

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

[2026] SGHCR 32

Originating Claim No 955 of 2025 (Summons No 1065 of 2026)

Between

The Timken Co

... Claimant

And

United Shipping Services Pte
Ltd

... Defendant

And

ST Engineering Aerospace
Systems Pte Ltd

... Third Party

GROUND OF DECISION

[Civil Procedure — Third party proceedings — Pleadings — Striking out]
[Damages — Apportionment — Contribution]
[Tort — Joint tortfeasorship]

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The Timken Co
v
**United Shipping Services Pte Ltd (ST Engineering Aerospace
Systems Pte Ltd, third party)**

[2026] SGHCR 32

General Division of the High Court — Originating Claim No 955 of 2025
(Summons No 1065 of 2026)
Gerome Goh Teng Jun AR
14 May 2026

5 August 2026

Gerome Goh Teng Jun AR:

1 HC/OC 955/2025 (“OC 955”) involved The Timken Company’s (“Timken”) claim alleging that United Shipping Services Pte Ltd (“USS”) infringed Timken’s registered trade marks by importing and selling counterfeit bearings with Timken’s registered trade marks and providing falsified certificates bearing those trade marks to the third party, ST Engineering Aerospace Systems Pte Ltd (“STEAS”). STEAS then supplied the bearings to military aircrafts belonging to the Republic of Singapore Air Force (“RSAF”). I shall refer to this as the “Main Proceedings”.

2 USS served a third party notice dated 15 December 2025 on STEAS and proceeded to file a statement of claim dated 27 February 2026 (“TPSOC”) against STEAS on the grounds that STEAS was liable in contribution under

ss 15 and 16 of the Civil Law Act 1909 (2020 Rev Ed) (“CLA”) or under joint tortfeasorship for trade mark infringement as alleged by Timken, if any such infringement was found. I shall refer to this as the “Third Party Proceedings”.

3 HC/SUM 1065/2026 (“SUM 1065”) was STEAS’s application to strike out USS’s third party notice and the TPSOC and dismiss the Third Party Proceedings. On 14 May 2026, I heard parties and allowed SUM 1065 with brief reasons.

4 In the course of arguments, STEAS brought to my attention the decision of the UK Supreme Court (“UKSC”) in *Lifestyle Equities CV and another v Ahmed and others* [2024] 2 WLR 1297 (“*Lifestyle Equities*”) which clarified the position in English law that the imposition of accessorial liability on a secondary tortfeasor requires knowledge of the essential facts which make the act of the primary wrongdoer an actionable wrong, regardless of whether the wrong is one of strict liability. This marked a divergence from the position in Singapore law where the state of mind of the secondary tortfeasor is only relevant if the liability of the particular tort requires satisfaction of a particular state of mind (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 (“*Gabriel Peter*”) at [35]). As I observed at [59] below, the developments in English law provide a compelling impetus for the Court of Appeal to reconsider the position in Singapore law when it next arises for determination. In light of this, I set out my full reasons in these grounds of decision which are intended to supplement and supersede the brief reasons which I earlier provided to parties.

Background

The parties

5 Timken is a company incorporated under the laws of Ohio, the United States of America and listed on the New York Stock Exchange. It is engaged in the business of design and manufacture of premium engineered bearings and mechanical transmission products. Timken's bearings are used in a variety of applications including aircraft engines, landing gear, helicopter transmissions and space exploration.

6 USS is an exempt private company limited by shares incorporated in Singapore. Its principal business activities are ship chandling and wholesale trade of a variety of goods without a dominant product.

7 STEAS is a private company limited by shares incorporated in Singapore. Its business includes repairing and servicing of aircraft and spacecraft.

Contractual relationship between STEAS and USS

8 On 9 December 2021, STEAS obtained a quotation for the sale and purchase of bearings from USS, amongst other vendors, for the use in aircraft and subsequently entered into a single purchase order on 1 January 2022 for 90 bearings.

9 STEAS conducted a subsequent request for quotations in the fourth quarter of 2023 to which USS responded. STEAS requested that USS complete and submit a vendor / sub-contractor quality survey questionnaire and asked for additional information including (a) whether USS possessed any form of distributor certification; and (b) whether there were various forms of quality

control, including an independent quality organisation and quality control manuals on 13 December 2023. Mr Roy Rajagopal, USS’s general manager, responded that Timken had been the “Approving Authority / Principal” since 2020 and that USS’s certificate from Timken would be renewed in 2024. Based on these responses, STEAS added USS to its approved vendor list on 18 January 2024.

10 Between January 2024 to October 2024, STEAS purchased from USS bearings for use in the RSAF aircrafts. STEAS understood that the manufacture and sale of these bearings were to be authorised by Timken as the Original Equipment Manufacturer (“OEM”). STEAS purchased bearings from USS pursuant to a total of 23 purchase orders (“POs”). Each of the POs provided that a certificate of conformance must be provided unless otherwise stated and a certificate certifying that the products to be delivered were manufactured by Timken as OEM of the products. The POs were also expressly stated to be subject to STEAS’s General Conditions of Contract for the Purchase of Goods and Services (the “General Conditions”).

11 The material terms of the General Conditions provided as follows:

(a) Clause 4(b)(i) provided that the goods shall “be new and conform in all respects with the specifications and other requirements or descriptions stated” in the contract;

(b) Clause 16(a)(i) provided that USS “represents and warrants that... neither the sale nor the use of the goods and/or services nor the performance of the contract will infringe any patent, trademark, registered design or other industrial or intellectual property rights”; and

(c) Clause 16(f) provided that USS “shall indemnify and save harmless [STEAS]... against all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement as aforesaid, and shall at its own expense defend or (at [STEAS’s] option) assist in the defence of any proceedings which may be brought in that connection”.

12 USS provided STEAS with documentation for each batch of goods delivered that were purportedly issued by Timken and which certified that the batch had been tested and inspected by Timken, originated from or was manufactured by Timken and/or were shipped by Timken. The documentation consisted of conformity certificates or certificates of origin.

STEAS’s discovery of allegedly counterfeit products

13 According to STEAS, it noticed around 19 March 2024 that certain bearings provided by USS (“Cup Bearings”) did not comply with the required specifications and requested that USS provide replacement units. On 20 March 2024, USS informed STEAS that Timken had advised that the Cup Bearings were of a new type produced since the beginning of 2024. On 4 April 2024, STEAS requested that USS obtain a letter or memorandum from Timken explaining the change of design. On 18 April 2026, USS produced a letter on Timken’s letterhead purportedly issued by Timken’s export compliance manager, Mr Richard Johnson, explaining the change of design of the Cup Bearing and that the change had been effected in 2022.

14 On or about 13 November 2024, STEAS shipped four of the Cup Bearings to Timken to verify the authenticity of the Cup Bearings. This led to the revelation that the Cup Bearings were counterfeit and that USS was not an

authorised Timken distributor in Singapore or China. STEAS sent to Timken the various documentation it received from USS and Timken confirmed that those documents were not authentic.

