IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHCR 2

Originating Application No 305 of 2024 (Summons No 165 of 2025)

Between

(1) L'Oreal
(2) La Roche-Posay Laboratoire Dermatologique

… *Applicants*

And

Shopee Singapore Private Limited

… *Respondent*

JUDGMENT

[Abuse of Process — *Riddick* principle]
[Civil Procedure — Disclosure of documents — Disclosure of information — — Sufficiency of answer]
[Civil Procedure — Interrogatories — Disclosure of information — Whether principles on interrogatories relevant to O 11 r 11 Rules of Court 2021]

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L'Oreal and another
v
Shopee Singapore Pte Ltd

[2025] SGHCR 2

General Division of the High Court — Originating Application No 305 of 2024 (Summons No 165 of 2025)
AR Chong Ee Hsiun
14 February, 17 March 2025

2 April 2025 Judgment reserved.

AR Chong Ee Hsiun:

Introduction

1 The Civil Justice Commission, in the *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) ("*Civil Justice Commission Report*") at p 18, declared that "[i]nterrogatories under the existing Order 26 and 26A [of the Rules of Court (2014 Rev Ed) ("Rules of Court 2014")] are abolished as they have long faded in effectiveness after affidavits of evidence-in-chief were introduced into the existing Rules". However, the ghosts of interrogatories before action, previously found in O 26A of the Rules of Court 2014, still linger in O 11 r 11 of the Rules of Court 2021. Order 11 r 11(1) of the Rules of Court 2021 contains a solitary reference to the production of *information* in an order that otherwise deals exclusively with the production of *documents*. This prompts the question: do the principles on interrogatories

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under the old law shed any light on an application for pre-action production of information under Order 11 r 11 of the Rules of Court 2021? Parties were invited to consider and submit on this issue,[1] and I have found these submissions helpful in coming to my decision.

2 HC/SUM 165/2025 ("SUM 165") was taken out by the applicants, who had earlier succeeded in obtaining an information production order against the respondent under O 11 r 11(1) of the Rules of Court 2021. This summons is rooted in the applicants' dissatisfaction with some of the respondent's answers to the information production order. The overarching issues for my determination are whether the respondent's answers are sufficient for compliance with the information production order, and whether further orders ought to be made to address any inadequacies in the answers.

Background

3 The applicants are L'Oreal and La Roche-Posay Laboratoire Dermatologique (collectively, the "Applicants"). The Applicants are incorporated in France.[2] The Applicants are part of a group of companies that manufactures and supplies perfumes, cosmetics and haircare products.[3] The Applicants gave evidence that they are, at all material times, registered proprietors of certain valid and subsisting trademarks in Singapore (collectively the "Registered Marks").[4]

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[1] Correspondence from Court dated 10 March 2025.

[2] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 5.

[3] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at paras 5–6.

[4] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 7.

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4 The Respondent is Shopee Singapore Private Limited (the "Respondent"). The Respondent is incorporated in Singapore.[5] The Respondent operates an online platform (the "Shopee Platform") which allows for the sale of goods between buyers and sellers (collectively, the "users").[6] The Respondent gave evidence that the users are independent individuals or businesses not associated with the Respondent in any way.[7]

5 On 1 April 2024, the Applicants filed HC/OA 305/2024 ("OA 305") seeking pre-action production of information and documents relating to 18 users (referred to in OA 305 as "Sellers") of the Shopee Platform.[8] The Applicants asserted that these Sellers had, without the Applicants' consent, advertised and offered for sale various cosmetic products (the "Offending Goods") under signs that are identical and/or similar to one or more of the Registered Marks, with the Offending Goods being goods that are identical and/or similar to the goods claimed by one or more of the Registered Marks.[9] In other words, the Applicants alleged that counterfeit goods that infringe the Applicants' trademarks are being sold on the Shopee Platform. Through OA 305, the Applicants hope to gather sufficient information about the Sellers to commence legal proceedings in Singapore against them for their alleged infringement of the Applicants' intellectual property rights.[10]

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[5] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 8.

[6] Affidavit of Zhou Junjie affirmed on 13 May 2024 at para 7.

[7] Affidavit of Zhou Junjie affirmed on 13 May 2024 at para 7.

[8] Originating application in HC/OA 305/2024 filed on 1 April 2024.

[9] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 12.

[10] Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 25; Applicants' Written Submissions dated 10 February 2025 at para 5.

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6 OA 305 was heard by AR Claudia Chen ("AR Chen"). On 27 May 2024, AR Chen ordered, *via* HC/ORC 3108/2024 ("ORC 3108"), the production by the Respondent to the Applicants of the following categories of information:[11]

(a) the full names and/or any other known aliases of the Sellers;

(b) the Sellers' personal identification and/or business registration numbers;

(c) the Sellers' residential addresses, registered business addresses, any other business addresses and/or addresses for service; and

(d) the Sellers' e-mail addresses and telephone / contact numbers.

7 Through an affidavit affirmed by the Chief Commercial Officer for the Respondent on 24 June 2024 (the "Disclosure Affidavit"), the Respondent purportedly furnished the information ordered by AR Chen.[12]

8 On 14 January 2025, the Applicants filed SUM 165, alleging that the information in the Disclosure Affidavit was incomplete and inadequate and seeking remedies to address these alleged deficiencies.[13] In SUM 165, the Applicants pray for:[14]

(a) an order for the Respondent to fully comply with AR Chen's order in ORC 3108 (the "Compliance Order");

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11 HC/ORC 3108/2024.

12 Affidavit of Zhou Junjie affirmed on 24 June 2024.

13 HC/SUM 165/2025; see also Applicants' Written Submissions dated 10 February 2025 at para 8.

14 HC/SUM 165/2025; Applicants' Written Submissions dated 10 February 2025 at para 1.

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(b) an order for the Respondent to explain whether the information on the Sellers, as provided in the Disclosure Affidavit, was obtained using a user verification process involving checks against government-issued documentation (the "Explanation Order");

(c) in relation to any information on any Seller not obtained using the user verification process involving checks against government-issued documentation, an order for the Respondent to take reasonable steps to obtain verified and updated identity information from the relevant Sellers and provide the same to the Applicants (the "Further Production Order");

(d) an order for the Respondent to detail all steps taken to obtain verified and updated identity information from the relevant Sellers, and, should the Respondent be unable in any instance to obtain such information, to explain why (the "Ancillary Order");

(e) an order restraining the Respondent and persons related to it from disclosing to the Sellers any information relating to the present proceedings (the "Non-Disclosure Order"); and

(f) an order granting the Applicants permission to inform the Ministry of Home Affairs ("MHA") of any failure and/or inability of the Respondent to verify the identities of sellers operating on the Shopee Platform against government-issued documentation (the "Notification Order").

Issues to be determined

9 The issues to be determined are as follows:

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(a) whether the Respondent fully complied with AR Chen's information production order in ORC 3108;

(b) whether this court ought to order the Respondent to furnish further information and/or explanations to the Applicants concerning the Sellers;

(c) depending on the answer to issue (b), whether this court ought to restrain the Respondent and persons related to it from disclosing to the Sellers any information relating to the present proceedings; and

(d) whether the Applicants ought to be given permission to inform the MHA of the alleged shortcomings of the Respondent's identity verification processes for sellers operating on the Shopee Platform.

Issue 1: Whether there was full compliance with information production order

Parties' cases

Applicants' case

10 The Applicants assert that the Respondent did not fully comply with ORC 3108 to provide all the information ordered,[15] and thus the Respondent ought to be ordered to fully comply with ORC 3108.[16] In particular, of the 18 Sellers targeted in ORC 3108, the Applicants claim that the Respondent had failed to provide all the ordered information vis-à-vis Sellers 1, 3, 5, 12, 13, and 16.[17] The main criticism that the Applicants have concerning these six Sellers is

[15] Applicants' Written Submissions dated 10 February 2025 at paras 8 and 13.

