

**LAU KEE MING**  
**(Trading under the business name of HUI HUANG ENTERPRISE)**

**... Plaintiff**

**AND**

**AMPUAN HAJAH ROHANI AMPUAN HAJI YUSOF**  
**(Trading under the business name of UMMI TRADING COMPANY)**

**... Defendant**

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

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Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

**Date of Judgment: 25 February, 2026.**

*Headnote: Distributorship — Exclusive distributorship agreement — Territorial restrictions — Parallel importation — Whether products designated for sale in Indonesia only — Whether introduction of territorially restricted goods into Brunei market constitutes unlawful conduct — Whether parallel importation defence available where goods diverted in breach of territorial restrictions.*

*Contract — Privity of contract — Exclusive distributorship agreement — Whether agreement enforceable against third party not privy to contract — Whether defendant bound by obligations under distributorship agreement to which it was not a party.*

*Tort — Liability for unlawful conduct — Causation — Remoteness of damage — Whether defendant's conduct caused loss and damage to plaintiff — Hadley v Baxendale (1854) 9 Exch 341 applied.*

*Damages — Compensatory damages — Quantum — Unaudited sales reports — Internal sales benchmarks — Whether speculative losses recoverable — Whether expenditure on promotional activities and sponsorship properly included in damages claim — Whether court entitled to make reasonable estimate where precise quantification difficult — Unjust enrichment — Claim dismissed.*

Lt. Col (R) Hj Harif bin Hj Ibrahim and Nur Khairunnisa binti Hj Hanipiah (M/S Lt.Col.(Rtd) Harif Ibraim) for the Plaintiff.

Mr Lim Rui and Ms Navrita Kaur (M/S Raed Lim) for the Defendant.

**Cases cited:**

*Guangzhou Light Industry & Trade Group Ltd & Ors v Lintas Superstore Sdn Bhd [2022] 4 MLJ 339*

*Jasmine Food Corp Sdn Bhd v Leong Wai Choon (2016) 11 MLJ 837*

*Barnett v Chelsea & Kensington Hospital Management Committee [1969] 1 QB 428*

*Hadley v Baxendale (1854) 9 Exch 341*

# J U D G M E N T

**Pg Hjh Norismayanti, Judge:**

## **Introduction**

1. The Plaintiff, Hui Huang Enterprise, is a sole proprietorship engaged in the importation, wholesale distribution, and dealership of foods, health food supplements, and related supplies in the Brunei market. The present action arises specifically from the Plaintiff's supply of YOU.C1000 beverages and its assertion of exclusive distributorship rights over said beverages in Brunei and Kota Kinabalu, Sabah, Malaysia.
2. The Defendant, Ummi Trading Company, is likewise a sole proprietorship, the scope of whose business included the manufacture of food and beverages, as well as wholesale and retail trade activities, excluding motor vehicles and motorcycles.
3. Through this action, the Plaintiff seeks relief against the Defendant for the alleged unlawful supply and distribution of YOU.C1000 beverages within Brunei, in purported breach of the Plaintiff's exclusive distribution rights. The Plaintiff further contends that the Defendant's conduct constitutes unlawful conduct and unjust enrichment, thereby causing loss and damage to the Plaintiff.

## **Plaintiff's case**

4. In brief, the Plaintiff states that it entered into an exclusive distributorship agreement with an Indonesian manufacturing company, P.T Djojonegoro YOU.C1000 ("PT.Djojonegoro"), the manufacturer, producer and owner of all exclusive and patent rights pertaining to YOU.C1000 brand products, having its principal place of business in Jakarta. By virtue of this agreement, the Plaintiff contends that no other entity is permitted to sell, distribute, or otherwise deal in the same products in the territories of Brunei and Kota Kinabalu.
5. It is further submitted that in January 2020, the Plaintiff discovered that 17 companies<sup>1</sup> were allegedly engaged in the *unlawful distribution, sale, display, dealing, and supply of YOU.C1000 beverages*<sup>2</sup> at their respective premises in Brunei, without having obtained the exclusive distribution license from PT Djojonegoro for the said products. Pursuant to this discovery, the Plaintiff, through its solicitors, caused letters of demand to all the companies directing them to cease and desist from the sale of the products. The said letters were, however, disregarded or ignored.
6. The Plaintiff further asserts that the Defendant bears responsibility for the unlawful importation, sale, and supply of YOU.C1000 drinks to the aforementioned companies. More particularly, the Plaintiff contends that the Defendant was supplying YOU.C1000 beverages that were produced exclusively for the Indonesian domestic market and not intended for export, without the requisite approval from PT Djojonegoro, the Ministry of Health of Brunei and/or such other relevant governmental authorities of Brunei, as may be applicable.

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<sup>1</sup> Paragraph 5, Plaintiff's Statement of Claim

<sup>2</sup> Ibid.

## Evidence of Katherine Hii (PW1)

### Background and Distributorship Agreement

7. PW1 is the manager of the Plaintiff's business. She confirms that the Plaintiff has held the sole and exclusive distributorship agreement with PT Djojonegoro for the supply YOU.C1000 products in Brunei and Kota Kinabalu, Sabah since January 2000, which agreement has been renewed to date. In support thereof, PW1 refers to the Distributorship Agreement<sup>3</sup> of 2020. PW1 further affirms that the Plaintiff has successfully registered<sup>4</sup> the YOU.C1000 products with the Food Safety and Quality Control Division, Public Health Services, Ministry of Health for importation purposes.

### Marketing Campaigns and Discovery of Parallel Imports

8. PW1 affirms that the Plaintiff has conducted active marketing campaigns throughout Brunei in its capacity as the sole distributor of YOU.C1000 beverages and it is widely known and recognised as the supplier for the said beverages for the past 10 years. In January 2020, PW1 noticed a drastic drop in the supply, sales and corresponding profits attributable to YOU.C1000 products, which led her to instruct one Khalid bin Nasar to investigate the matter.
9. Through that investigation by Khalid, PW1 discovered that the outlets supplied by the Plaintiff were selling YOU.C1000 products bearing the label "*Hanya dijual di Indonesia*" (translates to "*Only for sale in Indonesia*"). Khalid produced to PW1 photographs<sup>5</sup> of the beverages with the said labels taken from the numerous retail outlets. PW1 then contacted PT Djojonegoro, who confirmed that no other authorized distributor or agent had been appointed in Brunei apart from the Plaintiff. PW1 thereafter instructed Khalid to identify the party responsible for the parallel importation to ascertain the pricing at which the products were being sold.

### Discovery of the Defendant Selling Unauthorised Products

10. The investigation revealed that the Defendant had been selling and supplying YOU.C1000 products to local retail shops at a price of BND\$23.00 per carton, which was below the Plaintiff's own selling price. It is the Plaintiff's case that the Defendant has been involved in the unlawful sale of YOU.C1000 products since as early as 2019. In support thereof, PW1 referred to an invoice<sup>6</sup> issued by A-ZZ Trading to the Defendant dated 25 August 2019 and payment voucher<sup>7</sup> dated 27 August 2019 for 220 cartons of YOU.C1000 products. Further reference was made to invoices<sup>8</sup> issued by the Defendant to various retail outlets showing sales of YOU.C1000 beverages by the Defendant. PW1 then instructed Khalid to inform the Defendant to stop its sale of the products; however, the Defendant refused to comply. A formal letter of demand<sup>9</sup> was subsequently issued by the Plaintiff's solicitors, notifying them of impending legal proceedings for the unauthorised supply and sale of the products.