15 Thereafter, STEAS made further enquiries with USS, asking for an on-site audit and for USS to contact its supplier, NOKS International Group (“NOKS”) to provide documents showing that the bearings shipped to USS originated from Timken. On 1 January 2025, USS requested that STEAS return all of the bearings supplied by USS to date and offered to resupply all bearings that could not be returned at no additional cost.

16 Subsequently, STEAS requested a further review by Timken’s subsidiary, Timken Singapore Pte Ltd (“Timken Singapore”) of other bearings provided by USS and Timken Singapore’s view was that the samples provided for inspection were mostly counterfeit bearings.

The Main Proceedings and the Third Party Proceedings

17 Timken filed OC 955 on 17 November 2025. Timken claimed that USS infringed Timken’s registered trade marks by importing and selling counterfeit bearings with Timken’s registered trademarks to STEAS and/or RSAF and providing falsified certificates bearing the trade marks without Timken’s consent to STEAS in the course of trade (“Infringing Acts”). In USS’s defence, it pleaded that it had purchased the bearings from suppliers, NOKS and China North International Trade Group Limited (“China North”), and supplied those bearings to STEAS and/or the RSAF in Singapore. It denied applying, designing, or otherwise generating any of Timken’s registered trademarks on the certificates given to STEAS. At all material times, USS merely transmitted such certificates in the form received by China North and NOKS.

18 USS initiated the Third Party Proceedings by serving a third party notice dated 15 December 2025 on STEAS. In the TPSOC, USS claimed that STEAS was contributorily and/or jointly liable under ss 15 and 16 of the CLA for trade mark infringement as alleged by Timken, in the event any trade mark infringement was found in the Main Proceedings. USS pleaded that, if any trade mark infringement was found, STEAS would have been non-compliant with its relevant obligations to ensure that the aforementioned bearings and/or equipment parts that STEAS had installed were genuine, conforming and/or authentic. It would also have, in the course of business, given assurances and/or representations that the bearings and/or parts it installed were genuine products originating from Timken.

19 On 6 April 2026, STEAS filed SUM 1065 to strike out and dismiss the Third Party Proceedings.

Parties' cases in SUM 1065

STEAS's case

20 STEAS submitted that the Third Party Proceedings should be struck out for the following reasons:

- (a) First, the Third Party Proceedings disclosed no reasonable cause of action because there was no legal basis for USS to claim contribution from STEAS in respect of USS's alleged trademark infringement. The facts pleaded did not prove that STEAS was liable to Timken in relation to any damage. In any case, the facts pleaded also did not prove that USS and STEAS were liable to Timken in respect of the same damage (which is a requirement for seeking contribution (see [32] below)). The Third Party Proceedings disclosed no reasonable cause of action for joint

tortfeasorship because nothing was pleaded in the TPSOC to show that STEAS procured or instigated USS's Infringing Acts or had any knowledge of the essential facts that made USS's Infringing Acts an infringement of Timken's registered trade marks.

(b) Second, the Third Party Proceedings was an abuse of process in that it amounted to improper use of court proceedings and procedures since there was no factual foundation to any of USS's claims. They were also legally unsustainable since USS had represented and warranted to STEAS that neither the sale nor the use of the goods and/or services nor the performance of the contract will infringe any trademark and had covenanted to indemnify STEAS against all actions, costs, claims, demands, expenses and liabilities resulting from any actual or alleged infringement.

(c) Finally, it was in the interests of justice for the Third Party Proceedings to be struck out since USS would be liable to indemnify STEAS from any loss suffered as a result of USS's infringement of Timken's intellectual property rights.

USS's case

21 USS submitted that the Third Party Proceedings should not be struck out for the following reasons:

(a) First, its claims were not bare assertions or unsustainable since a person who procured and induced another to commit a tort becomes a joint tortfeasor.

(b) Second, the Third Party Proceedings were not an abuse of process because it disclosed a reasonable cause of action and was not

used as a means to vex and oppress STEAS. The evidence in the parties' affidavits showed that there were factual and legal issues to be resolved in order to assess parties' respective contribution to any alleged trade mark infringement.

(c) Third, it was not in the interests of justice to strike out the Third Party Proceedings as STEAS would not suffer prejudice by being brought into OC 955 as a third party. The particulars and/or evidence given by STEAS may be helpful in resolving the Main Proceedings.

(d) Finally, even if the TPSOC was to be struck out, USS's third party notice and the Third Party Proceedings ought not to be struck out.

Issue to be determined

22 The main issue to be determined in SUM 1065 was whether the Third Party Proceedings ought to be struck out. In so doing, the Court was to consider whether the claims brought by USS against STEAS in contribution and joint tortfeasorship as pleaded in the TPSOC disclosed a reasonable cause of action, was an abuse of process or ought to be struck out in the interests of justice.

My decision

The law on striking out

23 STEAS's application to strike out the claimant's claim was based on O 9 r 16 of the Rules of Court 2021 which states as follows:

16.—(1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —

- (a) it discloses no reasonable cause of action or defence;
- (b) it is an abuse of process of the Court; or

(c) it is in the interests of justice to do so,
and may order the action to be stayed or dismissed or judgment
to be entered accordingly.

24 It is trite that the bar for succeeding in a striking out application is a high one (*Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 (“*Leong Quee Ching Karen*”). The power to strike out is “very sparingly exercised, and only [applied] in very exceptional cases” and would not be justified “merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved” (*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 at [172]). The applicant in a striking out application bears the burden of proving that the claim is “obviously unsustainable, the pleadings [are] unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out” (*Koh Kim Teck v Credit Suisse AG, Singapore Branch* [2015] SGHC 52 at [21] and *Bank of China Ltd, Singapore Branch v BP Singapore Pte Ltd and others* [2021] 5 SLR 738 at [21]).

25 The tests for establishing each ground of O 9 r 16(1) of the Rules of Court 2021 was summarised in *Selvaraj s/o Packirisamy v Yap Chee Mun* [2024] SGHCR 1 at [34] as follows:

(a) Under O 9 r 16(1)(a), the test is whether the action has some chance of success when only the allegations in the pleadings are concerned (*Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 (“*Iskandar bin Rahmat*”) at [17]).

(b) Under O 9 r 16(1)(b), the test is whether the pleadings constitute an abuse of process of the court. The court will consider whether the

process of the court has been used properly, the good faith of the parties, public policy and the interests of justice to prevent improper use of its machinery and the judicial process as a means of vexation and oppression (*Iskandar bin Rahmat* at [18]). For instance, if a claimant knowingly pursues a case that is “doomed to fail”, the claimant would be wasting the court’s time and this would amount to an abuse of process as the proceedings serve no useful purpose (*Leong Quee Ching Karen* at [27] citing *Kim Hok Yung and others v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank) (Lee Mon Sun, third party)* [2000] 2 SLR(R) 455 at [17]).

