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

**[2024] SGHC 124**

Suit No 447 of 2020 (Registrar's Appeals Nos 248 and 259 of 2023)

Between

Dways International Pte Ltd
(formerly known as D'way
International Pte Ltd and as
Longevite Pte Ltd)

… *Plaintiff*

And

(1) Lim Seow Hui Ratna Irene
(2) Lim Kim Hwa
(3) Tang Lee Cheng
(4) Chua Hong Chor

… *Defendants*

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# JUDGMENT

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[Tort — Conversion — Damages — Measure of damages to a plaintiff who is a distributor of the converted goods — Meaning of relevant market]
[Tort — Defamation — Damages]

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# Dways International Pte Ltd (formerly known as D'way International Pte Ltd and as Longevite Pte Ltd)
# v
# Lim Seow Hui Ratna Irene and others

**[2024] SGHC 124**

General Division of the High Court — Suit No 447 of 2020 (Registrar's Appeals Nos 248 and 259 of 2023)
Audrey Lim J
9, 19 April 2024

10 May 2024 Judgment reserved.

**Audrey Lim J:**

## Introduction

1 The plaintiff ("Dways") sells nutritional products, "HL Span", "Purity" and "B'Glo" (collectively the "Products"), via a direct-selling method with a multi-tier compensation scheme. It sued the first and second defendants, Irene and Justin (collectively the "Lims") for, among other things, misappropriating the Products ("misappropriation claim"); and sued Irene for defamation ("defamation claim"). Damages were assessed by an assistant registrar (the "AR") for the two claims, and Dways and the Lims have appealed against the AR's decision.

2 In particular, an issue turns on whether the measure of damages to compensate Dways for the misappropriated Products is to be determined by

reference to its replacement cost or to the price at which Dways sells its Products to its customers.

**My findings at the trial**

3 The salient facts of the present suit (the "Suit") are set out in my decision at the liability stage (see *Dways International Pte Ltd (formerly known as D'way International Pte Ltd and as Longevite Pte Ltd) v Lim Seow Hui Ratna Irene and others* [2022] SGHC 158 ("Judgment")) and I adopt the abbreviations and terminology therein.

4 In relation to the misappropriation claim, I had found as follows. The Lims had conspired to remove Dways' Products with the intent to cause damage or injury to Dways. They had removed 244 boxes of HL Span, 214 boxes of Purity, and three tote bags containing HL Span and/or Purity, the quantities of which were to be determined at the assessment of damages ("AD") stage (Judgment at [141] and [145]). However, the Lims enjoyed Personal Entitlements to four boxes of HL Span and six boxes of Purity per month from November 2019 to January 2020. The quantity of Products that the Lims had already taken prior to the misappropriation, and therefore the extent of their remaining entitlements at that time, were to be determined at the AD stage. I thus ordered damages to be assessed for the loss caused to Dways by the Lims' misappropriation of the excess Products (Judgment at [122]).

5 I had also allowed Dways' claim against Irene for defamation and ordered damages to be assessed. In particular, I had found that Irene had sent a combination of some or all of the WhatsApp Messages, 1st Letter and 2nd Letter (collectively, the "Publications") to Inge, Lee and Ng (the "Three Persons"). Irene did not dispute that she had sent the Publications under the alias "Lisa

Chew" (Judgment at [149]–[150]). In this regard, I had rejected Irene's defences of justification and fair comment (Judgment at [164]–[190]). Further, I had rejected Irene's submission (made belatedly) that there was no real or substantial tort committed because the Publications were made only to three persons (Judgment at [192]–[193]).

**Assessment of damages before the AR**

6 The misappropriation and defamation claims for which damages were to be assessed, involved only Dways and the Lims. Hence the third and fourth defendants did not participate in the AD proceedings.

***The misappropriation claim***

7 The AR awarded $86,154 in damages to Dways for the misappropriation claim,[1] on the following basis.

8 The AR found that the three tote bags (see [4] above) had contained a total of 78 boxes of HL Span; and thus the Lims had taken a total of 322 boxes of HL Span and 214 boxes of Purity. Further, the Lims remained entitled at the time of the misappropriation to the full extent of their Personal Entitlements from November 2019 to January 2020, namely, 12 boxes of HL Span and 18 boxes of Purity. Subtracting these from the total number of Products removed from Dways, the Lims had misappropriated 310 boxes of HL Span and 196 boxes of Purity.[2]

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1 AR's Decision dated 23 October 2023 ("23/10/23 Decision") at [29]; AR's Supplementary Decision dated 16 November 2023 ("16/11/23 Decision") at [10].

2 23/10/23 Decision at [28]–[29]; 16/11/23 Decision at [7] and [10].

9 Next, the AR held that the measure of damages was compensation to Dways and not punishment of the Lims or disgorgement of their profits. It was therefore irrelevant whether the Lims could have sold the misappropriated Products at a profit or had personally consumed them. The AR held that the value of the misappropriated Products was to be determined by reference to their wholesale price, as there was a relevant market for the Products being the market in which Dways sold the Products to external parties at their wholesale price. The AR rejected the Lims' argument that the cost price should be adopted because their misappropriation merely meant that Dways' stock was reduced but Dways did not lose any sales. The AR held that there was no reason why a seller "can only claim the market price if the effect of the misappropriation is that the seller had absolutely nothing left on its shelves".[3]

10 The Lims had submitted in the alternative that, if the wholesale price was to be adopted, the award of damages should be discounted by up to 70% to account for the compensation that Dways would have had to pay its distributors if the misappropriated Products were sold. The AR disagreed because this submission was raised for the first time in the Lims' further written submissions and had not been addressed in the parties' affidavits of evidence-in-chief ("AEICs") or put to Dways' witnesses during the AD. It was also unclear on the evidence how much compensation Dways would have had to pay its distributors if the misappropriated Products were sold.[4]

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3 23/10/23 Decision at [13]–[14] and [17]–[20].

