



**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(COMMERCIAL DIVISION)**

**IN THE FEDERAL TERRITORY OF KUALA LUMPUR,  
MALAYSIA**

**[CIVIL SUIT NO: WA-22IP-13-04/2017]**

**BETWEEN**

**MOHAMMAD HAFIZ BIN HAMIDUN**

(NRIC No.: 840921-08-6171)

**... PLAINTIFF**

**AND**

**KAMDAR SDN. BHD.**

(Co. No.: 12300-T)

**... DEFENDANT**

**JUDGMENT**

(after trial)

**A. Introduction**

[1] This case raises a novel question of whether the plaintiff (**Plaintiff**), a “*Nasyid*” singer, can claim that the defendant company (**Defendant**) has committed the tort of passing off the Defendant’s fabrics (by using the Plaintiff’s name) as fabrics which have been manufactured by, endorsed by or related to the Plaintiff. In this regard, should this Court follow cases decided in New South Wales (Australia), Ontario (Canada) or United Kingdom (**UK**)?

**B. Plaintiff's case**

[2] The Plaintiff testified as follows, among others:

- (1) the Plaintiff is a singer and composer of songs. The Plaintiff is known by his name "*Hafiz Hamidun*" (**Plaintiff's Name**). In fact, the Plaintiff's Name is the title of one of his albums;
- (2) the Plaintiff started a company, Mikraj Concept Sdn. Bhd. (**MCSB**) [now known as Haje Sdn. Bhd. (**HSB**)]. Based on the Plaintiff's Name, HSB (previously MCSB) sells various -
  - (a) clothes, including "*Baju Melayu*" (traditional Malay outfit for men), "*Kurta*" shirts and robes; and
  - (b) fabrics

**(Plaintiff's Goods).**

The Plaintiff's Goods are sold in boutiques and online;

- (3) around February 2017, the Plaintiff had been informed by his fans via Twitter, Facebook and Instagram (**Messages From Plaintiff's Fans**) that the Defendant had -
  - (a) sold or offered to sell fabrics (**Defendant's Goods**) which had the Plaintiff's Name; and
  - (b) offered to sell the Defendant's Goods by using a price signboard which stated as follows -

**"DISKAUN 10%**

**PD HAFIZ HAMIDUN**

**RM18.90**

**401000030 semester**

**KAMDAR ...”**

**(Defendant’s Price Signboard).**

The Plaintiff had adduced as evidence in this case screen shots of Messages From Plaintiff’s Fans (**Plaintiff’s Screen Shots**). I refer to the two of the Plaintiff’s Screen Shots as follows -

- (i) one “*dahlia@AinSuhanaa*” had sent a message to the Plaintiff’s Facebook account which showed fabric with the printed words “*HAFIZ HAMIDUN KAIN BAJU MELAYU SHINE*” and asked the following question to the Plaintiff -

***“is this originally yours or what? Beli kat kamdar kota baru”***

(emphasis added); and

- (ii) one “*umairahabdurraz*” sent a message to the Plaintiff’s Twitter account with two photographs of the Defendant’s Price Signboard and the following message -

***“I’m so excited jumpa kain nama @hafizhamidun kat kamdar. beli terus ☺ ☺, sumpah best kain dia,,”***

(emphasis added).

- (4) after the receipt of Messages From Plaintiff’s Fans, on 31.1.2017 the Plaintiff bought three pieces of the Defendant’s fabrics [tendered as exhibits P2, P3 and P4 (**3 Exhibits**)]. Regarding the 3 Exhibits -

- (a) stated on the 3 Exhibits are -

***“HAFIZ HAMIDUN***

***401000030***

***HAFIZ HAMIDUN KAIN BAJU MELAYU SHINE***

***44” X ..... MTS”***

(emphasis added); and

- (b) the Plaintiff’s purchase of the 3 Exhibits was evidenced by two receipts issued by the Defendant (**2 Receipts**). The 2 Receipts stated the no. “401000030” which was also stated on the 3 Exhibits;
  - (5) the Plaintiff’s solicitors sent a demand dated 13.2.2017 to the Defendant regarding the Defendant’s commission of the tort of passing off regarding the Plaintiff’s Name (**Plaintiff’s Demand**). The Defendant did not reply to the Plaintiff’s Demand;
  - (6) after the service of the Plaintiff’s Demand on the Defendant, the Plaintiff found out that the Defendant’s Goods are still sold but with the name “AFIZ AMIDUN”. The Defendant only removed two letters “H” from the Plaintiff’s Name; and
  - (7) the Plaintiff adduced a Kurta sold by HSB (**Exhibit P4**). The Plaintiff’s name is stated twice on Exhibit P4 (marked as P4A).
- [3] The Plaintiff called Encik Mokhtaza bin Ahmad (**SP2**), the “*Repertoire Manager*” of Warner Music (M) Sdn. Bhd. (**WMSB**), to testify in this case. According to SP2, among others -

- (1) the Plaintiff is a renowned singer and song composer, domestically and internationally. The Plaintiff has also won many accolades and has been featured in many magazines and newspapers;
- (2) the Plaintiff's albums sell very well. SP2 had adduced tables containing details of sales of the Plaintiff's albums from January 2013 until March 2015 (**WMSB's Sales Data**); and
- (3) the Plaintiff has a business in fabrics and fashion which uses the Plaintiff's Name.

**C. Defendant's case**

[4] The Defendant's Managing Director, Mr. Kamal Kumar Kishorchandra Kamdar (**SD1**), was the sole witness for the Defendant. SD1 gave the following evidence, among others:

- (1) the Defendant is well established in the textile industry. The Defendant sells various fabrics, clothes and home furnishing throughout Malaysia on a retail and wholesale basis;
- (2) the Defendant has registered a trade mark, "**KAMDAR**" (**KAMDAR Trade Mark**), for services in Class 35 (Retail Store) under the Trade Marks Act 1976 (**TMA**). Regarding **KAMDAR Trade Mark** -
  - (a) based on **KAMDAR Trade Mark**, the Defendant's stores are represented as "**KAMDAR**" stores while the Defendant's Goods are promoted as "**KAMDAR**" goods;



