Telok Blangah Heights, #06-157, from Lau Chak Hou, the 21st defendant (one of the four directing minds) and both of them therefore appeared to share the same address. Andy was working in the construction industry while Kelvin was a sales assistant in a clothing outlet.

73 Under cross-examination, Andy explained that he and Kelvin got to know Vincent Wang on one of their trips to Malaysia. In 2000, they decided to set up Speedy Video and to employ Vincent Wang to run the entire business for them because he knew about the trade and had the contacts. Vincent Wang was not made a director or a shareholder but they were prepared to consider this matter sometime later. All of them had contributed money for a bankers' guarantee required for the video business. Andy believed he put in about $50,000.

74 Vincent Wang managed all aspects of the business, including procuring orders and delivering the products. He was also a signatory to Speedy Video's bank account. He generated the invoices

using his home computer and kept all the documents of the company. The company had neither an office nor a warehouse and was not listed in the telephone directory. He even took care of the task of engaging solicitors when the company was sued.

75 In April 2004, Vincent Wang's employment was terminated as a result of a dispute over money. He indicated he did not wish to be involved in the legal action against the company as he had returned to live and to work in Malaysia. A letter dated 23 April 2004 from the company (signed by Kelvin) to him was tendered as proof of the company's willingness to abide by his wishes. Vincent Wang was therefore not called to testify in these proceedings.

76 Andy and Kelvin were left with the messy company documents upon Vincent Wang's departure. Despite the plaintiffs' request for the video distributors' licence, the bankers' guarantee and the statutory declaration given to the censors in Singapore before the TTT VCDs were imported here, Speedy Video was unable to produce these three documents.

77 The final witness for the defendants was Joseph Toh. He described himself as a marketing manager and stated he was authorised to testify on behalf of all the defendants save for Aglow and its officers, Speedy Video, Andy and Kelvin. That was withdrawn in the light of the submission of no case to answer for the individual defendants. He is the manager of TS Laser Pte Ltd (the second defendant in S 718/2003) and Mega Star Pte Ltd and was a director of Fortune On-Line Pte Ltd (the fifth defendant in S 843/2003) until July 2003.

78 Joseph Toh explained that TS Laser Pte Ltd was incorporated in 1988 and dealt only in wholesale acquisition of copyright and licences in films and drama series from abroad. Upon securing the copyright in a film, it would distribute on a wholesale basis to retail outlets or retail groups within Singapore. The company did not have its own retail outlet here. It was never in possession and/or control of any of the VCDs in issue and did not deal in any way with them.

79 The TS Group was a group of independent companies which operated together on a loose arrangement. The arrangement allowed the various companies to increase their collective bargaining power and to advertise and promote their products at a level that was not possible for individual small companies. Although referred to as the TS Group, each company was a separate and independent entity having its own directors and shareholders and maintaining its own accounts.

80 The group was started by Clement Lau (one of the four directing minds). There were initially four retail outlets. Clement Lau then decided to expand his business by buying over other companies which owned retail outlets. However, he did not change the names of those companies and would sometimes invite the original directors to remain as such to run the outlets. Accordingly, a separate company operated each outlet. All the outlets' directors and staff reported to Clement Lau and took instructions from him.

81 Most of the TS Group companies were owned by Clement Lau, his wife and his brother (the 23rd and 21st defendants respectively in S 843/2003). The brother was the production and purchasing manager for the TS Group while the wife was in charge of paying the suppliers. The company administering and controlling the companies in the group was J&H Digital Laser Pte Ltd which imported and distributed the products to the outlets. However, TS Laser Pte Ltd's name was used on all the TS Group products and advertisements. The operating costs for the warehouse, rental and salary and advertisement costs were borne by all the companies in the TS Group which recently also employed an in-house counsel for the legal affairs of the group.

