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Your Ref: TBA
Our Ref: 2021/0230/SC

21 June 2024

Metasurface Technologies Pte Ltd
43 Tuas View Circuit
Singapore 637360
Attn: Mr Chua Chwee Lee

By email only

Dear Sirs

OPINION CONCERNING A CERTAIN UNDERTAKING AND INTELLECTUAL PROPERTY MATTERS RE: SINGAPORE KITCHEN EQUIPMENT LIMITED (“SKE”) AND Q’SON KITCHEN EQUIPMENT PTE LTD (“QKE”)

1. Thank you very much for your instructions.

Executive Summary¹

Basic facts

2. On or about 22 May 2013, Metasurface Technologies Pte. Ltd. (formerly known as Q’son Precision Engineering Pte Ltd, and hereafter, “**MST**” or “**QPE**”) gave an undertaking to SKE (and/or its related companies, together the “**SKE Group**”) to “*change its name within three months from the date of such undertaking, and to no longer utilise the “Q’son” name or brand as well as to no longer state that Q’son Precision Engineering Pte Ltd is part of the Q’son group of companies*” (the “**Undertaking**”).
3. MST maintained its “Q-son” name until late 2021 and complied with its obligations under the Undertaking in or around 2021 when: (1) QPE changed its name to MST on 22 October 2021; and (2) Metaoptics Technologies Pte. Ltd. (formerly known as Q’son Advanced Optics Pte. Ltd., and hereafter “**MOT**” or “**QAO**”) changed its name to MOT on 30 September 2021.
4. Further, there is a company in the USA owned by Mr Jee Wee Liang (who is the brother-in-law of MST’s ultimate controlling shareholder and director, Mr Chua Chwee Lee (“**CCL**”)) formerly called Q’son Corp (“**QC**”). On 27 June 2022, QC changed its name to Metasurface & Co (“**MC**”).

The Questions

5. We were asked to give our opinion on the following questions (the “**Questions**”):²

¹ In this opinion, all *emphasis* and **bold** are added unless otherwise stated.

² Please note that our views are based solely on the facts as set out herein. Those views may change depending on what other facts are subsequently made known to us.

- (1) Question 1: What is the potential legal implication or exposure of MST arising from the potential breach of the Undertaking?
- (2) Question 2: What is the potential legal implication or exposure of MST historically using the Q'son trademarks/ trade name which are not registered under MST, but instead under SKE?

Our views

6. Even after the aforementioned name changes, it would have been difficult for MST, MOT and MC to argue that MST did not breach the Undertaking. Our reasoning is set out in **Appendix 1** hereto.
7. Critically and notwithstanding the above, however, MST, MOT and MC have sought, and obtained, a waiver and release from SKE and QKE on MST's use of the "Q'son" name from the date of the Undertaking (and for MOT and MC, from its date of incorporation) to the date of the name change(s).
8. In particular, by way of SKE's solicitors' letters dated 15 December 2021, 22 December 2021 and 15 February 2023 ("**SKE's Waiver and Release**") and *inter alia*:
 - (1) SKE confirmed on the basis of MST, MOT and MC's assurances as set out in our letters dated 25 October 2021 and 11 January 2023³ (the "**Assurances**") that the SKE Group has retrospectively acquiesced to such use of the "Q'son" name for such time period prior to the respective name changes by MST, MOT and MC, provided that MST, MOT and MC had at no point in time represented to third parties that MST, MOT and MC were part of the SKE Group.
 - (2) SKE unconditionally and irrevocably waived, released and discharged MST, MOT and MC from any claims or liabilities (including but not limited to intellectual property rights) from the date of the Undertaking or from the date of the incorporation of MST, MOT and MC (as the case may be) arising out of or in connection with the Undertaking and the use of the "Q'son" name on, *inter alia*, the following terms:
 - (a) The Assurances confirming that MST, MOT and MC will not use the "Q'son" name any further and that MST, MOT and MC had at no point in time represented to third parties that they were part of the SKE Group, being accurate as at the date of the granting of the release, waiver and discharge;
 - (b) SKE reserving its rights to pursue damages and losses in the event it had actually suffered losses and damages arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances; and

³ On 16 February 2023, we further wrote to SKE's solicitors to confirm the Assurances.

- (c) Such waiver, release and discharge is inuring to and for the benefit of, and binding on, the successors of MST, MOT, MC and SKE and each of the companies in the SKE Group.
- (3) SKE confirmed that as at 15 February 2023, it has not suffered any loss or damage arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.
- (4) SKE confirmed that it is not aware, as at 15 February 2023, of circumstances that are contrary to the Assurances that will give reason for SKE to believe that it has suffered, or will suffer, loss and damages arising out of or in connection with the breach of the Undertaking by MST, MOT and MC and/or the Assurances.
- (5) SKE confirmed that it will endeavour to notify MST, MOT and MC as soon as reasonably practicable after it becomes aware of any loss or damage arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.
9. *Given SKE's Waiver and Release, the risks of SKE commencing any subsequent claims against MST, MOT and MC are remote.* Copies of the aforesaid inter-solicitor correspondence are collectively found at **Appendix 2** hereto.
10. Further, and subject to the actual terms of the Undertaking⁴, it is unlikely that MST owes any duties or obligations to the Singapore Exchange ("SGX"). MST is not listed on the SGX, and is not regulated by the same. Accordingly, it is unlikely that SGX can or will bring any action against MST in relation to the Undertaking.
11. We have been given to understand that none of the directors and shareholders of MST and MOT is disqualified to act as a director of a Singapore-incorporated company and under Singapore law in relation to the Undertaking.
12. Further, in relation to the Undertaking and assuming the Assurances are true, it is unlikely that a Singapore court will find that the conduct of the directors of MST and MOT was dishonest, fraudulent and/or will impact upon the integrity of those directors.
13. We have also been given to understand that following their name changes, MST, MOT and MC have stopped using the "Q'son" name as swiftly as practicable. Such steps included launching a new website and placing new signages at its premises.

Our Instructions

14. We are instructed as follows.

⁴ Assuming the Undertaking was given to SKE/QKE instead of SGX, and as MST is not a company listed on, or regulated by, the SGX.

The Chua siblings

15. CCL, Ms Sally Chua and Mr Chua Swee Soon (“**Sally Chua**” and “**CSS**” respectively) are siblings.
16. As will be explained below, each of the 3 siblings has/had owned / controlled separate business entities using the name “Q’son”. We are instructed that there was a common understanding among the 3 siblings that each of them may use the name “Q’son” for their separate businesses.

Sally Chua, SKE and the SKE Group

17. Sally Chua is the ultimate controlling shareholder and director of SKE, a public company listed on the *Catalist* board on SGX.
18. SKE has various wholly-owned subsidiaries under the SKE Group including:
 - (1) QKE, a company incorporated on 30 September 1996.⁵ Sally Chua is a director of QKE.
 - (2) Q’son International Pte Ltd (“**Q’son International**”), a company incorporated on 13 April 2007. Sally Chua is a director of Q’son International.
19. At all material times, QKE was and is in the business of fabricating and supplying kitchen equipment in Singapore using the name “Q’son”. In addition, as can be gleaned from its website (<https://www.qson.sg/brands/>), one of the brands of kitchen equipment that QKE



supplies is marketed under the

name or mark. This mark is not registered with IPOS.

20. Looking at its website (singaporekitchenequipmentltd.com), SKE uses the “Q’son” name in its 2 key business segments: (1) fabrication and distribution of kitchen systems and equipment; and (2) provision of kitchen equipment servicing and maintenance services. As is apparent, the key, if not only, focus of the SKE Group’s business revolves around commercial kitchen and equipment.

CCL, QPE and QAO

21. CCL is the controlling shareholder and director of MST, a company incorporated on 6 January 2000.
22. From its incorporation on 6 January 2000, MST used the word “Q’son” as part of its name, *i.e.* QPE. This was due to the common use of the name "Q'son" by each of the 3 siblings and the above-mentioned consensus among themselves to do so. Up to at least May 2013 (and possibly thereafter), SKE/QKE knew about this fact and consented to the same.

⁵ In turn, QKE is the sole shareholder of Q’son Kitchen Equipment Pte Ltd, a company incorporated on 7 March 2017.

23. MST's business and the goods and services it offers is vastly, if not completely, different from that provided/offered by SKE/QKE. MST was and remains primarily engaged in the business of *precision engineering* for a wide range of customers in high-tech industries including the semiconductor and electronics industries. MST does not produce kitchen systems or equipment, nor does it provide kitchen equipment servicing and maintenance services to any third party end customer. Therefore, save for SKE itself and the fact that MST has provided certain OEM services, which include finalising design drawings, sourcing suitable components and manufacturing kitchen equipment to SKE, MST does not provide goods or services to the players in the industries in which SKE does business. Further, MST manufactures products for its customers which are branded in the customers' name, and does not manufacture any products with a "Q'son" name.
24. MST is the majority shareholder of MOT, a company incorporated recently on 15 June 2021. CCL and his spouse, Ms Jee Wee Jene, are the directors of MOT.
25. MOT is in the business of design and manufacturing of optics lens and module. Like MST, MOT's business and the goods and services it offers is vastly, if not completely, different from that provided/offered by SKE/QKE.
26. MC is a company incorporated in the USA and owned by the brother-in-law of CCL. MC is in the business of procuring and purchasing components for MST and its subsidiaries.
27. From February 2000 to sometime in 2005, QKE held less than 5% shares in MST. Since then, Sally Chua and CSS are not and have never been the shareholders (whether directly or indirectly) or directors of MST, MOT and MC.

CSS and his Q'son companies

28. CSS is the sole shareholder and director of Q'son 21 F&B Pte. Ltd, Q'son 74 Pte. Ltd. and Q'son 122 Pte. Ltd.⁶
29. These 3 companies are in the business of letting and operating/running of self-owned or leased food courts, coffee shops and eating houses. CCL and Sally Chua are not shareholders or directors of these 3 companies.

SKE's listing and the Undertaking

30. In or around 2013, SKE embarked on its listing exercise. SKE issued an offer document pursuant to the listing process (the "**Offer Document**").
31. At pp 116-117 of the Offer Document, SKE made the following disclosures to the investing public concerning MST (then known as QPE):

Q'son Precision Engineering Pte Ltd

Background

⁶ For the avoidance of doubt, we do not act for CSS and his companies and provide no advice to him.

Q'son Precision Engineering Pte Ltd is a private company limited by shares incorporated in Singapore.

The principal business activities of Q'son Precision Engineering Pte Ltd are in the *provision of precision engineering and machining solutions*, including precision machining, sheet metal fabrication, welding services and contract assembly, to companies in the hard drive disk, semi-conductor, oil and gas, automation and aerospace industries.

