IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 22

Court of Appeal / Civil Appeal No 30 of 2025

Between

Louis Vuitton Malletier

… *Appellant*

And

Ng Hoe Seng (formerly trading as EMCASE SG)

… *Respondent*

In the matter of Originating Claim No 531 of 2023 (Assessment of Damages No 9 of 2024)

Between

Louis Vuitton Malletier

… *Claimant*

And

Ng Hoe Seng (formerly trading as EMCASE SG)

… *Defendant*

JUDGMENT

[Damages — Assessment]
[Intellectual Property — Trade marks and trade names — Remedies — Statutory damages]
[Statutory Interpretation — Construction of statute — Purposive approach]

TABLE OF CONTENTS

Louis Vuitton Malletier
v
Ng Hoe Seng (formerly trading as EMCASE SG)

[2026] SGCA 22

Court of Appeal — Civil Appeal No 30 of 2025
Steven Chong JCA, Ang Cheng Hock JCA, Hri Kumar Nair JCA
26 February 2026

6 May 2026 Judgment reserved.

Hri Kumar Nair JCA (delivering the judgment of the court):

Introduction

1 Louis Vuitton Malletier ("Appellant") is the owner of, *inter alia*, the well-known "Louis Vuitton" trade mark. It commenced an action for trade mark infringement against Ng Hoe Seng ("Respondent") and obtained judgment in default as the Respondent was absent in the proceedings below. A judge of the General Division of the High Court ("Judge") deemed the Respondent's infringement to involve the use of a "counterfeit trade mark". This entitled the Appellant to statutory damages under s 31(5)(*c*) of the Trade Marks Act 1998 (2020 Rev Ed) ("TMA"), which the Judge assessed to be S$200,000. The Judge's decision is set out in *Louis Vuitton Malletier v Ng Hoe Seng (formerly trading as EMCASE SG)* [2025] SGHC 122 ("Judgment").

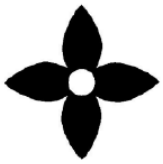
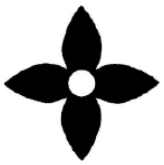
2 The Appellant brings this appeal against the quantum of statutory damages awarded, arguing that it is entitled to the sum of S$1.45m.

3 The crux of this case is the interpretation of s 31(5)(*c*) of the TMA, and the quantum of damages to be awarded, taking into account the factors under s 31(6) of TMA. Both provisions are reproduced below:

> **31.—** (5) In any action for infringement of a registered trade mark where the infringement involves the use of a counterfeit trade mark in relation to goods or services, the claimant is entitled, at the claimant's election, to —
>
> …
>
> (*c*) statutory damages —
>
> (i) not exceeding $100,000 for each type of goods or service in relation to which the counterfeit trade mark has been used; and
>
> (ii) not exceeding in the aggregate $1 million, unless the claimant proves that the claimant's actual loss from such infringement exceeds $1 million.
>
> (6) In awarding statutory damages under subsection (5)(*c*), the Court is to have regard to —
>
> (*a*) the flagrancy of the infringement of the registered trade mark;
>
> (*b*) any loss that the claimant has suffered or is likely to suffer by reason of the infringement;
>
> (*c*) any benefit shown to have accrued to the defendant by reason of the infringement;
>
> (*d*) the need to deter other similar instances of infringement; and
>
> (*e*) all other relevant matters.

Background facts

4 The Appellant is the proprietor of 13 "Louis Vuitton" trade marks registered in Singapore ("Registered Marks"):

S/N	Trade Mark	Trade Mark No	Classes
1		T1214158Z	3, 4, 6, 8, 9, 12, 26, 34
2		T9100128Z	14
3		T9007042C	18
4	LOUIS VUITTON	T7773776B	18
5		40202103540P	9
6		T0514536B	18
7		40202103531W	9

8		T0512684H	18
9		40202103537T	9
10		T0514539G	18
11		T1116259A	3, 9, 14, 16, 18, 24, 25, 34
12		40201916373U	18
13		40201916232X	18

5 The Respondent was the sole registered proprietor of EMCASE SG ("EMCASE") at the material time. It operated an online store through Instagram under the username "emcase_sg" ("EMCASE IG Page"), advertising, offering or exposing for sale goods affixed with signs identical to one or more of the Registered Marks without the Appellant's consent ("Offending Goods"). There

were nine types of Offending Goods: (a) phone case; (b) watch strap; (c) passport cover; (d) key case; (e) card wallet/holder; (f) pouch/purse; (g) phone bag; (h) spectacle case; and (i) cigarette case.

6 Around August 2022, the Appellant made a trap purchase of 12 of the Offending Goods. On 21 March 2023, the Appellant issued a cease-and-desist letter to the Respondent, demanding that he stop offering or exposing the Offending Goods for sale. EMCASE ceased registration as of 26 April 2023 and the EMCASE IG Page became inactive around May 2023. However, the Respondent continued to advertise, offer or expose for sale the Offending Goods using another Instagram page with a different username "emcrafts_sg" ("EMCRAFTS IG Page"). In May 2023, the Appellant made another trap purchase of one of the Offending Goods.

7 The Appellant filed HC/OC 531/2023, claiming that the Respondent had infringed the Registered Marks and passed off its goods as the Appellant's goods. As the Respondent did not file a notice of intention to contest or not contest, the Appellant obtained judgment in default in HC/JUD 486/2023 ("JUD 486"). In JUD 486, the Judge ordered, *inter alia*, an inquiry as to damages or, at the Appellant's election, an account of profits or statutory damages. The Appellant elected for an award of statutory damages under s 31(5)(*c*) of the TMA, or alternatively, general compensatory damages. An injunction was also granted to restrain the Respondent from continuing his infringing acts. However, even after the injunction was brought to the Respondent's attention, he continued his infringing acts by advertising the Offending Goods for sale on the EMCRAFTS IG Page. He also changed the EMCRAFTS IG Page to a private account. This meant that only existing followers could view the EMCRAFTS IG Page, and any new follow requests from other users had to be manually accepted by the Respondent.

The decision below

8 The Judge found that the Respondent had committed at least 121 instances of infringement (Judgment at [25]–[28]). The Judge also found that the Respondent used counterfeit trade marks in relation to the Offending Goods, thus satisfying the requirement for an award of statutory damages (Judgment at [38] and [50]).

9 Given the absence of an established framework for the quantification of statutory damages in Singapore, the Appellant relied on the scale for quantifying damages in cases involving the sale of counterfeit goods in Canadian jurisprudence ("Canadian Scale") as a starting point (Judgment at [16]). Under the Canadian Scale, general compensatory damages are quantified on a per incidence of infringement basis, taking into account the nature of the infringer. Given that there were 121 instances of infringement and that an adjustment should be made to account for inflation, the Appellant argued that the quantum of statutory damages should be S$4.84m under the Canadian Scale (Judgment at [84]–[85] and [93]).

10 However, s 31(5)(*c*) of the TMA prescribes maximum limits for statutory damages. The Appellant argued that the limit of S$100,000 under s 31(5)(*c*)(i) applied to each counterfeit mark used in respect of each type of goods; and the aggregate cap of S$1m under s 31(5)(*c*)(ii) applied to each counterfeit mark used (Judgment at [102]). We shall refer to the Appellant's arguments in relation to ss 31(5)(*c*)(i) and (ii) collectively as the "Per Mark Interpretation".

