

IN THE MARKET MISCONDUCT TRIBUNAL

IN THE MATTER OF the listed securities of Fujikon Industrial Holdings Limited (“**Fujikon**”) (Stock Code: 927), 1st Specified Person

IN THE MATTER OF Yeung Chi Hung (“**Johnny Yeung**”), 2nd Specified Person

IN THE MATTER OF Chow Lai Fung (“**Dorothy Chow**”), 3rd Specified Person

AND

IN THE MATTER OF section 307I(2) of and Schedule 9 to the Securities and Futures Ordinance, Cap. 571 (“**the Ordinance**”)

Before: Mr Kenneth Kwok SC (Chairman)
Professor Chen Chien-wen, Kevin (Member)
Mr Yu Chun-sing, Sam (Member)

Date of Hearing: 8 April 2019

Date of Determination: 8 April 2019

Date of Order: 8 April 2019

Date of Determination and Reasons for Order: 22 May 2019

DETERMINATION AND REASONS FOR ORDER

The agreed and admitted facts and agreed proposed Orders

1. These proceedings were initiated by the notice from the Securities and Futures Commission (“SFC”) dated 28 March 2018 (“Notice”) served on the Market Misconduct Tribunal (“MMT” or “the Tribunal”). The Notice is posted on MMT’s website, https://www.mmt.gov.hk/eng/rulings/Fujikon_28032018_e.pdf, and is incorporated by reference.

2. The disclosure proceedings were fixed to be heard on 8 – 12 and 15 - 16 April 2019.

3. By letter dated 3 April 2019, SFC and all 3 Specified Persons wrote jointly to MMT informing MMT that they had agreed:

- A
- B (1) A Statement of Agreed and Admitted Facts (“**Admitted**
- C **Facts**”)¹, Annex 1; and
- D (2) Agreed Proposed Orders (“**Agreed Orders**”).

E 4. Pursuant to section 33² of Schedule 9 to the Ordinance, Cap.

F 571, SFC and all 3 Specified Persons requested, and agreed to, the

G making of the Orders set out in the Agreed Orders.

H 5. Based on the Admitted Facts, we find the facts and matters

I there set out as facts.

J 6. Neither SFC nor any of the 3 Specified Persons adduced any

K oral evidence.

L *Relevant Statutory Provisions*

M *Jurisdiction of Tribunal under Part XIVA*

N 7. Except otherwise stated, references below to sections are to

O sections in the Ordinance.

P 8. Section 307H provides that:

Q “The Tribunal has jurisdiction to hear and determine in

R accordance with this Part, Part XIII and Schedule 9 any

S question or issue arising out of or in connection with any

T proceedings instituted under section 307I.”

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¹ A copy of the Admitted Facts is attached and marked “Annex 1”.

V ² It provides that “At any time after any proceedings have been instituted, the Tribunal or the chairman may make any order which it or he is entitled to make under any provision of this Ordinance, whether or not the requirements otherwise applicable to the making of the order have been complied with, if—

(a) the parties to the proceedings request, and agree to, the making of the order under this section by the Tribunal or the chairman (as the case may be); and (b) the parties consent to all of the terms of the order.”

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Institution of disclosure proceedings

9. Section 307I provides that:

“(1) If it appears to the Commission that a breach of a disclosure requirement has or may have taken place, the Commission may institute proceedings (disclosure proceedings) in the Tribunal concerning the matter.

(2) The Commission institutes disclosure proceedings by giving the Tribunal a notice in writing containing a statement specifying the matters prescribed in Schedule 9.”

Object and conduct of disclosure proceedings

10. Section 307J provides as follows:

“(1) Without limiting section 307H, the object of disclosure proceedings is for the Tribunal to determine—

(a) whether a breach of a disclosure requirement has taken place; and

(b) the identity of any person who is in breach of the disclosure requirement.

(2) Subject to section 261(3), the standard of proof required to determine any question or issue before the Tribunal in disclosure proceedings is the standard of proof applicable to civil proceedings in a court of law.

(3) Sections 253 and 254 apply to disclosure proceedings as if a reference in those sections to proceedings instituted under section 252 were a reference to disclosure proceedings.”