Chua Chwee Lee, the brother of Sally Chua, is a director of Q'son Precision Engineering Pte Ltd and directly owns 65.98% interest in Q'son Precision Engineering Pte Ltd.


We currently engage Q'son Precision Engineering Pte Ltd to *fabricate and supply us with gas valves and other minor spare parts for our Group* from time to time. Subsequent to the Invitation, all the future transactions between Q'son Precision Engineering Pte Ltd and our Group shall be subject to the relevant provisions under Chapter 9 of the Catalist Rules if these constitute interested person transactions by virtue of Q'son Precision Engineering Pte Ltd being an Associate of Sally Chua.

Notwithstanding the above, our Directors are of the view that there are *no potential conflicts of interests* for the following reasons:

- (a) Q'son Precision Engineering Pte Ltd is *not in the business of fabricating and sale of kitchen systems and kitchen equipment*;
 - (b) Sally Chua does not have any executive role in the management of Q'son Precision Engineering Pte Ltd;
 - (c) Q'son Precision Engineering Pte Ltd has a *different customer base* compared to our Group; and
 - (d) Q'son Precision Engineering Pte Ltd has *on 22 May 2013 undertaken to change its name within three months from the date of such undertaking, and to no longer utilise the "Q'son" name or brand as well as to no longer state that Q'son Precision Engineering Pte Ltd is part of the Q'son group of companies.* (With this part being the Undertaking)
32. We have been given to understand that MST has not kept a copy of the Undertaking, and is not aware of its exact terms or to which part(ies) MST had given the undertaking. However, MST does not dispute that it had entered into the Undertaking, nor does MST have any reason to challenge the description of the nature of its obligations under the Undertaking as set out in the Offer Document. In this opinion, we have proceeded on the basis of the Offer Document's description of the Undertaking. We have also assumed that SKE and/or QKE is/are MST's counterpart(ies) to the Undertaking (*i.e.* MST gave the undertaking to SKE/QKE) such that SKE and/or QKE have rights under the Undertaking and may take action against MST pursuant to the same.
33. We have been further given to understand that after the parties entered into the Undertaking, and over the years till today, SKE/QKE has continued to regularly engage MST prior to the

change of its name from QPE to supply component parts to SKE/QKE without raising any objection to the continued use of “Q’son”.

Registration of trade marks

34. QKE has registered various trademarks involving the word “Q’son” with IPOS: see the table found at **Appendix 3** hereto.⁷
35. As can be seen:
- (1) Some of those marks were abandoned or have expired.
 - (2) As to the existing marks:
 - (a) There are 3 marks which reflect not only the word or name “Q’son”, but also include or incorporate the words “KITCHEN EQUIPMENT” (together with SKE/QKE Mark 1, the “**SKE/QKE Marks**”).
 - (b) All of the SKE/QKE Marks include or incorporate the Chinese characters (翹伸 and hereafter, the “**Chinese Characters**”).
36. QPE previously used the sign  (for convenience, the “**QPE Mark**”). The QPE Mark is not registered.

Potential listing of MST on the HK Stock Exchange (“HKSE”)

37. MST is taking steps to list on the HKSE.

Our views on the Questions

38. Our views on the Questions and SKE’s possible causes of actions *prior to* the Waiver and Release are set out in detail at **Appendix 4** herein. Those views have to be considered against SKE’s provision of its Waiver and Release, on which we focus hereinbelow.

SKE’s Wavier and Release

39. By way of our letters dated 25 October 2021, 22 December 2021 and 11 January 2023, MST, MOT and MC sought, *inter alia*:
- (1) A waiver and release of MST, MOT and MC from any breach or claim from the date of the Undertaking/date of incorporation of MST, MOT and MC and arising out or in connection with the Undertaking and the use of the “Q’son” name.

⁷ Although QKE had registered the various SKE/QKE Marks, we do not know if there is any arrangement between QKE and SKE in relation to the SKE/QKE Marks, *e.g.* any licences etc. For the purposes of this opinion, we have assumed that both SKE and QKE have rights in relation to the SKE/QKE Marks. Should there be any action, a further examination of the facts will be required.

- (2) SKE to confirm that to date, it has not suffered any loss or damage arising out of or in connection with the Undertaking and the use of the “Q’son” name.
40. By way of SKE’s solicitors’ letters dated 15 December 2021, 22 December 2021 and 15 February 2023, and *inter alia*:
 - (1) SKE confirmed on the basis of the Assurances that the SKE Group has retrospectively acquiesced to such use of the “Q’son” name for such time period prior to the respective name changes by MST, MOT and MC, provided that MST, MOT and MC had at no point in time represented to third parties that MST, MOT and MC were part of the SKE Group.
 - (2) SKE unconditionally and irrevocably waived, released and discharged MST, MOT and MC from any claims or liabilities (including but not limited to intellectual property rights) from the date of the Undertaking or from the date of the incorporation of MST, MOT and MC (as the case may be) arising out of or in connection with the Undertaking and the use of the “Q’son” name on, *inter alia*, the following terms:
 - (a) The Assurances confirming that MST, MOT and MC will not use the “Q’son” name any further and that MST, MOT and MC had at no point in time represented to third parties that they were part of the SKE Group, being accurate as at the date of the granting of the release, waiver and discharge;
 - (b) SKE reserving its rights to pursue damages and losses in the event it had actually suffered losses and damages arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances; and
 - (c) Such waiver, release and discharge inuring to and being for the benefit of, and binding, the successors of MST, MOT, MC and SKE and each of the companies in the SKE Group.
 - (3) SKE confirmed that as at 15 February 2023, it has not suffered any loss or damage arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.
 - (4) SKE confirmed that it is not aware, as at 15 February 2023, of circumstances that are contrary to the Assurances that will give reason for SKE to believe that it has suffered, or will suffer, loss and damages arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.
 - (5) SKE confirmed that it will endeavour to notify MST, MOT and MC as soon as reasonably practicable after it becomes aware of any loss or damage arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.
41. As at the date of this opinion, we have not received any notification from SKE or its solicitors about any loss or damage arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances.

42. Given SKE's Waiver and Release, and assuming that the Assurances are true and correct, the chances of SKE commencing claims (including and notwithstanding the causes of action set out in Appendix 4) subsequently against MST, MOT and MC are remote.
43. We hope the above has been useful. Please do not hesitate to contact us should you require any clarification or further assistance.

Yours faithfully


SIM CHONG LLC

APPENDIX 1

- (1) It is important to first highlight that, by way of SKE's solicitors' letters dated 15 December 2021, 22 December 2021 and 15 February 2023, SKE unconditionally and irrevocably waived, released and discharged MST, MOT and MC from any claims or liabilities (including but not limited to intellectual property rights), from the date of the Undertaking or from the date of the incorporation of MST, MOT and MC (as the case may be) arising out of or in connection with the Undertaking and the use of the "Q'son" name. Thus, the risk of a successful claim has been negated by SKE's Waiver and Release and is therefore remote.
- (2) It may be difficult for MST to argue that it had not acted in bad faith in relation to its continued use of the name "Q'son", particularly since it had not stopped using that name notwithstanding its obligations under the Undertaking. Assuming, however, that a court finds that there was no bad faith, MST may be able to persuade the court that SKE/ QKE had acquiesced to MST's continued use of the "Q'son" name. This is because, among other things, not only were SKE/QKE aware of that continued usage and they did not raise any objection, they also continued to engage MST to supply component parts to them. When SKE/QKE did so, they would have known (*e.g.* by sight of QPE's invoices showing the usage of the name "Q'son") that MST was still using the "Q'son" name.
- (3) SKE/QKE can sue MST under various sections of the Trade Marks Act (Cap. 332) ("TMA"). MST's strongest argument appears to be that its business, customer base and goods and services are vastly, if not completely, different from those of SKE/QKE. It is very likely that the court will consider it a persuasive argument.
- (4) In relation to a claim in passing off, MST has an arguable case that there was no passing off. This is because both SKE/QKE's and MST's (separate) businesses are, in themselves, very "customised" and they both deal with "relatively sophisticated companies" such that there is no confusion between the business, goods or services of SKE/QKE and those of MST. Further, as SKE had disclosed in its Offer Document⁸, MST's customer base is different from that of the SKE Group. It is also important to note that when QPE used the name "Q'son", it did not seek to represent or suggest that it was part of the SKE Group.

⁸ As defined below.

APPENDIX 2

SIM CHONG LLC

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Your Ref: TBA
Our Ref: 2021/0230/SC

25 October 2021

Singapore Kitchen Equipment Limited
Attn: Ms Sally Chua

By email only
sally@qson.com.sg

Dear Sirs

**METASURFACE TECHNOLOGIES PTE LTD (“MST”), FORMERLY KNOWN AS Q’SON
PRECISION ENGINEERING PTE LTD (“QPE”)
UNDERTAKING TO SINGAPORE KITCHEN EQUIPMENT LIMITED**

1. We act for MST, and are instructed as follows.

The Undertaking

2. In or around 2013, and as part of your listing exercise on the Catalist of Singapore Exchange Securities Trading Limited, you issued an offer document. In the offer document, you made the following disclosure:

Q’son Precision Engineering Pte Ltd

Background

Q’son Precision Engineering Pte Ltd is a private company limited by shares incorporated in Singapore.

The principal business activities of Q’son Precision Engineering Pte Ltd are in the provision of precision engineering and machining solutions, including precision machining, sheet metal fabrication, welding services and contract assembly, to companies in the hard drive disk, semi-conductor, oil and gas, automation and aerospace industries.

Chua Chwee Lee, the brother of Sally Chua, is a director of Q’son Precision Engineering Pte Ltd and directly owns 65.98% interest in Q’son Precision Engineering Pte Ltd.

We currently engage Q’son Precision Engineering Pte Ltd to fabricate and supply us with gas valves and other minor spare parts for our Group from time to time. Subsequent to the Invitation, all the future transactions between Q’son Precision Engineering Pte Ltd and our Group shall be subject to the relevant provisions under Chapter 9 of the Catalist Rules if these constitute interested person transactions by virtue of Q’son Precision Engineering Pte Ltd being an Associate of Sally Chua.

