# JUNZHI WANG & ANOR

**v.**

# TC PHARMACEUTICAL INDUSTRIES CO LTD

Court of Appeal, Putrajaya
Mohd Nazlan Mohd Ghazali, Ahmad Fairuz Zainol Abidin, Lim Hock Leng JJCA
[Civil Appeal No: W-02(IPCv)(W)-1725-10-2023]
12 February 2026

***Trade Marks:*** *Infringement of — Use and registration by appellants of domain names incorporating respondent's trademarks — Claim by appellant for respondent's unlawful interference with trade by lodging complaint with World Intellectual Property Organization — Whether appellants' claim properly characterized — Whether High Court lacked jurisdiction to review, set aside or act as appellate body over decisions made by international tribunals or administrative panels — Whether private agreement between contracting parties could not confer jurisdiction on courts — Whether fact that issue had not been litigated before did not mean that claim based on that issue, justiciable or had legal foundation — Whether essential elements of tort of unlawful interference proven — Whether appellants' suit filed for collateral purpose, and an abuse of court's process — Whether quantum of damages awarded manifestly excessive — Whether damages ought to have been assessed*

The defendant ("respondent") was the creator, originator and registered proprietor of the 'Red Bull' trademarks globally and had in 1995 entered into a joint venture agreement with 3 other parties to produce and sell Red Bull vitamin energy drinks in China. The 2nd plaintiff ("2nd appellant") was the joint venture company formed for that purpose and was granted the rights by the respondent to use the Red Bull marks in China under several licence agreements, all of which expired on 6 October 2016 and were not renewed. The 2nd appellant was not authorised under any of the said agreements to register or use any domain names incorporating the Red Bull trademark. The 1st appellant, who claimed to be an employee of the 2nd appellant, between September 2018 and August 2019 acquired, by transfer, 11 domain names incorporating the respondent's Red Bull trademarks ("domain names") which were subsequently registered through a registration agreement with one Webnic.cc ("registration agreement"). The respondent was not a party to the said registration agreement and had been conclusively determined by the Supreme People's Court of the People's Republic of China on 21 December 2020 to be the rightful and legal owner of the Red Bull trademarks in China. The respondent thereafter lodged a complaint with the World Intellectual Property Organization in Geneva, Switzerland ("WIPO complaint") seeking the transfer of the domain names from the 1st appellant. The WIPO Administrative Panel found in favour of the respondent and ordered that the domain names be transferred to it ("WIPO

decision"). Consequent thereto, the appellants commenced the instant action against the respondent for unlawful interference with trade by the very act of filing the WIPO complaint and sought *inter alia* declarations that their use of the domain names was in good faith, that they have legitimate interests in the domain names, and that the domain names did not infringe the respondent's trademark. The Judicial Commissioner ("JC") dismissed the appellants' claim for unlawful interference with trade and allowed the respondent's counterclaim for abuse of legal process. The JC characterised the appellants' action as being an appeal against the WIPO decision, and held that the court lacked the jurisdiction to hear and adjudicate the appellants' challenge. Hence the instant appeal. The appellants contended *inter alia* that the JC erred in categorising their action as an appeal against the WIPO decision, that the instant case involved a novel point of law in that they could not have known that their claim lacked merit, and therefore they could not be found to have abused the court's process. The appellants also challenged the quantum of damages that was awarded and argued that damages should have been assessed instead of being awarded summarily.

**Held** (dismissing the appellants' appeal):

**(1)** The appellants' witness's testimony that the appellants would not have filed the instant suit if the WIPO had not made its decision conclusively established that the sole reason for filing the suit was the WIPO decision. That admission proved beyond reasonable doubt that the appellants had no pre-existing grievance about 'unlawful interference with trade' and that the suit was filed exclusively in response to the WIPO decision and for no other reason. The JC thus was entirely correct in his characterisation of the appellants' action. (paras 25-28)

**(2)** The High Court had neither the original, appellate, nor revisionary jurisdiction under the Courts of Judicature Act 1964 ("CJA") to review, set aside or act as an appellate body over decisions made by international tribunals or administrative panels such as the WIPO. (paras 33-34)

**(3)** The appellants' purported cause of action, if at all, did not arise in Malaysia but from the filing of the WIPO complaint in Geneva, Switzerland, and all relevant facts occurred outside Malaysia. The mere fact that a foreign company's products were sold in Malaysia by a local distributor did not mean that the foreign company had a place of business in Malaysia for the purposes of s 23(1)(b) of the CJA. None of the 4 limbs of s 23(1) of the CJA were satisfied. (paras 39, 40, 44. 49 & 52)

**(4)** The respondent was never a party to the registration agreement, cl 17.1 of which provided that the said agreement was governed by the laws of Malaysia. Hence, the said clause did not apply to disputes between the appellants and the respondent. Even if the respondent was a party to the registration agreement, the said clause could not confer jurisdiction on the High Court where none otherwise existed. As was established in *Hap Seng Plantations (River Estates)*

*Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor*, jurisdiction must be conferred by federal law. The JC thus was right in holding that a private agreement between contracting parties, including the Uniform Domain Name Dispute Resolution Policy ("UDRP") could not override the express provisions of art 121 of the Constitution or ss 23 and 24 of the CJA. (paras 56, 58, 59, 60 & 66)

**(5)** The function of the instant court or the High Court was not to act as an appellate or review body over decisions of WIPO administrative panels, more so when cl 4(k) of the UDRP did not create a cause of action. (paras 85-88)

**(6)** To permit disappointed parties to relitigate the same issues in national courts would undermine the UDRP system, encourage forum shopping, defeat the objectives of speed, efficiency and finality, and create conflicting decisions from different national courts on the same issue. Even if the courts had power to grant the declarations sought, there would be no practical utility in doing so. (paras 90-91)

**(7)** Novelty did not equal merit. The fact that an issue had not been litigated before did not mean that a claim based on that issue was justiciable or had any legal foundation. Given that the English courts have dealt with identical issues since at least 2008, the appellants' 'novel point of law' argument ought to be rejected. (paras 100-103)

**(8)** The appellants' substantive claim for unlawful interference failed because all of the 4 essential elements of the tort of unlawful interference with trade were not proven. As was correctly held by the JC, the court could not make any order for the WIPO decision to be set aside or for the domain names to remain registered in the appellants' names. In the circumstances, the JC was correct in dismissing the appellants' claim for unlawful interference with trade. (paras 104, 122 & 123)

**(9)** On the evidence, the appellants' suit was not filed for any genuine purpose of obtaining legitimate relief, but for the collateral purpose of frustrating the WIPO's decision and preventing transfer of the domain names. On the totality of the evidence and circumstances, the appellants knew from the outset that they had no valid cause of action. There clearly was an abuse of process. (paras 127, 133 & 135)