Powers of the Tribunal

11. The powers of the Tribunal under section 253 (which are applicable to disclosure proceedings by virtue of section 307J(3)) include the following:

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“(1) Subject to the provisions of Schedule 9 and any rules made by the Chief Justice under section 269, the Tribunal, for the purposes of any proceedings instituted under section 252, may, on its own motion or on the application of any party before it-

(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

...

(i) stay any of the proceedings on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;

(j) determine the procedure to be followed in the proceedings;

(k) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the proceedings or the carrying out of its functions.

...

(4) A person is not excused from complying with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.”

Definition of inside information

12. Section 307A(1) defines “inside information” as follows:

“inside information (内幕消息), in relation to a listed corporation, means specific information that —

(a) is about—

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

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(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities”.

Breach by listed corporation of disclosure requirement

13. Section 307A(2) defines a breach by a listed corporation of a disclosure requirement as follows:

“(2) For the purposes of this Part—

(a) a breach of a disclosure requirement takes place if any of the requirements in section 307B or 307C is contravened in relation to a listed corporation; and

(b) in those circumstances, the listed corporation is in breach of the disclosure requirement.”

Listed corporation’s disclosure requirements

14. Section 307B lays down a listed corporation’s disclosure requirement as follows:

“(1) A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public.

(2) For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if—

(a) information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.”

15. Section 307C prescribes the manner of disclosure as follows:

“(1) A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed.

(2) Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public.”

Officers’ disclosure requirements

16. Section 307G lays down the circumstances when an officer of a listed corporation is also in breach of the disclosure requirement:

“(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.

(2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation —

(a) whose intentional, reckless or negligent conduct has resulted in the breach; or

(b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement.”

Definition of “officer (高級人員)”

17. An “officer” is defined in Schedule 1 Part 1 of the Ordinance thus:

“(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(b) in relation to an unincorporated body, means any member of the governing body of the unincorporated body.”

Determination by Tribunal

18. The Tribunal was required by the Notice:

“... to conduct proceedings and determine:

(a) whether a breach of a disclosure requirement has taken place; and

(b) the identity of any person who is in breach of the disclosure requirement.”

19. Based on the Agreed Facts, we determine that:

(i) A breach of the disclosure requirement has taken place; and

(ii) The identities of the persons who are in breach of the disclosure requirement are:

(a) Fujikon [Industrial Holdings Ltd];

(b) Johnny Yeung [Chi Hung]; and

(c) Dorothy Chow [Lai Fung].

Sanctions available

20. Section 307N provides that:

“(1) Subject to section 307K, at the conclusion of any disclosure proceedings the Tribunal may make one or more of the following orders in respect of a person identified under

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section 307J(1)(b) as being in breach of a disclosure requirement—

(a) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance—

(i) be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation; or

(ii) in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation;

(b) an order that, for the period (not exceeding 5 years) specified in the order, the person must not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any securities, futures contract, leveraged foreign exchange contract or collective investment scheme;

(c) an order that the person must not again perpetrate any conduct that constitutes a breach of a disclosure requirement;

(d) if the person is a listed corporation or is in breach of the disclosure requirement as a director or chief executive of a listed corporation, an order that the person pay to the Government a regulatory fine not exceeding [\$8,000,000];

(e) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Government the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings;

(f) without prejudice to any power of the Tribunal under section 307P, an order that the person pay to the Commission the sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission, whether in relation or incidental to—

(i) the proceedings;

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B	(ii) any investigation of the person's conduct or affairs carried out before the proceedings were instituted; or	B
C	(iii) any investigation of the person's conduct or affairs carried out for the purposes of the proceedings;	C
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E	(g) an order that any body which may take disciplinary action against the person as one of its members be recommended to take disciplinary action against the person;	E
F		F
G	(h) if the person is a listed corporation, any order that the Tribunal considers necessary to ensure that a breach of a disclosure requirement does not again take place in respect of the corporation including, but not limited to, an order that the corporation appoint an independent professional adviser approved by the Commission to review the corporation's procedure for compliance with this Part or to advise the corporation on matters relating to compliance with this Part;	G
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K	(i) if the person is an officer of a listed corporation, any order that the Tribunal considers necessary to ensure that the officer does not again perpetrate any conduct that constitutes a breach of a disclosure requirement including, but not limited to, an order that the officer undergo a training program approved by the Commission on compliance with this Part, directors' duties and corporate governance.	K
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N	(2) When making an order in respect of a person under subsection (1), the Tribunal may take into account any conduct by the person which—	N
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P	(a) previously resulted in the person being convicted of an offence in Hong Kong;	P
Q	(b) previously resulted in the person being identified by the Tribunal—	Q
R	(i) under section 252(3)(b) as having engaged in any market misconduct; or	R
S	(ii) under section 307J(1)(b) as being in breach of a disclosure requirement; or	S
T	(c) at any time before the commencement of Part XIII resulted in the person being identified as an insider	T
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dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.