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<sup>3</sup> Page 4-8 of Plaintiff's Bundle of Documents – marked P3.

<sup>4</sup> Page 14 to 14, *ibid.*

<sup>5</sup> Pages 463 to 468 - Plaintiff's Bundle of Documents – P4

<sup>6</sup> Tab 5, page 12 - Defendant's Trial Bundle – D1

<sup>7</sup> Tab 6, page 13 - *ibid.*

<sup>8</sup> Tab 7 to 22, pages 14 to 29, *ibid.*

<sup>9</sup> Tab 2, page 6, *ibid.*

## Regulatory Non-Compliance

11. PW1 testified that products intended for sale in Brunei are required by law to bear labels designating them for the Brunei market, bearing the words "*For sale in Brunei Darussalam only*". Reference was made to the different forms of labelling at pages 9 to 13 of Plaintiff's Bundle of Documents<sup>10</sup>. PW1 further testified that the Plaintiff had been selling the YOU.C1000 beverages at BND\$27.00 per carton with the lowest at BND\$23.80 per carton as compared to the Defendant's selling price of BND\$23.00 per carton. PW1 confirmed that the products supplied by the Defendant were the domestic Indonesian version, not intended for sale outside Indonesia, and they did not carry the requisite approval from the Food and Drugs Administration of Brunei and were accordingly supplied and sold in contravention of the applicable regulatory requirements. It is nonetheless noted that PW1 acknowledged, on the question of illegality, the matter had not been reported to the Customs Department.

## Loss and Damage

12. On the issue of loss and damage, PW1 testified that in its capacity as sole distributor, the Plaintiff had made substantial investments in the marketing and advertising of YOU.C1000 products, including sponsorship and promotional events. PW1 attributed the drop in sales to the Defendant's conduct, noting that retail outlets which had previously sourced their supplies from the Plaintiff had subsequently ceased placing orders with it. The Plaintiff maintained records evidencing these changes, and PW1 concluded, based on such findings and data, that the Defendant's undercutting of the market price at BND\$23.00 per carton was directly responsible for the losses sustained.

## Parallel Importation

13. PW1 acknowledged that parallel importation is not, in itself, unlawful, provided that the products bear the same packaging and that the importer registers the products concerned and obtains the requisite approval from Brunei's Food and Drugs Administration prior to commencing sales. PW1 further stated that a parallel importer would ordinarily require an appointment by the manufacturer and appropriate documentation for submission to the relevant authorities.
14. PW1 confirmed that the manufacturer did not extend the Defendant with any authorisation to sell YOU.C1000 products in Brunei, and regarded the Defendant's conduct as constituting unlawful importation. PW1 further noted that the Plaintiff would not have instituted the present proceedings had the Defendant sold the products at the appropriate price, explaining that pricing is generally determined by the manufacturer, having regard to prevailing currency rates, freight charges, local handling charges and the sugar tax. PW1 agreed, however, that the Defendant was under no obligation to consult the Plaintiff before placing its orders.

## Admissions

15. PW1 admitted that, to date, the Defendant's purported unlawful activities have not been reported to the Royal Customs and Excise Department. PW1 further admitted that it was the shared objective of the Plaintiff and its sister company, Perusahaan Sinaran, to exercise control over the supply of

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<sup>10</sup> Plaintiff's Bundle of Documents – marked P3.

YOU.C1000 products, whilst denying that this extended to pricing control or constituted monopolistic conduct. PW1 maintained that the losses sustained by the Plaintiff were caused by the Defendant's activities.

### **Evidence of Khalid bin Nasar (PW2)**

#### **Background and Distributorship**

16. PW2 is the Marketing Officer of the Plaintiff, responsible for market analysis, product promotion and sales. He confirmed PT Djojonegoro appointed the Plaintiff as the sole and exclusive distributor of YOU.C1000 Isotonic and Vitamin drinks in Brunei and Kota Kinabalu Sabah, Malaysia, referring to the 2020 Distributorship Agreement<sup>11</sup> in support.

#### **Discovery of the Defendant's Activities**

17. PW2 affirmed that in January 2020, he visited several retail shops and discovered that they were selling YOU.C1000 beverages in packaging different from that supplied by the Plaintiff, bearing labels indicating the products were for sale in Indonesia only. On a subsequent visit, he was informed by the retail shops that they were supplied by the Defendant. PW2 noted the products were being sold at BND\$23.00 per cartoon or BND\$1.25 per bottle, and that the retail shops refused to cease such sales, citing higher profit margins compared to ordering from the Plaintiff. In further support, PW2 referred to an invoice<sup>12</sup> issued by the Defendant to Jafariya Super Market in August 2019 and testified that Jafariya Super Market had stopped ordering YOU.C1000 products from the Plaintiff at the same time as the invoice.

#### **Packaging Differences**

18. PW2 affirmed that the YOU.C1000 products found in the retail outlets differed in packaging<sup>13</sup> from those supplied by the Plaintiff, lacking proper labelling identifying the distributor and instead bearing markings indicating they were intended for sale in Indonesia only. PW2 referred to photographs<sup>14</sup> taken during his visits to said outlets in support, contending that these clearly showed the differences. On the basis of his findings, PW2 concluded that the products had been supplied by the Defendant.

#### **Regulatory Requirements**

19. PW2 testified that the labelling requirement applicable to such products are prescribed under Regulation 9 of the Public Health Food Act Regulations, pursuant to which the requisite approval and permit must be obtained before the importation of any products and before the same may be cleared by Customs. PW2 specifically identified the documents setting out the description<sup>15</sup> of the packaging labels issued by the manufacturer.

#### **Decision Not to Report and Brand Protection Concerns**

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<sup>11</sup> Page 4 to 8 - Plaintiff's Bundle of Documents- P3

<sup>12</sup> Tab 10, page 17 – Defendant's Trial Bundle – D1

<sup>13</sup> Paragraph 7(a) - PW2's Affidavit Evidence in Chief – P5.

<sup>14</sup> Pages 463 to 484 – Plaintiff's Bundle of Documents – P4.

<sup>15</sup> Pages 9 to 13, Plaintiff's Bundle of Documents – P3.

20. PW2 clarified that the Plaintiff chose not to report the Defendant to the relevant authorities, as it wished first to ascertain whether the Defendant had sourced the products through legitimate channels. On the loss of Musdin Enterprise as a customer of over 10 years, PW2 conceded that it would be reasonable for Musdin Enterprise to opt for a cheaper alternative, though the Plaintiff remained concerned about the loss and damage caused to its business. The Plaintiff's main concern was the protection of its brand, particularly the risk of contamination, given that source of the Defendant's was unknown to the Plaintiff. It is noted that no evidence was adduced to establish that the products were in any way tarnished or of low quality. Under re-examination, PW2 confirmed that the sale of Indonesian-market products within Brunei would be permissible, provided that the requisite government approval had been obtained and no objection was raised by the relevant authorities.