[16] Applicants' Written Submissions dated 10 February 2025 at paras 24.

[17] Applicants' Written Submissions dated 10 February 2025 at paras 11–12.

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that, out of the four categories of information ordered in ORC 3108 (see [6] above), the Respondent had not been able to provide one or two categories of information in relation to these Sellers, namely: (a) their full names and/or any other known aliases; and/or (b) their personal identification and/or business registration numbers (the "Allegedly Outstanding Information").[18]

11 While the Respondent takes the position that it has already disclosed all the information ordered which is within its possession or control, the Applicants argue that the court is not bound to accept the conclusiveness of the disclosing party's position taken in their affidavit where it is "plain and obvious" that the information ordered to be produced must be or have been in the disclosing party's possession or control.[19] The Applicants submit that while this "plain and obvious" standard was adopted in a case dealing with disclosure of documents, this standard is also consistent with the case law relating to when a court is entitled to look behind an answer to interrogatories under the Rules of Court 2014.[20] Applying this standard, the Applicants submit that it is "plain and obvious" that the Allegedly Outstanding Information is in the Respondent's possession or control.[21] The Applicants argue that the Respondent had implemented a user verification process involving checks against government-issued documentation (the "Verification Process") on the Shopee Platform which must have resulted in the Respondent collecting the Allegedly Outstanding Information from the Sellers.[22] The Applicants further contend that

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18 Applicants' Written Submissions dated 10 February 2025 at para 12.

19 Applicants' Written Submissions dated 10 February 2025 at paras 15–16; Applicants' Supplementary Written Submissions dated 17 March 2025 at para 11.

20 Applicants' Supplementary Written Submissions dated 17 March 2025 at paras 12–14.

21 Applicants' Written Submissions dated 10 February 2025 at paras 17 and 24; Applicants' Supplementary Written Submissions dated 17 March 2025 at para 15.

22 Applicants' Written Submissions dated 10 February 2025 at paras 18–19.

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the Respondent never defended OA 305 on the basis that it did not have possession or control of the Allegedly Outstanding Information.[23]

12 The Applicants submit that case law concerning pre-action / non-party interrogatories under O 26A of the Rules of Court 2014 is generally relevant in deciding applications for pre-action production of information under the present O 11 r 11 of the Rules of Court 2021.[24] In particular, the Applicants submit that the case law on *Norwich Pharmacal* orders (refer to *Dorsey James Michael v World Sport Group Pte Ltd* [2014] 2 SLR 208 at [24] for the Court of Appeal's discussion of the remedy set out in *Norwich Pharmacal Co and Others v Customs and Excise Commissioners* [1974] AC 133 ("*Norwich Pharmacal*")) under the Rules of Court 2014 remain generally applicable.[25] The Applicants argue that, having regard to the case law on when an answer to interrogatories is deemed insufficient, the Respondent's response to ORC 3108 is insufficient.[26]

Respondent's case

13 The Respondent objects to SUM 165, claiming that there is no basis for any further order to be made.[27] The Respondent argues that there is no basis for a further order for it to fully comply with ORC 3108 as it has already fully complied with said order.[28] According to the Respondent, it has provided all the ordered information within its possession or control, accurately reproduced "as-

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23 Applicants' Written Submissions dated 10 February 2025 at paras 20–21; Applicants' Supplementary Written Submissions dated 17 March 2025 at paras 8–9.

24 Applicants' Supplementary Written Submissions dated 17 March 2025 at para 2.

25 Applicants' Supplementary Written Submissions dated 17 March 2025 at para 4.

26 Applicants' Supplementary Written Submissions dated 17 March 2025 at para 6.

27 Respondent's Written Submissions dated 10 February 2025 at para 7.

28 Respondent's Written Submissions dated 10 February 2025 at para 16.

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is" from its records.[29] The Respondent highlights that, as a non-party, it has no incentive to not comply with ORC 3108 or state that it has no record of the information ordered if it indeed has such records.[30] The Respondent argues that the indications in the Disclosure Affidavit that the Respondent does not have records of certain information ordered in ORC 3108 should be considered conclusive, as the Applicants have not adduced any evidence to show that it is "plain and obvious" that the Respondent's indications are untrue.[31]

14 Moreover, in rebuttal against the Applicants' argument that the Respondent never defended OA 305 on the basis that it did not have possession or control of the Allegedly Outstanding Information (see [11] above), the Respondents contend that it has never taken the position that it had the Allegedly Outstanding Information, and that it was not obliged to verify or state whether the requested information was in its possession or control prior to ORC 3108.[32]

15 The Respondent submits that the court may consider, as relevant guidance, case law on when *Norwich Pharmacal* orders under O 26A r 1(5) of the Rules of Court 2014 may be ordered.[33] In the Respondent's view, both O 11 r 11(1) of the Rules of Court 2021 and O 26A r 1(5) of the Rules of Court 2014 are effectively the codification of the principles set out in *Norwich Pharmacal*. However, the Respondent takes the position that case law on when an answer to interrogatories is sufficient under O 26 r 5(2) read with O 26A r 4 of the Rules

29 Respondent's Written Submissions dated 10 February 2025 at para 9.

30 Respondent's Written Submissions dated 10 February 2025 at para 9.

31 Respondent's Written Submissions dated 10 February 2025 at para 13.

32 Respondent's Written Submissions dated 10 February 2025 at para 14.

33 Respondents' Further Written Submissions dated 17 March 2025 at paras 2 and 6.

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of Court 2014 is not relevant to SUM 165.[34] According to the Respondent, whereas the court had the express power under the Rules of Court 2014 to order a non-party to provide a further answer when an answer to interrogatories is insufficient, there is no equivalent provision in the Rules of Court 2021.[35] The Respondent argues that the deliberate omission of an express reference to a power to order a non-party to provide a further answer indicates that the drafters of the Rules of Court 2021 intended to exclude this from the new procedural framework, thereby rendering case law relating to O 26 r 5 of the Rules of Court 2014 irrelevant to the Rules of Court 2021.[36] In the alternative, the Respondent submits that its production of information is sufficient as it has fully complied with ORC 3108 by providing all information within its possession and control, to the best of its knowledge, information and belief, and is not obliged to conduct further verification checks.[37]

Law

16 Order 11 r 11 of the Rules of Court 2021 reads:

> **Production before action or against non-parties (O. 11, r. 11)**
>
> **11.**—(1) The Court may order the production of documents and information before the commencement of proceedings or against a non-party to identify possible parties to any proceedings, to enable a party to trace the party's property or for any other lawful purpose, in the interests of justice.
>
> (2) The Court must not order a document to be produced if its production cannot be compelled in law.

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[34] Respondents' Further Written Submissions dated 17 March 2025 at para 3.

[35] Respondents' Further Written Submissions dated 17 March 2025 at para 8.

[36] Respondents' Further Written Submissions dated 17 March 2025 at para 9.

[37] Respondents' Further Written Submissions dated 17 March 2025 at paras 3 and 10–14.

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> (3) A non-party is entitled to all reasonable costs arising out of such an application.