11 Under the Per Mark Interpretation, the limit under s 31(5)(*c*)(ii) would be S$13m since all 13 of the Registered Marks were infringed. However, this

was subject to the cap of S$100,000 under s 31(5)(*c*)(i) for each type of goods in relation to which the counterfeit trade mark had been used. Hence, according to the Per Mark Interpretation, the limit imposed would be derived based on the number of Registered Marks involved in *each* type of goods, resulting in a limit of S$2.9m, which the Appellant submitted should be the amount awarded (Judgment at [93] and [102]–[104]):

S/N	**Type of Goods and Number of Marks used in relation to the goods**	**Registered Marks Involved**	**Prescribed limit under s 31(5)(*c*)(i) of the TMA**
1	Phone cases (5 marks)	1, 5, 7, 9 and 11	S$500,000
2	Watch straps (1 mark)	2	S$100,000
3	Passport covers (3 marks)	3, 6 and 8	S$300,000
4	Key cases (5 marks)	3, 4, 6, 8 and 13	S$500,000
5	Card wallets / holders (3 marks)	3, 6 and 8	S$300,000
6	Pouches / purses (7 marks)	3, 4, 6, 8, 10, 11 and 12	S$700,000
7	Phone bag (1 mark)	1	S$100,000
8	Spectacle case (3 marks)	1, 5 and 7	S$300,000
9	Cigarette case (1 mark)	1	S$100,000
Total			S$2,900,000

12 The Judge rejected the Per Mark Interpretation. He held instead that the aggregate limit of S$1m applied "to each case" (Judgment at [105] and [110]). In other words, the Judge found that the maximum award of statutory damages he could award under s 31(5)(*c*)(ii) was S$1m and not S$13m as contended by the Appellant. Further, while it was not explicitly stated in the Judgment, it appears that the Judge was also of the view that the limit of S$100,000 under s 31(5)(*c*)(i) applied to *each type of goods* (regardless of the number of counterfeit marks). As only nine types of the Appellant's goods were infringed (see [5] above), the maximum statutory damages that could be awarded was S$900,000 (Judgment at [114]).

13 The Judge also rejected the adoption of the Canadian Scale but found the principles behind the gradations in the Canadian Scale useful in guiding a court in its assessment of the flagrancy of infringement. This entails a consideration of the scope of the infringer's operations based on three categories: (a) where the infringer operates from temporary facilities; (b) where the infringer operates from conventional retail premises; and (c) where the infringer is a manufacturer, importer or distributor of counterfeit goods (Judgment at [97]–[99]).

14 Finally, applying the factors under s 31(6) of the TMA, the Judge determined that the appropriate quantum of statutory damages was S$200,000 (Judgment at [164]):

> (a) The Respondent's infringement was highly flagrant as it was wide in breadth in that he used counterfeit trade marks on nine different types of goods and committed his infringing acts through online means thus enabling him to reach a larger audience. The manner in which the Registered Marks were used on the Offending Goods also strengthened

the false representation perpetrated on members of the public. Additionally, it was aggravating that, in some instances, the Respondent falsely represented that the Offending Goods were made from materials sourced from independent secondary market sources with "authenticity guaranteed and verified through a 3rd party authenticator" or "upcycled" from the Appellant's genuine products and thus "authentic" (Judgment at [118]–[119] and [123]–[125]).

(b) While the Appellant would have suffered some damage to its exclusivity, reputation and goodwill, it was doubtful whether the Appellant would have suffered significant lost sales as most consumers who were inclined to buy the Respondent's goods would likely have known that the Offending Goods were not genuine given the large disparity between the prices charged by the Appellant and the Respondent for the same type of goods. This was acknowledged by the Appellant in its submissions (Judgment at [135]–[136]).

(c) The Respondent had been able to leverage the Registered Marks to sell the Offending Goods at far higher prices compared with the same types of goods without trade marks associated with luxury goods (Judgment at [139]).

(d) The need to deter similar instances of infringement by the Respondent and others was acute given the accessibility and low costs of online commerce, and the Respondent was a recalcitrant infringer (Judgment at [144]–[149]).

15 The Judge however did not give a breakdown or otherwise explain how he arrived at the award of S$200,000.

The parties' cases on appeal

16 The Appellant submits that the Judge erred in: (a) not accepting the Per Mark Interpretation; and (b) quantifying the statutory damages at S$200,000 as that is wholly inadequate.

17 In respect of the Appellant's first ground of appeal, the Appellant makes two broad arguments:

(a) First, a plain reading of s 31(5)(*c*) of the TMA shows that the prescribed statutory damages limits operate on a "per mark" basis.

(b) Second, it is rational and justifiable for the prescribed statutory damages limits under the TMA to apply on a "per mark" basis.

18 The Appellant contends that S$2.9m ought to be the applicable limit on statutory damages in this case since it is the lower of the two limits under ss 31(5)(*c*)(i) and (ii) (see [11] above).

19 Regarding its second ground of appeal, the Appellant submits that the Judge erred in not considering the damages awarded in US cases involving statutory damages. Generally, the US courts have tended to award statutory damages of at least US$50,000 *per counterfeit mark per type of goods*. The Appellant further argues that all the prescribed factors under s 31(6) of the TMA "weigh heavily in favour of a high award of statutory damages", with no mitigating factors. Accordingly, S$1.45m should be awarded – this amounts to an award of S$50,000 per counterfeit mark per type of goods and aligns with the "most lenient damages award made" in the cited US authorities. Alternatively, if the Canadian Scale were to be applied, an award of S$1.45m is

similarly fair and proportionate. The Appellant does not appear to challenge the Judge's rejection of the Canadian Scale but argues that it remains a "broadly useful heuristic tool" for the calibration of statutory damages in Singapore. The Appellant's claim for S$1.45m represents a substantial departure from the sum of S$2.9m it claimed below.

20 At the hearing, counsel for the Appellant, Mr Chan Wenqiang ("Mr Chan"), submitted that in the event the court rejects the Per Mark Interpretation (and thus the statutory limit is S$900,000), the Appellant should be awarded S$675,000 in damages.

21 The Respondent appointed a solicitor on 5 August 2025, slightly more than a week after the Appellant filed its Notice of Appeal. No reasons were offered as to why the Respondent did not appear in the proceedings below. In sum, the Respondent submits that the Judgment should be upheld entirely.

Issues to be determined

22 The issues before this court are:

(a) whether the Judge erred in his interpretation of s 31(5)(*c*) of the TMA, in particular his finding that the prescribed statutory damages limits do not apply on a "per mark" basis; and

(b) whether the Judge erred in his assessment of the statutory damages awarded to the Appellant.

The prescribed statutory damages limits under s 31(5)(*c*) of the TMA do not apply on a "per mark" basis

23 It is well-established that the courts adopt a purposive interpretation of legislation and thus an interpretation which promotes the purpose or object

underlying a statutory provision should be preferred over one that does not: see s 9A(1) of the Interpretation Act 1965 (2020 Rev Ed) ("Interpretation Act"). There are three steps when undertaking a purposive interpretation of a legislation (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]):

(a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole ("Step 1").

(b) Second, ascertain the legislative purpose or object of the statute ("Step 2").

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute ("Step 3").

24 Step 1 requires a court to ascertain the possible interpretations of the provision by determining the ordinary meaning of the words of the provision. In so doing, a court is aided by rules and canons of statutory construction. One of them is that Parliament shuns tautology and does not legislate in vain; the court should therefore endeavour to give significance to every word in an enactment (*Tan Cheng Bock* at [38], citing *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43]). Another rule is that Parliament is presumed not to have intended an unworkable or impracticable result, so an interpretation that leads to such a result would not be regarded as a possible one (*Tan Cheng Bock* at [38], citing *Hong Leong Bank Bhd v Soh Seow Poh* [2009] 4 SLR(R) 525 at [40]).

25 Under Step 2, the court discerns the purpose of the provision based, in the first place, on the text of the provision itself and the surrounding context of the written law as a whole and, if permissible, on extraneous material that is capable of giving assistance (*Blackstone Asia Real Estate Partners Ltd (in liquidation) v Standard Chartered Bank (Singapore) Ltd* [2026] SGCA 12 ("*Blackstone*") at [25], citing *Tan Cheng Bock* at [42]–[53]). Extraneous material refers to "any material not forming part of the written law" (*Tan Cheng Bock* at [42], citing ss 9A(2)–9A(3) of the Interpretation Act). There are three situations under which the court may consider extraneous material as set out under s 9A(2) of the Interpretation Act (*Tan Cheng Bock* at [47], referring to *Attorney-General v Ting Choon Meng* [2017] 1 SLR 373 at [65]):

> (a) First, to confirm that the ordinary meaning deduced is the correct and intended meaning having regard to any extraneous material that further elucidates the purpose or object of the written law (see s 9A(2)(*a*) of the Interpretation Act).
>
> (b) Second, to ascertain the meaning of the text in question when the provision on its face is ambiguous or obscure (see s 9A(2)(*b*)(i) of the Interpretation Act).
>
> (c) Third, to ascertain the meaning of the text in question where, having deduced the ordinary meaning of the text and considering the underlying object and purpose of the written law, the ordinary meaning appears manifestly absurd or unreasonable (see s 9A(2)(*b*)(ii) of the Interpretation Act).

