

LAU MEE KING

... Plaintiff

(Trading under the business name of HUI HUANG ENTERPRISE)

AND

AMPUAN HAJAH ROHANI AMPUAN HAJI YUSOF

... Defendant

(Trading under the business name of UMMI TRADING COMPANY)

**(Intermediate Court of Brunei Darussalam)
(Civil Suit No. 33 of 2020)**

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

Date of Sentence: 12 September 2026

Headnote: Damages — Assessment of damages — Unauthorised resale of products outside an authorised distribution channel — Sufficiency of evidential basis for heads of loss advanced by way of supplementary expert exhibit (J1) — Confinement of loss to period of defendant's market presence — Apportionment between defendant's conduct and COVID-19 as concurrent causes — Pre-judgment interest — Indemnity costs.

Lt. Col (R) Hj Harif bin Hj Ibrahim & Nur Khairunnisa binti Hj Hanipiah (Lt Col (Rtd) Harif Ibrahim Advocates and Solicitors) for the Plaintiff.

Mr. Lim Rui and Ms. Navrita Kaur (Messrs Raed Lim Advocates and Solicitors) for Defendant.

Cases cited:

Lee Ah Chor v Southern Bank Bhd [1991] 1 MLJ 428

KEP Mohamed Ali v KEP Mohamed Ismail [1981] 2 MLJ 10

Farrell v Secretary of State for Defence [1980] 1 WLR 172

Biggin & Co Ltd v Permanite Ltd [1951] 1 KB 422

Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd [2008] 2 SLR(R) 623

Aerospace Publishing Ltd v Thames Water Utilities Ltd (2007) EWCA Civ 3

JUDGMENT ON DAMAGES

Pg Hjh Norismayanti, Judge:

A. Introduction

1. This judgment concerns the assessment of damages consequent upon the Court's earlier finding on liability in this matter, delivered on 25th February 2026 ("the Liability Judgment"). In the Liability Judgment, the Court found the Defendant liable for unlawful conduct in purchasing and reselling YOU.C1000 beverages that were subject to express territorial restrictions and had been introduced into Brunei Darussalam through an unauthorised supply chain, thereby causing loss and damage to the Plaintiff as the sole and exclusive authorised distributor of those products in Brunei. The Plaintiff's separate claim in unjust enrichment was dismissed.
2. On the question of damages, the Court found that the Plaintiff's then-claimed figure of BND\$205,934.40 could not be accepted as an accurate or reliable measure of the Plaintiff's loss. That figure was derived from unaudited internal sales reports, included expenditure the Plaintiff was already contractually obliged to incur under its Distributorship Agreement with PT Djojonegoro, and was substantially composed of the shortfall between the Plaintiff's actual sales and its own internal sales targets, a methodology the Court declined to accept as a basis for recoverable loss. The Court further found that the claim, as advanced, had not been shown to be causally connected to the specific scale of the Defendant's conduct, and that a claim exceeding BND\$200,000.00 arising from the Defendant's resale of 220 cartons at a profit of BND\$761.25 was, in its then form, too remote to be recoverable in full.
3. The Court was nevertheless satisfied that the Defendant's conduct had caused the Plaintiff some degree of genuine commercial harm, whether through the undercutting of the Plaintiff's pricing, the erosion of consumer confidence in the authorised distribution channel, or the broader diminution of the value of the exclusivity the Plaintiff had been granted. The Court accordingly held that it was not in a position, on the evidence and methodology then before it, to make a fair assessment of quantum, and reserved the questions of damages, pre-judgment interest, and costs for further hearing, directing the parties to appear before the Court to address those matters.
4. Pursuant to that direction, the Plaintiff filed a Supplementary Affidavit of Joan Hii Sing Ngah ("PW3"), affirmed on 7th May 2026, exhibiting a Statement of Quantum of Damages ("J1") dated March 2026. J1 reorganized the Plaintiff's claim into four specific heads of damage, namely direct loss of profits, price erosion losses, market dilution and brand damage together with remediation

marketing, and operational costs, totalling BND\$219,133.00. The Defendant resists this claim in its entirety, submitting, among other things, that the new heads of damage were not properly before the Court, that J1 does not establish actual loss, and that the Plaintiff has in any event failed to prove causation and quantum to the requisite standard.