17 Both parties took the position that, in assessing whether a party ordered to disclose information and/or documents under O 11 r 11 of the Rules of Court 2021 has adequately complied with the order, the court ought to apply the "plain and obvious" test set out in *Lutfi Salim bin Talib and another v British and Malayan Trustees Ltd* [2024] 5 SLR 86 ("*Lutfi*").[38] The General Division of the High Court ("General Division") in *Lutfi* at [32] stated:

> 32 … For the purposes of deciding an application under O 11 r 3(1), a respondent's opposing affidavit and any subsequent affidavits filed in response to a previous order under O 11 rr 3(1) or 3(2) of the ROC 2021 are conclusive and the court should not go behind the affidavits unless it is *plain and obvious* from the documents that have been produced, the respondent's affidavits or pleadings, or some other objective evidence before the court, that the requested documents: (a) must exist or have existed; (b) must be or have been in the respondent's possession or control; or (c) are not protected from production.
>
> [emphasis in original]

In essence, the General Division explained that, in deciding an application for production of requested documents under O 11 r 3(1) of the Rules of Court 2021, a respondent's opposing affidavit and any subsequent affidavits filed in response to a previous order under O 11 rr 3(1) or 3(2) of the Rules of Court 2021 are conclusive. Thus, where such affidavits contain statements that the disclosing party had complied with its production obligations and/or that no further discoverable documents existed, the court should not go behind the affidavits unless it is "plain and obvious" from the documents that have been produced, the respondent's affidavits or pleadings, or some other objective evidence before the court, that the requested but undisclosed documents:

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[38] Applicants' Written Submissions dated 10 February 2025 at para 16; Respondent's Written Submissions dated 10 February 2025 at para 12.

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(a) must exist or have existed; (b) must be or have been in the respondent's possession or control; or (c) are not protected from production. Parties are agreed that this same test applies in assessing applications for production of information or documents before action or against non-parties under O 11 r 11 of the Rules of Court 2021.

18 I agree that the "plain and obvious" standard is the appropriate standard to apply in relation to assessment of the adequacy of disclosures made pursuant to orders made under O 11 r 11 of the Rules of Court 2021. However, I would caution against a wholesale and unqualified application of the *dicta* at [32] of *Lutfi* to orders for the production of *information* and not *documents*. *Lutfi* was a case concerning the production of *documents*, and so were the two later cases which referred to *Lutfi*, namely *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308 ("*Wuhu*") and *Cachet Multi Strategy Fund SPC (on behalf of Cachet Special Opportunities SP) v Feng Shi and others* [2024] SGHC 327. There has thus been limited opportunity for the courts to opine on the application of the *Lutfi* test to orders to produce *information*.

19 I observe at the outset that the *dicta* at [32] of *Lutfi* does not map cleanly onto the issue of information disclosure. *Lutfi* at [32] speaks of whether it is plain and obvious that "the requested documents: (a) must exist or have existed; (b) must be or have been in the respondent's *possession or control*; or (c) are not protected from production" [emphasis added]. The concepts of possession and control, however, are concepts that apply most straightforwardly to tangible property (*ie*, documents, in this context), and not information. Thus, in *Your Response Ltd v Datateam Business Media Ltd* [2015] QB 41 at [19] and [23], the Court of Appeal of England and Wales held that it was not possible for a person to exercise physical control over information, which is intangible in

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nature, and, more broadly, that information is not itself a physical object capable of possession independently of the medium in which it is held. Indeed, in O 11 of the Rules of Court 2021, the concept of "possession or control" is tied only to documents, and not information (see O 11 rr 2(1), 2(4), 3(1), 3(2), 4, and 6 of the Rules of Court 2021).

20 I pause here to note that there is no question that information contained in a storage medium such as a computer database which contains information which may be retrieved and converted into readable form is discoverable. This follows from the fact that the database is a document: *Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2025) ("*Singapore Court Practice*") at para 11.1.5. However, the distinction between documents and information is not simply pedantic, in the present context. The distinction matters because a key issue to be decided in this summons is whether the Respondent had adequately complied with ORC 3108 which is framed as an order to produce *information* and not *documents*.

21 In my opinion, the process of assessing whether there has been adequate or sufficient disclosure in response to an order to produce information under O 11 r 11 of the Rules of Court 2021 has greater affinity with the process of assessing whether an answer to interrogatories is sufficient under the Rules of Court 2014. I am unable to agree with the Respondent's submission (see [15] above) that case law under the Rules of Court 2014 on when an answer to interrogatories is sufficient is *not* relevant to SUM 165.

22 Firstly, as a matter of logic, the court needs some metric and standard to gauge whether a respondent to an order to produce information under O 11 r 11(1) of the Rules of Court 2021 has complied with the order. The parties agree that there are salient similarities between O 11 r 11 of the Rules of Court 2021

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and O 26A of the Rules of Court 2014.[39] Order 26A of the Rules of Court 2014 merits reading in full, but the most relevant provision for present purposes is O 26A r 1(5), which states:

> ORDER 26A
>
> INTERROGATORIES BEFORE ACTION, ETC.
>
> **Interrogatories against other person (O. 26A, r. 1)**
>
> …
>
> (5) An order to administer interrogatories before the commencement of proceedings or to administer interrogatories to a person who is not a party to the proceedings may be made by the Court for the purpose of or with a view to identifying possible parties to any proceedings in such circumstances where the Court thinks it just to make such an order, and on such terms as it thinks just.

The similarities between O 11 r 11(1) of the Rules of Court 2021 (reproduced above at [16]) and O 26A r 1(5) of the Rules of Court 2014 are stark. It would be natural and logical for a court considering the adequacy of a party's compliance with an order under O 11 r 11(1) of the Rules of Court 2021 to consider principles laid down under the old law, to the extent that these principles remain relevant to the new regime.

23 Secondly, I am unpersuaded by the Respondent's contention (see [15] above) that the lack of an express reference to a power to order a non-party to provide a further answer indicates that the drafters of the Rules of Court 2021 intended to exclude this from the new procedural framework. In my view, there is no need for the drafters of the Rules of Court 2021 to expressly state that the court has the power to order a non-party to provide a further answer when his previous answers are insufficient because the court already has the requisite

[39] Applicants' Supplementary Written Submissions dated 17 March 2025 at paras 2–4; Respondents' Further Written Submissions dated 17 March 2025 at paras 5 and 6.

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power under O 3 r 2(2) of the Rules of Court 2021. Order 3 r 2(2) of the Rules of Court 2021 provide:

> **General powers of Court (O. 3, r. 2)**
>
> …
>
> (2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

An order for a non-party to provide a further answer when his previous answers are insufficient would help ensure that justice is done and/or prevent an abuse of the process of the court. Such an order is not prohibited by law and is consistent with the Ideals in civil procedure set out in O 3 r 1(2) of the Rules of Court 2021. I observe in this regard that the commentary on the production regime under O 11 of the Rules of Court 2021 does note that some powers which were previously expressly stated in the provisions on discovery in the Rules of Court 2014 are now rooted in the court's general powers in O 3 rr 2(1) and 2(2) of the Rules of Court 2021 and the court's inherent power (see, for example, *Singapore Court Practice* at paras 11.2.8, 11.3.4, 11.5.7, 11.11.14 and 11.11.15). Moreover, the case of *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2023] 3 SLR 1191 ("*Janesh*") also reminds us that omissions to expressly stipulate the existence of specific powers in the Rules of Court 2021 ought not to be blindly taken as suggesting that the court does not have such powers. As noted by the court at [86] in *Janesh*, the Rules of Court 2021 does not expressly provide for the power to order substituted service out of Singapore. However, the court had little trouble in going on to decide that it has such a power (see *Janesh* at [87]–[91]).

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24 Having taken the view that the law on when an answer to interrogatories under the Rules of Court 2014 is sufficient is relevant to assessing whether there has been adequate or sufficient disclosure in response to an order to produce information under O 11 r 11 of the Rules of Court 2021, I turn to consider the contents of the law in this area. I consider the commentary (and the cases considered therein) in *Singapore Court Practice* at para 26/5/4 and *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*White Book 2021*") at paras 26/5/1 to 26/5/5 to be illuminating. The guidance, with appropriate modifications to bring the guidance up to date for the Rules of Court 2021, may be summarised as follows:

(a) The duty on the party responding to an order to produce information is to answer them to the best of his knowledge and belief. He is bound to give all the information of which he personally knows at the time he is ordered to produce the information, from whatever sources or persons it has been derived. This is subject to his right to object, for example, on the basis of privilege.

