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

[2026] SGHC 77

Originating Claim No 138 of 2025

Between

The Beauty Nation Pte. Ltd.

… *Claimant*

And

(1) Herbs Health Ben Cao Kang Mu Pte. Ltd.
(2) TCM Shop SG Pte. Ltd.

… *Defendants*

Counterclaim of 1st and 2nd Defendants

Between

(1) Herbs Health Ben Cao Kang Mu Pte. Ltd.
(2) TCM Shop SG Pte. Ltd.

… *Claimants in Counterclaim*

And

The Beauty Nation Pte. Ltd.

… *Defendant in Counterclaim*

JUDGMENT

[Intellectual Property — Copyright — Infringement]
[Intellectual Property — Copyright — Licences]
[Intellectual Property — Copyright — Groundless threat]
[Intellectual Property — Trade marks and trade names — Infringement]
[Intellectual Property — Trade marks and trade names — Passing off]
[Intellectual Property — Trade marks and trade names — Groundless threat]

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The Beauty Nation Pte Ltd
v
Herbs Health Ben Cao Kang Mu Pte Ltd and another

[2026] SGHC 77

General Division of the High Court — Originating Claim No 138 of 2025
Dedar Singh Gill J
29–30 October, 18 December 2025

10 April 2026 Judgment reserved.

Dedar Singh Gill J:

1 The first defendant ("Herbs Health") was an authorised retailer of the claimant's ("Beauty Nation") products. Herbs Health sold goods bearing Beauty Nation's trade marks in a physical retail outlet and online. Herbs Health's related entity, the second defendant ("TCM Shop"), similarly sold goods bearing Beauty Nation's trade marks online. Further, Herbs Health and TCM Shop (collectively, the "Defendants") advertised these goods using photographs taken by a director of Herbs Health and materials in which the copyright was owned by Beauty Nation. Beauty Nation claims against the Defendants for copyright infringement, trade mark infringement and inverse passing off for the Defendants' online sales. The Defendants counterclaim against Beauty Nation for groundless threats of copyright and trade mark infringement proceedings. For the reasons that follow, I dismiss Beauty Nation's claims. In respect of the

Defendants' counterclaim, I make no order as I find no basis to grant any of the reliefs asked for.

Facts

The parties

2 Beauty Nation was founded in 2004 and is in the business of developing, producing, marketing and selling supplements incorporating Traditional Chinese Medicine ("TCM").[1] Its main lines of products include: "Miri", "Vitroman", "Root King" and "Quan Wei" (collectively, "Products" and in the singular, "Product").[2] Mr Tan See Leng ("Mr Tan") and his wife, Ms Tan Chiew Peng ("Ms Tan") are the directors and shareholders of Beauty Nation.[3]

3 Principally, Beauty Nation functions as a holding company that owns the intellectual property relating to the Products.[4] It is the proprietor of 15 registered trade marks in Singapore ("Trade Marks").[5] I highlight a few examples of the Trade Marks:

(a) Trade mark no. T1004068I "ROOT KING 根王" registered on 5 April 2010 in Class 5 for, *inter alia*, goods relating to pharmaceuticals and dietary supplements.

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1 Affidavit of Evidence-in-Chief of Tan See Leng dated 2 September 2025 ("AEIC of Tan See Leng") at paras 5–6.

2 AEIC of Tan See Leng at para 8.

3 AEIC of Tan See Leng at para 5.

4 AEIC of Tan See Leng at para 25.

5 AEIC of Tan See Leng at para 21.

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(b) Trade mark no. 40202124365S "**ROOT KING 根王**" registered on 12 October 2021 in Class 35 for, *inter alia*, advertising, marketing and promotional services.

(c) Trade mark no. 40202124369P "**VITROMAN 威特猛**" registered on 12 October 2021 in Class 35 for, *inter alia*, advertising, marketing and promotional services.

4 Relatedly, Root King Pte Ltd ("RKPL") was incorporated to distribute the Products to local retailers.[6] Both RKPL and Beauty Nation share the same directors and shareholders.[7]

5 Mr Chong Tuck Seng ("Mr Chong") is a director and shareholder of both Herbs Health and TCM Shop.[8] As a fifth-generation TCM physician, Mr Chong incorporated Herbs Health in 2010 as a registered TCM clinic and a physical retail outlet to sell TCM health products and supplements.[9] In 2016, to keep up with the rise of e-commerce, TCM Shop was incorporated as the online retail arm of Herbs Health.[10] From 2017, online sales were made through TCM Shop's website, www.tcmshop.sg ("TCM Shop's Website").[11] In 2022, Herbs Health expanded such online sales to e-commerce platforms such as Shopee and Lazada.[12]

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6 AEIC of Tan See Leng at para 25.

7 AEIC of Tan See Leng at para 25.

8 Affidavit of Evidence-in-Chief of Chong Tuck Seng dated 7 October 2025 ("AEIC of Chong Tuck Seng") at para 1.

9 AEIC of Chong Tuck Seng at paras 4 and 6.

10 AEIC of Chong Tuck Seng at paras 8 and 26.

11 AEIC of Chong Tuck Seng at para 8.

12 AEIC of Chong Tuck Seng at paras 39 and 42.

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6 Herbs Health and TCM Shop were related entities in so far as the sale of Herbs Health's goods was concerned. Mr Chong explained that to maintain proper accounting records, Herbs Health consigned its goods to TCM Shop.[13] Apart from the separation of such accounting records, Mr Chong's evidence was that he treated Herbs Health and TCM Shop as the same entity in terms of their operation and sales.[14]

Background to the dispute

7 Some time in 2011, Herbs Health's physical retail outlet began to offer the Products for sale.[15] Herbs Health was an authorised retailer of the Products.[16] Mr Allan Ng ("Mr Ng"), as a sales representative from RKPL, managed the distribution of the Products to Herbs Health.[17] It is undisputed that at all material times, the Defendants sold only genuine products from Beauty Nation.[18] The greater the quantity of genuine products sold by an authorised retailer, the more beneficial it would be for the trade mark owner. Accordingly, it was not contested by Mr Tan that Herbs Health, as an authorised retailer of the Products, would exercise its best efforts to sell the Products.[19]

8 Mr Tan and Mr Chong both agreed that this long-standing working relationship of over a decade between Herbs Health and RKPL was built on

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13 Notes of Evidence dated 30 October 2025 ("NE-2") at p 13 ln 1–6; Claimant's Bundle of Documents Volume IV dated 24 October 2025 at Tab 46 pp 56–59.

14 NE-2 at p 12 ln 26 to p 13 ln 16.

15 AEIC of Chong Tuck Seng at para 9; AEIC of Tan See Leng at para 28.

16 Notes of Evidence dated 29 October 2025 ("NE-1") at p 8 ln 23–26 and p 38 ln 18–20.

17 AEIC of Chong Tuck Seng at para 9; NE-1 at p 8 ln 20–26.

18 AEIC of Chong Tuck Seng at para 55; NE-1 at p 12 ln 4–17.

19 NE-1 at p 14 ln 14–21.

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trust and confidence,[20] with Mr Tan confirming that Herbs Health was one of Beauty Nation's "trusted retailers".[21] Additionally, Mr Chong described the informal working relationship between Herbs Health and RKPL in the context of Herbs Health's "traditional neighbourhood business" as follows:[22]

> [Mr Chong]: This is a typical---this is a neighbourhood business, you see. In a very neighbourhood business, we are not like corporate world. You need black and white, all this thing, no. So [Mr Ng] is, like, somebody quite elderly, 60-plus, so a lot of thing is through verbal, and we work on trust and, I think, good working relationship all these years, for the 12 years. He's a very good---he's a very good salesperson to us.

The supply of Beauty Nation's Products

9 The supply of the Products from RKPL to Herbs Health, which spanned more than a decade, took place from 2011 until the termination of their relationship some time in October 2023:[23]

> Q: … So since 2011, Herbs Health had been buying your products from you through [RKPL], correct? You would confirm that, since 2011?
>
> [Mr Tan]: Yes.
>
> Q: Yes. So they have been buying this all the way until their relationship with you was terminated, I think that was in October 2023. So they have been buying regularly from you?
>
> [Mr Tan]: Herbs Health bought the products directly from [RKPL] and not from Beauty Nation.

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20 AEIC of Tan See Leng at para 28; NE-2 at p 60 ln 5–11.

21 NE-1 at p 11 ln 14–18.

22 NE-2 at p 39 ln 6–7 and p 60 ln 5–11.

23 NE-1 at p 11 ln 19–28; AEIC of Tan See Leng at para 28; AEIC of Chong Tuck Seng at paras 8 and 120.

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> Q: Yes, that's what I've said. They buy your products through [RKPL].
>
> [Mr Tan]: Yes.

10 Before me, various documents for transactions between RKPL and Herbs Health were tendered, including:

(a) Delivery orders dated 9 June 2015, 31 July 2015 and 21 September 2015, 29 November 2017 and 27 October 2022 ("Delivery Orders").[24]

(b) Terms and conditions governing the supply of goods on a consignment basis, dated 20 September 2017 and 3 October 2022 ("Terms and Conditions").[25] The consignment notes dated 29 November 2017 and 27 October 2022 deemed that the retailer had read and agreed to the Terms and Conditions.[26]

(c) Numerous invoices issued nearly every month from the period of 12 October 2022 to 17 January 2024 ("Invoices") reflecting the supply of varying types and quantities of the Products on cash on delivery terms.[27] Two of the Invoices dated 15 November 2023 and 17 January 2024, issued after the termination of RKPL and Herbs Health's relationship, were meant to "tidy up" the consignment of goods

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24 AEIC of Chong Tuck Seng at Tab 3 at pp 49–54; AEIC of Tan See Leng at Tab H at pp 292–294; 300–302; 308–310 and 317–319.