82 TS Entertainment Pte Ltd (the third defendant in S 718/2003) was within the TS Group. It

obtained its supplies of TTT from Aglow which had repeatedly represented that the products originated from Mangpong and were legitimate parallel imports from Thailand supplied by Rungreang to Aglow. It was also represented that Mangpong was the exclusive licensee for TTT in VCD format, as evidenced by a "Legal Notice" issued by Mangpong (which Kityajai denied) on 15 May 2003. The translation of this Thai document read:

> Legal Notice
>
> To Whom It May Concern:
>
> I, Mrs. Yajai Triekasathit a managing director of MANGPONG CO., LTD, located at 637/38-42 Moo1, Soi Prachauthit 40, Prachauthit Rd, Bangmod, Tungkru, Bangkok 10140, notify that MANGPONG CO., LTD is the official holder of the copyright for Lord of the Rings I, II, & III.
>
> Any person or parties who violate the rights of the above movies will be subjected to the highest lawsuit.
>
> To be informed.
>
> Signed
>
> (Mrs. Yajai Triekasathit)
>
> Managing Director

Further, Aglow also assured the company that it had played the VCDs in question and that the logo of Mangpong appeared at the start of the film.

83 The defendants in S 843/2003 believed they were selling legitimate products based on the information and documents provided by their supplier, Speedy Video, that Mangpong had sold to Rungreang 7,000 VCDs of TTT in June 2003 and that Rungreang then sold the said VCDs to Speedy Video in July 2003. They had also seen other parallel imports from Mangpong brought into Singapore between 2000 and 2002 and received the same strong assurance from Aglow and Speedy Video as to the legitimacy of the imports.

84 Initially, the TS Group purchased its products from the second plaintiff. Upon finding out that Aglow was supplying the same products at lower prices, Joseph Toh complained to Tan as the TS outlets would be at a competitive disadvantage. Tan told him that Aglow's imports were pirated products and that legal action would be taken against Aglow. However, nothing appeared to have been done to stem the problem. Joseph Toh then informed the second plaintiff that since it could not solve the problem, the TS Group would solve it by importing titles from abroad.

85 To Joseph Toh, it was pointless to travel to Thailand to meet Kityajai as she would definitely not admit that the products originated from Mangpong because they had been manufactured in breach of Mangpong's licence agreement with the copyright owners. It was for this reason that Mangpong would only deal with Rungreang, a Thai entity, and not with overseas importers directly. Joseph Toh believed that products made by Mangpong as licensee were legitimate even if they were made in breach of its licence agreement. He was aware of legal notices sent by a law firm to Aglow

asserting that the VCDs of "Die Another Day" imported by it were infringing copies. However, as no legal action followed, he had no reason to doubt Aglow's assurances of the legitimacy of the VCDs of TTT. Joseph Toh was in fact lauded in the local newspapers with having brought another video distribution chain to justice for selling pirated products.

The decision of the court

86 This case turned essentially on the issue whether the VCDs and the VHS videotapes in question originated from Mangpong in Thailand. The primary evidence on this issue was the testimony of Kityajai for the plaintiffs and the testimony of Rungkitti for the defendants.

87 As far as the VHS videotapes of FD2 and D&D were concerned, the licensee in Thailand was not Mangpong but Right Beyond which had not sub-licensed these two titles to Mangpong. The document of 16 August 2003 allegedly from Prasong asserting such sub-licence was not proved to be authentic and it was in fact disavowed by Kityajai. There was also no evidence of any VCDs of these two titles having been manufactured by Mangpong. I accepted Tan's and Nestor's evidence that VHS rights were also included in the licence agreement of the second plaintiff and that such rights were not exercised because of the non-viability of this format. In any event, the first plaintiff would own such rights even if the second plaintiff did not.

88 I accepted the plaintiffs' evidence that the masters for TTT were received by Mongkol and subsequently by Mangpong in early August 2003 only. They had to obtain censorship approval for the film and had to comply with the official release date of 26 August 2003. Even if they had released the VCDs of TTT on the stealth before the said date, that could not have been in June or July 2003 anyway. Chukiat was unsure about the release date which he believed to be in the middle of the year and his evidence was contradicted by the firm evidence of the other witnesses for the plaintiffs.

89 I also believed the evidence of Kityajai. She might have appeared somewhat combative during her testimony but I accepted that she was speaking the truth. There was no Prasong in the employment of Mangpong and it could not be that an outlet manager had authorised the production of 10,000 sets of one title or ordered such amount without the knowledge of the people at the headquarters.

90 Rungreang, despite the claims by Rungkitti of its being rather well known in the Thai video industry, was completely unknown to the acknowledged leaders in that industry. The company had no official business premises and the business was not even properly registered until 2002. Further, Rungreang was not listed in the Thai telephone directory. Its only claim to fame was its purchase of the rights to some very old Chinese movies produced in the 1960s and 1970s and the operation of a mobile cinema in the northern provinces of Thailand. Its two outlets were roadside stalls. Rungkitti had the unusual habit of dealing with everyone, whether in Thailand or in Singapore, in cash only even when large sums of money were involved.

