INTELLECTUAL PROPERTY OFFICE OF SINGAPORE

SPOTLIGHT ON SAMPLE IP/TECH DECISIONS FROM THE SINGAPORE COURTS

This document provides a representative sampling of some of the decisions that the Singapore courts have handed down in the past years relating to intellectual property, intangible assets or technology this past year. The write-ups are aimed at briefly highlighting points which may be of interest to readers, particularly those who are not based in Singapore. They are not meant as a substitute for the Court's full reasons. The cases are presented in chronological order.

Cases are linked to the full judgment and (where available) a case summary prepared by the Singapore Supreme Court. Click to view the cases by year.

- **2024**
- **2023**

2024: YEAR-IN-REVIEW

S/No.	Case and brief outline
1.	*Fonterra Brands (Singapore) Pte. Ltd. v Consorzio del Formaggio Parmigiano Reggiano* [2024] SGCA 53

The Court of Appeal has allowed Fonterra's request for a qualification of rights to be entered into the register of Geographical Indications (GIs). The effect of the qualification is that registered GI protection for "Parmigiano Reggiano" does not extend to the term "Parmesan".

At the heart of the appeal lay the issue of whether "Parmesan" was a translation of "Parmigiano Reggiano" for the purposes of the relevant provisions in the Geographical Indications Act 2014. At first instance, the IPOS hearing officer took the view that there was evidence that "Parmesan" was a translation of "Parmigiano Reggiano". This was upheld on appeal by the General Division of the High Court.

However, the Court of Appeal disagreed and held that for the purposes of the GI Act 2014, it is not sufficient that "Parmigiano Reggiano" is a translation of "Parmesan". It held that a

translation must be one that is known to the average Singapore consumer to convey the same meaning as the GI in question. In this case, the evidence of marketing practices was found to support an inference that consumers regard "Parmesan" and "Parmigiano Reggiano" as two different types of cheese with differing origins. Hence, the term was found to be not a translation of the GI.

2. *TOWA Corporation v ASMPT Singapore Pte Ltd* [2024] SGCA 52

This appeal and cross-appeal was against two decisions (located here and here) of a High Court judge concerning the assessment of damages for patent infringement. By way of background, the plaintiff, TOWA, had sued ASMPT and its subsidiary for patent infringement arising from the manufacture and sale of certain moulding machines used to seal electronic parts with a type of protective resin. Ultimately, TOWA was successful and elected to claim damages. Both sides were dissatisfied with the assessment and argued for a more favourable result on appeal. After hearing the appeals, the Court of Appeal agreed with ASMPT on a single point (which had the effect of reducing the damages awarded in certain respects). Apart from that, the rest of the judge's decisions were upheld.

3. *Lim Suk Ling Priscilla and anor v Amber Compounding Pharmacy Pte Ltd and anor* [2024] SGCA 16

This decision of the Court of Appeal touches on the interplay between claims for wrongful gain and wrongful loss in a claim for breach of confidence. In brief, the court's view is as follows. A plaintiff is entitled to claim for both wrongful gain (under I-Admin) in respect of one set of documents/information and wrongful loss (under Coco v Clark) in respect of another set of documents/information. However, a plaintiff cannot claim for both wrongful gain and wrongful loss in respect of the same sets of documents/information.

4. *Truecoin LLC v Techteryx, Ltd* [2024] SGHC 296

An anti-suit injunction (ASI) was granted to restrain Techteryx from commencing court proceedings in Hong Kong in connection with contractual disputes between the parties which related to Truecoin's TUSD (stablecoin) business. The ASI was in support of arbitration proceedings seated in Singapore. This appears to be the first ASI to be granted by a Singapore court in connection with the cryptocurrency industry.