- (b) the KAMDAR Trade Mark is displayed prominently in all of the Defendant's stores throughout the country;
  - (c) the Defendant has incurred expenses in advertising KAMDAR Trade Mark; and
  - (d) the Defendant has "*continuously generated substantial*" revenue by the use of KAMDAR Trade Mark;
- (3) the Defendant also offers for sale and promotes other brands, such as "*Durban*", "*Arrow*", "*Byford*" and "*Master*" (which belong to other companies). However, approximately 95% of the sales revenue of the Defendant is derived from the sales of KAMDAR goods;
- (4) as the Defendant has various fabrics with different quality, design, colour, style and pattern, the Defendant uses an internal classification system based on random combinations of words and numbers (**Defendant's Classification**). With regard to the Defendant's Classification -
  - (a) the Defendant's Classification has "*no meaning*" and will be printed on the edge of the fabrics. The fabrics are rolled up and displayed upright in the Defendant's stores without the Defendant's Classification being visible. Once the Defendant's fabrics are sold and made into clothes, the Defendant's Classification will not be retained in the finished clothes; and



- (b) it is the Defendant's policy not to use names of celebrities or known persons in the Defendant's Classification. The Plaintiff's Name was inadvertently used in respect of the Defendant's Goods;
- (5) the Defendant was not aware of the Plaintiff's Name until the Defendant received the Plaintiff's Demand. The Defendant was shocked that an "*unreasonable*" sum of RM5 million was demanded in the Plaintiff's Demand as compensation for the Plaintiff. To comply with the Plaintiff's Demand, the Defendant used the name "*Afiz Amidun*" on the Defendant's Goods. After the filing of this suit, the Defendant stopped using "*Afiz Amidun*" on the Defendant's Goods; and
- (6) the Plaintiff has commenced this suit in bad faith against the Defendant.

#### **D. Credibility of witnesses**

- [5] I find as a fact that the Plaintiff is a credible witness because his testimony is supported by documentary evidence, 3 Exhibits and Exhibit P4. The cross-examination of the Plaintiff by the Defendant's learned counsel, Mr. Eugene Roy Joseph, has not revealed any reason to disbelieve the Plaintiff.
- [6] I have no problem accepting SP2 as a witness of truth because SP2 is not interested in the outcome of this case.
- [7] I am unable to accept SD1 as a truthful witness due to the following evidence and reasons:

- (1) SD1's claim that the Defendant's Classification is only an internal reference is contradicted by -
  - (a) the 3 Exhibits which expressly referred to the Plaintiff's Name not once but twice. The 3 Exhibits are real evidence and constitute the best evidence in this case - please see the judgment of the Supreme Court delivered by Mohd. Dzaiddin SCJ (as he then was) in *KPM Khidmat Sdn Bhd v. Tey Kim Suie* [1994] 2 MLJ 627, at 632; and
  - (b) the Defendant's Price Signboard (which openly promoted the Defendant's Goods by relying on the Plaintiff's Name). If there is a conflict between self-serving oral evidence and documentary evidence, especially contemporaneous ones, the Court should accept the latter - please see Siti Norma Yaakob JCA's (as she then was) judgment in the Court of Appeal case of *Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors* [2000] 4 CLJ 324, at 330;
- (2) if approximately 95% of the sales of Defendant's Goods consist of KAMDAR goods (as testified by SD1), there is no reason for the Defendant to use the Plaintiff's Name in the first place. There is also no reason for the Defendant's Price Signboard to rely on the Plaintiff's Name; and
- (3) if the Defendant's use of the Plaintiff's Name was due to an inadvertence (as alleged by SD1), there was no reason why the Defendant could not have replied as such to the Plaintiff's Demand.

**E. Whether Defendant has passed off Defendant's Goods as Plaintiff's Goods**

**E(1). Tort of passing off and trade mark infringement (TMI)**

[8] Mr. Eugene Roy firstly submitted that the Plaintiff has no monopoly over the Plaintiff's Name because the Plaintiff has no trade mark registered under the TMA regarding the Plaintiff's Name for, among others, textiles and clothing. According to Mr. Eugene Roy, to allow the Plaintiff's suit in this case -

- (1) this "*will create havoc to the trade mark filing system in this country and throughout the world*"; and
- (2) there will be a "*loss of revenue*" to the Government.

[9] I am not able to accede to the above contention because the tort of passing off is different from TMI as follows:

- (1) TMI is a statutory cause of action provided by s. 38(1) TMA. The tort of passing off is based on case law (not statute) and is preserved by s. 82(2) TMA - please see Azahar Mohamed FCJ's decision in the Federal Court in *Mesuma Sports Sdn Bhd v. Majlis Sukan Negara Malaysia (Pendaftar Cap Dagangan Malaysia, interested party)* [2015] 6 MLJ 465, at paragraph 24. Section 82 TMA provides as follows -

*"Unregistered trade marks*

*82(1) No person shall be entitled to initiate any action to prevent or to recover damages for the infringement of an unregistered trade mark.*

*(2) Notwithstanding subsection (1), nothing in this Act shall be deemed to affect the right of action against any person for passing off goods or services as those of another person or the remedies in respect thereof.”*

(emphasis added);

- (2) the tort of passing off protects the goodwill of a person’s business regarding a mark, name, get-up or indicium (**Business Indicium**) which identifies, describes or refers to the person’s business, goods or services. To sue for passing off, there is no requirement that the Business Indicium has to be registered under TMA.

A person can only file a TMI action regarding a trade mark which has been registered under TMA. Section 82(1) TMA bars an action based on an unregistered trade mark; and

- (3) the test for determining TMI (**TMI Test**) is explained by Suriyadi Halim Omar FCJ in the Federal Court case of *Low Chi Yong (Berniaga sebagai Reynox Fertichem Industries) v. Low Chi Hong & Anor* [2018] 1 MLJ 175, at paragraphs 35-37, as follows -

*“[37] Under s. 38 [TMA] the appellant needs to establish the following ingredients, inter alia:*

- (a) the respondent used a mark identical with or so nearly resembling the trademark as is likely to deceive or cause confusion;*
- (b) the respondent is not the registered proprietor or the registered user of the trademark;*

- (c) *the respondent was using the offending trademark in the course of trade;*
- (d) *the respondent was using the offending trademark in relation to goods or services within the scope of the registration; and*
- (e) *the respondent used the offending mark in such a manner as to render the use likely to be taken either as being use as a trademark or as importing a reference to the registered proprietor or the registered user or to their goods or services.”*

Malaysian case law has laid down 3 tests to ascertain the commission of the tort of passing off (**3 Tests**) - please see Part E(2) below. The 3 Tests are clearly different from TMI Test.