**(10)** On the evidence, the respondent had suffered damage. The respondent's lack of current use of the domain names was irrelevant. As the trademark owner, it was entitled to decide whether and how to use them. The respondent had been deprived of that right by the appellants' holding of the domain names. (paras 139 & 144)

**(11)** The award of RM200,000.00 for general damages to the respondent was not manifestly excessive, as the respondent had been completely deprived of its use of the domain names for approximately 3 years as at the date of judgment,

and given the international nature of the trademarks and the global reach of the Internet. (paras 160-163)

**(12)** Given that the abuse of process in this instance was serious, the award of RM300,000.00 in exemplary damages was not excessive. (paras 166-167)

**(13)** The court had the inherent jurisdiction to order appropriate remedies for abuse of its process including damages without the need for separate assessment proceedings. The facts necessary to assess damages were already before the JC and the claim having been found to be an abuse of process, it would be anomalous to require the respondent to undergo an assessment of damages as a result of the appellants' wrongdoing. There was no error in the quantum of damages awarded, nor was the quantum awarded manifestly excessive. (paras 170-173)

**Case(s) referred to:**

*Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd [2002] 3 MLRH 471 (refd)*

*Conweld Engineering Sdn Bhd & Ors v. Goh Swee Boh @ Goh Cheng Kin & Anor [2023] 1 MLRA 664 (refd)*

*Country Heights Holdings Bhd v. Monaliza Zaidel & Ors [2021] MLRHU 2093 (refd)*

*Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors [1996] 2 MLRH 631 (refd)*

*Globus Shipping & Trading Co. (Pte) Ltd v. Taiping Textiles Berhad [1976] 1 MLRA 415 (refd)*

*Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 3 MLRA 345 (folld)*

*Inter Maritime Management Sdn Bhd v. Kai Tai Timber Company Ltd Hong Kong [1995] 1 MLRA 715 (refd)*

*Karpal Singh v. Sultan Of Selangor [1987] 1 MLRH 215 (folld)*

*Lee Tat Development Pte Ltd v. Management Corporation Of Grange Heights [2018] SGCA 50 (refd)*

*Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed [1998] 1 MLRA 67 (refd)*

*Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2) [2009] 2 MLRH 82 (refd)*

*Michael Ross v. Playboy Enterprises International Inc [2016] EWHC 1379 (refd)*

*Pankajkumar Patel v. Allos Therapeutics Inc [2008] All ER (D) 172 (refd)*

*Toth v. Emirates [2012] FSR 719 (refd)*

*Yoyo.Email Limited v. Royal Bank Of Scotland Group Plc [2016] FSR 537 (refd)*

**Legislation referred to:**

Courts of Judicature Act 1964, ss 18, 19, 20, 21, 22, 23(1)(b), 24, 25A, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

Federal Constitution, arts 121, 128

**Counsel:**

*For the appellants: Linda Wang Chaw Ling, Joyce Goh Min Yen; M/s Linda Wang Su & Boo*

*For the respondent: Ng Pau Chze; M/s PC Kok & Co*

[For the High Court judgment, please refer to *Junzhiwang & Anor v. TC Pharmaceutical Industries Co Ltd* [2024] 1 MLRH 93]

**JUDGMENT**

**Ahmad Fairuz Zainol Abidin JCA:**

**Introduction**

**[1]** This is an appeal against the decision of the High Court of Malaya at Kuala Lumpur (Commercial Division) in Civil Suit No: WA-22IP-58-09/2021.

**[2]** The learned Judicial Commissioner dismissed the appellants' (plaintiffs at the High Court) claim for unlawful interference with trade and allowed the respondent's (defendant at the High Court) counterclaim for abuse of legal process, ordering the Appellants to pay:

(i) General damages: RM200,000.00;

(ii) Exemplary damages: RM300,000.00;

(iii) Costs: RM100,000.00 (subject to allocatur); and

(iv) Interest at 5% per annum from 24 September 2021 until full settlement.

**[3]** We dismissed the appeal and the following are the reasons of our decision.

**Background Facts**

**[4]** The background facts are largely undisputed and have been agreed upon by both parties. They are comprehensively set out in the trial judgment and may be summarized as follows.

**[5]** The respondent is a Thai company and the creator, originator, and registered proprietor of the "Red Bull" trademarks globally, including in Malaysia, where it holds 13 trademark registrations dating from 1988 to 2018, and in China, where it also holds registered trademarks.

**[6]** In 1995, the Respondent entered into a joint venture agreement with three other parties to produce and sell Red Bull vitamin energy drinks in China. The 2nd Appellant was the joint-venture company formed for this purpose.

**[7]** Pursuant to the joint venture, several licence agreements were executed between the Respondent and the 2nd Appellant, granting the 2nd Appellant

rights to use the Red Bull trademarks in China. Critically, all these licence agreements expired on 6 October 2016 and have not been renewed. None of these agreements authorized the appellants to register or use any domain names incorporating the Red Bull trademarks.

**[8]** Between September 2018 and August 2019, the 1st Appellant, who claims to be an employee of the 2nd Appellant, acquired by transfer eleven domain names incorporating the Respondent's Red Bull trademarks ("the Domain Names"), including:

(i) redbullchina.com

(ii) redbullbeijing.com

(iii) redbullwork.com

(iv) hongniu.cc;

(v) and seven others

**[9]** The 1st Appellant registered these Domain Names through a Registration Agreement with Webnic.cc, a company incorporated in the British Virgin Islands. The Respondent was never a party to this Registration Agreement.

**[10]** On 21 December 2020, the Supreme People's Court of the People's Republic of China, in Civil Judgment No. 394 (2020), conclusively determined that the Respondent is the rightful and legal owner of the Red Bull trademarks in China. This decision was final and binding.

**[11]** On 27 April 2021, the Respondent filed a complaint with the World Intellectual Property Organization ("WIPO") under the Uniform Domain Name Dispute Resolution Policy ("UDRP"), registered as Case No. D2021-1297, seeking transfer of the Domain Names from the 1st Appellant.

**[12]** The 1st Appellant actively participated in the WIPO proceedings, filed a response, and was represented by legal counsel throughout.

**[13]** On 31 August 2021, the WIPO Administrative Panel, by majority decision, ruled in favour of the Respondent and ordered the Domain Names to be transferred to the Respondent ("the WIPO Decision").

**[14]** On 24 September 2021, merely 24 days after the WIPO Decision, the appellants filed the present action in the High Court.

**The Appellants' Claim In The High Court**

**[15]** The Appellants' main cause of action pleaded in the High Court was for unlawful interference with trade. In paragraph 22 of their Statement of Claim, they alleged:

> "22. The Defendant, knowing at all material times that the Domain Names were used and registered by the Plaintiffs in good faith, wrongfully and with intent to injure the Plaintiffs or any of them by filing the complaint against the Plaintiffs' use and registration of the Domain Names with the WIPO."

**[16]** The essence of the Appellants' case was that the very act of the Respondent filing the WIPO Complaint constituted unlawful interference with their trade.