(c) Under 9 r 16(1)(c), the test is whether it is in the interests of justice to strike out the pleadings. This gives effect to the court’s inherent jurisdiction to prevent injustice, such as where the claim is plainly or obviously unsustainable (*Iskandar bin Rahmat* at [19]). A legally unsustainable claim is one which “it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks” and a factually unsustainable claim is one which “it is possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance, [for example, if it is] clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based” (*The “Bunga Melati 5”* [2012] 4 SLR 546 at [39]). This provision is residuary in nature and intended to empower the court to terminate an action or dismiss a defence or make any other appropriate order if this outcome is necessary to achieve the interests of justice. If there are circumstances which do not fall within O 9 r 16(1)(a) or O 9 r 16(1)(b), they may be caught by this ground (*Leong Quee Ching Karen* at [27]).

26 Having regard to the principles above, I struck out the USS’s third party notice and the TPSOC and dismissed the Third Party Proceedings for the reasons that follow.

USS’s pleadings in the TPSOC

27 It is first necessary to set out the main pleadings in the TPSOC which makes out USS’s claim in contribution and joint tortfeasorship against STEAS in the Third Party Proceedings.

28 USS pleaded as follows:

(a) First, STEAS should be held liable as it also infringed Timken’s trade marks whether jointly or contributorily.

(b) Second, STEAS would install bearings and/or equipment parts supplied by USS onto military aircrafts belonging to the RSAF and/or as part of its contracted work to STEAS’s end-customers and/or customers.

(c) Third, USS supplied the bearings in reliance on the fact that the bearings passed the rigorous testing of STEAS given that STEAS had to perform vigorous testing and verification of the quality and authenticity of all bearings to be installed on aircraft pursuant to the strict regulations governing airworthiness imposed by the Civil Aviation Authority of Singapore (“CAAS”). Such testing and verification would have also included making the relevant checks with the OEM for these products. Over years of dealing with USS, STEAS did not raise any issues, complaints or objections regarding the legitimacy or regularity of the bearings which reinforced USS’s belief in good faith that the bearings

supplied were genuine products. STEAS also did not raise any concerns regarding the legitimacy or regularity of the certificates received.

(d) Fourth, the fact that STEAS installed such bearings supplied by USS onto aircrafts for the RSAF show that STEAS approved the quality, authenticity and/or conformity of the bearings and conveyed such approvals to its customers and/or the CAAS.

(e) Finally, in the event that trade mark infringement was found, STEAS would not have been compliant with its relevant obligations to ensure that the bearings and/or equipment parts that STEAS had installed were genuine, conforming and/or authentic. It would therefore have given assurances and/or represented to USS and other parties that the bearings it installed were genuine products that originated from Timken.

On the above bases, USS alleged that STEAS should be jointly and contributorily liable for any trade mark infringement found against it.

29 As can be seen from [28(c)] to [28(e)] above, a central strand in USS's pleaded case was that STEAS ought to be responsible for ensuring the conformity of the bearings supplied by USS given that STEAS was licenced as a Maintenance, Repair and Overhaul company under the CAAS. USS emphasised that STEAS had obligations to ensure that the parts installed onto the RSAF aircrafts were conforming under the Singapore Airworthiness Requirements Part 145 ("SAR-145"). Under the SAR-145, USS highlighted that STEAS was obligated to establish a quality system that included independent audits and a quality feedback reporting system and to report any unairworthy conditions. In this backdrop, USS pleaded that it supplied the bearings in

reliance on STEAS’s representation of the legitimacy of the bearings. Arising from this, USS submitted that its causes of action in contribution or joint tortfeasorship would require the assessment of whether STEAS made any representation to USS in relation to the conformity and/or legitimacy of the bearings and whether STEAS abided by its obligations to CAAS.

USS’s claim in contribution did not disclose a reasonable cause of action

The law on contribution

30 Section 15(1) of the CLA is the starting point for entitlement to contribution. It provides that “any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise)” subject to s 15(2) to s 15(5). The legislation refers to “damage” and not to “damages” and so effectively means harm or loss (*Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2024] SGHC 159 at [182]). The purpose of contribution claims under s 15(1) of the CLA is to ensure that justice is done between the co-defendants *inter se* (*Value Monetization III Ltd v Lim Beng Choo and another matter* [2025] 3 SLR 1394 (“*Value Monetization*”) at [25] citing *Chuang Uming (Pte) Ltd v Setron Ltd and another appeal* [1999] 3 SLR(R) 771 at [51]).

31 The Court of Appeal, in *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 (“*Ho Yew Kong*”) at [212], endorsed the three-step test set out by the House of Lords in *Royal Brompton Hospital NHS Trust v Hammond* [2002] 1 WLR 1397, which is as follows:

When any claim for contribution falls to be decided the following questions in my opinion arise: (1) What damage has A suffered? (2) Is B liable to A in respect of that damage? (3) Is C also liable to A in respect of that damage or some of it? ...

32 The essence of the inquiry is whether the person from whom contribution is sought and the person claiming contribution are liable in respect of “the same damage” (*Value Monetization* at [23] citing *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 at [49]). However, it is not necessary for the individual liabilities of these persons to rest on the same legal basis (*Ho Yew Kong* at [219]) or to be based on joint tortfeasorship (*Airtrust (Singapore) Pte Ltd v Kao Chai-Chau Linda and another suit* [2014] 2 SLR 673 at [51]).

USS’s claim in contribution against STEAS

33 It is trite law that the facts relevant to *each* element of a cause of action should be specifically pleaded, and if not, the pleading discloses no reasonable cause of action and may be struck out (see *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2024] 3 SLR 1410 at [35]). Thus, in order to establish a reasonable cause of action in contribution under s 15 of the CLA against STEAS, USS must plead material facts of the following:

- (a) damage was suffered by Timken as a result of USS’s Infringing Acts;
- (b) USS was liable to Timken in respect of that damage; and
- (c) STEAS was also liable to Timken in respect of the *same* damage or some of it.

In my judgment, USS’s claim in contribution against STEAS as pleaded in the TPSOC did not disclose a reasonable cause of action.

34 On the damage suffered by Timken as a result of USS’s actions (see [33(a)] above), Timken pleaded in the Main Proceedings that it suffered loss and damage flowing from the Infringing Acts. On whether USS was liable to Timken in respect of that damage (see [33(b)] above), I proceeded on the assumption that USS was liable to Timken in respect of that damage. The crux of the dispute between the parties was on whether STEAS was also liable to Timken in respect of the same damage or some of it (see [33(c)] above). On this point, there were two aspects to the inquiry:

- (a) Was STEAS liable to Timken in respect of any cause of action?
- (b) If so, was STEAS also liable to Timken in respect of the same damage or some of the damage that USS was liable to Timken?