91 No one other than Rungkitti appeared to have met Prasong. His business contact in Mangpong seemed to be contactable whenever orders were placed by Rungreang but not available when he had to be introduced to someone else such as Leong, the lawyer. It could not be a case of Rungkitti trying to protect his turf by preventing the Singapore buyers from having direct contact with Prasong. After all, they knew Prasong's name and where he was stationed and could bypass Rungkitti quite easily even without introduction. Rungkitti did not seem concerned that his only contact in Mangpong was no longer with the Bangkok outlet and that he should be looking for a new contact in order to continue buying from Mangpong. If Prasong really existed and was involved in the alleged unlawful activities of Mangpong, it would be understandable if he did not want to testify against his

employers' interests. However, all the evidence pointed to the reality that Prasong was no more than an imaginary character.

92 Perhaps the best indication that Rungkitti was far from being a reliable witness was his explanations on why he made no profit on the first batch of 3,000 TTT VCDs. He had bought the 3,000 sets at 160 baht per set and then sold the same to Aglow at exactly the same price. The expenses incurred in obtaining and shipping the supply to Singapore would have caused him to suffer a loss on a film title which the entire movie world was waiting for with immense anticipation at that time, something that must surely be known to anyone in the film trade. I found Rungkitti's evidence inherently incredible. The invoices for TTT were obviously fakes and they were poor fakes.

93 Aglow shared many of the unusual characteristics of Rungreang. It had no real business premises, was unlisted in the local telephone directory and the man running the outfit was fond of dealing in cash only. Further, it saw nothing strange in taking out an advertisement in the newspapers inviting trade enquiries for its goods but omitting all contact information. It imported VCDs in unpackaged form. The discs arrived in a separate shipment from the artwork and the casing. It assembled the products in a small flat in a public housing estate. The shrink-wrapping had to be done in the warehouse of its customers, the TS Group. It was incredible that these products were manufactured and sold by a major player in the Thai video market in an assemble-it-yourself manner. All these pointed to the extremely suspicious nature of the business and to the fact that both Aglow and Rungreang were working hand in hand. What Rungreang knew, Zakir also knew or, at least, ought reasonably to know.

94 Zakir was also warned earlier that the products that Aglow had been importing, purportedly manufactured by Mangpong, were infringing ones. The evidence showed that he knew or, at least, ought reasonably to know, that the VCDs of TTT and the VHS videotapes of FD2 and D&D which he was importing had been made without the consent of the copyright owner. By importing them into Singapore for sale, he and Aglow infringed the plaintiffs' copyright and breached s 31 of the Act.

95 The evidence also showed clearly that the TS Group and Aglow were working closely. As said earlier, the TS Group's warehouse was the final destination for assembly of the VCDs imported by Aglow. They were sold to the TS Group outlets, which, as testified by Joseph Toh, bought in bulk through a co-ordinating company in order to have more bargaining power and to enjoy economies of scale. There was a purchase order for 3,000 sets from J&H Digital Laser Pte Ltd. There was no need for Aglow to deliver the products to the outlets as there was obviously a central purchasing authority for all of them. Yet, there were delivery orders made out to individual outlets (identified only by location and not by the names of the companies) and there were receipts acknowledging payment from them. Zakir claimed to have been asked to help deliver to some of the outlets after the shrink-wrapping. If he did deliver to those outlets, this confirmed his very close relationship with the TS Group.

96 The TS Group was aware of Aglow's problems with copyright owners. Joseph Toh had also received the warning notices about infringement. It was naïve to say that because no legal action had been commenced, Joseph Toh could continue to believe the word of Zakir. The TS Group took no steps to verify with the alleged source of the products or to check with the copyright owners on their assertions of infringement. It was telling that both Zakir and Joseph Toh, while willing to travel to Bangkok purportedly to try to resolve the problem after the injunction was served on them, nevertheless declined to meet Kityajai. Deliberate ignorance does not entitle a person to claim innocence (*Columbia Picture Industries v Robinson* [1986] 3 WLR 542). Joseph Toh's testimony betrayed his thinking. He was frustrated at the apparent ineffectiveness of the second plaintiff in curbing piracy and, since the copyright owners could only threaten but not hurt the pirates, the TS

Group might as well collaborate with the pirates instead of paying money to the copyright owners for more expensive goods.