5. Both parties filed written submissions on quantum and were heard further by the Court. This judgment sets out the Court's findings on the preliminary objections raised by the Defendant, followed by its assessment of each head of damage claimed, and concludes with its determination on pre-judgment interest and costs.

B. The Defendant's Procedural Objection

6. The Defendant's first objection is that the four heads of damage advanced in J1 were never pleaded in the Statement of Claim and formed no part of the Plaintiff's case at trial, where the claim had instead been advanced on an undifferentiated basis by reference to internal sales benchmarks. The Defendant submits that this constitutes an improper departure from the Plaintiff's pleaded case, and relies on the principle that a party is bound by its pleadings and may not, without amendment, advance an entirely new basis of claim.
7. The Court rejects the arguments that adding these four heads violates that principle. The authorities relied upon by the Defendant are concerned with a party seeking to introduce, after the fact, a new and previously unpleaded basis of liability or cause of action, one that would take the opposing party by surprise as to the case it has to meet. In *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428, the Supreme Court held that a vital issue not raised in the pleadings cannot be permitted to be argued and to succeed. Similarly, in *KEP Mohamed Ali v KEP Mohamed Ismail* [1981] 2 MLJ 10, Raja Azlan Shah CJ (Malaya) observed that one of the objects of modern pleadings is to prevent surprise, and that to condemn a party on a ground of which no material facts have been pleaded may be as great a denial of justice as to condemn him on a ground on which his evidence had been improperly excluded. And in *Farrell v Secretary of State for Defence* [1980] 1 WLR 172, Lord Edmund-Davies reaffirmed that pleadings continue to play an essential role in civil litigation, and that where a party seeks to advance an entirely new case, the proper course is to amend the pleadings.

8. That is not the case here. Liability has already been finally determined in the Liability Judgment, and what remains is confined to the assessment of quantum, a matter this Court itself reserved for further hearing and further evidence. The four heads set out in J1 do not alter the nature of the wrong the Defendant has been found liable for, nor do they introduce any new factual allegation as to how that liability arose. They organise the Plaintiff's claim for compensation into distinct, identifiable categories of loss said to flow from the same unlawful conduct already established. This is properly characterised as particularisation and quantification, not a new cause of action requiring amendment of the pleadings.
9. Furthermore, the Court is satisfied that no real prejudice or unfair surprise has resulted. The Defendant was afforded, and took, the opportunity to respond to each of the four heads individually in its own submissions, engaging with the evidence and figures put forth under each category. If anything, the reorganisation of the Plaintiff's claim has served the interests of both parties: it gives the claim a more coherent structure and evidential basis than the complex benchmark figure previously advanced and rejected in the Liability Judgment, while giving the Defendant a clearer and more defined scope of the case it must meet. The Court will accordingly proceed to assess the Plaintiff's claim by reference to the four heads set out in J1. This does not, however, relieve the Plaintiff of its burden of establishing, in respect of each head, that the loss claimed was actually suffered, was caused by the Defendant's conduct, and is not too remote to be recoverable.

C. The Timing and Reliability of J1.

10. The Defendant separately takes issue with the fact that J1 was only prepared after delivery of the Judgment, and after the Court had reserved the question of quantum, characterising this as the Plaintiff having "a second bite at the cherry." The Defendant further points to the change in methodology between the benchmark-based approach relied upon at trial and the four-head structure now adopted in J1, and to PW3's concession in cross-examination that J1's statement that it was prepared on the basis of "audited sales reports" was inaccurate, the underlying reports being in fact unaudited.
11. The Court accepts that these are legitimate matters going to the weight to be attached to J1, but does not accept that they go to its admissibility or provide grounds to exclude it from consideration altogether. The Court's own Judgment expressly reserved the issue of quantum for further hearing and contemplated

that the parties would be heard further on the point; it would be inconsistent with that direction to now hold against the Plaintiff the fact that it produced further evidence in response to it. A change in methodology, of itself, is not improper, particularly where the Court's own findings had already identified specific deficiencies in the benchmark approach previously relied upon. It would be curious for the Plaintiff to be criticised both for the shortcomings the Court itself identified in its original methodology, and for subsequently attempting to address those shortcomings.