26 Having identified the possible interpretations of the provision and its purpose, the court identifies in Step 3 the correct interpretation of the provision

that would best give effect to its ordinary meaning and purpose (*Blackstone* at [26]).

Step 1: Possible interpretations of the statute

27 To recapitulate, two possible interpretations of s 31(5)(*c*)(i) of the TMA were offered – the S$100,000 limit may apply to: (a) each type of goods or service on which counterfeit marks have been used, regardless of the number of counterfeit marks used on those goods or service ("Per Goods Interpretation"); or (b) each counterfeit mark used in respect of each type of goods of service, *ie*, the Per Mark Interpretation. Similarly, there are two possible interpretations of s 31(5)(*c*)(ii) – the aggregate S$1m limit may apply: (a) to each action, regardless of the number of types of goods or services on which counterfeit marks were used ("Per Action Interpretation"); or (b) to each counterfeit mark used, *ie*, the Per Mark Interpretation. The Appellant argues in favour of the Per Mark Interpretation while the Respondent supports the Judge's finding that the Per Goods Interpretation and the Per Action Interpretation apply.

28 The conflicting interpretations result in a substantial difference in the limit of the damages that may be awarded. That difference is well illustrated by the facts of this case. The Per Goods Interpretation would result in a limit of S$900,000 under s 31(5)(*c*)(i) since there are nine different types of goods bearing counterfeit marks. This may be contrasted against a much higher limit of S$2.9m pursuant to the Per Mark Interpretation (see [11] above). Under s 31(5)(*c*)(ii), the Per Action Interpretation limits the total damages in the action to S$1m, whereas the Per Mark Interpretation would lead to an aggregate cap of S$13m as there are 13 counterfeit marks.

29 We agree with the Judge that the plain words of s 31(5)(*c*) support the Per Goods Interpretation and the Per Action Interpretation. The critical language for quantification purposes is found in s 31(5)(*c*)(i) which sets the limit at "$100,000 for *each type of goods or service*" [emphasis added]. In other words, damages are to be assessed, and limited, per type of goods or services in issue. Likewise, s 31(5)(*c*)(ii) limits damages "in any action" to an aggregate S$1m without any qualification, save where the claimant proves its actual loss to be more. If Parliament intended for damages to be assessed on a "per mark" basis, it would have used clear words to that effect. This choice of words is particularly significant when examining the context in which Parliament passed the amendments to the TMA to introduce statutory damages, which will be explored below.

30 The Appellant relies on the references to "*a* registered trade mark" and "*a* counterfeit trade mark" [emphasis added] in the opening words of s 31(5) in the singular, as indicators that damages should be assessed on a "per mark" basis. It argues that, had Parliament intended the limits to apply regardless of the number of counterfeit marks used, the provision ought to begin with "[i]n any action for infringement of *one or more* registered trade marks where the infringement involves the use of *one or more* counterfeit trade marks" [emphasis added]. We disagree. The phrases relied on by the Appellant merely describe the *nature* of the action that triggers the assessment of damages regime and do not deal with how the quantum of statutory damages should be assessed. Likewise, the Appellant's reliance on the phrase "in relation to which *the* counterfeit trade mark has been used" [emphasis added] in s 31(5)(*c*)(i) does not assist its case for the Per Mark Interpretation as that only describes the type of goods relevant to the assessment, *ie*, those which bear the counterfeit mark.

31 Pertinently, s 2 of the Interpretation Act expressly states that "words in the singular include the plural and words in the plural include the singular". In *Chang Peng Hong Clarence v Public Prosecutor* [2024] 2 SLR 722 ("*Clarence Chang*"), the question was whether a sentencing judge may impose more than one penalty when an accused has been convicted of two or more offences for the acceptance of gratification in contravention of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). The provision in question was s 13 of the PCA, which stated:

> **13.—**(1) Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as *a penalty*, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.
>
> (2) Where a person charged with 2 or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court under section 148 of the Criminal Procedure Code 2010 for the purpose of passing sentence, the court may increase *the penalty mentioned in subsection (1)* by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.
>
> [emphasis added]

32 The applicant argued that the court must impose a single penalty order that reflects the entire sum of gratification set out in all the PCA offences for a single conviction as that would be "consistent with the grammatical reading of the provision and its ordinary meaning" (*Clarence Chang* at [30]). The applicant also contended that s 13(2) of the PCA lends support to the interpretation of s 13(1) as permitting only one global penalty order for multiple charges because s 13(2) pertains to charges taken into consideration and yet refers only to "the

penalty mentioned in subsection (1)" in the singular. Rejecting the applicant's argument, this court held that the singular in a statutory provision generally includes the plural unless the context indicates otherwise; having regard to the purpose of s 13 of the PCA, s 13(2) did not indicate that s 13(1) only allowed one penalty order to be made even if there was more than one charge (*Clarence Chang* at [59]). Accordingly, this court held that the sentencing judge can and must impose more than one penalty when an accused person has been convicted of two or more offences for the acceptance of gratification in contravention of the PCA (*Clarence Chang* at [61]).

33 Bearing the above in mind, the Appellant's reliance on the words in the singular is of limited assistance to its argument for the Per Mark Interpretation.

Step 2: Legislative purpose or object of statute

34 The next step involves the analysis of the legislative purpose or object of the statutory damages regime. We begin by examining the surrounding context of s 31(5) of the TMA.

Purpose of general damages and account of profits in s 31(5) of the TMA

35 Section 31(5) of the TMA provides that the claimant may *elect* between three types of relief where the use of a counterfeit trade mark is involved:

(a) damages and an account of profits attributable to the infringement that have not been taken into account in computing the damages;

(b) account of profits; or

(c) statutory damages.

36 The same suite of remedies is available in an action of infringement which does not involve the use of a counterfeit trade mark (see ss 31(2)(*b*), 31(2)(*c*) and 31(3) of the TMA). Section 31(4) makes clear that the types of relief granted are mutually exclusive.

37 It is trite that the objective of general damages in trade mark infringement cases is compensatory. The aim is to put the claimant (so far as is possible) in the same position it would have been if the wrong had not been committed. In other words, damages are only meant to compensate the claimant and not to punish the defendant (*Kickapoo (Malaysia) Sdn Bhd v The Monarch Beverage Co (Europe) Ltd* [2010] 1 SLR 1212 at [55], referring to *General Tire & Rubber Co v Firestone Tyre & Rubber Co Ltd* [1975] 1 WLR 819 at 824).

38 An account of profits serves a separate purpose. It compels a defendant to disgorge gains earned from his wrongdoing. Such a remedy is not meant to compensate, nor make restitution nor punish. Its effect is simply to disgorge profits (*McGregor on Damages* (James Edelman, Jason Varuhas & Andrew Higgins eds) (Sweet & Maxwell, 22nd Ed, 2024) ("*McGregor*") at para 16-001). It has been stated that the rationale of an account of profits, which is referred to by the learned editors of *McGregor* as "award for disgorgement" or "disgorgement damages", is deterrence. The act of disgorging a wrongdoer's profits serves a useful purpose in reducing one's temptation to commit wrongdoing and gives force to the principle that a person shall not profit by a wrong (*McGregor* at para 16-005).

39 We note that the UK Supreme Court ("UKSC") in *Lifestyle Equities CV v Ahmed* [2025] 1 All ER 385 ("*Lifestyle Equities*") expressed doubt as to the rationale of the account of profits being deterrence. The UKSC commented that "if the deterrence argument were the only rationale for ordering an account of

profits, it would not justify granting the remedy where the infringement is innocent" (at [154]). The reason for redirecting the profits to the owner of the right is not to punish or deter wrongdoing. Instead, a wider and more cogent rationale is that redirecting the profits to the owner of the right is simply to achieve the goals which the right exists to further (at [155]). Whereas an award of damages might make the defendant worse off than if the infringement had not occurred, an account of profits did not have that effect. The effect was simply to put the *defendant* back in the same position financially as if no infringement had taken place (at [156]). It followed then that it is only *profits* made by the defendant that he can be ordered to disgorge; even if the defendant is one of several wrongdoers, the defendant cannot be made liable to disgorge profits made by another wrongdoer (*Lifestyle Equities* at [158]; see also *McGregor* at para 16-046).