### **E(2). 3 Tests**

**[10]** Malaysian case law has laid the 3 Tests as follows:

- (1) Lord Diplock's test in the House of Lords case of *Erven Warnink v. Townend & Sons (Hull) Ltd* [1979] AC 731 (**Lord Diplock's Test**) has been accepted by our apex courts as follows -
  - (a) the majority judgment of the Supreme Court delivered by Gunn Chit Tuan CJ (Malaya) in *Seet Chuan Seng & Anor v. Tee Yih Jia Food Manufacturing Pte Ltd* [1994] 3 CLJ 7, at 15; and
  - (b) the decision of Richard Malanjum CJ (Sabah & Sarawak) (as he then was) in the Federal Court case

of *Maestro Swiss Chocolate Sdn Bhd & Ors v. Chocosuisse Union Des Fabricants Suisses De Chocolat (a co-operative society formed under title XXIX of the Swiss Code of Obligations) & Ors and another appeal* [2016] 2 MLJ 359, at paragraphs 41-44;

- (2) the majority decision in **Seet Chuan Seng and Maestro Swiss Chocolate** (at paragraph 45) has also affirmed Lord Fraser's test as laid down in **Erven Warnink (Lord Fraser's Test)**; and
- (3) Nik Hashim JCA (as he then was) in the Court of Appeal case of *Sinma Medical Products (M) Sdn Bhd v. Yomeishu Seizo Co Ltd & Ors* [2004] 3 CLJ 815, at paragraph 33, has applied Lord Oliver's test in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc & Ors* [1990] 1 All ER 873, at 880 (**Lord Oliver's Test**).

**E(3). Whether court should lift HSB's corporate veil**

[11] Mr. Eugene Roy submitted that pursuant to s. 20(a) of the Companies Act 2016, HSB is a legal entity which is separate from the Plaintiff. Mr. Eugene Roy further contended that HSB (which sells the Plaintiff's Goods by relying on the Plaintiff's Name) should be joined as a co-plaintiff in this case. Reliance has been placed on a decision of UK's Court of Appeal in *Fenty & Ors v. Arcadia Group Brands Ltd (trading as Topshop) & Anor* [2015] 1 WLR 3291 (**Rihana's Case**). In **Rihana's Case** -

- (1) the first claimant is the famous pop star, Rihana. The second and third claimant companies are authorized by

Rihana to grant licenses for Rihana's endorsement of products; and

- (2) the three claimants alleged that the defendants had committed the tort of passing off regarding the use of Rihana's image on t-shirts which had been sold by the defendant companies.

[12] For the Court to pierce or lift a corporate veil, three Federal Court cases, namely *Solid Investment Ltd v. Alcatel Lucent (M) Sdn Bhd* [2014] 3 CLJ 73, at 92, *Gurbachan Singh s/o Bagawan Singh & Ors v. Vellasamy s/o Pennusamy & Ors* [2015] 1 MLJ 773, at paragraphs 96-99 and *Giga Engineering & Construction Sdn Bhd v. Yip Chee Seng & Sons Sdn Bhd & Anor* [2015] 9 CLJ 537, at paragraphs 39, 44 and 45, require two conditions to be fulfilled (**2 Conditions**), namely -

- (1) the piercing or lifting of a corporate veil is in the interest of justice (**1<sup>st</sup> Condition**); and
- (2) there exists special circumstances to pierce or lift the corporate veil (**2<sup>nd</sup> Condition**).

[13] In this case, the Plaintiff is not seeking leave of this Court to pierce the corporate veil of the Defendant so as to impose liability on any individual for the tort of passing off. The Plaintiff applies to Court to lift HSB's corporate veil to show that the Plaintiff is the controller, "*alter ego*" or "*directing mind and will*" of HSB. The Court lifts (not pierces) the corporate veil of a company to ascertain the true factual position without imposing any personal liability on a particular individual. Such a distinction between the piercing and lifting of a company's corporate veil has been recognized in the following cases:

- (1) the judgment of Staughton LJ in UK's Court of Appeal case of *Atlas Maritime Co SA v. Avalon Maritime Ltd (The Coral Rose)* (No. 1) [1991] 4 All ER 769, at 779; and
- (2) *Chanel v. Melwani<sup>2</sup> International Sdn Bhd & Ors, and other cases* [2017] 4 AMR 19, at sub-paragraph 16(3).

Based on the two above cases, the fulfillment of the 2 Conditions for the lifting of a corporate veil (not to impose personal liability on an individual) is not as stringent as the satisfaction of the 2 Conditions for the piercing of a corporate veil (which imposes personal liability on an individual).

[14] I am of the view that the 2 Conditions for the lifting of HSB's corporate veil (to reveal that the Plaintiff is HSB's *alter ego*) have been fulfilled in this case. This decision is based on the following evidence and reasons:

- (1) the 1<sup>st</sup> Condition is satisfied because the lifting of HSB's corporate veil is in the interest of justice as follows -
  - (a) the Plaintiff owns 80% of the total issued shares of HSB; and
  - (b) the Plaintiff is a director of HSB since its incorporation on 23.9.2014. Such evidence supports the Plaintiff's testimony that he has incorporated HSB; and
- (2) if this suit is dismissed solely on the ground that HSB is not joined as a co-plaintiff, the Defendant would be allowed to evade liability for the tort of passing off. In this sense, the 2<sup>nd</sup> Condition is fulfilled in this case because there exists special circumstances to lift HSB's corporate veil so as to prevent the Defendant from evading liability

to the Plaintiff for the tort of passing off the Plaintiff's Name on the Defendant's Goods.

[15] Even if I have erred in lifting HSB's corporate veil to reveal the Plaintiff as HSB's *alter ego*, the non-joinder of HSB in this case, in my view, does not defeat the Plaintiff's action due to the following reasons:

- (1) HSB does not own the goodwill in the business regarding the Plaintiff's Name - please see Part E(5) below. Hence, there is neither requirement nor necessity to join HSB as a co-plaintiff in this case; and
- (2) O. 15 r. 6(1) of the Rules of Court 2012 (**RC**) provides as follows -

***“O. 15 r. 6(1) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.”***

(emphasis added).