12. That said, the Court shares the Defendant's concern regarding the description of the underlying sales reports as "audited" when PW3 accepted this was not accurate. This inconsistency does not render J1 inadmissible, but it is a matter the Court bears in mind in weighing the reliability of the document and the figures it contains, and it informs the degree of scrutiny the Court applies to each head of damage assessed below.

D. Assessment of Damages

13. Having disposed of the Defendant's procedural objections and set out the degree of caution with which J1 is to be approached, the Court turns to consider each of the four heads of damage in turn, starting with direct loss of profits.

(i) Head 1 - Direct Loss of Profits.

14. Under this head, the Plaintiff claims BND\$82,704.00 for direct loss of profits and commercial opportunity, said to flow from the suppression of its ordinary marketing investment during 2020. J1's methodology applies the Plaintiff's historical marketing-to-sales ratio (approximately 9.15%), derived from 2018 and 2019, to the shortfall in 2020 marketing expenditure (a reduction of BND\$57,914.40, or approximately 59.6%, from BND\$97,252.40 in 2019 to BND\$39,338.00 in 2020). Of the resulting figure, 80% is attributed to the Defendant's conduct
15. The Defendant submits that this head is speculative and unsupported. It points out that the Plaintiff has not identified any specific customer lost, order cancelled, or transaction diverted as a result of the Defendant's conduct, and that the claim proceeds entirely on an assumed relationship between marketing expenditure and sales. The Defendant relies on PW5's evidence in cross-examination that the relationship between marketing spend and sales was, in his own words, "very difficult to tell", a "grey area", and "100% uncertain", and that once informed the Defendant's proven conduct involved the resale of only approximately 220 cartons, Lau Kui Hwa (PW5) accepted that

the 80% attribution in J1 could no longer be regarded as "true and fair". This is of particular significance especially when PW5 is a chartered accountant engaged by the Plaintiff to review the methodology adopted in preparing J1. The Defendant further relies on the Plaintiff's own sales figures, which show total net sales rising by approximately 58.37%, from BND\$984,841.00 in 2019 to BND\$1,559,756.00 in 2020, notwithstanding the reduction in marketing spend, a matter said to weaken any causal link between reduced marketing expenditure and lost profit.

16. In reply, the Plaintiff submits that this head does not depend on tracing any individual diverted transaction. Its purpose, rather, is to measure the consequence of the Defendant's conduct in suppressing the Plaintiff's ordinary marketing and commercial development activity during the relevant period. On the rise in overall 2020 sales, the Plaintiff points to evidence of exceptional pandemic-driven demand for vitamin and immunity-related products during that period. On this account, the relevant comparison is not simply between 2019 and 2020 sales, but between the Plaintiff's actual performance and what it would probably have achieved absent the Defendant's unauthorised, lower-priced supply in the market. The Plaintiff further submits that the claim already discounts 20% of the figure to account for COVID-19.

Considerations and findings

17. The Court's assessment of this head begins with the reliability of the base deficit of BND\$103,380.00 itself. PW3 accepted in cross-examination that J1's description of its supporting data as drawn from "audited sales reports" was inaccurate, the said reports were in fact unaudited. PW5, whose role was to review J1's methodology rather than to audit the underlying transactions, went further: he was prepared to vouch for the report only as "approximately 80–90% accurate." The Court does not treat this as a reason to set J1 aside altogether. Quantification of loss need not be mathematically precise, and the Court must do its best on the evidence before it: *Biggin & Co Ltd v Permanite Ltd* [1951] 1 KB 422; *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623. But that principle assists a claimant only where precise proof is genuinely unobtainable and an audit of the Plaintiff's own records was not inherently unobtainable here. It simply was not carried out, notwithstanding J1's representation to the contrary. That calls for a discount to the base figure, separate from the adjustments that follow.