Notwithstanding the above, our Directors are of the view that there are no potential conflicts of interests for the following reasons:

- (a) Q'son Precision Engineering Pte Ltd is not in the business of fabricating and sale of kitchen systems and kitchen equipment;
- (b) Sally Chua does not have any executive role in the management of Q'son Precision Engineering Pte Ltd;
- (c) Q'son Precision Engineering Pte Ltd has a different customer base compared to our Group; and
- (d) Q'son Precision Engineering Pte Ltd has on 22 May 2013 undertaken to change its name within three months from the date of such undertaking, and to no longer utilise the "Q'son" name or brand as well as to no longer state that Q'son Precision Engineering Pte Ltd is part of the Q'son group of companies. (the "Undertaking")

Our clients' name changes and their assurances

- 3. MST wishes to inform you that on 22 October 2021, MST changed its name from QPE. Further, MST's subsidiary, Metaoptics Technologies Pte Ltd ("**MOT**" and together with MST and its other subsidiaries, "**our clients**"), also changed its name from Q'son Advanced Optics Pte Ltd on 30 September 2021. Our clients will not use the "Q'son" name any further.
- 4. Although the name changes were only effected in 2021, our clients wish to give you and the group of companies under and/or associated with you (the "**SKE Group**"¹) the assurances that at all material times, including after the Undertaking was given:
 - (a) Our clients had not represented to third parties that they were part of the SKE Group before and after the date of the Undertaking.
 - (b) There was no potential conflict of interest in our clients using the "Q'son" name because, among other things:
 - (i) Our clients are in fundamentally different industries and businesses. The principal business activities of MST remained, and remains, the provision of precision engineering and machining solutions, including precision machining, sheet metal fabrication, welding services and contract assembly, to companies in the hard drive disk, semi-conductor, oil and gas, automation and aerospace industries. MOT was and is in the business of design and manufacturing of optics lens and module.
 - (ii) Our clients were/are not in the business of fabricating and sale of kitchen systems and kitchen equipment. Indeed, our clients' businesses and the goods and services they offer(ed) are/were vastly, if not completely, different from that provided/offered by the SKE Group. Further, our clients

¹ For the avoidance of doubt, in this letter, the SKE Group refers to: (1) Singapore Kitchen Equipment Limited; (2) Q'son Kitchen Equipment Pte Ltd; (3) Q'son International Pte Ltd; and (4) Q'son Kitchen Equipment Services Pte Ltd.

manufacture(d) original equipment manufacturer (OEM) products for their customers which are branded in the customers' names, and not branded under "QPE" or the "Q'son" name. Our clients also did not and does not manufacture any other product under the name of "QPE" or "Q'son".

- (iii) Our clients have a different customer base from that of the SKE Group.
 - (iv) There is no cross-shareholding between the SKE Group and MST/MOT.
 - (v) Ms Sally Chua did not and does not have any shareholding or executive role in the management of our clients.
5. Moreover, our clients would respectfully note that after the Undertaking was given: (a) the businesses of QPE and the SKE Group co-existed for many years; (b) you and/or the SKE Group continued to engage QPE to supply component parts despite being aware that our clients had yet to change their names; and (c) there were no notices or demands made for our clients to change their names.
6. Based on the above circumstances, our clients believe that you and the SKE Group would not have suffered, and did not suffer, any loss or damage notwithstanding the time it took for our clients to change their names.

Request for waiver and release

7. With the aforesaid name changes, our clients would be grateful if you could confirm the above understanding of our clients and that you and each of the companies in the SKE Group have acquiesced to our clients' continued use of the "Q'son" name, have not suffered any loss or damage caused by our clients' breach of the Undertaking, and irrevocably and unconditionally waive, release and discharge our clients from any breach or claim (including but not limited to intellectual property rights, etc) from the date of the Undertaking/date of the incorporation of our clients and arising out or in connection with the Undertaking. This waiver and release should also inure to and for the benefit of, and bind, the successors of the parties. This will help bring some finality to the Undertaking.
8. We look forward to hearing from you as soon as possible. On an administrative note, as we are working from home in support of the Singapore Government's efforts to combat COVID-19, we would be grateful if further communications can be carried out *via* email.

Yours faithfully

Sim Chong LLC

SIM CHONG LLC

cc. clients

15 December 2021

BY EMAIL ONLY

No. of pages : 2

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 of court documents by fax*

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Our Ref

JNK/CHWM/487540

Your Ref

2021/0230/SC

Dear Sirs

RE: METASURFACE TECHNOLOGIES PTE LTD, FORMERLY KNOWN AS Q'SON PRECISION ENGINEERING PTE LTD ("MST")

1. We act for Singapore Kitchen Equipment Limited (our "**Client**"), and are instructed as follows.
2. We refer to your letter dated 25 October 2021 (the "**Letter**") regarding the Undertaking that was given by MST to our Client on 22 May 2013. For convenience, we will adopt the same abbreviations used in the Letter unless otherwise indicated.
3. Notwithstanding that MST and its subsidiary MOT only changed their respective names on 22 October 2021 and 30 September 2021, which is more than the three (3) months deadline as provided for in the Undertaking and thus being in breach of the Undertaking, our Client hereby confirms your clients' understanding set out at paragraph 6 of the Letter on the basis of your clients' assurances set out at paragraphs 3 and 4 of the Letter (the "**Assurances**").
4. Insofar as the "Q'son" name was used by MST and MOT prior to their respective name changes (being 22 October 2021 for MST and 30 September 2021 for MOT), our Client hereby confirms on the basis of your clients' Assurances that the SKE Group has retrospectively acquiesced to such use of the "Q'son" name for such time period prior to the respective name changes by MST and MOT, provided that MST and MOT had at no point in time represented to third parties that MST and MOT were part of the SKE Group.
5. Our Client hereby unconditionally and irrevocably waives, releases and discharges MST and MOT from any claims or liabilities (including but not limited to intellectual property rights) from the date of the Undertaking or from the date of the incorporation of MST and MOT (as the case may be) arising out of or in connection with the Undertaking, on the following terms:
 - a. the Assurances given by MST, *inter alia*, confirming that MST and MOT will not use the "Q'son" name any further and that MST and MOT had at no point in time

represented to third parties that they were part of the SKE Group, being accurate as at the date of the granting of this release, waiver and discharge;

- b. our Client having reserved its rights to pursue damages and losses in the event that it had actually suffered losses and damages arising out of or in connection with the breach of the Undertaking by MST and/or the Assurances; and
 - c. such waiver, release and discharge inuring to and being for the benefit of, and binding, the successors of MST, MOT and our Client and each of the companies in the SKE Group.
6. Should you have any queries or require any clarification, please do not hesitate to contact our Julian Kwek (+65 6531 2451) or Chan Wei Meng (+65 6531 2412).

Yours faithfully



Drew & Napier LLC
(Julian Kwek / Chan Wei Meng)

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Advocates & Solicitors

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Your Ref: JNK/CHWM/487540
Our Ref: 2021/0230/SC

22 December 2021

Drew & Napier LLC
10 Collyer Quay
#10-01 Ocean Financial Centre
Singapore 049315
Attn: Mr Julian Kwek / Mr Chan Weimeng

By email only
julian.kwek@drewnapier.com
/
weimeng.chan@drewnapier.com

Dear Sirs

**METASURFACE TECHNOLOGIES PTE LTD, FORMERLY KNOWN AS Q'SON
PRECISION ENGINEERING PTE LTD
UNDERTAKING TO SINGAPORE KITCHEN EQUIPMENT LIMITED**

1. Thank you for your letter dated 15 December 2021.
2. In respect of your client's reservation of rights as set out at paragraph 5b of your said letter, please may we trouble you to kindly confirm that to date, your client has:
 - (1) Not suffered any such loss and damage; and
 - (2) No reason to believe that it has suffered, or will suffer, any such loss and damage.
3. Further, please may we also have your client's confirmation that it will notify our clients as soon as possible, and in any event not more than 5 business days, after it becomes aware of any such possible or actual loss or damage and the details thereof.
4. We would be grateful to hear from you as soon as possible, and in any event by 28 December 2021.

Yours faithfully

Sim Chong LLC

SIM CHONG LLC

cc. clients

22 December 2021

BY EMAIL ONLY

No. of pages : 2

Metasurface Technologies Pte Ltd
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Attention: Mr. Sim Chong

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Our Ref

JNK/CHWM/487540

Your Ref

2021/0230/SC

Dear Sirs

**RE: METASURFACE TECHNOLOGIES PTE LTD, FORMERLY KNOWN AS Q'SON PRECISION
 ENGINEERING PTE LTD
 UNDERTAKING TO SINGAPORE KITCHEN EQUIPMENT LIMITED**

1. We refer to your letter dated 25 October 2021 ("**Your 25 Oct Letter**") and your letter dated 22 December 2021 ("**Your 22 Dec Letter**", and together with Your 25 Oct Letter, "**Your Letters**") and to our letter dated 15 December 2021 ("**Our Letter**"). Unless otherwise stated, we adopt the abbreviations in Our Letter.
2. In relation to paragraph 2(1) of Your 22 Dec Letter, we are instructed that our client confirms that as at 1 December 2021, it has not suffered any loss or damage.
3. In relation to paragraph 2(2) of Your 22 Dec Letter, our client is not aware, as at the date of this letter, of circumstances that are contrary to the assurances given by your clients in paragraphs 3 to 6 of Your 25 Oct Letter ("**Assurances**") that will give reason for our client to believe that it has suffered, or will suffer, losses and damages arising out of or in connection with the breach of the Undertaking or Assurances.
4. In relation to paragraph 3 of Your 22 Dec Letter, our client will endeavour to notify your clients as soon as reasonably practicable after it becomes aware of any loss or damage arising out of or in connection with the Breach of the Undertaking by MST and/or the Assurances.
5. For the avoidance of doubt, nothing herein shall constitute any obligation or undertaking on the part of our client to provide any notification requested at paragraph 3 of your 22 Dec Letter, and notwithstanding paragraph 4 above, our client does not, and shall not, owe any responsibility or liability whatsoever to your clients arising out of or in connection with any failure or delay in providing such notification to your clients.

6. All our client's rights are expressly reserved.

Yours faithfully



Drew & Napier LLC
(Julian Kwek / Chan Wei Meng)

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Your Ref: TBA
Our Ref: 2021/0230/SC

11 January 2023

Singapore Kitchen Equipment Limited
c/o Drew & Napier LLC
Attn: Julian Kwek / Chan Wei Meng

By email only

Dear Sirs

METASURFACE & CO REQUEST FOR WAIVER AND RELEASE

1. We refer to our letter to your client, Singapore Kitchen Equipment Limited (“SKE”), dated 25 October 2021 and your replies dated 15 and 22 December 2021.