**[17]** The reliefs sought by the Appellants included:

(i) A declaration that the Plaintiffs' registration and use of the Domain Names were not in bad faith but in good faith;

(ii) A declaration that the Appellants have rights or legitimate interests in the Domain Names;

(iii) A declaration that the Domain Names do not infringe the Respondent's trademarks;

(iv) An order that the WIPO Decision be set aside and the Domain Names remain registered in the Appellants' names;

(v) A permanent injunction restraining the Respondent from instituting any action for trademark infringement or passing off; and

(vi) General damages, interest, and costs.

**[18]** It is immediately apparent from these reliefs that the Plaintiffs were seeking orders that would effectively reverse, overturn, and nullify the WIPO Decision.

**The Respondent's Counterclaim**

**[19]** The Respondent filed a counterclaim alleging three torts:

(i) Passing off;

(ii) Unlawful interference with trade; and

(iii) Abuse of legal process.

**[20]** The learned Judicial Commissioner dismissed the counterclaims for passing off and unlawful interference with trade but allowed the counterclaim for abuse of legal process.

**This Court's Analysis And Decision**

**Issue 1: Whether The Claim Was Properly Characterized**

**[21]** We reject the Appellants' contention that the learned Judicial Commissioner erred in characterizing their action as an appeal against the WIPO Decision.

**[22]** The characterization of a claim is determined not merely by the label the plaintiff chooses to attach to it, but by examining the substance of what is pleaded and, most importantly, the reliefs sought.

**[23]** Here, the primary relief sought by the Appellants was:

> "An order that the WIPO Administrative Panel's decision dated 31 August 2021 be set aside and the Domain Names shall remain registered in the Plaintiffs' names."

**[24]** This relief is unambiguously seeking to overturn the WIPO Decision. No amount of semantic manoeuvring can disguise this fact.

**[25]** We have carefully examined the evidence adduced at trial, particularly the testimony of the Appellants' witness Mr. Wu Fangshuo (the Appellants' China legal counsel). His evidence conclusively establishes that the sole reason for filing the High Court suit was the WIPO Decision. When asked directly whether they would have filed the suit if WIPO had not made its decision, he answered simply: "Yes" [meaning they would not have filed]. The relevant testimony reads:

> "KPC: "Do you agree that if the WIPO did not make the decision on 31 August 2021, the Plaintiffs would not have filed the present suit?"
>
> FANGSHUO: "Yes"."

**[26]** This admission demolishes the Appellants' case. It proves beyond any doubt that the Appellants had no pre-existing grievance about "unlawful interference with trade." The purported tort only came into existence in the Appellants' minds after they lost at WIPO. The suit was filed exclusively in response to the WIPO Decision and for no other reason.

**[27]** We agree with the Respondent's submission that the purported cause of action for "unlawful interference with trade" is merely a vehicle — a trojan horse, to use the Respondent's apt metaphor — to smuggle in what is in substance an appeal against the WIPO Decision.

**[28]** The learned Judicial Commissioner was therefore entirely correct to identify and address the true nature of the claim before him. We find no error in his characterization of the Appellants' action.

**Issue 2: Jurisdiction Under The Courts Of Judicature Act**

**[29]** We affirm the learned Judicial Commissioner's finding that the High Court lacked jurisdiction to hear and adjudicate the Appellants' challenge to the WIPO Decision.

**[30]** The starting point is art 121 of the Federal Constitution, which provides that the High Courts "shall have such jurisdiction and powers as may be conferred by or under federal law."

**[31]** As the Federal Court held in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 3 MLRA 345 at p 354:

> "It is imperative to note that the Federal Constitution allows the High Courts to have jurisdiction only as conferred by federal law."

**[32]** This is a fundamental constitutional principle. The High Court is a creature of statute. It has only such jurisdiction as Parliament has seen fit to confer upon it through legislation.

**[33]** The relevant federal law is the Courts of Judicature Act 1964 ("CJA"). Part II of the CJA (ss 18-37) deals with the High Court's jurisdiction, which is divided into three categories:

(i) Original jurisdiction (ss 22-25A)

(ii) Appellate jurisdiction (ss 26-30)

(iii) Revisionary jurisdiction (ss 31-37)

**[34]** We have examined each of these provisions carefully. None of them confers jurisdiction on the High Court to review, set aside, or act as an appellate body over decisions made by international arbitral or administrative panels such as WIPO.

**[35]** We must categorically state that WIPO is an agency of the United Nations, headquartered in Geneva, Switzerland. The UDRP is an international dispute resolution mechanism for domain name disputes. There is no reason why the Malaysian Parliament would or should confer jurisdiction on Malaysian courts to review decisions made by such international bodies. The Respondent has rightly submitted that the CJA has been in force since 1964 (61 years ago). The Appellants, with their legal counsel at all times since the WIPO proceedings, cannot plausibly claim ignorance of these statutory provisions.

**[36]** None of the provisions of the CJA relating to the original jurisdiction of the High Court, or to the appellate jurisdiction of the High Court, or to the revisionary jurisdiction of the High Court, applies so as to confer on the High Court the jurisdiction to hear and determine any action to challenge a decision of an administrative panel formed under UDRP or the Rules.

**Section 23(1) CJA Not Satisfied**

**[37]** We turn to s 23(1) CJA, which provides:

> "Subject to the limitations contained in art 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where-
>
> (a) the cause of action arose
>
> (b) the defendant or one of several defendants resides or has his place of business

(c) the facts on which the proceedings are based exist or are alleged to have occurred, or

(d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court…"

**[38]** It is our considered view that none of the limbs (a) to (d) are satisfied here.

**Cause Of Action**

**[39]** The Appellants' purported cause of action (unlawful interference with trade) arose, if at all, from the filing of the WIPO Complaint in Geneva, Switzerland, and the conduct of WIPO proceedings there. The cause of action did not arise in Malaysia.

**[40]** We note from the evidence that the Appellants have admitted they conduct no business or trade in Malaysia, have never used the Red Bull trademarks in Malaysia, and the Domain Names were registered in China. All relevant facts occurred outside Malaysia — in China, Switzerland, or the British Virgin Islands.

**Place Of Business**

**[41]** The Appellants contend the Respondent has a "place of business" in Malaysia because its Red Bull products are sold here and it sponsors events in Malaysia.

**[42]** We have considered the Respondent's submission on this issue and find it persuasive. The respondent is a Thai company headquartered in Thailand. The evidence shows its products are distributed in Malaysia by an independent Malaysian company, "All Excel Trading Sdn Bhd." The Respondent has no office, no registered office, and no business office in Malaysia.

**[43]** We accept the Respondent's submission that All Excel Trading Sdn Bhd is the Respondent's appointed distributor, who actually conducts the business, sales, and advertising and promotional activities in Malaysia. The Respondent's Red Bull products and promotions are traded and promoted in Malaysia by this independent distributor, not by the Respondent itself.