Based on O. 15 r. 6(1) RC, the Plaintiff's action shall not be defeated by reason of non-joinder of HSB and the Court may decide the issue regarding the tort of passing off in this case so far as they affect the rights and interests of the Plaintiff and Defendant - please see Abdul Rahman Sebli JCA's judgment in the Court of Appeal case of *Rajamani Meyappa Chettiar v. Eng Beng Development Sdn Bhd & Ors* [2016] 4 CLJ 510, at paragraph 102.



[16] I have not overlooked **Rihana's Case**. In **Rihana's Case**, the second and third claimant companies jointly filed the suit with Rihana because those companies have the right to license the use of Rihana's image to third parties and to collect the requisite fees. In this case, the Plaintiff is the alter ego of HSB (please see the above paragraph 14) and HSB has no right to grant any license to any party for the use of the Plaintiff's Name. Accordingly, **Rihana's Case** is easily distinguishable from this case.

**E(4). Can this suit be filed based on Plaintiff's Name?**

[17] Regarding the question of whether a plaintiff may file an action based on his or her actual name, stage name, moniker or picture, my research has shown different judicial approaches in New South Wales, Ontario and UK (in chronological order).

[18] In *Henderson et al v. Radio Corp Pty Ltd* [1969] R.P.C. 218, a pair of professional ballroom dancers claimed for the tort of passing off when the defendant company published a photograph of the plaintiffs dancing on the cover of a gramophone cover. A three-member *coram* of the High Court of New South Wales upheld the plaintiffs' claim as follows:

(1) Evatt CJ and Myers J held as follows, at p. 231 and 236 -

***“The only question at the hearing and before us was whether there had been a passing off by the appellant which the respondents were entitled to have restrained.***

*The principle upon which the action for passing off is based has been discussed by counsel at considerable length and we have been referred to many reported decisions on the subject. However, the principle has been*

*clearly and authoritatively stated and we do not think that there is now room for debate about it, at all events before this court. It is sufficient to refer to the statement by Romer L.J. in *The Clock Ltd. v. The Clock House Hotel Ltd* [1936] 53 R.P.C. 269 at 275. He said:*

*“There is really no dispute and can be no dispute as to the principle of law involved in this case. **The principle is this, that no man is entitled to carry on his business in such a way or by such a name as to lead to the belief that he is carrying on the business of another man or to lead to the belief that the business which he is carrying on has any connexion with the business carried on by another man.**”*

*... Without the permission of the respondents, and without any other right or justification, the appellant has appropriated the professional reputation of the respondents for its own commercial ends. It claims that a court of equity has no power to restrain the appellant from falsely representing that the respondents recommend its products, unless the respondents can prove that their professional reputation has thereby been injured, or that in some other way their capacity to earn money by the practice of their profession has thereby been impaired. We do not think that is the law.*

*It is true that the coercive power of the court cannot be invoked without proof of damage, but the wrongful appropriation of another’s professional or business reputation is an injury in itself, no less, in our opinion, than the appropriation of his goods or money. The professional recommendation of the respondents was and*

*still is theirs, to withhold or bestow at will, but the appellant has wrongfully deprived them of their right to do so and of the payment or reward on which, if they had been minded to give their approval to the appellant's record, they could have insisted. In our opinion it is idle to contend that this wrongful appropriation is not an injury to the respondents. It is as much an injury as if the appellant had paid the respondents for their recommendation and then robbed them of the money. That injury, and the acknowledged intention to continue to inflict it, is ample justification for the injunction which was granted."*

(emphasis added); and

- (2) Manning J (as he then was) decided as follows, at p. 243 -

*"... The development in the advertising of products to which I have referred has opened up a new field of gainful employment for many persons who, by reason not only of their sporting, but of their social, artistic or other activities, which have attracted notoriety, have found themselves in a position to earn substantial sums of money by lending their recommendation or sponsorship to an almost infinite variety of commodities.*

*To meet changes in the manner of conducting commercial enterprises, I would prefer in considering cases of this kind to propound as the test the one to which I have referred above, namely, whether the plaintiff has suffered a financial detriment and such detriment flows from or arises as a result of the defendant's act, rather than to ask whether the defendant's act caused financial loss to the plaintiff.*

*The plaintiffs in this case had acquired a reputation which doubtless placed them in a position to earn a fee for any recommendation which they might be disposed to give to aid the sale of recorded dance music of the type in question. I have referred to those engaged in sporting activities because of the facts in Tolley's case, but the position of the plaintiffs is better compared with that of a well-known actress or model. I can see no distinction in any such cases provided, as has been established in this case, that the activity of the party concerned has resulted in their recommendation becoming a saleable commodity.*

*The result of the defendant's action was to give the defendant the benefit of the plaintiffs' recommendation and the value of such recommendation and to deprive the plaintiffs of the fee or remuneration they would have earned if they had been asked for their authority to do what was done. The publication of the cover amounted to a misrepresentation of the type which will give rise to the tort of passing off, as there was implied In the acts of the defendant an assertion that the plaintiffs had "sponsored" the record."*

(emphasis added).

[19] In *Krouse v. Chrysler Canada Ltd et al* [1973] 40 DLR (3d) 15, the Ontario Court of Appeal (in a judgment delivered by Estey JA) held as follows:

*"In argument before us the respondent did not found his claim in the common law action of passing-off or, indeed, in any alleged right of privacy, but rather in the submission that as a professional athlete he has earning power not only in his role as a football player, but also in*

*his ability to attach his endorsement to commercial products or undertakings or to participate otherwise in commercial advertising. It is this right, that is to say the right to realize upon this potential, that the respondent says has been injured by the conduct of the appellants. ...*

*There is indeed some support in our law for the recognition of a remedy for the appropriation for commercial purposes of another's likeness, voice or personality. ... Thus far the Courts in this country and the United Kingdom have declined to found an award on any broad basis such as appropriation of personality or even an injury to the latent power of endorsement. ...*

*I, therefore, conclude from the foregoing examination of the authorities in the several fields of tort related to the allegations made herein that the common law does contemplate a concept in the law of tort which may be broadly classified as an appropriation of one's personality. Assuming the existence of such a wrong in our law, it remains to be determined whether the respondent has established that the appellants have committed such a wrong and have thereby damaged the respondent."*

(emphasis added).