MC’s name change and its assurances

2. Further to our said letter, Metasurface Technologies Pte Ltd (“MST”) wishes to inform your client that there is a company in the USA owned by a Mr Jee Wee Liang (who is the brother-in-law of MST’s Mr Chua) formerly called Q’son Corp (“QC”). On 27 June 2022, QC changed its name to Metasurface & Co (“MC”). Although the name change was only effected in 2022, MC gives SKE and the group of companies under and/or associated with it (the “SKE Group”¹) the assurances that at all material times:
 - (a) MC had not represented to third parties that it was part of the SKE Group.
 - (b) There was no potential conflict of interest in MC using the “Q’son” name because, among other things:
 - (i) MC was, and remains, in fundamentally different industries and businesses. The principal business activity of MC was, and remains, to procure and purchase components for MST and its subsidiaries.
 - (ii) MC was/is not in the business of fabricating and sale of kitchen systems and kitchen equipment. Indeed, MC’s business and the goods and services it offer(ed) are/were vastly, if not completely, different from that provided/offered by the SKE Group. MC did not fabricate or sell any product under “QC” or the “Q’son” name.
 - (iii) MC has a different customer base from that of the SKE Group.

¹ For the avoidance of doubt, in this letter, the SKE Group refers to: (1) Singapore Kitchen Equipment Limited; (2) Q’son Kitchen Equipment Pte Ltd; (3) Q’son International Pte Ltd; and (4) Q’son Kitchen Equipment Services Pte Ltd.

- (iv) There is no cross-shareholding between the SKE Group and MC.
 - (v) Ms Sally Chua did not and does not have any shareholding or executive role in the management of MC.
3. Moreover, MC would respectfully note that: (a) the businesses of QC and the SKE Group co-existed for many years; and (b) there were no notices or demands made for QC to change its name.
4. Based on the above circumstances, MC believes that SKE and the SKE Group would not have suffered, and did not suffer, any loss or damage notwithstanding the time it took for MC to change its name.

Requests for confirmations, waiver and release

5. With the aforesaid name change, MC would be grateful if your client could confirm that, based on the above assurances, your client and each of the companies in the SKE Group: (1) have acquiesced to MC's continued use of the "Q'son" name; (2) have not suffered any loss or damage caused by MC's continued use of the "Q'son" name; (3) there is no reason to believe that your client and each of the companies in the SKE Group has suffered, or will suffer, any such loss and damage; and (4) irrevocably and unconditionally waive, release and discharge MC from any claims or liabilities (including but not limited to intellectual property rights) from the date of the incorporation of MC and arising out of or in connection with the use of the "Q'son" name and the Undertaking given by MST on 22 May 2013 (the "**Undertaking**"). This waiver, release and discharge should also inure to and be for the benefit of, and binds, the successors of MC and SKE and each of the companies in the SKE Group.
6. In addition, and further to your letters dated 15 and 22 December 2022, please could you kindly confirm that in relation to MST and MOT, SKE and the SKE Group have to-date not suffered any loss and damage, and have no reason to believe that they have suffered, or will suffer, any such loss and damage arising out of or in connection with the use of the "Q'son name" and the Undertaking.
7. Finally, whether in relation to MST, MOT or MC, our clients ask that your client can notify them as soon as reasonably practicable after it becomes aware of any loss or damage arising out of or in connection with the Undertaking and/or assurances given by our client.
8. We look forward to hearing from you as soon as possible.

Yours faithfully

Sim Chong LLC

SIM CHONG LLC

cc. clients

15 February 2023

BY EMAIL ONLY

No. of pages : 3

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Attention: Mr. Sim Chong

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Our Ref

JNK/CHWM/487540-1

Your Ref

2021/0230/SC

Dear Sirs

RE: UNDERTAKING TO SINGAPORE KITCHEN EQUIPMENT LIMITED – REQUEST FOR WAIVER AND RELEASE IN RELATION TO:

- **METASURFACE TECHNOLOGIES PTE LTD (“MST”), FORMERLY KNOWN AS Q’SON PRECISION ENGINEERING PTE LTD (“QPE”)**
- **METAOPTICS TECHNOLOGIES PTE LTE (“MOT”), FORMERLY KNOWN AS Q’SON ADVANCED OPTICS PTE LTD (“QAO”)**
- **METASURFACE & CO (“MC”), FORMERLY KNOWN AS Q’SON CORP (“QC”)**

1. We refer to your letters dated 25 October 2021 (“**Your October 2021 Letter**”), 22 December 2021 and 11 January 2023 (“**Your January 2023 Letter**”, collectively “**Your Letters**”), and our letters dated 15 December 2021 and 22 December 2022 (together with Your Letters, “**The Letters**”). Unless otherwise stated, we adopt the abbreviations in The Letters.

2. In relation to paragraph 5 of Your January 2023 Letter, we are instructed that:

- a. insofar as the “Q’son” name was used by MC prior to the name change from QC to MC was effected on 27 June 2022, our client hereby confirms on the basis of the assurances given by your clients in paragraphs 2 to 4 of Your January 2023 Letter (“**MC Assurances**”) that our client has retrospectively acquiesced such use of the “Q’son” name for such time period prior to the name change;
- b. as at the date of this letter, our client confirms that it has not suffered any loss or damage caused by MC’s use of the “Q’son” name for such time period prior to the name change from QC to MC on 27 June 2022;
- c. as at the date of this letter, our client confirms that it is not aware of circumstances that are contrary to the MC Assurances that will give reason for our client to believe that it has suffered, or will suffer, losses and damages arising out of or in connection with the use of the “Q’son” name for such time period prior to the name change from QC to MC on 27 June 2022; and

- d. our Client hereby unconditionally and irrevocably waives, releases and discharges MC from any claims or liabilities (including but not limited to intellectual property rights) from the date of the incorporation of MC and arising out of or in connection with the use of the “Q’son” name, on the following terms and conditions:
- (i) MST and its subsidiaries (collectively, the “**MST Group**”) giving to the SKE Group the assurances that, at all material times, they had not represented to third parties that MC or QC were part of the SKE Group (“**MST Group Assurances**”);
 - (ii) MC undertaking in favour of the SKE Group to no longer utilise the “Q’son” name or brand, and MC and the MST Group jointly and severally undertaking to no longer state that MC or QC are part of the SKE Group (collectively, the “**Relevant Undertakings**”);
 - (iii) the MST Group Assurances and the MC Assurances, *inter alia*, confirming that MC had at no point in time represented to third parties that it was part of the SKE Group, being accurate as at the date of the granting of this release, waiver and discharge;
 - (iv) our client having reserved its rights to pursue damages and losses in the event that it had actually suffered losses and damages arising out of or in connection with the breach of the MC Assurances, the MST Group Assurances, and/or the Relevant Undertakings by MC or any entity in the MST Group (as the case may be); and
 - (v) such waiver, release and discharge inuring to and being for the benefit of, and binding, the successors of MC and each of the entities in the MST Group and our client and each of the companies in the SKE Group.
3. In relation to paragraph 6 of Your January 2023 Letter, subject to MST and MOT giving the following assurances to the SKE Group as at the date of this letter (the “**New Assurances**”), our client confirms as at the date of this letter that it is not aware of circumstances that are contrary to the New Assurances or the undertaking given by MST on 22 May 2013 (the “**May 2013 Undertaking**”) that will give reason for our client to believe that it has suffered, or will suffer, losses and damages arising out of or in connection with the use of the “Q’son” name for such time period prior to the respective name changes from QPE to MST on 22 October 2021 and from QAO to MOT on 30 September 2021:
- a. MST and MOT each giving to the SKE Group the assurances that, at all material times, they had not represented to third parties that MST, QPE, MOT or QAO were part of the SKE Group, and such assurances being accurate as at the date of this letter; and
 - b. MST and MOT each repeating the assurances set out in paragraph 4(b) of Your October 2021 Letter.
4. In relation to paragraph 7 of Your January 2023 Letter, our client will endeavour to notify your clients as soon as reasonably practicable after it becomes aware of any loss or damage arising out of or in connection with the breach of the MC Assurances, the MST Group Assurances, and/or the Relevant Undertakings by MC or any entity in the MST Group (as the case may be).
5. For the avoidance of doubt, nothing herein shall constitute any obligation or undertaking on the part of our client to provide any notification requested at paragraph 7 of Your January 2023 Letter, and notwithstanding paragraph 4 above, our client does not, and shall not, owe any responsibility or liability whatsoever to your clients arising out of or in connection with any failure or delay in providing such notification to your clients.

6. Please let us have the following:
 - a. the MST Group Assurances referred to at paragraph 2(d)(i);
 - b. the Relevant Undertakings referred to at paragraph 2(d)(ii); and
 - c. the New Assurances referred to at paragraph 3.
7. All our client's rights are expressly reserved.

Yours faithfully



Drew & Napier LLC
(Julian Kwek / Chan Wei Meng)

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Your Ref: JNK/CHWM/487540-1
Our Ref: 2021/0230/SC

16 February 2023

Singapore Kitchen Equipment Limited
c/o Drew & Napier LLC
Attn: Julian Kwek / Chan Wei Meng / Joel Ng

By email only

Dear Sirs

METASURFACE & CO (“MC”) REQUEST FOR WAIVER AND RELEASE

1. Thank you for your letter dated 15 February 2023.
2. Our clients have instructed us to convey the following undertakings and assurances from them to your client:
 - (1) At all material times up to 15 February 2023, the MST Group had not represented to third parties that MC (and Q’son Corp (“QC”)) were part of the SKE Group.
 - (2) MC undertakes in favour of the SKE Group to no longer utilise the “Q’son” name or brand, and MC and the MST Group jointly and severally undertake to no longer state that MC or QC are part of the SKE Group.
 - (3) Metasurface Technologies Pte Ltd (“MST”) and Metaoptics Technologies Pte Ltd (“MOT”) assure the SKE Group that, at all material times up to 15 February 2023, they had not represented to third parties that MST (or Q’son Precision Engineering Pte Ltd) and MOT (or Q’son Advanced Optics Pte Ltd) were part of the SKE Group.
 - (4) MST and MOT repeat the assurances as set out at paragraph 4(b) of our letter dated 25 October 2021.




