GATEWAY LAW CORPORATION
Advocates and Solicitors | Notary Public | Commissioners for Oaths
Patent, Design and Trade Mark Agents

3 Anson Road
#24 – 02 Springleaf Tower
Singapore 079909
Telephone: (65) 62216360
Facsimile: (65) 62216375

Case Summary: Fanco Fan Marketing Pte Ltd v Triple D Trading Pte Ltd [2025] SGHCR 15 ("FANCO Case")

Overview:

In the FANCO Case (available here), the Singapore High Court ("**SGHC**") considered the remedy of an "*account of profits*" in a tortious claim for passing off. The FANCO Case highlights the importance for litigants, particularly defendants, to maintain accurate records of revenue and costs incurred in the sale of goods in the course of business. The FANCO Case also provides key insights into the factors that the SGHC assesses when determining such a remedy.

Case Facts:

The claimant in the FANCO Case, Fanco Fan Marketing Pte Ltd ("**Fanco**"), sold a line of fans under the mark "*CO-FAN*", and one of Fanco's fan models therein also used the mark "*HELI*".

Subsequently, the defendant in the FANCO Case, Triple D Trading Pte Ltd ("**Triple D**"), launched its own line of fans under a similar mark, i.e. "*COFAN*", with one of its models therein also under the mark "*HALI*". Triple D then also registered a trade mark for its said "*COFAN*" mark.

A further point to note was that Triple D was established by a former employee of Fanco.

In the first instance case (see *Triple D Trading Pte Ltd v Fanco Fan Marketing Pte Ltd [2022] SGHC 226*) Triple D alleged that Fanco had actually been the first one to commit trademark infringement. Triple D argued that Fanco's use of the "*CO-FAN*" mark infringed Triple D's own trade mark registration.

In turn, Fanco then claimed passing off against the defendant and sought invalidation of the "*COFAN*" mark on the grounds of bad faith and sought relief arising from Triple D's alleged groundless threats of trade mark infringement.

After successfully obtaining summary judgment against Triple D for the tort of passing off, Fanco then sought an account of profits as a remedy. This required the SGHC to determine the extent of Triple D's unlawful profits and what proportion of those profits could then be attributed to their tortious conduct.

However, as Triple D claimed that they supposedly lost invoices of the "*COFAN*" fans sold by them when they were moving office, the relevant documents before the SGHC were therefore found to be incomplete. This in turn complicated the quantification process further.

Therefore, the key issue before the SGHC, in the FANCO Case, was to determine what portion of Triple D's profits were attributable to their tortious conduct, and what deductions, if any, should be allowed for costs and overheads.

(For the full background facts, see the first instance judgment for *Triple D Trading Pte Ltd v Fanco Fan Marketing Pte Ltd [2022] SGHC 226*, available here).

Decision:

Revenue Extrapolation Accepted for Missing Record Period

The SGHC first considered how to determine the revenue generated from the sale of the offending "*COFAN*" fans. As the documents before the SGHC were incomplete, the SGHC accepted Fanco's suggested methodology of extrapolating revenue from available invoices (between the period of 23 April 2021 to 31 August 2021), and which was supported by additional invoice data.

3 Anson Road
#24 – 02 Springleaf Tower
Singapore 079909
Telephone: (65) 62216360
Facsimile: (65) 62216375

The SGHC found no reason to doubt that the sales figures from that material period could not be used to project revenue across the full period up to 31 October 2022. The total revenue of Triple D was thus extrapolated based on this method and was found by the SGHC to be in the amount of S$673,367.93 (before taking into account the costs and/or overheads incurred by Triple D).

The SGHC also emphasised that the burden of proof was on Fanco (as the claimant in the FANCO Case) to prove the amount of revenue attributable to the passing off.

Deductions for Costs

The SGHC then went on to consider the deductions that could be made to the abovementioned revenue to determine the actual account of profits payable by Triple D to Fanco. In doing so, the SGHC emphasised that the burden of proof was then on the defendant to justify the deductions it claimed.

Manufacturing Costs

The SGHC accepted that manufacturing costs attributable to the making of the offending "*COFAN*" fans were legitimate costs to deduct from the revenue. Due to the paucity of documents, however, vis-à-vis Triple D's claimed manufacturing costs the SGHC based it off of the manufacturing costs of Fanco's own fans instead, as such fans were near-identical to those produced by Triple D. Such manufacturing costs were found to be in the amount of S$342,623.

Transport Costs

Triple D argued that it had incurred shipping costs to transport the offending "*COFAN*" fans from China to Singapore. Again, due to the absence of documentary records by Triple D on the actual transport costs incurred, the SGHC based its estimates off Fanco's own provided estimates instead. This was then found to be in the amount of S$3,252.75.