#### **Evidence of Joan Hii Sing Ngah (PW3)**

21. PW3 is the Plaintiff's Finance Officer responsible for the Plaintiff's finance and accounting matters. In her evidence, PW3 referred to the Plaintiff's Monthly Sales Report<sup>16</sup> which showed a significant decline in sales of YOU.C1000 beverages, falling from BND\$61,067.00 in December 2018 and BND\$80,699.00 in January 2019 to BND\$55,692.00 in December 2019 and BND\$61,067.00 in January 2020. PW3 also confirmed that this decline coincided with the period during which the Defendant had been supplying YOU.C1000 products to local retail shops, as evidenced by the Defendant's invoices to retail shops covering the period August 2019 to March 2020.

#### **Quantification of Losses**

22. PW3 calculated the Plaintiff's losses by reference to sales benchmarks set by the Plaintiff's management for the relevant period as follows: -

| <b>Month</b>  | <b>Sales</b> | <b>Benchmark</b> | <b>Loss</b> |
|---------------|--------------|------------------|-------------|
| August 2019   | \$65,694.00  | \$90,000         | \$24,306.00 |
| December 2019 | \$55,692.00  | \$110,000        | \$54,308.00 |
| January 2020  | \$56,845.00  | \$110,000        | \$53,155.00 |
| February 2020 | \$102,682.00 | \$110,000        | \$7,318.00  |

23. PW3 explained that the benchmark figures were determined by management based on the business's historical performance. If sales exceed their current benchmark, then it would be increased accordingly. PW3 clarified that she did not include the sale figures for September to November 2019 in her calculations as the sales appeared to be at a healthy level<sup>17</sup>.

#### **Sponsorship and Marketing Expenses**

24. PW3 affirmed that the Plaintiff participated in sponsorship campaigns<sup>18</sup> involving the supply of 1,280 cartons of drinks at the cost of BND\$30,720.00 and incurred marketing expenses<sup>19</sup> of BND\$36,127.40 for the period August 2019 to November 2019. Under cross-examination, PW3 agreed that under the

<sup>16</sup> Exhibit J-1 - PW3's Affidavit Evidence in Chief – P6.

<sup>17</sup> Exhibit J-1, *ibid* - 2<sup>nd</sup> paragraph, columns 9, 10 and 11.

<sup>18</sup> Exhibit J-3, PW3's Affidavit Evidence in Chief – P6.

<sup>19</sup> Exhibit J-2, *Ibid* - Plaintiff's Marketing Report.

distributorship agreement with PT Djojonegoro, the Plaintiff was contractually obligated to conduct promotional and marketing activities and that the associated costs would have been incurred regardless of the Defendant's actions.

#### Sales Fluctuations and Profitability

25. Under cross-examination, PW3 acknowledged that sales fluctuations were observable as early as 2018 and accepted that such fluctuations are an ordinary feature of business operations. She further acknowledged that the Plaintiff recorded profits from 2018 to 2021 which increased profits incrementally year after year. However, PW3 maintained that those profit figures did not take into account for the costs incurred in connection to sponsorship and marketing activities, and the specific decline in 2019 and 2020 was attributable to the Defendant's supply of products to retail shops rather than ordinary market variation. PW3 also testified that meeting the manufacturer's quota as critical to the Plaintiff in order to maintain its position as sole agent for YOU.C1000 products in Brunei.

#### Evidence of Imam Santoso Soebagio (PW4)

##### Background

26. PW4 is the Export Manager of PT Djojonegoro responsible for overseeing sales to several countries including Brunei, Kenya and Malaysia. His responsibilities include arranging shipments, communicating with the factory in order to meet buyer and distributor requirements, and maintaining regular communication with distributors in order to assist in sales growth.

##### Product Packaging and Labelling Differences

27. PW4 confirmed that PT Djojonegoro is the sole producer of YOU.C1000 products. He testified that PW1 had informed him of unauthorized products being sold in Brunei and referred to photographs<sup>20</sup> taken from retail shops showing products marked "For sale in Indonesia only" with barcode labels positioned vertically, in contrast to the authorised products supplied by the Plaintiff, which bear horizontally positioned barcodes.
28. PW4 further identified the bottles of YOU.C1000 shown in the photographs at pages 461 to 484 of P4<sup>21</sup>, as products intended for the Indonesian domestic market, and set out the key differences between the two product variants as follows:

*Products for the Brunei market:* bear the distributor's name clearly labelled on the packaging, include the wording "For sale in Brunei Darussalam only"; display the production date, expiry date and the batch number; and have horizontally positioned barcode labels.

*Products for the Indonesian market:* marked "For sale in Indonesia only"; display only the expiry date and batch number; and have vertically positioned barcode labels.

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<sup>20</sup> Pages 463 and 466 of the Plaintiff's Bundle of Documents – P4.

<sup>21</sup> Plaintiff's Bundle of Documents.

## Legal Proceedings and Concerns

29. PW4 affirmed that both he and PT Djojonegoro had instructed the Plaintiff to commence legal proceedings against the Defendant. PW4 clarified, however, that PT Djojonegoro is not providing financial support for the conduct of the said legal proceedings and chose not to participate directly, as it is not a Brunei entity and does not have a direct financial interest in the outcome of the proceedings.
30. PW4 testified that PT Djojonegoro's main concern are the quality of the products and the preservation of the company's reputation and that it cannot guarantee the quality of the products supplied by the Defendant. Based on his own experience, PW4 expressed the view that such products were likely approaching their expiry dates. Under cross-examination, PW4 confirmed that the authenticity and originality of the products was not in question; the concerns raised related to solely to product quality.

## Distributorship Agreement

31. PW4 affirmed that PT Djojonegoro's sole and exclusive distributorship arrangement with the Plaintiff commenced in 2000, with authorization letters issued from 2016, and renewed annually until the execution of the annual renewals, continuing until the execution of the more comprehensive and formal 2020 Distributorship Agreement<sup>22</sup>. PW4 stated that he did not know whether the Defendant contravened any laws in Brunei but explained that a party engaged in the supply of products would ordinarily be required to produce documentation from the manufacturer, and that a failure to do so would constitute a breach of the distribution agreement.

## Defence case

32. The Defendant's case, as pleaded and presented before this Court, rests upon two distinct grounds. First and foremost, the Defendant contends that it obtained the YOU-C 1000 beverages through a legitimate commercial transaction, having purchased the said products directly from A-ZZ Trading Company, a trader based in Miri, Sarawak, with delivery made directly to the Defendant in the ordinary course of business. The Defendant maintains that it was at no material time aware that the Plaintiff held sole and exclusive distributorship rights over YOU-C 1000 products in Brunei. It is the Defendant's position that it conducted its commercial activities in good faith throughout.
33. Second, and in the alternative, the Defendant asserts that even if it were to be accepted that the Plaintiff is the duly appointed sole and exclusive distributor of YOU-C 1000 products in Brunei, this would not as a matter of law, operate so as to preclude third-party entities from independently importing and selling the same products within the territory of Brunei. The Defendant relies on the doctrine of parallel importation, contending that the Plaintiff's distributorship agreement cannot

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<sup>22</sup> Exhibit A-1, PW4's Affidavit Evidence in Chief – P7.

confer an absolute monopoly over the supply of YOU.C1000 products so as to exclude all other traders operating within Brunei.