Yours faithfully

Sim Chong LLC

SIM CHONG LLC

cc. clients




APPENDIX 3

Mark	TM / Application No:	Class / Description of Goods/Services	Application / Registration Date	Status / Status Update Date
	T9705384B	Class 11 Equipment and appliances for commercial kitchen using gas & electricity operation; refrigeration system for commercial kitchen.	Application date: 09/05/1997	Abandoned as of 05/05/1999
	T0705762B	Class 37 Fabrication [construction], installation, repair and maintenance of kitchen equipment	Application date: 19/03/2007 Registered on 23/07/2007	Removed on 19/03/2018 Mark expired on 19/03/2017
	T0705763J	Class 35 Import and export agency in relation to kitchen equipment.	Application date: 19/03/2007 Registered on 30/08/2007	Removed on 19/03/2018 Mark expired on 19/03/2017
	T0705318Z ("SKE/QKE Mark 1")	Class 11 Apparatus for cooking; apparatus for freezing foodstuffs; apparatus for refrigerating beverages; apparatus for refrigerating purposes; appliances for cooking;	Application date: 12/03/2007 Registered on 10/09/2007	Registered

		bakers' ovens; baking ovens; commercial catering fryers; commercial cooking apparatus; commercial ovens for baking food; commercial refrigeration units; cookers; cookers having vitreous enamelled surfaces; cookers incorporating grills; cooking apparatus and installations; cooking appliances; cooking appliances (non-electric-); cooking grills; cooking hobs; cooking installations; cooking machines; cooking ovens; cooking ranges; cooking stoves; cooking units; cooking utensils, electric; domestic cooking apparatus; domestic cooking appliances [electric]; domestic deep fryers [electric]; domestic drying apparatus [electric]; domestic frying pans		
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		<p>[electric];</p> <p>domestic gas cookers;</p> <p>domestic grill apparatus;</p> <p>domestic heating apparatus;</p> <p>domestic heating appliances;</p> <p>domestic heating utensils;</p> <p>domestic hot plates; domestic machines</p> <p>(electric-) for making pancakes; domestic machines for making ice;</p> <p>domestic ovens;</p> <p>domestic plate warmers;</p> <p>domestic pressure cookers [electric];</p> <p>domestic refrigerators;</p> <p>domestic stoves;</p> <p>steam cookers;</p> <p>steel degassing heating rods;</p> <p>refrigerators for foodstuffs;</p> <p>overlying bed ovens for bakeries;</p> <p>ovens (microwave-) for industrial purposes;</p> <p>ovens (shaped fittings for-);</p> <p>machines for use in the preparation of food</p> <p>[cooking];</p> <p>machines for use in the processing of foodstuffs [cooking or</p>		
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		refrigerating]; microwave devices for cooking; microwave ovens [cooking apparatus]; microwave ovens for domestic use; microwave ovens for industrial purposes; kitchen machines (electric-) for cooking; kitchen machines (Gas-) for cooking; kitchen ranges; kitchen ranges [ovens]; kitchen stoves; installations for cooking; installations for cooking consisting of halogen heating devices; installations for cooking incorporating halogen heating devices; installations for heating foodstuffs; heating apparatus for foodstuffs; gas cookers; gas cooking apparatus incorporating cooking grills; gas cooking appliances; gas operated apparatus for cooking; gas operated apparatus for heating; gas ovens; grilling [cooking] apparatus; grills; grills [cooking		
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		<p>appliances]; grills for barbecuing; electric cookers; electric cooking apparatus; electric cooking pots; electric cooking stoves; electric cooking utensils; electric grilling apparatus; .electric grills.</p>		
	T1303167B	<p>Class 11</p> <p>Apparatus for heating, steam generating and cooking</p>	<p>Application date: 21/02/2013</p> <p>Registered on 17/09/2014</p>	Registered
	T1303168J	<p>Class 35</p> <p>Retail of kitchen equipment</p>	<p>Application date: 21/02/2013</p> <p>Registered on 30/12/2014</p>	Registered
	T1303169I	<p>Class 37</p> <p>Installation service and maintenance of kitchen equipment</p>	<p>Application date: 21/02/2013</p> <p>Registered on 07/07/2015</p>	Registered

APPENDIX 4

1. Before we set out our views on the Questions, it is important to bear in mind again that in the light of SKE's Waiver and Release, the chances of SKE commencing any action against MST, MOT and MC are remote. The risks of a successful claim by SKE (if any) have also been negated or significantly diluted and are therefore remote.

Question 1: What is the potential legal implication or exposure of MST arising from the potential breach of the Undertaking?

MST was in breach of the Undertaking

2. MST had not complied with its obligations under the Undertaking. As mentioned:
 - (1) QPE did not change its name within 3 months from 22 May 2013.
 - (2) MST only changed its name on 22 October 2021.
3. Further, we note that the name "Q'son" is important and valuable to the SKE Group. Not only do the companies under the SKE Group actively do business under that name, further subsidiaries such as Q'son International were incorporated using that same name.
4. Looking at MST's previous website, it appears that MST did *not* state that it is part of the SKE Group. We have also been instructed that at least since the entering of the Undertaking, neither MST nor MOT has represented that either company is or was part of the SKE Group.
5. The statutory limitation period for commencing an action for the breach of the Undertaking is 6 years pursuant to s 6(1)(a) of the Limitation Act (Cap.163, 1996 Rev Ed). Although the Undertaking was executed by MST on 22 May 2013 (approximately 8 years ago), MST's breach was a continuing one until 22 October 2021. Hence, SKE/QKE is possibly not time-barred from bringing an action against MST for its breach of its obligations under the Undertaking.⁹

Possible remedies that SKE/QKE may seek

6. *Subject to SKE's Waiver and Release* (which is addressed in the main section of this advice), SKE can sue MST/MOT for damages. We elaborate below.

Damages

⁹ This applies equally in relation to any action which may be brought against MST for trademark infringement and passing off.

7. SKE/QKE have to prove, on a balance of probabilities, that they suffered loss and damage caused by MST's breach of the Undertaking. Further, SKE/QKE will have to provide evidence to substantiate and quantify their losses.
8. Based on the facts and information available to us, it is difficult to assess the losses suffered by SKE/QKE and, in turn, the quantum of damages that the Court may award to SKE/QKE for QPE's breach of the Undertaking.
9. That said, the risk of SKE/QKE being able to obtain significant damages appears to be *extremely low*. It may be difficult for SKE/QKE to prove significant loss and damage for the following reasons:
 - (1) The goods and services offered by SKE/QKE are very different from those offered by MST. They have separate and distinct scopes of business.
 - (2) By its own statement in the Offer Document, SKE/QKE disclosed that MST has "a *different customer base* compared to the [SKE Group]".
 - (3) Based on the information presently known to us, SKE/QKE did not go into the precision engineering and contract manufacturing industries in which MST does business¹⁰, and have no plans to do so.
 - (4) For more than 8 years, SKE/QKE were aware that MST did not change its name. Despite such knowledge, and to the best of our knowledge, SKE/QKE: (a) made no objection to MST's breach; and (b) in fact, continued to engage MST to supply component parts to SKE/QKE. When SKE/QKE did so, they would have known (*e.g.* by sight of QPE's invoices showing the usage of the name "Q'son") that MST was still using the "Q'son" name.
 - (5) Indeed, by way of its solicitors' letters dated 15 December 2021, 22 December 2021 and 15 February 2023, *SKE has confirmed, inter alia, that as at 15 February 2023, it did not suffer any loss or damage.*

Action by the SGX?

10. Based on the information presently available to us, MST does not seem to owe any duties or obligations to SGX in relation to the Undertaking. MST is not listed on the SGX and is not regulated by the same. Further, and generally speaking, SGX is more likely to take action against the listed entity, *i.e.* SKE, rather than a third party unless that third party had breached, for example, the regulations under the SGX Rules or conspired with the listed entity to do so.¹¹

¹⁰ For completeness, to the best of our knowledge, SKE/QKE also were/are not in the business of designing and manufacturing of optics lens and module, and have no plans to do such business.

¹¹ Purely as an example, if MST had somehow manipulated, or worked with SKE to manipulate, SKE's share price, then the SGX would take action directly against MST. The circumstances in relation to the Undertaking are very different. Of course, and again generally speaking, if the SGX takes action against SKE, it is open to SKE to sue MST. Again, we do not think that this example applies to the circumstances concerning the Undertaking.

11. Without sight of the Undertaking, and assuming MST owes no duties or obligations to SGX in relation to the same, the possibility of SGX commencing any action against MST for its breach of the Undertaking is *remote*.

The potential defences available to MST

Waiver by election

12. This doctrine concerns a situation where a party has a choice between 2 inconsistent rights. If he elects not to exercise one of those rights, he will be held to have abandoned that right if he has communicated his election in *clear and unequivocal terms* to the other party. He must also be aware of the facts which have given rise to the existence of the right he is said to have elected not to exercise. Once the election is made, it is final and binding, and the party is treated as having waived that right by his election: *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 (“**Audi Construction**”) at [54].
13. In our view, until 15 December 2021, MST faced difficulties advancing a defence of waiver by election. To the best of our knowledge, until 15 December 2021, there was no “clear and unequivocal” communication from SKE/QKE to MST that SKE/QKE have elected not to enforce the rights under the Undertaking. Those difficulties have since been resolved given that SKE has now given its Waiver and Release to MST and MOT.

Waiver by estoppel

14. The doctrine of equitable (or promissory) estoppel requires an *unequivocal representation* by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation. A party making an election is communicating his choice whether or not to exercise a right which has become available to him. By contrast, a party to an equitable estoppel is representing that he will in future forbear to enforce his legal rights. The latter doctrine is premised on inequity, not choice, hence the requirement of reliance.¹²
15. It is important to note that mere silence or inaction will not normally amount to an unequivocal representation: *Fook Gee Finance Co Ltd v Liu Cho Chit* [1998] 1 SLR(R) 385 at [36].
16. In certain circumstances, particularly where there is a duty to speak, mere silence *may* however amount to such a representation. Such circumstances usually concern circumstances in which a failure to speak would lead a reasonable party to think that the other party has elected between 2 inconsistent rights or will forbear to enforce a particular right in the future, as the case may be. The exercise is an *objective* assessment made by reference to how a reasonable person apprised of the relevant facts would view the silence in the circumstances: see, for example, *Audi Construction* at [61]
17. As the arguments concerning waiver by estoppel and acquiescence are similar, we address them together below.

¹² *Audi Construction* at [57].

Acquiescence

18. In essence, the defence of acquiescence is as follows¹³:

The term acquiescence is... properly used where *a person having a right and seeing another person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to its being committed*; a person so standing-by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may reasonably be inferred from it and is no more than an instance of the law of estoppel by words or conduct...