(3) The Tribunal must not impose a regulatory fine on a person under subsection (1)(d) unless, in all the circumstances of the case, the fine is proportionate and reasonable in relation to the breach of the disclosure requirement. For that purpose, the Tribunal may take into account, in addition to any conduct referred to in subsection (2), any of the following matters—

(a) the seriousness of the conduct that resulted in the person being in breach of the disclosure requirement;

(b) whether or not that conduct was intentional, reckless or negligent;

(c) whether that conduct may have damaged the integrity of the securities and futures market;

(d) whether that conduct may have damaged the interest of the investing public;

(e) whether that conduct resulted in any benefit to the person or any other person, including any profit gained or loss avoided;

(f) the person's financial resources.

(4) An order made under subsection (1)(a) may specify a corporation by name or by reference to a relationship with any other corporation.

(5) Subject to any rules made by the Chief Justice under section 307X, Order 62 of the Rules of the High Court (Cap 4 sub. leg. A) applies to the taxation of any sum ordered under subsection (1)(e) or (f) for costs reasonably incurred in relation or incidental to the proceedings.

(6) In this section—

chief executive (最高行政人員) has the meaning given by section 308(1).”

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B *The Agreed Orders*

C 21. At the hearing of the Disclosure Proceedings on 8 April 2019,
D we told the parties that we agreed to the making of the Agreed Orders and
E would not impose any further sanctions. Our brief reasons are as
follows.

F *Section 307N(1)(a)*

G 22. Our findings of breach by Johnny Yeung and Dorothy Chow
H are based on their negligence. This appears to be their first breach of the
I disclosure requirements. Further, we intend to order Fujikon to appoint
J an independent professional adviser and Johnny Yeung and Dorothy
K Chow to undergo and complete a training programme, to be approved by
L the Commission, on compliance with Part XIVA of the Ordinance,
directors' duties and corporate governance. In the premises, we do not
think it is appropriate to disqualify them as director etc.

M *Section 307N(1)(b)*

N 23. There is no allegation that Johnny Yeung and Dorothy Chow
O had dealt improperly with securities. There is no basis for an Order
under section 307N(1)(b).

P *Section 307N(1)(c)*

Q 24. As for cease and desist orders, we agree with what the MMT
R said at §§45 – 48 and 71 in the *Yorkey Optical International (Cayman)*
S *Ltd Report:*

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“45. Section 307N(1) empowers the Tribunal to “make one or more of the following orders”. The cease-and-desist order has been described by Mr Horace Wong SC as a permanent injunction. It may also be likened to a permanent good behaviour order.

46. It was understandable for SFC to ask for the cease-and-desist orders. It had a duty to protect the investors and the integrity of the market. Mr Horace Wong SC contended that a cease-and-desist order should be made on the following grounds:

- (1) There was no attempt to address wrong;
- (2) There was risk by reference to subsequent conduct;
- (3) The concern was to protect the public;
- (4) The Legislature placed more importance on protecting the public;
- (5) There was a real risk of posing a danger to the public; and
- (6) “Recent” announcements do not mean proper safeguards having been put in place.

47. Having given Mr Horace Wong SC’s contentions careful consideration, we are not persuaded to make a cease-and-desist order in this case.