**[44]** The mere fact that a foreign company's products are sold in Malaysia by a local distributor does not mean the foreign company has a "place of business" in Malaysia for purposes of s 23(1)(b) CJA.

**[45]** The authorities relied upon by the Appellants (*Country Heights Holdings Bhd v. Monaliza Zaidel & Ors* [2021] MLRHU 2093 and *Bank Utama (Malaysia) Bhd v. Perkapalan Dai Zhun Sdn Bhd* [2002] 3 MLRH 471) do not assist them. Those cases merely held that "place of business" is not limited to "registered office." They do not hold that having products distributed by a third party constitutes a "place of business."

**[46]** We further note the Appellants' inconsistency on this point, as highlighted by the Respondent. If the Respondent has a place of business in Malaysia, then the Respondent's counterclaim for passing off (which requires acts in Malaysia) would have merit. Yet the Appellants argued strenuously that the counterclaim for passing off should be dismissed because the Respondent's business is in Thailand, not Malaysia. The Appellants cannot have it both ways.

**[47]** More significantly, if the Respondent has no place of business in Malaysia (as the Appellants contended when defending against the passing off counterclaim), then the Respondent's counterclaim was filed knowing that s 23(1)(b) CJA was not satisfied. This would mean, following the Respondent's logic, that the Respondent filed its counterclaim in bad faith with knowledge that the Court had no jurisdiction.

**[48]** We find that the Appellants are precluded by the facts and circumstances from taking inconsistent positions on this issue.

**Facts Occurred**

**[49]** All the material facts occurred outside Malaysia:

(i) The alleged "50-year agreement" was made in China;

(ii) The 2nd Appellant's operations were in China;

(iii) The Domain Names were registered in China;

(iv) The WIPO Complaint was filed in Switzerland;

(v) The WIPO proceedings were conducted in Switzerland; and

(vi) The WIPO Decision was rendered in Switzerland.

**[50]** Thus, no material facts occurred in Malaysia.

**Land Dispute**

**[51]** This clearly does not apply.

**[52]** We therefore conclude that none of the four limbs of s 23(1) CJA are satisfied.

**Private Agreement Cannot Confer Jurisdiction**

**[53]** The Appellants relied on cl 17.1 of the Registration Agreement. The Registration Agreement is a private contract entered into between Junzhi Wang, the 1st Appellant, and Webnic.cc, a domain name registrar incorporated in the British Virgin Islands. This agreement governs the registration and use of the eleven disputed domain names that incorporate the Respondent's Red Bull trademarks.

**[54]** Clause 10 of the agreement expressly provides that in the event of a dispute arising due to the registrant's registration or use of a domain name, the registrant agrees to be bound by the applicable Dispute Policy, being the UDRP. The clause further states that the Dispute Policy is incorporated into and forms part of the Registration Agreement itself.

**[55]** The jurisdictional arguments advanced by the Appellants are cl 17.1 of the Registration Agreement, which provides that the agreement is governed by the laws of Malaysia and that the registrant consents to the exclusive jurisdiction of the courts in Malaysia. The Appellants have sought to rely heavily on this provision to establish that this Court has jurisdiction to hear and determine their challenge to the WIPO UDRP decision.

**[56]** Clause 17.1 reads as follows:

> "This Registration Agreement is governed by the laws of Malaysia and the Registrant hereby consents to the exclusive jurisdiction of the courts in Malaysia."

**[57]** This is a standard forum-selection and choice-of-law clause. It means:

(i) Malaysian law governs the interpretation and enforcement of the Registration Agreement; and

(ii) Disputes between the parties to the Registration Agreement (the 1st Appellant and Webnic) will be heard in Malaysian courts.

**[58]** We have examined the evidence carefully, particularly the testimony of the Appellants' own witness. The respondent is not a party to the Registration Agreement. This was unequivocally admitted by the Appellants' witness at trial. The relevant testimony from the Agreed Notes of Proceedings, which reads:

> "KPC: "Do you agree that this agreement is a private and personal agreement between the registrar Webnic.cc and the 1st Plaintiff?"
>
> FANGSHUO: "Yes."
>
> KPC: "That means only these two parties agree to this agreement. No one else. Yes or no?"
>
> FANGSHUO: "Yes"."

**[59]** This admission is fatal to the Appellants' jurisdictional argument based on the Registration Agreement. The clause does not apply to disputes between the Appellants and the Respondent, who was never a party to the agreement.

**[60]** Even if the Respondent were a party to the Registration Agreement, the clause could not confer jurisdiction on the High Court where none otherwise exists. As established by the Federal Court in *Hap Seng Plantations* (*supra*),

jurisdiction must be conferred by federal law. Private parties cannot, by agreement, confer jurisdiction on courts.

**[61]** The distinction between:

(i) Choice of law (which law applies);

(ii) Forum selection (which court hears disputes between the contracting parties); and

(iii) Jurisdiction (which must be conferred by statute).

is well-established in Malaysian law.

**[62]** In *Inter Maritime Management Sdn Bhd v. Kai Tai Timber Company Ltd Hong Kong* [1995] 1 MLRA 715 at pp 717-718, the Court of Appeal held:

> "It is appropriate to now deal with the clause in the bill of lading on which the appellant grounded its summons. It is, what English textbook writers, and, it would appear even Judges from other parts of the Commonwealth, term an exclusive jurisdiction clause. American jurists refer to it as a forum-selection clause. I must confess my own preference for the latter terminology as it appears to be more accurate a description of such clauses."

**[63]** In *Globus Shipping & Trading Co. (Pte) Ltd v. Taiping Textiles Berhad* [1976] 1 MLRA 415 at pp 415 and 417, the Federal Court held:

> "With respect to learned Counsel, those cases do not support any such contention as they do not relate to the jurisdiction clause in a contract but to the clause as to the proper law of the contract."

**[64]** These authorities make clear that forum-selection clauses do not confer jurisdiction as they merely designate which court will hear disputes only if that court has jurisdiction.

**[65]** Here, the High Court lacks jurisdiction under the CJA. Clause 17.1 cannot remedy that lack of jurisdiction.

**[66]** The learned Judicial Commissioner rightfully held that a private agreement between contracting parties cannot override the express provisions of art 121 of the Federal Constitution or ss 23 and 24 of the CJA.

**[67]** To hold otherwise would be to allow private parties to rewrite the Constitution and expand the jurisdiction of the High Court beyond what Parliament has provided. This is constitutionally impermissible.

**Paragraph 4(k) UDRP Cannot Confer Jurisdiction**

**[68]** The Appellants argue they had a right to file suit under paragraph 4(k) of the UDRP. For completeness, the said clause is reproduced as follows:

> "Availability of Court Proceedings. The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded. If an Administrative Panel decides that your domain name registration should be cancelled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced a lawsuit against the complainant in a jurisdiction to which the complainant has submitted under paragraph 3(b)(xiii) of the Rules of Procedure. (In general, that jurisdiction is either the location of our principal office or of your address as shown in our Whois database. See paragraphs 1 and 3(b)(xii) of the Rules of Procedure for details. If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action, until we receive (i) evidence satisfactory to us of a resolution between the parties; (ii) evidence satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing your lawsuit or ordering that you do not have the right to continue to use your domain name."

