

**IN THE HEARINGS AND MEDIATION DEPARTMENT OF
THE INTELLECTUAL PROPERTY OFFICE OF SINGAPORE
REPUBLIC OF SINGAPORE**

Trade Mark No. T0700270D
Hearing Dates: 22 February 2017, 19 April 2017
Date of Further Submissions: 11 May 2017

**IN THE MATTER OF A TRADE MARK REGISTRATION BY

TAN JEE LIANG TRADING AS YONG YEW TRADING COMPANY**

AND

APPLICATION FOR REVOCATION THEREOF BY

FMTM DISTRIBUTION LTD

Hearing Officer: Mark Lim Fung Chian
Principal Assistant Registrar of Trade Marks

Representation:

Ms Francine Tan (Francine Tan Law Corporation) for the Applicant¹

Ms Denise Loh (Ella Cheong LLC) for the Registered Proprietor

GROUND OF DECISION

Introduction

1 This case is about whether Trade Mark No. T0700270D (the “Subject Mark”) should be revoked for non-use. In most non-use cases, the central question is whether the

¹ The Applicant also instructed Mr Jonathan Agmon (Soroker Agmon Nordman) for the purposes of conducting cross-examination: see [14] below. He did not attend the oral hearing: see [15] below.

registered proprietor has sufficiently proven genuine use of the mark, in relation to the relevant goods or services, and within the relevant time period(s) in question.

2 On the face of the documentary evidence provided by the Registered Proprietor of the Subject Mark – Mr Tan Jee Liang trading as Yong Yew Trading Company – the answer to this central question appeared to be “yes”.

3 However, the Applicant – FMTM Distribution Ltd – sought to persuade me that the true state of affairs was very different. The essence of the Applicant’s case was that while the Subject Mark may have been applied to the relevant goods, such use took place outside of Singapore. Further, the Applicant sought to cast doubt on the legitimacy of some of the transactions which appeared to show use of the Subject Mark. Forceful arguments were advanced to the effect that the Registered Proprietor’s evidence was inconsistent and vague. I was also invited to find that in certain cases, evidence had been fabricated for the purposes of these proceedings.

4 It is true that some aspects of the Registered Proprietor’s evidence raised more questions than answers. But it is not necessary to deal with every piece of evidence tendered in this case. Neither is it necessary for me to express any view on whether evidence was manufactured for these proceedings. At the end of the day, I must come back to the central question that I need to decide. In my judgment, even if I were to disregard the parts of the Registered Proprietor’s evidence which the Applicant has called into question, there is nonetheless sufficient evidence, on balance, to show that the Subject Mark had indeed been put into genuine use. I therefore dismiss the action for non-use revocation, and give my detailed reasons below.

The Subject Mark

5 A representation of the Subject Mark is set out below:

Casa Blanca
CASA BLANCA

6 The Subject Mark is registered in Class 14, in respect of: “*L.C.D watch, analog quartz watch, automatic watch, watch buckle, watch straps and stainless steel watch band*”.

The application to revoke for non-use

7 The application for non-use revocation was filed on 21 July 2014. The Applicant pleaded that the mark should be revoked for non-use under Section 22(1)(a) of the Trade Marks Act (Cap. 332, 2005 Rev Ed) (“TMA”).

8 Section 22(1)(a) TMA provides that a mark may be revoked if:

“...within the period of 5 years following the date of completion of the registration procedure, it has not been put to genuine use in the course of trade in Singapore, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use”

9 In this case, the date of completion of the registration procedure for the Subject Mark was 28 November 2008. The relevant time period under consideration for this ground of revocation would therefore be 29 November 2008 to 28 November 2013.

Events prior to hearing

10 By and large, the procedural history in this action was recorded in the interlocutory decision in *Application for cross-examination by FMTM Distribution Ltd* [2016] SGIPOS 9. I will not repeat the details here, and will only briefly mention the documents filed:

- a. On 21 July 2014, as mentioned above, the Applicant filed the application for non-use revocation.
- b. On 21 November 2014, the Registered Proprietor filed his Counter Statement, together with his *prima facie* evidence of use. This was the first statutory declaration (“SD”) of Mr Tan Jee Liang (i.e. the Registered Proprietor himself), which I refer to as “TJL-SD1”.
- c. On 20 April 2015, the Applicant filed its evidence in support of the action. This was the first (and only) SD of its legal counsel, Ms Gwenaelle Vache.
- d. On 17 September 2015, the Registered Proprietor filed the following SDs:
 - i. Second SD of Mr Tan Jee Liang (“TJL-SD2”).
 - ii. First SD of Mr Tan Jee Peng, director of Niva Time Watch (“TJP-SD”). His evidence was that Niva Time Watch had, since 2007, been purchasing goods bearing the Subject Mark from the Registered Proprietor and selling them to customers. Mr Tan Jee Liang and Mr Tan Jee Peng are brothers.
 - iii. First SD of Mr Subramaniam s/o Sinnathamby, sales manager of BSD Management & Services (“SS-SD”). His evidence was that BSD Management & Services had been purchasing goods bearing the Subject Mark from the Registered Proprietor and selling them to customers since 2013.
 - iv. First SD of Ms Ho Yeok Sun, director of Nokato (M) Sdn Bhd (“HYS-SD”). Her evidence was that Nokato (M) Sdn Bhd was one of the dealers in Malaysia to which the Registered Proprietor exported goods bearing the Subject Mark.

11 Although the Applicant had the opportunity to file evidence in reply, it did not do so. It subsequently applied to cross-examine three witnesses: Mr Tan Jee Liang (i.e. the Registered Proprietor himself), Mr Tan Jee Peng, and Mr Subramaniam s/o Sinnathamby (collectively, the “Witnesses”). After hearing parties, I issued the interlocutory decision on 17 October 2016. In short, I granted the Applicant leave to cross-examine the Witnesses on a set of issues. The Applicant did not seek leave to cross-examine Ms Ho Yeok Sun.

Cross-examination and hearing

12 Cross-examination took place on 22 February 2017. For the record, Mr Tan Jee Liang gave evidence in Mandarin through an interpreter. The other Witnesses gave evidence in the English language.

13 During cross-examination, Mr Tan Jee Liang was asked, among other things, to identify the person who normally prepared the invoices issued in the name of Yong Yew Trading Company (i.e. the name of the business under which the Registered Proprietor trades). He did so. According to Mr Tan Jee Liang, the individual was a lady named “Xin Yan”. Mr Tan Jee Liang wrote her Chinese name: 心燕. The document bearing the handwriting was marked as Cross-Examination 1 (“CX-1”).

14 Mr Jonathan Agmon, who cross-examined the Witnesses, introduced a number of documents in the course of cross-examination. They were marked as Cross-Examination 2 to 9, as follows:

<u>Document No.</u>	<u>Description</u>
CX-2	Printout from “ http://www.portero.com/patek-philippe-twenty-4-stainless-steel-ladies-quartz-watch-4910-10a ” dated 9 February 2017
CX-3	Printout from “ https://www.rolex.com/watches/day-date/m118346-0024.html ” dated 10 February 2017
CX-4	Copy of document entitled “Rules and Regulations of The Sultan Plaza Association”, together with a printout of the Schedule to the Societies Act (Cap. 311) and copies of the Annual Returns of the Sultan Plaza Association for 2012 and 2016.
CX-5	Copy of the Accounting and Corporate Regulatory Authority (“ACRA”) business profile of Tin Sing Watch & Pen Company
CX-6	Printout from Niva Time’s Facebook page showing a post dated 22 September 2013
CX-7	Copy of the ACRA business profile of BSD Management & Services

CX-8	Printout from InSing.com dated 20 February 2017
CX-9	Copy of six photographs dated 13 February 2017

15 On 20 March 2017, the parties filed their written submissions. Oral submissions were heard on 19 April 2017. To assist with oral submissions, counsel for the Applicant (Ms Tan) also tendered a document marked “Applicant’s Basic Rebuttal Submissions” at the hearing itself. For the record, it appeared that Mr Agmon was engaged by the Applicant for the purposes of cross-examination only, and he was not present during oral submissions.

16 At the conclusion of the hearing, I asked parties to address me on certain cost issues by way of letter. They did so by the allotted deadline of 11 May 2017.

PRELIMINARY ISSUES

17 Two preliminary issues were raised by the parties in the course of their written and oral submissions. I address them in turn.

First Issue: Admissibility of Evidence

18 As mentioned at [14] above, various documents (*viz.* CX-2 to CX-9) were produced in the course of cross-examination. Counsel for the Registered Proprietor, Ms Loh, raised objections to some of them. However, the Registered Proprietor did not strenuously pursue the objections there and then. Instead, they were left for written submissions.

19 The Registered Proprietor’s written submissions contained strong objections to the admission of documents CX-2 to CX-9. He also argued that the lines of questioning and the responses given by the Witnesses – insofar as they related to CX-2 to CX-9 – should be deemed inadmissible.

20 The Registered Proprietor’s arguments were advanced along two main lines.

The Trade Marks Rules Argument

21 The first line of argument was premised on non-compliance with Rule 35 of the Trade Marks Rules (Cap 332, 2008 Rev Ed) (“TMR”). This Rule essentially provides that no “further evidence” may be filed except with the Registrar’s leave. The Registered Proprietor submitted that CX-2 to CX-9 constituted “further evidence” which should have been filed earlier (for example, as evidence in reply). It was further submitted that there were procedures to be followed, which had not been complied with (and here I was referred to both Rule 35 as well as HMD Practice Circular No. 1/2011 dated 8 April 2011). According to the Registered Proprietor, since the necessary procedures had not been followed, leave had to be sought for the late filing of CX-2 to CX-9. It was also argued that in any event, leave should not have been granted given that CX-2 to CX-9 were sought to be introduced at a late juncture.

22 I can deal with this first argument very quickly. To my mind, it is clear that CX-2 to CX-9 were not “further evidence” within the meaning of Rule 35. It is true that these documents *could* have been filed in an earlier SD (e.g. at the evidence in reply stage), but that they were not is beside the point. As the Applicant rightly pointed out, CX-2 to CX-9 were tendered in the course of cross-examination for the purposes of challenging the witnesses’ testimony. All that Rule 35 provides is that no further evidence may be filed without the leave of the Registrar. This is very different from the issue of admissibility (discussed further below). In my judgment, documents produced during cross-examination, and the questions asked about them, are outside the scope of Rule 35.

The Evidence Act Argument

23 The second line of argument was based on the Evidence Act (Cap. 97, 1997 Rev Ed) (“EA”). The Registered Proprietor argued that CX-2 to CX-9, along with the lines of questioning and responses by the witnesses, should be excluded under Section 155 EA² on grounds that these documents were “*for the purpose of contradicting the answers from the Witnesses to questions testing veracity and with the intention to shake their credit by injuring their character*”.³ I was also referred to Section 157 EA, which permits a witness’ credit to be impeached in certain cases.⁴ In the Registered Proprietor’s submission, since CX-2 to CX-9 did not fall under any one of these situations listed in Section 157 EA, the documents (together with the related lines of questioning) should be excluded from the proceedings.

24 In its rebuttal submissions, the Applicant referred me to Sections 147 and 148 EA, and provided reasons why it considered that the EA provisions relied on by the Registered Proprietor did not apply. Its case was that CX-2 to CX-9, together with the lines of questioning relating to these documents, were admissible in evidence. The Applicant took pains to emphasise that the questions asked during cross-examination were designed to test the evidence and also the veracity and credibility of the witnesses. It invited me to consider all of the evidence, and then determine the witnesses’ veracity and credibility, and to determine what weight, if any, should ultimately be accorded to the evidence.