40 On either view, an account of profits is not intended to *punish* the wrongdoer. This point was explicitly made by both the learned editors of *McGregor* (at para 16-001) as well as the UKSC in *Lifestyle Equities* (at [155]). In some situations, an account of profits may result in the claimant recovering more than the loss it suffered, particularly where the claimant has suffered minimal or no actual loss while the defendant has derived substantial benefit from the infringement, for instance, where they sell their products in or to entirely different markets. However, even in such cases, the quantum recovered remains tethered to the defendant's actual benefit.

41 Crucially, notwithstanding their different purposes, the remedies under s 31(5) are mutually exclusive – the claimant must elect between them and cannot claim cumulatively across different remedies. This election reflects the fundamental principle that while the claimant's remedy under s 31(5) may in some cases exceed its actual loss suffered (as in the case of an account of

profits), the quantum awarded must bear some reasonable approximation to either the loss that might have been suffered by the claimant or the benefit that might have been gained by the defendant.

42 Statutory damages, as an *alternative* remedy, should logically operate within this same principle. The statutory damages regime under s 31(5)(*c*) should therefore be interpreted consistently with the other provisions in s 31, *ie*, to reflect the extent the claimant has suffered or the defendant has benefitted, from the use of counterfeit marks on the defendant's goods. There is nothing in s 31(5) to suggest that statutory damages should be assessed more generously than the other forms of relief or is intended to be punitive.

43 In our view, applying the Per Mark Interpretation may potentially allow a claimant to recover damages that substantially exceed both the actual loss suffered and the defendant's actual gain from the infringement, and result in a punitive effect. As the Judge observed, the number of counterfeit marks used is "but a function of how the [Appellant] uses the Registered Marks on its goods. For instance, if the [Appellant] uses three of the Registered Marks on a bag, a defendant who seeks to imitate that bag would use counterfeits of those three Registered Marks as well" (Judgment at [121]). In other words, the fact that two or more marks are used on the same type of goods should not ordinarily affect the number of infringing goods sold nor the loss suffered by the claimant. In that case, adopting the Per Mark Interpretation may result in statutory limits that bear no reasonable relationship to the actual harm suffered by the claimant or benefit derived by the defendant. For example, where the defendant sells only one type of goods using counterfeit marks which infringe three of the claimant's trademarks, the Per Mark Interpretation raises the limit of damages to S$300,000. This would not serve to compensate the claimant for its actual loss or to disgorge the defendant's actual gain, but to *punish* the defendant. The

purpose of statutory damages, as discerned from the context of s 31 of the TMA, therefore does not support the Per Mark Interpretation.

44 The Appellant relies on the Judge's observation that statutory damages are not meant to be purely compensatory in nature as s 31(6)(*d*) of the TMA mandates that deterrence is a consideration in the assessment (Judgment at [70]–[79]). But this does not support the Per Mark Interpretation. As explained above at [37]–[40], the purpose of the relief granted under s 31(5) is not only to compensate the claimant, but also to disgorge the benefits received by the defendant, with no overlap between the two. The reference to "deter" in s 31(6)(*d*) is consistent, at least on the view expressed in *McGregor*, with the rationale of awarding an account of profits against the defendant (see [38] above). Further, the assessment of statutory damages is left to the court's discretion, considering the broad factors in s 31(6) and within the limits prescribed in s 31(5). The award of statutory damages is therefore necessarily imprecise. In other words, there would in almost all cases be a reasonable range of statutory damages that may be awarded, and deterrence operates as a factor that may justify making an award at the higher end of that range. On any view, deterrence is not intended to transform statutory damages into a punitive remedy.

45 The other factors in s 31(6) of the TMA are similarly consistent with this framework. Under s 31(6)(*a*), the assessment of "flagrancy" focuses on the seriousness of the defendant's conduct to calibrate the appropriate level of compensation within the prescribed range and permits the court to consider, *inter alia*, the number of counterfeit trade marks used. Under s 31(6)(*b*), the assessment of the claimant's loss focuses on the actual or likely harm suffered. Under s 31(6)(*c*), the defendant's benefit is measured by the advantage gained from the infringement and consequently, the exploitation of the registered

marks. None of these factors suggest that Parliament intended damages to be assessed on a basis that could result in awards bearing no relationship to actual harm or benefit. A detailed discussion of the factors under s 31(6) is undertaken below at [77].

Interpretation of s 31(2) of the TMA

46 The above analysis is consistent with the case law assessing damages under s 31 of the TMA. If the Per Mark Interpretation is correct, an action for infringement under s 31(2) should likewise be assessed on a per mark basis as the provision begins with similar language in the singular, *ie*, "in an action for an infringement". But this is not the case – the courts in Singapore and the UK have not assessed damages under s 31(2) on a "per mark" basis. We note that the Appellant did not refer us to any local authorities supporting or applying the Per Mark Interpretation.

47 We first analyse how local authorities have assessed general compensatory damages.

(a) *Creative Technology Ltd v Cosmos Trade-Nology Pte Ltd* [2004] SGHC 5 ("*Creative*") is a case considered by the Judge (Judgment at [163]). It involved the award of compensatory damages arising from the defendants' infringement of the plaintiffs' five registered trade marks. The assistant registrar assessed the damages "for loss of business profits or damages at large" by taking the plaintiffs' figures of average "sales" of sound cards on a monthly basis, multiplying these by the number of months the defendants carried out their infringing sales, and then multiplying this figure by the plaintiffs' profit per unit of sound card (at [22]). When considering the plaintiffs' loss of business reputation and goodwill, the assistant registrar awarded

S$70,000 – what she deemed to be a "rough estimate" of a "fair and temperate sum" (at [24]). It is clear from the above that the assistant registrar did not consider the damages from a per mark perspective. Neither did the parties raise the argument of assessing damages on a per mark basis.

(b) In *Cordlife Group Ltd v Cryoviva Singapore Pte Ltd* [2016] SGHCR 5, the plaintiff had two registered trade marks. The parties entered into a consent order wherein the defendant agreed, *inter alia*, to pay the plaintiff damages for trade mark infringement by virtue of its trial website. In analysing the plaintiff's claimed loss of profits, the assistant registrar did not consider the damages on a per mark basis. The methodology applied by the assistant registrar was based on the plaintiff's signups and expected signups, average contract price and profit margin (at [37]). The assistant registrar eventually awarded the plaintiff S$1,000 as nominal damages for the trade mark infringements and passing off as the plaintiff failed to show on a balance of probabilities that the trade mark infringements were the effective cause of its loss of profit (at [73] and [121]). Similarly, the per mark argument was not raised by the parties.

48 Next, we consider the UK authorities on the assessment of general damages for trade mark infringement. These cases are instructive because the TMA is modelled after the UK's Trade Marks Act 1994 ("UK Act"): see Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) ("*Ng-Loy*") at para 20.1.7.

49 Sections 14(1) and 14(2) of the UK Act state as follows:

> **14 Action for infringement.**
>
> (1) An infringement of a registered trade mark is actionable by the proprietor of the trade mark.
>
> (2) In an action for infringement all such relief by way of damages, injunctions, accounts or otherwise is available to him as is available in respect of the infringement of any other property right.

50 By way of comparison, ss 31(1) to 31(3) of the TMA provide as follows:

> **Action for infringement**
>
> 31.—(1) An infringement of a registered trade mark is actionable by the proprietor of the trade mark.
>
> (2) Subject to the provisions of this Act, in an action for an infringement, the types of relief that the Court may grant include the following:
>
> (*a*) an injunction (subject to such terms (if any) as the Court thinks fit);
>
> (*b*) damages;
>
> (*c*) an account of profits;
>
> (*d*) in any case to which subsection (5) applies, statutory damages under subsection (5)(*c*).
>
> (3) When the Court awards any damages under subsection (2)(*b*), the Court may also make an order under subsection (2)(*c*) for an account of any profits attributable to the infringement that have not been taken into account in computing the damages.

51 Sections 14(1) and 14(2) of the UK Act, after which ss 31(1) to 31(3) of the TMA have been modelled, have not been interpreted by the UK courts to require damages to be awarded on a "per mark" basis.