**[69]** The critical words of the clause relied on by the Appellants, in reference to the mandatory administrative proceeding is that it "shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution."

**[70]** We make several observations. First, paragraph 4(k) is part of a private dispute resolution policy. It is not legislation. It cannot confer jurisdiction on courts. It is helpful for us to make reference to the decision of the English Queen's Bench Division case of *Pankajkumar Patel v. Allos Therapeutics Inc* [2008] All ER (D) 172 where an interpretation of paragraph 4(k) was made. Interestingly, the court too was discussing the same issue of whether the said paragraph conferred juridical jurisdiction. The court held that:

> "Paragraph 4k of the Policy appears to assume that the court to whom the matter is referred may be able to review the Panellist's decision on its merits, because the paragraph speaks of 'referring the dispute' to the court for 'independent resolution'. However, it is trite law that an agreement cannot confer a jurisdiction on the court which it does not otherwise have."

**[71]** We therefore, as a matter of settled law, hold that private agreements, including the UDRP, cannot confer judicial jurisdiction on courts where none exists under domestic law.

**[72]** Second, paragraph 4(k) does not say parties can file suit in any court they choose. It refers to "a court of competent jurisdiction." A court has competent

jurisdiction only if its jurisdiction is conferred by statute or constitutional provision or the statutory requirements for jurisdiction are satisfied.

**[73]** Here, as we have found, the High Court's jurisdiction is not conferred by the CJA and the requirements of s 23(1) are not satisfied. The High Court is therefore not a "court of competent jurisdiction" for purposes of paragraph 4(k).

**[74]** Third, we note from the Respondent's submission that paragraph 4(k) itself specifies that the appropriate jurisdiction is "either the location of our principal office or of your address as shown in our Whois database."

**[75]** The evidence shows that WIPO's principal office is in Geneva, Switzerland. The 1st Appellant's address in the Whois database is Beijing, China. Malaysia satisfies neither criterion.

**[76]** We have examined the Appellants' witness's testimony on this point. The Appellants' own witness admitted that the British Virgin Islands (where Webnic is located) would be the proper jurisdiction. The relevant testimony from the Agreed Notes of Proceedings reads:

> "MAH: "Ok, you were then asked that 'Do you agree that this action should be filed where the registrar is placed which is the British Virgin Island, I believe?' And you said disagree."
>
> FANGSHUO: "Yes, from our perspective, the Virgin Island, BVI. It also has a jurisdiction on this suit but it's up to the BVI's court direction, from our perspective"."

**[77]** This admission supports the Respondent's submission that the Appellants filed suit in the wrong jurisdiction. According to paragraph 4(k) UDRP and the Appellants' own witness, the appropriate jurisdictions were Switzerland, China, or the British Virgin Islands, but not Malaysia.

**[78]** Fourth, and most fundamentally, paragraph 4(k) permits filing suit, but it does not create a cause of action where none exists.

**[79]** As Deputy Judge Proudman QC held in *Pankajkumar Patel*:

> "The claimant must demonstrate some independent right of action justiciable in this Court... An unsuccessful registrant therefore faces considerable difficulty in identifying a cause of action upon which the Panel's decision can be challenged."

Here, the Appellants have failed to identify any independent right of action justiciable in the Malaysian courts. Their claim for "unlawful interference with trade" is, as we shall explain, wholly without merit. We therefore conclude that paragraph 4(k) UDRP does not confer jurisdiction on the High Court in this case.

**Conclusion On Jurisdiction**

**[80]** For all the above reasons, we affirm the learned Judicial Commissioner's finding that the High Court lacked jurisdiction to hear and adjudicate the Appellants' challenge to the WIPO Decision.

**[81]** This finding alone is sufficient to dispose of the appeal. However, for completeness, we shall address the other issues.

**Issue 3: Whether The Court Should Act As Appellate Body Over WIPO**

**[82]** Even assuming that the High Court had jurisdiction, we agree with the learned Judicial Commissioner that it should not grant the reliefs sought by the Appellants.

**Courts Are Not Appellate Bodies for UDRP Decisions**

**[83]** Reference is again made to *Pankajkumar Patel v. Allos Therapeutics Inc,* where the court categorically held "it is trite law that an agreement cannot confer a jurisdiction on the court which it does not otherwise have. Under the Policy, the Registrar will abide by a judicial decision, but the function of this Court is not as a judicial review or appellate body. The claimant must demonstrate some independent right of action justiciable in this Court."

**[84]** The learned Judge struck out the claim, concluding that the Plaintiff Patel's claim was "totally without merits."

**[85]** The need to establish a separate cause of action to confer jurisdiction on a court has been discussed in many cases. In *Yoyo.Email Limited v. Royal Bank Of Scotland Group Plc* [2016] FSR 537 at pp 554-555, the Court adopted the reasoning in *Pankajkumar Patel* and held:

> "(1) adopting the reasoning of Ms Proudman in *Patel* drives me to hold that on a proper construction of the UDRP cl 4(k) does not give rise to a separate cause of action in favour of the claimant;
>
> (2) nor does it afford any jurisdiction to this Court to act as an appeal or review body from the Decision."

**[86]** In *Toth v. Emirates* [2012] FSR 719 at pp 737-738, Mann J held:

> "No independent cause of action based on 'abusive registration' existed before them or is created at that moment. What is created is a question for the expert to decide. That leaves no room for parallel (or consecutive) court proceedings on the point. Looking at the scheme as a whole, it was apparently intended to create self-contained dispute resolution mechanism which is closely regulated, cheap, quick and (apparently) efficient. To add a parallel route of applying to court (which I fear would not always attract all those adjectives) would be inimical to the apparent intention of the parties."

**[87]** In holding that a cause of action must first be established before any attempt to overturn the decision is made, the court in *Michael Ross v. Playboy Enterprises International Inc* [2016] EWHC 1379 at pp 101-102, was unequivocal and held:

> "No separate cause of action has been identified here to justify the grant of such a declaration, which would, in my view, be tantamount to granting an appeal against the Decision, something which this Claimant accepts cannot be done. In the circumstances, in my judgment the answer to Issue 1 is that the Court does not have the power to overturn the Decision."

**[88]** We respectfully adopt and apply these principles. The function of this Court (or the High Court) is not to act as an appellate or review body over decisions of WIPO Administrative Panels. More so when cl 4(k) does not create a cause of action.

**[89]** The UDRP is a specialized, self-contained dispute resolution mechanism designed for quick, efficient, and inexpensive resolution of domain name disputes. Parties who submit to this process are bound by the outcome. It is pertinent to note that the 1st Appellant had voluntarily submitted herself to the said process without objections.