4 16/11/23 Decision at [8]–[9].

***The defamation claim***

11 The AR awarded $20,000 in general damages to Dways for the defamation claim, having regard to the following factors.

12 First, Dways was in the business of manufacturing health products and distributing them especially through third-party individuals. Thus, the defamatory statements which related to the quality and safety of the Products, particularly when made to Dways' existing or potential third-party individual distributors, were especially grave.[5]

13 Second, the AR considered the conduct, position and standing of the parties.[6] In particular, Dways had been in business for only a relatively short period when the Publications were made. However, in making the Publications, Irene had made use of information obtained as a director of Dways, and it was necessary to deter former directors from engaging in such conduct.

14 Third, the AR found that, in addition to the Three Persons, Irene had made the Publications to: (a) another eight or nine of Dways' distributors or customers who had been introduced by the Lims or whom the Lims were close to; and (b) a further unknown number of Dways' distributors or customers not exceeding 100.[7]

15 Fourth, the AR considered Irene's conduct after the making of the Publications. Irene had failed to apologise and appeared to "double down" on

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5 23/10/23 Decision at [33].

6 23/10/23 Decision at [34]–[36].

7 23/10/23 Decision at [37]–[39].

the defamatory statements during the AD proceedings and this demonstrated a lack of remorse. The AR also took account of the finding at the liability stage that Irene was malicious in making the defamatory statements.[8]

16 Additionally, the AR had regard to the fact that Dways, being a company, could not be injured in its feelings and could only recover damages to remedy the harm to its reputation.[9]

17 Finally, the AR declined to award exemplary damages. Dways had submitted that Irene knew the defamatory statements were false and contained an element of racism against Zul. The AR held that Irene's alleged racism against Zul, even if proven, could not be considered in an award of damages to Dways. As Dways accepted that aggravated damages were not available to it as a corporate plaintiff, the AR thus did not deal with this issue.[10]

**The appeals**

18 In HC/RA 259/2023, Dways appealed against the AR's decision to award only $20,000 for the defamation claim. In HC/RA 248/2023, the Lims appealed against the AR's award of damages for both the misappropriation and defamation claims.

***Parties' respective cases on the misappropriation claim***

19 There is no challenge to the AR's finding that the Lims had misappropriated a total of 310 boxes of HL Span and 196 boxes of Purity, after

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8 23/10/23 Decision at [41] and [45].

9 23/10/23 Decision at [44].

10 23/10/23 Decision at [31] and [43].

taking into account the Lims' Personal Entitlements.[11] However, the parties disagree on whether the value of the misappropriated Products should be determined at the cost price or wholesale price. The parties do not dispute that: (a) the cost price and wholesale price of HL Span are US$7.12 and $209 respectively; and (b) the cost price and wholesale price of Purity are US$11.98 and $109 respectively.[12]

20 Counsel for the Lims ("Ms Chong") submits that the measure of damages should be the cost price and the AR's award should be reduced to US$4,555.28. The misappropriation did not cause Dways any loss of sales as it had ample stocks and could also have replenished the stocks. Hence, the AR's award had conferred on Dways an "uncovenanted and undeserved windfall". Alternatively, the AR's award should be discounted by 25% to 70% to account for the commissions and other forms of compensation that Dways would have had to pay its distributors if the misappropriated Products were in fact sold.[13]

21 Counsel for Dways ("Mr Arshad"), however, submits that the AR was correct to measure the value of the misappropriated Products at their wholesale price as there was a market for the Products at that price. Moreover, the Lims "could very well" have sold the misappropriated Products at a profit, and an award of damages based on their cost price would unfairly allow the Lims to retain these profits.[14] The AR was also correct to reject the Lims' alternative

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11 Plaintiff's Submissions dated 26 February 2024 ("PS") at [30]; 1st and 2nd Defendants' Submissions dated 26 February 2024 ("DS") at [4]; 1st and 2nd Defendants' Reply Submissions dated 18 March 2024 ("DRS") at [2].

12 PS at [16]; DS at [3(a)]; 9/4/24 Notes of Evidence ("NE") 10.

13 DS at [4]–[5], [24]–[34] and [43]–[46]; DRS at [21]–[22].

14 PS at [22]–[24]; Plaintiff's Reply Submissions dated 18 March 2024 ("PRS") at [6]–[9] and [22].

submission, that there should be a discount on the AR's award, as this was raised belatedly in the Lims' further written submissions after the AD had been conducted and had not been put to Dways' witnesses.[15]

***Parties' respective cases on the defamation claim***

22 As for the defamation claim, Mr Arshad initially submitted that the AR's award should be increased to $150,000 comprising general damages of an amount "significantly higher" than $30,000 and exemplary damages of a "significantly high" amount.[16] Before me, however, Mr Arshad stated that Dways would no longer be pursuing its claim for exemplary damages.[17]

23 Dways mostly agrees with the AR's findings and considerations. However, Mr Arshad submits that the AR erred in finding that Irene's use of the name "Lisa Chew" was a neutral factor. Instead, this was an "intentional and blatant lie" which exhibited malice on Irene's part, and it was done to make the Publications more persuasive; its effect was to make detection harder, thereby warranting a greater degree of deterrence. Mr Arshad submits that Irene's racism should have been regarded as malice, justifying an uplift in the quantum of general damages.[18]

24 In contrast, Ms Chong submits that the AR's award should be reduced to $10,000 for the following reasons.[19] An award of damages to a corporate

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15 PRS at [25]–[29].