97 Section 33(1) of the Copyright Act reads:

> The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Singapore, and without the licence of the owner of the copyright —
>
> (*a*) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article; or
>
> (*b*) by way of trade exhibits an article in public,
>
> where he knows, or ought reasonably to know, that the making of the article constituted an infringement of the copyright or, in the case of an imported article, the making of the article was carried out without the consent of the owner of the copyright.

Based on my findings set out earlier, the above section has been breached as the products in issue were not manufactured by Mangpong and this was within the knowledge of Aglow and the TS Group, working in conjunction with Rungreang. The defence of innocent retailers dealing with what they believed to be genuine parallel imports must therefore fail.

98 Far from being a loosely-knit group, the companies in the TS Group were really little pieces of mosaic forming a complete mural, glued together by the four directing minds. The business cards of these four persons intimated that TS Laser Pte Ltd was the parent or nerve centre and all the listed outlets were merely the offspring. In two newspaper articles, Joseph Toh was described as the group marketing manager for the TS Group. He described himself in his affidavit of evidence-in-chief as sales manager without specifying the company which employs him. The group also had a privilege card scheme applicable to all the outlets. All the outlets bore the initials "TS", a trademark owned by TS Video Centre Pte Ltd. The plastic carrier bag used by them listed the chain of outlets. The companies in the group shared many common directors and shareholders, and took instructions from Clement Lau, who appeared to be the beneficial owner of practically all of the companies. The headquarters of the group was in Lam Leong Building in Geylang Lorong 17, which also served as the warehouse and was owned by several of the companies in the group.

99 In the circumstances, it would be entirely just to lift the corporate veils here and regard the companies for what they all really are – the business vehicles of Clement Lau and his family. The court's findings should therefore apply to all the companies in the group. Since the VCDs of TTT were infringing products, the entire TS Group was liable for having dealt with the products. J&H Digital Laser Pte Ltd was liable as it imported the products. TS Laser Pte Ltd was also liable as its name was used on all the TS Group products and advertisements. TS Entertainment Pte Ltd was within the TS Group and also dealt with the VCDs of TTT from Aglow. It was therefore liable to the plaintiffs as well.

100 Speedy Video could not have come into the picture so fortuitously soon after the injunction had been served on Aglow. It was obvious from Andy's testimony that both he and Kelvin knew hardly anything about the video business and were, in all probability, puppets of the four directing minds or related to some of them in some way. This was made more evident by the fact that Kelvin was residing in the flat of one of the four directing minds, even if he was really a paying tenant. Further, Speedy Video shared the same registered office and company secretary as the rest of the TS Group. The explanation given was that Vincent Wang had previous business dealings with the group and the company was in the same trade as the TS Group. That, in my view, was a rather lame explanation in

the light of all the other connecting factors between Speedy Video and the TS Group. I had no difficulty finding that Speedy Video was able to import from Rungreang the 7,000 sets of TTT because it was merely another corporate vehicle of one, or some, or all, of the four directing minds. It would be too much of a coincidence that all 7,000 sets were also sold to the TS Group outlets. I therefore found Speedy Video liable as well.

101 In so far as the individual defendants were concerned, the plaintiffs submitted that the corporate veils should also be lifted to hold them accountable for the acts of the corporate defendants. They relied on two grounds – the common law and the following provisions of the Act. Section 201B(4) of the Act provides:

> Where an offence under section 136, 139 or 254A committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

The said s 136 reads:

> (1) A person who at a time when copyright subsists in a work —
>
> (*a*) makes for sale or hire;
>
> (*b*) sells or lets for hire, or by way of trade offers or exposes for sale or hire; or
>
> (*c*) by way of trade exhibits in public,
>
> any article which he knows, or ought reasonably to know, to be an infringing copy of the work shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 for the article or for each article in respect of which the offence was committed or $100,000, whichever is the lower, or to imprisonment for a term not exceeding 5 years or to both.
>
> …

102 Tortious liability could arise out of a criminal statute where there is a breach of a statutory obligation resulting in damage and the obligation is of the kind that the statute is intended to prevent (see *Clerk & Lindsell on Torts* (Sweet & Maxwell, 15th Ed, 1982).) The plaintiffs argued that the circumstances listed were present in this case as there was a statutory duty owed by the officers of companies to the plaintiffs as copyright owners to respect such copyright. A breach of that duty would result in damage, and the damage was precisely what the statute sought to prevent. Such a ruling, it was submitted, would be consistent with the clear intention of the Act which was to promote respect for, and the protection of, intellectual property.