35 On the first aspect, while USS asserted that STEAS was liable to Timken in trade mark infringement, the pleaded facts by USS did not establish how STEAS would be in any way liable to Timken for trademark infringement. Section 27 of the Trade Mark Act 1998 (“TMA”) provided as follows:

- (1) A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, the person uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.
- (2) A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, the person uses in the course of trade a sign where because —
 - (a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered; or
 - (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,there exists a likelihood of confusion on the part of the public.

(3) A person infringes a registered trade mark which is well known in Singapore if —

(a) without the consent of the proprietor of the trade mark, the person uses in the course of trade a sign which is identical with or similar to the trade mark in relation to goods or services which are not similar to those for which the trade mark is registered;

(b) the use of the trade mark in relation to those goods or services would indicate a connection between those goods or services and the proprietor;

(c) there exists a likelihood of confusion on the part of the public because of such use; and

(d) the interests of the proprietor are likely to be damaged by such use.

(4) For the purposes of this section and sections 28, 29 and 31, a person uses a sign if, in particular, the person —

(a) applies it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign;

(c) imports or exports goods under the sign;

(d) uses the sign on an invoice, wine list, catalogue, business letter, business paper, price list or other commercial document, including any such document in any medium; or

(e) uses the sign in advertising.

(5) Despite subsection (4), a person who —

(a) applies a sign to any material used or intended to be used for labelling or packaging goods; or

(b) uses a sign on any document described in subsection (4)(d) or in advertising,

is deemed not to use the sign if, at the time of such application or use, the person does not know nor have reason to believe that the proprietor or a licensee of the registered trade mark did not consent to such application or use of the sign.

36 Preliminarily, it was unclear from USS's pleadings whether USS was alleging trade mark infringement by STEAS under s 27(1), s 27(2) or s 27(3) of

the TMA. However, given that all three subsections require that the infringer use a sign in the course of trade which is identical or similar to the trade mark (see *Intuition Publishing Ltd v Intuition Consulting Pte Ltd* [2012] SGHC 149 at [17]), it was necessary for USS to have pleaded the material facts showing how STEAS had used a sign which was identical or similar to Timken's trade marks in the course of trade within the meaning of s 27(4) of the TMA. The only fact pleaded by USS against STEAS was that STEAS installed bearings and/or equipment parts supplied by USS onto military aircrafts belonging to the RSAF and/or as part of its contracted work to STEAS's end-customers and/or customers. This did not establish that STEAS had used a sign which was identical or similar to Timken's trade marks in the course of trade within the meaning of s 27(4) of the TMA. Apart from this, USS had also not pleaded material facts establishing the other elements of trademark infringement under s 27 of the TMA.

37 In this regard, I rejected the submission by counsel for USS, Ms Annie Dai, during the hearing that I should order an amendment of the TPSOC so that USS may set out in what way STEAS was liable to Timken in trademark infringement. Counsel for STEAS, Mr Afzal Ali ("Mr Ali"), objected to this on the basis that any such amendment would be futile. I was of the view that USS's submission was a belated afterthought and it would not be appropriate to entertain it at that stage. The onus was on USS to have carefully considered its claim in contribution against STEAS at the outset when it chose to file the third party notice and the TPSOC. In the midst of the hearing of a striking out application of the TPSOC, it would have been unfair to allow USS the opportunity to amend its claim regarding such a critical aspect of its case. It would also have prejudiced STEAS by effectively allowing the goal post in the striking out application to be shifted. Furthermore, no draft amendments were

tendered before the court prior to the hearing and there was no clarity of what the alleged amended case against STEAS would be. I also agreed with Mr Ali that allowing an amendment would not cure USS's case which was fundamentally defective for the reasons given at [38] to [40] below.

38 On the second aspect, even if I took USS's argument at its highest that STEAS was liable to Timken in trade mark infringement, USS's pleadings did not disclose a reasonable cause of action that STEAS was liable in contribution to Timken in respect of the "same damage" or some of the damage that USS was allegedly liable to Timken in the Main Proceedings. This was the fundamental defect in USS's claim in contribution. USS failed to plead any material facts showing that STEAS was liable for the same damage or some of the damage that USS was allegedly liable to Timken in OC 955.

39 In this regard, the damage alleged to have been suffered by Timken in the Main Proceedings arose from the Infringing Acts committed by USS. Even if it was assumed that there was trademark infringement by STEAS by its use of the bearings on the RSAF aircrafts, that would give rise to damage arising from a *different* set of acts by STEAS that constituted STEAS's infringement of Timken's trade marks. In my view, the damage occasioned by STEAS's infringement would be distinct from the damage that was occasioned by USS's Infringing Acts. I considered it conceptually incorrect for USS to assert that simply because there was a chain of trade mark infringements and they arose due to the same counterfeit bearings, that it necessarily followed the damage caused was the same. In my view, while the type of harm or loss (*ie*, pecuniary loss, reputational loss etc) arising from their respective trade mark infringements may well be the same, the damage (*ie*, harm or loss) to Timken nevertheless was distinct as it arose from distinct acts that constituted the respective trade mark infringements by USS and STEAS. Thus, I found that

there was no reasonable cause of action that STEAS was liable to Timken for the same damage or some of the damage that USS was liable to Timken.

40 For completeness, I found that USS’s heavy reliance on the SAR-145 and STEAS’s obligations to CAAS (see [29] above) did not assist its case on contribution at all and appeared to be simply muddying the waters. USS failed to establish any relation between the pleadings on the alleged non-compliance by STEAS of their obligations to CAAS in the SAR-145 and its claim in contribution. USS’s submission that the responsibility should fall on STEAS to ensure the conformity and/or legitimacy of the bearings supplied by USS based on STEAS’s obligations to CAAS was neither here nor there. Even if I accepted that STEAS had obligations under the SAR-145 to ensure the conformity and/or legitimacy of the bearings it used on the aircrafts and it failed to comply with any of these obligations, that would at most have given rise to potential liability to CAAS that may be contractual or regulatory in nature. This was irrelevant in proving that STEAS was liable to Timken for trade mark infringement or that STEAS was liable in respect of the “same damage” or some of the damage that USS was allegedly liable to Timken in the Main Proceedings.

USS’s claim in joint tortfeasorship did not disclose a reasonable cause of action

The law on joint tortfeasorship

(1) Scenarios of joint tortfeasorship

41 Where two or more people by their tortious acts cause damage to a claimant, those people may be liable as: (a) joint tortfeasors; (b) several tortfeasors causing the same damage; or (c) several tortfeasors causing distinct damage (*Halsbury’s Laws of Singapore* vol 18 (LexisNexis Singapore, 2025) (“*Halsbury’s Laws of Singapore*”) at para 240.031). Several tortfeasors may be

liable in different causes of action and the resultant damage caused to the claimant by those torts may be the same or indivisible or distinct (*Halsbury's Laws of Singapore* at [240.033] and [240.034]). The distinction is noteworthy because if one is a joint tortfeasor or one of several tortfeasors causing the same damage, one is liable for the whole damage even if one only caused a small part of it. However, several tortfeasors causing distinct damage are only liable for the damage which each tortfeasor caused (*Clerk & Lindsell on Torts* (Sweet & Maxwell, 24th Ed, 2023) (“*Clerk & Lindsell*”) at para 4.02).