18. Taking PW5's own outer estimate of accuracy as the ceiling, and resolving the resulting imprecision against the Plaintiff as the party bearing the burden of proof, the Court discounts the base deficit by 20%, to BND\$82,704.00. The Court notes that this discount is directed solely at the reliability of the figure as reported. It is not to be mistaken with the separate 80% causal attribution originally advanced in J1 and rejected elsewhere in this judgment; the two percentages arise from entirely different evidential questions and their coincidence is just that, a coincidence.
19. A second and independent difficulty concerns duration. J1 measures the marketing-expenditure deficit across the whole of 2020 and treats it as though it accrued evenly over that year. The evidence, however, is that the Defendant's products were present in the market for a materially shorter period, from August 2019 to March 2020, eight months in total, of which only three months, January to March 2020, fall within the calendar year over which J1's deficit is measured. It would be unreasonable to allow recovery calculated as though the Defendant's conduct persisted through an entire year when, on the evidence, it plainly did not. The Court confines the deficit to 3/12, reflecting the proportion of the relevant year during which the Defendant's products were actually in the market.
20. Within that confined three-month window, the Court does not accept a flat, evidence-detached COVID-19 discount of the kind proposed in J1. The pandemic did not reach Brunei Darussalam until on or about March 2020, the final month of the confined period. January and February 2020 fall wholly outside its reach, and March sits only at its margin. The three-month window in question was, in substance, a pre-pandemic one, and the Court attributes 70% of the resulting figure to the Defendant, reflecting its dominance as the operative cause of loss across that period.
21. The Court observes that 70% sits close to the 80% attribution J1 itself proposed. That proximity does not rehabilitate J1's methodology. J1's 80% was an unexplained round number applied to an entire year without regard to when the Defendant's products were or were not in the market. The 70% reached here follows a narrower and dated exercise: that the confined three-month period was itself almost entirely free of pandemic disruption. Two different questions producing similar-looking numbers does not make them the same exercise.

22. On this basis, the Court's assessment is as follows:

Base deficit (per J1): BND\$103,380.00

Reliability discount (80%): $\text{BND\$103,380.00} \times 80\% = \text{BND\$82,704.00}$

Time-confinement factor: 3 months $\div$ 12 months (January to March 2020, being the portion of the relevant year falling within the Defendant's period of market presence)

Time-confined, reliability-adjusted deficit: $\text{BND\$82,704.00} \times 3/12 = \text{BND\$20,676.00}$

Attribution to the Defendant (70%): $\text{BND\$20,676.00} \times 70\% = \text{BND\$14,473.20}$

The Court accordingly assesses the Plaintiff's recoverable loss under this head at **BND\$14,473.20**.

(ii) Head 2 - Price Erosion.

23. The Plaintiff's second head of claim is for price erosion in the sum of BND\$70,189.00. J1 applies a rate of 5% to the Plaintiff's total 2020 sales revenue of BND\$1,559,756.00, said to represent a conservative estimate of the price differential caused by the Defendant's conduct (the actual differential between the parties' respective selling prices being approximately 17.86%), before further reducing the resulting figure by attributing only 90% of it to the Defendant.

24. The Defendant submits that the 5% rate was arbitrarily selected and is not evidentially derived; no independent market or pricing analysis was placed before the Court, and no evidence was adduced from any customer or distributor to show that price reductions were in fact caused by the Defendant's conduct specifically, as opposed to ordinary market competition. The Defendant further submits that the rate is applied to the whole of the Plaintiff's 2020 turnover, rather than confined to the portion of the Plaintiff's business actually exposed to competition from the Defendant's resale of approximately 220 cartons through 17 retail outlets.

25. In reply, the Plaintiff submits that the 5% figure is a deliberate understatement of the true price differential of 17.86%, and that the further 10% reduction applied on top represents a second, independent layer of conservatism rather than an arbitrary round number. The Plaintiff also relies on the Court's own finding in the Liability Judgment that the Defendant's conduct undercut the Plaintiff's pricing, submitting that this head merely quantifies harm already established.