16 PS at [33], [65] and [68].

17 9/4/24 NE 9.

18 PS at [34]–[39] and [47]–[66]; PRS at [46]–[47]; 9/4/24 NE 9.

19 DS at [82(b)].

plaintiff for defamation should generally be "small in commercial terms" and Dways had only been in business for about five months at the time of the defamation. The extent of publication was also limited to the Three Persons and the AR was wrong to find otherwise. Further, it transpired from Lee's evidence in the AD proceedings that Dways had misrepresented the country of manufacture of its Products. Hence, contrary to the finding made at the liability stage, Irene's statements to this effect were justified. Irene's failure to apologise was also not an aggravating factor because Dways, a corporate plaintiff, had no injured feelings to soothe. Finally, Irene's use of information obtained as a director of Dways was irrelevant in a defamation claim.[20] As for any remarks that were allegedly racist and pertained to Zul, this was irrelevant. Zul is not a plaintiff in the Suit, and such remarks were not specifically pleaded by Dways (nor raised in its AEIC) as part of the defamatory statements for its defamation claim. The issue of the allegedly racist remarks was only raised by Dways in its closing submissions at the AD stage and Irene was prejudiced as she did not have the opportunity to cross-examine Dways' witnesses on this matter.[21]

## Damages for the misappropriation claim

### *The law*

25 The issue to be determined in the present case is how damages for the misappropriated Products are to be measured and whether it should be by reference to their cost price (*ie*, the cost to Dways to replace the Products) or the wholesale price (*ie*, the price that Dways could have sold the Products to its distributors). Putting aside the Lims' alternative argument that the wholesale

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20 DS at [55], [60]–[65] and [71]–[74].

21 DRS at [40]–[41] and [43]; 9/4/23 NE 9.

price should be discounted (see [20] above), the parties have not argued for any other measure of damages.

26 Parties do not dispute that the object of an award of damages in tort is to restore a plaintiff to the same position as if the tortious wrong had not been committed.[22] The fundamental rule is that the plaintiff cannot recover more than the loss actually sustained by him; and the measure of damages in conversion is the value of the goods, together with any consequential damage flowing from the conversion which is not too remote to be recoverable at law (*Chartered Electronics Industries Pte Ltd* v *Comtech IT Pte Ltd* [1998] 2 SLR(R) 1010 ("*Chartered Electronics*") at [16]–[17]).

27 In *Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 ("*Marco Polo*"), a case pertaining to conversion, the Court of Appeal elaborated as follows:

> (a) The typical approach is to equate the damages with the value of the goods, although there may be cases where the plaintiff is also allowed to recover consequential losses such as loss of profits and losses incurred by being deprived of the use of the goods (at [29]).
>
> (b) When determining the value of the goods, the courts typically look at their market value as the "first port of call"; the most commonly cited justification for using market value is that it is "the best approximate of the loss suffered by the plaintiff who has been deprived of his goods". The market value is typically determined as at the date of conversion or, where goods are converted in transit, at the date of

[22] 9/4/23 NE 2.

expected delivery (at [27] and [30]). Where the market value cannot be determined, the cost of replacement (which is typically the price at which the goods were bought) may be used to determine the value of the goods instead (at [33]).

(c) To determine the market value, one must first ascertain if a market exists for the goods, *ie*, there must be a willing seller and willing buyer after negotiations. The market must also be a *relevant* market, in light of the *compensatory* aim of awarding damages (at [30]–[32]). The plaintiff bears the burden to establish a relevant market (at [42]).

28 Hence, the first question is how the relevant market is to be identified. In *Chartered Electronics*, the Court of Appeal (at [18]) referred to the following statement of principle by the English Court of Appeal in *J & E Hall, Ltd v Barclay* [1937] 3 All ER 620 at 623 (*per* Greer LJ):

> Where you are dealing with goods which can be readily bought in the market, a man whose rights have been interfered with is never entitled to more than what *he would have to pay to buy a similar article in the market*.
>
> [emphasis added]

Whilst the court in *Chartered Electronics* observed that it might be too strong to say that the plaintiff was "never" entitled to more than the market value of the goods, since there may be consequential losses flowing from the act of conversion, the court approved of this statement (at [18]).

29 Thus, the relevant market is ordinarily the market that the *plaintiff would go to obtain a similar replacement* for his goods, assuming the existence of such a market. This accords with the compensatory aim of an award of damages. As the Court of Appeal in *Marco Polo* (at [30]) explained, the most commonly cited

justification for the market value rule is that it is the best approximate of the *loss suffered by the plaintiff* who has been deprived of his goods. Moreover, the plaintiff "should never be allowed to rely simply on 'some other market out there' – typically somewhere much further down the supply chain – wherein goods are traded at a vastly more expensive rate" (*Marco Polo* at [32]). Otherwise, this would overcompensate the plaintiff and confer upon him a windfall.