**[90]** To permit disappointed parties to re-litigate the same issues in national courts would:

(i) Undermine the UDRP system;

(ii) Encourage forum shopping;

(iii) Defeat the objectives of speed, efficiency, and finality; and

(iv) Create conflicting decisions from different national courts on the same issue.

**No Practical Utility In Granting Declarations**

**[91]** Even if the Court had power to grant the declarations sought, there would be no practical utility in doing so.

**[92]** In *Yoyo.Email*, the Court held that "there is no practical utility in granting declaratory relief in this case for the reasons explained by Mann J in *Toth*, because the UDRP scheme has dealt with the issue between the parties, because any declaration made by this Court could not alter the findings of the Panel."

**[93]** Here, the WIPO Panel has made the following findings:

(i) the Domain Names are confusingly similar to the Respondent's trademarks;

(ii) the Appellants have no rights or legitimate interests in the Domain Names; and

(iii) the Domain Names were registered and used in bad faith.

**[94]** These findings were made after full inter partes proceedings in which the 1st Appellant was represented by counsel and had every opportunity to present her case. It was not carried out summarily.

**[95]** The domain name registrar (Webnic) is bound by the UDRP Policy to implement the WIPO Panel's decision, not any contrary finding by a national court. Any declaration by this Court contradicting those findings would have no legal effect on the WIPO Decision.

**[96]** Granting such declarations would therefore serve no useful purpose. It would be an exercise in futility.

**Conclusion On Court's Role**

**[97]** We therefore agree with the learned Judicial Commissioner's finding not to grant the relief sought, including to set aside the WIPO Decision.

**Issue 4: The "Novel Point of Law" Argument**

**[98]** The Appellants argue that because this case involves a "novel point of law" never before considered in Malaysia, they could not have known their claim lacked merit, and therefore cannot be found to have abused the court process.

**[99]** We reject this argument entirely.

**[100]** First, novelty does not equal merit. The fact that an issue has not been litigated before does not mean a claim based on that issue is justiciable or has any legal foundation.

**[101]** Second, the issue is not truly novel. The English courts have dealt with identical issues since at least 2008 (*Pankajkumar Patel*). The legal principles are clear and settled. With competent legal advice, the Appellants would have known their claim faced insurmountable difficulties.

**[102]** Third, the novelty argument proves too much. We agree with the Respondent that if parties could circumvent jurisdictional requirements simply by claiming their case is "novel," it would open the floodgates to frivolous litigation. Jurisdiction either exists or it does not, regardless of whether the underlying issue is novel.

**[103]** We therefore reject the "novel point of law" argument.

**Issue 5: Claim For Unlawful Interference With Trade**

**[104]** We turn to the Appellants' substantive claim for unlawful interference with trade. We agree with the learned Judicial Commissioner that this claim fails on every element.

**Elements Of The Tort**

**[105]** In *Megnaway Enterprise Sdn Bhd v. Soon Lian Hock (No 2)* [2009] 2 MLRH 82, the Court set out the four essential elements. They are:

(i) Interference with the plaintiff's trade or business;

(ii) Unlawful means;

(iii) Intention to injure the plaintiff; and

(iv) The plaintiff is injured thereby.

**[106]** The Appellants must prove all four elements. They have failed to prove any of them.

**First Element: No Trade Or Business In Malaysia**

**[107]** The first element requires proof that the Appellants have a trade or business that was interfered with.

**[108]** We have carefully examined the evidence adduced at trial on this critical point. The Appellants' own witness, Mr. Wu Fangshuo (the Appellants' China legal counsel), made devastating admissions under oath that destroy their claim. The relevant testimony from the Agreed Notes of Proceedings reads:

> "KPC: "Do you agree that the Plaintiffs have no business, no trade and no sales of Red Bull drinks in Malaysia?"
>
> FANGSHUO: "In Malaysia, yes."
>
> KPC: "Yes. Do you agree that the 2nd Plaintiff have never used the Red Bull trademarks in Malaysia?"
>
> FANGSHUO: "To my knowledge, yes".
>
> KPC: "Do you agree that there is no interference with any of the Plaintiffs' trade in Malaysia because the 2nd Plaintiff has no trading activities in Malaysia, agree?"
>
> FANGSHUO: "In Malaysia, yes"."

**[109]** These admissions are fatal to the Appellants' claim. If they have no trade or business in Malaysia, then there is no trade or business in Malaysia that could be interfered with. The Respondent's submission on this point is irrefutable.

**Second Element: No Unlawful Means**

**[110]** The Appellants allege that the "unlawful means" was the Respondent's filing of the WIPO Complaint. This allegation is wholly misconceived. There was nothing unlawful about filing the WIPO Complaint.

**[111]** It is our considered view that the UDRP is the recognized international mechanism for resolving domain name disputes. Filing a complaint under the UDRP is not only lawful, but it is also the very procedure designed for this purpose.

**[112]** The respondent is the registered proprietor of the Red Bull trademarks globally, including in China, where the 2nd Appellant was operating. In separate proceedings, it was highlighted to this court that the China Supreme Court had conclusively determined that the Respondent owns these trademarks.

**[113]** The WIPO Panel, after full proceedings, found:

(i) The Domain Names are confusingly similar to the Respondent's trademarks;

(ii) The Appellants have no rights or legitimate interests in the Domain Names; and

(iii) The Domain Names were registered and used in bad faith.

**[114]** These findings vindicate the Respondent's decision to file the WIPO Complaint. Far from being unlawful, the filing of the Complaint was a legitimate exercise of the Respondent's intellectual property rights.

**[115]** The learned Judicial Commissioner held at paragraph 53:

> "...a claimant who brings an action to protect his legal rights and uses all remedies afforded to him by the law to do so cannot be said to be interfering with the trade of the respondent to that action, unless he knew that he never had a cause of action in the first place and that he had proceeded with that action to extort or obtain a relief he was never entitled to in law."

**[116]** We agree with the Judicial Commissioner's finding that "the Defendant's filing of the Complaint with WIPO against the Plaintiffs' use and registration of the Domain Names with the WIPO was an action to protect its rights and use all remedies afforded to it by the law, and the relief it sought was one it was entitled to under the UDRP and one which the Administrative Panel could grant. The Respondent acted entirely lawfully and within its rights."

**[117]** As the Court held in *Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors* [1996] 2 MLRH 631 at p 638:

> "if a litigant brings an action to protect his rights (as the defendants did in filing the motion), the use of all remedies afforded to them by the law cannot be an abuse of the court's process."

We find the above dicta to be consistent with the Respondent's filing of the WIPO Complaint.

**Third Element: No Intention To Injure**

**[118]** The Respondent's intention in filing the WIPO Complaint was to protect its trademark rights, not to injure the Appellants. The UDRP proceedings were conducted fairly, with both sides represented and given full opportunity to present their cases.