42 Joint tortfeasors may be liable for a tort that they both commit or which one of them commits on behalf of or in concert with another. In *Clerk & Lindsell*, read with the Second Cumulative Supplement to the Twenty-Fourth Edition (Sweet & Maxwell, 2025), at paras 4-03 and 4.04 (see also *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [117] which cited the same paragraphs from an earlier edition of *Clerk & Lindsell*), the learned authors summarise joint tortfeasorship as follows:

4.03 Who, then, are joint tortfeasors? One way of answering the question is to see whether the cause of action against each tortfeasor is the same. If the same evidence would support an action against each, they are joint tortfeasors. They will be jointly liable for a tort which they both commit or for the commission of which they are both responsible, but not where each is independently responsible for a separate tort and the two torts combine to produce the same damage. ...

4.04 Thus, the agent who commits a tort on behalf of his principal and the principal himself are joint tortfeasors; so are the employee who commits a tort in the course of his employment and his employer ...; so are an independent contractor who commits a tort and his employer ... Apart from these instances, concerted action is required. ... Where one person instigates another to commit a tort, they are joint tortfeasors; so are persons whose respective shares in the commission of a tort are done in furtherance of a common design. A person could be liable in deceit as a joint tortfeasor,

for example, if they were a knowing and active party to a common design to defraud, even if the actual representation was made by someone else ...

43 In *Trek Technology (Singapore) Pte Ltd v FE Global Electronics Pte Ltd and others and other suits* [2005] 3 SLR(R) 389 (“*Trek Technology*”), Lai Kew Chai J (as he then was) stated that joint tortfeasors can be divided into two broad categories: (a) where one party conspires with the primary party or induces the commission of the tort; or (b) where two or more persons join in a common design pursuant to which the tort is committed (at [35]).

44 Broadly, the numerous and varied categories in which joint tortfeasorship may arise are as follows:

(a) First, where a person authorises, directs, procures, induces or instigates another person to commit a tort (see *Gabriel Peter* at [36]; *Creative Technology Ltd v Cosmos Trade-Nology Pte Ltd and another* [2003] 3 SLR(R) 697 (“*Creative Technology*”) at [15]; *De Cruz Andrea Heidi v Guangzhou Yuzhitang Health Products Co Ltd and others* [2003] 4 SLR(R) 682 at [191]–[195]; *Bosch Corp (Japan) v Wiedson International (S) Pte Ltd and others and another suit* [2013] 2 SLR 700 at [37]–[41]).

(b) Second, where two or more persons participate in a joint enterprise or common design in the commission of a tort (see *Trek Technology* at [39]–[41], *Rohm and Haas Electronic Materials CMP Holdings, Inc (formerly known as Rodel Holdings, Inc) v NexPlanar Corp and another* [2018] 5 SLR 180 (“*Rohm and Haas*”) at [228]–[233]; *Fish & Fish Ltd v Sea Shepherd UK* [2015] 4 ALL ER 247 (“*Fish & Fish*”) at [20]).

(c) Third, where an agent commits a tort on behalf of his principal or an employee commits a tort in the course of employment (see *South East Enterprises (Singapore) Pte Ltd v Hean Nerng Holdings Pte Ltd* [2013] 2 SLR 908 at [73]; *Fish & Fish* at [19]).

(d) Finally, where two or more persons breach a joint tortious duty. For instance, by jointly signing and publishing a defamatory document (see *Fish & Fish* at [19]).

Within these broad categories, issues as to the relevance of knowledge (actual or constructive), incitement, inducement and control may arise (see *Rohm and Haas* at [226]).

(2) Basis of imposing liability on joint tortfeasors

45 The varied factual scenarios under which joint tortfeasorship arises obscures the reality that the basis for imposing liability on each tortfeasor may be distinct. In so far as joint tortfeasorship is relied upon to impose liability on a person who did not commit a tort (“secondary tortfeasor”) because of certain actions undertaken by the secondary tortfeasor which the law considers to be sufficiently connected to the commission of a tort by another person (“primary tortfeasor”), the basis is grounded upon the principle of accessorial liability (see [55] below). Accessorial liability is generally understood to refer to the imposition of liability on one party for the wrongdoing of another party where there is sufficient participation in or contribution or complicity to the wrongdoing (see Lee Pey Woan, “Accessory Liability in Tort and Equity” [2015] 27 SAcLJ 853 at 857). This would be the basis for liability to be imposed on the secondary tortfeasor in circumstances of authorising, procuring, directing, inducing or instigating the primary tortfeasor to commit a tort or

participating in a joint enterprise or common design in the commission of a tort (see [44(a)] and [44(b)] above).

46 Indeed, in *Lifestyle Equities*, the UKSC held that procuring another person to commit a tort and assisting another person in more than a trivial manner to commit a tort pursuant to a common design between them were *two separate principles of accessory liability* on which a person may be held jointly liable with the other person for damage caused by the tort (at [120], [135] and [136]). In this regard, I noted that the UKSC disagreed with Lord Sumption JSC’s view in *Fish & Fish* at [41] and [44] that procuring the commission of a tort and participation in a common design both depended on common intent to the extent that the common intent referred to a shared intention that an otherwise lawful act will assist the tort (at [122]).

47 However, where joint tortfeasorship is relied upon in circumstances of agency or where persons breach a joint tortious duty (see [44(c)] and [44(d)] above), the basis of the tortfeasors’ liability may not be accessory in nature. As regards the former, where the tort is committed by the agent for and on behalf of the principal, the conventional understanding is that the law recognises the tort as the principal’s own. This is consistent with the orthodox nature of an agent-principal relationship. Thus, a principal’s liability for an agent’s tort is primary and not secondary. This stands in contrast to vicarious liability which would involve the imputation of secondary liability on the employer on the basis of the employee’s primary tortious liability (see *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 at [209] and [210]). As regards the latter, another example would be where two occupiers of the same premises breach their duty towards a visitor in failing to take reasonable care to prevent damage (Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2016) at

[18.028(d)]). In this instance, both occupiers are joint tortfeasors in that they both committed the same tort which caused the same indivisible damage to the visitor. However, the liability of one occupier is primary in nature and not accessory to the liability of the other occupier.