34. It is therefore the Defendant's case that its conduct was at all material times lawful and commercially justified, that no actionable wrong was committed against the Plaintiff, and that the claim for loss and damage is accordingly without merit and ought to be dismissed.

### **Evidence of Cheetan Tripathi (DW1)**

#### **Background and Trading Relationship with A-ZZ Trading Company**

35. DW1 is the Defendant's manager, responsible for finance and administration, debt recovery, marketing and management of the Defendant's day to day operations including the ordering of products in demand within the local market. He affirmed that in August 2019, one Mr Liew, a representative of A-ZZ Trading Company ("A-ZZ"), a business entity based in Miri, Sarawak, visited the Defendant's premises and offered to a wide range of food and beverage products for sale. DW1 confirmed that the Defendant has maintained a trading relationship with A-ZZ since 2019, with its representatives visiting the Defendant's shop once or twice monthly by pickup truck. Orders were placed upon such visits and all transactions were conducted on a cash basis.

#### **Purchase and Onward Sale of YOU.C1000 Products**

36. Among the products offered by A-ZZ, the Defendant ordered 220 cartons in or about August 2019 as evidenced by the invoice<sup>23</sup> and payment voucher<sup>24</sup> from A-ZZ. DW1 confirmed that this was the only transaction the Defendant conducted with A-ZZ for the YOU.C1000 products. The Defendant subsequently sold the YOU.C1000 beverages to 17 supermarkets<sup>25</sup> and minimarts with copies of invoices<sup>26</sup> of the sale to the retail shops referred to in evidence. DW1 explained that it was the Defendant's practice to endorse invoices with a "PAID" stamp upon receipt as confirmation of settlement.

#### **Due Diligence and Regulatory Compliance**

37. DW1 testified that the Defendant made no attempt to ascertain whether A-ZZ was an authorised distributor of the YOU.C1000 beverages and received no invoice, delivery note or other documentation from A-ZZ confirming authorisation. DW1 sought to justify this omission on the basis that compliance with any applicable authorisation requirement falls on A-ZZ rather than the Defendant. Under cross-examination, DW1 confirmed that the products were delivered directly to the Defendant's warehouse and that the Defendant was unable to confirm whether the products had been cleared through Customs. DW1 further confirmed that the Defendant held no import license

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<sup>23</sup> Tab 5, page 12 of Defendant's Trial Bundle – D1.

<sup>24</sup> Tab 6, page 13, *ibid*.

<sup>25</sup> Paragraph 7(a) to 7(q) – list of supermarkets and minimarts – DW1's Affidavit in Chief – D2.

<sup>26</sup> Tab 7 to 22, pages 14 to 29 – Defendant's Trial Bundle – D1.

for the products, had obtained no health approval from the relevant authorities and was unable to confirm whether the products complied with Ministry of Health requirements.

#### Profits from the Sale of YOU.C1000 Products

38. DW1 explained that the Defendant's profit from the sale of the YOU.C1000 products was minimal, with a total profit of BND\$761.25, broken down as follows:

| Products                 | Sale price      |
|--------------------------|-----------------|
| YOU.C1000 Vitamin Lemon  | \$165.825       |
| YOU.C1000 Vitamin Orange | \$183.075       |
| YOU.C1000 Water Lemon    | \$201.00        |
| YOU.C1000 Water Orange   | \$211.35        |
| <b>Total Profits</b>     | <b>\$761.25</b> |

39. Under cross-examination, DW1 maintained that the Defendant's profit margin amounted to no more than 10% of the cost price of the said products and disagreed that the Defendant's supply of YOU.C1000 products had resulted in substantial loss and damage to the Plaintiff's business.

#### Receipt of Notice and Discovery of Plaintiff's Distributorship

40. DW1 affirmed that on or about 21<sup>st</sup> March 20202, the Defendant received a notice from Messrs Lt Col (Rtd) Harif Ibrahim informing it of the Plaintiff's intention to commence legal proceedings in respect of losses and damages allegedly arising from the Defendant's supply and sale of the YOU.C1000 beverages. DW1 stated that the Defendant was shocked by the notice as there had been no prior contact with the Plaintiff regarding the distribution of the products, and that it was only at this point that the Defendant became aware that the Plaintiff was the sole and exclusive distributor for YOU.C1000 beverages in Brunei. DW1 also recalled two individuals, believed to be representatives of the Plaintiff, visiting the Defendant's shop and taking photographs without permission in a manner he described as aggressive and disruptive to the Defendant's business.

#### Attempts to Resolve the Disputes and Cessation of Sales

41. DW1 further testified that the Defendant only managed to obtain a copy of the Plaintiff's distributorship agreement with PT Djojonegoro only after numerous requests and that upon reviewing the said agreement, the Defendant immediately stopped trading in the products. DW1 further stated that the Defendant attempted to settle the matter but the Plaintiff declined to do so.

#### DW1's Evidence on Legal Claims

42. DW1 maintained that the Defendant's conduct was at all material times lawful, asserting that A-ZZ successfully imported the product into Brunei through established channels and that it was A-ZZ, not

the Defendant, that was responsible for the importation. DW1 further affirmed<sup>27</sup> that, to the best of his knowledge, there is no express statutory provisions in Brunei that prohibits the importation of goods such as beverages from a foreign country, and that the Defendant was not a party to the Plaintiff's distributorship agreement and therefore could not be in breach of it, and there was no evidence of unjust enrichment or unlawful conduct on the Defendant's part<sup>28</sup>. DW1 added that the events leading up to the Plaintiff's legal action predated the distributorship agreement relied upon, and expressed the view that the manufacturer bore some responsibility for failing to exercise adequate control over the distribution of its products from Malaysia.

## **Considerations and Finding**

43. The Plaintiff submits that there are four (4) issues for the Court to determine in this matter. The Court will proceed to address these accordingly.

### **I. Exclusive Distributorship**

#### **Evidence on the establishment of Exclusive Distributorship Rights**

44. The Court accepts, on the totality of the evidence adduced, that the Plaintiff was duly appointed as the sole and exclusive distributor of YOU.C1000 beverages in Brunei Darussalam and Kota Kinabalu, Malaysia, by virtue of the Distributorship Agreement dated 1 January 2020 entered into between the Plaintiff and PT Djojonegoro. This finding is not merely anchored on the written agreement alone. The Court is satisfied, having regard to the oral testimony of PW1, PW2, PW3 and PW4, that the exclusive distributorship arrangement between the Plaintiff and PT Djojonegoro had in fact subsisted since the year 2000, predating any formal written documentation by some sixteen years.
45. The Court places particular weight on the evidence of PW4, whose testimony established a coherent and credible account of how this commercial relationship evolved over time, from an informal but consistently observed arrangement, to its partial formalization by way of a letter of authorization in 2016, and ultimately to its full contractual expression through the 2020 Distributorship Agreement. The Court finds this progression entirely consistent with ordinary commercial practice, where long-standing business relationships are frequently conducted on the basis of mutual trust and understanding before being reduced to formal written instruments. The absence of a written contract prior to 2016 does not, in the Court's view, diminish the legal or commercial significance of the arrangement that existed before that date. On the contrary, it reinforces the depth and durability of the relationship between the Plaintiff and PT Djojonegoro.
46. The Court therefore finds, as a matter of fact, that the Plaintiff is and has been the one and only authorized distributor of YOU.C1000 products in Brunei Darussalam, and that this exclusivity is now clearly and unambiguously maintained in the 2020 Distributorship Agreement. No other party has been appointed by PT Djojonegoro to distribute YOU.C1000 products within this jurisdiction.