19. Acquiescence is premised not on delay, but on the fact that the plaintiff has, by standing by and doing nothing, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights.¹⁴ Further, to succeed on a defence of acquiescence, the acquiescing party must have been aware of the acts he now seeks to complain of because one cannot acquiesce to something he does not know.¹⁵
20. SKE/QKE's most direct line of attack is that MST had breached its obligations under the Undertaking, and it had done so in bad faith as QPE's breach was one which took place over 8 years.¹⁶ A court is likely to accept this argument.
21. Assuming, however, a court finds that there was no bad faith on the part of MST, it may be persuaded that SKE/QKE had acquiesced to MST's breach due to the following points:
- (1) SKE/QKE knew that MST had been using the "Q'son" name. It took pains to enter into the Undertaking with MST, and even deemed it necessary to disclose the fact of the Undertaking in its Offer Document.
 - (2) After SKE/QKE entered into the Undertaking, it took no steps to enforce the same or "speak out" against MST's breach of the same¹⁷. SKE/QKE will find it difficult to argue that they were unaware that MST failed to comply with its obligations under the Undertaking. After its listing on *Catalist*, SKE/QKE continued to deal with and engage MST to manufacture and supply component parts. In other words, SKE/QKE knew about the continuing breach by MST, but did nothing about it.
 - (3) The Undertaking was entered into in May 2013, more than 8 years ago. By SKE/QKE's *inaction* for so many years, together with SKE/QKE's *positive act(s)* of continuing to do business with MST during those years, there is an argument that

¹³ See *Tan Yong San v Neo Kok Eng and Ors* [2011] SGHC 3011 ("**Tan Yong San**") at [112] citing *Halsbury's Laws of England* (vol 16, 4th Ed Reissue) at para 924. For complete, in the event SKE/QKE seek equitable reliefs, MST should also argue laches, which defence is only applicable to equitable remedies.

¹⁴ *Tan Yong San* at [114] citing *Orr v Ford* (1989) 167 CLR 316 at 337-338.

¹⁵ *Tan Yong San* at [117] citing *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [40].

¹⁶ MST should also note that if it seeks to advance a defence under ss 55(6)-(8) TMA, it would have to show that it did not act in bad faith.

¹⁷ We have been given to understand that there has been no demand or protest from SKE/QKE concerning MST's failure to comply with its obligations under the Undertaking.

SKE/QKE had represented to QPE that “everything was in order”, thereby inducing MST to believe that SKE/QKE had consented to MST not changing its name and continuing to use the “Q’son” name.

22. MST and MOT have since changed their names. Even after the name changes, however, it was open to SKE to sue MST and MOT for usage of the “Q’son” name: (a) in the case of MST, from 23 August 2013 to 22 October 2021; and (b) in the case of MOT, from the date of its incorporation being 15 June 2021 to 30 September 2021. That said, and as explained above, given SKE’s Waiver and Release, any such potential claims are remote.

Question 2: What is the potential legal implication or exposure of MST historically using the Q’son trademarks/ trade name which are not registered under MST, but instead under SKE?

23. It is difficult to exhaustively list out the actions which SKE/QKE may take against MST, and we do not attempt to do so. Again, *subject to SKE’s Waiver and Release*, we set out certain potential actions below.

Allegation of trademark infringement

24. QKE may allege that MST has infringed upon QKE’s trademarks, and bring actions under ss 27(1), (2)(a) and (2)(b) TMA.

Action under s 27(1) TMA

25. Section 27(1) TMA reads as follows:

27.—(1) A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, he uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.

26. To succeed in an action brought under this provision, the plaintiff must show that:

- (1) The defendant must be acting without the consent of plaintiff.
- (2) The plaintiff’s registered mark and the defendant’s sign are *identical*.
- (3) The goods or services offered by the plaintiff and the defendant are *identical*.

27. The test is a strict one – there must be identity. Anything less than complete identity, no matter how minor the difference, would fall short of this criterion: see David Llewelyn, Ng Hui Ming, Nicole Oh Xuan Yuan, *Cases, Materials and Commentary on Singapore Intellectual Property Law* (Academy Publishing, 2018) (“**Cases on Singapore Intellectual Property Law**”) at [07.192] and *City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* [2010] 1 SLR 382 at [39].

28. In our view, any action brought under s 27(1) TMA is not likely to succeed.¹⁸ This is because:
- (1) The SKE/QKE Marks and the QPE Mark are not identical. There are clear differences between the same. For example, all of the SKE/QKE Marks include or incorporate the Chinese Characters but the QPE Mark does not. Further, the majority of the SKE/QKE Marks include or incorporate the words “KITCHEN EQUIPMENT” but the QPE Mark does not.
 - (2) There is no identity in the goods and services between SKE/QKE and MST. There are 3 related points to note:
 - (a) SKE *knows* that there is no identity in the goods and services between SKE/QKE and MST – it disclosed the same in its Offer Document.
 - (b) SKE has already declared that MST's customer base is different from that of the SKE Group. To the best of our knowledge, this continues to be the case.
 - (c) QPE manufactures products for its customers which are branded in the customers' name, and it does not manufacture any products with a “Q'son” brand name.

Action under s 27(2)(a) TMA

29. Section 27(2)(a) TMA reads as follows:

A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, he uses in the course of trade a sign where because —

- (a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered.

30. To succeed in an action brought under this provision, the plaintiff must show that¹⁹:

- (1) The defendant must be acting without the consent of the plaintiff.
- (2) The plaintiff's registered mark and the defendant's sign are *identical*.
- (3) The goods or services offered by the plaintiff and the defendant are *similar*.
- (4) The identical mark/sign and similar goods or services would result in a likelihood of confusion on the part of the public.

31. Again, such an action is not likely to succeed. This is so for the following reasons:

- (1) The SKE/QKE Marks and the QPE Mark are not identical.

¹⁸ On a related note, we will discuss statutory defences further below.

¹⁹ See *Cases on Singapore Intellectual Property Law* at [07.195].

- (2) There is no similarity in the goods and services between those offered by SKE/QKE and MST.
- (3) Without identical marks/signs and/or similar goods/services, there is little or no likelihood of confusion on the part of the public.

Action under s 27(2)(b) TMA

32. Section 27(2)(b) TMA reads as follows:

A person infringes a registered trade mark if, without the consent of the proprietor of the trade mark, he uses in the course of trade a sign where because —

- (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered

33. To succeed in an action brought under this provision, the plaintiff must show that²⁰:

- (1) The infringer must be acting without the consent of the trade mark owner;
- (2) The infringer must use his sign in the course of trade, this means he must use it as a badge or identifier of origin and not for purely decorative or descriptive purposes
- (3) The trade mark and the allegedly infringing sign must be *similar*;
- (4) The trade mark and the allegedly infringing sign must be used on *identical goods or services*, or *at least on goods or services that are similar to one another*; and
- (5) Because of elements (3) and (4) above, there exists a likelihood of confusion on the part of the public. The likelihood of confusion required is that which is to be expected amongst a *substantial portion of the relevant segment* of the public. While not amounting to a majority, the relevant segment of the public must go beyond a “*de minimis*” level.

34. We first address whether the SKE/QKE Marks are “similar” to the QPE Mark. In our view, a court is likely say Yes. As held by the Court of Appeal in *Hai Tong* at [29]:

Where a trader chooses a word or mark that is purely inventive or fancy in the sense that it is made up and has no meaning at all, or that is arbitrary in the sense that it has nothing relevant to say about the goods in question themselves, then *from the perspective of trade mark law, it will be regarded as distinctive...*

35. This is the case here. The name “Q’son” is a “purely inventive or fancy” name in that “it is made up and has no meaning at all or that is arbitrary in the sense that it has nothing relevant to say about the goods in question themselves”. This is despite the noticeable visual differences between the SKE/QKE Marks and the QPE Mark.

²⁰ See *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd* [2013] 2 SLR 941 (“*Hai Tong*”) at [78].

36. That said, SKE/QKE may find it difficult to prove that “the trade mark and the allegedly infringing sign [were] used on *identical goods or services*, or *at least on goods or services that are similar to one another*”: see above. Without the satisfaction of this element, SKE/QKE is not likely to succeed in proving element (5), being a likelihood of confusion on the part of the public. In the circumstances, an action under s 27(2)(b) TMA is not likely to succeed.

Actions in relation to a “well known mark”

37. The TMA affords certain protection under the TMA, including ss 27(3) and 55 TMA.

An action under s 27(3) TMA

38. Section 27(3) TMA reads as follows:

A person infringes a registered trade mark which is well known in Singapore if —

- (a) without the consent of the proprietor of the trade mark, he uses in the course of trade a sign which is *identical with or similar to* the trade mark in relation to goods or services which are *not similar* to those for which the trade mark is registered;
- (b) the use of the trade mark in relation to those goods or services would indicate a connection between those goods or services and the proprietor;
- (c) there exists a likelihood of confusion on the part of the public because of such use; and
- (d) the *interests of the proprietor are likely to be damaged* by such use.

39. Section 2(1) TMA defines a “well-known trade mark”:

“well known trade mark” means —

- (a) any registered trade mark that is well known in Singapore; or
- (b) any unregistered trade mark that is well known in Singapore and that belongs to a person who —
 - (i) is a national of a Convention country; or
 - (ii) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country,

whether or not that person carries on business, or has any goodwill, in Singapore;

40. Section 2(7) TMA sets out a list of non-exhaustive factors that may be taken into account in deciding whether a mark should be deemed as “well known” for the purpose of the TMA:

Subject to subsection (8), in deciding, for the purposes of this Act, whether a trade mark is well known in Singapore, it shall be relevant to take into account any matter

from which it may be inferred that the trade mark is well known, including such of the following matters as may be relevant:

- (a) the degree to which the trade mark is known to or recognised by *any relevant sector* of the public in Singapore;
- (b) the duration, extent and geographical area of —
 - (i) any use of the trade mark; or
 - (ii) any promotion of the trade mark, including any advertising of, any publicity given to, or any presentation at any fair or exhibition of, the goods or services to which the trade mark is applied;
- (c) any registration or application for the registration of the trade mark in any country or territory in which the trade mark is used or recognised, and the duration of such registration or application;
- (d) any successful enforcement of any right in the trade mark in any country or territory, and the extent to which the trade mark was recognised as well known by the competent authorities of that country or territory;
- (e) any value associated with the trade mark.

41. Section 2(8) TMA further states that “where it is determined that a trade mark is well known to any *relevant section* of the public in Singapore, the trade mark is shall be deemed to be well known in Singapore.”

42. Section 2(9) TMA further casts light on what may constitute (non-exhaustive) “any relevant sector of the public in Singapore”:

In subsections (7) and (8), “relevant sector of the public in Singapore” includes any of the following:

- (a) all actual consumers and potential consumers in Singapore of the goods or services to which the trade mark is applied;
- (b) all persons in Singapore involved in the distribution of the goods or services to which the trade mark is applied;
- (c) all businesses and companies in Singapore dealing in the goods or services to which the trade mark is applied.

43. *First*, we consider whether the SKE/QKE Marks and the “Q’son” mark/sign is likely to be a “well known” mark under the provisions of the TMA.