30 Hence, the court has held that where the plaintiff is a stockist, the relevant market will ordinarily be the market in which he buys his stock and not the market in which he sells the stock; and the measure of damages for the stock that is lost will usually be the replacement cost: *YCT Import & Export Pte Ltd v FG Food Industries Pte Ltd and others* [2021] SGHC 190 ("*YCT*") at [23]–[24]. Whilst *YCT* was a case that pertained to goods damaged because of the negligence of a defendant, I am of the view that the same principle would apply to a similar plaintiff in the case of conversion. The general principle in the quantification of tortious damages is *restitutio in integrum*: the plaintiff being entitled to recover the amount which will put him in the position he would have been in had the tort never been committed (*Chartered Electronics* at [16]).

31 In *Furness v Adrium Industries Pty Ltd* [1996] 1 VR 668 ("*Furness*") (cited in *Marco Polo* at [45]), the Supreme Court of Victoria Appeal Division held that the loss of a plaintiff who is a wholesaler is ordinarily to be assessed on the basis of the amount he paid for the goods (*ie*, the replacement cost) and not on the basis of the price at which he might have sold the goods (at 680 and 682). "If there exists a market into which the deprived person can go and purchase identical goods to those of which he has been deprived, the price he must pay for them on that market is prima facie the value of the goods" (at 669).

32 That said, where the plaintiff is in the business of selling the goods and has suffered a loss of sales in respect of the lost goods, he may also be entitled to damages for his consequential losses (flowing from the act of conversion) such as the loss of profits (*Marco Polo* at [29]; *Chartered Electronics* at [19]). However, the plaintiff must show that he has in fact suffered such a loss of sales. Otherwise, the award would effectively "compensate [the plaintiff] for lost sales which were not in fact lost" and confer upon him an "uncovenanted windfall": *Sonicare International Ltd v East Anglia Freight Terminal Ltd and Others and Neptune Orient Lines Ltd (Third Party)* [1997] 2 Lloyd's Rep 48 at 56.

***My decision***

33 I begin by reiterating that Dways is entitled to recover the amount that will put it in the position it would have been in if the tort had not been committed. As Mr Arshad agreed before me, the measure of damages is compensation to Dways for its loss.[23] In particular, the measure of damages in conversion is the value of the goods based on a relevant market to the plaintiff, together with any consequential loss flowing from the conversion (subject to the principles of remoteness of damage). What is the relevant market must be determined based on the facts of the case.

34 In the present case, the relevant market is the market in which Dways would have obtained replacements for the misappropriated Products, namely from its manufacturer. Dways is in the business of buying Products from its manufacturer at the cost price and selling the Products to distributors at the wholesale price.[24] Nancy did not deny that Dways could have ordered

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23 9/4/24 NE 2.

24 Nancy's AEIC (dated 10 April 2023) at [22]; 3/5/23 NE 27–28 and 155–156.

replacement Products from its manufacturer after the misappropriation, only saying that this would have required a lead time of at least three months.[25] Hence, the measure of damages for the misappropriated Products is the price at which Dways would have to pay to purchase similar replacement Products, namely from its manufacturer at the cost price.

35 I also find that Dways has not suffered any consequential loss flowing from the Lims' conversion of the Products, such as loss of profits or loss incurred through being deprived from the use of the misappropriated Products. Dways' own evidence showed that no sales were lost in respect of the misappropriated Products.

36 First, Dways continued to have ample stocks even after the misappropriations in January 2020. Nancy had conducted an inspection on 2 February 2020 and recorded that Dways had 4,314 boxes of HL Span and 2,286 boxes of Purity.[26] She conducted a further inspection thereafter and recorded that Dways had 4,383 boxes of HL Span and 2,321 boxes of Purity.[27] Dways' own evidence showed that these stocks were more than sufficient to meet any demand for the Products for many months even after the misappropriation of Products by the Lims. Nancy stated that there were "a lot of stocks" and that Dways did not face any "out-of-stock issue" between February 2020 to September 2020.[28] Nancy further stated that a supply of HL Span and Purity which Dways received from its manufacturer in October 2019 was only sold out

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25 3/5/23 NE 48–49.

26 7AB 3825; Bundle of Cause Papers for the AD (Volume 1) ("1BCP") at p 381.

27 7AB 3770; 3/5/23 NE 39–41 and 160–161; 1 BCP at p 385.

28 3/5/23 NE 46–47 and 49–50.

in late 2021 or early 2022,[29] approximately two years after the conversion of the misappropriated Products. Second, Dways could easily have replenished its stocks before they were depleted. Even if Dways required at least three months to replace the misappropriated Products (see [34] above), it could clearly have replenished its stocks multiple times before they were depleted in late 2021 or early 2022. Indeed, Mr Arshad confirmed before me that, despite the misappropriation, Dways had sufficient or plenty of stocks to satisfy any demand even if it required three to six months to replenish its stocks.[30]

37 Accordingly, the value of the misappropriated Products which Dways is entitled to recover is their replacement cost. As Mr Arshad stated, the relevant market would have been the market to which Dways would go to procure the replacement goods, namely, from its manufacturer or supplier and not from its downstream distributors.[31] An award of damages based on the market in which Dways sold Products to its distributors at the wholesale price would overcompensate Dways.