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<sup>27</sup> Paragraph 12 of DW1's Affidavit Evidence in Chief – D2.

<sup>28</sup> Paragraph 8 of the Plaintiff's Statement of Claim.

## The Distinction Between Authorised Distributors and Parallel Importers

47. The Court notes that the Plaintiff, in the course of its submissions, asserted that PT Djojonegoro has not appointed any parallel importers for the Brunei and Kota Kinabalu markets. With respect, this submission reflects a fundamental conceptual misunderstanding of what constitutes a parallel importer, and the Court considers it necessary to clarify this distinction before proceeding further, as it is central to the resolution of the issues in this matter.
48. A parallel importer, by its very legal and commercial definition, is an entity that has no formal relationship with the manufacturer and requires no license, authorization, or appointment from the manufacturer to operate. It is precisely the absence of such a relationship that characterizes parallel importation. To speak of a manufacturer "appointing" a parallel importer is therefore a contradiction in terms. A distributor who is appointed by a manufacturer is, by that very appointment, an authorized distributor, not a parallel importer. The two categories are mutually exclusive.
49. The significance of the 2020 Distributorship Agreement, insofar as this issue is concerned, is not that it excludes parallel importers by name or by express prohibition, rather, its significance lies in the fact that it confers upon the Plaintiff the exclusive right to distribute YOU.C1000 products within the defined territory. The existence of that exclusivity is a matter between the Plaintiff and PT Djojonegoro, and it is enforceable as such between those two contracting parties. Whether that exclusivity can be asserted against third parties who are not privy to the agreement is a separate and distinct question, which the Court will address below.

## The Defendant as a Parallel Importer, Territorial Restrictions and the Grey Market

50. The Court accepts, on the evidence before it, that A-ZZ Trading, a company incorporated and operating out of Miri, Sarawak, was not appointed by PT Djojonegoro as an authorized distributor for the Brunei market. No evidence has been adduced to suggest otherwise, and the Court proceeds on this basis.
51. The Court now turns to the critical question of whether the products supplied by A-ZZ Trading to the Defendant were obtained through legitimate means, or whether their introduction into the Brunei market constituted a diversion of goods in breach of applicable territorial restrictions. This is not merely a side issue, it goes to the heart of whether the Defendant's conduct can be characterized as lawful parallel importation, or whether it constitutes something more legally objectionable.
52. On this point, the Court finds that the Plaintiff has adduced persuasive and material evidence establishing that the YOU.C1000 products manufactured by PT Djojonegoro were designated exclusively for sale and distribution within Indonesia. The Court accepts this evidence. The Court further finds that the territorial restriction is not merely a commercial preference or an informal understanding, it represents a deliberate limitation by the manufacturer of the geographic restrictions within which its products are authorized to be sold. The significance of this finding is that any YOU.C1000 products that found their way out of Indonesia and into the Brunei market did so in circumstances that were not sanctioned by PT Djojonegoro, and in direct contravention of the territorial limitations that PT Djojonegoro had established for the distribution of its products.

53. The Court is therefore unable to accept the characterization of the Defendant's conduct as straightforward or ordinary parallel importation. While the Court acknowledges the general legal principle that parallel importation of genuine goods is not inherently unlawful, that principle is not without qualification. The grey market doctrine does not operate as a blanket immunity that shields all dealings in genuine goods from legal scrutiny, regardless of the circumstances in which those goods were diverted from their intended market. Where, as here, there is evidence that the goods were subject to express territorial restrictions confining their sale to a specific jurisdiction (in this case, Indonesia) and those restrictions have been evaded by the introduction of the goods into an entirely different market, the Court is of the view that the legitimacy of the supply chain is called into serious question.
54. The products supplied by A-ZZ Trading to the Defendant were, on the evidence, goods that were never intended or authorized to be sold outside Indonesia. Their presence in the Brunei market is therefore not merely a matter of commercial competition between an authorized distributor and an unauthorized one — it represents a diversion of goods in breach of the territorial restrictions imposed by the manufacturer itself. A-ZZ Trading, by sourcing these products and making them available for sale into the Brunei market, acted outside the scope of any legitimate distribution channel and in a manner inconsistent with the territorial limitations attached to the goods.
55. The Defendant, by purchasing these products from A-ZZ Trading with the intention of selling them in Brunei, cannot be regarded as an innocent or neutral party in this chain. While the Court accepts that the Defendant may not have been directly aware of the precise contractual arrangements between PT Djojonegoro and its authorized distributors, the commercial reality is that the Defendant was participating in a supply chain that operated entirely outside the manufacturer's authorized network and in contravention of the territorial restrictions governing those products. The Court finds that this is a materially different situation from ordinary parallel importation, where goods are genuinely placed on the market in one jurisdiction and subsequently traded into another without restriction.
56. The Court therefore finds that the products sold by the Defendant in Brunei were not goods that had been legitimately placed into free circulation in a manner that would attract the protection ordinarily afforded to parallel importers. On the contrary, they were goods that had been diverted from their intended and restricted market in Indonesia, in breach of the territorial limitations established by PT Djojonegoro. This diversion taints the legitimacy of the entire supply chain through which the Defendant obtained those products.
57. This finding has significant implications for the Defendant's position in these proceedings. The Defendant can no longer rely on the grey market doctrine as a complete answer to the Plaintiff's claim, as that doctrine presupposes that the goods in question have been lawfully introduced into the market from which they were sourced. Where the goods have been diverted in breach of territorial restrictions, the foundation upon which the parallel importation defense rests is weakened. The Court will bear this in mind in its consideration of the remaining issues, including the question of

whether the Defendant's conduct gives rise to liability and what relief, if any, the Plaintiff is entitled to.