**[119]** There is no evidence of any ulterior motive or intention to injure on the Respondent's part.

**Fourth Element: No Injury**

**[120]** The Appellants have not established that they suffered any compensable injury. The WIPO Panel's order that the Domain Names be transferred to the Respondent was a legitimate remedy under the UDRP. It was the natural and intended consequence of the Respondent's successful complaint.

**Reliefs Sought Not Available**

**[121]** The principal reliefs sought by the Appellants are not available. The Appellants sought declarations contradicting the WIPO Panel's findings and an order setting aside the WIPO Decision. As we have already held, the Court has no jurisdiction to make such orders.

**[122]** The learned Judicial Commissioner correctly held (at paragraphs 56-58) that the Court cannot make any order that the WIPO Administrative Panel's Decision dated 31 August 2021 be set aside, or order that the Domain Names remain registered within the appellants' names. We agree entirely.

**Conclusion On Unlawful Interference with Trade**

**[123]** For all the above reasons, we affirm the learned Judicial Commissioner's dismissal of the Appellants' claim for unlawful interference with trade.

**Issue 6: Abuse Of Legal Process**

**[124]** In *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed* [1998] 1 MLRA 67 at p 76, Gopal Sri Ram JCA (as he then was) held:

> "In my judgment, the essential elements of the tort of abuse of process are these:
>
> (1) The process complained of must have been initiated;
>
> (2) The purpose for initiating that process must be some purpose other than to obtain genuine redress which the process offers. In other words, the dominant purpose for which the process was invoked must be collateral, that is to say, aimed at producing a result not intended by the invocation of the process; and
>
> (3) The plaintiff must have suffered some damage or injury in consequence."

**[125]** In *Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors* [1996] 2 MLRH 631 at p 638, Mahadev Shankar J (as he then was) said:

> "As to what constitutes an abuse of process, it would be salutary to remind ourselves that in *Grainger v. Hill* it was obvious that the plaintiff knew he never had a cause of action in the first place. Secondly he proceeded with his action in order to extort a relief he was never entitled to in law."

**[126]** The Court of Appeal has reaffirmed that this tort remains good law in Malaysia. In *Conweld Engineering Sdn Bhd & Ors v. Goh Swee Boh @ Goh Cheng Kin & Anor* [2023] 1 MLRA 664, the Court of Appeal declined to follow the Singapore Court of Appeal's decision in *Lee Tat Development Pte Ltd v. Management Corporation Of Grange Heights* [2018] SGCA 50 (which refused to recognize the tort). Instead, the court held that the tort of collateral abuse of process should continue to be recognized as a distinct tort in Malaysia. We cannot disagree.

**Action Filed**

**[127]** We are satisfied, based on the evidence before us, that the Appellants filed the High Court suit not for any genuine purpose of obtaining legitimate relief, but for the collateral purpose of frustrating the WIPO Decision and preventing transfer of the Domain Names.

**Collateral Purpose**

**[128]** The evidence establishing this collateral purpose is overwhelming. As we have already noted, the Appellants' witness, Mr. Wu Fangshuo, admitted unequivocally that but for the WIPO Decision, the Appellants would never have filed the suit. The relevant testimony from the Agreed Notes of Proceedings bears repeating:

> "KPC: "Do you agree that if the WIPO did not make the decision on 31 August 2021, the Plaintiffs would not have filed the present suit?"
>
> FANGSHUO: "Yes"."

**[129]** This admission is a blow to the Appellants' case. It proves that the sole reason for filing suit was the WIPO Decision. The Appellants had no pre-existing grievance about "unlawful interference with trade." The purported tort only came into existence in the Appellants' minds after they lost at WIPO.

**[130]** This evidence conclusively establishes that the Appellants filed the suit exclusively in response to the WIPO Decision and for no other reason.

**[131]** We also note that the suit was filed on 24 September 2021, just 24 days after the WIPO Decision on 31 August 2021. This demonstrates it was a reactive measure to the WIPO Decision, not a genuine claim for unlawful interference.

**[132]** It is our firm finding that the primary relief sought was to set aside the WIPO Decision. This relief has nothing to do with genuine unlawful interference with trade, which would be compensated by damages. It is an attempt to overturn the WIPO Decision.

**[133]** We find, based on the totality of the evidence and circumstances, that the Appellants knew from the outset they had no valid cause of action. We reason as follows:

(i) No jurisdiction: The CJA does not confer jurisdiction to review WIPO decisions. As the Respondent correctly submits, these statutory provisions have been in the statute books since 1964. The Appellants, with legal advice throughout, knew or should have known this;

(ii) No trade in Malaysia: The evidence is clear — their own witness admitted under oath they have no business or trade in Malaysia. Without trade, there can be no interference with trade;

(iii) No unlawful means: Filing a WIPO complaint is lawful. The Appellants knew this; and

(iv) English authorities: The Respondent has drawn our attention to cases from 2008 onwards (*Pankajkumar Patel*, *Toth*, *Yoyo.Email*, *Michael Ross*) which clearly held that courts are not appellate bodies for UDRP decisions. It would be presumed that the Appellants through their lawyers, were aware of the cases.

**[134]** Despite knowing they had no valid cause of action, the Appellants filed the suit anyway. The only plausible explanation is the collateral purpose of frustrating the WIPO Decision.

**[135]** We agree with the Judicial Commissioner's finding that there was an abuse of process.

**Effect Of Paragraph 4(k) UDRP**

**[136]** Paragraph 4(k) UDRP provides that if the losing party files court proceedings, the domain name registrar will not implement the Panel's decision until the court proceedings are resolved.

**[137]** We find that the Appellants took advantage of this provision by filing suit in Malaysia, knowing they had no valid cause of action, simply to delay and frustrate implementation of the WIPO Decision.

**[138]** Nearly four years have now passed since the WIPO Decision. The Domain Names still have not been transferred. This is precisely the result the Appellants sought through their abuse of process.

**Damage To Respondent**

**[139]** We are satisfied, based on the evidence, that the Respondent has suffered damage.

**[140]** First, the Respondent has been deprived of the use and benefit of the Domain Names for nearly four years (from August 2021 to present). The WIPO Decision has not been implemented due to the pendency of these court proceedings.

**[141]** Second, the Domain Names incorporate the Respondent's internationally famous Red Bull trademarks. They have a global reach via the Internet. The Respondent, as the rightful owner of these trademarks, is entitled to control how they are used in domain names.

**[142]** Third, every day that passes with the Domain Names in the Appellants' hands represents continuing damage to the Respondent's trademark rights and reputation.

**[143]** The Appellants argue the Respondent suffered no damage because the Respondent never used the Domain Names, has no plans to use them, and that the WIPO Decision is merely "on hold," not frustrated.

**[144]** We find these arguments unpersuasive. The Respondent's lack of current use of the Domain Names is irrelevant. The point is that the Respondent, as trademark owner, is entitled to decide whether and how to use them. The Appellants' unauthorized holding of the Domain Names deprives the Respondent of this right.