Consideration and findings

26. The Court's assessment of this head begins with the evidentiary basis for the rate applied. The Defendant's submission that the 5% figure is arbitrary is well founded: no price list, invoice, or independent market analysis evidencing either the asserted 17.86% differential or the 5% rate applied against it has been placed before the Court, notwithstanding J1's reference to "price list exhibits." The 5% rate accordingly stands as an assertion, not a derived figure.
27. Despite this, the Court does not, for that reason, value this head at nil. The Liability Judgment has already found that the Defendant's conduct undercut the Plaintiff's pricing, and the Court must do its best on the material available rather than decline to compensate an established harm for want of precision: *Biggin & Co Ltd v Permanite Ltd* [1951] 1 KB 422; *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623. In the absence of any evidential basis to derive a different figure, the Court treats the Plaintiff's own rate of 5%, being the lower of the two figures advanced in J1, and the ceiling of what the Plaintiff itself has been prepared to claim, as the outer limit of what may properly be attributed to this head. This is not a finding that 5% has been proven; it is the most the Court is prepared to allow the Plaintiff on a record that establishes the character of the harm but not its precise extent.
28. As with Head 1, the Court does not accept that this rate may be applied to the whole of the Plaintiff's 2020 annual revenue. The Defendant's products, on the Court's findings at paragraph 19 above, were present in and competing within the Plaintiff's market for a materially shorter period than twelve months. The Court confines the revenue base accordingly, applying the 5% rate to the Plaintiff's actual recorded sales for the relevant months, rather than to a proportion of the full year's turnover, the former being both more precise and directly supported by the Plaintiff's own sales records.
29. The Court has already found, in relation to Head 1, that the Defendant's products were present in the market from August 2019 to March 2020, and that the three months of that period falling within the 2020 calendar year, January, February, and March, were, in substance, a pre-pandemic period during which the Defendant's conduct was the dominant operative cause of loss. The same finding applies equally here. The Court does not, however, treat price erosion as necessarily aligned with the period the Defendant's products were physically on sale. A price point once undercut may take some time to recover even after the competing supply is withdrawn, and the Court allows a limited further period for that adjustment to occur. In the absence of any evidence establishing

how long such an effect persisted in this case, the Court declines to extend the confinement period beyond one further month, and confines the recoverable period to January to April 2020.

30. The Court adopts, for the reasons already given at paragraph 20 above in relation to Head 1, an attribution of 70% to the Defendant, reflecting the dominance of the Defendant's conduct over COVID-19 as the operative cause of loss during a period that was, on the evidence, substantially unaffected by the pandemic. The Court does not accept the 90% attribution advanced in J1, which, like the 80% originally advanced under Head 1, is unsupported by any stated methodology.

31. On this basis, the Court's assessment is as follows:

Confined revenue base (Jan–Apr 2020, per sales records) = BND\$442,086.00

Price erosion rate (5%) = BND\$442,086.00 × 5% = BND\$22,104.30

Attribution to the Defendant (70%) = BND\$22,104.30 × 70% = BND\$15,473.01

The Court accordingly assesses the Plaintiff's recoverable loss under this head at **BND\$15,473.01**.

(iii) Head 3 - Market Dilution, Brand Damage and Remediation Marketing

32. The Plaintiff's third head of claim is for BND\$54,240.00 in respect of market dilution, brand damage, and remediation marketing, being the increase in the Plaintiff's marketing expenditure between 2020 (BND\$39,338.00) and 2021 (BND\$93,578.00). The Plaintiff attributes the whole of this incremental increase to remediation activity said to have been necessitated by the Defendant's conduct, including digital marketing, new content production, engagement of new talent, and the reinstatement of sponsorship arrangements.

33. The Defendant submits that an increase in marketing expenditure year-on-year is an ordinary feature of business recovery, as PW5 himself accepted, and that the 2021 increase more probably reflects the Plaintiff's normal recovery from the effects of the COVID-19 pandemic than remediation of any harm caused by the Defendant. The Defendant highlights, in particular, that no COVID-19 discount whatsoever is applied under this head, in contrast to the 20% discount conceded by the Plaintiff under the first head, and submits that this inconsistency in the Plaintiff's own methodology undermines the reliability of the figure claimed.

34. In reply, the Plaintiff submits that this head is confined to the incremental increase in expenditure above the 2020 baseline, rather than the whole of the

Plaintiff's 2021 marketing spend, and that it is anchored to actual, contemporaneous expenditure rather than derived ratios or estimates. The Plaintiff submits that this head is properly distinguished from the first, in that it concerns expenditure actually incurred during the recovery period, rather than commercial activity said to have been suppressed during 2020.