25 AEIC of Chong Tuck Seng at Tab 2 at pp 46–47; AEIC of Tan See Leng at Tab H at pp 295–298 and pp 311–314.

26 AEIC of Chong Tuck Seng at Tab 5 at pp 56–60; AEIC of Tan See Leng at Tab H at pp 291; 299; 307 and 316.

27 AEIC of Chong Tuck Seng at Tab 6 at pp 65–79.

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from 2022 whereby Mr Chong returned the balance stock and paid RKPL for the consigned Products that had been sold.[28]

11 Both Beauty Nation and Herbs Health agree that the supply of Products between RKPL and Herbs Health first started on a consignment basis in 2017. After the initial consignment of Products, while Beauty Nation maintains that the supply of Products was on a consignment basis for the entire period of dealing,[29] the Defendants argue that the goods were subsequently sold on a cash on delivery basis.[30]

12 To my mind, the subsequent legal analysis would not turn on whether the parties proceeded on the basis of a consignment or sale. In both scenarios, RKPL would have supplied the Products and consented to Herbs Health offering the Products for sale. The consistent supply of the Products from 2011 to 2023 occurred regardless of whether it was based on a consignment or sale (see [9] above).

13 In any event, I find that RKPL sold, and not consigned, the Products to Herbs Health for a long duration of their relationship. Apart from the supply of the Products on a consignment basis some time in 2017 and 2022 (see [10(b)] above), for a better part of their relationship, RKPL sold the products to Herbs Health on a cash on delivery basis (see [10(c)] above). Once cash was paid to RKPL upon delivery of the Products, the Products became Herbs Health's property, which points against a supply on a consignment basis throughout their

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28 NE-2 at p 34 ln 8–13.

29 NE-2 at p 31 ln 3–6.

30 1st and 2nd Defendants' Closing Submissions dated 18 December 2025 ("DCS") at para 7.

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entire relationship. It is also significant that Mr Tan made the following concession at trial:[31]

> Court: … Subsequently, and for a [long] duration of this relationship, was it consignment or was it an outright sale?
>
> [Mr Tan]: Herbs Health *bought the goods from us and we sell the goods to them.*
>
> [emphasis added]

Thereafter, RKPL, for a substantial period of their relationship, sold the Products to Herbs Health on a monthly basis, as described by Mr Chong:[32]

> [Mr Chong]: … they will give us all their product, consignment for the first three bottles … for each product. … Then subsequently, the next month where we buy order will be all on COD, cash on delivery. It will be forever like that. Every month, it'll be cash on delivery …

14 As Mr Tan acknowledged in cross-examination, there was no restriction on the manner in which authorised retailers could sell the Products, or prohibition on selling the Products online.[33] In principle, it was open to Herbs Health to sell the Products on third-party e-commerce platforms and/or deal with the Products under TCM Shop's name.

The Defendants' online sales of Beauty Nation's Products

15 In the course of its marketing and branding efforts, Beauty Nation commissioned designers to create advertising materials. These were "write-ups that represent the Products for the purpose of advertising", the packaging design

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31 NE-1 at p 40 ln 13–17.

32 NE-2 at p 15 ln 9–17.

33 NE-1 at p 14 ln 16–24 and p 64 ln 21–28.

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of the Products, and corresponding photographs of the Products.[34] As parties do not dispute that Beauty Nation owns the copyright subsisting in the aforesaid advertising materials,[35] I will proceed on that basis and collectively refer to the same as the "Copyright Materials".

16 Between 2017 and 2021, TCM Shop, in its listings on TCM Shop's Website ("TCM Shop's Listings"), used photographs of the Products taken by Mr Chong ("Mr Chong's Photographs").[36] In or around December 2020 to January 2021, Mr Chong caused to be removed the said listings containing Mr Chong's Photographs.[37] According to Mr Chong, he did so as he was informed that TCM Shop's Listings contained outdated photographs of the Products.[38] TCM Shop also temporarily ceased online sales of the Products on TCM Shop's Website.[39] While Beauty Nation pleaded that the Copyright Materials were used by the Defendants from at least 18 January 2017,[40] it eventually accepts in its closing submissions that the Defendants only used Mr Chong's Photographs from 2017 to 2021.[41]

17 In mid-2022, TCM Shop recommenced online sales of the Products on TCM Shop's Website. Mr Chong used the Copyright Materials in TCM Shop's

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34 AEIC of Tan See Leng at para 13; Statement of Claim dated 21 February 2025 ("SOC") at paras 8–9.

35 Claimant's Closing Submissions dated 18 December 2025 ("CCS") at para 4; NE-1 at p 34 ln 28–30.

36 AEIC of Chong Tuck Seng at paras 33–34; CCS at para 5.

37 AEIC of Chong Tuck Seng at paras 37–38.

38 AEIC of Chong Tuck Seng at paras 37–38.

39 AEIC of Chong Tuck Seng at paras 38–39.

40 SOC at paras 8 and 19.

41 CCS at para 5.

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Listings.[42] Similarly, in July 2022, Herbs Health also used the Copyright Materials in Herbs Health's listings of the Products on Shopee and Lazada ("Herbs Health's Listings").[43] I shall refer to the Defendants' online listings of the Products generally as the "Online Listings". In some of the Online Listings, the Defendants also included new photographs taken by Mr Chong depicting other angles of the Products ("Mr Chong's Subsequent Photographs").[44]

18 Thus, the Online Listings from 2022 to 2023 generally featured a mix of the Copyright Materials and Mr Chong's Subsequent Photographs.[45] I reproduce an example of TCM Shop's use of the Copyright Materials and Mr Chong's Subsequent Photographs, *ie*, the top and bottom photographs respectively:[46]



42 AEIC of Chong Tuck Seng at paras 40–41.

43 AEIC of Chong Tuck Seng at paras 52–53.

44 NE-2 at p 62 ln 7–19.

45 CCS at para 9; NE-2 at p 60 ln 15–32.

46 AEIC of Tan See Leng at Tab I at p 330.

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19 Beauty Nation draws attention to two features regarding the manner in which the Defendants listed the Products online:

(a) In the title of Herbs Health's Listings and several of TCM Shop's Listings, the name "Herbs Health" was included before the respective name of the Product.[47]

(b) Some of Herbs Health's Listings were purportedly classified under "No Brand".[48]

Beauty Nation's cease and desist letter

20 On 13 October 2023, Beauty Nation issued a cease and desist letter to Herbs Health ("Cease and Desist Letter").[49] The Cease and Desist Letter stated, *inter alia,* that:

> 11. It has come to our Client's attention that that you have been engaging in unauthorized use of the our Client's Trade Marks in the course of trade by displaying and referencing products bearing our Client's Trade Marks extensively on your Websites in order to further your business as a Chinese Medicine Shop. It has also come to our Client's attention that you are using our Client's Copyrights, including our Client's Marketing Materials and/or images which feature our Client's Product Packaging on your Websites, without having sought our Client's permission to do so. This also includes using our Client's Marketing Materials and/or images which feature our Client's Product Packaging on advertisements.
>
> …
>
> 14. In the present circumstances, please provide proof of your legitimate ownership over our Client's Trade Marks and Copyrights used on your Websites. Otherwise, our Client

47 AEIC of Chong Tuck Seng at para 46; AEIC of Tan See Leng at para 30.

48 AEIC of Chong Tuck Seng at paras 48 and 50–51; AEIC of Tan See Leng at paras 39 and 43.

49 AEIC of Tan See Leng at Tab J.

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HEREBY DEMANDS that you immediately cease and desist from all further unauthorised use of our Client's Trade Marks and Copyrights on your Websites, and any other website that you currently possess and/or are in control over.

15. Our Client FURTHER DEMANDS that within fourteen (14) days from the date of this letter, you will do the following:

(a) Provide our Client with a signed copy of the undertaking enclosed at Annex C which sets out the below terms;

(b) Make payment of damages owing to our Client due to your unauthorised use to date of our Client's Trade Marks and Copyrights;

(c) Provide written confirmation to our Client that you have removed all of our Client's Marketing Materials which are substantially similar to our Client's from your Websites, any other related websites and/or in any advertisements; and

(d) Provide our Client with the written apology in English as enclosed at Annex D, and publish the same (at your expense and to our Client's satisfaction) on your website "https://tcmshop.sg/" and on The Straits Times where said notice on The Straits Times is at least one-quarter (1/4) of the page.

…

18. TAKE NOTE HOWEVER that if we do not receive from you a satisfactory written response on the above terms within fourteen (14) days from the date of this letter, our Client may have little choice but to take further action as they deem necessary to protect their intellectual property rights, without further reference to you. This may include the commencement of court proceedings (which could result in damages, injunctions, costs and other adverse consequences to you), as well as contacting social media platforms and website hosts to seek to remove any pages which infringe our clients' rights currently.

…

[emphasis in original omitted]

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21 Consequently, the Defendants ceased all online sales of the Products.[50] The remaining stock of the Products was sold in Herbs Health's physical retail store.[51] Herbs Health stopped placing orders for the Products with RKPL and thus ceased to be an authorised retailer of the Products.[52]

22 On 6 November 2023, Herbs Health's lawyers replied to the Cease and Desist Letter. On 19 September 2024, Beauty Nation issued a second letter to Herbs Health making an amicable settlement offer.[53] After a failed attempt to resolve the dispute amicably through mediation on 19 December 2024,[54] Beauty Nation filed the present proceedings.

The parties' cases

23 During the trial, Mr Tan and Mr Chong were respectively called as the sole factual witnesses for Beauty Nation, and the Defendants.

Beauty Nation's claims

24 First, regarding the copyright infringement claim, the Defendants used copyright materials owned by Beauty Nation from at least 18 January 2017.[55] In its closing submissions, Beauty Nation states that it takes issue with the Defendants' use of Mr Chong's Photographs from 2017 to 2021, and their subsequent use of the Copyright Materials and Mr Chong's Subsequent

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50 AEIC of Chong Tuck Seng at para 76; SOC at para 56.