44. In *Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 (“*Novelty*”), the Court of Appeal found at [154] that the “relevant sector of the public in Singapore” under s 2(8) TMA refers to the “actual and/or potential consumers of the [trade mark proprietor’s] goods and

services”. The “relevant sector” could be any sector of the Singapore public and this sector needs not be large in size²¹.

45. It was further held in the case of *Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd* [2015] 4 SLR 618 (“*Rovio Entertainment*”) at [141] that a trade mark may be found to be well known in Singapore “even if it is difficult to define with precision the sector or class of the public among which it is well known”.
46. In our opinion, taking into account ss 2(1), (7)-(9) TMA, a court is likely to find that the SKE/QKE Marks and the “Q’son” mark/sign is well known to the actual and potential customers of SKE/QKE’s goods and services and thus is well known in Singapore. This is despite the court previously commenting that the hurdle should not be considered to be “minimal”.²² This is particularly so since SKE is a public-listed company and we have been given to understand that the “Q-son” mark is a market-leading brand in the commercial kitchen and food & beverage (“**F&B**”) industries.
47. *Second*, a court is likely to find that elements (a)-(c) of s 27(3) TMA are satisfied, particularly due to the distinctiveness of the name “Q’son”. QPE has an arguable case that element (d) of s 27(3) TMA may not be made out. This is because SKE/QKE are in vastly different industries or businesses from MST such that their interests are not likely to be damaged.
48. On balance, we think that there is a chance that MST may face a risk of a successful claim by SKE/QKE under s 27(3) TMA. That risk, however, has now been negated by SKE’s Waiver and Release and therefore remote.

An action under s 55 TMA

49. Section 55 TMA reads as follows:

55.— (1) A well-known trade mark shall be entitled to protection under this section —

- (a) whether or not the trade mark has been registered in Singapore, or an application for the registration of the trade mark has been made to the Registrar; and
- (b) whether or not the proprietor of the trade mark carries on business, or has any goodwill, in Singapore.

(b) Subject to subsections (6) and (7), the proprietor of a well known trade mark shall be entitled to restrain by injunction the use in Singapore, in the course of trade and without the proprietor’s consent, of any trade mark which, or an essential part of which, is identical with or similar to the proprietor’s trade mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.

- (3) Subject to subsections (6) and (7), the proprietor of a well known trade mark shall be entitled to restrain by injunction the use in Singapore, in the course of trade and

²¹ *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 (“*Ceramiche Caesar*”) at [102].

²² See *Ceramiche Caesar* at [101].

without the proprietor's consent, of any trade mark which, or an essential part of which, is identical with or similar to the proprietor's trade mark, in relation to any goods or services, where the use of the trade mark —

- (a) would indicate a connection between those goods or services and the proprietor, and is likely to damage the interests of the proprietor; or
- (b) if the proprietor's trade mark is well known to the public at large in Singapore —
 - (i) would cause dilution in an unfair manner of the distinctive character of the proprietor's trade mark; or
 - (ii) would take unfair advantage of the distinctive character of the proprietor's trade mark.

(4) Subject to subsections (6) and (7), the proprietor of a well known trade mark shall be entitled to restrain by injunction the use in Singapore without the proprietor's consent of any business identifier which, or an essential part of which, is identical with or similar to the proprietor's trade mark, where the use of the business identifier —

- (a) would indicate a connection between the business in respect of which it is used and the proprietor, and is likely to damage the interests of the proprietor; or
- (b) if the proprietor's trade mark is well known to the public at large in Singapore —
 - (i) would cause dilution in an unfair manner of the distinctive character of the proprietor's trade mark; or
 - (ii) would take unfair advantage of the distinctive character of the proprietor's trade mark.

(b) If the Court grants an injunction under subsection (4) restraining the use by any business of any business identifier, the Court may make such other order as the Court deems fit in respect of any entry in any record maintained by any person, body or authority which associates that business with that business identifier.

(b) The proprietor shall not be entitled to the right referred to in subsection (2), (3) or (4) if the use of the trade mark or business identifier, as the case may be, began before the proprietor's trade mark became well known in Singapore, unless the trade mark or business identifier has been used in bad faith.

(7) The proprietor shall cease to be entitled to the right referred to in subsection (2), (3) or (4) if the proprietor has acquiesced for a continuous period of 5 years in the use of the trade mark or business identifier, as the case may be, in Singapore, being aware of that use, unless the trade mark or business identifier has been used in bad faith.

(8) In deciding whether the trade mark or business identifier, as the case may be, has been used in bad faith, it shall be relevant to consider whether the person who used the trade mark or business identifier had, at the time he began to use the trade mark or business identifier, knowledge of, or reason to know of, the proprietor's trade mark.

(9) Nothing in subsection (2) shall affect the continuation of any use referred to therein in good faith of a trade mark that was begun before 15th January 1999.

(10) Nothing in subsection (3) or (4) shall affect the continuation of any use referred to therein in good faith of a trade mark or business identifier, as the case may be, that was begun before 1st July 2004.

(11) For the purposes of this section and sections 55A, 56, 57 and 59, “use”, in relation to a trade mark, means use within the meaning of section 27(4).

50. SKE/QKE is not likely to succeed in an action under ss 55(2) TMA. This is because SKE/QKE and MST do not provide “identical or similar goods or services”.
51. Although there was a risk that SKE/QKE may successfully claim against MST under ss 55(3)(a) and (4)(a) TMA²³, MST has an arguable case that any infringement would not “...likely to damage the interests of [SKE/QKE]...” since MST is in a completely different business and industry as well as having a different customer base from SKE/QKE.
52. Moreover, SKE/QKE may encounter some difficulties in its claim against MST under ss 55(3)(b) and (4)(b) TMA.
53. *First*, the test for “well known to the public at large in Singapore” under ss 55(3)(b) and (4)(b) TMA means *more* than just “well known in Singapore”.²⁴ To satisfy the test for “well known to the public at large in Singapore”, the trade mark in question must be “recognized by *most sectors* of the public.”²⁵
54. Based on the Offer Document²⁶ and SKE and QKE’s websites, it appears that SKE and QKE’s main customers are businesses within the F&B and hospitality service industries such as central kitchens, restaurants and hotels. These are customers who use or operate *commercial* kitchens. To the best of our knowledge, SKE and QKE do not offer or provide goods and services to retail customers, and the general public at large. In the circumstances, it is unlikely for the “Q’son” name to be well known to most sectors of the public in Singapore.
55. *Second*, there is no “dilution” (both by blurring or tarnishment²⁷) of the SKE/QKE Marks.²⁸ On balance, we think a court is likely to accept this argument.
 - (1) SKE/QKE’s customers – who by SKE’s own disclosure are different from MST’s customers – are not likely to be drawn to MST’s goods and services (of an entirely different nature from SKE/QKE’s) instead of SKE/QKE’s, *i.e.* there is no dilution by blurring.

²³ Prior to SKE’s Waiver and Release.

²⁴ See *Ferrero SpA v Sarika Connoisseur Café Pte Ltd* [2011] SGHC 176 (“*Sarika*”) at [153].

²⁵ See *Sarika* at [153].

²⁶ At p 98.

²⁷ See *Novelty* at [225].

²⁸ See *Novelty* at [97]-[101].

- (2) Further, as the goods and services offered by MST are completely different from SKE/QKE's, there is also no "worse quality" of goods and services for comparison between MST and SKE/QKE, *i.e.* there is no dilution by tarnishment.
56. *Third*, MST may argue that it did not take any "unfair advantage" of the distinctive character of the SKE/QKE Marks, in that the nature and degree of proximity between SKE/QKE and MST's business are very far apart.
57. MST should note that this is only one of the non-exhaustive factors which a court will consider: see *Sarika* at [178]-[188]. At [180] of the decision, the court held that "The concept of taking unfair advantage covers, in particular, cases where there is *clear exploitation on the coat-tails of the mark with a reputation*, *viz*, when the defendant's mark freely rides on the coat tails of the well-known mark in order to benefit from its power of attraction, its reputation and its prestige and to exploit the marketing effort of the proprietor without any financial compensation."
58. SKE/QKE may argue that: (1) the name or mark "Q'son" is a well-known one and enjoys a certain reputation and level of prestige; (2) SKE is a public listed company; (3) prior to the listing of SKE, the parties had taken pains to enter into the Undertaking (presumably to protect the "Q'son" name); (4) we have been given to understand that MST does not pay SKE/QKE to use the "Q'son" name. That said, and on balance, we think that there is a more than even chance of a successful defence by MST.

Statutory defences to actions under section 27 TMA

59. We discuss certain (non-exhaustive) statutory defences below.

Section 28(2) TMA

60. Section 28(2) TMA reads as follows:

Notwithstanding section 27, a person does not infringe a registered trade mark by using an unregistered trade mark that is identical with or similar to the registered trade mark in relation to *goods or services identical with or similar to* those for which the trade mark is registered if he, or he and his predecessor in title, have continuously used in the course of trade the unregistered trade mark in relation to those goods or services from a time before —

- (a) the date of registration of the registered trade mark; or
- (b) the date the proprietor of the registered trade mark, or a predecessor in title, or a person who was a registered user of the trade mark under the repealed Act, first used the trade mark,

whichever is the earlier.

61. We do not think that it would be useful for MST to adopt this defence, particularly since one of its key responses to a potential claim by SKE/QKE is that MST does not offer *goods or services identical with or similar to* those offered by SKE/QKE.

Section 28(3) TMA

62. Section 28(3) TMA is as follows:

Notwithstanding section 27, a registered trade mark is not infringed by the use of another registered trade mark in relation to goods or services for which the latter is registered.

63. Insofar as we are aware, the QPE mark is not registered and MST does not possess any registered trade mark on the word “Q’son”. Hence, this defence is not helpful to MST. Any attempt by MST to register the QPE Mark now may be faced with resistance by SKE/QKE, particularly in light of the Undertaking.

Section 28(4)(a) TMA

64. Section 28(4)(a) TMA is as follows:

Notwithstanding section 27, a person who uses a registered trade mark does not infringe the trade mark if such use —

(a) constitutes fair use in *comparative* commercial advertising or promotion;

65. We do not think that there is much value in MST adopting this defence as one of its key arguments is that the parties offer vastly different products and services, with different customer bases. Quite simply, there is nothing to compare.

Sections 28(4)(b) &(c) TMA

66. Sections 28(4)(b) & (c) TMA are as follows:-

Notwithstanding section 27, a person who uses a registered trade mark does not infringe the trade mark if such use —

...

(b) is for a non-commercial purpose; or

(c) is for the purpose of news reporting or news commentary.