Considerations and findings

35. The Court agrees with the Defendant's submission that an increase in marketing expenditure, without more, is not probative of loss caused by the Defendant's conduct. PW5's own evidence, given on behalf of the Plaintiff, was that a year-on-year increase of this kind is an ordinary incident of business. That evidence sits uneasily with J1's characterisation of the entire 2021 increase as remediation of harm specifically attributable to the Defendant, and the Court prefers PW5's own, more measured, evidence on this point over the characterisation advanced in J1.
36. The Court also accepts the Defendant's submission concerning the asymmetry in J1's own methodology. Head 1 applied a discount of 20% to reflect COVID-19 and other non-Defendant factors. This head applies none, notwithstanding that the expenditure in question was incurred in 2021, at a time when the effects of the pandemic on business conditions generally, including on the Plaintiff's own recovery, were plainly still in play. No explanation is offered in J1, or in the Plaintiff's submissions, for why full attribution is appropriate here when partial attribution was accepted as appropriate elsewhere. An unexplained departure of this kind is, in the Court's view, a further indication that the figure claimed under this head was not derived from any consistent or principled methodology, but was calculated so as to maximise recovery under each head considered in isolation.
37. The Court accepts the Plaintiff's submission that this head is properly confined to the incremental increase in expenditure above the 2020 baseline, and that the underlying figures, BND\$39,338.00 for 2020 and BND\$93,578.00 for 2021, are drawn from the same contemporaneous sales and marketing records already relied upon elsewhere in this judgment. The Court does not doubt that this expenditure was, in fact, incurred. The difficulty is not one of documentary support for the figures themselves, but of causal connection between that expenditure and the Defendant's conduct.
38. On that question, the Court finds the Plaintiff's case wanting. The Defendant's products, on the Court's findings under Head 1, were present in and competing within the Plaintiff's market only from August 2019 to March 2020. The

expenditure said to constitute remediation was incurred across the whole of 2021, commencing, at the earliest, many months after the Defendant's conduct had ceased. Neither J1 nor the Plaintiff's submissions explain why expenditure incurred at that remove in time should be attributed to the Defendant, as opposed to the Plaintiff's own ordinary commercial response to the market and competitive conditions prevailing in 2021, including the general recovery from the pandemic that PW5 himself accepted as the more probable explanation.

39. The Court does not consider this to be a case in which the difficulty lies merely in quantifying an established loss with precision, such that a broad-brush or nominal award would be appropriate. The Liability Judgment establishes that the Defendant's conduct caused commercial harm of the kind particularised in the Liability Judgment; it does not establish that the Plaintiff's 2021 marketing decisions, taken as they were after the Defendant had already left the market, were a response to that harm rather than to independent commercial considerations. The burden of proving that causal link lies with the Plaintiff, and on the material before the Court, it has not been discharged.

40. For these reasons, the Court is not satisfied that the Plaintiff has established that any part of the increase in 2021 marketing expenditure was caused by the Defendant's conduct, as distinct from the Plaintiff's own ordinary recovery from the broader effects of the COVID-19 pandemic. The Court accordingly makes no award under this head.

(iv) Head 4 - Operational, Warehousing and Stock-Related Costs.

41. The Plaintiff's fourth and final head of claim is for BND\$12,000.00 in operational, warehousing, and stock-related costs, comprising BND\$4,800.00 for extended stock retention and affected warehouse capacity (calculated at approximately BND\$1,200.00 per month over four months), BND\$3,500.00 for near-expiry and distressed stock, and BND\$3,700.00 for cancelled or abandoned promotional expenditure.

42. The Defendant submits that PW3 accepted in cross-examination that no additional warehouse rental was in fact incurred, the same warehouse having already been rented by the Plaintiff in the ordinary course of its business irrespective of the Defendant's conduct. The Defendant further submits that stock-holding risk is an ordinary commercial risk assumed by any distributor, and that the components of this head were "roughly" estimated rather than calculated by reference to invoices or other documentary records, relying on *Aerospace Publishing Ltd v Thames Water Utilities Ltd* (2007) for the proposition that a claimant must establish that expenditure was incurred

because of the wrongdoing, and not merely as an ordinary cost of carrying on business.