(b) If he does not have the information but is able to obtain it, he must do so, but he is not bound to obtain the information of anyone except his employees or agents.

(c) If this information can be obtained from documents which are in his possession or control, then he is expected to provide that information.

(d) He is also bound to provide information which is within the personal knowledge of his employees or agents unless the information was not acquired in the course of employment or agency respectively. That is, the party is required to exercise his best efforts in providing information which his employees or agents have acquired in their

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capacity as such employees or agents. This duty extends to former employees and agents (unless they ceased being such a considerable time ago) from whom enquiries can still be made.

(e) A party may have to provide information known by another person where the party is responsible for that person acquiring that knowledge.

(f) When considering whether an answer is sufficient, the court will look at its substance and determine whether it is an adequate response to the order to produce information. The truthfulness of the answer is not directly in issue for the purpose of this determination.

(g) If a party declines to provide an answer in response to any part of an order to produce information on the basis of a recognised ground for not answering (*eg*, privilege), the court will not compel him to do so unless the court is clearly satisfied that the answering party is not entitled to rely on that ground for not answering. The mere fact that the answers given are not the answers which the requesting party wants and was led to expect is not a basis for saying that they are insufficient.

(h) Where the answers to an order to produce information contradict the sworn evidence of the party, the court has the inherent jurisdiction to strike the answers out on the basis of oppression and abuse of process.

25 In my opinion, the guidance in *Lutfi* at [32] may be adapted in the following manner for the purposes of deciding an application under O 11 r 11 of the Rules of Court 2021. A respondent's opposing affidavit and any subsequent affidavits filed in response to a previous order under O 11 r 11(1) of the Rules of Court 2021 are conclusive and the court should not go behind the

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affidavits unless it is *plain and obvious* from the documents that have been produced, the respondent's affidavits, or some other objective evidence before the court, that:

(a) the requested documents which have not been produced:

(i) must exist or have existed;

(ii) must be or have been in the respondent's possession or control; or

(iii) are not protected from production; and/or

(b) the requested information which has not been disclosed:

(i) is within the respondent's knowledge and belief;

(ii) is information that the respondent is bound to obtain, having regard to the principles summarised at [21] above;

(iii) appears to have been contained within disclosure affidavit(s) provided by the respondent but has in essence not been disclosed, having regard to the substance of the answers provided by the respondent (*eg,* the answers provided are an irrelevant or nonsensical response to the order for production); or

(iv) is not protected from production.

26 In addition, the *dicta* of the Court of Appeal of England and Wales in *Lyell v Kennedy (No. 3)* (1884) 27 Ch D 1 ("*Lyell*") at 15 is also germane for present purposes. Cotton LJ there held that, in relation to interrogatories, a party interrogated can refer to the whole of his affidavit in answer to show that his

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answer is sufficient, and is not confined to that part of the affidavit which purports to deal with a particular interrogatory. In my judgment, when assessing the adequacy of the Respondent's compliance with ORC 3108, I ought to consider the Disclosure Affidavit as a whole and not simply focus on each answer or each piece of information given in isolation.

Decision

27 In my judgment, the Respondent had complied with ORC 3108.

28 As a preliminary matter, I note that a person ordered to produce documents or information may respond with an indication that he is unable to produce the document or information ordered, and *yet* be found compliant with the production order: *Wuhu* at [81]–[87]. This is subject to compliance with the principles set out by the court in *Wuhu* in those paragraphs, which cover some general expectations as to affidavits filed in compliance with a party's production obligations. Thus, the mere fact that the Respondent has not produced *some* of the information ordered is insufficient for me to find that the Respondent has not complied with ORC 3108.

29 In my judgment, my task is to consider the entirety of the Respondent's disclosures, in the context of the purpose for which the information is sought. As summarised at [5] above, the key objective of the Applicants is to gather sufficient information about the Sellers to commence legal proceedings in Singapore against them for their alleged infringement of the Applicants' intellectual property rights.[40] The four categories of information ordered in

40 Affidavit of Delphine de Chalvron sworn on 28 March 2024 at para 25; Applicants' Written Submissions dated 10 February 2025 at para 5.

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ORC 3108 (see [6] above) are interrelated in that these information serve to identify the Sellers and allow for service of court documents on them.

30 The Respondent's disclosures have materially and substantially advanced the Applicants' key objective of gathering sufficient information about the Sellers to commence legal proceedings in Singapore against them. For *every single one* of the Sellers, the Respondent had provided information about their geographical addresses, phone numbers and e-mail addresses. Personal service of court documents can potentially be effected using the geographical addresses. Even if those geographical addresses are not the addresses at which the Sellers can be found, substituted service *via* the phone numbers and e-mail addresses can be considered. The court has power to order substituted service within jurisdiction or out of jurisdiction: O 7 r 7 of the Rules of Court 2021 and *Janesh* at [88]–[91]. As these geographical addresses, phone numbers and e-mail addresses are tied to the Sellers' accounts on the Shopee Platform from which the Sellers have allegedly sold goods that infringe the Applicants' intellectual property rights, it appears likely that substituted service of court papers to these geographical addresses, phone numbers and e-mail addresses will be effective in bringing the papers to the notice of these Sellers.

31 It has also not escaped my attention that of the 18 Sellers targeted in ORC 3108, the Applicants' complaints about missing information relate only to six Sellers (see [10] above). In relation to these six Sellers, the Respondent asserts on affidavit that it has "[n]o records" of one or two categories of the information ordered, namely: (a) their full names and/or any other known aliases; and/or (b) their personal identification and/or business registration numbers. However, as mentioned above at [30], the geographical addresses, phone numbers and e-mail addresses of these six Sellers were provided by the Respondent.

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32 Looking at the information produced by the Respondent as a whole, seen in the context of the purpose of this information production exercise, it is my judgment that the disclosure is sufficient and there has been adequate compliance with ORC 3108. Referring to [25] above, the Respondent's statement affirmed in affidavit that it has "[n]o records" of certain pieces of information ordered to be produced is conclusive and the court should not go behind the affidavits because it is not *plain and obvious* that the requested but unproduced information is within the Respondent's knowledge and belief or is information that the Respondent is bound to obtain. The Respondent's very substantial disclosure of identification information for the Sellers, as canvassed at [30] and [31] above, are strongly suggestive that the Respondent has acted in good faith when checking its records and surfacing information it knows about the Sellers.

33 I turn to the Applicants' contention that the Respondent had implemented the Verification Process on the Shopee Platform which, according to the Applicants, must have resulted in the Respondent collecting the Allegedly Outstanding Information from the Sellers (see [11] above). In my view, this contention is unsustainable in view of the Applicants' concession in their affidavit that the Verification Process may not have been applied to all the Sellers. This is because the Respondent implemented the Verification Process for existing sellers on the Shopee Platform in phases starting from 16 October 2023,[41] and the Sellers are existing sellers that had been operating on the Shopee Platform since at least August 2023.[42] It is thus not plain and obvious that the Allegedly Outstanding Information is within the Respondent's knowledge and ought to have been disclosed.

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41 Affidavit of Zhou Junjie affirmed on 13 May 2024 at para 20(b)(i).

42 Affidavit of Delphine de Chalvron sworn on 23 December 2024 at para 27.

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34 I am also unpersuaded by the Applicants' argument that the Respondent never defended OA 305 on the basis that it did not have the Allegedly Outstanding Information. It was not incumbent on the Respondent, as a non-party, to verify or state whether it had the requested information prior to being ordered by the court to make the necessary disclosures under ORC 3108. Having considered the record of the earlier portion of the proceedings before AR Chen, and the affidavits and submissions tendered before her, I am also unable to find any representation by the Respondent that it did have the Allegedly Outstanding Information.