25 Interestingly, during oral argument, counsel for the Registered Proprietor did not seriously pursue the objections under the EA. Instead, counsel was content to argue that the Applicant should have followed the requisite procedure to tender the documents: an argument I have rejected for the reasons stated at [22] above. When counsel was asked whether she had any case authority which showed that such evidence (that is, tendered for

² Section 155 EA reads: “*When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely he may afterwards be charged with giving false evidence*”.

³ Registered Proprietor’s Written Submissions at [47].

⁴ Section 157 EA reads: “*The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him: (a) by the evidence of persons who testify that they from their knowledge of the witness believe him to be unworthy of credit; (b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or received any other corrupt inducement to give his evidence; (c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted*”.

the purposes of challenging witness testimony) was rejected by a court or tribunal, she answered in the negative.

26 Ultimately, there is nothing in CX-2 to CX-9, or the related lines of questioning, that would change my conclusion that there has been genuine use of the Subject Mark based on the evidence tendered by the Registered Proprietor. For that reason, it is not necessary for me to decide on the admissibility of documents CX-2 to CX-9 or the lines of cross-examination relating to these documents.

27 Nevertheless, given the Applicant's reliance on CX-2 to CX-9 (and the related lines of cross-examination), and in case this is taken up elsewhere, I have outlined my brief views below. Where appropriate, CX-2 to CX-9 (and the related lines of cross-examination) will also be dealt with within the body of the main decision below.

Outline of views on admissibility

28 It has often been said that touchstone of admissibility is relevance, and this is also true for proceedings before this tribunal.

29 In my view, CX-2 and CX-3 (and the related lines of cross-examination) were irrelevant to these proceedings and were inadmissible in evidence. Even if I am wrong in this regard and they were admissible, they should be accorded no weight. A further discussion is set out at [88] to [93] below.

30 As for CX-4 to CX-9 (and the related lines of cross-examination), they were each of varying relevance to the proceedings. I would consider all of them to be admissible. (Further discussion as to their relevance is set out at various points in the body of the main decision below.) Although there are exceptions to every rule, I was not persuaded by the Registered Proprietor's submission that CX-4 to CX-9 (and the related lines of cross-examination) should be excluded by reason of Sections 155 and/or 157 EA.

31 The heading of Section 155 EA reads: "*Exclusion of evidence to contradict answers to questions testing veracity*". It comes into play when "*a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character*"; in such a case, "*no evidence shall be given to contradict him*". Here, none of the questions relating to CX-4 to CX-9 were solely in respect of veracity, credibility and/or character. Rather, what the Applicant was attempting to do, through these documents and Mr Agmon's questions, was to show that the factual position was something other than what the Registered Proprietor (and in particular the relevant Witnesses) had claimed. To the extent that suggesting a witness' version of events is not accurate would necessarily involve a suggestion that his evidence on those events is not credible, I note that this is in fact the very purpose of cross-examination. It cannot be that such an incidental challenge to a witness' veracity and credibility is impermissible. As such, I am of the view that Section 155 EA is not applicable.

32 The Registered Proprietor's (erroneous, in my view) reliance on Section 155 EA also carried over to Section 157 EA. That provision sets out some ways in which the credit of a witness may be impeached.⁵ But, as with Section 155 EA, it should not operate to exclude CX-4 to CX-9 (and the related lines of cross-examination) because they were not about impeaching the witness' credibility *per se* but rather to put forth the Applicant's version of the facts.

Second Issue: Relevance of evidence between 28 November 2013 and 21 July 2014

33 In his written submissions, the Registered Proprietor referenced Section 22(3) TMA, which states:

“(3) The registration of a trade mark shall not be revoked on the ground mentioned in paragraph (a) or (b) of subsection (1) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the 5 year period and before the application for revocation is made.”

The provision works like this. Even if a trade mark was not been put to genuine use within the relevant 5-year period under consideration, it shall not be revoked if use is “*commenced or resumed*” after the expiry of the relevant 5-year period, and before the application for revocation is made.

34 The Applicant objected to the Registered Proprietor's reliance on Section 22(3) TMA on the basis that this section had never been pleaded by way of “*an alternative defence*”.⁶

35 I was unable to agree with the Applicant's submission on this point. Section 22(3) TMA is not a “defence” that needs to be pleaded. The starting point is Section 105 TMA, which provides that if “*a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it*”. Here, the Applicant initiated the action and thereby put into issue the question of whether the Subject Mark has been put to genuine use. The burden is on the Registered Proprietor to show “*what use has been made of*” the Subject Mark so that it ought not to be revoked. This is a question of fact. If the evidence shows that such use “*commenced or resumed*” after 28 November 2013 but prior to 21 July 2014, surely I must take such evidence into account. I cannot simply ignore it just because Section 22(3) was not included in the Registered Proprietor's counter statement. After all, the language of the section is imperative in nature: it says that the registration “*shall not be revoked*” if the conditions are met.

36 Even if I am wrong in my view that Section 22(3) TMA does not have to be expressly pleaded, nothing turns on it. Whether or not I take into account the evidence between 28 November 2013 and 21 July 2014, the evidence *within* the relevant 5-year period of 29 November 2008 to 28 November 2013 is still enough to establish genuine use of the Subject Mark such that it ought not to be revoked.

⁵ *Ibid.*

⁶ Applicant's Basic Rebuttal Submissions at [2].

MAIN DECISION

The law

37 The following legal principles are trite and undisputed.

38 First: In an action for non-use revocation, the burden of proof is on the proprietor to show what use has been made of the mark. (Section 105 TMA.)

39 Second: A trade mark serves to indicate the source of the goods to which it is affixed and registration facilitates and protects this function of the trade mark. There must be genuine use of the trade mark before its function is served and protection by registration justified. The register serves as a notice to rival traders of trade marks that are already in use. As such, to allow a mark that is not *bona fide* in use to remain on the register would be deceptive and could permit the registered proprietor to unfairly hijack or usurp a mark and/or monopolise it to the exclusion of other legitimate users. (*Weir Warman Ltd v Research & Development Pty Ltd* [2007] 2 SLR(R) 1073 (“*Weir Warman*”) at [99].)

40 Third: The essential question in Section 22(1)(a) TMA is whether there has been genuine, or *bona fide*,⁷ use of the mark, in the course of trade. For use to be considered genuine, the use in question does not have to be significant in the qualitative sense provided it was in accordance with the essential function of a trade mark, which is to guarantee the origin of goods or services to the consumer or end user. (*Weir Warman* at [99] – [100].) Although not cited in argument, I note that this principle was further elaborated upon in *Société des Produits Nestlé SA and anor v Petra Foods Ltd and anor* [2017] 1 SLR 35, where the Court of Appeal clarified that genuine use means *bona fide use as a trade mark* (i.e. use of the mark to indicate the origin of the goods to which it is affixed).

41 Fourth: Token use for the sole purpose of preserving the rights conferred by the mark, or use which is just internal use by the proprietor concerned, is not genuine use. (*Weir Warman* at [100] citing *Ansul BV v Ajax Brandbeveiliging BV* [2003] RPC 717.)

42 Fifth: There is no rule that *de minimis* use cannot constitute genuine use. No one single objective formula which applies to all situations can be laid down; much would depend on the fact situation in each individual case. (*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 at [44] (“*Wing Joo Loong*”).)

43 Sixth: As a general rule, the fewer the acts of use relied upon, the more solidly the acts need to be established. In a case where one single act is relied on, this single act ought to be established by, if not conclusive proof, overwhelmingly convincing proof. (*NODOZ Trade Mark* [1962] RPC 1 (“*NODOZ*”), followed by *Nike International Ltd v Campomar SL* [2006] 1 SLR 919 (SGCA). (“*Nike CA*”) It would stand to reason that where there are

⁷ There is no real or practical difference between the terms *bona fide* use and *genuine* use: see *Nike International Ltd v Campomar SL* [2006] 1 SLR(R) 919 (“*Nike*”) at [15].

a number of acts of use relied upon, the standard of proof should be the usual civil standard – i.e. on a balance of probabilities.

44 Although each case must necessarily turn on its own facts, it is useful to look at a few of the decided cases for guidance as to how the principles operate.

- a. The *NODOZ* case concerned an isolated instance of tablets being imported into England from the US. The proprietor adduced evidence from company records, including: (i) a letter from the proprietor accepting an offer to buy the product; (ii) a note from the foreign sales department to the shipping department of the proprietor instructing the shipping department to ship the product; (iii) a record of receipt of the payment of the product price; (iv) a copy of an invoice giving particulars of the shipment. However, there was no evidence that the product was, in fact, delivered to any post office, or that it had arrived in England, or that it had reached the customer. In those circumstances, Wilberforce J felt unable to hold with sufficient certainty that the goods had indeed arrived.
- b. *Nike CA* was a non-use case where the Court of Appeal allowed an appeal against the decision of the High Court and restored the decision of the Principal Assistant Registrar. The facts bore some similarity to the *NODOZ* case in that the alleged use hinged upon a single transaction. In allowing the appeal, the Court of Appeal held that the judge appeared to have given insufficient consideration to the fact that none of the documents produced to prove use in Singapore related to the goods being received in Singapore. Although there was an invoice and a bill of lading, these were no more than *prima facie* evidence of the goods being shipped. However, there was no proof that the goods had in fact arrived in Singapore. Neither was there any receipt of payment for the goods.
- c. As against these cases, it is useful to consider *Weir Warman*. Although it was not a single transaction case, the evidence of use was not voluminous either. On the facts, it was found that the following were sufficient to constitute genuine use: three e-mail enquiries received by the proprietor from Singapore companies; a fax written by the proprietor to a potential customer offering for sale the products in question; and a meeting in Singapore with a dealer of the products.
- d. *Wing Joo Loong* probably lies at the far end of the volume-of-evidence scale. In that case, the sales of cordyceps bearing the impugned mark were found to be amply evidenced by documents, with numerous invoices adduced showing, among other things, the purchase orders as well as the shipping and documentation instructions received, the different locations in Singapore to which the cordyceps were to be delivered and different billing addresses in Singapore. The Court of Appeal considered these documents to be clear proof of genuine sales of cordyceps bearing the impugned mark during the relevant period. They were *bona fide* transactions, and not merely transactions concocted just to preserve the validity of the registration of the mark.

45 I now turn to examine the evidence of use which was tendered in the present case, having regard to the above principles.

Evidence of use prior to the relevant 5-year period

46 Mr Tan Jee Liang claimed to have been selling watches for many years. He produced a copy of a price list labelled “Casa Blanca” dated 6 September 1996, which contained model numbers and gross/net prices. He also produced a copy of an invoice no. 55175 dated 9 January 1996 addressed to “SUN RIVER”, for a total of 266 watches. The model numbers in the invoice (9004, 9100, 9101 and 9117) corresponded to Casa Blanca models listed in the price list. (See documents in TJL-SD1 at Exhibit TJL-1.)

47 The Applicant argued that these documents were prior to the relevant 5-year period under consideration. That was true. I also noted that: (a) the name on the price list dated 6 September was that of “Ho Yeok Sun”, whose SD evidence concerned sales of Casa Blanca in Malaysia; and (b) during cross-examination, Mr Tan Jee Liang gave evidence that it was a Malaysian customer that had originally asked for Casa Blanca products.