38 This was the approach adopted in *Furness* (see [31] above). The case concerned a plaintiff/respondent wholesaler which imported novelty items and sold them to retailers. The appellant had converted the items belonging to the respondent. The Supreme Court of Victoria Appeal Division held that the value of the converted goods was to be determined by reference to their replacement cost (where ascertainable) and not their wholesale price. Marks J, with whose conclusions Fullagar and Ormiston JJ agreed, explained that this was because

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29 3/5/23 NE 51 and 162–164; 2AB 1180.

30 9/4/24 NE 6–8.

31 9/4/24 NE 7.

the relevant market was that from which the goods could be purchased by the respondent. As Marks J stated (at 675): "The wholesale market was relevant only to the respondent as the market to which it sold; not relevant to it as one from which it bought."

39 As the value of the misappropriated Products is to be determined by reference to their cost price, I reduce the damages awarded to Dways from $86,154 to US$4,555.28. This is based on the number of misappropriated Products as accepted by the parties (see [19] above).

40 As such, it is unnecessary to consider the Lims' alternative argument that the AR's award (if accepted) should be discounted to reflect the compensation that Dways would have had to pay its distributors if the misappropriated Products were in fact sold. In this regard, I deal briefly with Dways' arguments that the Lims' actions "[reeked] of deceit and dishonesty" or that they had the opportunity to sell the misappropriated Products at a profit.[32] Whatever their truth, these allegations are irrelevant as the aim of an award in the tort of conversion is to compensate Dways. Furthermore, there is insufficient evidence to conclude (on a balance of probabilities) that the Lims did sell the misappropriated Products or that they had been sold at a profit.

## Damages for the defamation claim

### *The law*

41 As Dways accepted that aggravated damages were not available to it and is no longer claiming exemplary damages, I deal only with general damages for

[32] PRS at [21]–[22].

the defamation claim. General damages in defamation serve to console the plaintiff for the distress he has suffered from the publication of the statement, to repair the harm to his reputation and to vindicate his reputation (*Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86 at [53]; *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock*") at [4]). In determining the quantum of general damages, the Court of Appeal in *Lim Eng Hock* identified the following relevant factors (at [7]–[8]) (see also *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629 at [23]–[24]):

(a) the nature and gravity of the defamation;

(b) the conduct, position and standing of the plaintiff and the defendant;

(c) the mode and extent of publication;

(d) the natural indignation of the court at the injury caused to the plaintiff;

(e) the conduct of the defendant from the time the defamatory statement is published to the very moment of the verdict;

(f) the failure to apologise and retract the defamatory statement;

(g) the presence of malice; and

(h) the intended deterrent effect of the damages.

42 Whilst a company may recover damages appropriate for the vindication of its injured reputation, it may not recover for injury to its feelings (as a

company cannot be injured as such) (*Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [65]). This may explain why, absent proof of consequential damage such as loss of business, "a company is unlikely to be entitled to a really substantial award of damages" and the award "whilst more than nominal will be 'small in commercial terms'" (*Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 ("*Golden Season*") at [134]).

***My decision***

43 I turn to consider the damages to be awarded to Dways, dealing in particular with the factors that the parties have put in issue before me.

*Nature and gravity of the defamation*

44 First, I agree with the AR that the defamatory statements relating to the quality and safety of the Products were especially grave and observe that Irene does not appear to challenge this assessment.[33] As I had observed in my decision at the liability stage, the allegations that the Products were unsafe for consumption and that Dways' business was conducted in a dishonest manner were serious allegations (Judgment at [193]).

*Conduct, position and standing of parties*

45 As for the conduct, position and standing of the parties, I consider the following.

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33 DRS at [33(b)].

46 I agree with the AR that Dways was not an established company at the time of the Publications in 2020 (which Dways accepts),[34] having been incorporated only in 2018 and received its first batch of Products for onward distribution in October 2019. Hence, Dways' standing at the time of the Publications cannot be considered as high or to justify an award in the region given generally to persons or entities with a more established reputation or of higher standing in society such as "public leaders" (*Lim Eng Hock* at [12]).

47 Next, I consider the relevance of Irene's impersonation of "Lisa Chew" in making the Publications. Putting aside the issue of malice for the time being, I agree with the AR that this was a neutral factor. Dways' submission, that Irene's adoption of a fake persona was an attempt to make the defamatory statements more persuasive,[35] is not supported by any evidence. Somewhat contradictorily, Dways itself relied on Irene's acceptance that comments about the Products' safety "would have carried more weight" had they been made in Irene's own name on account of her status as a former director of Dways.[36] As for Dways' submission that Irene's assumption of the identity of "Lisa Chew" made the identification of the perpetrator of the Publications more difficult, this was not borne out. Nancy had accepted at the liability stage that Irene had previously informed her in November 2019 that Irene was using the mobile number from which the Publications would later be sent (the "HP number").[37] It would thus not have been difficult for Nancy to infer that the Publications were sent by Irene. In fact, Nancy had conceded at the liability stage that, when

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34 PS at [34(b)].

35 PS at [38].

36 PS at [36]–[37]; 23/5/23 NE 168.

37 12/8/21 NE 11–13.

the Publications were sent, she knew that Irene was using that HP number and that it was "obvious" by April and especially by May 2020 that the Publications had been sent by Irene.[38]

48 As for Irene's use of information she had obtained as a director of Dways in making the Publications (which she does not seriously dispute), I accept that the AR was entitled to take this into account, and that a former director should be deterred from essentially misusing company information when sending defamatory statements.