35 Thus, it is my decision that the Respondent had complied with ORC 3108 by producing the ordered information to the best of its knowledge and belief. There is no reason to make a further order for the Respondent to "fully comply" with ORC 3108. I thus dismiss the first prayer of SUM 165 for the Compliance Order to be made.

Issue 2: Whether further information and/or explanations ought to be furnished

Parties' cases

Applicants' case

36 The Applicants also complain about the quality of the information furnished in the Disclosure Affidavit. In particular, the Applicants argue that their investigations have revealed that the information provided in the Disclosure Affidavit concerning most of the Sellers was "missing, bogus and/or unreliable, such that the Applicants are unable to file legal actions against the relevant Sellers and/or serve the originating process".[43] The Applicants argue

[43] Applicants' Written Submissions dated 10 February 2025 at paras 10 and 25.

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that this alleged inadequacy of the information provided is at odds with the Respondent's implementation of its Verification Process.[44] Thus, the Applicants submit that it is fair and reasonable for the Respondent to be ordered to properly explain whether the information provided in the Disclosure Affidavit on the Sellers was obtained using the Verification Process (*ie*, the Explanation Order).[45] Relying on *Wuhu* at [75] and [76], the Applicants submit that even if the court finds that the "plain and obvious" test (see [11] above) is not satisfied, the Respondent has a distinct and separate obligation to explain why it does not have the Allegedly Outstanding Information.[46]

37 The Applicants contend that if the information provided in the Disclosure Affidavit on the Sellers was obtained using the Verification Process, this will suggest that the relevant Sellers had submitted fraudulent or doctored documents and/or information.[47] In such a case, the Applicants say that they will then consider applying for production of the relevant Sellers' bank or financial information to discover the Sellers' true identities.[48]

38 The Applicants submit that if the information provided in the Disclosure Affidavit on the Sellers was not obtained using the Verification Process, it is fair and reasonable for the court to order the Respondent to take reasonable steps to obtain verified and updated identity information from the relevant Sellers (*ie*, the Further Production Order).[49] In this regard, the Applicants assert that the

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44 Applicants' Written Submissions dated 10 February 2025 at para 26.

45 Applicants' Written Submissions dated 10 February 2025 at para 27.

46 Applicants' Supplementary Written Submissions dated 17 March 2025 at para 15.

47 Applicants' Written Submissions dated 10 February 2025 at para 28.

48 Applicants' Written Submissions dated 10 February 2025 at para 29.

49 Applicants' Written Submissions dated 10 February 2025 at paras 30 and 34.

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Respondent has a duty to take reasonable efforts to request for verified identity information from the relevant Sellers.[50] The Applicants argue that this position is supported by the legal position regarding a party's obligations in responding to interrogatories under the Rules of Court 2014, and consistent with the Ideal of achieving fair and practical results suited to the needs of the parties under the Rules of Court 2021.[51] Moreover, the Applicants contend that verified identity information from the relevant Sellers is in fact within the Respondent's control as it has the practical ability to access or obtain the information.[52] In particular, the Applicants argue that the Sellers would have a clear incentive to comply with any directions given by the Respondent to provide updated and verified identity information as the Respondent has the power to terminate the Sellers' accounts for non-compliance or withhold the Sellers' sale proceeds.[53]

39 The Applicants submit that the court should make the Ancillary Order, *ie*, an order requiring the Respondent to explain the steps it has taken to comply with the Further Production Order.[54] According to the Applicants, the Ancillary Order is necessary and reasonable to effectively police the Further Production Order and ensure that the Respondent complies with the Further Production Order not just in letter but also in substance.[55]

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50 Applicants' Written Submissions dated 10 February 2025 at para 32; Applicants' Supplementary Written Submissions dated 17 March 2025 at para 16.

51 Applicants' Supplementary Written Submissions dated 17 March 2025 at para 17.

52 Applicants' Written Submissions dated 10 February 2025 at paras 35 and 40; Applicants' Supplementary Written Submissions dated 17 March 2025 at para 16.

53 Applicants' Written Submissions dated 10 February 2025 at para 40.

54 Applicants' Written Submissions dated 10 February 2025 at para 41.

55 Applicants' Written Submissions dated 10 February 2025 at paras 43–44.

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Respondent's case

40 In rebuttal against the Applicants' complaints that the information provided in the Disclosure Affidavit concerning most of the Sellers was "missing, bogus and/or unreliable, such that the Applicants are unable to file legal actions against the relevant Sellers and/or serve the originating process" (see [36] above), the Respondent argues that O 11 r 11(1) of the Rules of Court 2021 does not require a non-party to produce accurate, reliable and actionable identity information to enable the requesting party to commence proceedings and serve the originating process.[56] Moreover, the Respondent asserts that it is untrue that the Applicants are unable to file legal actions against the Sellers or serve the originating process on them as the Applicants have sufficient information to do so.[57] The Respondent points out that the Applicants can still bring a claim against the Sellers by identification through their pseudonyms, using the Sellers' shop usernames on the Shopee Platform and providing a description which is sufficiently certain to identify those who are included and those who are not.[58] In relation to personal service, the Respondent submits that it is premature and speculative to claim that the Applicants are unable to effect personal service on the Sellers based abroad when: (a) the Applicants have not even filed the originating process against the Sellers; and (b) the Applicants have not even attempted personal service.[59] The Respondent further notes that even if personal service may be impracticable or impossible, the Applicants can apply for substituted service on the Sellers, such as through registered post to

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56 Respondent's Written Submissions dated 10 February 2025 at para 19.

57 Respondent's Written Submissions dated 10 February 2025 at para 20.

58 Respondent's Written Submissions dated 10 February 2025 at para 21.

59 Respondent's Written Submissions dated 10 February 2025 at para 25.

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the Sellers' addresses, the Sellers' e-mail addresses (which were provided by the Respondent) or through the Shopee Platform's chat function.[60]

41 The Respondent submits that the Applicants' prayers for further information and/or explanations are self-serving attempts to shift the burden of time and resources onto the Respondent, solely for the Applicants' convenience, and granting such a request would set a detrimental precedent of imposing an undue burden on non-parties against whom pre-action production of documents and information is sought.[61]

42 Specifically with regard to the Explanation Order sought by the Applicants (see [36] above), the Respondent submits that the court does not have the power under O 11 r 11(1) of the Rules of Court 2021 to make the Explanation Order as this is not an order to produce documents or information.[62] In so far as the Applicants seek to rely on the court's general powers under O 3 r 2(2) of the Rules of Court 2021, the Respondent submits that it is neither in the interest of justice nor consistent with the Ideals of civil procedure for the Explanation Order to be made for the reasons summarised at [40] and [41] above.[63]

43 Specifically with regard to the Further Production Order sought by the Applicants (see [38] above), the Respondent submits that the court does not have the power to make such an order against a non-party. This is because it is akin to a freestanding mandatory injunction against a non-party to prevent

60 Respondent's Written Submissions dated 10 February 2025 at paras 23 and 25.

61 Respondent's Written Submissions dated 10 February 2025 at para 27.

62 Respondent's Written Submissions dated 10 February 2025 at para 29.

63 Respondent's Written Submissions dated 10 February 2025 at paras 30–31.

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injustice independent of substantive rights, and the court has no power to grant such an injunction.[64] Moreover, the Respondent submits that *even if* the Court has the power to order such injunctions, the court will only exercise its power in rare circumstances as this is an onerous demand on a non-party.[65] In the present circumstances, the Respondent argues that there at least needs to be a showing that the Further Production Order is necessary due to the absence of any other practicable means of obtaining the information sought.[66] In the Respondent's view, there are many feasible avenues for the Applicants to commence legal proceedings against the Sellers or to undertake their own further investigations, and it is thus inappropriate for the Further Production Order to be granted.[67] Correspondingly, on the Respondent's case, there is no basis for the court to grant the Ancillary Order, since there is no basis for the Further Production Order to be granted.[68]

Decision

44 In my judgment, the Respondent ought not to be ordered to furnish further information and/or explanations.

45 I deal first with the Applicants' complaints about the quality of the information furnished in the Disclosure Affidavit (see [36] above). In my judgment, I ought to give little weight to these complaints. As a preliminary point, when considering the sufficiency and adequacy of information disclosed pursuant to an order to produce information under O 11 r 11 of the Rules of

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64 Respondent's Written Submissions dated 10 February 2025 at paras 32–33.