## **II. Importation and Sales by the Defendant**

### **The Plaintiff's Case on Unlawful Importation and Sale**

58. The Plaintiff contends that the Defendant unlawfully imported, sold and supplied YOU.C1000 products that were designated exclusively for the Indonesian market, and did so without proper authorization from either the manufacturer or the relevant regulatory authorities in Brunei Darussalam. The Plaintiff's case on this issue operates on two distinct but related levels. The first concerns regulatory compliance, specifically, whether the Defendant satisfied the legal requirements imposed by Brunei law on importers of food and beverage products prior to placing those products into circulation. The second concerns the broader question of commercial legitimacy, in other words whether the Defendant's participation in a supply chain involving territorially restricted goods renders its conduct unlawful, irrespective of its role in the physical act of importation.
59. On the question of regulatory compliance, the Plaintiff submits that any party seeking to import products into Brunei Darussalam is required to satisfy a comprehensive set of regulatory obligations, including the registration of products with the relevant authorities, the maintenance of a registered warehouse or storage facility, compliance with Customs and Excise regulations and declaration requirements, laboratory certifications, and the obtaining of halal certifications. The Plaintiff asserts that it has obtained all of these approvals and certifications in respect of the YOU.C1000 products it distributes, and that the Defendant has adduced no evidence to demonstrate that it has done the same in respect of the products it obtained from A-ZZ Trading. On this basis, the Plaintiff argues that the Defendant's sale of those products is rendered unlawful by reason of non-compliance with mandatory regulatory requirements.

### **The Guangzhou Case and Its Applicability**

60. The Plaintiff places reliance on the Federal Court of Malaysia decision in *Guangzhou Light Industry & Trade Group Ltd & Ors v Lintas Superstore Sdn Bhd* [2022] 4 MLJ 339 in support of its submission that liability against the Defendant is established. The Court has considered this authority carefully. In that case, the Federal Court of Malaysia held that the importation of genuine goods bearing a marking indicating that they were "for sale in China only," without the consent of the trademark owner, constituted trademark infringement. The court adopted a consent-based approach to the exhaustion of trademark rights, holding that territorial restrictions of this nature prevent the exhaustion of those rights and that the parallel importation defence is therefore unavailable where the trademark owner has not consented to the goods being placed on the market in the jurisdiction in question.
61. The Court accepts that the principle discussed in *Guangzhou* is informative insofar as it affirms that territorial restrictions on the sale of goods are legally recognizable and capable of giving rise to liability. The Federal Court of Malaysia recognised that goods bearing territorial restrictions cannot

be sold outside their intended market without the rights holder's consent. This principle is relevant to the present case, as the YOU.C1000 products were meant to be sold in Indonesia only.

62. However, the Court finds that the *Guangzhou* case cannot be applied here because there is key difference between that case and the present one. In *Guangzhou*, the claim was based on trademark infringement and passing off, meaning the party bringing the action was the owner of the trademark whose rights had been violated. In the present case, the Plaintiff does not own the YOU.C1000 trademark. This is not a minor or technical difference — it is a fundamental one. Because the Plaintiff is not the trademark owner, it cannot rely on the trademark infringement framework or the rules surrounding a trademark owner's consent to establish that the Defendant is liable. The Court therefore cannot use *Guangzhou* as direct authority to find the Defendant liable on the facts of this case. That said, the case remains a useful reference point for the broader principle that territorial restrictions on goods carry legal weight and cannot simply be ignored.
63. The Court also notes, consistent with the evidence of PW2 and PW4, that PT Djojonegoro's main concern in imposing territorial restrictions was to protect the quality and integrity of its products rather than to protect its trademark rights as such. This is a commercially understandable position, the manufacturer simply wants to ensure that its products reached consumers through channels that it had checked and approved, so as to maintain quality control and consumer confidence in the brand. This concern, while legitimate and deserving of recognition, does not in itself transform a quality-control restriction into an exclusive distribution right that can be enforced by the Plaintiff against third parties in these proceedings.

#### The Question of the Defendant's Role as Importer

64. A significant question that arises in this section is whether the Defendant can properly be considered as an importer of the YOU.C1000 products, and whether, if it cannot, it can nonetheless still be held legally responsible for any failures to comply with the relevant import regulations.
65. The Defendant argues that it was not the importer of the products and that the entire importation process was handled by A-ZZ Trading. The Defendant relies on the definitions contained in section 2 of the Customs Act, Cap 36, which defines an "importer" as including any owner or person in possession of goods at and from the time of importation until such goods are duly removed from customs control, and defines "import" as the act of bringing or causing goods to be brought into Brunei Darussalam by land, sea or air. The Defendant contends that it did not bring the goods into Brunei, and that it was not in possession of the goods at the time of importation. The Court understands that it only became a purchaser of the products after they had already been brought into Brunei and were in domestic circulation. On this basis, the Defendant argues that the regulatory obligations to importation, such as obtaining import permits, customs clearances, and other approvals, fell on A-ZZ Trading, and not on the Defendant.

66. The Court has carefully considered this contention and finds that it has considerable legal merit. The definitions under the Customs Act are clear, and there is no evidence before the Court that the Defendant was involved in the physical act of bringing the goods into Brunei, or that it directed or procured A-ZZ Trading to do so on its behalf. The Plaintiff has not adduced any evidence to show that the Defendant made any customs declaration for the products, or that the importer of record in any formal or legal sense. In the absence of such evidence, the Court is unable to find that the Defendant bore the statutory obligations of an importer under the Customs Act, and the Plaintiff's attempt to characterize the Defendant as such is not made out on the evidence.
67. The Court further notes that the Plaintiff has not produced direct evidence of any specific regulatory breach committed by the Defendant in connection with the importation of the products. The fact that the Defendant purchased and resold products that may have been brought into Brunei without full regulatory compliance does not mean that the Defendant was responsible for those failures or can be held personally liable for them. Regulatory responsibility for non-compliant importation falls primarily on the importer, which in this case is A-ZZ Trading. The Court is not persuaded that those obligations can be transferred to the Defendant simply because it bought the products further down the supply chain.
68. It should be noted that the Court's finding above is based on the specific facts as established by the evidence, namely that A-ZZ came to the Defendant's premises on its own initiative and sold the products directly from its pickup truck, with the Defendant simply choosing and buying from the products that were already physically there. The outcome would, in the Court's view, have been different had the evidence shown that the Defendant had placed a specific advance order with A-ZZ for the YOU.C1000 products, thereby directly causing or prompting A-ZZ to source and bring those products into Brunei. In that situation, the Defendant's conduct would fall within the definition of "import" under section 2 of the Customs Act, Cap 36, which covers not only the act of physically bringing goods into Brunei, but also the act of causing goods to be brought in.
69. A party that places an order which sets off the chain of events leading to goods being brought across the border cannot, in the Court's view, escape responsibility for the importation simply because another party physically carried out the act of bringing the goods in. In that scenario, the legal obligations that come with being an importer, including obtaining the necessary import permits, customs clearances, and health approvals, would likely have been found to apply to the Defendant, and the Plaintiff's case on this point would have been on much stronger footing.

#### The Defendant's Knowledge and Good Faith

70. Notwithstanding the above findings, the Court does not consider that the Defendant's position is entirely without difficulty. The Plaintiff draws attention to the evidence of DW1, who by his own admission is an experienced food and beverage operator with some nine years of industry experience, including seven years specifically in retail supply. The Court finds this evidence significant. DW1 also admitted that he supplied YOU.C1000 beverages to retail shops from August 2019 to March

2020, without having obtained any license or clearance from the relevant Brunei authorities. This is not a minor admission. Someone with DW1's level of experience in the food and beverage retail sector could reasonably be expected to know the rules governing the importation and sale of food and beverage products in Brunei. The Court is not prepared to accept that DW1 was genuinely unaware of the need to check whether the products he was buying and reselling met the required regulatory standards.