*Mode and extent of publication*

49 In the present case, the mode of publication was relatively targeted in nature. The Publications were sent by WhatsApp to specific recipients.[39] In this regard, I find that Dways has failed to prove that the Publications were made to anyone other than the Three Persons.

50 The AR inferred that Irene had made the Publications to many others on essentially the following basis. The AR observed that Irene had been angry with Nancy and Zul for misrepresenting to customers that the Products originated from USA, Australia or New Zealand; that Irene had other grievances with Nancy; and the emotion Irene had displayed during the AD proceedings when explaining why she had made the Publications. In the circumstances, the AR considered it "unbelievable" that Irene had made the Publications only to the Three Persons and was more inclined to find that Irene would have made the

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38 12/8/21 NE 23.

39 Nancy's AEIC (dated 10 April 2023) at [30].

Publications about the Products to the distributors or customers to whom the Lims were close.[40]

51 As the AR's findings of further publication were based on inferences drawn from the facts, an appellate court is in as good a position as the trial court to undertake that exercise; and such inferences of fact may be subject to a *de novo* review by the appellate court (*Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41]; *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [37]–[38]). In this regard, I find the AR had erred in concluding that the Publications were made to another eight or nine persons and also to another unknown number of persons not exceeding 100.

52 To begin with, the AR's conclusion is unsupported by any evidence.[41] In fact, Nancy's and Zul's AEICs for the AD did not even assert that the Publications had been made to anyone other than the Three Persons.[42] During the AD proceedings, Nancy conceded that she had "no way of knowing" whether the Publications had been made to any other persons and was unable to provide any estimate of the number of persons she suspected had received the Publications.[43] The AR herself observed that Dways had not adduced testimony from other alleged recipients of the Publications and that "the extent of publication [was] unclear even on Dways' evidence".[44]

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40 23/10/23 Decision at [37]–[39].

41 9/4/24 NE 4–5.

42 9/4/24 NE 4; 3/5/23 NE 190.

43 23/5/23 NE 45; 3/5/23 NE 116 and 201.

44 23/10/23 Decision at [39].

53 In finding that Irene had made the Publications to another eight or nine of Dways' distributors or customers, the AR had stated that these persons had either been introduced by or were close to the Lims.[45] Based on Nancy's assertion, "eight or nine" distributors introduced by the Lims had ceased to make further purchases and sought refunds for their Products.[46] However, there is no evidence to show that these distributors had sought refunds because they had received the Publications (or the defamatory statements therein). They could have sought refunds for several reasons. As Zul attested, Dways "[adhered] to the … lemon law" and would offer refunds "[i]f anyone is not happy with the product, no questions asked".[47] Zul further admitted that other persons had sought refunds from Dways for unrelated reasons, such as on medical or other advice that the Products were unnecessary for their health.[48]

54 As for the AR's finding that Irene had made the Publications or defamatory statements to a further unknown number of distributors or customers not exceeding 100, this would have been based on Irene's access to a customer list containing the names and contact details of about 100 of Dways' customers.[49] In my view, that Irene had taken Dways' customer list is insufficient to infer that she had therefore used the information in the list to disseminate the defamatory statements or the Publications to these customers. Irene could have taken Dways' customer list for any number of reasons,

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45 23/10/23 Decision at [38].

46 3/5/23 NE 207–210; 23/5/23 NE 56.

47 4/5/23 NE 19.

48 4/5/23 NE 42–43.

49 23/10/23 Decision at [37] and [39], referring to the Plaintiff's Closing Submissions (dated 31 August 2023) at [103].

including to injure Dways by making it more difficult to operate its business without the necessary records or information.

55 Dways observed that some of the Publications appeared to have been "forwarded" on WhatsApp, for instance, to Lee.[50] However, Irene explained that this was because they had been composed on her personal mobile phone before being sent to a second mobile phone (bearing the HP number) from which the Publications were then forwarded.[51] This account is not implausible and I therefore draw no inferences that the publication was more extensive just because Irene had disseminated the Publications to one or more of the Three Persons by way of forwarding the Publications via WhatsApp.

56 The burden is on Dways to prove the extent of publication. I find that Dways has failed to prove, on balance, that the Publications or defamatory statements had been made to persons other than the Three Persons.

*Defendant's conduct from the time the defamatory statement is published to the verdict*

57 I agree with the AR's finding that Irene demonstrated intransigence and a lack of remorse by "doubling down" on the defamatory statements during the AD proceedings. Irene does not challenge this finding. For example, at the AD proceedings, Irene "[disagreed] that the defamatory words impugned the reputation of [Dways]" and maintained that she was only "putting across the facts".[52] These assertions were made despite my findings at the liability stage

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50 PRS at [44(e)]; 23/5/23 NE 174.

51 23/5/23 NE 174–177.

52 4/5/23 NE 73, 75 and 82; 23/5/23 NE 162 and 165.

that the statements were defamatory of Dways and had not been shown to be true in substance and in fact.

58 Ms Chong, however, submits that it transpired at the AD proceedings from Lee's evidence that Dways had in fact misrepresented the country of manufacture of its Products. Lee attested that Nancy informed her that the Products were manufactured in the USA (when it was undisputed that they were manufactured either in China or Malaysia);[53] hence Irene's statements in this regard were justified. Ms Chong thus submits that Lee's evidence should be taken into account to reduce the quantum of damages.