65 Respondent's Written Submissions dated 10 February 2025 at para 34.

66 Respondent's Written Submissions dated 10 February 2025 at para 34.

67 Respondent's Written Submissions dated 10 February 2025 at para 35.

68 Respondent's Written Submissions dated 10 February 2025 at para 36.

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Court 2021, the truthfulness of the answer is not directly in issue for the purpose of this determination (see [24(f)] above). Indeed, the *White Book 2021* at para 26/5/3, in commenting on whether a further answer to interrogatories under the Rules of Court 2014 should be ordered, cites *Lyell* at 19 and 21 for the proposition that "the question to be decided is whether the answer is sufficient and not whether it is true" and that "the answer is, for this purpose, conclusive, and the truthfulness of the answer cannot, as a rule, be inquired into". I consider that a similar principle ought to apply in relation to an order for production of information under O 11 r 11 of the Rules of Court 2021. The bottom line here is that the truthfulness of the information provided by the Respondent cannot, as a rule, be inquired into when determining the sufficiency of the answer. This is *not* to say that a respondent to an information production order is at liberty to lie in their answers – there are other remedies available to address a situation where a person lies to the court. Referring to [25] above, the Respondent's affidavit produced in response to an information production order under O 11 r 11(1) of the Rules of Court 2021 is conclusive, and the court should not go behind the affidavit unless it is *plain and obvious* that there is a deficiency in a manner as highlighted in [25(b)]. In my judgment, it is not plain and obvious that the information ordered to be produced under ORC 3108 was not produced – the Respondent has produced what appears to be substantive identity information on all of the Sellers.

46 At this stage of proceedings, without the benefit of cross-examination of relevant witnesses, the court is not in a position to conduct any detailed investigation into the truth of the answers provided in response to an order to produce information under O 11 r 11 of the Rules of Court 2021. The Applicants' allegation that the identity information provided by the Respondent for most of the Sellers is "missing, bogus and/or unreliable" is based on the

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Applicants' investigation findings in respect of 16 out of the 18 Sellers, which were summarised at para 22 of the Applicants' supporting affidavit for SUM 165 sworn by the first Applicant's General Counsel Intellectual Property & Media.[69] In fairness to the Applicants, they had exhibited the relevant investigation reports in said affidavit. However, what is starkly apparent is that the actual investigators who conducted the investigations did not give evidence to this court. They did not swear or affirm any affidavit placed before this court, nor were they cross-examined on their investigations. At the hearing before me, counsel for the Respondent pointed out, from the face of the investigation reports exhibited in the Applicants' supporting affidavit for SUM 165, alleged shortcomings in the investigations. The Respondent's counsel took me through the investigation report relating to Seller 9, which was one of the Sellers for whom the Respondent allegedly provided "missing, bogus and/or unreliable" information. The Respondent's counsel noted that the information disclosed by the Respondent allowed the Applicants to conduct a business registration search which resulted in business registration records being obtained. These records had substantive information such as the company's name, the legal representative's name, geographical address, business scope, shareholder information, contact details and website. An investigator did conduct an investigation at the geographical addresses surfaced, and found, at one of the addresses, "a small cosmetic processing family-run workshop for the manufacturing of perfumes / cosmetics".[70] However, the investigator reported that the premises were under tight surveillance and it was not possible to check the products in cardboard boxes at the premises as the premises were monitored

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[69] Affidavit of Delphine de Chalvron sworn on 23 December 2024 at para 22.

[70] Affidavit of Delphine de Chalvron sworn on 23 December 2024 at p 107.

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by cameras. Hence, according to the Respondent, it is not correct to say that the information provided was missing, unreliable or bogus.

47 At the hearing, the Applicants' counsel replied to the Respondent's arguments on the investigation reports. The Applicants' counsel argued that there is nothing definitive to suggest that Seller 9 is located at the address provided by the Respondent. Counsel flagged that this is a problem as the process of personal service on persons in China, where Seller 9 is allegedly located, is time-consuming, and it would be a waste of time and effort to go through this process only to discover that the relevant Seller is not located at the address supplied. The Applicants' counsel highlighted Seller 5, for whom the geographical address provided by the Respondent was visited by investigators hired by the Applicants and found to be occupied by what appears to be an unrelated entity.[71] The Applicants' counsel's conclusion was that as Seller 5 cannot be located at the address, it would not serve any purpose to send court papers by registered post to this location.

48 I am unpersuaded that the Respondent provided "missing, bogus and/or unreliable" information in response to ORC 3108. Not only has the Respondent managed to raise doubts about the conclusiveness of the investigations by pointing out that the investigators, in at least one instance, stopped short of fully investigating a geographical address because the premises were monitored, the Applicants' investigations have also failed to show that the information on the phone numbers and e-mail addresses of the Sellers supplied by the Respondent are "missing, bogus and/or unreliable". The investigations focused on the geographical addresses provided by the Respondent, which is only one aspect of the information ordered in ORC 3108. There is nothing before me which

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[71] Affidavit of Delphine de Chalvron sworn on 23 December 2024 at pp 83–93.

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shows, plainly and obviously, that the Respondent provided "missing, bogus and/or unreliable" information in response to ORC 3108.

49 Furthermore, I consider that the Further Production Order and the Ancillary Order ought not be made because these orders would undermine the principle that a respondent ordered to disclose information under O 11 r 11 of the Rules of Court 2021 is not, as a general rule, bound to obtain the information of anyone except his employees or agents (see [24(b)] above and *White Book 2021* at para 26/5/5). The Applicants are, in essence, seeking to leverage on the Respondent's commercial power over the Sellers to try to obtain information known by the Sellers themselves (*ie*, their actual names and geographical addresses). This is made crystal clear at para 31 of the Applicants' supporting affidavit for SUM 165, where the Applicants make the point that the Respondent's terms of service and commercial agreements with the Sellers empower the Respondent to wield the threat of account termination and/or withholding of sale proceeds against any Seller who does not comply with the Respondent's directions or requirements. In my judgment, a request for a non-party to tap on its commercial relationships and powers to find out from third parties information that the Respondent (and its employees or agents) does not have goes beyond the boundaries of an order for production of information under O 11 r 11 of the Rules of Court 2021. In this regard, I consider the general principles set out by the court at [92] of *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and others* [2006] 4 SLR 95 to be instructive. The court, in considering the inherent jurisdiction of the court to make an order in respect of documents that are being ordered to be discovered or produced for inspection under O 24 r 6 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), opined at [92] that there is a public interest in ensuring that non-parties are not unduly troubled by litigation involving others. Matters to be considered by a

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court in such a case will include the nature of the order sought, whether it may result ultimately in a saving in costs, the degree of intrusiveness the non-party may be required to endure, and the availability of the evidence through other means. In my judgment, the Further Production Order is intrusive to an inordinate degree and does not sit well with the public interest in ensuring that non-parties are not unduly troubled by litigation involving others. It may result in costs savings for the Applicants, but this comes at the price of a significant increase in costs for the Respondent. The Respondent would have to leverage on its commercial relationships with the Sellers to conduct further investigations on behalf of the Applicants, at a time when legal action between the Applicants and the Sellers have not even been commenced. Therefore, it is my view that the Further Production Order and the Ancillary Order (which is meant to police the Further Production Order) ought not be granted.