51 AEIC of Chong Tuck Seng at para 121.

52 AEIC of Chong Tuck Seng at para 121; AEIC of Tan See Leng at para 31.

53 AEIC of Chong Tuck Seng at para 80; Tab 18.

54 AEIC of Chong Tuck Seng at paras 88–89; SOC at para 56.

55 SOC at para 19.

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Photographs from 2022 to 2023.[56] Beauty Nation contends that the Defendants had no express licence for the aforesaid uses.[57] Moreover, no implied contractual licence arose under the test for the implication of terms as laid down by *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*").[58]

25 Second, Beauty Nation's claim for trade mark infringement is based on s 27 of the Trade Marks Act 1998 (2020 Rev Ed) ("TMA").[59] Beauty Nation pleads that since at least 18 January 2017, it has observed the Defendants "advertising, marketing and selling" the Products by using "imagery and/or words which are identical to [the Trade Marks]" in their Online Listings.[60] Beauty Nation argues that it did not expressly or impliedly consent to the Defendants' use of the Trade Marks in the online sales and advertising of the Products.[61] Beauty Nation does not challenge Herbs Health's sale of the Products in its physical retail store.

26 Third, Beauty Nation submits that inverse passing off occurred as the Defendants passed themselves off as the source of the Products.[62] Beauty Nation alleges that there has been longstanding use, publicity and promotion of the Trade Marks.[63] Amongst other conduct which Beauty Nation alleges resulted in

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56 CCS at paras 5–7 and 9.

57 CCS at para 11.

58 CCS at paras 14–16.

59 CCS at para 25.

60 SOC at para 24.

61 CCS at paras 30–31.

62 CCS at paras 50–51.

63 SOC at para 44.

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confusion to the public, Beauty Nation contends that the Defendants misrepresented themselves as the commercial source of the Products by including "Herbs Health" in the title of their Online Listings.[64] This reportedly caused damage to Beauty Nation's goodwill, such as the "tarnishment of its brands" and diversion of business away from Beauty Nation.[65]

27 Beauty Nation thus claims:[66]

(a) an injunction to restrain the Defendants from "permitting and/or causing any further infringement" involving the Copyright Materials and Trade Marks, and engaging in acts of passing off;

(b) an order for the Defendants to remove the Online Listings;

(c) an order for delivery up or destruction of all infringing articles in the Defendants' possession, power, custody or control;

(d) an inquiry as to damages or an account of profits made by the Defendants derived from the copyright and trade mark infringement and passing off; and

(e) interest, costs and such further or other relief that this court deems appropriate.

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64 SOC at paras 46–51.

65 SOC at para 53; CCS at para 54.

66 SOC at p 20.

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The defence

28 The Defendants did not plead any of the statutory defences under the Copyright Act 2021 (2020 Rev Ed) ("CA") or the TMA.

29 On copyright infringement, the Defendants take the view that they acted with licence.[67] The Defendants plead that Beauty Nation granted them a licence, "expressly … and/or impliedly by conduct", to use the Copyright Materials to promote and sell the Products:[68]

(a) The Defendants contend that Beauty Nation consented through express permission given by Mr Ng.[69] Mr Chong allegedly informed Mr Ng that he intended to use the Copyright Materials and no objections were raised up till the Cease and Desist Letter.[70]

(b) Alternatively, the Defendants advance several bases which gave rise to an implied licence. First, an implied contractual licence pursuant to *Sembcorp Marine* arose.[71] Second, that Beauty Nation and RKPL knew of the Defendants' online sales yet continued the supply of the Products, supports a case on consent and acquiescence.[72]

30 Turning to the trade mark infringement claim, the Defendants rely on Beauty Nation's express and/or implied licence to use the Trade Marks for the

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67 1st and 2nd Defendants' Defence and Counterclaim dated 28 March 2025 ("DCC") at para 3; DCS at para 11.

68 DCC at para 4(13).

69 DCS at para 14.

70 DCS at para 14; AEIC of Mr Chong Tuck Seng at para 53.

71 DCS at para 15.

72 DCS at paras 20–21.

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purposes of promoting and selling the Products.[73] In addition, the Defendants allege that they had been promoting and selling the Products online since 2017 without objections from Beauty Nation.[74] The Defendants further argue that an authorised retailer's use of a trade mark in relation to the proprietor's genuine goods does not amount to infringement.[75]

31 Regarding the inverse passing off claim, the Defendants deny that they passed off the Products as their own products.[76] The Defendants assert that there was no misrepresentation of the source of the Products.[77] Further, the alleged damage to Beauty Nation's goodwill stemmed from "price competition" which related to "commercial strategy, not misrepresentation of source".[78]

The Defendants' counterclaim

32 The Defendants' view is that Beauty Nation has made groundless threats of infringement proceedings pursuant to s 499 of the CA and s 35 of the TMA:[79]

(a) The Defendants posit that the threat of copyright infringement proceedings was unjustified as they had acted with licence in using the Copyright Materials.[80]

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73 DCC at para 4(23).

74 DCC at paras 4(23)–4(24).

75 DCC at para 4(23); DCS at para 26.

76 DCC at para 4(52).

77 DCS at paras 35–36.

78 DCS at para 47.

79 DCC at para 6; DCS at para 54.

80 DCC at para 6; DCS at para 58.

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(b) For the threat of trade mark infringement proceedings, the Defendants allege that the Cease and Desist Letter is actionable as it related to acts other than those excluded by ss 35(1)(*a*)–(*c*) of the TMA.[81]

(c) The Defendants claim to be aggrieved persons under s 499 of the CA and s 35 of the TMA as the threats had caused a halt to their online sales, removal of the Online Listings and forced stock clearance.[82]

33 Beauty Nation denies that its allegations of copyright and trade mark infringement were groundless.[83] Beauty Nation states that it was justified in issuing the Cease and Desist Letter to Herbs Health and the demands therein related to acts falling within ss 35(1)(*a*)–(*c*) of the TMA.[84] Beauty Nation also contends that Herbs Health is not an aggrieved person.[85]

Issues to be determined

34 Before me, four main issues arise.

35 First, whether the Defendants' use of Mr Chong's Photographs, the Copyright Materials and Mr Chong's Subsequent Photographs (collectively, "Defendants' Uses") in the Online Listings constitutes copyright infringement. This turns on whether the Defendants had an express or implied licence for such use.

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81 DCS at para 56.

82 DCS at paras 57–58.

83 Claimant's Defence to Counterclaim dated 11 April 2025 at para 7.

84 Claimant's Opening Statement dated 27 October 2025 ("COS") at para 54.

85 COS at para 54.

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36 Second, whether the Defendants' use of the Trade Marks in the sale and advertising of the Products amounts to trade mark infringement. The crux of the issue lies in whether there was consent for the Defendants to use the Trade Marks.

37 Third, whether the Defendants passed themselves off as the source of the Products.

38 Fourth, whether Beauty Nation's issuance of the Cease and Desist Letter gives rise to actionable groundless threats of infringement proceedings under s 499 of the CA and/or s 35 of the TMA. If so, whether it is appropriate to grant relief for the groundless threats.

Claim for copyright infringement

39 An infringement of copyright occurs when a person, without the licence of the copyright owner, does an act comprised in copyright: s 146(1) of the CA. An act comprised in copyright encompasses, *inter alia*, the act of making a copy of a copyright work: ss 112(1)(*a*) and 113(*a*) of the CA. This includes the making of a copy of a substantial part of a copyright work: ss 39(1) and 49 of the CA.

40 Copyright is not infringed where there is a licence issued by the copyright owner to use the copyright work. A licence generally refers to permission by or on behalf of the copyright owner: see Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Rev Ed, 2022) at paras 13.3.2–13.3.3:

> For more general purposes, a 'licence' is simply an *authorisation given by or on behalf* of the copyright owner to do an act comprised in the copyright.

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> …
>
> There is no requirement that a licence, to have legal effect, must be in writing or signed by the copyright owner.
>
> [emphasis added]

41 The two broad situations when an implied licence may arise are summarised in Gwilym Harbottle, Nicholas Caddick KC & Uma Suthersanen, *Copinger and Skone James on Copyright* (Sweet & Maxwell, 19th Ed, 2025) ("*Copinger and Skone James on Copyright*") at para 4-259:

> *Implied licence where there is a contract* Where the parties were in a contractual relationship, the question whether there was an implied licence does not depend on whether it would be reasonable for there to have been such a grant. Instead the test is whether someone construing the contract objectively against the relevant background, would reasonably understand the parties intended there to be a licence.
>
> …
>
> *Implied licence—gratuitous and informal situations* In a case where the licence is gratuitous and informal, however, the position is different. Thus, where the work is supplied knowing that it will be used for a particular purpose, the licence may be limited to that purpose, but where the purpose is left vague, the extent of the licence is unlikely to be confined to the immediate purposes which the parties had in mind. No doubt the test is objective: for what purposes would a reasonable person in the shoes of the licensee consider the work could be used?
>
> [emphasis in original]

Specifically, in a non-contractual situation, a licence may be implied from, *inter alia*, conduct or trade practice: *Copinger and Skone James on Copyright* at paras 4-260–4-261.

42 Accordingly, the issue that arises for my consideration is whether a licence was granted by or on behalf of Beauty Nation to the Defendants to allow the Defendants' Uses. In this regard, the Defendants say that an express or

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implied licence was granted. The main bases on which the Defendants claim that an implied licence was granted are an implied contractual licence, and/or "impliedly by conduct [*sic*]" based on the manner in which parties acted which evinces consent and acquiescence (see [29] above).[86] I begin with what appears to me to be the strongest ground raised by the Defendants, *ie*, an implied licence by conduct.

Implied licence by conduct

43 A licence can arise as a result of the parties' conduct that does not hinge on the existence of any underlying contractual relationship: *Copinger and Skone James on Copyright* at para 4-261. The test is objective. Namely, whether the words and conduct of the alleged licensor, as made known to the alleged licensee, objectively indicated that the licensor *consented* to what the licensee was doing: *Copinger and Skone James on Copyright* at para 4-261.