[20] **Krouse** has been followed by Henry J in the Ontario High Court in *Athans v. Canadian Adventure Camps Ltd et al* [1978] 80 DLR (3d) 583, at paragraph 24, as follows:

*"I turn now to the second head of claim, namely, wrongful appropriation of the plaintiff's personality. I say at once that, on the basis of recent authority, it is*

*clear that Mr. Athans has a proprietary right in the exclusive marketing for gain of his personality, image and name, and that the law entitles him to protect that right, if it is invaded: see [Krouse]. If a case for wrongful invasion of this right is made out, then the plaintiff is entitled, in appropriate circumstances, to an injunction and to damages, if proved. It is only in recent years that the concept of appropriation of personality has moved from its place in the tort of defamation, as exemplified by Tolley v. J. S. Fry and Sons, Ltd., [1931] A.C. 333, to a more broadly based common law tort.”*

(emphasis added).

[21] The above Canadian cases have recognized a new tort of “misappropriation of personality”.

[22] In UK, if a person (usually a celebrity) has goodwill in the business regarding a Business Indicum (which may consist of the actual name, stage name, moniker or image of the person in question), the tort of passing off protects the person’s goodwill by not allowing any other person to use the Business Indicum without the permission of the former. In *Irvine v. Talksport Ltd* [2003] FSR 35, at paragraphs 31-33, Jonathan Parker LJ in the Court of Appeal affirmed the following judgment of Laddie J in the High Court:

*“31. ... Laddie J ..., turned first to a submission made by Mr Hicks that the cause of action in passing off does not cover a case where the claimant is represented as having “endorsed” a particular product or service unless it can also be shown that the claimant and the defendant shared a common field of activity or that the “endorsement” will,*

*at least in the short term, result in some financial loss to the claimant.*

32 *Having conducted what is, if I may respectfully say so, an impressive analysis of the historical development of the tort of passing off, the judge rejected Mr Hicks' submission, concluding ... that it is not necessary for a claimant who has been falsely represented as endorsing a particular product or service to establish these additional facts in order to recover substantial damages in passing off. The judge continued:*

*“Of course there is still a need to demonstrate a misrepresentation because it is that misrepresentation which enables the defendant to make use or take advantage of the claimant's reputation.”*

33. *... the judge said this:*

*“It follows from the views expressed above that there is nothing which prevents an action for passing off succeeding in a false endorsement case. However, in order to succeed, the burden on the claimant includes a need to prove at least two, interrelated, facts. First, that at the time of the acts complained of he had a significant reputation or goodwill. Second, that the actions of the defendant gave rise to a false message which would be understood by a not insignificant section of his market that his goods have been endorsed, recommended or are approved of by the claimant.”*

*(emphasis added).*

- [23] My research is unable to reveal any previous Malaysian case regarding an action for the tort of passing off which is based solely on a person's actual name, stage name, moniker or picture. Nor has any Malaysian court recognized a new tort of misappropriation of personality.
- [24] I am of the view that **Henderson** and **Irvine** are applicable in this country. If a person, whether Malaysian or otherwise, has goodwill in the business in this country regarding a Business Indicum (which may consist of the actual name, stage name, moniker or image of the person in question), it is only just that the person be allowed to claim for the tort of passing off against another person who has used the Business Indicum without the former's consent. Furthermore, I am not able to find any principle or policy which bars a passing off action based on a person's goodwill regarding a Business Indicum. Needless to say, a person who files a passing off suit based on the goodwill in his or her real name, stage name, moniker or picture, has to satisfy the 3 Tests.
- [25] As the tort of passing off protects the goodwill in the business regarding an individual's personality (please see the above paragraph 24), I am reluctant to introduce a new tort of misappropriation of personality as laid down by case law from Ontario (please see the above paragraphs 19 and 20). As decided by Millett LJ (as he then was) in UK's Court of Appeal in *Harrods Ltd v. Harrodian School Ltd* [1996] RPC 697, at 711, "*no one has a monopoly in his brand name or get up, however familiar these may be*".

**E(5). Does Plaintiff have goodwill in business regarding Plaintiff's Name?**

[26] Mr. Eugene Roy has contended that the Plaintiff has no goodwill in the Plaintiff's Name. According to Mr. Eugene Roy, there is no reason why the Plaintiff should be given a monopoly regarding the Plaintiff's Name. Mr. Eugene Roy cited, among others, the following:

- (1) **Harrods;**
- (2) *"The Law of Passing Off"*, Prof. Christopher Wadlow, 5<sup>th</sup> Edition, at paragraph 5-3;
- (3) **Rihana's Case**; and
- (4) our Court of Appeal case of *Zhu Ge Kong Ming Sdn Bhd v. BM Eng Leong Sdn Bhd* [2017] 1 LNS 314.

[27] Firstly, the 3 Tests require a plaintiff in a passing off suit based on a Business Indicum to prove that the plaintiff enjoys goodwill in the business regarding the Business Indicum - *Singham Sulaiman Sdn Bhd v. Appraisal Property Management Sdn Bhd & Anor and another case* [2018] 10 MLJ 187, at paragraph 74. It is important to note that the tort of passing off does not protect a plaintiff's Business Indicum *per se* but the plaintiff's goodwill in the business relating to the Business Indicum - **Singham Sulaiman**, at sub-paragraph 76(1)(a).

[28] Goodwill has been described by Lord MacNaghten in the House of Lords case of *The Commissioners of Inland Revenue v. Muller & Co's Margarine Ltd* [1901] AC 217, at 223-224, as an "attractive force which brings in custom" (**Muller's Case**).

[29] I have no hesitation to accept that the Plaintiff is a famous Nasyid singer. This finding of fact is supported by the following documentary evidence:

- (1) the Plaintiff has produced many albums and singles [listed in Part D of the Plaintiff's "*Curriculum Vitae*" (CV)]. Part F of the CV has also described the many musical awards achieved by the Plaintiff. WMSB's Sales Data showed the brisk sales of the Plaintiff's albums;
- (2) on 10.3.2017, the Plaintiff has registered the Plaintiff's Name as a trade mark under TMA for services in Class 4 (Entertainment, Entertainment Services, Entertainment Information, Television Entertainment, Television Programs, Radio Programs, Religious Education, Sound Recordings, Publication of Books, Performances, Music Composition Services, Live Performances and all services in Class 4);
- (3) "*The Muslim 500*", 2016 Edition, had listed the Plaintiff as one of "*The World's 500 Most Influential Muslims*" in the category of Arts and Culture;
- (4) the following articles have featured the Plaintiff as a prominent singer -
  - (a) "*Hafiz Hamidun Recognized Celebrities Influential Muslim World*" in "*The Star Online*" dated 5.10.2015;
  - (b) "*Siti Nurhaliza, Hafiz Hamidun dinobat antara 500 muslim paling berpengaruh di dunia*", published in "*Berita Mediacorp*";