67. The defences under ss 28(4)(b) and (c) TMA are clearly not useful to MST.

Statutory defences to trade mark infringement actions under section 55 TMA*Section 55(6) TMA*

68. Section 55(6) TMA reads as follows:

The proprietor shall not be entitled to the right referred to in subsection (2), (3) or (4) if the use of the trade mark or business identifier, as the case may be, began before the proprietor’s trade mark became well known in Singapore, unless the trade mark or business identifier has been used in bad faith.

69. Further, s 55(8) TMA provides that “in deciding whether the trade mark or business identifier, as the case may be, has been used in bad faith, it shall be relevant to consider whether the person who used the trade mark or business identifier had, at the time he began to use the trade mark or business identifier, *knowledge of, or reason to know of, the proprietor’s trade mark.*”
70. It is unlikely that MST can avail itself of this defence. While MST may argue whether the SKE/QKE Marks were “well known” before May 2013, it would be challenging for MST to assert that it did not know of those marks before it signed the Undertaking. After all, one of MST’s obligations under the Undertaking is for it to stop using the “Q’son” name, and it breached that obligation.

Section 55(7) TMA

71. Section 55(7) TMA is as follows:-

The proprietor shall cease to be entitled to the right referred to in subsection (2), (3) or (4) if the proprietor has acquiesced for a continuous period of 5 years in the use of the trade mark or business identifier, as the case may be, in Singapore, being aware of that use, *unless the trade mark or business identifier has been used in bad faith.*

72. There appears to be no reported decision concerning s 55(7) TMA. On balance, it may be difficult to overcome the hurdle of “bad faith”, but assuming MST can do so, a court may be persuaded by this defence.

Section 55(10) TMA

73. Section 55(10) TMA is as follows:

Nothing in subsection (3) or (4) shall affect the continuation of any use referred to therein *in good faith* of a trade mark or business identifier, as the case may be, that was begun before 1st July 2004.

74. Assuming the court agrees with MST on the lack of any bad faith, it may be persuaded by this argument.

Allegation of passing off

75. Passing off is concerned with protecting the plaintiff’s goodwill in his business: *Hai Tong* at [110].
76. To succeed in an action for passing off, the plaintiff must prove 3 elements²⁹:

- (1) Goodwill in the business;

²⁹ See *Lifestyle 1.99 Pte Ltd v S\$1.99 Pte Ltd* [2000] 1 SLR(R) 687 at [17].

- (2) Misrepresentation, namely, passing off one's goods or services as the goods or services of another; and
 - (3) Damage.
77. SKE/QKE will likely be able to satisfy the first element of proving goodwill in the business. It is the second and third elements on which we focus our analysis. Taking matters together, MST has an arguable case that SKE/QKE may not be able to satisfy the second and third elements of the claim.

Misrepresentation

78. This second element, in itself, carries 2 sub-elements. The plaintiff has to show that³⁰:
- (1) The defendant has made a misrepresentation to the *relevant sector of the public*; and
 - (2) Such misrepresentation has resulted in or is likely to result in damage to the plaintiff's goodwill.³¹
79. To establish misrepresentation, one relevant factor is the evidence of confusion. There are several points to consider:
- (1) Evidence of actual confusion between the business, goods or services of the plaintiff and those of the defendant may be helpful but the lack thereof is not fatal to the plaintiff's claim.³²
 - (2) The court is entitled to consider whether the average reasonable person, with characteristics reflective of the relevant section of the public as identified under the examination of goodwill, is likely to be confused by the defendant's misrepresentation.³³
 - (3) Whether the parties are in the same field or closely related fields of business. That said, *the parties need not be in mutual competition or may even be engaged in different fields of business activities*.³⁴
 - (4) To bring an action in passing off, the plaintiff must show that his goodwill is associated with his get-up (*i.e.* his mark, name and/or labelling) and that by the use of a similar get-up, the alleged tortfeasor is passing off his goods as those of the plaintiff or as *emanating from a source related to the plaintiff*. In this connection, a threshold question which arises is whether the plaintiff's name or mark is *distinctive* of his goods, and that *distinctiveness is more easily found with fancy names* that have no apparent relationship to the goods.³⁵

³⁰ See *Novelty* at [69].

³¹ This is very similar to the third element of damage to goodwill, and will be considered together.

³² See *Novelty* at [80].

³³ See *Novelty* at [80].

³⁴ See *Novelty* at [84]-[86].

³⁵ See *Hai Tong* at [115].

80. In our circumstances, even if there may be some misrepresentation on the part of MST, MST has an arguable case that it had not done so to the “relevant sector of the public”. The “target audience” for the alleged misrepresentation, *i.e.* the “relevant sector of the public”, must be actual or potential customers of the plaintiff (in our case, SKE/QKE). The risk of MST misrepresenting to the “target audience” is remote because MST’s business, customer base and “target audience” are *completely different* from SKE/QKE’s.
81. It would be difficult for SKE/QKE to challenge MST’s argument. After all, the Offer Document declared that there are “no potential conflicts of interest” because MST is “not in the business of fabricating and sale of kitchen systems and kitchen equipment” and that MST’s customer base is different from that of the SKE Group. It is also important to note that when QPE used the name “Q’son”, it did not seek to represent or suggest that it was part of the SKE Group.
82. The case of *Mechanical Handling Engineering (S) Pte Ltd v Material Handling Engineering Pte Ltd* [1992] 3 SLR(R) 365 (“***Mechanical Handling Engineering***”) is instructive. The court took into account the nature of the respective businesses of the parties³⁶, namely:
- ...the products dealt in that the products dealt in are *relatively expensive* and therefore sold to *relatively sophisticated companies* rather than individuals. The typical transactions involve *sums of at least five figures* and *a system being purchased usually costs six figures*. The *customised nature of the products* requires *face-to-face contact* between potential customers and the suppliers. All these reasons no doubt explain why there has not been any proven case of confusion leading to a mistaken transaction being consummated
83. To the best of our understanding, various parts of the above observations by the court apply to the nature of SKE/QKE’s and MST’s separate businesses, thus lending an argument to MST to argue against misrepresentation and confusion. Designing and setting up commercial kitchens are “relatively expensive” and targeted at “relatively sophisticated companies”. Such commercial kitchens are likely to be “customised” which may require face-to-face interaction between potential customers and SKE/QKE.
84. The factor of “customisation” applies *even more acutely* to MST’s business – it is in the business of precision engineering and contract manufacturing. Such projects are likely to be “relatively expensive” and face-to-face contact with “sophisticated companies” will likely be key.

Damage to goodwill

85. Any damage must to be SKE/QKE’s goodwill. It is unlikely that SKE/QKE will be able to show a “real tangible risk of substantial damage”³⁷ to its goodwill, particularly since they offer very different goods and services from MST. Further, and as highlighted above, SKE has already confirmed via its solicitors that it did not suffer any loss and damage.

³⁶ See [66] of the decision.

³⁷ See *Novelty* at [105].

86. There is also no suggestion that SKE/QKE have plans to expand into precision engineering and contract manufacturing such that its goodwill might have suffered damage.
87. As noted by the court in *Mechanical Handling Engineering* at [70], “without damage, there can be no passing off.” The court in that case noted that “the plaintiff has not adduced evidence of any specific damage such as diversion of business to the defendants or loss of sales or contracts to the defendants. There are vague suggestions that there might be loss of reputation or goodwill but these have not been substantiated.”³⁸

Other potential defences

88. The English courts have generally accepted 2 categories of defences: (1) “own name” or honest concurrent use defence; and (2) estoppel and acquiescence.

“Own name” or honest concurrent use defence

89. In *Joseph Rodgers & Sons Ltd v W N Rodgers & Co* (1924) 41 RPC 277, the English courts held that “...a man is entitled to carry on his business in his own name as long as he does not do anything more than that to cause confusion with the business of another, and so long as he does it honestly.”
90. The position under Singapore law is not settled, although in *Audience Motivation Co Asia Pte Ltd v AMC Live Group China (S) Pte Ltd* [2016] 3 SLR 517 at [103], the Court of Appeal expressed a provisional view that this defence should *not* be extended to cases of passing off.
91. Further, even if this defence were available under Singapore law, it is unlikely to assist MST. A court is likely to find that given the Undertaking, MST knew that it was not only obliged to stop using the “Q’son” name, but also change its name. Yet, MST did neither, and instead continued to use the name. A court is likely to find that such use was not done “honestly”. The court found that even more so because when the defendants first commenced business, the parties “were not at that time dealing in the same products as the plaintiff, even though they all came within the broad class of material handling products”³⁹.
92. Our circumstances are even more stark. SKE/QKE and MST are not even in the same “broad class” of industry.

Estoppel and acquiescence

93. In *Habib Bank Ltd v Habib Bank AG Zurich* [1981] 1 WLR 1265 (“**Hahib Bank**”) at 1287, the English courts held that a plaintiff will be prevented from successfully suing a defendant in passing off if the circumstances of the conduct and behaviour of the party to an action are such that it would be wholly inequitable that he should be entitled to succeed in the proceed.
94. According to the authors of *Cases on Singapore Intellectual Property Law* at [06.089], such conduct and behaviour may involve a situation where a plaintiff did not object to, and may

³⁸ See [71] of the decision.

³⁹ See [73] of the decision.

even be inferred as encouraging, the use and continued use of the plaintiff's name or mark by the defendant in a similar business.

95. There seems to be no reported decision in Singapore which has raised this defence in relation to passing off. With the situation not settled in Singapore, it is difficult to say whether such arguments will be accepted by a Singapore court. If, however, MST were to argue estoppel and acquiescence, it may have to rely on the arguments set out above, save that MST should not, of course, concede that it was involved in any "similar business" as SKE/QKE.

Shared goodwill or reputation

96. The defendant in *Mechanical Handling Engineering* raised the doctrine of shared reputation in the sense that was explained by Oliver LJ in *Habib Bank* at 24–25:⁴⁰

... where you find that two traders have been concurrently using in the United Kingdom the same or similar names for their goods or businesses, *you may well find a factual situation in which neither of them can be said to be guilty of any misrepresentation. Each represents nothing but the truth, that a particular name or mark is associated with his goods or business.*

97. The court in *Mechanical Handling Engineering* found the doctrine was not relevant on the facts of that case.⁴¹ There appears to be no other decision in Singapore concerning this defence.
98. That said, the difficulty with MST's case, if it were to argue shared reputation or goodwill, however, is that after the entering of the Undertaking, it was supposed to change its name and stop using the "Q'son" name. In other words, the "reputation" or "goodwill" enjoyed by MST after May 2013 was not supposed to be enjoyed at all.

⁴⁰ See [23] of the decision.

⁴¹ See [26] of the decision.