Marketing Costs

Additionally, a deduction of $10,902 was allowed for free offending "*COFANS*" fans given away by Triple D during the product launch, as it was considered a legitimate marketing expense. This was found to be in the amount of S$10,902.

General Overheads

After determining the direct costs associated with the offending "*COFAN*" fans, the SGHC then also considered indirect overhead costs that may have been incurred by Triple D.

The SGHC adopted a two-step test from *Dart Industries Inc v Décor Corporation Pty Ltd* (the "**Deductibility Test**") to assess deductibility of such general overheads, as follows:

- Would the overhead have been incurred even without the tortious act?
- Was there any opportunity cost incurred due to the tortious act?

If the general overhead would have been incurred anyway and no business opportunity was lost, then it should not be deducted from the quantum of the profits.

3 Anson Road
#24 – 02 Springleaf Tower
Singapore 079909
Telephone: (65) 62216360
Facsimile: (65) 62216375

1. *Rental Costs*

Triple D attempted to claim the cost of rental for the space used to store the offending "*COFAN*" fans as a legitimate general overhead. This was, however, disallowed by the SGHC because it failed to satisfy the first step of the Deductibility Test. Such an overhead would have been incurred regardless of the sale of the offending "*COFAN*" fans, since Triple D was also storing other products in the said space.

2. *Vehicle Costs*

Triple D claimed a van was used exclusively for the transport and delivery of the offending "*COFAN*" fans, but this was unconvincing since the sales of the offending "*COFAN*" fans only made up 10% of Triple D's total sales.

Again, the vehicle costs failed to satisfy the first step of the Deductibility Test.

3. *Staff Salaries*

Triple D attempted to claim that the costs of three (3) staff members were general overheads attributable to the sale of the offending "*COFAN*" fans. However, the SGHC found that it was unconvincing that the three (3) staff in question would have exclusively been involved in the sale of only the offending "*COFAN*" fans. Additionally, they were simply redeployed after the offending "*COFAN*" fans sales ended, showing their salaries would have been paid anyway by Triple D.

Accordingly, the salaries for these three (3) staff were therefore disallowed as this argument also failed to satisfy the first step of the Deductibility Test.

Taxes

Triple D sought a 17% deduction on the account of profits payable for corporate tax purposes. However, since no evidence in the form of IRAS tax records were presented to the SGHC by Triple D, the SGHC declined to allow any deduction for taxes.

Indemnity Costs

Fanco sought indemnity costs due to Triple D's unreasonable conduct, including:

- Obfuscating profits;
- Tampering with evidence by altering photographs and adducing it as evidence in the SGHC;
- Giving inconsistent testimony in the examination of judgment debtor proceedings and in these proceedings; and
- Rejecting early settlement offers.

However, the SGHC declined to award indemnity costs, finding that while Triple D's conduct was not ideal, it did not meet the high threshold of exceptional unreasonableness required to justify indemnity costs. The SGHC further pointed out that Triple D had made its own settlement offer of $165,000, which showed at least some willingness to resolve the matter.

3 Anson Road
#24 – 02 Springleaf Tower
Singapore 079909
Telephone: (65) 62216360
Facsimile: (65) 62216375

Final Profit Assessed

Accordingly, the SGHC found the final profit sum attributable to Triple D's sales of the offending "*COFAN*" fans to be in the amount of S$316,590.18. This was as a result of deducting all of the allowed costs, assessed in the amount of S$356,777.75, from the total revenue, as mentioned above.

Interest Payment

Finally, the SGHC ordered interest at 5.33% per annum on the profit sum of S$316,590.18, starting from 1 February 2022 (the midpoint of the material period) until the date of payment by Triple D to Fanco.

Concluding Comments:

The SGHC took a methodical, evidence-based approach to the account of profits. It placed a heavy emphasis on the parties' respective burdens of proof, especially regarding deductions for overheads. Because the defendant in the FANCO Case failed to provide proper documentation or demonstrate that its claimed costs were directly attributable to the tortious sales, most deductions were disallowed. As a result, the SGHC therefore allowed a significant amount of damages, following the assessment of the account of profits, to be disgorged from the defendant and thus made payable to the claimant.

Mitchel Chua
Counsel
Gateway Law Corporation

Email:
mitchel.chua@gateway-law.com

Max Ng
Managing Director
Gateway Law Corporation

Email:
max.ng@gateway-law.com

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.

This article is intended to highlight key legal and practical considerations regarding the factors taken into account by the SGHC in determining an account of profits. It is not intended to be comprehensive, nor should it be construed as legal advice. This article is updated as of 28 August 2025.

The authors would like to express their appreciation and thanks to Bharath Rai and Lim Yi Rui, interns at Gateway Law, for their assistance and contribution to this article.

Disclaimer:
Any views expressed in this article are the author's personal views and should not be taken to reflect or represent the views or position of Gateway Law Corporation and its affiliated entities.