44 To illustrate how an implied licence by conduct might arise, I begin by considering the case of *Helme v Maher* [2015] EWHC 3151 (IPEC) ("*Helme*"). The relevant facts in *Helme* were as follows:

(a) The claimant operated a jewellery business under the trade name "Hidden Gem": at [1] and [5]. The claimant owned copyright in a logo and several commissioned photographs of her jewellery ("the claimant's Logo and Photographs"): at [3]–[4].

(b) Some time in late 2008 and early 2009, the claimant entered into negotiations with the defendants for a joint venture, under which franchise arrangements would be granted to allow third-party businesses

[86] DCC at para 4(13); DCS at paras 15–21.

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to operate under the "Hidden Gem" trade name: at [6]. No formal contract was concluded.

(c) Nonetheless, in view of this possible joint venture, the defendants began to advertise jewellery under the "Hidden Gem" trade name, using the claimant's Logo and Photographs: at [7]. Such use occurred throughout 2009 and 2010: at [6].

(d) In one of the meetings, the parties discussed that the defendants would offer the jewellery to third-party companies and the claimant knew this was being done to promote the Hidden Gem brand in anticipation of the joint venture: at [16]. Further the defendants had informed the claimant during the said meeting of the appointment of a company ("Timscris") to promote the Hidden Gem goods, to which there was no dissent: at [17]. Jewellery was sold to Timscris and Timscris had placed advertisements using the claimant's Logo and Photographs: at [42].

(e) The claimant "never complained about any of the advertisements using the Hidden Gem name": at [23]. In an electronic mail correspondence, the claimant had indicated to the defendants that she had seen one of the advertisements placed in a magazine, but she did not raise any objections to it: at [23]. Parties continued exchanging electronic mails "in a form which suggest[ed] no change in the atmosphere of willing co-operation": at [23].

(f) However, the joint venture plan fell through and on 9 April 2010, the claimant's solicitors sent a letter to the defendants and subsequently

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commenced an action for copyright infringement and passing off: at [6]–[7].

45 The court held that a licence arose for the defendants to use the "Hidden Gem" trade name and the claimant's Logo and Photographs: at [32]. The court implied such a licence based on parties' conduct. The court considered that the claimant had "enthusiastically endorsed" the defendants' efforts to promote their joint enterprise to the best of their abilities, and also bore in mind that the parties' relationship was one of friendship and trust and not a hard-nosed commercial arrangement: at [12] and [32]. Such a licence persisted until its termination via the letter issued on 9 April 2010: at [33].

46 In relation to Timscris's use of the claimant's Logo and Photographs, the court found at [43] that:

> Sales of 'Hidden Gem' jewellery to Timscris before April 2010 were licensed and therefore the subsequent advertising and sale of the jewellery by Timscris must have been licensed. … Consequently, all advertisements arranged by Timscris were sub-licensed by the [d]efendants. The *granting of such a sub-licence was within the scope of the broad licence* granted by [the claimant] to the [d]efendants to use the 'Hidden Gem' trade name, the Logo and the Photograph. Such use included, as was agreed, the promotion of the 'Hidden Gem' brand by means of direct sales of jewellery through Timscris.
>
> [emphasis added]

47 In my judgment, whether an implied licence to use a copyright work arises from the copyright owner's conduct is an inquiry that turns on the specific factual matrix. Given the highly fact-sensitive nature of the inquiry, it is not practical for me to set out an exhaustive list of factors that may be relevant. Nonetheless, on the facts of *Helme*, it appears to me to be significant that the claimant knew of the advertisements which contained the defendants'

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purportedly infringing uses and, viewed in the context that the parties were exploring the possibility of a joint venture, it was telling that the claimant did not raise any complaints and the parties continued to maintain an "atmosphere of willing co-operation" (see [44(d)–(e)] above). The claimant's knowledge of the allegedly infringing uses cannot be analysed in a vacuum but rather, such knowledge was coloured by the parties' pre-existing relationship. Based on the circumstances, it is easy to understand the finding that an implied licence by conduct arose in *Helme*.

48 I now turn to the present dispute. To recapitulate, Beauty Nation challenges the Defendants' Uses which concern (see [16]–[17] earlier):

(a) the Defendants' use of Mr Chong's Photographs in TCM Shop's Listings from 2017 to 2021; and

(b) the Defendants' use of a combination of the Copyright Materials and Mr Chong's Subsequent Photographs in their Online Listings from mid-2022 to October 2023.[87]

49 The Defendants rely on the course of the parties' relationship of more than a decade to argue that an implied licence arose in fact.[88] The Defendants argue that the continued supply of the Products to them without any objections raised, despite Beauty Nation and RKPL's knowledge of the Defendants' Online Listings, supports their case on consent.[89]

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87 CCS at para 5; DCS at para 12.

88 DCS at para 20.

89 DCS at para 21.

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50 In my view, an implied licence arose by conduct permitting the Defendants' Uses for the purpose of executing Herbs Health's role as an authorised retailer of the Products. Three key facts lead me to this conclusion, which I consider in turn:

(a) Beauty Nation knew of the Online Listings and the Defendants' Uses since 2017.

(b) RKPL continued to supply the Products to Herbs Health, without raising any objections, notwithstanding the Defendants' Uses.

(c) RKPL acted on behalf of Beauty Nation in the continued supply of Beauty Nation's Products.

51 Taken together, notwithstanding that Beauty Nation had known of the Online Listings and the Defendants' Uses since 2017, the fact that RKPL continued to supply the Products, on behalf of Beauty Nation, to Herbs Health indicates that an implied licence for the Defendants' Uses arose for the aforesaid period of use, up until the issuance of the Cease and Desist Letter.

52 I am mindful that for the purposes of selling the Products, TCM Shop operated in tandem as the online arm to Herbs Health (at [5]–[6] above). In my view, the broad licence granted to Herbs Health would have allowed the granting of a sub-licence to TCM Shop to similarly use Mr Chong's Photographs, the Copyright Materials and Mr Chong's Subsequent Photographs for the purposes of the sale and advertising of the Products (see *Helme* at [43], which I reproduced at [46] above).

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53 I now elaborate on the evidence before me which leads me to arrive at the three key facts that give rise to the implied licence by conduct (at [50] above).

Beauty Nation knew of the Defendants' use of the photographs and the Copyright Materials

54 Beauty Nation pleaded in its statement of claim that it had known of the Defendants' Online Listings since at least 18 January 2017:[90]

> Since at least 18 January 2017, the Claimant has *observed the Defendants advertising, marketing and selling the Claimant's Products* by reference to or with the *use of imagery* and/or words which are identical to the Claimant's Marks. …
>
> [emphasis added]

55 However, Beauty Nation abandoned its pleaded position that it had noticed the Online Listings from 2017. In his affidavit of evidence-in-chief ("AEIC") and at trial, Mr Tan took different positions on when Beauty Nation became aware of the Online Listings.

56 Mr Tan advances the following version of events in his AEIC:

(a) He claims that he only discovered sometime in 2022 that "the Defendants had been blatantly copying and pasting" the Copyright Materials when selling the Products on "various online sites".[91]

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90 SOC at para 24.

91 AEIC of Tan See Leng at para 29.

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(b) In a subsequent paragraph, he asserts that it was only on or around 30 December 2024 that Beauty Nation "first became aware of the existence" of TCM Shop.[92]

57 When cross-examined on the inconsistency between Beauty Nation's pleadings and his AEIC, Mr Tan continued to claim his lack of awareness up till 2022:[93]

> [Mr Tan]: Though the paragraph 24 put "Since at least 18 January 2017", but *only in 2022 then we discovered the website.*
>
> …
>
> Q: So despite knowing that Herbs Health was selling your products online, you did not restrict Herbs Health from doing so when you renewed their appointment as authorised retailer.
>
> Court: Which year?
>
> Q: Both in 2017 as well as in 2022.
>
> [Mr Tan]: I already said that we did not know the existence of the website in 2017. *We were only aware of the website in 2022.*
>
> [emphasis added]

58 Mr Tan further testified that upon his supposed discovery of TCM Shop's Website in 2022, he was "unable to locate the picture[s] of the products" and could only retrieve the "explanation for the products" from the cache data.[94] However, Beauty Nation has also pleaded that it believes that the Defendants have used the Copyright Materials "since at least 18 January 2017".[95] It is thus

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92 AEIC of Tan See Leng at para 32.

93 NE-1 at p 52 ln 2–3 and p 65 ln 8–14.

94 NE-1 at p 52 ln 2–7.

95 SOC at para 19.

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inexplicable how Beauty Nation believed, as it pleaded, that the Defendants had used the Copyright Materials since 2017 if Mr Tan could not locate the photographs of the Products upon his alleged discovery of TCM Shop's Website in 2022.

59 I can briefly deal with Mr Tan's evidence that he only knew in 2024 of TCM Shop's existence (see [56(b)] above). I do not accept Mr Tan's evidence in this respect. In the Cease and Desist Letter dated 13 October 2023, Beauty Nation's solicitors stated that Herbs Health was the owner and/or operator of TCM Shop.[96] It is thus inconsistent for Mr Tan to claim that he only knew of TCM Shop's existence on or around 30 December 2024, when Beauty Nation's solicitors had referenced TCM Shop some months prior in the Cease and Desist Letter. In any event, Mr Tan's own evidence in the earlier part of his AEIC and during cross-examination was that he discovered TCM Shop's Website in 2022 ([56(a)] and [57] above).[97]

60 I have difficulty accepting Mr Tan's evidence that Beauty Nation only became aware of the Defendants' Online Listings from 2022. Mr Tan has not adduced cogent evidence to substantiate Beauty Nation's change in position from its pleaded position that it had known of the Defendants' Online Listings since 18 January 2017 (see [54] earlier). On the contrary, there are various internal inconsistencies with Mr Tan's evidence (see [58] and [59] above). It is also material that Beauty Nation's pleadings omit any references to its present case that it was only in 2022 when it realised that the Defendants were selling

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96 AEIC of Chong Tuck Seng at Tab 15 at p 125.