**[145]** A decision that has not been implemented for four years is, for all practical purposes, frustrated. The Respondent has been denied the benefit of its successful WIPO complaint for four years. That is damage.

**[146]** We therefore find that the third element (damage) is established.

**The "50-Year Agreement" Aggravating Factor**

**[147]** We agree with the learned Judicial Commissioner that the Appellants' reliance on the purported "50-year licence agreement" is particularly egregious and constitutes an aggravating factor.

**[148]** The evidence shows that this alleged agreement has been rejected by:

(i) China Supreme Court: Found its authenticity "still in doubt" and refused to admit it as evidence;

(ii) WIPO Panel: Declined to give it weight, noting the China Supreme Court had found it dubious; and

(iii) Multiple Chinese High Courts: The Respondent has drawn our attention to the testimony of the Appellants' own witness, Sun Jie, who confirmed that the Heilongjiang High Court found that even if the "50-year agreement" were valid, it made no difference because the 2nd Appellant's right to use the Red Bull trademarks derived from the multiple trademark licence contracts which all expired on 6 October 2016.

**[149]** Despite these repeated rejections, the Appellants now seek to introduce the same agreement in Malaysia, accompanied by purported "new evidence" of authenticity obtained in 2022 (after the China and WIPO proceedings concluded).

**[150]** The learned Judicial Commissioner rightly characterized this as "nothing short of an undisguised, unsavoury and disingenuous attempt by the Plaintiffs to challenge the outcome of those proceedings in China and WIPO on evidence that those forums held to be dubious in the hope of extracting a conflicting order from this Court to override them. In my mind, that constitutes a serious and grave abuse of the process of this Court."

**Conclusion On Abuse Of Process**

**[151]** For all the above reasons, we affirm the learned Judicial Commissioner's finding that the Appellants committed the tort of abuse of legal process.

**Issue 7: *Locus Standi* Of 2nd Appellant**

**[152]** Although the learned Judicial Commissioner did not specifically address this issue, we note the Respondent's submission that the 2nd Appellant lacks *locus standi* to bring this action.

**[153]** The Respondent has highlighted several compelling points.

(i) the 2nd Appellant was not a party to the WIPO proceedings. The proceedings were between the Respondent and the 1st Appellant. The evidence shows that the entity identified in the Whois records as the "registrant organisation" was "Beijing Red Bull Beverage Sales Co. Ltd." — a different entity from the 2nd Appellant.

(ii) the 2nd Appellant does not own the Domain Names. The registered owner is the 1st Appellant. The 2nd Appellant's claim that the 1st Appellant holds them "on behalf of" the 2nd Appellant is unsupported by any written evidence.

(iii) the 2nd Appellant does not own any Red Bull trademarks. The China Supreme Court conclusively held that the Respondent owns these trademarks. The 2nd Appellant merely held a licence via many licence agreements which all had expired in 2016.

**[154]** Applying the principle in *Karpal Singh v. Sultan of Selangor* [1987] 1 MLRH 215 a stranger to proceedings cannot bring an action.

**[155]** We find merit in the Respondent's submission that the 2nd Appellant is a stranger to the WIPO proceedings and has no proprietary interest in the Domain Names or the Red Bull trademarks. However, since the claim fails on other grounds, it is unnecessary to rest our decision on this point.

**Issue 8: Quantum Of Damages**

**[156]** Finally, we address the Appellants' challenge to the quantum of damages awarded.

**[157]** The learned Judicial Commissioner awarded:

(i) General damages: RM200,000.00;

(ii) Exemplary damages: RM300,000.00;

(iii) Costs: RM100,000.00 (subject to allocatur); and

(iv) Interest at 5% per annum from 24.9.2021 until full settlement.

**[158]** The Appellants argue these sums are excessive and were awarded without proper inquiry.

**[159]** We disagree. The quantum of damages for abuse of process is a matter within the trial judge's discretion. We will only interfere if the award is manifestly excessive or inadequate.

**[160]** Here, we cannot say the award is manifestly excessive, for the following reasons.

**General Damages (RM200,000.00)**

**[161]** These damages compensate the Respondent for being deprived of the Domain Names for approximately three years at the time of judgment (now nearly four years).

**[162]** The Respondent has submitted, and we agree, that the Domain Names incorporate the Respondent's internationally famous Red Bull trademarks. They have a global reach via the Internet. The Respondent has been completely deprived of their use during this period.

**[163]** An award of RM200,000.00 over three years amounts to approximately RM66,666.00 per year, or less than RM6,000.00 per month. Given the international nature of the trademarks and the global reach of the Internet, we find this to be a modest and reasonable sum.

**Exemplary Damages (RM300,000.00)**

**[164]** Exemplary damages serve a different purpose from compensatory damages. They are awarded to punish the wrongdoer and deter similar conduct.

**[165]** As the learned Judicial Commissioner stated (at para 98):

> "Exemplary damages of RM300,000.00 evince this Court's displeasure on the Plaintiff's abuse of its process."

**[166]** We find that the abuse of process here was serious:

(i) Filing suit with no valid cause of action;

(ii) For the collateral purpose of frustrating a foreign tribunal's decision;

(iii) Attempting to relitigate issues already decided by the China Supreme Court and WIPO;

(iv) Seeking to introduce evidence (the "50-year agreement") that had been rejected elsewhere as dubious; and

(v) Maintaining the suit through trial despite having no merit.

**[167]** We agree with the Respondent's submission that an award of RM300,000.00 in exemplary damages for such conduct is not excessive. It sends an important message that abuse of process will not be tolerated.

**No Inquiry Necessary**

**[168]** The Appellants argue that damages should have been assessed rather than awarded summarily.

**[169]** We disagree. As the learned Judicial Commissioner stated (at para 97):

> "I have ordered those sums of damages without assessment to avoid this Court being subjected to any prolonged or protracted assessment of damages."

**[170]** This was within his discretion. The facts necessary to assess damages were already before him from the trial. The Respondent had been deprived of the Domain Names since the WIPO Decision. The length of deprivation and the nature of the trademarks were clear.

**[171]** Moreover, given that the claim was found to be an abuse of process, it would be anomalous to then require the Respondent to undergo further proceedings (assessment of damages) as a result of the Appellants' wrongdoing.

**[172]** The Court has inherent jurisdiction to order appropriate remedies for abuse of its process, including damages, without the need for separate assessment proceedings.

**Conclusion On Damages**

**[173]** We find no error in the quantum of damages awarded. The award was within the learned Judicial Commissioner's discretion and is not manifestly excessive.

**Conclusion**

**[174]** We find no reason to disturb the finding of the learned Judicial Commissioner. We affirm the said decision, and the appeal is dismissed with costs.

**[175]** We order the Appellants to pay the Respondent costs of this appeal in the sum of RM80,000.00 subject to allocatur.