(a) In *Link Up Mitaka Ltd v Language Empire Ltd* [2018] EWHC 2633 (IPEC), the defendants were found liable for passing off and trade mark infringement for their use of the claimant's registered marks in the domain names of their websites (at [3] and [4]). In considering the

appropriate quantum of damages based on lost profits, the court noted that there was a 50% increase in traffic to the claimant's website once the defendants' websites were taken down. The defendants' websites had diverted significant numbers of potential customers away from the claimant's website and that 75% of traffic would have converted to sales (at [70]). The court went on to consider the loss to sales from future repeat business from new customers and applied a 33% uplift to the damages awarded (at [83]).

(b) In *Merck KGaA v Merck Sharpe & Dohme Llc* [2025] EWHC 2376, the court assessed damages following the infringement of the claimant's registered trade marks (at [40]). The court considered it appropriate to award damages based on a notional licence fee by first postulating a hypothetical situation where the relevant infringing acts were instead carried out pursuant to a licence or agreed release of obligation (at [59]).

(c) In *32Red plc v WHG (International) Ltd* [2013] EWHC 815 (Ch), the court assessed damages arising out of the infringement of three of the claimant's registered marks. The claimant sought a sum equal to a reasonable royalty on the strength of the "user principle". In estimating what might have been the agreed figure in the hypothetical negotiation between the parties, the court considered, *inter alia*, the quantum of the claimant's profits when the defendants used the "32Vegas" brand (at [101]–[102]).

52 As illustrated above, the UK cases suggest that damages for trade mark infringement are usually computed by: (a) calculating the amount of profits lost by the trade mark owner due to the infringement; or (b) applying the user

principle (*eg*, by estimating a notional licence fee that would have been agreed between the defendant and the claimant for their use of the infringing trade mark). The courts apply different formulations to arrive at a figure depending on the facts of each case. However, regardless of which method is employed, the courts do not assess quantum on a "per mark" basis.

Analysis of extraneous materials

53 Nonetheless, taking the Appellant's case at its highest that there is some ambiguity on the face of the provisions, we turn to extraneous materials to ascertain the meaning of the text of the provisions. These are: (a) the Parliamentary debates during the amendment of the Trade Marks Bill in 2004 (*Singapore Parliamentary Debates, Official Report* (15 June 2004) vol 78 ("2004 Parliamentary Debates")) which introduced the statutory damages regime in the TMA; (b) the US-Singapore Free Trade Agreement ("USSFTA") signed in May 2003; and (c) the relevant US legislation governing statutory damages as at 2004, namely 15 USC (US) § 1117(*c*) of the United States' ("US") Trademark Act of 1946 ("2004 Lanham Act").

54 The statutory damages regime was introduced in 2004 together with a suite of legislative changes to fulfil Singapore's obligations under the USSFTA, including the provision of civil remedies which allow a trade mark holder to elect between actual damages or "pre-established damages". Article 16.9.9 of the USSFTA states that "…[e]ach Party shall provide that pre-established damages shall be in an amount sufficiently high to constitute a deterrent to future infringements and with the intent to compensate the right holder for the harm caused by the infringement." This coheres with the analysis above at [44] and the Judge's finding on the dual purpose of statutory damages, being both compensatory and as a deterrent. However, we note the view of Prof David

Llewelyn in his article "Statutory Damages for Use of a 'Counterfeit Trade Mark' and for Copyright Infringement in Singapore: A Radical Remedy in the Law of Intellectual Property or One in Need of a Rethink?" (2016) 28 SAcLJ 61 at fn 18, that neither the US nor Singapore has complied strictly with the requirement to provide "pre-established damages" as the statutes in the US and in Singapore give the courts wide discretion to award *statutory* damages instead.

55 More relevant for our purposes are the comments made by the (then) Minister for Law Prof S Jayakumar when moving the Trade Marks Bill during the 2004 Parliamentary Debates (at col 113):

> We have also proposed, for infringement cases that involve the use of a counterfeit trade mark, a new remedy of statutory damages that will *complement the current process of assessing damages*. This is because, *in certain cases, it may be difficult to prove actual losses or obtain an account of profits. For example, some infringers may not keep clear records of their sales.* Hence, a new section 31(5) provides that the trade mark owner can seek statutory damages. In such a situation, the court will assess the quantum of statutory damages on *compensatory principles*, taking into account the guidelines in section 31(6).
>
> [emphasis added]

56 In brief, apart from emphasising the compensatory aim of statutory damages, Prof Jayakumar clarified that statutory damages are offered as an option for claimants where it may be difficult to prove actual losses or obtain an account of profits, for example, because the infringer did not keep clear records of his sales. We add that this difficulty may also arise when the infringer fails or refuses to participate in legal proceedings or provide discovery, as happened in this case in the court below.

57 The above materials support our view that the animating principle behind statutory damages is to reflect or approximate what the claimant would have received in damages and/or an account of profits. The quantum of statutory

damages must bear some reasonable relationship to either the loss that might have been suffered by the claimant or the benefit that might have been gained by the defendant. It clearly does not extend to assessing damages on a punitive basis.

58 Parliament's deliberate departure from the terms of the relevant US legislation reinforces this understanding. 15 USC (US) § 1117(*c*) of the 2004 Lanham Act, on which s 31(5) of the TMA is loosely modelled, states as follows:

> In a case involving the use of a counterfeit mark … in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect … to recover, instead of actual damages and profits … an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—
>
> > (1) not less than $500 or more than $100,000 *per counterfeit mark* per type of goods or services sold, offered for sale, or distributed, as the court considers just; or
> >
> > (2) if the court finds that the use of the counterfeit mark was willful, not more than $1,000,000 *per counterfeit mark* per type of goods or services sold, offered for sale, or distributed, as the court considers just.
>
> [emphasis added]

59 Like s 31(5) of the TMA, § 1117(*c*) of the 2004 Lanham Act refers to "the use of *a* counterfeit mark" in the singular. Significantly, it explicitly uses the phrase "*per counterfeit mark* per type of goods or services" in both limbs of its statutory damages provision to make it plain that statutory damages are to be assessed on a per mark basis. If Parliament intended the Per Mark Interpretation to apply to the TMA, it could easily have adopted this clear and unambiguous language, particularly given that the TMA amendments were introduced specifically on account of the USSFTA. The absence of this explicit language

suggests a conscious legislative choice to adopt a different approach from the US.

60 We also note from the US case law that the assessment of statutory damages in the US involves "punitive" considerations (*Sara Lee Corp. v. Bags of N.Y., Inc.,* 36 F.Supp.2d 161 ("*Sara Lee*") at 165):

> 15 U.S.C. § 1117(c). This is an alternative to traditional awards based on actual losses under §§ 1117(a), (b). Under § 1117(a), a "plaintiff shall be entitled … to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action." Courts have discretion under § 1117(a) to increase the award to three times actual damages or to otherwise adjust the award, but only to "constitute compensation and not a penalty." Under § 1117(b), willful violations automatically merit treble profits or damages and attorney fees "unless the court finds extenuating circumstances." Unlike § 1117(a), which merely permits trebling of damages in the court's discretion, § 1117(b) requires trebling of damages upon a finding of willfulness, absent extenuating circumstances. Also unlike § 1117(a) is what the Second Circuit has termed "the punitive nature of the treble damages provision" under § 1117(b), which trebles damages not to compensate as under § 1117(a), but "to deter potential counterfeiters." *Louis Vuitton S.A., et al. v. Spencer Handbags Corp.,* 765 F.2d 966, 970 (2d Cir. 1985).
>
> These distinctions among §§ 1117(a), (b), (c) clarify the nature of § 1117(c) awards: § 1117(a) provides strictly compensatory relief; § 1117(b) provides strictly capped punitive relief; and § *1117(c) provides both compensatory and punitive relief without the strict limits of §§ 1117(a), (b).* While § 1117(c) looks to compensatory considerations (e.g., actual losses and trademark value), it also looks to punitive considerations (e.g., deterrence of other infringers and redress of wrongful defense conduct). … Thus, damages inquiries under § 1117(c) and those under §§ 1117(a), (b) look to similar considerations *but differ in that under § 1117(c), "there is no necessary mathematical relationship between the size of such an award and the extent or profitability of the defendant's wrongful activities" because § 1117(c) omits the strict limits on compensatory and punitive relief of §§ 1117(a), (b)…*
>
> [emphasis added]

61 In *Sara Lee*, the court noted that had the plaintiff sought actual damages rather than statutory damages, the *trebling* of damages would have been "automatic" upon a finding of wilfulness under § 1117(*b*) of the 2004 Lanham Act. It went on to state that "[s]tatutory damages [under § 1117(*c*)] give *even greater weight* to the need to deter and *punish*" [emphasis added] (at 170). This consideration is distinct from the principles contemplated under the TMA discussed at [41], [42] and [44] above.