97 AEIC of Tan See Leng at para 29; NE-1 at p 52 ln 2–3 and p 65 ln 8–14.

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the Products online. Mr Tan cannot now attempt to backtrack from Beauty Nation's pleaded position that it was aware of the Online Listings from 2017.

61 Therefore, I reject Mr Tan's evidence that Beauty Nation noticed the Defendants' online sales from 2022. I find that, as a matter of fact, Beauty Nation had noticed the Defendants' online sales of the Products since 2017, as it has pleaded. The corollary of having observed the Defendants' Online Listings is that Beauty Nation must have also been aware of the Defendants' Uses in the Online Listings. Indeed, this is consistent with the fact that Beauty Nation has also pleaded its observation of the Defendants "advertising, marketing and selling the Claimant's Products by reference to or with the use of imagery" since at least 18 January 2017.[98] On Beauty Nation's own account, it knew of the "imagery" used in the Online Listings, *ie*, the aforesaid Defendants' Uses.[99] Therefore, Beauty Nation knew of the Defendants' Uses since 2017.

Root King Pte Ltd's continued supply without objections to the Defendants' use of the photographs and Copyright Materials

62 According to the Defendants, Mr Chong's Photographs were taken down from TCM Shop's Listings as Mr Ng had informed Mr Chong to remove these photographs which had contained "outdated and incorrect versions of the original images of the product[s]".[100] Although Beauty Nation has filed objections to some portions of Mr Chong's AEIC,[101] Beauty Nation did not

98 SOC at para 24.

99 SOC at para 24.

100 AEIC of Chong Tuck Seng at para 37.

101 Claimant's Notice of Objections to Contents of Affidavit of Evidence-in-Chief dated 12 September 2025 ("Claimant's Notice of Objections").

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specifically object to Mr Chong's evidence that he took down Mr Chong's Photographs as Mr Ng had purportedly told him they were outdated. Moreover, Beauty Nation's pleaded case also references the Defendants publishing outdated versions of photographs.[102] In its closing submissions, Beauty Nation also refers to the "incident in 2021 when [Mr Ng] had told the Defendants to take down the photos".[103] Hence, it appears that both parties accept that Mr Chong's Photographs were taken down because they portrayed outdated versions of the Products.

63 It seems to me that Mr Chong's Photographs were requested to be taken down because they were outdated, and not because RKPL or Beauty Nation was objecting to the use in principle on the basis of copyright infringement. This was apparent from Mr Tan's evidence that his concern with self-taken photographs lay in the quality of such photographs:[104]

> Q: … If I were to take a picture of your products and then I list my picture online, is that okay?
>
> [Mr Tan]: We will provide our own photographs.
>
> Court: Please answer the question.
>
> [Mr Tan]: Our company is in the hope that the presentation of the images will be clear and sharp.

64 Although it may not be reflective of the legal position, as much would depend on the factual matrix (see [66] below), it is pertinent that Mr Tan himself

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102 SOC at para 18.

103 CCS at para 6.

104 NE-1 at p 50 ln 24–29.

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believed that he could not prohibit an individual from taking a photograph of the Products and using the said photograph to sell the Products online:[105]

> Q: … If I take a picture of your products and I use my picture and post it online to sell your products. Is that okay?
>
> [Mr Tan]: No.
>
> Q: Why not, Mr Tan? It's the picture that I took, so I own the copyright to the picture. You don't have---you don't own the picture. Do you agree that you don't own that picture?
>
> [Mr Tan]: *Yes, I don't own it.*
>
> Q: You don't own it?
>
> [Mr Tan]: Because the person, that person took the picture.
>
> Q: Yes. So you can't stop me from using that photo, because it's my photo.
>
> [Mr Tan]: *I can't stop.*
>
> [emphasis added]

65 Similarly, Mr Chong was under the impression that he did not require permission to use the photographs taken by him:[106]

> Q: … the photos that you had taken around 2017, you had not obtained any permission for them.
>
> [Mr Chong]: 2017?
>
> Q: Yes or no? Yes.
>
> [Mr Chong]: I took my own photos.
>
> Q: Did you obtain [Mr Ng]'s or [RKPL]'s permission to use those?

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105 NE-1 at p 50 ln 31–32 to p 51 ln 2–9.

106 NE-2 at p 61 ln 18–32.

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> [Mr Chong]: That is---that is my own copyright. … No, this is a photo I took myself. … Don't need authorisation.

66 Viewed together, the evidence at [64]–[65] above reveals that both Mr Chong and Mr Tan shared the understanding that since Mr Chong was the author of Mr Chong's Photographs and Mr Chong's Subsequent Photographs, it was not open to Beauty Nation to raise objections to the Defendants' use of the aforesaid photographs. For the avoidance of doubt, the creation of an original work derived from the infringement of copyright in another's work may nonetheless be independently protected by copyright: *Virtual Map (Singapore) Pte Ltd v Suncool International Pte Ltd* [2005] 2 SLR(R) 157 at [10]. Hence, the mere fact that independent copyright may have subsisted in the photographs that Mr Chong had taken of the Products does not, by itself, mean that Mr Chong may not have infringed Beauty Nation's copyright. Notwithstanding, the broader point is that Mr Tan, labouring under the belief that he could not object to an individual using self-taken photographs of the Products, had therefore *not objected* to the Defendants' use of Mr Chong's Photographs and Mr Chong's Subsequent Photographs. This is consonant with Mr Tan's evidence that he only took issue with the Defendants' use of the Copyright Materials that began in 2022:[107]

> Q: Okay. But your representative, [Mr Ng], knew of that website and [Mr Ng] subsequently told Herbs Health to put those pictures down because they are outdated pictures.
>
> [Mr Tan]: We did not have---we did not---we never had those information.
>
> Q: Okay. So you only take issue because in June 2022, the defendants started using your original advertising material, isn't that correct?

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107 NE-1 at p 51 ln 17–23.

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[Mr Tan]: Yes.

67 As I explained at [62] above, Mr Chong's evidence was that he had taken down Mr Chong's Photographs because they were outdated and not professionally taken.[108] After the Defendants recommenced online sales of the Products in 2022, Mr Chong noticed that other authorised retailers of the Products were using the Copyright Materials and thus believed that the Defendants also had the right to use the aforesaid.[109] Mr Chong testified that he informed Mr Ng of the Defendants' use of the Copyright Materials in 2022:[110]

> [Mr Chong]: So when we start using the photos in 2022, somewhere on the mid-2022, *we informed [Mr Ng] and tell [Mr Ng], "If there's any issue, please let us know."* … So a lot of time, it's through verbal one. So, "[Mr Ng], is---is it okay? If there's issue, you let us know". Say, "Okay, okay." So there was no objection for the next 16 months until---so this is mid-2022, I would say June, maybe around there. So until October 2023, 16 months, there was no objection from [Mr Ng], and there was *no objection from the claimant*. So everything is peaceful. Suddenly, in 2023 October, one letter come.
>
> [emphasis added]

Mr Chong explained that the Defendants would supplement the use of the Copyright Materials with Mr Chong's Subsequent Photographs to fulfil the e-commerce platform's requirement that three photographs had to be uploaded in a product listing.[111]

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108 NE-2 at p 58 ln 12–13.

109 NE-2 at p 58 ln 20–24.

110 NE-2 at p 59 ln 1–3 and ln 10–17.

111 NE-2 at p 57 ln 5–11.

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68 Beauty Nation has objected to Mr Chong's evidence, on the grounds of hearsay, that he informed Mr Ng of his intention to "use [RKPL]'s promotional images and asked [Mr Ng] to let [him] know if there were any objections" and "[Mr Ng] did not object".[112] However, I find that Mr Chong's evidence is only relevant in so far as he is testifying that he himself had informed Mr Ng of the Defendants' use of the Copyright Materials and had asked him to raise any objections. I find no need to consider what Mr Ng's response was, if any, as the main point here is that there is no record of any objections to the use of the Copyright Materials and Mr Chong's Subsequent Photographs by Beauty Nation or RKPL up until the Cease and Desist Letter was issued.

69 Significantly, the evidence reveals that Mr Ng, on behalf of RKPL, persistently supplied the Products to Herbs Health for over a decade without objections, notwithstanding the Defendants' Uses (see [9] and [12] above):

(a) No objections was raised to the Defendants' use of Mr Chong's Photographs in 2017 (see [63] and [66] above). After they were taken down because they were outdated, RKPL still maintained the supply of the Products.

(b) Even after the Defendants began using the Copyright Materials and Mr Chong's Subsequent Photographs, the supply of the Products to Herbs Health continued for a prolonged period of a year. The Invoices tendered showed that the sale of the Products persisted on a monthly basis from 12 October 2022 till 26 September 2023.[113] This timeline coincided with the Defendants' use of the Copyright Materials and Mr

112 Claimant's Notice of Objections at para 1(c).

113 AEIC of Chong Tuck Seng at Tab 6 at pp 65–77.

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> Chong's Subsequent Photographs from mid-2022 to October 2023. Moreover, this period of continued supply of the Products was coupled with the absence of any objections from either RKPL or Beauty Nation to the use of the Copyright Materials and Mr Chong's Subsequent Photographs.

Accordingly, despite the Defendants' Uses, the fact remains that RKPL continued to sell the Products to Herbs Health for a substantial period of time.

Root King Pte Ltd acted on behalf of Beauty Nation

70 It is clear to me that RKPL acted, at all material times, on behalf of Beauty Nation in so far as dealings with authorised retailers of the Products were concerned. This much was conceded by Mr Tan:[114]

> Q: So because you delegate the role of sales and distribution to [RKPL], would you agree that whatever that *[RKPL] does is actually doing it on your behalf?*
>
> [Mr Tan]: *Yes.*
>
> [emphasis added]

71 First, Beauty Nation and RKPL are related companies. They share the same shareholders and directors, *ie*, Mr Tan and Ms Tan.[115] RKPL functioned as the operating company handling the sales, distribution and administration of the Products.[116] In substance, RKPL was the operative arm of Beauty Nation as the latter was merely the "dedicated intellectual property holding company".[117]

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114 NE-1 at p 10 ln 2–5.