43. In reply, the Plaintiff submits that this head does not claim for any new rental expense, but rather for the commercial consequence of existing warehouse capacity being occupied by affected stock over a limited period, quantified by reference to a conservative monthly rate. The Plaintiff submits that uncertainty as to the precise amount of a genuinely incurred consequence does not mean that the loss should be valued at zero.

Considerations and findings

44. The Court deals with the three components of this head in turn, as each raises a distinct difficulty.
45. As to extended warehouse retention (BND\$4,800.00), the Court accepts the Defendant's submission that this component cannot stand. PW3 accepted in cross-examination that no additional warehouse rental was in fact incurred; the warehouse in question was already rented by the Plaintiff in the ordinary course of its business, irrespective of the Defendant's conduct. The Plaintiff's submission recasts this as a claim not for rental expense but for the commercial consequence of existing capacity being occupied by affected stock. That recasting does not assist the Plaintiff. A claim of that kind requires evidence of what the Plaintiff was thereby prevented from doing with the capacity, and what value was lost as a result — whether by way of alternative stock that could have been held, revenue foregone, or some other measurable consequence. No such evidence has been put before the Court. The figure of BND\$1,200.00 per month over four months is not tied to any invoice, valuation, or comparator; it is, on the material before the Court, an estimate of a consequence that has not itself been shown to exist.
46. As to distressed and near-expiry stock (BND\$3,500.00), the Court is in no better position. No stock count, write-off record, disposal invoice, or other documentary basis has been produced to show that stock was in fact written down or disposed of, still less in what quantity or at what loss. The figure is, on its face, a round estimate rather than a calculated loss. The Court accepts the Defendant's submission that stock-holding risk of this kind is an ordinary commercial risk assumed by any distributor in the Plaintiff's position, and that it is the Plaintiff's burden to show that this particular instance of it was caused by the Defendant's conduct rather than being an incident of ordinary trading. That burden has not been discharged.

47. As to cancelled or abandoned promotional expenditure (BND\$3,700.00), the Court accepts that this component is, in principle, capable of being tied to actual sunk costs, in contrast to the two components already considered. The difficulty here is causal rather than evidential in the narrower sense: nothing before the Court shows that the promotional activity in question was cancelled because of the Defendant's conduct, as opposed to the broader disruption caused by the COVID-19 pandemic during the same period, a period the Court has already found, in relation to Head 1, to have significantly affected the Plaintiff's ordinary commercial activity from March 2020 onward. The same difficulty that proved fatal to Head 3 arises here in miniature: an assertion that expenditure was foregone "because of" the Defendant's conduct is not itself evidence of that causal link.
48. The Court accepts the Defendant's reliance on *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] EWCA Civ 3, for the proposition that a claimant must show that expenditure was incurred because of the wrongdoing complained of, and not merely as an ordinary incident of carrying on business. Each of the three components of this head fails to clear that threshold: the first because no additional expenditure has been shown to have been incurred at all; the second because no evidential basis for the figure claimed has been produced; and the third because, even accepting the expenditure was genuinely incurred, no causal link to the Defendant's conduct has been established.
49. For these reasons, the Court is not satisfied that any part of the sum of BND\$12,000.00 claimed under this head has been proven, whether as to the fact of the expenditure, its quantum, or its causal connection to the Defendant's conduct. The Court accordingly makes no award under this head.

E. Pre-Judgment Interest

50. The Plaintiff submits that interest should be awarded at such rate and for such period as the Court considers just.
51. The Defendant submits that no pre-judgment interest should be awarded given the Plaintiff's failure to establish the damages claimed, or alternatively that any interest awarded should be confined strictly to the amount, if any, proved.
52. In reply, the Plaintiff submits that an assessment of damages at a figure below that claimed does not, of itself, justify depriving the Plaintiff of interest on whatever sum is ultimately found to have been suffered.