48 But all that does not mean that the documents in Exhibit TJL-1 were irrelevant. They showed, at the very least, that Mr Tan Jee Liang was carrying on trade in Casa Blanca watches, perhaps directed at customers in Malaysia, as far back as 1996. This sets the tone for the rest of the evidence because, as it will be seen, Mr Tan Jee Liang did in fact have a legitimate business dealing in Casa Blanca watches in both Singapore and Malaysia.

Evidence of use during the relevant 5-year period

49 One of the salient features of this case is that Mr Tan Jee Liang did not – at least as far as I could tell from the evidence – sell his watches directly to end consumers. Instead, his clients were, according to him, “*various wholesalers, retailers and other related entities or dealers in Singapore*”.⁸ He was, in effect, running a business-to-business (or in common parlance: “B2B”) trade. As a middle-man, so to speak, Mr Tan Jee Liang’s own evidence was confined to the following categories:

- a. First Category: documents showing the order, purchase and importation of Casa Blanca goods into Singapore.
- b. Second Category: documents establishing that Casa Blanca goods were sold to other traders/entities in Singapore.
- c. Third Category: documents concerning the sales of Casa Blanca goods to traders in Malaysia.

50 Mr Tan Jee Liang was not the only person who gave evidence in defence of the Subject Mark. His evidence in the Second Category (i.e. sales to other traders/entities in

⁸ See TJL-SD1 at [9].

Singapore) was corroborated by the evidence of Mr Tan Jee Peng and Mr Subramaniam s/o Sinnathamby. As for the Third Category (i.e. sales to Malaysia), his evidence was corroborated by that of Ms Ho Yeok Sun's SD evidence.

51 The Applicant vigorously challenged many aspects of the Registered Proprietor's evidence during cross-examination, and raised various arguments as to why the evidence did not establish genuine use of the Subject Mark within the relevant period. Some of them merited consideration, whereas others did not. I will deal with the Applicant's objections below to the extent necessary to arrive at a decision.

First Category: order, purchase, and importation under the Subject Mark

52 It is convenient to start by outlining how the Registered Proprietor ordered, purchased and imported goods under the Subject Mark into Singapore. With the exception of the evidence insofar as they related to *importation of goods*, the matters stated in [53] and [54] below were not seriously disputed by the Applicant.

53 Apart from Casa Blanca watches, Mr Tan Jee Liang also dealt in watches bearing trade marks such as Jasnica and Milané. All of the Registered Proprietor's watches (including Casa Blanca watches) were manufactured in Guangzhou, Shenzhen, and Taiwan. Mr Tan Jee Liang identified his watch manufacturers as: (a) Astina Watch & Clock located in Guangzhou City, Guandong, China; (b) Shenzhen Dingxing Watch Co. Ltd located in Shenzhen, China; (c) Waiden International Co., Ltd located in Taipei, Taiwan (R.O.C.); and (d) Hong Sheng Watch Case Factory located in Guangzhou, China.⁹ (Collectively, the "Chinese Manufacturers".)

54 Mr Tan Jee Liang provided documents evidencing the contact details of each of the Chinese Manufacturers. He also provided sample copies of order requests, invoices, and remittance documents.¹⁰ By and large, these documents were in the Chinese language with some words in English scattered about. Unfortunately, no English translations were provided.¹¹ Notwithstanding this defect, the following were reasonably clear:

- a. Whenever the Registered Proprietor required watches, an order would be placed with one of the Chinese Manufacturers.
- b. Each order would contain instructions. These instructions typically contained the following: (i) the number of watches the Registered Proprietor wanted made; (ii) the desired design of the watch as depicted by a photograph or a drawing; (iii) some additional product specifications such as "water resistant", "sapphire", and/or "quartz"; and (iv) the trade mark which the watches were to carry (i.e. whether Casa Blanca, Jasnica or Milané).

⁹ See TJL-SD2 at [8] – [9] and Exhibits TJL-8 and TJL-11.

¹⁰ See TJL-SD2 at Exhibits TJL-8, TJL-9, TJL-10 and TJL-11 respectively. Each exhibit corresponds to one of the four Chinese Manufacturers.

¹¹ Any document which is not in the English language should be translated into English: HMD Practice Circular No. 3/2015 dated 30 June 2015 at Part B.

- c. In the order requests and packing lists, the trade mark Casa Blanca was sometimes abbreviated as “CB” and Milané was sometimes abbreviated as “M”.¹²
- d. In most cases, each watch order would be accompanied with a designated model number. The model number would often be accompanied by a preceding letter: either “L” or “G”, which referred to “Ladies” and “Gents” watches respectively.¹³
- e. After an order was placed for the desired goods, payment would be made to the relevant Chinese Manufacturer. This was done through remittance companies such as Hanshan Money Express Pte Ltd¹⁴ and Zhongguo Remittance Pte Ltd.¹⁵ Although the documents did not contain references to Casa Blanca (and I would have been surprised if they did), the name of the payees (and in certain cases, the telephone contact details) matched the details on the name cards of the Chinese Manufacturers’ representatives provided by Mr Tan Jee Liang.¹⁶
- f. Aside from sourcing for watches (including straps), Mr Tan Jee Liang also placed orders for watch spare parts (e.g. watch faces¹⁷ and case backs). I should add that the case backs typically also bore the (slightly stylised) mark “CB” above the words “Casa Blanca”.¹⁸
- g. As a general observation, Casa Blanca and Milané watches/parts formed the bulk of the orders placed by the Registered Proprietor. (There were scattered references to Jasnica, but they were few and far between.) Typically, Casa Blanca and Milané watches/parts were ordered within *the same order request*.¹⁹ At times, equal numbers of Casa Blanca and Milané watches/parts were ordered.²⁰ At other times, the quantity of Milané watches/parts ordered was greater than for Casa Blanca,²¹ but even then the proportion of Casa Blanca watches/parts was not insignificant: around at least 30%.²²

¹² See TJL-SD2 at Exhibit TJL-8, pp 26, 28, 38, 55 and 56 to cite just some examples.

¹³ See TJL-SD2 at [6].

¹⁴ See for example TJL-SD2 at Exhibit TJL-8, pp 50, 51 and 57, 69, 70, 71.

¹⁵ See for example TJL-SD2 at Exhibit TJL-8, pp 68

¹⁶ See for example TJL-SD2 at Exhibit TJL-8, p 40 where there was a remittance to “Fu Na”. Her name card was in the same exhibit at p 19. Another example: TJL-SD2 at Exhibit TJL-10, p 84, where there was a remittance to “HUANG HUAN HUAN”. Huang’s name card was in the same exhibit at p 81.

¹⁷ See for example TJL-SD2 at Exhibit TJL-8, p 29. The middle of the page contains an order for watch faces for both Milané and Casa Blanca. Orders for watch faces can be seen in some the documents e.g. TJL-SD2 at Exhibit TJL-8, p 30 and Exhibit TJL-11, p 98.

¹⁸ See for example TJL-SD2 at Exhibit TJL-8, pp 26, 27, 28, 30.

¹⁹ See for example TJL-SD2 at Exhibit TJL-8 pp 20 to 34.

²⁰ See for example TJL-SD2 at Exhibit TJL-11 p 93.

²¹ See TJL-SD2 at Exhibit TJL-8, page 29 is an example of an order where the quantity of Milané watches was slightly more than Casa Blanca watches. This was an order request dated 20 February 2012 (which was within the relevant first 5 year time period). The top half of the page contained an illustration of a watch, assigned the model or code number 2447. A total of 300 pieces were ordered, 200 of them Milané and 100 of them Casa Blanca.

²² See footnote above.

55 Having regard to the evidence above, I found that the Registered Proprietor ordered Casa Blanca watches/parts from the Chinese Manufacturers and paid money for them.

Were Casa Blanca watches imported into Singapore?

56 Although the Applicant did not dispute the fact that the Casa Blanca mark had been applied to watches *manufactured* in China,²³ it maintained that the Registered Proprietor had failed to show that these Casa Blanca watches were in fact *imported* into Singapore.²⁴

57 In this connection, it was argued that the Registered Proprietor's numerical product codes²⁵ were not exclusive to Casa Blanca watches and could designate Milané or Jasnica watches as well.²⁶ Accordingly (so the submission went), it was unsafe for me to find that Casa Blanca watches were imported into Singapore.

58 I found the Applicant's submissions in this regard to be obviously unsustainable. The Registered Proprietor may have been importing watches bearing other marks as well, but this did not detract from the main point that it was also importing Casa Blanca watches *at the same time*: see [54(g)] above.

59 More importantly, the documentary evidence showed that Casa Blanca watches were *imported into* Singapore. In particular, there were bills of lading, invoices and related shipping documents which showed the existence of 6 shipments of Casa Blanca watches (and other products) from the Chinese Manufacturers to the Registered Proprietor. These took place during the following time periods: (a) November 2012²⁷; (b) January 2013²⁸; (c) August 2013²⁹; (d) October 2013³⁰; (e) early January 2014³¹; and (f) mid to late January 2014³². (The last two shipments were after the first 5-year period, but they were nonetheless relevant: see [35] above.)

60 It is useful to focus on the evidence relating to the August 2013 shipment into Singapore. The reason I have chosen to discuss this particular shipment is that the links in the chain of documents (from order to payment to delivery) were relatively easy to follow. And, of course, it took place within the relevant period.

- a. The August 2013 shipment was evidenced by three documents. One: A Bill of Lading issued by the shipper of the goods, KS Global Air & Sea Logistics Limited dated 11 August 2013. Two: A tax invoice corresponding to the Bill of Lading. This was also issued by KS Global Air & Sea Logistics Limited and was

²³ See Applicant's Written Submissions at pp 34-35. The point was also acknowledged by Ms Tan during oral argument.

²⁴ And this was emphasised by Ms Tan during oral argument.

²⁵ See for example the watch designs and corresponding number codes in TJL-SD2 at Exhibit TJL-6 and the price list in TJL-SD1 at Exhibit TJL-3

²⁶ See for example TJL-SD2 at Exhibit TJL-11 pp 91, 93, 94 and 96.

²⁷ See TJL-SD2 at Exhibit TJL-8, pp 35 to 37

²⁸ See TJL-SD2 at Exhibit TJL-11, pp 106 to 107

²⁹ See TJL-SD2 at Exhibit TJL-8, pp 41 to 43

³⁰ See TJL-SD2 at Exhibit TJL-8, pp 52 to 53

³¹ See TJL-SD2 at Exhibit TJL-8, pp 58 to 59

³² See TJL-SD2 at Exhibit TJL-8, pp 64 to 65

also dated 11 August 2013. Three: A tax invoice dated 12 August 2013 issued by Century Freight Forwarders (S) Pte Ltd (which made the local delivery), addressed to Yong Yew Trading Co.

- b. Based on the said Bill of Lading, the port of lading (for the goods) was Shekou (in China), and the port of discharge / final destination of the goods was Singapore. The Bill of Lading showed that the goods being shipped were: 3990 pieces of “WATCHES” together with “BOX” (2000 pieces) and “HANDBAG” (1000 pieces). The total weight of the shipment was 550 kg, and came in 26 cartons. The total value of the watches was recorded as being 219,450.00 Yuan (RMB).
- c. All three of the abovementioned documents were addressed to the Registered Proprietor, and the listed business address in the documents matched that of the Registered Proprietor’s place of business: 100, Jalan Sultan #02-28, Sultan Plaza, Singapore.