- (c) *“East-West Travelblog: Taking ‘divine music’ out of the mosque”* in *“Religion News Service”* dated 15.9.2015;
  - (d) *“Nasheed ... reaching out to the Heaven above - Hafiz uses his art to spread message of peace, faith”*, published in *“Arab Times”* on 19.4.2016;
  - (e) *“Hafiz Hamidun: Finding the way through music and beyond”*, an article dated 6.6.2017 in the *“Creative Ummah”*; and
  - (f) *“In high spirits”*, *“New Straits Times”* dated 1.11.2014;
- (5) the Plaintiff’s songs may be downloaded at *“Spotify”* and *“iTunes”*;
- (6) up to March 2017, the Plaintiff has -
- (a) 2.3 million followers in his Facebook account;
  - (b) 474,000 followers in his Twitter account; and
  - (c) 566,000 followers in his Instagram account.

All the above social media accounts are in the Plaintiff’s Name; and

- (7) a *“Google”* search of the Plaintiff’s Name yields numerous results regarding the Plaintiff.

**[30]** I have no hesitation to find as a fact that the Plaintiff’s Goods are promoted and sold based on the Plaintiff’s Name. This finding is supported by the following evidence and reasons:



- (1) Exhibit P5 with the Plaintiff's Name (marked P5A) constitutes the best evidence;
- (2) the Plaintiff's Demand had expressly stated that due to the Defendant's promotion and sales of the Defendant's Goods which carried the Plaintiff's Name, the sales of the Plaintiff's own "*clothing line*" had been affected. If the Plaintiff's Goods do not carry the Plaintiff's Name, the Defendant could have easily stated as such in the Defendant's reply to the Plaintiff's Demand. However, there was no reply by the Defendant to the Plaintiff's Demand. Hence, any averment by the Defendant that the Plaintiff's Goods do not bear the Plaintiff's Name, is clearly an afterthought which should be rejected by this Court; and
- (3) the Plaintiff has given evidence that the Plaintiff's Goods are advertised and sold based on the Plaintiff's Name. There is no doubt regarding the veracity of the Plaintiff (please see the above paragraph 5).

[31] In view of the promotion and sales of the Plaintiff's Goods which carry the Plaintiff's Name, I find as a fact that the Plaintiff's Name has acquired a secondary meaning in the sense that the Plaintiff's Name is descriptive of the Plaintiff's Goods and of the Plaintiff's Goods alone - please see Lord Oliver's judgment in **Reckitt & Colman Products**, at p. 885-886.

[32] Due to the Plaintiff's fame as a Nasyid singer (please see the above paragraph 29), the Plaintiff has substantial or significant goodwill in the business regarding the Plaintiff's Name (**Plaintiff's Goodwill**) when the Plaintiff's Name is used in relation to the Plaintiff's Goods. As explained in **Muller's Case**, when the Plaintiff's Goods are marketed and sold based on the

Plaintiff's Name, the Plaintiff's Name constitutes an "*attractive force which brings in custom*". The Plaintiff's Goodwill is clearly shown in the Messages From Plaintiff's Fans.

**E(6). Whether Defendant has misrepresented Defendant's Goods by using Plaintiff's Name and Defendant's Price Signboard**

[33] The 3 Tests require the Plaintiff to prove that the Defendant has misrepresented the Defendant's Goods to the public by the use of the Plaintiff's Name and the Defendant's Price Signboard (**Misrepresentation Issue**). The Misrepresentation Issue has been explained in *Warmal WIL Heavy Duty Pumps Sdn Bhd v. Pump Matrix Engineering Sdn Bhd* [2018] 10 MLJ 99, at paragraph 21, as follows:

*"21. I am of the following view regarding the element of misrepresentation in the tort of passing off:*

- (1) a defendant misrepresents the defendant's mark or get-up in respect of the defendant's goods/services if the use of the defendant's mark or get-up is likely to deceive or confuse the public between the goods/services of the defendant and plaintiff (Likelihood of Deception/Confusion) - Sinma Medical Products, at paragraph 37. As decided by Sundaresh Menon CJ in the Singapore Court of Appeal case of The Singapore Professional Golfers' Association v. Chen Eng Waye & Ors [2013] 2 SLR 495, at paragraph 28, the focus of the inquiry (on whether there is misrepresentation by a defendant) is the defendant's use of the mark or get-up with regard to the defendant's goods/services;*

- (2) *a plaintiff is not required to prove that the public is actually deceived or confused between the goods/services of the plaintiff and defendant (Actual Deception/Confusion) - Sinma Medical Products, at paragraph 37;*
- (3) *the question of Likelihood of Deception/Confusion -*

  - (a) *is to be decided solely by the court without the aid of evidence from any witness (factual or expert), market survey, market research, market study or market inquiry - please see Syarikat Dumas Sdn Bhd v. Abdul Aziz bin Ibrahim (trading as Radiant Star Enterprise) & Other Proceedings [2018] MLJU 5, at paragraphs 30 and 31; and*
  - (b) *is to be decided objectively;*
- (4) *there cannot be a misrepresentation of a name, surname, a geographical name, an ordinary word or a purely descriptive term (with direct reference to the character or quality of goods/services) unless the name or term has acquired a secondary meaning by a course of dealing over time in the sense that the name or term is descriptive of the plaintiff's goods/services and of the plaintiff's goods/services alone - please see Lord Oliver's judgment in Reckitt & Colman Products, at p. 885-886;*
- (5) *a plaintiff is not required to prove that the defendant has acted with fraudulent or dishonest intent - please see Wilfrid Greene MR's judgment in the English Court of Appeal case of Draper v. Trist & Ors [1939] 3 All ER 513, at 517. The misrepresentation may be done without any intention on the part of the defendant - please see Lord*

*Oliver's judgment in Reckitt & Colman Products, at p. 880; and*

- (6) *whether a defendant has misrepresented a mark or get-up, is a question of fact - Seet Chuan Seng, at p. 782. Accordingly, cases which have decided on the existence or non-existence of misrepresentation, are merely illustrative and are not binding legal precedents from the view point of the stare decisis doctrine."*

(emphasis added).