5. *Cheong Jun Yoong v Three Arrows Capital Ltd and others* [2024] SGHC 21 (permission to appeal denied by the Appellate Division: see [2024] SGHC(A) 10)

The first defendant, Three Arrows Capital (3AC), was a failed cryptocurrency hedge fund incorporated in the British Virgin Islands (BVI). It operated trading activities from premises in Singapore. In June 2022, 3AC was placed under liquidation by a BVI court. (The other defendants in the case were its liquidators.) In November 2022, the claimant filed an application in the Singapore High Court seeking permission to commence proceedings against 3AC in respect of certain assets. The claimant contended that these assets comprised an independent fund which—although on the 3AC platform—were owned and controlled by the claimant. (The liquidators' position was that the assets sought by the claimant were beneficially owned by 3AC.) In May 2023, the Singapore High Court granted an order allowing the claimant to effect service of court papers on the defendants in the

BVI. After they were served, the defendants applied to set aside: (a) the order allowing service out of jurisdiction; and (b) the service of court papers. The questions that the court had to determine were: (i) whether the claimant had a good arguable case that there is a sufficient nexus to Singapore; (ii) whether Singapore is the more appropriate forum; and (iii) whether there is a serious question to be tried on the merits. In dismissing the defendants' setting aside application, the General Division of the High Court: (a) affirmed the principle that cryptoassets constitute property, the proprietary rights to which may be enforced in court; (b) recognised that a cryptoasset has no physical identity and is not associated with any physical object; and (c) held that the location of a cryptoasset is best determined by looking at where it is controlled, and the residence of the person who controls the private key should be treated as the situs of the cryptoasset linked to that key.

6. *Fantom Foundation Ltd v Multichain Foundation Ltd and anor* [2024] SGHC 173

This decision grapples with one of the key issues in assessing damages in connection with crypto assets: price volatility.

Fantom had deposited various crypto assets onto Multichain's liquidity facility platform. These crypto assets were subsequently lost following a security breach. Fantom sued, alleging that this loss was attributable to Multichain's failure to implement certain security safeguards in breach of a key term of the relevant agreements between the parties. It subsequently obtained default judgment for: (1) damages to be assessed and (2) the return of 4.175m FTM (fantom) tokens or alternatively their equivalent value. For the purposes of the assessment, the claimant proceeded on the "conservative" basis that damages should be assessed by reference to the date of the breach. Even so, the court observed the breach date may not always be the best assessment methodology to value cryptocurrencies in all circumstances (see analysis from [41]-[49]). As regards the FTM claim, the court assessed the value of the tokens by reference to the market value of FTM on 14 April 2023: the date on which the claimant had transferred the tokens to the platform. In so doing, the court acknowledged the various issues posed by valuing a price-volatile asset.

7. *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2024] SGHC 39 (upheld on appeal by the Appellate Division without written grounds of decision)

Tiger Pictures Entertainment (the claimant) alleged that Encore Films (the defendant) infringed its copyright in respect of a Chinese movie, "Moon Man" by releasing it theatrically in Singapore. The defendant did not dispute the acts complained of but argued that there was a distribution licence agreement in place. The court found that there was no valid and binding distribution agreement between the parties. Notably, the decision makes it clear that the burden of proving that no copyright licence was given rests on the claimant (see [28]-[35]). This was the first case to be tried under the Simplified Process for Certain IP Claims.

8. *CNA v CNB and another* [2024] SGCA(I) 2 (upholding [2023] SGHC(I) 6)

In May 2023, the Singapore International Commercial Court dismissed applications to set aside certain arbitral awards made by the International Chamber of Commerce. The arbitration was between Korean and Chinese companies in the field of computer and mobile games. The long running multi-national dispute arose in connection with a software licensing agreement relating to a massively multiplayer online role-playing game and

involved intellectual property rights. The premise of the applications was that the tribunal lacked jurisdiction to determine the dispute.

After the setting-aside applications were dismissed, the unsuccessful applicant appealed to the Court of Appeal which upheld the decision below.

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2023: YEAR-IN-REVIEW

S/No. Case and brief outline

1. *IIa Technologies Pte Ltd v Element Six Technologies Ltd and anor appeal* [2023] SGCA 5

2. IIa Technologies, a local manufacturer of lab-grown diamonds, succeeded in its appeal to the Court of Appeal against a High Court ruling that it had infringed one of the patents for the manufacture of synthetic diamonds owned by Element Six Technologies (a subsidiary of leading diamond company De Beers). The overall result following the long-running litigation was that both of the synthetic diamond patents asserted by Element Six against IIa were revoked. One of the patents was revoked following the trial on the basis that it was neither novel nor inventive. The other was revoked on appeal on the basis of insufficiency. This, of course, was a complete defence to patent infringement.