62 In that regard, the US provision includes a *tenfold* uplift in the limit where the infringement is wilful: see § 1117(*c*)(2) of the 2004 Lanham Act. This punitive measure is in stark contrast to the Singapore legislation, where the limit remains the same irrespective of whether the infringement is negligent, inadvertent or "wilful". The flagrancy of the infringement is only one of the several factors to be considered under s 31(6) when assessing statutory damages. The TMA further imposes an "aggregate limit" under s 31(5)(*c*)(ii) which the 2004 Lanham Act does not have.

63 Moreover, as alluded to above at [61], in assessing statutory damages for wilful infringement, the US courts treble what they estimate to be actual damages. For example, in *Sara Lee*, the court deemed US$250,000 to be a "reasonable estimate of the ill-gotten gains of the defendants" (at 169). Since this figure was purely compensatory relief, the court increased it to US$750,000, commenting that such a figure conformed with "the precedents instructing that awards increase to deter and punish a [wilful] continuous course of infringements and defiance of the judicial process" (at 170). In *Gucci Am, Inc v Duty Free Apparel, Ltd.* 315 F.Supp.2d 511 ("*Gucci*"), the court estimated the defendant's profits from the use of two marks on six items to be US$720,000 (at 25 and fn 8). The court found that the plaintiff would have been automatically entitled to treble damages had it elected actual as opposed to

statutory damages. Referring to *Sara Lee*, the court in *Gucci* concluded that it was an "unadventurous corollary" to also treble any determinable damages when awarding statutory damages and thus awarded US$2m in statutory damages (at 28). Unlike in the US, there is nothing in the TMA which permits the Singapore court, during its assessment of statutory damages, to treble their estimation of actual damages even when the infringement is found to be "wilful" or flagrant.

64 These substantial variations, in our view, illustrate the differences in the purpose of statutory damages under the TMA (which entails both compensation and deterrence) and under the 2004 Lanham Act (which goes beyond compensation and deterrence, and serves to *punish* the wrongdoer).

65 Our interpretation of s 31(5) of the TMA is further fortified by Prof Jayakumar's intimation that the amendments to the TMA were *not* intended to be a wholesale adoption of the rights and remedies conferred by US legislation. This can again be gleaned from the 2004 Parliamentary Debates, where he acknowledged the different concerns faced by Singapore companies compared to firms in the US (at col 109):

> Several amendments in the Bills are also connected with our obligations under the US-Singapore Free Trade Agreement (USSFTA). When we started FTA talks with the United States in late 2000, we decided to carry out an extensive review of our IP legislation in conjunction with those talks. It gave us an opportunity to study the key features of the US IP framework, and to examine which are the ones relevant to us.
>
> But while we aspire to higher standards, *we also need to be mindful that Singapore companies are at different stages of development. The concerns of our companies will be different*, depending on whether they are or are not predominantly owners, or users, of IP. We have given special consideration to this. Therefore, let me assure the House that *as we provide greater incentives for innovation by strengthening the rights of IP*

> *creators and holders, we will also consciously provide safeguards to balance the needs of IP users.*
>
> [emphasis added]

66 The differences between the TMA and US legislation also put paid to the Appellant's argument that we should regard the quantum of damages awarded in US cases as providing a benchmark or being of persuasive value. We deal with the issue of damages below.

Step 3: Comparison of possible interpretations against the legislative purpose or object of statute

67 The legislative purpose of s 31(5) of the TMA plainly supports the Per Goods Interpretation and the Per Action Interpretation. As explained above at [60]–[64], adopting the Per Mark Interpretation within Singapore's statutory damages regime would introduce punitive elements that Parliament deliberately chose to exclude. The Appellant's reliance on the 2004 Lanham Act in support of the Per Mark Interpretation fails to account for the fundamental differences in the language of s 31(5) of the TMA and its purpose. The fact that the US courts assess damages in respect of each counterfeit mark does not support its adoption in Singapore because, leaving aside the difference in the language in the statute, the US regime is designed to punish infringers, while Singapore's regime is not.

68 Finally, the Appellant sought to emphasise that the interpretation of the provisions only affects the *limit* of damages that may be awarded, not the actual assessment of damages. In the Appellant's Case, the Appellant also stressed multiple times that it was not seeking the maximum statutory damages against the Respondent. Nevertheless, as Mr Chan agreed during the hearing, there is a necessary correlation between the maximum possible damages and the actual quantum awarded. If, for instance, the court determines that an infringer's

conduct based on all the factors in s 31(6) of the TMA places the infringement at the midpoint of the possible range of statutory damages, the quantum of the midpoint would vary widely depending on the limit. A limit of S$300,000 would mean that the quantum awarded is S$150,000, whereas a limit of S$100,000 would lead to an award of S$50,000. Hence, the interpretation of s 31(5)(*c*) of the TMA will incontrovertibly affect the assessment of damages under s 31(6).

69 We summarise our observations as follows:

(a) First, the plain text of s 31(5)(*c*) of the TMA supports the Per Goods Interpretation and Per Action Interpretation rather than the Per Mark Interpretation. If Parliament intended damages to be assessed on a "per mark" basis, it would have used clear and unambiguous language to that effect, as demonstrated by the express phrase "per counterfeit mark per type of goods or services" in the US legislation.

(b) Second, the legislative purpose of the statutory damages regime in Singapore is to compensate the claimant and deter the defendant and other potential infringers, but not to punish the wrongdoer. This dual purpose must be achieved within boundaries that bear a reasonable relationship to the harm caused to the claimant or benefit derived by the defendant.

(c) Third, our interpretation is consistent with how remedies under other sub-provisions in s 31 of the TMA are assessed. The courts in Singapore have not assessed damages on a "per mark" basis, despite similar statutory language in s 31(2) referring to "an action for an infringement" in the singular.

(d) Fourth, although Singapore enacted the statutory damages regime to fulfil its USSFTA obligations, it did not adopt wholesale the US legislation or its principles in awarding statutory damages. The statutory damages regime in the US involves punitive considerations, including implementing a tenfold uplift in the limit for wilful infringement. In contrast, the statutory damages regime in Singapore, consistent with other remedies, is not meant to punish. The statutory limits remain the same regardless of whether the infringement is negligent, inadvertent or wilful.

70 Consequently, the Per Goods Interpretation applies to s 31(5)(*c*)(i) of the TMA and the Per Action Interpretation applies to s 31(5)(*c*)(ii) of the TMA.

The quantum of statutory damages awarded to the Appellant should have been assessed from the perspective of each type of goods and was wholly inadequate

71 In assessing the quantum of statutory damages, the Judge considered the factors under s 31(6) of the TMA in respect of all the nine types of goods collectively. In sum, he found that all the factors under s 31(6) were aggravating but noted that the Respondent's operations were not on such a large scale that he should be considered a "manufacturer, importer or distributor" of counterfeit goods. Although the Respondent was a "manufacturer" in the literal sense, the Judge considered him like a retailer as he did not make the Offending Goods for the purposes of distribution to other retailers, but only for himself to sell through his online store (Judgment at [131]).

72 The Judge then had regard to the quantum awarded in four local cases (Judgment at [151]–[155] and [161]–[163]):

(a) S$275,000 awarded to the first claimant and S$65,000 awarded to the second claimant in *Bosch Corp v Wiedson International (S) Pte Ltd* [2015] 3 SLR 961 ("*Bosch*");

(b) S$70,000 in *Creative*;

(c) S$100,000 in *Converse Inc v Ramesh Ramchandani* [2014] SGHCR 11 ("*Converse*"); and

(d) S$35,000 in *Louis Vuitton Malletier v Cuffz (Singapore) Pte Ltd* [2015] SGHCR 15 ("*Cuffz*").