(3) Extent of involvement

48 The success of a claim in joint tortfeasorship depends on the precise facts of each case. Particularly in cases of joint tortfeasorship that is grounded upon accessory liability, the extent of involvement of the secondary tortfeasor in the commission of the tort is of utmost importance. For instance, where it is claimed that a director authorised, procured or directed the commission of a tort by his company, the level of his involvement needs to be closely scrutinised to determine if this was so and that is a matter of degree (see *Gabriel Peter* at [35]). Our courts have also recognised that a person who only *facilitates* a tort is not liable as a joint tortfeasor whereas a person who *procures* a tort is liable (see *Canadian Pacific (Bermuda) Ltd v Nederkoorn Pte Ltd and another* [1999] 1 SLR(R) 628 at [43], citing *PLG Research Ltd v Ardon International Ltd* [1993] FSR 197 at 238–239; *Gabriel Peter* at [36]).

49 There is authority that the threshold for a finding of joint tortfeasorship is a high one. In *Towa Corp v ASM Technology Singapore Pte Ltd and another* [2017] 3 SLR 771 at [124], Lee Seiu Kin J (as he then was), citing Susanna H S Leong, *Intellectual Property Law of Singapore* (Academy Publishing, 2013) at para 19.045, noted that the finding of joint tortfeasorship by common design “requires the discharge of a heavy evidentiary burden on the part of the plaintiff”, and that the threshold for such a finding is a high one. In my view, this would be similarly applicable for a finding of joint tortfeasorship

on the basis of procuring, inducing, conspiring, directing or authorising the commission of a tort.

50 While the courts have used terminology such as assisted, conspired, participated, or contributed to describe a secondary tortfeasor’s complicity in the wrongdoing of the primary tortfeasor, the essential inquiry is whether the joint tortfeasors were “so involved in the commission of the tort as to make himself liable for the tort” (see *Rohm and Haas* at [229] citing *Sabaf SpA v MFI Furniture Centres Ltd* [2002] EWCA Civ 976 at [59]). As an illustration, in the context of assisting the commission of a tort pursuant to a common design, Lord Neuberger JSC in *Fish & Fish* at [56] held that the “assistance provided by the defendant must be *substantial*, in the sense of not being de minimis or trivial” [emphasis added].

(4) Degree of knowledge required for secondary tortfeasor

51 As for the degree of knowledge required to impose liability on the secondary tortfeasor in joint tortfeasorship, Yong Pung How CJ delivering the judgment of the Court of Appeal in *Gabriel Peter* stated at [35] the following in the context of liability of directors for torts committed by the company:

35 After giving much thought to the opposing considerations above, we came to the conclusion that the principles echoed in *C Evans & Sons Ltd v Spritebrand Ltd* and its predecessor cases represent the position as to the liability of directors for a tort committed by the company. It is an established principle of law that a director can, in certain circumstances, be liable for a tort committed by the company if he directed or procured the commission thereof. ... *If a particular tort is one which requires the satisfaction of the proof of mens rea before personal liability can be founded, then the state of mind of the director when he authorised, directed or procured the act will be relevant. This is only logical as a director should not be more vulnerable to tortious liability than any other individual. However, if the tort is one for which liability can be imposed in the absence of any intention or state of mind of the*

tortfeasor, the knowledge or the recklessness of the director as to whether the act was tortious will not be relevant. [emphasis added]

52 Yong CJ followed the decision of the English Court of Appeal in *C Evans & Sons Ltd v Spritebrand Ltd* [1985] 2 All ER 415 (“*Evans & Sons*”). Slade LJ, delivering the judgment of the English Court of Appeal in *Evans & Sons*, opined in *obiter* at 424 that there was no general requirement that a director would only be liable for torts committed by a company where he had acted recklessly or where he knew that the company’s acts were tortious. The learned judge also accepted that the particular state of mind or knowledge on the part of the defendant would depend on whether it is a necessary element of the particular tort alleged. If, however, the tort alleged is not one in respect of which it is incumbent on the claimant to prove a particular state of mind or knowledge (*ie*, infringement of copyright), different considerations may well apply.

53 Thereafter, Lord Neuberger JSC in *Vestergaard Frandsen A/S v Bestnet Europe Ltd* [2013] 1 WLR 1556 (“*Vestergaard Frandsen*”) at [37], observed in *obiter* that patent infringement was a wrong of strict liability that required no knowledge or intention on the part of the alleged infringer and it would therefore be “entirely logical that a person who, while wholly innocent of the existence, contents or effects of the patent, is none the less secondarily liable if she assists the primary infringer in her patent-infringing acts”. This could be contrasted to the approach for a person who assists the primary misuser of trade secrets, given that it was necessary to establish the latter’s knowledge and/or state of mind before that person may be liable for the misuse as was the case on the facts of *Vestergaard Frandsen*.

54 Most recently, however, this view was criticised by Lord Leggatt JSC (with whom Lord Lloyd-Jones, Lord Stephens, Lord Richards and Lord Kitchin JJSC agreed), delivering the judgment of the UKSC in *Lifestyle Equities*. In this case, the UKSC allowed an appeal by directors of a company who were found jointly liable with the company which infringed the claimant’s registered trade marks in the course of selling clothing, footwear and headgear on the basis that the infringements were committed pursuant to a common design. The UKSC held that the directors were not found to possess knowledge of the essential facts which made the acts of the company using the signs wrongful and they could not therefore be held jointly liable for the company’s infringements (at [138] to [143]).

55 Lord Leggatt JSC took the occasion to clarify the degree of knowledge that was required for joint tortfeasorship. The learned judge observed that it seemed unjust that “anyone whose act causes another person to commit a tort should be held jointly liable for the tort as an accessory if the individual was acting in good faith and without knowledge of facts which made the act of the other person tortious” (at [85]). Lord Leggatt JSC also rejected a rule (at [90]) that the mental element required for liability as an accessory must mirror that required for primary liability which was expressed in *obiter* in *Evans & Sons* and *Vestergaard Frandsen* (see [52] and [53] above). Lord Leggatt JSC reasoned that applying the same standard of knowledge to both parties would be a logical approach if procuring or inducing someone to commit a tort or participating in a common design to do so were simply another way of committing a tort. However, this was incorrect since the procurer or participant was not liable because all the elements of the tort were established in relation to them. Their liability as an accessory arises, even though they do not satisfy all the elements of the tort, from an act which is connected in some relevant way

to the commission of a tort by someone else. There was thus no logical requirement that any mental element necessary to make them liable should be the same as any mental element which was a constituent of the tort (at [92]). This distinction was particularly significant in the context of statutory torts such as patent, copyright or trade mark infringement, where procuring or authorising another person to use an offending sign does not amount to infringement under the relevant acts (at [93]).