[34] Mr. Eugene Roy has relied on the Defendant's Classification to submit that the Defendant has not misrepresented the Defendant's Goods by using the Plaintiff's Name and the Defendant's Price Signboard. I am not able to accede to this contention. On the contrary, I find that the Plaintiff has proven on a balance of probabilities that the Defendant has misrepresented the Defendant's Goods to the public by the use of the Plaintiff's Name and the Defendant's Price Signboard (**Defendant's Misrepresentation**) in a manner which has caused a likelihood of deception and/or confusion among the public (**Likelihood of Deception/Confusion**). This decision is premised on the following evidence and reasons:

- (1) in the first place, there is no reason at all for the Defendant to use the Plaintiff's Name on the Defendant's Goods. Nor is there any reason why the Defendant's Price Signboard should contain the Plaintiff's Name. As SD1 is not a credible witness (please see the above paragraph 7), this Court cannot accept the Defendant's Classification as an excuse for the Defendant to use Plaintiff's Name on the Defendant's Goods and to put up the Defendant's Price Signboard. Accordingly, the irresistible inference is that



the Defendant had used the Plaintiff's Name on the Defendant's Goods and had put up the Defendant's Price Signboard to misappropriate the Plaintiff's Goodwill - **Warmal**, at sub-paragraph 22(i)(iv). In any event, the Defendant's Misrepresentation had been committed even though there might not be any intention on the Defendant's part to mislead the public - please see Lord Oliver's judgment in **Reckitt & Colman Products**, at p. 880;

- (2) the Messages From Plaintiff's Fans (which raised queries of whether the Plaintiff had manufactured or endorsed the Defendant's Goods with the Plaintiff's Name) clearly proved that there was a Likelihood of Deception/Confusion between the Plaintiff's Goods and the Defendant's Goods (which bore the Plaintiff's Name);
- (3) if there was no Likelihood of Deception/Confusion, upon receipt of the Plaintiff's Demand, the Defendant would not have replaced the Plaintiff's Name with "*AFIZ AMIDUN*" on the Defendant's Goods. In other words, the above conduct by the Defendant supports this Court's finding regarding the Defendant's Misrepresentation. A party's conduct is relevant under s. 8(2) of the Evidence Act 1950 - please see Chang Min Tat FJ's judgment in the Federal Court case of *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] 2 MLJ 229, at 234;
- (4) the Defendant did not reply to the Plaintiff's Demand. If there was no Defendant's Misrepresentation, the Defendant should have replied as such to the Plaintiff's Demand;
- (5) after receiving the Plaintiff's Demand, the Defendant's use of "*AFIZ AMIDUN*" on the Defendant's Goods, constituted a continuation of the Defendant's Misrepresentation. This

is because the pronunciation of the Plaintiff's Name is similar to that of "AFIZ AMIDUN". Hence, the Likelihood of Deception/Confusion continued by reason of the Defendant's use of "AFIZ AMIDUN" on the Defendant's Goods; and

- (6) after this suit has been instituted by the Plaintiff against the Defendant, the Defendant ceased to use "AFIZ AMIDUN" on the Defendant's Goods. If there was no Likelihood of Deception/Confusion which arose from the Defendant's use of "AFIZ AMIDUN" on the Defendant's Goods, the Defendant should have continued to use "AFIZ AMIDUN" on the Defendant's Goods.

**E(7). Has Plaintiff proven likelihood of damage caused by Defendant's Misrepresentation?**

[35] A plaintiff in a passing off action is only required to prove a probability or likelihood of damage to the goodwill attached to the plaintiff's business which has been caused by the defendant's misrepresentation (**Likelihood of Damage**) - please see Abdul Malik Ishak JCA's judgment in the Court of Appeal case of *Yong Sze Fun & Anor (t/a Perindustrian Makanan & Minuman Layang-layang) v. Syarikat Zamani Hj Tamin Sdn Bhd & Anor* [2012] 1 MLJ 585, at paragraph 240.

[36] Mr. Eugene Roy has contended that there is no likelihood that the Plaintiff would suffer any damage due to the Defendant's Misrepresentation. I am not able to accept this submission because the following evidence and reasons support a finding that the Defendant's Misrepresentation has caused a Likelihood of Damage to the Plaintiff's Goodwill as follows:

- (1) the Plaintiff has been deprived of his right to endorse or recommend the Defendant's Goods. In this manner, the Plaintiff has lost license fee or royalty in respect of his endorsement of the Defendant's Goods - please see **Henderson**;
- (2) there is a likelihood that the sales of the Plaintiff's Goods will be adversely affected in the following manner -
  - (a) compared to the Plaintiff's Goods, the Defendant's Goods are sold at lower prices. Furthermore, the Plaintiff's Goods are exclusive and limited in quantity. The Defendant's Goods are widely sold on a retail and wholesale basis. Accordingly, I accept the submission by Encik Habizan bin Rahman, the Defendant's learned counsel, that there is a likelihood of loss of sales of the Plaintiff's Goods when the Defendant's Goods are sold based on the Plaintiff's Name and Defendant's Price Signboard. The majority of the Supreme Court has decided in **Seet Chuan Seng**, at p. 15, that if the goods in question are in direct competition with one another, the court will readily infer the likelihood of damage to the plaintiff's goodwill through, among others, loss of sales; and
  - (b) if the quality of the Defendant's Goods bearing the Plaintiff's Name is found to be lacking, this will dissuade prospective purchasers from buying the Plaintiff's Goods;
- (3) the Plaintiff will lose his exclusive right to use the Plaintiff's Name for the Plaintiff's Goods - **Seet Chuan Seng**;

- (4) there is a likelihood that the Plaintiff's Goodwill may be damaged by a dilution of the Plaintiff's Name to the detriment of the Plaintiff - please see Abdul Hamid Mohamad J's (as he then was) decision in the High Court in *The Scotch Whisky Association & Anor v. Ewein Winery (M) Sdn Bhd* [1999] 6 MLJ 280, at 303;
- (5) the Defendant's Misrepresentation will prevent the Plaintiff from controlling the reputation to which the Plaintiff's Goodwill is associated with the Plaintiff's Name - please see Falconer J's (as he then was) judgment in the English High Court case of *Lego System Aktieselskab & Anor v. Lego M. Lemelstrich Ltd* [1983] FSR 155, at 190-191; and
- (6) the Defendant's Misrepresentation will restrict or deprive the Plaintiff of its ability to use the Plaintiff's Name to launch new fabrics or clothes - **Lego System**.