115 AEIC of Tan See Leng at paras 5 and 25; NE-1 at p 7 ln 7–13.

116 AEIC of Tan See Leng at para 25; NE-1 at p 7 ln 14–16.

117 AEIC of Tan See Leng at para 25.

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72 Second, RKPL had considerable discretion when it dealt on behalf of Beauty Nation. Mr Tan accepted during cross-examination that RKPL handled all of Beauty Nation's dealings with the authorised retailers of the Products.[118] Furthermore, Mr Tan gave evidence that RKPL had the sole discretion in determining who to appoint as an authorised retailer:[119]

> [Mr Tan]: I would say that *[RKPL] has the sole decision* to appoint who to be their retailer. So basically, we do not have any dealings with the retailers and *[RKPL] would be responsible* to make arrangement with the retailers for the sales of the goods.
>
> [emphasis added]

73 Third, Mr Ng played an instrumental role in facilitating RKPL's function as the operative arm of Beauty Nation. Herbs Health purchased the Products from RKPL directly and not from Beauty Nation.[120] Mr Tan confirmed that he and Ms Tan did not personally interact with the authorised retailers of the Products.[121] At all material times, Mr Tan had not met or communicated with Mr Chong.[122] This was because all dealings between Beauty Nation and the authorised retailers of the Products were conducted through RKPL's representatives, in particular, Mr Ng.[123] Indeed, Mr Ng was listed as the "salesman" in the majority of the Invoices issued.[124] From Mr Chong's perspective, Mr Ng was the "only point of contact throughout these 12 years"

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118 NE-1 at p 7 ln 22–25.

119 NE-1 at p 9 ln 20–23 and p 10 ln 30–32 to p 11 ln 1.

120 NE-1 at p 11 ln 19–28.

121 NE-1 at p 8 ln 4–6.

122 NE-1 at p 8 ln 7–9.

123 NE-1 at p 7 ln 24–25 and p 8 ln 10–19.

124 AEIC of Chong Tuck Seng at Tab 6 at pp 65–74.

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of being an authorised retailer of the Products.[125] From the foregoing evidence, it would be artificial to construe the actions of Mr Ng, acting as a representative of RKPL, disparately from Beauty Nation.

74 Relatedly, Beauty Nation submits that in so far as the Defendants argue that any consent was granted by Mr Ng's representations, Mr Ng was acting in the capacity of RKPL and not Beauty Nation.[126] I cannot agree with this substance-free contention. The objective evidence reveals that for all material purposes, Mr Ng, as representative of RKPL, acted on behalf of Beauty Nation in its dealings with the Defendants. It lies ill in the mouth of Mr Tan to cherry-pick which actions by RKPL it ought to be bound by when Beauty Nation had afforded wide discretion to Mr Ng to manage the relationships with authorised retailers of the Products. In this vein, I find that Mr Ng's conduct in his capacity as a representative of RKPL in dealing with Herbs Health, namely, the decision to continue the supply of the Products for a prolonged period of time (see [69] above), was carried out on behalf of Beauty Nation.

Conclusion on the copyright infringement claim

75 Taken together, the facts reveal that Beauty Nation, acting through RKPL, had impliedly consented by its conduct to the Defendants' Uses. Bearing in mind that RKPL acted on behalf of Beauty Nation for the purposes of appointing and managing authorised retailers of the Products, the fact that RKPL continued to supply the Products to Herbs Health despite Beauty Nation being aware of the Online Listings and the Defendants' Uses from 2017, viewed in tandem with the lack of objections to the aforesaid use, is telling. I find that

125 NE-2 at p 39 ln 1–2.

126 COS at para 28.

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implied consent to the use of the aforesaid materials had arisen by conduct based on the specific factual matrix before me (at [54]–[74] above). I also bear in mind that any advertising and sale of the Products by the Defendants benefitted Beauty Nation as the manufacturer of the Products. From a commercial perspective, there was every reason to consent to Defendants' Uses. Cognisant of the relationship between Herbs Health and RKPL spanning over a decade that was built on mutual trust in the context of a "traditional neighbourhood business" (see [8] above), I am satisfied that an implied licence to use the relevant materials (*ie*, Mr Chong's Photographs, the Copyright Materials and Mr Chong's Subsequent Photographs) arose notwithstanding the absence of an express agreement.

76 Having found that an implied licence by conduct arose for the Defendants' Uses, this suffices to dispose of Beauty Nation's copyright infringement claim. I do not proceed to consider the other defences, *inter alia*, an implied contractual licence and acquiescence.

77 I therefore dismiss Beauty Nation's claim for copyright infringement.

Claim for trade mark infringement

78 Beauty Nation claims that the Defendants used the Trade Marks since at least 18 January 2017 in the course of "advertising, marketing and selling" the Products in their Online Listings.[127] Beauty Nation's case is that such use constitutes trade mark infringement under s 27 of the TMA.[128]

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127 SOC at paras 24–25.

128 SOC at para 23; COS at para 33.

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79 The relevant parts of section 27 of the TMA reads:

> **Acts amounting to infringement of registered trade mark**
>
> **27**.—(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.
>
> …
>
> (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.
>
> [emphasis added]

80 The Defendants take the position that no trade mark infringement occurred. As authorised retailers of the Products, they contend that Beauty

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Nation had expressly and/or impliedly granted the Defendants a licence to use the Trade Marks.[129]

Beauty Nation consented to the Defendants' use of Beauty Nation's Trade Marks

81 In my opinion, the issue lies in whether Beauty Nation, as the proprietor of the Trade Marks, consented to the Defendants' use of the Trade Marks in the course of trade. This is because each ground of trade mark infringement requires that the mark is used without the consent of the trade mark proprietor. It is observed in Tan Tee Jim SC, *Law of Trade Marks in Singapore* (Sweet & Maxwell, 4th Ed, 2021) ("*Law of Trade Marks in Singapore"*) at para 11.081 that:

> … the word "consent" in this context bears the ordinary dictionary meaning of "permission", "approval" and "agreement". Whether there is implied consent is a question of fact.

I would add that the aforesaid consent may be given by the trade mark proprietor, or on the proprietor's behalf.

82 I first identify the relevant uses of the Trade Marks. In my judgment, the Defendants offered the Products bearing the Trade Marks for sale and put them on the market pursuant to s 27(4)(*b*) of the TMA. Further, the Trade Marks were used in the course of advertising by the Defendants in their Online Listings under s 27(4)(*e*) of the TMA.

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129 DCC at para 4(23).

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83 In this connection, Beauty Nation argues that no implied licence arose for the Defendants to use the Trade Marks to advertise the Products online.[130] Beauty Nation further submits that the Trade Marks were infringed as it did not consent to the Defendants putting the Products for sale online.[131] However, Mr Tan could not identify the basis behind this ostensible restriction on online sales.[132]

84 I am satisfied that the Defendants' use of the Trade Marks was done with Beauty Nation's consent. The same key factual findings I made for the copyright claim, summarised at [50] above, apply equally to the trade mark infringement claim. To reiterate, despite Beauty Nation's own pleaded position that it observed the Defendants advertising, marketing and selling the Products bearing the Trade Marks since 2017, RKPL, acting on Beauty Nation's behalf, continued to supply the Products for a prolonged period up until the Cease and Desist Letter without any objections to the use of the Trade Marks by RKPL or Beauty Nation. Given the parties' relationship which extended beyond a decade and was built on trust and confidence, the consistent supply of the Products without objections notwithstanding knowledge of the use of the Trade Marks, evinces implied consent to use the same. Accordingly, Beauty Nation impliedly consented to the Defendants' use of the Trade Marks in the sale and advertising of the Products.

85 As I have found that the Defendants used the Trade Marks with Beauty Nation's consent, there is no need for me to examine the specific elements of

130 CCS at paras 29 and 31.

131 CCS at para 28.

132 NE-1 at p 14 ln 16–24; p 64 at ln 21–24.

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each ground of trade mark infringement. Beauty Nation's claim for trade mark infringement fails at this stage.

Claim for inverse passing off

86 In an inverse passing off situation, one trader misrepresents himself as the source of another trader's goods or services: *Tessensohn Denyse Bernadette v John Robert Powers School Inc* [1994] 1 SLR(R) 470 ("*John Robert Powers School*") at [23]. This is as opposed to classic passing off where one trader misrepresents that his goods or services emanate from another trader.

87 Nonetheless, the classical trinity of goodwill, misrepresentation and damage apply equally to a claim for inverse passing off: *John Robert Powers School* at [25]. The following must thus be established (*Singsung Pte Ltd v LG 26 Electronics Pte Ltd* [2016] 4 SLR 86 ("*Singsung*") at [34]; *John Robert Powers School* at [25]):

(a) goodwill is attached to the claimant's business as a whole;

(b) the defendants misrepresented themselves as the commercial source of the claimant's goods or services; and

(c) the claimant's goodwill was damaged as a consequence.

88 Beauty Nation submits that it has proven the three elements of inverse passing off (see [87] above):[133]

[133] CCS at para 51.

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(a) Beauty Nation had acquired goodwill in its business under the Trade Marks through longstanding, extensive use and promotion.[134]

(b) The Defendants were misrepresenting themselves as the commercial source of the Products by, *inter alia*, inserting "Herbs Health" in the title of their Online Listings.[135]

(c) The Defendants damaged Beauty Nation's goodwill, causing a "loss of custom and tarnishment of [Beauty Nation's] brands and marks", diversion of Beauty Nation's business and damage to Beauty Nation's "reputation amongst customers".[136]

89 The Defendants aver that as authorised retailers of the Products, they were supplying genuine goods originating from Beauty Nation.[137] The Defendants explain that the inclusion of "Herbs Health" in the title of their Online Listings was intended to identify the seller of the Products and not the manufacturer.[138] Accordingly, the Defendants submit that no misrepresentation as to the source of the Products arose.[139] Further, the Defendants argue that there is no evidence that damage flowed from any alleged misrepresentation.[140]

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134 SOC at para 44; COS at para 48.