61 Admittedly, the mark “Casa Blanca” could not be found on the Bill of Lading, or on the invoice issued by KS Global Air & Sea Logistics Limited. It was also not on the invoice issued by Century Freight Forwarders (S) Ltd. How then did I conclude that these were “Casa Blanca” goods? The short answer is that these shipping documents could be linked to other contemporaneous documents that supported my conclusion.³³ In the subparagraphs that follow, I discuss three links.

- a. The first link was to a document that appeared to be a packing list.³⁴ It contained a detailed breakdown – in table form – of the products ordered (e.g. model number, quantity, and so on), together with the corresponding value of the products (in RMB): see TJJ-SD2 at Exhibit TJJ-8, p 44 to 47. Although this document was in Chinese (and was not translated), since it was comprised of numbers, figures and product codes set out in a table, its essential import was not difficult to understand. Importantly, it was dated 31 July 2013, very shortly before the date of the Bill of Lading and corresponding invoice. Critically, it made reference to 3,990 pieces of what appeared to be watches. This was the same number as that of “WATCH” that was listed in the shipper’s invoice. Throughout this packing list, there were references to “CB” and “M”, alongside the number of pieces and product codes. At the end of the document was a summation of the total value of the watches, which was calculated as being 217,178.00 Yuan (RMB). There were other numbers (with descriptions not translated) immediately below, but presumably indicating the amount of tax and other variables, and the grand total was listed as 232,752.46 Yuan (RMB).
- b. The second link was to a series of three remittance slips (also in Chinese), handled by Hanshan Money Express Ltd (these words were in English). They

³³ All of these documents were in TJJ-SD2 at Exhibit TJJ-8.

³⁴ The categories of documents were described in TJJ-SD2 at [9(i)]. There, he mentioned order requests and packing lists. Obviously this document was not an order request because those were made on the Yong Yew Trading Company letterhead, so the only logical conclusion must be that this was a packing list.

were dated 2 August 2013 (for 90,000 RMB), 7 August 2013 (for 90,000 RMB), and 10 August 2013 (for 30,000 RMB): see TJJ-SD2 at Exhibit TJJ-8, p 49 to 51. The amounts remitted totaled up to 210,000 RMB, which roughly corresponded to the value of the 3,990 watches (see sub-paragraph above). Given the value of the monies remitted, and the fact that the dates on which the remittances were made were *after* the packing list date but *prior to* the dates on the shipping documents, the irresistible conclusion was that these payments were made for those 3,990 watches.

- c. The third link was that the remittance payments referenced above were all made to “Fu Na”, from Astina Watch & Clock (see name card exhibited at TJJ-SD2, Exhibit TJJ-8, p 19), one of the Chinese Manufacturers.

62 It is noteworthy that during cross-examination, the Applicant did not directly challenge Mr Tan Jee Liang on the evidence referenced above. Neither did the Applicant cross-examine him on the other 5 shipments showing the importation of Casa Blanca goods into Singapore.

63 Having examined the documents as a whole, I had little difficulty concluding that Casa Blanca watches were being imported into Singapore by the Registered Proprietor throughout (and also after) the relevant 5-year period under consideration.³⁵

Second Category: evidence of sales to other traders/entities in Singapore

64 The above does not dispose of the matter. As the Applicant rightly pointed out, the use of the Subject Mark cannot be simply internal, or token. I still need to consider the further question of whether the Subject Mark was put to genuine use in Singapore. This is where the Registered Proprietor’s second category of documents comes in.

Mr Tan Jee Liang’s evidence

65 It was Mr Tan Jee Liang’s evidence that he had sold his goods bearing the Subject Mark to several local dealers or retailers in Singapore.

66 He named some of them: Tai Wee Watch Co.; Tin Sing Watch; BSD Management & Services; and Niva Time Watch.³⁶ In support, he produced the following: copies of a total number of 56 invoices to these (and other) dealers/entities, dated 2009 to 2014 (see TJJ-SD1 at TJJ-3 pp 17 to 72). Although the words Casa Blanca (or CB) were not listed in each and every one of these 56 invoices, most (but not all) of the number codes in the invoices corresponded to a number code used by the Registered Proprietor to designate the specific model of watch (see price lists in TJJ-SD1 at TJJ-3 pp 15 and 16).

³⁵ Although the Registered Proprietor should have translated the documents, the important points in the evidence could nonetheless be made out.

³⁶ See TJJ-SD1 at [9].

67 The abovementioned invoices also had to be read in light of the following documents provided by Mr Tan Jee Liang:

- a. A photograph of a series of Casa Blanca watches (top view) which showed that the Subject Mark was applied to the face of the relevant watches as well as the accompanying price tags, guarantee cards, and packaging (see TJJ-SD1 at Exhibit TJJ-2, pp 10, 11).
- b. A compilation of photographs of a total of 21 different watches (top and slanted view). These showed the various watch models to which the Subject Mark had been applied, together with the corresponding product codes (see TLJ-SD1 at Exhibit TJJ-2, pp 12, 13). Unfortunately these photographs were not of the best quality and for some of them, the words “Casa Blanca” could not be made out (but for others, they could).
- c. A compilation of photographs of 26 different watches (top and case back view). These photographs were of decent picture quality. They showed the various watch models to which the Subject Mark had been applied, together with the corresponding product codes (see TJJ-SD2 at Exhibit TJJ-6, pp 7 – 14).

68 Several aspects of Mr Tan Jee Liang’s evidence were heavily challenged during cross-examination, and are further addressed below (from at [88] onwards). At this point, all that needs to be said is that although there were some gaps and flaws, Mr Tan Jee Liang’s testimony as a whole stood up to scrutiny.

69 In all, I was satisfied that there was sufficient evidence from Mr Tan Jee Liang *alone* which established that goods bearing the Subject Mark had been not only imported but also sold to other traders/entities *in Singapore*.

70 Even if I am wrong in this regard, when Mr Tan Jee Liang’s evidence was viewed in connection with the evidence of the other individuals who came forth to testify in support of the Registered Proprietor’s case, there was more than sufficient evidence to establish genuine use of the Subject Mark in Singapore within the relevant period.

Mr Tan Jee Peng’s evidence

71 I now move to discuss the evidence of Mr Tan Jee Peng, Director of Niva Time Watch. Niva Time Watch was a watch retailer located at 180 Kitchener Road #01-40 City Square Mall.

72 According to Mr Tan Jee Peng, Niva Time Watch had been dealing in goods bearing the Subject Mark since 2007. In support of this assertion, he produced sample copies of invoices issued by Niva Time Watch to customers between 2009 and 2011. There were 6 invoices in all.³⁷ Each of them was paid for in cash, and the quantity of goods sold was

³⁷ See TJP-SD1 at Exhibit TJP-1, pp 6 – 11. I should add that in the usual case (such as this), a sampling of invoices is sufficient and it is not necessary to provide all of the invoices.

usually small (a few pieces at a time). One invoice was issued in 2009, 3 were issued in 2010, and 2 were issued in 2011.

73 The Applicant chose *not to cross examine* Mr Tan Jee Peng on the abovementioned 6 invoices. As such, they went unchallenged and I could see no reason not to take them at face value. However, in submissions, the Applicant attempted to water down their effect by arguing that it was unclear what items were actually sold.³⁸ The Applicant also heavily criticised the poor quality of the copies of the invoices, which were partly illegible.

74 I was not persuaded that the invoices should not be taken into account as part of the Registered Proprietor's evidence of use.

- a. I agree that the poor legibility of the invoices affected (in certain cases) the description of goods as well as the dates of issue (although the year of issue could, in each case, be made out). But, with the exception of a 2010 invoice (which was almost completely illegible), the handwritten notation "CB" could be seen in the description of goods in each case. It was untenable, I think, to conclude that "CB" referred to anything other than Casa Blanca. (After all, based on the order requests tendered in evidence by Mr Tan Jee Liang, the case backs of Casa Blanca watches bore the mark "CB" above the words "Casa Blanca". Furthermore, "CB" was a natural abbreviation for "Casa Blanca" and this was also consistent with the manner in which it appeared in the order requests.³⁹) Moreover, it was undisputed that Niva Time Watch was a *watch retailer*. There was no evidence that it was dealing in other types of goods. It would logically follow that, more likely than not, the "CB" goods in the invoices were Casa Blanca watches or accessories.
- b. It is true that one cannot really tell whether these invoices were issued to customers in Singapore or not. But when goods are shipped abroad, they are not usually paid for in cash. As such, more likely than not, they were sold to customers in Singapore. Even if I am wrong in this regard, at the very least, the fact that Niva Time Watch had Casa Blanca watches to sell meant that it had obtained them from the Registered Proprietor.

75 Mr Tan Jee Peng also gave evidence of Niva Time Watch's approximate annual turnover in relation to the sale of goods bearing the Subject Mark. They was as follows: (a) S\$2,371.00 in 2009; (b) S\$3,167.00 in 2010; (c) S\$4,629.50 in 2011; (d) S\$2,122.00 in 2012; and (e) S\$1,234.78 in 2013. The sales of Casa Blanca watches could perhaps be described as relatively modest. However, that did not mean that they were not genuine.

76 In his SD, Mr Tan Jee Peng took the opportunity to comment on some of the invoices exhibited in Mr Tan Jee Liang's first SD: see TJL-SD1 at Exhibit TJL-3, pp 48 to 53. The invoices in question were issued by the Registered Proprietor to Niva Time Watch, allegedly in respect of goods bearing the Subject Mark. Mr Tan Jee Peng explained that

³⁸ Applicant's Written Submissions at pp 37 – 39.

³⁹ For an example of packing list with "CB", see TJL-SD2 at Exhibit TJL-8, p 55.

although Niva Time Watch did not generally provide the Registered Proprietor with acknowledgements of receipt for the goods, he was able to confirm that those shipments were indeed received.⁴⁰ To my mind, the fact that he did not acknowledge receipt was not unusual, given the nature of Niva Time Watch's business and the relatively modest quantity of Casa Blanca watches sold.

77 The last aspect of Mr Tan Jee Peng's evidence was a reference to the copies of photographs exhibited in Mr Tan Jee Liang's first SD: see at TJJL-SD1 at Exhibit TJJL-4. He claimed that they were "*taken at the premises of the Niva Time Watch outlet...*".⁴¹ This part of his evidence was challenged and for the reasons set out at [121] to [132] below, I did not take these photographs into account.

78 However, I was satisfied that the rest of Mr Tan Jee Peng's evidence showed that watches bearing the Subject Mark had been sold to Niva Time Watch in Singapore. There was also some evidence that pointed towards Niva Time Watch as having sold watches bearing the Subject Mark to customers in Singapore.

Mr Subramaniam s/o Sinnathamby's evidence

79 Mr Subramaniam s/o Sinnathamby, Sales Manager of BSD Management & Services gave evidence that BSD Management & Services had been purchasing goods bearing the Subject Mark from the Registered Proprietor and selling them to customers since 2013.

80 He furnished 6 invoices by BSD Management Services (the ampersand "&" between Management and Services being omitted).⁴² To my mind, these invoices were of paramount importance to the Registered Proprietor's case because they firmly established that Casa Blanca watches had been sold in Singapore. They are discussed below.