Considerations and findings

53. The Court accepts the Defendant's submission that no pre-judgment interest should be awarded in this case. The power to award interest is discretionary, and while it is compensatory rather than punitive in nature, its exercise is not automatic simply because some sum has been found due.
54. The sum found due under this judgment, BND\$29,946.21, represents a small fraction of the BND\$219,133.00 claimed. The greater part of the claim, Heads 3 and 4 in their entirety, and substantial portions of Heads 1 and 2, has not been established, for the reasons given above. In these circumstances, the Court does not consider it appropriate to award interest calculated from a date fixed by reference to the Plaintiff's original claim, when that claim has, in its greater part, not been made out.
55. The Court does not accept that a reduced award is, without more, irrelevant to the exercise of this discretion. Where the sum ultimately proved bears little relationship to the sum claimed, the assumption that a plaintiff has simply been "kept out of" the awarded sum since the accrual of its cause of action becomes correspondingly harder to sustain.
56. The Court accordingly declines to award pre-judgment interest.
57. This is to be distinguished from the Defendant's liability to pay interest on the judgment sum from the date of this judgment until payment, which the Court orders separately and which does not depend on the considerations set out above. The Court orders that interest shall accrue on the total sum awarded under this judgment at the rate of 6% per annum, being the statutory judgment interest rate, from the date of this judgment until payment in full.

F. Costs

58. The Plaintiff has succeeded in this action, but only in a materially reduced sum. The Court has awarded BND\$29,946.21 under Heads 1 and 2, out of a total claim of BND\$219,133.00, and has made no award under Heads 3 and 4. The question of costs must reflect that mixed outcome.
59. The Court accepts that the Plaintiff, having established liability and having recovered a substantive, non-nominal sum, is entitled to its costs of the action, but confined to costs referable to the sums actually recovered under Heads 1 and 2. The Court equally accepts that the Defendant, having successfully resisted Heads 3 and 4 in their entirety, and the greater part of Heads 1 and 2, is entitled to its costs of successfully defending those aspects of the claim.

60. The Defendant has invited the Court to award it costs on an indemnity basis, on the footing that the claim, taken as a whole, was speculative and grossly inflated.

Considerations and findings on indemnity costs

61. The Court declines to award indemnity costs. The usual course is for costs to be awarded on the standard basis; an order for indemnity costs is exceptional, and requires some conduct or circumstance that takes the case out of the ordinary run of litigation. A claim being weak, or ultimately unsuccessful in large part, does not of itself meet that threshold.

62. The Court has already found, in the Liability Judgment, that the Defendant's conduct caused the Plaintiff genuine commercial harm. The Plaintiff has, moreover, succeeded in recovering a substantive sum under two of the four heads advanced. This is not a case in which the claim, taken as a whole, has been shown to be hopeless or advanced without any proper basis; it is a case in which parts of the claim were not proven to the Court's satisfaction, for the evidential and causal reasons set out at length above. That is the ordinary consequence of a claim only partially made out, not conduct taking the case out of the norm.

63. Nor is the Court satisfied that the disparity between the sum claimed and the sum recovered, standing alone, justifies an indemnity order. The authorities treat gross exaggeration as capable of supporting indemnity costs chiefly where a claimant persists with an inflated figure after it has been shown, whether through disclosure or otherwise, to be unsustainable. Exhibit J1 represented the Plaintiff's attempt to improve upon a previously rejected quantum methodology, following an invitation from the Court at the reserved damages hearing to do so; it is not, on this record, the kind of continued pursuit of a known-hopeless figure that the authorities require.

64. The Court accordingly orders that costs be awarded on the standard basis only, apportioned as follows: the Plaintiff shall have its costs of the action, limited to costs referable to the sums recovered under Heads 1 and 2; the Defendant shall have its costs of successfully resisting Heads 3 and 4, and the unproven balance of Heads 1 and 2. In default of agreement between the parties as to apportionment, such costs shall be taxed if not agreed.

G. Conclusion

65. For the reasons given above, the Court orders that the Defendant shall pay to the Plaintiff the sum of BND\$29,946.21, comprising BND\$14,473.20 under Head 1 (direct loss of profits and commercial opportunity) and BND\$15,473.01

under Head 2 (price erosion). No sum is awarded under Heads 3 or 4. The Court declines to award pre-judgment interest. Interest shall instead accrue on the sum awarded at the rate of 6% per annum from the date of this judgment until payment in full. Costs are awarded on the standard basis only, apportioned as set out at paragraph 64 above; indemnity costs are refused.

66.I order accordingly.



PG HJH NORISMAYANTI PG HJ ISMAIL
Judge, Intermediate Court