71. The Defendant's argument that it purchased the products in good faith from A-ZZ Trading, whose representatives had approached the Defendant as suppliers, does not sit comfortably with this evidence. Good faith in a commercial setting is not simply a matter of not having bad intentions, it requires a reasonable degree of inquiry and due diligence, especially where the circumstances ought to have raised red flags. A supplier turning up with products priced below those of the authorized distributor, and unable to produce any evidence of authorization or regulatory approval, is precisely the kind of situation that should have prompted the Defendant to ask questions. The Court finds that the Defendant, given DW1's experience and the surrounding commercial circumstances, knew or ought to have known that the products it was purchasing and reselling were not part of the authorized distribution chain for Brunei.
72. The Court accepts the Plaintiff's submission that ignorance is no defense in these circumstances, particularly given DW1's level of experience and the nature of the trade. The Defendant also failed to produce any evidence to demonstrate that A-ZZ Trading had the authority to export the YOU.C1000 products into Brunei. Given the territorial restrictions attached to those products and the Defendant's position as an experienced operator in this sector, the Court takes the view that the Defendant took on a degree of commercial and legal risk by proceeding with the purchase and resale of those products without making any inquiries as to their origin or whether they complied with applicable regulations.

#### Overall Finding on Importation and Sales

73. Having considered the overall evidence and the submissions of both parties, the Court makes the following findings on this issue.
74. First, the Court is not satisfied, on the evidence, that the Defendant was the importer of the YOU.C1000 products within the meaning of the Customs Act, Cap 36. The products were physically brought into Brunei by A-ZZ Trading, and the regulatory obligations that come with that act rest primarily with A-ZZ Trading. The Plaintiff has not established that the Defendant bore or breached any statutory obligation as an importer.
75. Second, and more importantly, the Court is of the view that the question of whether the Defendant was technically the importer of the products does not resolve the matter. The more important question is whether the Defendant, by buying and reselling products that were expressly restricted for sale to Indonesia only, and which entered Brunei outside any authorized distribution channel, acted unlawfully. On this question, the Court finds in favor of the Plaintiff. The territorial restrictions

placed on the products represent a clear and deliberate decision by PT Djojonegoro to limit where its products are authorised to be sold. The Defendant's involvement in a supply chain that got around those restrictions, particularly given DW1's experience in the industry and the Defendant's failure to make any inquiries on where the products came from or whether they were authorised for sale in Brunei, cannot be regarded as lawful commercial activity.

76. The Court therefore finds that the Defendant acted unlawfully in purchasing and reselling the territorially restricted YOU.C1000 products in Brunei, even though it was not a party that physically imported the products. The products were not authorised for sale in Brunei, the supply chain through which they were obtained involved a breach of territorial restrictions imposed by the manufacturer, and the Defendant, as an experienced commercial operator, must bear responsibility for its knowing participation in that chain. The Court will take these findings into account when considering question of liability and the appropriate relief to be granted to the Plaintiff.

### **III. Liability on losses and damages**

#### **The Legal Framework on Liability**

77. The Plaintiff argues that the Defendant should be held liable for the losses and damages suffered as a direct result of the Defendant's unlawful conduct in purchasing and reselling YOU.C1000 products in Brunei that were restricted for sale in Indonesia only. In support, the Plaintiff relies on *Jasmine Food Corp Sdn Bhd v Leong Wai Choon* [2016] 11 MLJ 837<sup>29</sup>, where the court held that a defendant cannot avoid paying damages simply by showing that it did know it was doing anything wrong, and that a claimant's right to damages is unaffected by whether the defendant acted innocently or not. The Plaintiff also relies on the principle from *Gillette UK Ltd & Anor v Edenwest Ltd* [1994] RPC 279, which was cited approvingly in *Jasmine Food Corp*, that innocence is no defence to a claim for damages.
78. The Court has considered these authorities carefully. Both *Jasmine Food Corp* and *Gillette UK* were, however, decided in the context of trademark infringement and passing off — causes of action that are not directly engaged in the present case, given that the Plaintiff is not the trademark owner of the YOU.C1000 brand. The Court therefore declines to apply these authorities as direct precedent for the establishment of liability in these proceedings. That said, the broader principle underlying both decisions (that a party who participates in the unauthorized distribution of goods cannot escape the legal responsibility simply by claiming ignorance or good faith) is one of wider application and is consistent with the findings already made in this judgment.
79. As the Court has already found, the Defendant acted unlawfully by purchasing and reselling YOU.C1000 products subject to express territorial restrictions through an unauthorized supply chain. Given DW1's considerable experience in the food and beverage retail sector, the Defendant knew or ought to have known that the products did not come from through legitimate channels. In these

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<sup>29</sup> Tab 3 – Plaintiff's Bundle of Authorities

circumstances, the Defendant cannot hide behind a claim of good faith or innocence. The Court therefore finds that the Defendant is liable to the Plaintiff for the losses and damages flowing from its unlawful conduct, subject to the qualifications on quantum addressed below.

#### Parallel Importation and Consent

80. The Plaintiff further submits that characterizing the Defendant's conduct as parallel importation does not, of itself, afford a defence. The Court agrees. Parallel importation is not automatically lawful in all situations, and the mere fact that goods are genuine does not protect a defendant from liability where those goods have been brought into the country in breach of territorial restrictions and without the consent of the rights holder or authorized distributor. As the Court has already found, the YOU.C1000 products resold by the Defendant were goods that had been diverted from their designated Indonesian market in breach of the manufacturer's express territorial restrictions. They were not goods that had been legitimately placed into circulation in a way that would support a lawful parallel importation defence. The Defendant's sales of these products in Brunei were therefore made without the requisite consent or authorisation, and the parallel importation does not help the Defendant in avoiding liability.

#### IV. Remedies and Quantum

##### The Compensatory Principle

81. Both parties agree on the foundational principle that damages in civil proceedings are compensatory in nature. The purpose of an award of damages is to place the injured party in the position it would have occupied had the wrongful act not occurred, not to punish the wrongdoer or to enrich the claimant beyond its actual loss. The burden rests upon the Plaintiff to prove, on a balance of probabilities, both that it suffered loss and that such loss was caused by the Defendant's wrongful conduct. The Court approaches the assessment of quantum with these principles firmly in mind.

##### The Evidential Basis for the Plaintiff's Claimed Losses

82. The Plaintiff's claim for losses in the sum of BND\$205,934.40 rests mainly on sales reports<sup>30</sup> produced by PW3, covering the period August 2019 to March 2020. The Court has examined this evidence with care and finds that it is affected by three serious deficiencies that significantly undermine the reliability and probative value of the figures put forward.
83. The first is that the sales reports are unaudited. They have not been independently verified by any external auditor or accountant, and no expert evidence has been adduced to validate their accuracy. The Court recognises that internal financial records are a common and legitimate form of evidence in commercial disputes. However, where, such records form the entire basis of a claim exceeding two hundred thousand dollars, the absence of any independent verification is a significant evidential gap.