- a. Invoice No. 0020/2013 dated 4 November 2013: This invoice was dated *within* the relevant 5 year period. It was issued to Liu Nam Hong Audio of 1 Park Road #02-25, People's Park Complex, Singapore 059108. Listed within the invoices were the following: 2 pieces of "CASA BLANCA 2428 CBN", 3 pieces of "CASA BLANCA 2428 GOLD", 1 piece of "CASA BLANCE 2466", 2 pieces of "CASA BLANCE 2467" and 1 piece of "CASA BLANCE 2478". I note that the last 3 entries contained a minor typographical error ("BLANCE" instead of "BLANCA") but nothing turned on it. The total sales value of these 9 watches was S\$440.00. The invoice contained a handwritten note stating that it was paid on 3 January 2014, and there was a receipt stamp from Liu Nam Hong Audio.
- b. Invoice No. 022/2013 dated 15 November 2013: This invoice was dated *within* the relevant 5 year period. It was issued to L KG Fone Foto Electronics of 150 Orchard Road #01-58 Orchard Plaza Singapore 238841. Listed within the invoice was an entry for some Seiko watches (which showed that they were

⁴⁰ See TJP-SD at [8]

⁴¹ See TJP-SD at [9]

⁴² See SS-SD at Exhibit SS-1, pp 5 – 10.

dealing in not only Casa Blanca watches but other watches as well), as well as 3 “CASA BLANCA 2428” watches. A handwritten note indicated the invoice as paid on 3 January 2014, and on the bottom left I can make out a slightly faded receipt stamp from L KG Fone Foto Electronics and a signature and date: 18 November 2013.

- c. Invoice No. 0023/2013 dated 18 November 2013: This invoice was dated *within* the relevant 5 year period. It was issued to DFG Camera & IT Centre of 321 Orchard Road #01-01 Orchard Shopping Centre, Singapore 238866. Here, there are other watch brands listed such as Seiko and Citizen, and below that I see a listing for 1 piece of “CASA BLANCA 2467” and 1 piece of “CASA BLANCA 2478”. Here there was also a receipt acknowledgement stamp by DFG Camper & IT centre, and it was signed and dated 20 November 2013.
- d. Invoice No. 0026/2013 dated 6 December 2013: This invoice was dated slightly *after* the relevant 5 year period, but I consider it to be nonetheless relevant for the reasons stated at [35] above. It was issued to Appollo Sellappas Pte Ltd of 153, Dunlop Street / 3 Campbell Lane, Singapore 209467. Here there were 3 entries for “CASA BLANCA WATCH”, but no model or code numbers were given. The quantity of the watches was 12 for the first entry, 9 for the second, and 2 for the third, making a total of 23 watches. There was also a reference to 90 pieces of a “TIME ZONE WATCH”. Although there was no receipt stamp, it was signed as “Received in good order” and dated 6 December 2013.
- e. Invoice No. 0044/2014: There was handwriting over the date which made it unclear whether it was dated 27 January or February 2014, but nothing turns on it. In either case, the date would have been *after* the relevant 5 year period, but prior to the date on which this revocation action was commenced. Nonetheless it would have been relevant for the reasons stated at [35] above. This invoice, like the one in the sub-paragraph above, was issued to Appollo Sellappas Pte Ltd of 153, Dunlop Street / 3 Campbell Lane, Singapore 209467. It recorded the sale of 50 pieces of “CASA BLANCA RLX WATCH”. No model or code numbers were provided. There was a receipt stamp from Appollo Sellappas Pte Ltd and a signature. There was handwriting which indicated that the invoice was paid on 25 March 2014.

81 During cross-examination, the Applicant did not directly challenge Mr Subramaniam s/o Sinnathamby regarding the above invoices. Neither did it apply for an exercise of the Registrar’s powers (under Section 71(a) and (b) TMA) to summon witnesses from the companies named in the abovementioned invoices with a view to receiving their evidence. And so his evidence in this regard went unchallenged.

82 Instead, the Applicant advanced three submissions with a view to casting doubt on the effect of the invoices. First, it argued that BSD Management & Services was *not* in the business of retailing watches because there was evidence that it was engaged in other business activities. Second, it argued that in any event, Liu Nam Hong Audio, L KG Fone

Foto Electronics and DFG Camera & IT Centre were not watch retailers. Third, it argued that the invoices to Appollo Sellappas Pte Ltd were after the relevant 5 year period.

83 However, I was not persuaded by these submissions for the following reasons.

- a. In relation to the first submission, even if BSD Management & Services was engaged in other business activities, the fact remained that the Subject Mark had been put to use, as evidenced by the invoices. (For completeness, although nothing turns on BSD Management & Services' other business activities, I will briefly touch on the issue at [108] to [110] below.)
- b. In relation to the second submission, the fact that BSD Management & Services purchased watches bearing the Subject Mark and resold them to Liu Nam Hong Audio, L KG Fone Foto Electronics and DFG Camera & IT Centre was sufficient to support my finding that it had been put to genuine use. They may well have carried on other types of business such as freight forwarding, audio, electronics and cameras. But the point remains that there was evidence they had purchased Casa Blanca watches originating from the Registered Proprietor. While there may have been no evidence specifically on point, it was reasonable to infer that all of them were reselling the Casa Blanca watches.
- c. As regards the invoices evidencing sales to Appollo Sellappas Pte Ltd, I considered that even though they were dated after the first 5-year period, they were nonetheless relevant: see [80(d)-(e)] and [35] above.

84 To briefly conclude, I found that the invoices tendered by Mr Subramaniam s/o Sinnathamby showed that watches bearing the Subject Mark had been sold *in Singapore*. This was sufficient to establish genuine use of the Subject Mark in question.

The Applicant's challenges to the Registered Proprietor's evidence of use

85 It would not have escaped the reader's notice that the evidence in this case was nothing like what was tendered in *NODOZ* and *Nike v Campomar*. This was not a single transaction type of case. Far from it. Neither was this a *Weir Warman* type of case where the evidence of use was limited to a few emails, a fax, and a record of a meeting in Singapore. No: the evidence in this case was far more than that. Consequently, conclusive or overwhelmingly convincing proof of each and every transaction relied upon (which is required for cases where the alleged evidence of use turned on a single act) was not required.

86 Instead, the ordinary civil standard of proof – that is, a balance of probabilities – was the correct standard to apply. And on that standard, I was convinced that the Registered Proprietor had discharged his burden of showing genuine use of the Subject Mark.

87 Of course, the Applicant did not accept this conclusion. The main theme that ran across its entire case was that the evidence filed in support of the Registered Proprietor's

case was a sham, tampered or fabricated for the purposes of these proceedings. It urged me to disbelieve the Registered Proprietor's evidence. In the paragraphs below, I address the Applicant's main objections to the Registered Proprietor's evidence.

Was Mr Tan Jee Liang's evidence to be disbelieved because of the way he did business?

88 The Applicant made efforts to discredit Mr Tan Jee Liang during cross-examination. Central to this were two documents: CX-2 (a picture of a Patek Philippe watch); and CX-3 (a picture of a Rolex "Day-Date" watch). Both were printouts from the internet.

89 When Mr Agmon first produced CX-2 and sought to question Mr Tan Jee Liang about it, Ms Loh objected on the basis that it was irrelevant. In response, Mr Agmon stated that this document went to the credibility of the witness and argued that tendering the document was allowed under the EA. I considered it to be fair, just and reasonable for the Applicant to be afforded the opportunity to show how the document impacted on the credibility of Mr Tan Jee Liang. As such, I allowed Mr Agmon to proceed.

90 I will not go through the *minutiae* of the cross-examination relating to CX-2. It suffices to say that the essence of Mr Agmon's challenge was that Mr Tan Jee Liang had obtained a picture of a Patek Philippe watch (see TJL-SD2 at Exhibit TJL-8, p 24), crossed out the mark "Patek Philippe", and requested that his manufacturers produce watches in a similar design bearing either Casa Blanca or Milane (instead of Patek Philippe). This was not denied by Mr Tan Jee Liang. Indeed, he agreed that those were his instructions to his Chinese Manufacturers.

91 A similar challenge was also issued by the Applicant (through Mr Agmon) in respect of Rolex watches: hence CX-3. (It should be noted that when CX-3 was tendered, Ms Loh did not raise any objections.) When confronted with CX-3, Mr Tan Jee Liang was slightly evasive. He insisted that there were other watches (apart from Rolex) bearing such a design.

92 In essence, the Applicant was seeking to portray the Registered Proprietor's business as one which sailed close to the wind. (By this I mean that Mr Tan Jee Liang's actions may or may not have come close to infringement of Patek Philippe and Rolex's rights.) But that is not an issue for this tribunal and more importantly, just because that (allegedly) was Mr Tan Jee Liang's business model did not mean that his testimony in these proceedings, which relate to wholly different matters, necessarily lacked credit or ought to be disbelieved or be given less weight.

93 On a proper view, CX-2 and CX-3 (and the related lines of cross-examination) were wholly irrelevant to the issue of whether the Subject Mark had been put to genuine use in Singapore. As a general rule, evidence of a fact which is wholly irrelevant to the proceedings is inadmissible, or even if admissible, is of no weight. So too, here. Although nothing turned on it, if I had to decide the point, I would have found CX-2 and CX-3 (and the related lines of cross-examination) to be irrelevant and hence inadmissible. Even if they were admissible, they would have been accorded no weight.

Was “Casa Blanca” inserted into some of the invoices for the proceedings?

94 It was the Applicant’s case was that the words “Casa Blanca” had been inserted into some of the invoices for the purposes of the proceedings. This argument was made in respect of the invoices in TJJ-SD1 at Exhibit TJJ-3, pp 43, 44, 45, 47, 48 and 62.⁴³ Out of these, Mr Tan Jee Liang was cross-examined on two of them: the invoice on page 47 of the aforementioned exhibit (*viz.* tax invoice no. 7352, issued by the Registered Proprietor to BSD Management & Services) and the invoice on page 48 (*viz.* tax invoice no. 7353). It was put to him that for these invoices, the handwritten words “Casa Blanca” had been inserted sometime *after* they were originally issued. Mr Tan Jee Liang’s response on both occasions was that he was not sure whether those words were added later, and he declined to take a position one way or the other.

95 I am no expert (and none was called to give evidence), but on the face of the matter it appeared clear enough that the words “Casa Blanca” had been added to both these invoices. The handwriting was ostensibly different and the words “Casa Blanca” appeared to have been awkwardly placed. Significantly, the words “Casa Blanca” were more legible (and were perhaps written in different ink) than the original notations on the invoices. (For tax invoice no. 7352, the words below “Casa Blanca” were either “SAPPHIRE”, “SAPPHIRE, GOLD” or “SAPPHIRE, ROSE”. On the left of those words were product codes such as “L 2467 S/S”, “L 2478 S/S” and “G 2428 S/S”. As for tax invoice no. 7353, the original notation was less legible, but the word “SAPPHIRE” could be made out, along with product codes such as “S/S L 2430”, “S/S L 2466” and “S/S L 2467”.)

96 At first blush, my finding that the words “Casa Blanca” were added afterwards would seem damning to the Registered Proprietor’s case. However, that need not necessarily be so. There could have been any number of reasons why those words were added. For instance, it they could have been added by someone (other than the person who prepared the invoice) who wanted to record that these were Casa Blanca watches. But fabrication of evidence? Highly unlikely. In arriving at this view I am mindful of the following points.