50 Additionally, I am unconvinced by the Applicants' argument (see [36] above) that the court's comments in *Wuhu* at [75] and [76] mean that I ought to order the Respondent to explain why it does not have the Allegedly Outstanding Information. The court in *Wuhu* at [75] explained that the *Lutfi* "plain and obvious" test is not a "charter for parties seeking to suppress or withhold material documents from production" because "a party seeking to avail itself of this stricter standard cannot simply make bald and unsubstantiated assertions that it has complied with its production obligations". Thus, "a party against whom a specific production order is made has *two* distinct and independent obligations: (a) to produce the document or state on affidavit that it is unable to do so for some reason; *and* (b) if it is unable to do so, *explain* why that is so". The court emphasised at [76] that "the shift to the 'plain and obvious' test does not allow a party to respond to a specific production order by simply making bald assertions on affidavit that it has no documents responsive to the order in

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its possession or control". In my judgment, the Respondent did not make bald and unsubstantiated assertions that it has complied with its production obligations. As noted above at [30] and [31], the Respondent had provided geographical addresses, phone numbers and e-mail addresses for *every single one* of the 18 Sellers targeted in ORC 3108. The Respondent's explanation that it was unable to provide one or two categories of information ordered for six of the Sellers because it had "[n]o records" of the information must be seen against the backdrop of its material and substantial disclosures which have significantly aided the Applicants' key objective of gathering sufficient information about the Sellers to commence legal proceedings in Singapore against them. I take the view that the Respondent's disclosures have complied (in letter and substance) with its obligations under ORC 3108 and its explanations are, in this context, adequate. I must stress here that each case must turn on its own facts and my decision on this point ought not to be seen as setting out a blanket rule that a bland assertion that a respondent has "no records" or "does not know" the information ordered to be produced will always satisfy an information production order under O 11 r 11(1) of the Rules of Court 2021. The entirety of the disclosures made by the respondent must be holistically examined, with attention paid to the unique facts and circumstances of each case.

51 Before I leave this point, I must clarify here that the present situation is readily distinguishable from the situation in *Natixis, Singapore Branch v Lim Oon Kuin and others* [2024] 3 SLR 1502 ("*Natixis*"), which the Applicants relied on in their written submissions. On the first level, *Natixis* deals with the discovery of documents, not information. On the deeper level, the court in *Natixis* observed at [39]–[41] that the documents which were ordered to be disclosed by the second defendant in that case were "all *his personal* documents" over which the second defendant had a presently enforceable legal

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right. It is therefore apparent that *Natixis* does not support the broad general proposition that a respondent ordered to disclose information under O 11 r 11 of the Rules of Court 2021 is bound to obtain information from third parties when that information does not belong to the respondent (or its employees or agents). Thus, I am of the view that *Natixis* does not assist the Applicants in this case.

52 I therefore dismiss the second prayer of SUM 165 for the Explanation Order, the Further Production Order and the Ancillary Order to be made.

Issue 3: Whether the non-disclosure order ought to be granted

Parties' cases

Applicants' case

53 Incidental to the Further Production Order, which requires the Respondent to take steps to obtain verified identity information from relevant Sellers, the Applicants also seek the Non-Disclosure Order to be made against the Respondent to ensure that it does not communicate to these Sellers any information relating to or in connection with the present proceedings.[72] According to the Applicants, this will decrease the likelihood of the Sellers failing to cooperate with the Respondent in providing verified identity information or taking steps to undermine the Applicants' contemplated legal action.[73]

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[72] Applicants' Written Submissions dated 10 February 2025 at para 45.

[73] Applicants' Written Submissions dated 10 February 2025 at para 47.

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Respondent's case

54 The Respondent submits that there is no basis for the court to grant the Non-Disclosure Order, since it is parasitic on the Further Production Order being granted, and there is no basis for the Further Production Order to be granted.[74] The Respondent further characterises the prayer for the Non-Disclosure Order as an afterthought, as the Applicants did not request for the Respondent to verify the Sellers' information and request for the Non-Disclosure Order at the outset in OA 305.[75]

Decision

55 The Applicants frame the Non-Disclosure Order as being supportive of the Further Production Order.[76] As I have decided not to grant the Further Production Order, the prayer for the Non-Disclosure Order also falls away.

Issue 4: Whether permission should be given to notify authorities

Parties' cases

Applicants' case

56 The Applicants further pray for a lifting of the *Riddick* undertaking, which provides that the Applicants, as parties entitled to the discovery of documents or information, impliedly undertake to the court that they will use those documents or information for the conduct of their case and for no other purpose unless the other party consents or the court's approval is obtained. The Applicants seek the court's permission to inform the MHA of any failure and/or

74 Respondent's Written Submissions dated 10 February 2025 at para 37.

75 Respondent's Written Submissions dated 10 February 2025 at para 38.

76 Applicants' Written Submissions dated 10 February 2025 at paras 45–51.

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inability of the Respondent to verify the identities of sellers operating on the Shopee Platform against government-issued documentation.[77] The Applicants contend that the failure and/or inability of the Respondent to verify the identities of sellers against government-issued documentation raises sufficiently serious public safety concerns which is an important factor in favour of lifting the *Riddick* undertaking to allow the MHA to be notified of this point.[78] Specifically, the Applicants highlight the importance of user verification in combating e-commerce scams and public messaging from the MHA apparently praising the Respondent for fully implementing user verification against government-issued documentation for all sellers on the Shopee Platform.[79] The Applicants assert that the MHA's public messaging appears inconsistent with the allegedly deficient information provided by the Respondent for most of the Sellers,[80] and that it is important and in the public interest that the MHA is informed of this point.[81]

Respondent's case

57 The Respondent argues that the Applicants have failed to provide any basis for the Notification Order.[82] The Respondent submits that this request is an abuse of process with the Applicants invoking the court process for the collateral purpose of coercing the Respondent to obtain more information from the Sellers.[83]

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77 Applicants' Written Submissions dated 10 February 2025 at para 52.

78 Applicants' Written Submissions dated 10 February 2025 at paras 56–60.

79 Applicants' Written Submissions dated 10 February 2025 at paras 57–58.

80 Applicants' Written Submissions dated 10 February 2025 at para 59.

81 Applicants' Written Submissions dated 10 February 2025 at para 60.

82 Respondent's Written Submissions dated 10 February 2025 at para 39.

83 Respondent's Written Submissions dated 10 February 2025 at para 40.

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Law

58 The Court of Appeal in *Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 ("*Lim Suk Ling Priscilla*") provided important guidance on the appropriate test for determining whether a party ought to be released from the *Riddick* undertaking. In summary:

(a) In determining whether a party ought to be released from its *Riddick* undertaking, a balancing of interests test is to be adopted: *Lim Suk Ling Priscilla* at [45].

(b) In applying this test, the court will engage in a multifactorial balancing exercise, and permission to be released from the *Riddick* undertaking will be granted if, in all the circumstances of the case, the interests advanced for the extraneous use of the disclosed documents outweigh the interests that are protected by the *Riddick* undertaking. Factors such as injustice (or lack thereof) to the disclosing party and the privileges which may be asserted are relevant factors which will feature in the balancing exercise. The weight to be accorded to such factors is necessarily fact-specific: *Lim Suk Ling Priscilla* at [46], [47] and [69].