135 CCS at para 52.

136 CCS at para 54.

137 DCC at paras 4(47) and 4(52).

138 DCS at para 36.

139 DCS at para 35.

140 DCS at paras 45–46.

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Beauty Nation's goodwill

90 Goodwill is the attractive force that brings custom which attaches to the claimant's business. Goodwill exists in Singapore when a business offers a product for sale in this jurisdiction and a customer purchases the product here: *Singsung* at [67]. Beauty Nation has demonstrated the availability of the Products in Singapore through various department stores, pharmacies and online channels.[141] The Defendants have also not disputed the existence of goodwill attaching to Beauty Nation's business. Accordingly, I find that Beauty Nation has established goodwill in its business under the Trade Marks.

No misrepresentation occurred

91 Under the misrepresentation inquiry, the threshold requirement is that the claimant's mark must be distinctive of its goods or services: *Singsung* at [38]. As the Defendants do not contest the said requirement, I proceed on this basis.

92 Next, for a misrepresentation to be actionable, the claimant must prove that the defendant has made a misrepresentation and this gives rise to actual or a likelihood of confusion: *Singsung* at [70]. This confusion may manifest in the relevant public being led to believe that the defendant is the source of goods or services that are in fact offered by the claimant, owing to the defendant's misrepresentation as to the trade origin of the claimant's goods or services.

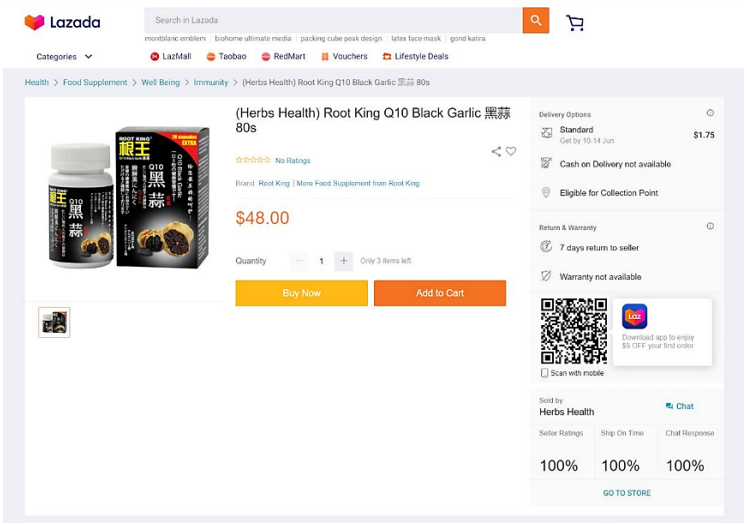
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141 SOC at para 42.

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93 Beauty Nation relies on the following conduct by the Defendants which, in its view, amounted to a misrepresentation that the Defendants were the commercial source of the Products and caused confusion amongst consumers:[142]

(a) The Defendants' action of adding the labels "Herbs Health" and "No Brand" to the title of their Online Listings confused consumers into believing that the Defendants were the original manufacturers of the Products.[143] I set out an example of Herbs Health's Listings for reference:[144]



(b) The Defendants engaged in price manipulation by offering discounts and providing erroneous information regarding the prices of the Products, which led consumers to associate the Products with the Defendants.[145]

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142 CCS at para 50.

143 SOC at para 46; CCS at para 52.

144 AEIC of Tan See Leng at Tab I at p 339.

145 SOC at paras 50–51; CCS at para 53.

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94 I first address the allegations regarding the Defendants' price manipulation. These remain unproven. Beyond bare averments, Beauty Nation has not led evidence to prove this point. On the contrary, Mr Chong explained that Herbs Health did not offer discounts on its e-commerce platforms while TCM Shop offered a maximum of 10% discount on TCM Shop's Website, consistent with the pricing in Herbs Health's physical retail store.[146] In any event, such pricing strategies are, at best, commercial decisions.

95 I turn to consider the manner in which the Defendants have titled their Online Listings.

96 There is no merit to Beauty Nation's allegation in so far as the alleged conduct of the Defendants inserting "No Brand" in the title of their Online Listings' was concerned, as both Mr Tan and his counsel conceded that they could not point to any documentary evidence in Mr Tan's AEIC to support this claim.[147] I reject this evidence-free allegation.

97 Regarding the Defendants' incorporation of "Herbs Health" before Beauty Nation's Trade Marks in the title of their Online Listings, Mr Chong clarified why he chose to adopt such a naming convention:[148]

> [Mr Chong]: … [the] bracket, basically, it's just to say I'm the account holder as well as the authorised retailer. It's also to differentiate me from other retailers, other authorised retailers.

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146 AEIC of Chong Tuck Seng at para 116.

147 NE-1 at p 23 at ln 9–29; p 25 ln 25–27 and p 27 ln 25–30.

148 NE-2 at p 70 ln 1–3.

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Mr Chong explained that he was reportedly taught to do so by employees from Lazada in order to identify the authorised retailer operating the online store.[149] He had used the same naming convention for Herbs Health's Shopee listings, although his evidence was that Shopee's employees did not give similar instructions.[150] I am mindful that Beauty Nation has objected to Mr Chong's evidence pertaining to the references made to his communications with the Lazada employees as the relevant staff has not been called to testify.[151] I find no need to rely on Mr Chong's testimony in so far as it concerns the alleged instructions by Lazada employees on how to title the listings of the Products. The broader point remains, that it is hard to understand how a likelihood of confusion could arise from the mere inclusion of the "Herbs Health" label in the title of the Online Listings.

98 Ultimately, Beauty Nation's Trade Marks remained identifiable in the Online Listings, thereby indicating that Beauty Nation was the source of the Products. It is crucial that the title of the Online Listings retained Beauty Nation's Trade Marks and the accompanying photographs used in the Online Listings clearly illustrated Beauty Nation's Trade Marks. In addition, Herbs Health's Listings on Lazada specifically state "Brand: Root King".[152] During cross-examination, Mr Tan was able to identify the source of the Product from an example of one of Herbs Health's Listings on Lazada:[153]

> Q: This is an advertisement in Lazada for Root King Energy.

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149 AEIC of Mr Chong Tuck Seng at para 46.

150 NE-2 at p 69 ln 28–29.

151 Claimant's Notice of Objections at para 1(d)–(e).

152 AEIC of Tan See Leng at Tab I.

153 NE-1 at p 21 ln 28 to p 22 ln 10.

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[Mr Tan]:	Yes.
Q:	And you see underneath that, there is a brand there stated?
[Mr Tan]:	Yes.
Q:	Can you identify which brand that is?
[Mr Tan]:	Root King.
Q:	So Root King is specifically mentioned as the brand, correct?
[Mr Tan]:	Yes.

When prompted with other examples pertaining to Herbs Health's Listings on Shopee, Mr Tan similarly identified "Root King" as the brand of the Product.[154]

99 Overall, Beauty Nation has not sufficiently proven how the insertion of "Herbs Health" in the title of the Online Listings had misrepresented the origin of the Products. Instead, I find that Beauty Nation's Trade Marks remained identifiable as the true source of the Products such that the naming convention of adding "Herbs Health" before Beauty Nation's Trade Marks *per se* did not give rise to any likelihood of confusion.

100 I am unable to conceive how confusion regarding the source of the Products would arise in principle. As authorised retailers of the Products, the Defendants were, at all material times, selling genuine goods from Beauty Nation that were sourced from RKPL. The commercial source of the Products was therefore not displaced.

101 In this regard, the policy considerations that inverse passing off seeks to address are not engaged on the facts. Inverse passing off protects the situation

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154 NE-1 at p 25 ln 28–32.

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where a consumer makes a mistake as to the attributes of goods or services that are acquired from the defendant: *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd* [2015] 2 SLR 751 ("*Golden Season*") at [230]. The consumer is thereby induced to acquire the defendant's goods or services under the mistaken belief that the defendant's goods or services enjoy the same goodwill as the claimant's: *Golden Season* at [230]. On the facts, consumers who purchased the Products from the Defendants were under no such mistaken belief. They purchased the Products from the Defendants under the rightful impression that they were genuine goods sourced from Beauty Nation, and they received legitimate products originating from Beauty Nation.

102 It follows that Beauty Nation has not proven, on a balance of probabilities, that an actionable misrepresentation arose on the facts. In the result, Beauty Nation's claim for inverse passing off fails. There is no need for me to consider whether any damage to Beauty Nation's goodwill occurred.

Counterclaim for groundless threats of infringement proceedings

103 The statutory tort of groundless threats of infringement proceedings strikes a balance between protecting intellectual property rights and addressing the use of threats of legal proceedings to chill legitimate activities: *Singsung* at [129].

104 The Defendants argue that Beauty Nation's issuance of the Cease and Desist Letter (at [20] above) constituted groundless threats of copyright and trade mark infringement proceedings under s 499 of the CA and s 35 of the TMA respectively. The Defendants seek a declaration that Beauty Nation's

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threats were groundless and unjustified, an injunction against the continuation of the threats and damages in respect of any loss sustained by the threats.[155]

105 In response, Beauty Nation submits that its allegations of copyright and trade mark infringement were not groundless.[156] Beauty Nation also asserts that Herbs Health has not shown that it was an aggrieved person.[157]

106 I first set out the relevant parts of s 499 of the CA:

> **Groundless threats of legal proceedings for copyright infringement**
>
> **499.**—(1) This section applies where a person (*X*) threatens another person (*Y*) with any proceedings in respect of an infringement of copyright.
>
> (2) *Y* or any aggrieved person may bring an action in the Court against *X*.
>
> (3) In an action under subsection (2), the claimant may —
>
> (*a*) obtain a declaration to the effect that the threat is unjustifiable;
>
> (*b*) obtain an injunction against the continuance of the threat; and
>
> (*c*) recover such damages (if any) as the claimant has sustained.
>
> (4) Subsection (3) does not apply if *X* proves that the acts in respect of which *X* has threatened proceedings are (or would, if done, be) an infringement of copyright.
>
> …

107 Section 35 of the TMA, in part, reads:

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155 DCC at p 45.