73 In considering the local cases, the Judge disagreed with the assistant registrar's holding in *Converse* that statutory damages are intended to be compensatory in nature as he found that s 31(6)(*d*) makes express reference to deterrence (Judgment at [75]–[77]). He also expressed doubt as to whether the infringing mark in *Cuffz* was even a counterfeit mark (Judgment at [157]). Nonetheless, he found those figures to "form useful guides" for the present case (Judgment at [150]).

74 The Judge arrived at the final figure of S$200,000, which is just over one-fifth of the maximum statutory damages of S$900,000 (Judgment at [164]). We observe, however, that there is no explanation in the Judgment as to how the figure of S$200,000 was determined.

75 The Appellant limited its written submissions to the quantum of statutory damages and sought a sum of S$1.45m – being 50% of the maximum limit of S$2.9m – in the event the Per Mark Interpretation applied. At the hearing, Mr Chan submitted that if the court rejects the Per Mark Interpretation, the Appellant should nonetheless be awarded S$675,000 in statutory damages, representing 75% of the limit of S$900,000. But he too did not explain how he

arrived at a figure of S$675,000, merely claiming that this is "based on an overall assessment of the extent of egregiousness" of the Respondent's infringement.

Applicable framework

76 Section 31(6) of the TMA states as follows:

> (6) In awarding statutory damages under subsection (5)(*c*), the Court is to have regard to —
>
> (*a*) the flagrancy of the infringement of the registered trade mark;
>
> (*b*) any loss that the claimant has suffered or is likely to suffer by reason of the infringement;
>
> (*c*) any benefit shown to have accrued to the defendant by reason of the infringement;
>
> (*d*) the need to deter other similar instances of infringement; and
>
> (*e*) all other relevant matters.

77 We first elucidate the considerations relevant to ss 31(6)(*a*)–(*d*) of the TMA. In this regard, we broadly agree with the Judge as to the scope and application of the different factors in s 31(6) (Judgment at [116] to [149]). It must be emphasised that this is non-exhaustive and only meant to serve as general guidance:

(a) Under s 31(6)(*a*), the flagrancy of infringement may be assessed by reference to the number of counterfeit marks used, the number of types of goods as well as the scope of the defendant's operations (*eg*, whether the defendant was a retailer, manufacturer, importer or distributor). In this regard, we accept as sensible the principles behind the gradations in the Canadian Scale, which classifies the infringer's operations into three categories: (i) where the infringer operates from

temporary facilities; (ii) where the infringer operates from conventional retail premises; and (iii) where the infringer is a manufacturer, importer or distributor of counterfeit goods (*Burberry Limited v Juvilyn Billones Ward* [2023] FC 1257 at [98]). The court may also consider the way the goods were advertised by the defendant. It will be aggravating where, for instance, the defendant promotes the counterfeit goods by using the claimant's name and represents the counterfeit goods as being authentic. The use of online media to promote and propagate false representations about the counterfeit goods will also be aggravating.

(b) The assessment of loss suffered by the claimant under s 31(6)(*b*) should consider whether the field of business activities of the parties give rise to direct competition – *ie*, whether the products sold by the defendant are substitutes of the claimant's products within the same market. It would be difficult to establish substantial loss where the claimant does not operate in the relevant market segment – for instance, if the claimant only sells bags but the defendant sells shoes. Nevertheless, we agree with the Judge's observation that the loss of sales in cases such as the present (even where both parties deal in identical types of goods) is unlikely to be significant. This is because most consumers who choose to buy counterfeit goods would likely have been aware that they are not genuine where there is a significant price disparity between the counterfeit goods and the genuine goods. Beyond direct commercial loss, there is also damage to exclusivity, reputation and goodwill. This is especially so where the claimant has built substantial goodwill and reputation from years of sales and promotion of goods in association with the mark, or where the claimant's brand is particularly exclusive and its goods are only distributed by the claimant itself.

(c) Under s 31(6)(*c*), the defendant's benefit may be measured by estimating the profit margins – for instance, by comparing the prices of the defendant's counterfeit goods and the prices of alternatives which have no counterfeit marks associated with the claimant's brand. The advantage of free-riding off the quality associated with the registered marks is also a relevant factor. If it may be shown that the customers came to identify the products as the claimant's products, the defendant would clearly have benefited from its use of the claimant's registered mark.

(d) There are two aspects to the deterrence factor under s 31(6)(*d*). General deterrence may account for the prevalence of counterfeit luxury goods and the ease with which online platforms facilitate infringement, requiring awards that meaningfully discourage similar conduct by other potential infringers. Online marketing and sales generally give the infringer a wider reach at a lower cost. Specific deterrence requires consideration of the defendant's conduct, including recalcitrant behaviour, attempts at evasion, non-cooperation with legal proceedings and persistence in infringing activities in disregard of court orders.

78 We note that the Appellant had argued below that the Respondent's evasive and uncooperative conduct was a factor to be considered under "all other relevant matters" in s 31(6)(*e*). The Judge found that this was more appropriately accounted for under the rubric of specific deterrence in s 31(6)(*d*) (Judgment at [145]). We see no reason to disagree with the Judge. As parties have not proffered any arguments on what other matters may be relevant to the assessment of statutory damages under s 31(6)(*e*), we make no comment on what these may be and leave this to be decided in an appropriate case.

79 Finally, we disagree with the Appellant's submission that the Singapore courts ought to consider the awards of damages in US cases in calibrating the quantum of statutory damages. As explained above at [60]–[63], the statutory damages regime in Singapore is distinct from that of US. The Singapore courts should not follow US precedents decided based on provisions with different statutory language and very different statutory purposes. In the same vein, the Canadian cases cited by the Appellant are of little utility as they operate within a regime without statutory limits. Unlike in Canada where a fixed rate is imposed per instance of infringement, the TMA gives the court broad discretion to assess damages by considering the factors in s 31(6) and within the limits prescribed in s 31(5)(*c*). Moreover, the considerations in the Canadian cases are different as the Canadian Scale is used for the assessment of purely compensatory damages, not statutory damages (*Louis Vuitton Malletier S.A. v Audrey Wang* [2019] FC 1389 at [122]).

Analysis of the factors in this case

80 We broadly concur with the Judge's reasoning on the factors under s 31(6) of the TMA as they apply to the facts of this case. We also agree with the Judge that the local cases serve as useful guides for the assessment of damages, although we stress that none of the cases are particularly instructive as they turn on their own facts.

81 *Converse* and *Cuffz* – the only two published decisions on statutory damages under s 31(5) of the TMA – did not involve more than one type of goods nor mark.

(a) In *Converse*, the defendants dealt in shoes which were counterfeits of the plaintiff's Chuck Taylor All Star canvas shoes. The plaintiff hired a private investigator who posed as a potential buyer and

inspected a container in Singapore containing 13,596 pairs of counterfeit shoes (at [2]–[4] and [30]). The shoes were shipped out of Singapore but seized by the plaintiff en route to Rotterdam. The plaintiff elected to seek statutory damages under s 31(5) of the TMA. The assistant registrar, holding that statutory damages were meant to be compensatory in nature and finding that the *potential* loss of royalties to the plaintiff was S$46,226.40, nonetheless awarded the maximum sum of S$100,000 (at [11] and [46]).

(b) *Cuffz* involved three wallets bearing a mark identical or similar to the claimant's "Epi Mark". The defendant sold these wallets at a retail outlet and the assistant registrar awarded S$35,000 in statutory damages (at [4] and [47]).

82 *Bosch* and *Creative* have an even lower precedential value than *Converse* and *Cuffz* as they did not engage with the question of statutory damages. *Bosch* concerned an account of profits for the sale of infringing products bearing the claimant's trade mark (*Bosch* at [37]–[38]), whereas *Creative* involved the assessment of general compensatory damages for trade mark infringement (*Creative* at [25]).