(c) Non-exhaustive factors which have been raised in favour of lifting the *Riddick* undertaking include: (i) countervailing legislative policy; (ii) support of related proceedings; (iii) investigation and prosecution of criminal offence(s); (iv) public safety concerns; and (v) international comity: *Lim Suk Ling Priscilla* at [71].

(d) The factors in favour of granting leave are then to be balanced against the interests sought to be protected by the *Riddick* undertaking,

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namely the public interest in encouraging full disclosure and the disclosing party's privacy interests. Other factors which may militate against the grant of leave include: (i) injustice or prejudice to the disclosing party; (ii) improper purpose for which leave is sought; and (iii) whether the disclosing party may rely on the privilege against self-incrimination, and whether such privilege has been waived in the circumstances: *Lim Suk Ling Priscilla* at [72].

59 Given that the Applicants have focused on public safety concerns as the key reason for their application to lift the *Riddick* undertaking, it is helpful to reproduce the Court of Appeal's guidance at [71(c)] and [71(d)] of *Lim Suk Ling Priscilla* on public safety concerns and the closely related factor of the investigation and prosecution of criminal offences:

> (c) ***Investigation and prosecution of criminal offence(s)*:** Another public interest in favour of release may be the location and prosecution of criminal offence(s). In determining the weight to be given to this interest, the court may consider, among others (a) whether civil remedies are available; (b) the cogency of the evidence to be adduced in support of the offence; (c) the body or authority to which the documents will be disclosed to; (d) the seriousness of the crime reported; and (e) the proportionality of the potential penal sanctions (*Reebok* at [36]; *Bailey* at 488; *O Ltd v Z* ([46] *supra*) at [76]–[77]; *Prime Finance Pty Limited and ors v Randall and ors* [2009] NSWSC 361 at [39]). In relation to (e), it has been observed that the court would not allow the use of disclosed information or documents against another party in support of criminal proceedings abroad "if, for example, the punishment for an offence involving an infringement of intellectual property rights may be imprisonment for life, or worse, or some other form of cruel or unusual punishment" (*Reebok* at [36]). When considering the weight to be accorded to this factor, the privilege against self-incrimination, if timeously asserted, would also feature prominently in the balancing exercise (see [72(c)] below).
>
> (d) ***Public safety concerns*** raised by the disclosed documents, such as concerns of paedophilia (*O Ltd v Z*) or a plan to commit heinous crimes against an identifiable person

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> or group o[f] persons (*Smith v Jones* ([63] *supra*)) may warrant a lifting of the undertaking, especially if there is a threat of "immediate and serious danger" (*Doucette (SC)* at [40]). This factor is closely tied to and may overlap with factor (c).

Decision

60 In my judgment, there is no reason to lift the *Riddick* undertaking in this case. The interests advanced for the extraneous use of the disclosed information do not outweigh the interests that are protected by the *Riddick* undertaking.

61 The infringement of intellectual property rights is no doubt a serious matter, but I am not convinced that the public safety concerns raised are at the level of seriousness of "paedophilia", "a plan to commit heinous crimes against an identifiable person or group o[f] persons" or "a threat of 'immediate and serious danger'" (see *Lim Suk Ling Priscilla* at [71(d)]). I clarify here that I am certainly *not* saying that only *very serious* public safety concerns can form the basis of a strong case for lifting the *Riddick* undertaking. However, in carrying out a multifactorial balancing exercise and assigning due weight to various factors, the court must inevitably evaluate the relative weightiness of each of the factors. I have no doubt that a serious public safety concern such as "a plan to commit heinous crimes against an identifiable person or group o[f] persons" raises more weighty public safety concerns than an allegation that the Respondent had failed to verify the identities of certain Sellers against Government-issued documentation, which creates risks of e-commerce scams.

62 Taking reference from the guidance in *Lim Suk Ling Priscilla* at [71(c)]) which concerns the related factor of the investigation and prosecution of criminal offences, I also consider as relevant the cogency of the evidence to be adduced in support of the complaint to the MHA. The Applicants premised their submission concerning the need to inform the MHA on their allegation that the

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Respondent had provided "missing, bogus and/or unreliable" information for "most of the Sellers".[84] As explained above at [48], I am unpersuaded that the Respondent provided "missing, bogus and/or unreliable" information in response to ORC 3108.

63 In addition, the court in *Lim Suk Ling Priscilla* at [71(c)]) also noted "whether civil remedies are available" as a relevant consideration. In this regard, I consider that the underlying principle behind this idea of the availability of civil remedies operates on the present facts in a manner that weakens the Applicants' case. If consumers on the Shopee Platform have truly been placed at risk of harm (*eg,* through falling victim to an e-commerce scam, or purchasing products that are revealed to be counterfeits when the consumer takes delivery of their purchase), those consumers are better placed to personally make the relevant reports to the authorities. Those consumers would have personally experienced the harm and would have all the facts on hand. In my view, the availability of an alternative remedy aside from the Applicants making a complaint to the MHA, which is for consumers themselves to make reports if they have truly been placed at risk of harm, is a relevant factor in the multifactorial balancing exercise.

64 Thus, on the whole, I consider the case in favour of granting permission to lift the *Riddick* undertaking to be fairly weak.

65 *Per* [72] of *Lim Suk Ling Priscilla*, the factors in favour of granting permission are then to be balanced against the interests sought to be protected by the *Riddick* undertaking, namely the public interest in encouraging full

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[84] Applicants' Written Submissions dated 10 February 2025 at para 59; Affidavit of Delphine de Chalvron sworn on 23 December 2024 at para 39.

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disclosure and the disclosing party's privacy interests. I consider both these interests to be unattenuated in this present case. As trenchantly noted by the court in *ACL Netherlands BV (as successor to Autonomy Corporation Ltd) and other companies v Lynch and another* [2019] EWHC 249 (Ch) at [53], which decision was referred to with approval in *Lim Suk Ling Priscilla* at [72], "[c]areful observance of the restrictions against collateral use, and circumspection accordingly in permitting any departure from them, is important in encouraging compliance with fundamental obligations in contested … proceedings of full and proper disclosure …". Non-parties faced with an information production order ought to be encouraged to comply with the order and to provide full and proper disclosure. Careful observance of the *Riddick* undertaking and circumspection in permitting the lifting of the undertaking is important.

66 In my judgment, at the conclusion of the balancing exercise, the interests advanced for the extraneous use of the disclosed information do not outweigh the interests protected by the *Riddick* undertaking. I therefore dismiss the fourth prayer of SUM 165 for the Notification Order to be made.

Conclusion

67 In summary, I have decided that:

(a) the Respondent has complied with ORC 3108 by producing the ordered information to the best of its knowledge and belief (see [35] above);

(b) it is not plain and obvious that the information ordered to be produced under ORC 3108 was not produced (see [45] above) and there is nothing to show, plainly and obviously, that the Respondent provided

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"missing, bogus and/or unreliable" information in response to ORC 3108 (see [48] above);

(c) the Respondent is not bound to obtain the information of third parties other than his employees or agents and the Further Production Order is inordinately intrusive (see [49] above);

(d) there is no need for the Non-Disclosure Order as the Further Production Order ought not be granted (see [55] above); and

(e) the interests advanced for the extraneous use of the disclosed information do not outweigh the interests protected by the *Riddick* undertaking (see [66] above).

68 I therefore dismiss SUM 165.

69 Parties are to file their written submissions on costs, of not more than five pages, within seven days of this Judgment, if they are unable to agree on costs.

Chong Ee Hsiun
Assistant Registrar

Ravindran s/o Muthucumarasamy, Chan Wenqiang and Maria Xenia Robles Lafiguera (Ravindran Associates LLP) for the applicants;
Sheryl Lauren Koh Quanli and Woozeer Shaquil Ahmad (Chua & Partners LLP) for the respondent.

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