59 I accord little weight to this submission. Aside from the fact that Irene should have called Lee as a witness at the liability stage to support her defence of justification, the issue pertaining to the country of manufacture (being but one of the allegations in the defamatory statements) did not lessen the seriousness of the allegations in the defamatory statements, which as a whole imputed that Dways' business had been conducted in a dishonest manner and that the Products were unsafe for consumption.

*Failure to apologise and retract the defamatory statement*

60 It is undisputed that Irene did not apologise and retract her defamatory statements.[54] She argues however that the failure to apologise is not an aggravating factor in the case of a corporate plaintiff.[55] Whilst a corporate plaintiff has no injured feelings to soothe, this submission is in any event

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53 23/5/23 NE 14; Judgment at [154].

54 23/5/23 NE 203–204.

55 DS at [71].

misconceived because there is no evidence that the AR had considered this as an aggravating factor. Instead, an apology can constitute a mitigating factor. As Irene did not apologise, there is thus no mitigation in this respect.

*Malice*

61 It is clear that Irene was malicious in making the defamatory statements inasmuch as she did not genuinely believe in what she said. Ms Chong does not dispute that there was malice,[56] a finding which I had already made at the liability stage. In particular, I had already found as follows.[57] First, Irene did not genuinely believe that the country of manufacture of the Products was a cause for concern. She was aware early on that the Products were manufactured in China and Malaysia but was nevertheless perfectly content for Dways to sell them. Second, she claimed that the Products were made from a country that did not meet the World Hygiene Standard despite knowing that there was no such standard. Third, she did not genuinely believe that the Products (particularly HL Span) were unsafe for consumption. She continued to promote the Products and even brought home a few months' worth of Products.

62 I further accept Dways' submission that Irene's impersonation of "Lisa Chew" was constitutive of malice. As I had observed in my decision at the liability stage, Irene had admitted to pretending to be "Lisa Chew" and had sought to portray "Lisa" as a former Dways distributor or customer who had been cheated and who had legitimate concerns about the safety or manufacturing origins of the Products. She thus used an alias to make her

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56 DS at [72] and [81]; DRS at [26].

57 Judgment at [187]–[189].

allegations appear objective.[58] That said, the AR, in determining the quantum of general damages, had noted my findings on malice at the liability stage.[59]

63 Finally, Mr Arshad submits that Irene had, in the Publications, made certain remarks against Zul that were racist, and this also constituted malice which should justify an uplift on the general damages. Essentially Dways relies on certain statements made in the 1st Letter which referred to his race (the "Remarks").[60]

64 I am unable to accept Mr Arshad's submissions. The Remarks were never specifically pleaded by Dways nor relied on for its claim in defamation or to show malice.[61] More importantly, any alleged racist remarks made against *Zul* are irrelevant to an award of damages to *Dways* for defamation, unless such remarks had, *eg*, affected Dways' reputation. Dways has not shown how this is the case. Hence, I agree with the AR that even if there was an element of racism against Zul in the Remarks, this could not be taken into account for an award of damages to Dways.

*Quantum of damages*

65 I turn to consider the appropriate quantum of damages to be awarded.

66 Having considered the relevant factors, I agree with Ms Chong that the award of damages should be revised downwards. In particular, I have found the

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58 Judgment at [153].

59 23/10/23 Decision at [45].

60 PS at [49]; 9AB 5106.

61 Statement of Claim (Amendment No. 2) at [33A]–[33J].

extent of publication (made only to the Three Persons) to be very limited, contrary to the AR's findings that the Publications were made` to a further eight or nine persons and an additional unknown number of persons up to 100. The extent of publication of the defamatory statements would have a material bearing on the damages to be awarded to Dways. That said, it should be emphasised that Irene's conduct from the time the Publications were made to the date of the verdict left much to be desired (see [57] above) and that Irene was malicious in making the defamatory statements (see [61] to [62] above). Balancing the various considerations, I therefore reduce the AR's award from $20,000 to $15,000.

67 In determining the quantum of damages, the court may "look at the corpus of past awards for comparison or guidance", bearing in mind that "[b]roadly appropriate comparable cases can, if used with discretion, provide some guidance on the appropriate amount of damages to award in a particular case" (*Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642 at [73]). However, precedents, whilst helpful, are merely a guide. No two cases are identical and the computation of damages in defamation is not an exact science.

68 In this regard, I consider the case of *Golden Season*, which I find to be broadly comparable. In *Golden Season*, the second defendant had sent an email chain to various individuals in a non-governmental organisation in which he insinuated that the plaintiffs were guilty of misconduct in dealing with some donor monies and sought to question their actions and honesty. The High Court awarded $15,000 in general damages to the first plaintiff, a company in the business of providing military and humanitarian relief products. The defamatory statements in *Golden Season* were akin to those in the present case which

alleged that Dways' business was conducted in a dishonest and an improper manner (Judgment at [154], [159] and [162]). Like Irene, the second defendant in *Golden Season* was malicious in making the defamatory statements and did not apologise (*Golden Season* at [142]). As in Dways' case with the Publications, the email chain in *Golden Season* was published to a small number of recipients (*Golden Season* at [141]). Although the first plaintiff in *Golden Season* was "a 30-year-old company of some repute, especially given its involvement in charity work" unlike Dways, the email chain in *Golden Season* was "framed in a very particular context", concerning the "specific episode" of the acquisition of some boats for flood relief efforts in a specific instance (*Golden Season* at [141]). In contrast, the defamatory statements in the present case were more wide-ranging, involving allegations of multiple distinct forms of dishonesty and impropriety to the effect that Dways: (a) had misrepresented to its customers where its Products were manufactured; (b) had terminated its distributors unjustifiably; and (c) was managed by a director who was unscrupulous, unethical, immoral and a crook (Judgment at [154], [159] and [162]). The defamatory statements also alleged that the Products were unsafe for consumption. Weighing all these factors in the round, I consider that an award of $15,000 is also reasonable in the present case.