83 Notwithstanding the above, we do not think that a lump sum figure of S$200,000 should have been awarded without due regard to the different types of goods. Although the law gives the court broad discretion in assessing statutory damages, they must still be assessed on a principled basis. As alluded to above at [74], given that the statutory limit is S$100,000 for *each type* of goods or service in relation to which the counterfeit trade mark has been used (s 31(5)(*c*)(i)), the more appropriate approach is to assess damages based on the factors in s 31(6) in respect of *each of the nine type* of goods in this case.

84 We deal first with the factors common to all nine types of goods.

85 The Respondent's infringement was highly flagrant. He sold the Offending Goods through the EMCASE IG Page (16,100 followers) and EMCRAFTS IG Page (17,100 followers) which enabled his posts to reach a larger audience at a lower cost as compared to retail in a physical store. He also promoted the Offending Goods online in a manner that was aggravating, as seen from the following:

(a) When the Appellant's representative contacted the EMCASE IG Page to make the first trap purchase, the Respondent used "LV" to name and identify his products.

(b) Although the Respondent represented on Instagram that all the Offending Goods were made from "authentic vintage 2nd hand materials" with "authenticity guaranteed and verified through a 3rd party authenticator", the Appellant's testing revealed that the underlying canvas or material used for at least two of the trap purchases were in fact not from genuine Louis Vuitton products.

(c) The Respondent promoted his products by re-posting Instagram posts and/or stories by customers, some of which referred to the "LV DESIGN" and claimed that the purchased product was "MADE FROM AUTHENTIC LV LEATHER" or "authentic lv skin". He even had a "small circle of influencers" known as the "EmCollabFam". One such "influencer" advertised the Respondent's products on her account with the "Louis Vuitton" packaging.

In other words, the Respondent free-rode off the quality associated with the Registered Marks by outrightly labelling the goods he sold as "LV" products

and representing his products as being made from "authentic" materials, likely allowing him to attract more customers and sales at higher prices.

86 The most aggravating factor of all is the Respondent's conduct throughout the proceedings. He was evasive and uncooperative, failed to make an appearance and only participated in the present appeal. This deprived the court and the Appellant of evidence unveiling the full extent of his counterfeiting operations or the profits that he made. Most significantly, he showed blatant disregard for the law. Even after the injunction was granted and was brought to his attention through his daughter, the Respondent continued his infringing acts. He persisted in advertising the Offending Goods for sale on EMCRAFTS IG Page and even changed the EMCRAFTS IG Page to a private account four days after the Appellant's solicitors sent him a letter to remind him to comply with the injunction. The Respondent's recalcitrant behaviour demonstrates that he was not merely an opportunistic infringer but a recalcitrant violator who showed no respect for court orders.

87 In terms of general deterrence, the "Louis Vuitton brand" is widely counterfeited and the use of technology has made it easier for infringing items to be marketed and sold. In terms of specific deterrence, the Respondent's conduct as outlined above warranted a higher level of statutory damages.

88 All the factors under s 31(6) of the TMA in this case are aggravating. Perhaps the only factor militating against a higher award of damages is the fact that the scope of the Respondent's operations appears to be limited. As noted by the Judge, the Respondent "manufactured" the Offending Goods only to sell in his own online store (Judgment at [131]). This may be contrasted against large-scale manufacturers who distribute counterfeit goods to other retailers. Nevertheless, whilst the evidence shows 121 instances of infringement (which

pales in comparison to other cases such as *Converse* where there were 13,596 pairs of counterfeit shoes (see *Converse* at [30])), they likely represent a fraction of the Respondent's actual counterfeiting operations. We highlight that, ultimately, there is no evidence before the court as to the true extent of the Respondent's counterfeiting operations given the Respondent's intentional decision not to participate in the proceedings below.

89 With the above in mind, we find that damages should provisionally land on the higher side of the mid-point of S$50,000 per type of goods. In this regard, the Appellant accepts that this case does not represent the worst kind of infringement which would warrant damages at or near the maximum of S$100,000 per type of goods. This provisional figure is subject to adjustments based on the factors specific to each type of goods, which we discuss below.

90 We group the nine different types of goods into four broad categories, in descending order of quantum of damages awarded. The categories are conceptualised based on several factors, including: (a) the quantum of the Respondent's sales and/or advertising (based on the limited evidence before the court); (b) the price disparity between the Offending Goods and the same type of products without the counterfeit marks associated with the Registered Marks; and (c) whether the Appellant deals in the same type of goods. These considerations are not meant to be exhaustive; they are what we consider to be relevant on the facts of the present case. It bears emphasis that the categorisations are necessarily imprecise given the nature of the assessment of statutory damages in a case such as this where there is little evidence of the actual total sales before the court.

91 The first category comprises phone cases, key cases and pouches/purses. These three types of goods warrant the highest awards of damages among all

the types of goods. The evidence reveals extensive use of counterfeit marks, with five counterfeit marks appearing on phone cases and key cases respectively, and seven counterfeit marks on pouches/purses. The scale of infringement is also significant, with at least 26, 17 and 31 documented instances of infringement for phone cases, key cases and pouches/purses respectively. Moreover, the Appellant deals in these three types of goods, increasing the likelihood of loss suffered. The profit margins for these types of goods were relatively high, as can be surmised from a comparison of the prices of these goods with the prices of alternatives on online shopping platforms without the counterfeit marks: (a) phone cases were priced at S$79 to S$395 versus S$0.60 to S$7.99; (b) key cases were sold for S$149 to S$195 versus S$1.48 to S$17.61; and (c) pouches/purses fetched prices of S$95 to S$259 versus S$0.73 to S$19.70.

92 The second category consists of watch straps and card wallets/holders, which justify awards of a lower quantum than the first category. Watch straps involved only one counterfeit mark but likely generated substantial profit margins – the Respondent priced watch straps at S$195 to S$259, much higher than substitutes without counterfeit marks which cost S$1.31 to S$32.99. Three counterfeit marks were applied on card wallets/holders, which were sold by the Respondent for S$139 to S$195 (versus S$1.40 to S$19.19 for alternatives). There were also at least 24 instances and 10 instances of infringement pertaining to the watch straps and card wallets/holders, respectively. Similar to the first category, the Appellant offers both types of goods for sale.

93 The third category comprises passport covers, phone bags and spectacle cases. There were three counterfeit marks applied on passport covers and one counterfeit mark applied on phone bags, respectively. The Appellant showed only six instances of infringement for passport covers and two instances of

infringement for phone bags. As for spectacle cases, there were three counterfeit marks and four instances of infringement. The Respondent sold passport covers for S$159 (as compared to S$0.49 to S$37.99 for alternatives without counterfeit marks) and phone bags for S$295 (as opposed to S$1.45 to S$65.40 for alternatives).

94 The final category is cigarette cases. The quantum of damages awarded for cigarette cases ought to be the lowest amongst all the types of goods. The Appellant adduced evidence of only one instance of infringement. Mr Chan also conceded during the hearing that he was "not sure" whether the Appellant sold cigarette cases. There is no evidence that it does so. Although that does not detract from the fact that there was nonetheless an infringement, the Appellant would be hard-pressed to show any considerable loss under s 31(6)(*b*) of the TMA.

95 Accordingly, we award damages for each type of goods as follows:

S/N	Type of Goods	Damages awarded
1	Phone cases	$70,000
2	Watch straps	$60,000
3	Passport covers	$50,000
4	Key cases	$70,000
5	Card wallets / holders	$60,000
6	Pouches / purses	$70,000
7	Phone bags	$50,000
8	Spectacle cases	$50,000
9	Cigarette case	$30,000

Total	$510,000

96 Given the dearth of evidence occasioned by the Respondent's lack of cooperation and the broad approach to assessment based on s 31(6) of the TMA, it is inevitable that there exists some measure of imprecision in this exercise. In the final analysis, we find that the above assessment represents as principled an approach as we can take in the circumstances.

Conclusion and costs

97 For the reasons above, the appeal is allowed. We set aside the Judge's award of S$200,000 and substitute it with an award of S$510,000. Given that the Appellant has only succeeded in one of two issues, costs shall be fixed at S$40,000 (all-in) payable by the Respondent to the Appellant. The usual consequential orders are to apply.

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Ravindran s/o Muthucumarasamy and Chan Wenqiang (Ravindran Associates LLP) for the appellant;
Quek Liuyong Uthai (I.R.B Law LLP) for the respondent.