56 In discussing the appropriate degree of knowledge that the secondary tortfeasor is required to have about the nature of the intended acts, Lord Leggatt JSC considered it unsound to require the secondary tortfeasor to know that the act intended to be done by the primary tortfeasor was unlawful under the law of tort as a person cannot be allowed to escape liability by relying on ignorance of the law (at [126]). The learned judge held that the relevant degree of knowledge required to make an accessory liability for procuring a tort or giving assistance in pursuance of a common design is *knowledge of the essential facts which make the act done wrongful*, even if the tort is one of strict liability. For instance, only if all the features of the act done which make it an infringement of a patent or copyright or trade mark are known to a defendant whose conduct has procured the infringement will the defendant be jointly liable with the actual infringer (at [131] and [132]).

57 Given that assisting, or even knowingly assisting, another person to commit a tort was insufficient to give rise to accessorial liability (see *Credit Lyonnais Bank Nederland NV (now known as Generale Bank Nederland NV) v Export Credits Guarantee Department* [1998] 1 Lloyd's Rep 19, 46, which was cited with approval by both Lord Sumption JSC and Lord Neuberger JSC in *Fish & Fish* at [42] and [58]), it would be an irrational line to draw if innocently procuring or inducing the commission of a tort were to give rise to liability when

knowing assistance does not suffice. Further, other areas of law such as liability for dishonestly assisting in a breach of trust and inducing a breach of contract requires proof of a particular mental state before the accessory is held liable which does not correspond to that required to commit the primary wrong (at [96] to [101]). Thus, Lord Leggatt JSC held that the degree of knowledge required for liability to be imposed on the secondary wrongdoer was knowledge of the essential facts which make the act of the primary wrongdoer an actionable wrong together with an intention to procure the doing of that act (at [132] and [133]).

58 As foreshadowed at [4] above and fleshed out at [54] to [57] above, the UKSC has clarified that the position in English law is that the imposition of accessorial liability on a secondary tortfeasor requires knowledge of the essential facts which make the act of the primary wrongdoer an actionable wrong, regardless of whether the wrong is one of strict liability. In contrast, the position in Singapore law as stated by the Court of Appeal in *Gabriel Peter* (see [51] above), following the decision of the English Court of Appeal in *Evans & Sons*, is that the state of mind of the secondary tortfeasor is only relevant if the liability of the particular tort requires satisfaction of a particular state of mind. Where the tort is one for which liability can be imposed in the absence of any intention or state of mind of the tortfeasor, the knowledge or the recklessness of the director as to whether the act was tortious will not be relevant (at [35]).

59 The UKSC's disapproval in *Lifestyle Equities* of the *obiter* in *Evans & Sons*, which was the foundation of the Court of Appeal's decision in *Gabriel Peter*, has yet to be considered by our courts. In my view, it provides a compelling impetus for the Court of Appeal to reconsider the position in Singapore law when it next arises for determination. While the implication of these propositions on Singapore law had not been fully argued before me, I

tentatively observe that there appeared to be compelling force in the English position. The requirement for the secondary tortfeasor to have knowledge of the essential facts which made the act of the primary wrongdoer a tort regardless of whether the tort requires a particular state of mind to be established seemed principled given the underlying basis of accessorial liability for joint tortfeasorship in these contexts (see [44(a)] and [44(b)] above) and its consistency with the approaches in other areas of private law such as liability for dishonestly assisting in a breach of trust and inducing a breach of contract.

60 Further, I was intuitively attracted to the notion that it seemed unjust that accessorial liability should be imposed under joint tortfeasorship if the secondary tortfeasor was acting in good faith and without knowledge of facts which made the acts of the primary tortfeasor tortious (see *Lifestyle Equities* at [85]). In the context of infringement of patent, copyright and trade mark which do not require knowledge or intention on the part of the primary tortfeasor, it is arguable that a secondary tortfeasor who acts in good faith and without any knowledge of facts which made the act of the primary tortfeasor tortious ought not to held liable as an accessory.

(5) Pleading requirements

61 Where there is an allegation of joint tortfeasorship, the facts supporting the respective cases that the tortfeasors had committed the torts or acted in concert for one of them to commit a tort must be pleaded (*Ong Seow Pheng and others v Lotus Development Corp and another* [1997] 2 SLR(R) 113 at [40]; *Hoya Corp v Asahi Glass Co Ltd and others* [2010] SGHC 15 at [4]; *Continental Steel Pte Ltd v Nippon Steel & Sumitomo Metal Southeast Asia Pte Ltd and another* [2023] 5 SLR 445 at [153]).

62 In *Sun Electric Pte Ltd v Sunseap Group Ltd and others* [2019] SGHCR 4, the learned Assistant Registrar Justin Yeo held at [56] that a common design claim ought to be particularised with details that identify the primary and secondary tortfeasors in question, the relevant act of the primary tortfeasor, the common design in question (including facts on which reliance is to be placed in support of the existence of a common design, and how those give rise to the inference that the defendants were parties to a common design) and the assistance allegedly rendered by the secondary tortfeasor pursuant to the identified common design towards the primary tortfeasor's commission of an act.

63 To advance a claim in joint tortfeasorship on the basis of procuring or inducing another to commit a tort, I was of the view that the pleadings ought similarly to be particularised with details to identify:

- (a) First, secondary tortfeasor (*ie*, the party who procured or induced) and the primary tortfeasor (*ie*, the other party who was procured or induced to commit the tort).
- (b) Second, the relevant acts of the primary tortfeasor that constituted the commission of the tort.
- (c) Third, the relevant acts of the secondary tortfeasor which were intended to procure or induce the primary tortfeasor to do the acts that constituted the commission of the tort.
- (d) Finally, the degree of knowledge that the secondary tortfeasor possessed of the essential facts which made the acts of the primary tortfeasor actionable (where applicable).

USS's claim in joint tortfeasorship against STEAS

64 In USS's claim against STEAS in joint tortfeasorship, USS relied on the proposition that "[a] person who procures and induces another to commit a tort becomes a joint tortfeasor" (*Creative Technology* at [15]). USS submitted that its pleaded case was that STEAS procured or induced them to supply the counterfeit bearings because USS relied on STEAS's representations that the bearings were legitimate. The representations allegedly arose because STEAS did not raise any issues with the bearings over the years of their commercial relationship despite its obligations under the SAR-145 to the CAAS.

65 I noted that USS did not submit that its pleadings raised a reasonable cause of action that STEAS ought to be liable as a joint tortfeasor for its participation in a common design in the commission of USS's trade mark infringement. This was rightly so. In its pleadings, USS did not assert that there was a common design in question or particularise what assistance was rendered by STEAS pursuant to the common design towards USS's commission of the trade mark infringements alleged in the Main Proceedings. This therefore was a non-starter.