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<sup>30</sup> PW3's Affidavit Evidence in Chief – P6 – exhibit J-1.

The Court cannot simply accept the internal figures prepared by the Plaintiff's own employee without some form of corroboration.

84. The second problem concerns the composition of the claimed losses. It emerged in the cross-examination of PW3, that the figure of BND\$205,934.40 includes expenditure on promotional activities, sponsorship campaigns and marketing initiatives, costs that the Plaintiff was already contractually obliged to incur under its Distributorship Agreement with PT Djojonegoro. Expenses of this nature cannot be characterized as losses caused by the Defendant's wrongful conduct, and it is not appropriate to pass them on to the Defendant by including them in a damages claim. Their inclusion, without any attempt to separate them from losses properly attributable to the Defendant, significantly inflates the figure claimed and casts doubt on the reliability of the Plaintiff's approach to calculating its losses.
85. The third and most analytically problematic difficulty is that a significant part of the Plaintiff's claimed losses appears to be based not on actual losses suffered, but on the gap between the actual sales and internal targets. PW3 confirmed that in August 2019, the Plaintiff recorded actual sales of BND\$65,694.00. The Plaintiff's internal sales benchmark for that month was BND\$90,000.00. The shortfall of BND\$24,306.00 was then treated by the Plaintiff as a recoverable loss. The Court finds this methodology deeply problematic. A sales benchmark or internal target is, by its very nature, an aspirational figure, a projection of what a business hopes to achieve, not what it is guaranteed to earn. Shortfalls against such sales target can be due to any number of reasons, including market conditions, consumer preferences, seasonal variations, competitive pressures, or the ordinary ebb and flow of running a business. Without considerably more analysis and evidence, such shortfalls cannot be attributed to the specific conduct of any particular defendant. To treat the gap between an internal benchmark and actual sales as a recoverable loss caused by the Defendant, is to combine commercial aspiration with legal entitlement, and the Court declines to adopt this approach.

#### Causation and Remoteness

86. The evidential difficulties aside, the Court finds that the Plaintiff has not satisfactorily established the causal link between the Defendant's specific conduct and the magnitude of the losses claimed. A plaintiff cannot recover losses that are not shown to flow from the defendant's wrongful act, or that were not something the parties could have reasonably have anticipated as a likely consequence of that act.
87. In the present case, what the Defendant actually did was buy and resell 220 cartons of YOU.C1000 beverages, making a profit of BND761.25. While the Court does not suggest that the size of the defendant's profit necessarily determines the extent of a plaintiff's recoverable loss, the Court acknowledges that a plaintiff's loss may well exceed a defendant's gain, it remains the Plaintiff's responsibility to show a credible and evidence-based connection between the Defendant's specific sales and the losses claimed. This has not been done. The Plaintiff has not adduced evidence establishing that the 220 cartons sold by the Defendant directly displaced an equivalent or

proportionate volume of the Plaintiff's own sales, or that the Defendant's lower pricing caused a measurable drop in the Plaintiff's market that can be traced through to the losses being claimed.

88. The Court further accepts the Defendant's submission, grounded in *Hadley v Baxendale (1854) 9 Exch 341*, that recoverable damages must either arise naturally from the wrongful conduct or be something the parties could reasonably have anticipated as a likely consequence of that conduct at the time it occurred. In the Court's view, it cannot reasonably have been with the Defendant's contemplation that purchasing and reselling 220 cartons of beverages from a third-party supplier would expose it to a damages claim of over BND\$200,000.00. The Plaintiff's claimed losses, as presented and quantified, are too remote from the Defendant's specific conduct to be recoverable in full.

#### The Court's Assessment and Award

89. The Court is satisfied that the Defendant's unlawful conduct did cause some degree of loss and commercial harm to the Plaintiff. As the sole authorized distributor of YOU.C1000 products in Brunei, the Plaintiff would have been inevitably affected by the unauthorized availability of the same products at a lower price, whether by undercutting its pricing, undermining consumer confidence in the authorized distribution channel, or otherwise eroding the commercial value of the exclusivity the Plaintiff had been granted. The Court does not accept that the Defendant's conduct was without consequence to the Plaintiff's business.
90. The claimed figure of BND\$205,934.40 cannot, however, be accepted as an accurate or reliable measure of those losses. It is derived from unaudited internal reports, includes expenses that the Plaintiff would have incurred regardless of the Defendant's conduct, and is substantially based on speculative shortfalls measured against internal benchmarks rather than proven actual losses. It has not been independently verified, and no satisfactory causal analysis has been presented to link the losses claimed to the specific volume and nature of the Defendant's sales.
91. The Court is nevertheless mindful that the law does not require mathematical precision where the existence of loss is established and the difficulty of precise quantification arises from the nature of the wrong itself rather than from any deficiency on the part of the claimant. The Court is entitled, in such circumstances, to make a fair and reasonable estimate based on the best evidence available. In doing so, the Court takes into account the volume of the Defendant's sales: 220 cartons over the relevant period, the price differential between the Defendant's products and the Plaintiff's authorized products, the likely impact of that price differential on consumer purchasing decisions within the Brunei market, and the broader commercial harm to the Plaintiff's goodwill and exclusivity arising from the unauthorized presence of the products in the market.
92. Having stripped out the speculative, duplicative, and non-attributable components of the Plaintiff's claimed losses, the Court will assess damages at an amount that properly reflects the genuine commercial harm caused by the Defendant's conduct. The Court will hear further submissions from

both parties on the precise quantum of the award in light of these findings, and will also consider the Plaintiff's application for pre-judgment interest from the date of the Writ to the date of judgment.

### **The Plaintiff's Claim for Unjust Enrichment**

93. The Plaintiff's Statement of Claim includes a plea of unjust enrichment, contending that the Defendant wrongfully benefited from the purchase and resale of YOU-C 1000 products in Brunei at the Plaintiff's expense. Notwithstanding this plea, the Plaintiff did not address the claim in its final submissions. No legal arguments were advanced, no authorities were cited, and no submissions were made to assist the Court in identifying the unjust factor or establishing the requisite elements of the cause of action.
94. It is not the function of the Court to construct a party's case on its behalf, and a pleading unsupported by submissions provides no legal or evidential basis upon which the Court can find in a party's favour. Accordingly, the claim for unjust enrichment is dismissed.

### **Conclusion**

95. Having regard to the totality of the evidence adduced, the submissions of both parties, and the findings of this Court as set out in the preceding sections of this judgment, the Court concludes as follows.
96. The Defendant is found liable for unlawful conduct in purchasing and reselling YOU-C 1000 products subject to express territorial restrictions and 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 claim in unjust enrichment is dismissed for the reasons set out above.
97. The quantum of damages, the Plaintiff's application for pre-judgment interest, and the question of costs are all reserved. The parties are directed to appear before this Court for a further hearing on those matters, at a date to be fixed by this Court.
98. **IT IS SO ORDERED.**

**PG HJH NORISMAYANTI BINTI PG HJ ISMAIL**  
Judge, Intermediate Court

