

Year-in-review 2023: Spotlight on sample IP/Tech decisions from the Singapore courtsⁱ

- | <u>S/No.</u> | <u>Case and brief outline¹</u> |
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| 1. | <p>Ila Technologies Pte Ltd v Element Six Technologies Ltd and anor appeal [2023] SGCA 5</p> <p>Ila 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 Ila 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 One of the patents was revoked following the trial on the basis that it was neither novel nor inventive. The other was revoked on appeal on the basis of insufficiency.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.</p> |
| 2. | <p>Siemens Industry Software Inc. v Inzign Pte Ltd [2023] SGHC 50</p> <p>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.</p> |
| 3. | <p>Fonterra Brands (Singapore) Pte Ltd v Consorzio del Formaggio Parmigiano Reggiano [2023] SGHC 77</p> <p>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.</p> |

¹ Cases are linked to the full judgment and (where available) a case summary prepared by the Singapore Supreme Court.



4. [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.)

5. [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.

6. [Consortio 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.

7. [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*".

8. [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. While the court found that there was a *prima facie* case of an arbitration agreement, the request for a stay in favour of arbitration was nevertheless refused on the basis that the defendants had taken steps in the proceedings (including filing a defence on the merits, a counterclaim, as well as various other applications).

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Note: This document provides a representative sampling of some of the decisions that the Singapore courts have handed down in the past year 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.