103 The plaintiffs' approach would involve a two-stage process. Firstly, the court would have to find that civil liability could arise from s 136. However, I think we should not be too hasty to inject civil liability into criminal offences. Secondly, the court would then have to use s 201B(4), intended for imposing criminal liability, to impute civil liability on the directors and officers as well. I would prefer to approach this issue of personal liability of company directors somewhat differently.

104 In *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR 543, the Court of Appeal said ([117], [118] and [144]):

117 A fundamental tenet of company law is that a company is a separate legal entity from its members or shareholders. As such, the members are not liable to be sued in respect of a breach of the company's obligations: *Salomon v A Salomon and Co, Ltd* [1897] AC 22. In an extension of this principle, the courts have held that proof of the commission of a tort by a company does not automatically prove that the directors who manage its affairs are also guilty of the tort: *Rainham Chemical Works, Ltd v Belvedere Fish Guano Co Ltd* [1921] 2 AC 465, *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374.

118 The law has carved out an exception to this principle. Where directors order an act by the company which amounts to a tort by the company, they may be liable as joint tortfeasors on the basis that they have "procured or directed" the wrong to be done: *Performing Right Society, Ltd v Ciryl Theatrical Syndicate, Ltd* [1924] 1 KB 1.

…

144 … The court must look at the level of his involvement in the company in order to determine the extent to which he is the company's alter ego: *Gabriel Peter*, [117] *supra* at [35].

The Court of Appeal in that case found that the director in question was clearly the controlling mind and spirit of the company in question and held that there was sufficient reason to lift the corporate veil and find the said director personally liable for authorising, directing and/or procuring the company's negligent acts.

105 Applying the principles set out above, it would not be sufficient to hold a director liable on the ground of his indifference or inaction alone. The plaintiffs did not adduce any evidence on the individual defendants, except for the four directing minds, three of whom chose not to testify.

106 Where Aglow and its three officers were concerned (S 836/2003), there could be no doubt that Zakir was the alter ego of Aglow and that he was its directing mind. Most of the decisions in Aglow were made by him personally. He was the one who dealt with Rungkitti and the TS Group. He took delivery of the imported goods, arranged to package them and then delivered them to their intended destination. He collected payment in Singapore and travelled to Thailand to pay his supplier. Manjit Singh (the fourth defendant in S 836/2003) filed an affidavit earlier in these proceedings but that was not admitted for the truth of its contents. There was no mention of Pauziyah binti Hussin's (the third defendant in S 836/2003) involvement in this matter. Accordingly, I found only Zakir personally liable as a director of Aglow.

107 For the TS Group, the four directing minds were mentioned by Tan in his testimony as the persons he dealt with over the years. They were clearly very involved in the direction and operations of the companies in the group. They held executive positions in the group and appeared to form an inner circle of management, with at least three of them related by blood or marriage. One was the managing director, one was in charge of production and purchasing, one was in charge of sales and the final one was in charge of finance. Clement Lau was the acknowledged "boss" of the entire group but when Tan spoke to him about the piracy problem, surely a very important issue for a company in the video trade, he merely shoved the problem to Joseph Toh in order to avoid Tan. Joseph Toh was practically conducting these proceedings and co-ordinating the defence of the entire group. He spoke with confidence and authority. The other three would obviously be kept updated about developments in this dispute and make the necessary decisions from time to time. Their titles implied duties closely related to the ordering, importation and distribution of the infringing VCDs. I believed the four of them were the controlling mind and spirit of the TS Group and therefore found them personally liable for the infringing activities committed by the corporate defendants.

108 Nothing was said about the rest of the individual defendants save that they were served "cease and desist" letters and should have knowledge of the injunction. I disagreed with the plaintiffs' submission that because "each of them can be deemed to have consented, by their silence and inactivity, to the infringing activities of the defendant companies", they could thereby be held personally accountable. The law requires more than that to impose personal liability. Andy's testimony merely showed that he and Kelvin, far from being actively involved in the decision-making process of Speedy Video, hardly knew what was going on in the company. I found the plaintiffs had not proved all these other individual defendants to be liable.