3. *Siemens Industry Software Inc. v Inzign Pte Ltd* [2023] SGHC 50

The General Division of the High Court found Inzign Pte Ltd, a Singapore company, to be vicariously (but not directly) liable for copyright infringement arising out of the actions of its employee, Mr Win. Mr Win had downloaded and installed an unauthorised version of the plaintiff's software on an unused laptop which had been left in one of the drawers in the toolroom which he worked. The court assessed damages at S$30,574 and granted a permanent injunction against the defendant. Prior to this case, it was unclear whether the doctrine of vicarious liability extends to cases involving copyright infringement in Singapore.

4. *Fonterra Brands (Singapore) Pte Ltd v Consorzio del Formaggio Parmigiano Reggiano* [2023] SGHC 77

Is "Parmesan" a translation of "Parmigiano Reggiano"? Fonterra Brands contended that it is not, and that the registered geographical indication "Parmigiano Reggiano" (owned by a consortium of Parmigiano Reggiano cheese producers) should be qualified such that its protection should not extend to that term. In this appeal, the General Division of the High Court agreed with the consortium, ruling that there was insufficient evidence to support Fonterra's case. The practical implication is that the consortium can take enforcement action against any unauthorised uses of "Parmesan" for cheese. Fonterra's further appeal will be heard by the Court of Appeal.

5. *General Hotel Management (Singapore) Pte Ltd and anor v The Wave Studio Pte Ltd and ors* [2023] SGHC(A) 11

Where a client engages a company for a photoshoot, who owns the copyright to the photographs; the client, the company, or the photographer? In this case involving a hotel group's use of photographs taken for the purposes of branding and marketing a range of its properties (including on the websites of online travel agencies), the Appellate Division of the High Court found that the client (here: the hotel group) was not the owner of the

copyright. Instead, there was a validly incorporated provision in the agreement between the parties which reserved copyright to the company engaged for the photoshoot. (Note: earlier, a claim for copyright infringement of the photographs had been filed in the United States District Court. The US District Court had held that Singapore was the natural forum to determine ownership of copyright.)

6. *ByBit Fintech Ltd v Ho Kai Xin & Ors* [2023] SGHC 199

In this case, the General Division of the High Court ruled that the Tether (USDT) stablecoin specifically (and cryptocurrency generally) is property that is capable of being held on trust. The practical implication of this is that proprietary remedies at law could potentially be sought in connection with cryptocurrency.

7. *Consorzio di Tutela della Dominazione di Origine Controllata Prosecco v Australian Grape and Wine Incorporated* [2023] SGCA 37

The Court of Appeal has allowed "Prosecco" to be registered as a geographical indication for wines. The owner of the geographical indication is an Italian consortium or trade body tasked with protecting, promoting, and overseeing prosecco. This application had been objected to by an Australian representative body for grape growers and winemakers. The Australian group had contended that "Prosecco" was the name of a plant variety and was likely to mislead the consumer as to the origin of the product. While it was able to demonstrate that "Prosecco" contained the name of a plant variety, the court was not persuaded that the evidence showed that the Singapore consumer was likely to be misled.

8. *Loh Cheng Lee Aaron v Hodlnaut Pte Ltd* [2023] SGHC 323

This decision was made in connection with an application for the winding up of Hodlnaut, a Singapore company. The key ruling by the court was that Hodlnaut's cryptocurrency obligations counted towards determining whether the company is insolvent. The court rejected the argument (made by the company's directors) that its cryptocurrency holdings should not be counted as debts owed by the company. In arriving at this decision, the judge cautioned that "*nothing in my decision suggests that cryptocurrency should be treated as money in the general sense, a question which I do not have to decide in the present case*".

9. *Beltran, Julian Moreno and another v Terraform Labs Pte Ltd and others* [2023] SGHC 340

A class action lawsuit against Terraform Labs and its co-founders — including the infamous Do Kwon — has been given the green light by the court to proceed. The action was brought following the collapse of TerraUSD (UST) tokens which were supposed to be pegged 1:1 to the US dollar. The defendants had attempted to have the lawsuit thrown out on grounds that the website terms of use contained an arbitration clause.

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