66 In my judgment, USS's pleadings in the TPSOC (see [27] above) were manifestly insufficient to disclose a reasonable cause of action that STEAS had procured or induced USS to commit the trade mark infringement alleged by Timken in the Main Proceedings. I found that USS had failed to adequately plead the relevant acts of STEAS which were intended to procure or induce USS to commit the trade mark infringements for the following reasons:

- (a) First, I did not accept that the mere fact that STEAS entered into a contractual relationship with USS for the supply of bearings in and of itself went towards showing that STEAS procured or induced USS to

commit trade mark infringement of Timken’s registered trade marks through the Infringing Acts. There was no suggestion in the pleadings that STEAS and USS intended to contract for counterfeit bearings or that STEAS had made any statements or acted in any way so as to encourage USS to supply counterfeit bearings to them.

(b) Second, I found that the alleged non-compliance of STEAS’s obligations under the SAR-145 to CAAS pleaded by USS had no relevance to establishing that STEAS had procured or induced USS to commit trade mark infringement of Timken’s registered trade marks. If anything, that would only have given rise to separate liability by STEAS to CAAS (see [40] above).

(c) Third, on USS’s allegation that STEAS represented to USS that the bearings were legitimate by not raising any issues with them and installing the bearings on the aircrafts, I noted that this was contrary to cl 16(a)(i) of the General Conditions which provided that USS “represents and warrants that... neither the sale nor the use of the goods and/or services nor the performance of the contract will infringe any patent, trademark, registered design or other industrial or intellectual property rights” (see [11(b)] above). In this light, it was rather odd for USS to have averred that STEAS represented to it that the bearings were genuine given that USS was the very party that supplied the counterfeit bearings to STEAS and represented to STEAS that the bearings would not infringe any trade marks.

(d) In any case, even assuming that such a representation had been made, this did not assist USS in showing that there was any procurement or inducement by STEAS towards the commission of the trade mark

infringements by USS. The mere allegation that STEAS did not raise complaints to USS that the bearings were counterfeit during the years that it received supplies from USS despite its obligations under the SAR-145 and went on to install the bearings on the aircrafts fell far short of establishing the high threshold required for a case of procurement or instigation of a trade mark infringement. To procure would mean to endeavour towards a desired end by way of positive steps or omissions to produce that end with some element of persuasion, inducement or influencing of the other party (see *Law Society of Singapore v Bay Puay Joo Lilian* [2007] SGHC 208 at [39]). There were no material facts disclosed of any positive steps taken by STEAS or any omissions made to raise a reasonable cause of action that STEAS intended to influence, induce or persuade USS towards the desired end of committing the trade mark infringements against Timken.

Given this, I found that USS's claim in joint tortfeasorship did not disclose a reasonable cause of action.

67 For completeness, I turn to address STEAS's submission that nothing was pleaded in the TPSOC to show that STEAS had any knowledge of the essential facts that made USS's Infringing Acts an infringement of Timken's registered trade marks (see [20(a)] above). In this regard, STEAS relied on *Lifestyle Equities* and submitted that some form of knowledge of the wrong was required.

68 I noted that USS did not plead any material facts that STEAS had knowledge of or was wilfully blind of the essential facts which made USS's Infringing Acts an infringement of Timken's registered trade marks or that STEAS was not acting in good faith. However, in light of the position in

Singapore law as stated in *Gabriel Peter* that the secondary tortfeasor's state of mind is not relevant where the tort is one for which liability can be imposed in the absence of any state of mind of the primary tortfeasor (see [51] and [58] above) and given that trade mark infringement under s 27 of the TMA is one of strict liability (see *Creative Technology* at [16]), I considered that the claim for joint tortfeasorship ought to be struck out for the reasons at [66] above and not for the lack of pleading on STEAS's state of mind.

69 I make only two further observations on this point:

(a) First, any pleading that STEAS had knowledge of the facts which made USS's Infringing Acts an infringement of Timken's registered trade marks would have been roundly contradicted by USS's own case in its defence, *ie*, that it was allegedly in the dark that the bearings were counterfeit. If USS was in the dark, it would appear unbelievable that STEAS, which received and relied upon USS's warranties and representations of the authenticity of the bearings through conformity certificates and certificates of origin (see [12] above), could have been taken to have any knowledge that the bearings were counterfeit in the absence of any other pleaded facts asserting that state of affairs. In fact, Timken pleaded in its statement of claim in the Main Proceedings that it was STEAS which eventually surfaced the suspicions to Timken (see [14]–[15] above).

(b) Second, there was force in the argument that it would be unjust if accessorial liability could be imposed on STEAS on these pleadings even though it appeared to be acting innocently in good faith and without knowledge of any facts which made USS's Infringing Acts an infringement of Timken's registered trade marks (see [60] above).

USS's claims against STEAS were legally unsustainable and an abuse of process

70 For the reasons above, I would have also struck out and dismissed the Third Party Proceedings in the interests of justice on the basis that it was legally unsustainable and bound to fail and as an abuse of process for being manifestly groundless. This appeared to me to be a clear case of legal unsustainability in that even if USS were to succeed in proving all the facts pleaded in the TPSOC in the Third Party Proceedings, USS would not have been entitled to its claim in contribution or joint tortfeasorship against STEAS for the trade mark infringement alleged in the Main Proceedings. Given that I have found USS's claims in the TPSOC to be manifestly groundless, it was unnecessary for me to consider whether the indemnity provided by USS to STEAS (see [11(c)] and [20(b)]) rendered its claims an abuse of process.

71 USS submitted that it was not in the interests of justice to strike out the Third Party Proceedings as STEAS would not suffer prejudice by being brought into OC 955 as a third party and the particulars and/or evidence given by STEAS may be helpful in resolving the Main Proceedings. I found this submission wholly without merit. If there was no basis for a claim in contribution or joint tortfeasorship by USS against STEAS, there would be no legal basis for bringing STEAS in as a third party or for it to remain as such. In my view, STEAS would surely be prejudiced by having to incur costs and expend time in participating in OC 955 as a third party if there was no legitimate claim in contribution or joint tortfeasorship against it.

72 Further, if USS intended to seek particulars and/or evidence from STEAS for the purposes of resolving the Main Proceedings, there were other mechanisms in civil procedure such as non-party discovery or orders to attend

court which USS could consider. I would go further to observe that it raises concerns of an abuse of process to bring STEAS into the Main Proceedings as a third party for the collateral purpose of seeking discovery and evidence for the Main Proceedings in circumstances where there was no legitimate claim in contribution or joint tortfeasorship against it.

Conclusion

73 I thus allowed SUM 1065 and struck out the TPSOC on the basis that the Third Party Proceedings disclosed no reasonable cause of action in respect of contribution and joint tortfeasorship or alternatively as an abuse of process and in the interests of justice. Consequently, I also struck out USS's third party notice and dismissed the Third Party Proceedings.

74 As for costs, I heard parties' submissions and fixed costs and disbursements (all-in) for SUM 1065 and the dismissal of the Third Party Proceedings at \$15,000 to be paid by USS to STEAS forthwith.

Gerome Goh Teng Jun
Assistant Registrar

Tan Siew Ling Francine (Francine Tan Law Corporation) for the
claimant (on a watching brief);
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