**E(8). Whether 3 Tests have been fulfilled by Plaintiff**

[37] Based on the evidence and reasons explained in the above Parts E(2) to E(7), I am satisfied that the Plaintiff has proven on a balance of probabilities the commission of the tort of passing off by the Defendant by the use of the Plaintiff's Name on the Defendant's Goods and the Defendant's Price Signboard. This decision is premised on an application of the 3 Tests as follows:

- (1) based on Lord Diplock's Test -
  - (a) the Defendant's Misrepresentation has been proven - please see the above Part E(6);

- (b) the Defendant's Misrepresentation had been made in the course of the Defendant's business;
  - (c) the Defendant's Misrepresentation had been made to prospective or ultimate purchasers of fabrics and clothes;
  - (d) the Defendant's Misrepresentation was calculated to injure the Plaintiff's Goodwill in the sense that this is a reasonably foreseeable consequence; and
  - (e) the Defendant's Misrepresentation will probably cause damage to the Plaintiff's Goodwill - please see the above Part E(7);
- (2) applying Lord Fraser's Test -
- (a) the Plaintiff's business through HSB (please see the above paragraph 14) consists of sales of the Plaintiff's Goods bearing the Plaintiff's Name;
  - (b) the Plaintiff's business through HSB is a class of goods which is clearly defined in the minds of the Malaysian public and the Plaintiff's Name distinguishes the Plaintiff's Goods from other goods;
  - (c) because of the reputation of the Plaintiff, there exists the Plaintiff's Goodwill - please see the above Part E(5);
  - (d) the Plaintiff is the owner of the Plaintiff's Goodwill in Malaysia which is of substantial value - please see the above Part E(5); and
  - (e) the Plaintiff is really likely to suffer substantial damage to the Plaintiff's Goodwill by reason of the



Defendant's Misrepresentation - please see the above Part E(6); and

- (3) premised on Lord Oliver's Test -
  - (a) the Plaintiff's Goodwill has been proven - please see the above Part E(5);
  - (b) the Defendant's Misrepresentation has been committed - please see the above Part E(6); and
  - (c) the Plaintiff has proven that he is likely to suffer damage by reason of the Defendant's Misrepresentation - please see the above Part E(7).

**F. Whether Defendant may rely on KAMDAR Trade Mark and/or KAMDAR goods**

[38] I have not overlooked SD1's evidence that the Defendant's customers have purchased the Defendant's Goods which have KAMDAR Trade Mark (without the Plaintiff's Name) and this constitutes proof that the Defendant's Goods have been purchased based on their quality and affordable prices (not based on the Plaintiff's Name). I am not persuaded that the Defendant can rely on KAMDAR Trade Mark as a defence against this action. My reasons are as follows:

- (1) once the Plaintiff has proven the Defendant's commission of the tort of passing off the Defendant's Goods by the use of the Plaintiff's Name and the Defendant's Price Signboard (by applying the 3 Tests), the Defendant cannot evade this liability by reliance on KAMDAR Trade Mark. Furthermore, as explained above, if approximately 95% of the sales of Defendant's Goods comprise KAMDAR goods,

there is absolutely no reason for the Defendant to use the Plaintiff's Name or "AFIZ AMIDUN" name; and

(2) the following cases have clearly decided that there is still liability for "innocent" passing off -

(a) the judgment of Lord Parker in the House of Lords in *AG Spalding Brothers v. AW Gamage Ltd* [1914-1915] All ER Rep 147, at 149; and

(b) **Warmal**, at sub-paragraph 34(3).

## G. Conclusion

[39] Premised on the above evidence and reasons, the Plaintiff's action against the Defendant is allowed with costs.

[40] If a celebrity (X) has goodwill in a business regarding X's real name, stage name, moniker or image, it is important for any person (Y) to obtain X's written consent before Y uses X's actual name, stage name, moniker or picture in respect of Y's business, goods or services. If otherwise, Y may be liable for the tort of passing off Y's business, goods or services as the business, goods or services provided, produced or endorsed by X.

**(WONG KIAN KHEONG)**

Judge

High Court (Commercial Division)

Kuala Lumpur

**Dated:** 9 OCTOBER 2018

**COUNSEL:**

*For the plaintiff - Habizan Rahman & Theivini Nayagam; M/s Rahman Rohaida*

*For the defendant - Eugene Roy Joseph & Yong Cheng Aik; M/s Joseph Chambers*

**Case(s) referred to:**

*Fenty & Ors v. Arcadia Group Brands Ltd (trading as Topshop) & Anor [2015] 1 WLR 3291*

*Solid Investment Ltd v. Alcatel Lucent (M) Sdn Bhd [2014] 3 CLJ 73*

*Gurbachan Singh s/o Bagawan Singh & Ors v. Vellasamy s/o Pennusamy & Ors [2015] 1 MLJ 773*

*Giga Engineering & Construction Sdn Bhd v. Yip Chee Seng & Sons Sdn Bhd & Anor [2015] 9 CLJ 537*

*Henderson et al v. Radio Corp Pty Ltd [1969] R.P.C. 218*

*Krouse v. Chrysler Canada Ltd et al [1973] 40 DLR (3d) 15*

*Athans v. Canadian Adventure Camps Ltd et al [1978] 80 DLR (3d) 583*

*Irvine v. Talksport Ltd [2003] FSR 35*

*Harrods Ltd v. Harrodian School Ltd [1996] RPC 697*

*Singham Sulaiman Sdn Bhd v. Appraisal Property Management Sdn Bhd & Anor and another case [2018] 10 MLJ 187*



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*The Commissioners of Inland Revenue v. Muller & Co's Margarine Ltd [1901] AC 217*

*Warmal WIL Heavy Duty Pumps Sdn Bhd v. Pump Matrix Engineering Sdn Bhd [2018] 10 MLJ 99*

*Yong Sze Fun & Anor (t/a Perindustrian Makanan & Minuman Layang-layang) v. Syarikat Zamani Hj Tamin Sdn Bhd & Anor [2012] 1 MLJ 585*

**Legislation referred to:**

Companies Act 2016, s. 20(a)