- a. First, if one had wanted to falsify or create evidence, one would have had a hard time finding more difficult invoices to alter. Because of lack of space in the square box for the “Description” (of goods), the words “Casa Blanca” had to be inserted in awkwardly. It was too obvious to have been fake. Any average person could have done a better job of “faking it”, so to speak, by choosing invoices where the words “Casa Blanca” were easier to insert. The same could also be said for some of the other invoices in which the words “Casa Blanca” had apparently been inserted. Conversely, there were numerous other invoices where it would have been all too easy to add the words “Casa Blanca” without rousing suspicion (see for example, TJJ-SD1 at Exhibit TJJ-3, p 40 where there was a great deal of space next to the product code to add “Casa Blanca” if one so wished).

⁴³ Applicant’s Written Submissions at p 8.

- b. Second, during cross-examination, Mr Tan Jee Liang gave evidence that he was usually not the person who prepared the invoices. Instead, the invoices were typically handled by one of his staff. For some of them it was a lady named Xin Yan. At other times it was Sai Kiau. This was consistent with the fact that the signatures on the invoices signed “for YONG YEW TRADING CO” were different for different invoices. So then, there would be nothing out of the ordinary for Mr Tan Jee Liang not to know about who added the words “Casa Blanca”. Neither would it be surprising to have the handwriting of different persons on the invoices.

97 To my mind, whether or not the invoices were altered to add the words “Casa Blanca” was as not as important as the next question: Were the goods in question really “Casa Blanca” watches? For if they were, then nothing turned on the addition of the so-called alteration or amendment of the invoices to that effect. And in my judgment, the answer to that question could easily be obtained by looking at the evidence as a whole. The following aspects of the evidence led me to the conclusion, on a balance of probabilities, that they were indeed “Casa Blanca” watches.

- a. The number codes listed in the invoices (both dated 2013) could be found in the Casa Blanca price list for 2008 - 2014 (see TJJ-SD1 at Exhibit TJJ-3, p 15). For instance, in the price list, there were entries for “L 2467 SS”, “L 2478 SS”, “G 2428 SS”, “L 2430 SS”, “L 2466 SS” and “L 2467 SS”. Each of these corresponded to the codes in the invoices.
- b. Cross-references could also be made to the photographs provided by Mr Tan Jee Liang. For instance, a photograph of “L 2467” (and I know from Mr Tan Jee Liang’s evidence that “L” referred to “ladies”) was provided in TJJ-SD2 at Exhibit TJJ-6, p 8. True enough, the picture appears to be that of a ladies’ watch.
- c. All of the Casa Blanca number codes listed in tax invoice no. 7352 (issued to BSD Management & Services) dated 25 October 2013 matched those number code in the invoices issued by BSD Management & Services in 2013. For instance, the invoice to Liu Nam Hong Audio (dated 4 November 2013) listed “CASA BLANCA” code nos. 2428, 2466, 2467 and 2478. These were the exact same numbers in invoice no. 7352.

98 To conclude, I found that the words “Casa Blanca” may have been inserted into some of the invoices after they were originally issued. However, this was immaterial in light of my conclusion that what was listed were *in fact* Casa Blanca watches. I am aware of the counterargument that not every number code in the invoices could be matched to some other part of the overall evidence. But that, to my mind, supported rather than undermined the Registered Proprietor’s case. It was all too elaborate to have been anything but real. If the invoices had been created or doctored for the purposes of these proceedings, one would not have deliberately included that many gaps in the evidence.

Were the transactions genuine, arms-length transactions?

99 Much of the Applicant's case hinged on an elaborate conspiracy theory.

100 This conspiracy theory was essentially that the evidence of sales under the Subject Mark were not genuine, arms-length transactions. The suggestion was that they not *bona fide* in nature and were merely token, for the sole purpose of preserving the rights conferred by the mark. With this conspiracy theory as a sword, the Applicant sought to sever the following key links in the Registered Proprietor's evidence of use in Singapore.

Key Link 1: Niva Time Watch

101 The first key link was between the Registered Proprietor and Niva Time Watch.

102 Two arguments were advanced by the Applicant in relation to the invoices issued by the Registered Proprietor to Niva Time Watch.⁴⁴ One: It was argued that the "*alleged sales to Niva Time Watch have been established in fact to be sales to a Malaysian customer*". Two: In any event, any sales to Niva Time Watch (which were not accepted by the Applicant) were transactions which were internal to the Registered Proprietor's organisation given that Mr Tan Jee Peng and Mr Tan Jee Liang were related by blood, as brothers.

103 The Applicant was right, of course, that *some* of the Registered Proprietor's invoices issued to Niva Time Watch contained a reference to "WELLWIN ENTERPRISE".⁴⁵ It was Mr Tan Jee Liang's oral evidence during cross-examination that Wellwin Enterprise was located in Malaysia and that in such cases, watches were sold to Niva Time Watch which in turn exported them to Wellwin Enterprise in Malaysia. However, this missed the larger point, which was this: Even if I were to leave aside the issue of whether sales to customers in Malaysia equated to genuine use of the Subject Mark *in Singapore*, there was already a genuine transaction *in Singapore* as between the Registered Proprietor and Niva Time Watch. Where one trader (as was the case here) sells goods exclusively to other traders, such sales must necessarily amount to genuine use of the mark in question. Otherwise one would end up with an absurd situation that a trade mark proprietor engaged in "B2B" trade can never establish trade mark use.

104 Furthermore, not all of the invoices issued to Niva Time Watch bore a reference to "WELLWIN ENTERPRISE",⁴⁶ and there is no evidence that *all* of the Casa Blanca watches purchased by Niva Time Watch were exported to Malaysia. (Conversely, there were invoices issued by Niva Time Watch which evidenced the sale of Casa Blanca watches directly to individual customers. As stated above (see [72] and [74(b)]), the fact that the sales were relatively small in quantity and paid for in cash pointed to the sales as being to consumers *in Singapore*.)

⁴⁴ Applicant's Written Submissions at [17], p 52 and see TJL-SD1 at Exhibit TJL-3, pp 48 to 53.

⁴⁵ See TJL-SD1 at Exhibit TJL-3, pp 50, 51, 52, 53.

⁴⁶ See TJL-SD1 at Exhibit TJL-3, pp 48, 49.

105 As regards the Applicant's argument relating to the fact that Mr Tan Jee Peng and Mr Tan Jee Liang are brothers, all that needs to be said is that this did not mean that the sales described above were not genuine.

Key Link 2: BSD Management & Services

106 The second key link was between the Registered Proprietor and BSD Management & Services ("BSD").

107 As detailed above, the Registered Proprietor had sold Casa Blanca watches to BSD, and documentary evidence to this effect was tendered by Mr Tan Jee Liang and Mr Subramaniam s/o Sinnathamby (a sales manager of BSD).⁴⁷

108 During cross-examination, the Applicant challenged Mr Subramaniam s/o Sinnathamby's evidence. In particular, Mr Agmon put it to him that BSD was not in fact a retailer or wholesaler of watches. (The Applicant's case was that BSD was engaged in other types of business such as moneylending.) To that end, the Applicant produced 3 documents during cross-examination with a view to challenging his evidence. They were: CX-7, CX-8, and CX-9. I shall describe them briefly below.

- a. CX-7: This was an ACRA printout of the business profile of BSD, together with some relevant business registration documents. According to the ACRA profile, BSD's principal activities were "FREIGHT FORWARDING, PACKING AND CRATING SERVICES" and "AIR-SEA FREIGHT TRANSPORT AGENCIES". The principal place of business was listed as "320 Serangoon Road #04-51 Serangoon Plaza Singapore 218108".
- b. CX-8: This was a printout from insing.com, an online business directory. The specific entry in question was for "Bsd Moneylender", and the contact address was listed as 1 Sophia Road #08-05 Peace Centre Singapore 228149.
- c. CX-9: This was a series of photographs which, according to Mr Agmon, were taken at Peace Centre, unit #05-28. Among the photographs were two of a green coloured sign which appeared to have been placed on the floor behind some cardboard boxes. It read:

BSD MONEYLENDER
[---]20 SERANGOON ROAD #04-51
[---]JERANGOON PLAZA SPORE 218108

This was the same address as the BSD's place of business listed on its ACRA profile (see CX-7 above).

109 I must say that at certain points, Mr Subramaniam s/o Sinnathamby seemed uncomfortable when discussing moneylending, which he termed as "*the boss' business*".

⁴⁷ See for e.g. the invoice to BSD discussed at [94] above.

(The “boss” in question was one Bhupinder Singh as reflected in the ACRA printout and as identified by him during cross-examination.) However, as far as he was concerned, his main trade (conducted under the auspices of BSD) was “*watches and transport*”. He also explained that BSD had to relocate to Peace Centre as the Serangoon Plaza building was “*going off*” (*i.e.* being demolished).

110 To be fair, the Applicant was extensive and thorough in testing the evidence of Mr Subramaniam s/o Sinnathamby. However, I could see no reason to disbelieve his oral testimony that one of the business activities BSD was engaged in was the sale of watches. And critically, the mere fact that BSD was also engaged in other types of business (e.g. moneylending) did not mean that it was *not* selling Casa Blanca watches. I have dealt with the evidence relating to BSD in detail above.⁴⁸ This evidence was not challenged in cross-examination, and nothing more needs to be said in this regard.

Key Link 3: The Sultan Plaza conspiracy

111 The third link related to Sultan Plaza, which was where the Registered Proprietor’s registered office was located.

112 At this juncture, it is convenient to refer to two documents: CX-4 and CX-5, introduced by the Applicant during cross-examination. Both these documents were integral to the Applicant’s case regarding what was taking place within Sultan Plaza.

113 Document CX-4 was a copy of the “Rules and Regulations of the Sultan Plaza Association”, together with a printout of the Schedule to the Societies Act (Cap. 311) and a copy of the Annual Returns of the Sultan Plaza Association for 2012 and 2016.

- a. During cross-examination, Ms Loh objected to CX-4 on the basis that Mr Tan Jee Liang did not have the time to look at the document. Ms Loh also mentioned that the veracity of the document was unknown. Mr Agmon replied that the Applicant could bring in such a document and that any questions could be left for re-examination. I agreed.
- b. I considered CX-4 (and the related lines of cross-examination) to be relevant and admissible. On the face of it, CX-4 established the following: (i) that the Sultan Plaza Association is in fact a trade association registered with the Registry of Societies; and (ii) that Mr Tan Jee Liang held the position of “ASST ADJUDICATOR” in the association in 2012 and “ASST TRADE AFFAIRS OFFICER” in 2016.
- c. When provided with CX-4, Mr Tan Jee Liang did not seek to contend otherwise. He also agreed that Sultan Plaza Association was not a watch dealer.
- d. However, during re-examination, he clarified that his role in the Sultan Plaza Association was primarily in the area of entertainment. For example, the

⁴⁸ See [79] to [84] above.

members of the association would meet once a year to eat and drink and to organise activities for the Chinese Hungry Ghost Festival. Mr Tan Jee Liang took pains to make clear that his role in the Sultan Plaza Association was not a management role.

114 Document CX-5 was a printout of an ACRA business profile for a sole proprietorship: TIN SING WATCH & PEN COMPANY (“Tin Sing”).