69 I briefly mention *ATU and others v ATY* [2015] 4 SLR 1159 ("*ATU*"), which Dways sought to distinguish to obtain higher damages. In *ATU*, the defendant suggested in emails, WhatsApp messages and communications to the press that the first plaintiff ("P1") had attempted to cover up child abuse that allegedly occurred on its premises. P1 was a private, non-profit international school mainly serving the expatriate community in Jakarta. The High Court awarded $30,000 in general damages to P1. To begin with, the allegations in *ATU* were of a "particularly grave nature" as they involved allegations of

physical and sexual abuse (including rape) and "pointed to a systematic abuse of the trust reposed in educational institutions and individuals responsible for the learning and general well-being of the young children under their charge" (*ATU* at [20], [21] and [33]). Conversely, the allegations in the present Suit, while not trivial, were not of a commensurate degree of severity. Further, P1 was "relatively well known within the international school community" (*ATU* at [34]) while Dways was not an established company at the material time. Although the extent of publication of the emails and WhatsApp messages in *ATU* was low, the defendant was held liable for the damage that flowed from the repetition of her statements by the press (*ATU* at [41]). The extent of publication and republication in *ATU*, taken together, was much higher than in the present Suit. Hence, in comparing with *ATU*, I find that the more appropriate award in this Suit is a lower figure (and not a higher one as Dways submits).

70 I therefore reduce the AR's award for general damages for defamation to $15,000.

**Interest**

71 Finally, I consider whether Dways should be awarded pre-judgment interest under s 12 of the Civil Law Act 1909 ("CLA") for any period between the date on which the cause of action arose and the date of judgment.

72 The award of interest pursuant to s 12 of the CLA is not as of right but is a matter of discretion. Pre-judgment interest is awarded to compensate a successful claimant for the time value of money, the use of which has been lost because an unsuccessful defendant had wrongfully kept the claimant out of moneys to which the claimant has been shown to be entitled, during which time,

the defendant instead had the use of it: see *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 at [137]–[138].

73 In relation to the misappropriation claim, I disagree with Dways that interest should run from 30 January 2020,[62] this being the later of the two dates on which the misappropriation took place. Dways continued to have abundant stocks after the misappropriation and it was only in late 2021 or early 2022 that these were depleted (see [36] above). The Lims accept that Dways' loss would have crystallised at this point because it would have had to order a replenishment of its stocks. They further submit that the relevant date should be 1 January 2022 given the lack of specificity in the evidence as to when exactly Dways' stocks were depleted.[63] I accept the Lims' submissions. As the parties have not submitted for any departure from the usual pre-judgment interest rate of 5.33% per annum, I award interest from 1 January 2022 at the rate of 5.33% per annum on the damages awarded for the misappropriation claim.

74 As for the defamation claim, I disagree with Dways' submission that interest should begin to run from April 2020, this being when Irene made the Publications. Dways asserts that its loss accrued at this very moment because, after receiving the Publications, Ng became hesitant to become a distributor and Lee stopped using the Products for some time.[64] I would observe that no positive finding of fact was made to this effect at either of the liability or AD stages. Further, while the AR appeared to accept that there were other recipients of the

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62 Plaintiff's Submissions on Interest dated 19 April 2024 ("PSI") at [1].

63 Defendants' Submissions on Interest dated 19 April 2024 at [6].

64 PSI at [22]–[25],

Publications who thereafter sought refunds for their Products,[65] I have found, contrary to the AR, that the Publications were only made to the Three Persons (see [49]–[56] above). Additionally, it is unclear how Dways was kept out of pocket of the damages for defamation from April 2020. Dways would have been entitled to such damages only when its quantum was assessed by the AR and taking into account the circumstances occurring *after* the Judgment (and until the AD proceedings), whether they be aggravating or mitigating (see *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [88]–[91]). I thus order the interest to run from date of the AD decision, also at the rate of 5.33% per annum.

**Conclusion**

75 In conclusion:

(a) I reduce the AR's award for the misappropriation claim from $86,154 to US$4,555.28, with interest to run from 1 January 2022 at the rate of 5.33% per annum; and

(b) I reduce the AR's award for the defamation claim from $20,000 to $15,000, with interest to run from 23 October 2023 (the date of the AD decision) at the rate of 5.33% per annum.

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65 23/10/23 Decision at [39].

76 I will hear parties on costs.

Audrey Lim
Judge of the High Court

Patrick Fernandez and Mohamed Arshad bin Mohamed Tahir
(Fernandez LLC) for the plaintiff;
Chong Siew Nyuk Josephine (Josephine Chong LLC) for the first and
second defendants.