109 Under s 119(4) of the Act, additional damages may be awarded against the infringers. The section provides:

> Where, in an action under this section —
>
> (*a*) an infringement of copyright is established; and
>
> (*b*) the court is satisfied that it is proper to do so, having regard to –
>
> (i) the flagrancy of the infringement;
>
> (ii) any benefit shown to have accrued to the defendant by reason of the infringement; and
>
> (iii) all other relevant matters,
>
> the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

110 Such an award is punitive in nature and should not translate into an extraordinary profit for the plaintiffs. Deplorable conduct on the part of the infringers would be a factor to consider in deciding whether to award such damages and in determining the appropriate amount (see *Ong Seow Pheng v Lotus Development Corp* [1997] 3 SLR 137 at [56], where the Court of Appeal awarded a sum of US$100,000 as additional damages).

111 In the present case, I have found that Aglow, the TS Group and Rungreang were working in collaboration to bring in infringing products under the guise of legitimate parallel imports. It was a scheme that was not easy to unravel. There was falsification of documents and aspersions were cast on a reputable foreign business. The infringing products were advertised as original imports and anti-piracy stickers were even placed on the infringing products urging consumers to "Get Real, Buy Original" in a calculated move to persuade the members of the public that they would be buying genuine goods. The TS Group is one of the largest chains here and has a wide outreach. It is familiar with copyright issues, having prosecuted other infringers in court before. It abused the law relating to companies by creating a network of seemingly independent companies, thereby allowing it to circumvent any injunction served on any one of them. The defendants have been enriching themselves at the expense of the copyright owners.

112 In view of these factors which I have listed out, I awarded additional damages at $10 per set of TTT VCD imported less the six sets delivered up to the plaintiffs, *ie*, $99,940 (9,994 sets x $10) against the defendants who were found to be liable to the plaintiffs. I did not award such damages in respect of FD2 and D&D as the infringement activity there was much narrower in scope and was stopped at a very early stage.

The orders made

113 I made the following orders:

(a) Parties found liable or not liable for infringing copyright in the three films in issue

(i) S 718/2003 — all three defendants found liable.

(ii) S 836/2003 – first and second defendants found liable, and third and fourth defendants found not liable.

(iii) S 843/2003 – first to 19th, 30th and 31st defendants found liable, 20th to 23rd defendants found personally liable, and 24th to 29th, 32nd to 34th defendants found not liable.

(b) Reliefs granted against the defendants found liable

(i) An injunction is granted against infringement of the copyright in the three films in issue.

(ii) Damages are to be assessed by the Registrar and be paid by the defendants, who are jointly and severally liable, and interest at 6% per annum is to be awarded on such amounts as may be found due to the plaintiffs from the date of judgment till payment.

(iii) Additional damages pursuant to s 119(4) of the Act are to be paid by the defendants found liable for infringing the copyright in TTT (not including Zakir as he was not sued personally for this). The additional damages awarded are $10 per set of VCD imported (minus the six that were delivered up to the plaintiffs), amounting to $99,940.

(iv) No additional damages under s 119(4) of the Act are ordered in respect of infringement of copyright in FD2 and D&D.

(v) The costs of the trial are to be taxed on the standard basis and be paid by the defendants.

(vi) The costs of the assessment before the Registrar are reserved to be decided by the Registrar.

(c) The counterclaims

(i) S 718/2003 (by Aglow) – dismissed with costs.

(ii) S 836/2003 (by Aglow, Zakir, Pauziyah and Manjit) – dismissed with costs.

(iii) S 843/2003 (by Speedy Video, Andy and Kelvin) – dismissed with costs.

The costs of the counterclaims are to be subsumed under the costs of the trial, *ie*, there will not be separate sets of costs for the counterclaims. There is to be no separate set of costs against Andy and Kelvin.

(d) Costs of defendants found not liable

Although there is insufficient evidence to find these defendants personally liable, they have left the conduct of these proceedings to the four defendants found personally liable, in particular, Joseph Toh. I find that they are part of the TS Group which is run as an organic group or that they are related to the said group (where Speedy Video, Andy and Kelvin are concerned).

Accordingly, no costs are ordered against the plaintiffs in respect of their claims against the defendants found not liable.

114 The TS Group of companies (save for Speedy Video) and the four directing minds have filed an appeal against my decision.

Plaintiffs' claims partially allowed.

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