- a. The relevance of Tin Sing to the proceedings was that it was one of the local watch dealers which, according to Mr Tan Jee Liang, had purchased goods bearing the Subject Mark (see TJJ-SD1 at [9] and Exhibit TJJ-3, pp 35 to 40). According to Tin Sing’s ACRA profile, the principal activities of the business were “WHOLESALE OF WATCHES AND CLOCKS” and “RETAIL SALE OF WATCHES AND CLOCKS”. The ACRA printout also revealed that Tin Sing had the same registered business address as the Registered Proprietor: 100 Jalan Sultan #02-28, Sultan Plaza, Singapore 199001. Given the relevance of Tin Sing to the dispute, I considered CX-5 (and the related lines of cross-examination) to be relevant to, and also admissible, in these proceedings.
- b. After he was challenged with CX-5, Mr Tan Jee Liang gave his explanation for why Tin Sing had the same registered address as his (i.e. the Registered Proprietor’s) business. His evidence was that at one point, Tin Sing had used his business address as a temporary registered address although Tin Sing’s “operating address” was elsewhere.

115 I should also briefly mention an exchange that took place during the cross-examination of Mr Tan Jee Liang. Mr Agmon drew Mr Tan Jee Liang’s attention to a tax invoice issued by the Registered Proprietor to an entity known as “ASIANSUN ENTERPRISE PTE LTD” (“Asiansun”): TJJ-SD1 at Exhibit TJJ-3, p 69. I will not repeat the lines of questioning in their entirety, but in summary, Mr Tan Jee Liang’s evidence was: (a) that he had known the people from Asiansun for quite a long time; (b) that Asiansun was not a wholesaler or watch dealer and did not sell watches – instead, they had bought his watches and gifted them to someone; and (c) that Asiansun was a “neighbour” in the Sultan Plaza, located on the same floor as the Registered Proprietor offices.

116 According to the Applicant, the above matters (relating to Tin Sing, the Sultan Plaza Association, and Asiansun) showed that the invoices which recorded transactions between the Registered Proprietor and the businesses located within Sultan Plaza were not genuine sales but a sham. In essence, the Applicant’s case was that there was something highly nefarious going on as amongst the Sultan Plaza businesses, and that the transactions recorded in the invoices were not genuine, arms-length transactions. I was urged to disregard the Applicant’s evidence.

117 With respect, I found the Applicant’s submissions concerning the Sultan Plaza conspiracy to have been greatly overstated. Granted, Mr Tan Jee Liang did state in TJJ-SD1 at [9] that he had used the Subject Mark “*through sales to various wholesalers,*

retailers and other related entities or dealers in Singapore” and at [10] that the invoices exhibited at TJJ-3 were “*sample copies of invoices that were issued to such dealers in Singapore*”. And it was also true that in cross-examination it was conceded that Tin Sing, Asiansun, and the Sultan Plaza Association were not watch dealers or traders. But it was too much of a leap to conclude that there was a larger conspiracy or sham taking place. Moreover, there was to my mind no evidence of some sort of concerted effort by the members of the Sultan Plaza Association to create evidence for the sake of these proceedings.

118 To put matters in perspective, out of the 56 invoices in TJJ-SD1 at Exhibit TJJ-3, there were only 6 invoices issued to Tin Sing, 1 issued to Asiansun and 1 issued to the Sultan Plaza Association. Even if I disregarded all of those invoices which were allegedly “infected” with the Applicant’s Sultan Plaza conspiracy theory, what remained – having regard also to all of the other evidence – was more than sufficient to establish genuine use of the Subject Mark for watches.

119 There is a principle in philosophy – Ockham’s razor – which provides guidance in these sorts of cases. And it posits that if there are multiple explanations for an occurrence, the simplest explanation is usually to be preferred. Here, the most likely explanation was that the invoices to Asiansun and the Sultan Plaza Association were lumped together with the other invoices to watch dealers out of convenience. In all likelihood, Mr Tan Jee Liang never meant to claim that Asiansun and Sultan Plaza Association were in the watch trade. After all, it was not even necessary to prove that fact in order to show use of the Subject Mark in Singapore. All he needed to show was that the relevant goods bearing the Subject Mark had been sold to customers in Singapore.

120 As regards Tin Sing, the fact that it had once shared premises with the Registered Proprietor was immaterial. It was a separate business altogether. I could not, on that mere basis alone, reasonably conclude that these were internal or sham sales. It is common knowledge that there are many businesses which share office space for one reason or another. That does not mean that they cannot legitimately trade with each other.

Were the photographs in TJJ-SD1 at Exhibit TJJ-4 created for the proceedings?

121 I come now to the one aspect of this case that was somewhat troubling.

122 TJJ-SD1 at Exhibit TJJ-4 contained copies of photographs which ostensibly showed a window display of Niva Time Watch’s shop, with a display of what appeared to be Casa Blanca watches. The rear of the display case also bore the words “Casa Blanca”. Mr Tan Jee Liang did not state in his SD, however, when the photographs were taken. All he said (see TJJ-SD1 at [11]) was that these were taken at Niva Time Watch’s business premises.

123 In Mr Tan Jee Peng’s SD, he made two statements about the Exhibit TJJ-4 photographs. First, he confirmed that these were taken at the Niva Time Watch premises. Second, he gave evidence that since 2009, watches bearing the Subject Mark had “*always been on display*” at the premises of Niva Time Watch. (See TJP-SD at [9].)

124 During cross-examination, the Applicant challenged Mr Tan Jee Peng's above statements through document CX-6.

- a. Document CX-6 was a printout from Niva Time's Facebook page showing a Facebook post, dated 22 September 2013. The key portion of the printout was a photograph of the interior of Niva Time's shop. Captured in the photograph were a series of locked display cases, each containing watches. Although a viewer would not be able to see the watches in detail (since the photograph was not taken close up), each case appeared to contain a poster or signage of sorts advertising the watches in that case as originating from a certain maker. The trade marks Seiko, Skagen, Fossil and Anne Klein could be made out in the photograph. Of particular interest to the present dispute is the Anne Klein display case, where the mark "AK" could be seen in large font, together with "ANNE KLEIN" in much smaller font below.
- b. I shall now briefly recount the series of questions asked by Mr Agmon and answers given by Mr Tan Jee Peng prior to the production of CX-6. When asked about the photographs in Exhibit TJL-4, Mr Tan Jee Peng's oral testimony was that they were always displayed at his shop (i.e. Niva Time Watch). When asked when the photographs were taken, he said that he could not remember. When asked who took them, he said that his brother (i.e. Mr Tan Jee Liang) took them. When asked whether he arranged the window display, he replied yes. When asked whether the words "Casa Blanca" was always there, he replied that it was originally an Anne Klein cardboard backing and that he placed the words "Casa Blanca" over the words "ANNE KLEIN" and that he had done so in 2011. When asked whether he did that for the proceedings, he denied it.
- c. It was at this point that Mr Agmon produced CX-6, which apparently showed that in September 2013, the display was an "ANNE KLEIN" display which did *not* have the words "Casa Blanca" placed over it. Mr Agmon called out the contradiction in Mr Tan Jee Peng's evidence. Not surprisingly, Tan Jee Peng was could not provide any ready answer. And so when Mr Agmon asked him again whether the "Casa Blanca" sticker could have been put there in 2014, he conceded that it was possible.
- d. It was clear to my mind that CX-6 (and the related lines of cross-examination) was relevant to the proceedings and I could see no reason why it should be inadmissible.

125 Mr Tan Jee Liang was also cross-examined regarding the photographs in Exhibit TJL-4, although he was not challenged with CX-6. He was asked whether he took the photographs, to which he said yes. When asked when the photographs were taken, he had some difficulty answering. After some meandering, interspersed with assertions that he was not sure, he conceded that they could have been taken around 2014.

126 The Applicant submitted that the net effect of the above was that the photographs in Exhibit TJJL-4 showed a staged display of Casa Blanca watches which was fabricated for the proceedings, taken in 2014, and placed in evidence for the purposes of misleading this tribunal.⁴⁹ In its submission this cut against the credibility of Mr Tan Jee Liang and Mr Tan Jee Peng, and called into question the rest of the Registered Proprietor's evidence. Further, if there was really evidence of use (so the argument went), why would it have been necessary to fabricate evidence in this manner?

127 While I agree that the photographs in TJJL-4 gave rise to a great deal of unanswered questions, it was not so clear that the display cabinet of Casa Blanca watches was put together for the purposes of deceiving this tribunal. Consequently, I make no finding in this regard. After all, there was other evidence that showed that Niva Time Watch had in fact sold Casa Blanca watches.

128 Speaking hypothetically, if those photographs had been the *only* evidence of use that the Registered Proprietor had been able to adduce in evidence, I might have been persuaded to come to a different view. But in this case the evidence of use (leaving aside these photographs) was substantial. Thus, the rhetorical question posed by the Applicant could be turned on its head: since there was other evidence of use, why would it have been necessary for the Registered Proprietor to take the huge risk of fabricating evidence which was not likely to be determinative anyway?

129 In my judgment, the correct approach is to simply accord these photographs no weight and to disregard them from the overall assessment. Just because I accord the photographs in Exhibit TJJL-4 no weight does not mean that the rest of the Registered Proprietor's evidence should thereby also be rejected. In any case, while the Applicant did succeed in casting doubt on this part of the evidence, it was only a very minor part of the overall evidence.

130 In its Basic Rebuttal Submissions, the Applicant referred me to *Jagatheesan s/o Krishnasamy v PP* [2016] 4 SLR 45, which in turn referred to a number of cases. I shall mention two.

- a. The first was *PP v Yeoh Choon Poh* [1994] 2 SLR 867, which was cited for the proposition that “*a witness may even lie but need not be completely distrusted if he lies not out of guilt but because of a misguided desire to bolster his case, or in other cases, to prevent shameful information from being revealed*”, and that in such cases “*the court is not obliged, as a matter of course, to dismiss the credibility of the witness and reject his entire testimony out of hand*”. Rather, when “*Confronted with such a witness, the court should, naturally, be more circumspect than ever when scrutinising the rest of his testimony with care. But a court is perfectly entitled, notwithstanding minor inconsistencies, to hold that a particular witness is in fact a witness of truth and to accept the other aspects of his testimony which are untainted by discrepancies*”.

⁴⁹ Applicant's Written Submissions at pp 30 – 31.

- b. This may be contrasted with the second case, *Nandia v Emperor* AIR 1940 Lahore 457, which was cited for the proposition that not all discrepancies could be ignored. Where “*the inconsistency affects a material part of the witness’ testimony, it may well be safer not to rely on that witness’ evidence*”, for “*to pull a stone out of an arch: the whole fabric must fall to the ground*”.

Naturally, it was the Applicant’s submission that the instant case was more akin to the second case than the first.

131 I respectfully disagree with the Applicant on this point. Although I have not made such a finding, I accept that it was arguable that the Registered Proprietor’s inclusion of these photographs may have been attributed to a misguided desire to bolster his case or to prevent shameful information from being revealed.

132 But whatever the case may have been, nothing turned on it. As touched on above, the evidence relating to TJJL-4 was only a small portion of the overall evidence of use. It was not a material part of the testimony of Mr Tan Jee Liang and/or Mr Tan Jee Peng. I have been careful to scrutinise the rest of the evidence with care, and it is more than sufficient to establish that there has been genuine use of the Subject Mark in Singapore.

Third Category: sales of Casa Blanca goods to traders in Malaysia

133 The final category of evidence concerned sales of Casa Blanca watches to watch traders in Malaysia.

134 Who were these watch traders in Malaysia? For one, there was Wellwin Enterprise, which was purchasing Casa Blanca watches exported by Niva Time Watch: see [103] to [104] above.