156 Claimant's Defence to Counterclaim dated 11 April 2025 at para 7.

157 COS at para 54.

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> **Remedy for groundless threats of infringement proceedings**
>
> **35**.—(1) Where a person threatens another with proceedings for infringement of a registered trade mark other than —
>
> (*a*) the application of the mark to goods or to material used or intended to be used for labelling or packaging goods;
>
> (*b*) the importation of goods to which, or to the packaging of which, the mark has been applied; or
>
> (*c*) the supply of services under the mark,
>
> any aggrieved person may bring proceedings for relief under this section.
>
> (2) The relief which may be applied for is any of the following:
>
> (*a*) a declaration that the threats are unjustifiable;
>
> (*b*) an injunction against the continuance of the threats;
>
> (*c*) damages in respect of any loss the person has sustained by the threats.
>
> (3) The claimant is entitled to the relief mentioned in subsection (2) unless the defendant shows that the acts in respect of which proceedings were threatened constitute (or if done would constitute) an infringement of the registered trade mark concerned.
>
> …

Beauty Nation has made actionable threats of infringement proceedings

108 In the Cease and Desist Letter (reproduced at [20] above), Beauty Nation alleged, *inter alia*, the following:

> (a) Products bearing the Trade Marks were "display[ed] and referenc[ed]" in the Online Listings to "further [the Defendants'] business as a Chinese Medicine Shop".

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(b) The Copyright Materials were featured during advertising in the Online Listings.

(c) The aforesaid conduct constituted an infringement of Beauty Nation's intellectual property rights.

(d) Beauty Nation demanded that Herbs Health cease and desist from the unauthorised use of the Trade Marks and the Copyright Materials in the Online Listings. Further demands for a signed copy of an undertaking, payment of damages, written confirmation of removal and a published written apology were also made.

(e) Beauty Nation reserved its rights to commence court proceedings should its demands not be met.

109 There can be little doubt that a reasonable person in the Defendants' position would objectively view the statements summarised in [108] above as threats to sue for trade mark and copyright infringement: *Triple D Trading Pte Ltd v Fanco Fan Marketing Pte Ltd* [2023] 3 SLR 1417 ("*Triple D Trading*") at [61].

110 In relation to the groundless threat of trade mark infringement proceedings, I consider whether the threat was rendered unactionable by virtue of ss 35(1)(*a*)–(*c*) of the TMA. The Defendants argue that the Cease and Desist Letter contained a threat of trade mark infringement proceedings which exceeded that of an application of a mark to goods (*ie*, s 35(1)(*a*) of the TMA) as the acts complained of related to the use, marketing and advertising.[158] On the

158 DCS at para 56.

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other hand, Beauty Nation alleges that the demands contained in the Cease and Desist Letter concerned an excluded act falling within ss 35(1)(*a*)–(*c*) of the TMA.[159] However, Beauty Nation has not elaborated on why this is the case.

111 In my opinion, the threat in the Cease and Desist Letter remains actionable. The plain language of ss 35(1)(*a*)–(*c*) of the TMA does not exclude threats made in relation to further acts such as the sale and/or advertising of goods bearing the impugned mark from being actionable: *Triple D Trading* at [67]. Likewise, the acts complained of in the Cease and Desist Letter were not limited to the mere application of the Trade Marks to the Products, which would otherwise have been excluded by virtue of s 35(1)(*a*) of the TMA, but extended to the Defendants' advertising and sale of these goods in the Online Listings.

112 Neither did the threat concern the importation of goods bearing the Trade Marks or a supply of services under the Trade Marks, which would otherwise have been excluded by virtue of ss 35(1)(*b*)–(*c*) of the TMA respectively. While some of the Trade Marks are registered in Class 35 for, amongst others, advertising services (see [3] above), I am mindful that the threat in the Cease and Desist Letter was in respect of the Defendants' advertising of the Products (*ie,* goods) under the Trade Marks. In any event, the advertising of services using a registered trade mark does not constitute a supply of services under the mark pursuant to s 35(1)(*c*) of the TMA: *Dr Babor GmbH & Co KG v Sante De Beaute Pte Ltd* [2018] 5 SLR 928 at [57]. It follows that the Defendants' advertising of the goods bearing the Trade Marks would not fall within s 35(1)(*c*) of the TMA. In the circumstances, the threat of trade mark

159 COS at para 54.

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infringement proceedings in the Cease and Desist Letter is actionable under s 35(1) of the TMA.

Examining the appropriateness of relief

113 The grant of relief for groundless threats of proceedings is discretionary. The court will undertake a fact-sensitive inquiry regarding whether the actions that were claimed to be groundless threats were warranted and whether the court should exercise its discretion to award relief considering, *inter alia*, the cost consequences of the failed claim: *Singsung* at [148]. To that end, the following principles are relevant when determining the appropriateness of relief (*Singsung* at [148]):

(a) The grant of a declaration and an injunction are discretionary remedies.

(b) The court retains a discretion to refuse an inquiry as to damages if the damage suffered is likely to be trivial or negligible, or if there is no evidence of loss to the claimant.

Other reasons why relief may not be granted are when the groundless threats claim is futile or unnecessary, or there is no reasonable expectation of the threats being repeated: *Law of Trade Marks in Singapore* at para 15.027.

114 The Defendants say that because there was no underlying copyright or trade mark infringement, such threats were groundless.[160] However, that is not the end of the inquiry. A failed claim of infringement does not *ipso facto* warrant relief for groundless threats of infringement proceedings, as any relief is

[160] DCS at para 59.

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ultimately discretionary: *Singsung* at [148]. The court must thus consider whether, in all the circumstances, there is any reason to grant relief upon a claim of groundless threats that is founded on a failed allegation of infringement: *Singsung* at [148]. The abovementioned considerations at [113] are thus relevant.

115 I find that the Defendants have not substantiated any discernible loss arising from the threats in the Cease and Desist Letter. The Defendants argue that the threats in the Cease and Desist Letter had caused immediate commercial impact arising from the Defendants' removal of the Online Listings of the Products.[161] Additionally, these losses apparently flowed directly from the Cease and Desist Letter as the threats had caused them to immediately halt their online sales, remove their Online Listings and clear their stock, leading to an end to their revenue.[162] However, according to Mr Chong's own evidence, the remaining stock of the Products was thereafter sold in Herbs Health's physical retail outlet and all stock was successfully sold by January 2024.[163] In these circumstances, it is unclear what losses the Defendants could have sustained from taking down the Online Listings. On the Defendants' own account, they managed to realise the economic benefit of the remnant stock by selling it in Herbs Health's physical retail store. Accordingly, the Defendants have not established that any loss arose from the threats set out in the Cease and Desist Letter.

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161 DCS at para 55.

162 DCS at para 57.

163 AEIC of Chong Tuck Seng at para 121.

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116 Regarding the Defendants' prayer for declaratory relief, I look no further than to adopt the Court of Appeal's holdings in *Singsung* at [149]:

> … It is true we have found that the respondent had not infringed the appellant's copyright … But *no conceivable damage flows from the demand having been made*, which cannot now be compensated by a costs order against the appellant for having made an unwarranted threat. A declaration that the threat was groundless is also *unnecessary* since we have held that the alleged infringement fails. To put it shortly, the appellant sued and lost and *there is nothing more that needs to be said or done in this regard*…
>
> [emphasis added]

Further, as Herbs Health has ceased to be an authorised retailer of the Products and the Defendants have stopped selling the Products,[164] it is unlikely that Beauty Nation would issue new threats. As such, the Defendants have not demonstrated any basis for me to grant an injunction against the continuance of the threats.

117 Accordingly, I make no order regarding the counterclaim as the Defendants have not sufficiently shown that the relief they seek is appropriate.

Conclusion

118 To conclude, I dismiss Beauty Nation's claims for copyright and trade mark infringement, as well as passing off. Additionally, I make no order in relation to the Defendants' counterclaim of groundless threats of copyright and trade mark infringement proceedings.

119 Litigation is aimed at resolving genuine disputes between parties. It is not intended for the mounting of a frivolous claim with the ulterior purpose of

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164 AEIC of Chong Tuck Seng at para 121; AEIC of Tan See Leng at para 31.

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gaining some commercial leverage. Such a principle assumes special significance for proceedings under the Simplified Process for Certain Intellectual Property Claims, which the present claims are brought under. This process is, in general, meant for parties with fewer financial resources. Court proceedings under this process should not be misused to commence an action which lacks sufficient legal basis and is designed to stifle legitimate and fair competition in the market place.

120 On that note, the legal and commercial logic of this dispute is incomprehensible. Beauty Nation attempted to restrain, what it had regarded as a long-standing trusted authorised retailer, from selling and advertising its genuine Products online by alleging copyright and trade mark infringement, and passing off. Viewed in the context of the relationship between Herbs Health and RKPL that subsisted beyond a decade and was built on mutual trust, it would have sufficed for Beauty Nation to revoke its implied licence by requesting the removal of the Online Listings and bringing the matter to an end. To exacerbate the situation, despite the Defendants having ceased all sales of the Products, Beauty Nation still commenced this action and prayed for, *inter alia*, an injunction to restrain further acts of infringement. Bearing in mind that the Defendants were at all material times selling Beauty Nation's genuine Products, it defies logic that any damage would have been suffered by Beauty Nation.

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121 I shall hear parties separately on costs.

Dedar Singh Gill
Judge of the High Court

Ng Chee Weng and Dai Jingwen Annie (Gateway Law Corporation) for the claimant and the defendant in counterclaim;
Suhaimi bin Lazim, Mohamed Hashim H Sirajudeen and Thrumurgan s/o Ramapiram (Trident Law Corporation) for the first and second defendants and the first and second claimants in counterclaim.

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