135 Apart from Wellwin, there was also the evidence of one Ms Ho Yeok Sun, director of Nokato (M) Sdn Bhd (“Nokato”), formerly known as Sunny Way Enterprise, in Malaysia. Her evidence was that Nokato had been purchasing Casa Blanca goods from the Registered Proprietor and selling them to customers (presumably in Malaysia): see HYS-SD at [5]. Ms Ho also produced 20 copies of invoices dated between 2008 and 2014 recording such sales: see HYS-SD at Exhibit HYS-1. However, about a third of them were of poor quality and it was difficult to discern the details. The remainder were reasonably legible, and for these I could see numerous references to “Casa Blanca” in the invoices. (In this connection, Mr Tan Jee Liang had also produced 26 invoices issued by Yong Yew Trading Company to Nokato – or “Sunny Way” for the earlier invoices – dated 2009 to 2014. These were at TJJL-SD1 at Exhibit TJJL-5, pp 75 to 101. In addition, there were also 2 shipping documents issued by TNT dated 12 October 2012 and 20 August 2013 evidencing shipments of “WRIST WATCHES” from Yong Yew Trading Company in Singapore to Nokato in Malaysia: see TJJL-SD1 at Exhibit TJJL-5, pp 102 and 103.)

136 As mentioned above, the Applicant did not seek to cross-examine Ms Ho Yeok Sun. Instead, it argued that Nokato’s evidence was irrelevant to these proceedings because such

sales were outside of Singapore and therefore did not count towards establishing genuine use of the Subject Mark in Singapore. In principle, the Applicant's submission on this point must be correct insofar as it concerned the sales from Nokato to consumers in Malaysia.

137 However, it was not so clear that the export of Casa Blanca watches from the Registered Proprietor in Singapore to Nokato in Malaysia could not amount to use of the Subject Mark in Singapore. One way of framing the question is as follows: What is the nexus between Singapore and the evidence of use required to defeat a non-use revocation action? Must the evidence show that the mark was applied to goods that were advertised and sold to consumers in Singapore? Or is it sufficient to show evidence of *entrepôt* trade conducted under the mark in question, never mind the issue of whether the goods were exposed to consumers in Singapore?

What is the Nexus of Use to Singapore that is required for the purposes of defeating an application for revocation on the basis of non-use?

138 To be clear, this is not an issue that I am required to decide in light of my conclusion that the evidence of use relating to Singapore was sufficient to establish genuine use of the Subject Mark. Nevertheless, it is worthwhile setting out the arguments on both sides.

139 The starting point of the discussion takes place against the backdrop of two statutory provisions: Section 22(2) TMA and Section 27(4) TMA.

140 Section 22(2) TMA provides as follows:

“(2) For the purposes of subsection (1), use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in Singapore includes applying the trade mark to goods or to materials for the labelling or packaging of goods in Singapore solely for export purposes.”

(emphasis added)

141 In *Ng-Loy Wee Loon, Law of Intellectual Property of Singapore* (Second Ed.) at [25.3.20], which was cited to me by the Applicant, the learned author explained the provision in the following way: “*This issue [of whether there has been use of a mark in Singapore] also arises where the only use of the trade mark is in relation to goods which are made in Singapore but destined for foreign markets. These trademarked goods will never reach the end-users or the retail market in Singapore. This scenario is dealt with in s 22(2): it makes it clear that application of the trade mark to these goods or its packaging constitutes use of the trade mark in Singapore*”.

142 The Applicant argued that the fact that Section 22(2) TMA did not expressly include a pure *entrepôt* trade scenario (i.e. where (a) the goods are not manufactured here; (b) the mark is applied to the goods or their packaging abroad; and (c) the goods are not sold to traders or end-consumers in Singapore) meant that such *entrepôt* trade use did not amount

to genuine use for the purposes of Section 22(1)(a) and/or (b) TMA. Otherwise, so the argument goes, why did Parliament not expressly provide for such a situation?

143 Although this argument is certainly tenable, it is unclear whether it is correct. After all, Section 22(2) TMA was drafted in a non-exhaustive fashion. The word “*includes*” in “*use in Singapore includes...*” cannot be ignored. It suggests that the categories of genuine use are not closed, and that Parliament had never meant to close them.

144 Section 22(2) is not the only provision which touches upon “use” of a trade mark in Singapore. The concept of “use” of a sign is also found in Section 27(4) TMA (which relates to trade mark infringement). It provides as follows:

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

(Note: Section 28 sets out the acts which do not amount to infringement; Section 29 relates to exhaustion of rights; and Section 31 concerns actions (and remedies) for infringement.)

145 In *Bluestar Exchange (Singapore) Pte Ltd v Teoh Keng Long and ors (trading as Polykwan Trading Co)* [2003] 4 SLR(R) 92 (HC) (“*Bluestar*”), an issue arose as to whether swimwear bearing a label with the words “BLUE STAR” above a smaller star device constituted genuine use of that sign in Singapore for the purposes of Section 22 TMA. Although such swimwear had been imported into Singapore, it was then re-exported to Brunei for sale. In other words, it was a pure *entrepôt* trade scenario. Counsel for the respondent (registered proprietor) in that case relied on Section 27(4)(c) TMA and a passage from *Kerly’s Law of Trade Marks and Trade Names* (13th Ed) at p 281 where it was opined that although the UK equivalent of our Section 27(4) was expressed as being for the purposes of that provision only, the types of use set out therein (which included Section 27(4)(c) TMA were nonetheless equally applicable when considering the question of use under the UK equivalent of our Section 22. Notably, counsel for the applicant did not contest this submission. (See *Bluestar* at [51] – [53].)

146 In *Nike International Ltd v Campomar SL* [2005] 4 SLR(R) 76 (HC) (“*Nike HC*”), an argument was made that the “*mere import and export of goods, without the additional tasks of labelling or packaging, could not amount to “genuine use in the course of trade”* for the purposes of Section 22 TMA. Tay Yong Kwang J (as he then was) disagreed with this submission, stating that he saw “*no reason why import and export of goods bearing a*

trade mark should not qualify as genuine use of that mark if it is true entrepot trade and not a case of the proprietor importing and then exporting back to himself or his associates to create the façade of trade". Once again, reference was made to Section 27(4)(c) TMA and while it was recognised that that provision applied only to the infringement provisions, that fact did not alter the judge's conclusions. (*Nike HC* at [59].) It should also be noted that while the Court of Appeal eventually reversed the decision on a finding of fact, the proposition that true *entrepôt* trade may constitute use of the mark for the purposes of Section 22 was left intact.

147 *Nike HC* was also cited in *Ng-Loy Wee Loon, Law of Intellectual Property of Singapore* (Second Ed.) at [25.3.21] and *Tan Tee Jim, S.C., Law of Trade Marks and Passing Off in Singapore* (Sweet & Maxwell, Third Edition) at [9.072] for this same proposition. (I should also mention that the latter goes on to say that "*it is suggested that the transshipment of goods bearing a trade mark through Singapore would not constitute genuine use of the mark in Singapore. This is because the transshipment is inherently not intended to create or preserve a market share for the goods in Singapore*".)

148 To summarise: the weight of authority appears to be against the position advanced by the Applicant. However, it is also fair to say that different considerations underpin different provisions in the TMA and the omission of a pure *entrepôt* trade scenario from Section 22(2) TMA may well have been intentional. Notably, this argument was never run in *Bluestar* and the arguments in *Nike HC* on this point were not recorded in full. To play devil's advocate: How different really is *entrepôt* trade from transshipment cases? In both situations the mark in question is never exposed to the trade and/or consumers in Singapore.

149 As briefly alluded to at [39] to [40] above, the High Court in *Weir Warman* set out some policy reasons why unused marks must be removed from the register. These merit reproduction in full:

"42 Finally, the register is also meant to notify rival traders dealing in similar products of the rights over particular trade marks possessed by the registered proprietor. As such, it is also important that these registered marks be *in actual use* or be *bona fide intended to be used* by the registered proprietors; any contrary approach would result in unjust monopolies where devious registered proprietors could prevent the use of a mark by others despite not having any intention to use it, *simply* by reason of prior registration. Indeed, such "squatting" situations are addressed by most modern trade mark registration statutes, which require that the registrant has at least a *bona fide* intention to use a mark before registering it (see, *ie*, s 5(2) of the TMA; s 32(3) of the English Trade Marks Act 1994). Kitchin *et al*, *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 14th Ed, 2005) at p 237 helpfully illustrates this by reference to three instances of hijacking a mark or spoiling a competitor's plans that suggest bad faith:

- (1) The applicant has no *bona fide* intention to use the trade mark at all, but wishes to prevent a competitor from using the, or a similar, mark;

(2) The applicant has no present or fixed intention to use the mark, but wishes to stockpile the mark for use at some indeterminate time in the future; and

(3) The applicant becomes aware that someone else plans to use the mark, and files a pre-emptive application with a view to selling it.

...

99 I turn now to examine whether the use by the defendant of the “Warman” mark in respect of Class 7 goods (see [24]–[30] above) constitutes genuine use that would suffice to prevent the revocation of the mark under s 22(1) of the TMA. It must be noted at the outset that this requirement of “genuine use” is closely intertwined with the function of a trade mark and the purpose of registration (see [39]–[44] above). A trade mark serves to indicate the source of the goods to which it is affixed and registration facilitates and protects this function of the trade mark. There must be genuine use of the trade mark before its function is served and protection by registration is justified. Further, as the register also serves as a notice to rival traders of trade marks that were already in use, to allow a mark that is not bona fide in use to remain on the register would be deceptive and could permit the registered proprietor to unfairly hijack or usurp a mark and/or monopolise it to the exclusion of other legitimate users. These considerations underpinning the need for “genuine use” of a registered trade mark must be borne in mind when assessing an application for revocation.”

150 Where is the justification for the continuation of the legal monopoly over the use of a trade mark where the only use of a mark is in *entrepôt* trade? The present position appears to be not entirely satisfactory. Guidance and clarity from the courts in a future case would be most welcome.

151 In closing, the answer as to the requisite nexus to Singapore for the purposes of establishing genuine use is an important one. As the world grows increasingly more interconnected (e.g. through the movement of people for work, education, tourism and immigration), and especially with the rise of e-commerce in all its myriad strands, these issues will only keep coming back.⁵⁰

Conclusion

152 Having considered all the pleadings, evidence and submissions before me, I find that the Subject Mark was put to genuine use within (as well as after) the relevant period under

⁵⁰ For completeness, I should add that the issue of what constitutes “use” of a trade mark is not confined to “use” for the purposes of resisting an application to revoke a trade mark for non-use, or “use” of a sign for ascertaining whether there has been trade mark infringement. Integral to Sections 7(2) and 23(2) TMA is the concept of acquired distinctiveness through “*use which has been made of [the mark]*”. Trade mark use is also relevant to the assessment of whether a trade mark is well known in Singapore under Section 2(7)(b)(i) TMA, which in turn impacts on the inquiry (for actions based on an earlier well known trade mark) under Sections 8(4) and/or 55 TMA. These are just some, among several, examples in the TMA where “use” of a trade mark is mentioned.

consideration, and in respect of the goods for which it is registered. (I note that there was no suggestion by the Applicant that the Subject Mark was only used in relation to some but not all of the goods.) Consequently, the action for non-use revocation fails.

153 As regards costs, I note that at least part of the cross-examination was necessitated by various statements made by the Witnesses in their respective SDs. As such, the Registered Proprietor should not be entitled to full costs for that part of the proceedings. Having regard to all of the circumstances and the submissions on costs by counsel, I award the Registered Proprietor 75% of its costs, to be taxed if not agreed.

Date of issue: 4 August 2017