48. The Tribunal is given the discretion to decide whether to make a cease-and-desist order and is not bound to do so in every case of breach of the disclosure requirement. The question is whether it is proportionate and appropriate in all the circumstances of each case to make such an order against a first offender, bearing in mind the other sanctions which the Tribunal intends to impose. This is a fact sensitive balancing exercise. As against Yorkey, the Tribunal intends to impose a regulatory fine of HK\$1 million; to order Yorkey to pay the costs and expenses of both SFC and the Government; and to order the appointment of independent professional advisers. In the circumstances and having regard to the mitigating factors accepted by the Tribunal, we have decided to give Yorkey a chance to behave itself without a cease-and-desist order”

“71. The Tribunal intends to order Michio to pay a regulatory fine of HK\$1 million and the costs and expenses of both SFC and the Government and to undergo a training

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B programme. In the circumstances and having regard to the
C mitigating factors accepted by the Tribunal, and for reasons
D given in §§45 - 48 above, we have decided to give Michio a
E chance to behave himself without a cease-and-desist order.”
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D 25. In §154 of Part II of the *Mayer Holdings Limited Report*, the
E MMT stated that “SFC takes on board the Tribunal’s observation at
F §§45-48, 71 and 83 of the *Yorkey Report* and does not seek any
G cease-and-desist order.”
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G 26. We agree with the approach in *Yorkey*, we have decided to
H give Fujikon, Johnny Yeung and Dorothy Chow a chance to behave
I themselves without a cease-and-desist order.
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J *Section 307N(1)(d)*
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K 27. In §66 of the *Yorkey Report*, the MMT said:
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L “66. A specified person’s financial resources is a matter
M peculiarly within the personal knowledge of the specified
N person. If a specified person wishes to raise financial
O resources as a ground for a lower regulatory fine, he should
P make a full and frank disclosure of his financial position, assets
Q and liabilities, income and expenditure. Making selective and
R partial disclosure does not prove his financial position. It is
S not open to him to hide under the excuse of privacy and
T disclose only such information as he chooses to let the Tribunal
U know. Michio has again put forward “costs” as an excuse.
V This is a lame excuse. Costs pale in significance compared
with the difference between HK\$1 million asked for by SFC
and HK\$250,000 suggested by Michio. Michio has failed to
establish that he has any difficulty paying a HK\$1 million
regulatory fine.”

We agree with those principles. None of the 3 specified persons has said anything about their respective financial resources.

28. More importantly, the amounts of the respective regulatory fines have been agreed with Fujikon, Johnny Yeung and Dorothy Chow which means that there is no question about their respective financial resources.

29. Last but not least, we are of the view that the respective fines are proportionate and reasonable in relation to the breach of the disclosure requirement.

Section 307N(1)(e) and(f)

30. These disclosure proceedings came into being as a result of the breach by Fujikon, Johnny Yeung and Dorothy Chow of the disclosure requirement. They should bear the costs of SFC and the government.

Section 307N(1)(g)

31. The case against Dorothy Chow is one of negligence. It is not a proper case to invoke section 307N(1)(g) to recommend that the HKICPA take disciplinary action against her.

Section 307N(1)(h) and (i)

32. Sanctions under section 307N(1)(h) and (i) aim to improve the compliance culture and ability of Fujikon, Johnny Yeung and Dorothy

A Chow. There is room for improvement on their part and the sanctions
B under section 307N(1)(h) and (i) should be imposed.
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D *Agreed amendment of the Agreed Orders*
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E 33. At the hearing on 8 April 2019, we raised certain matters
F about the Agreed Orders with the parties. The amendments were
G suggested by Fujikon, Johnny Yeung and Dorothy Chow and agreed by
H the SFC. We added the agreed suggested amendments which are as
I follows:
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- I (1) A time limit of “28 days from 8 April 2019” for the payment
J of the regulatory fines.
K (2) Time limits for the appointment of an independent
L professional adviser and for the review and advice.
M (3) Time limit for the completion of the training programmes.
N (4) SFC’s costs of proceedings be taxed if not agreed, with
O certificate for 2 counsel.
P (5) SFC’s costs of investigation be summarily assessed by the
Q Tribunal Chairman on paper, with directions for the
R assessment. This is because as pointed out in §§178-179 of
S Part II of the *Mayer Report*, section 307N(5) which
T incorporates Order 62 of The Rules of High Court, Cap 4A,
U on taxation, does not cover taxation of costs and expenses of
V any investigation.
R (6) The Government’s costs of proceedings be taxed if not
S agreed.
T (7) Liberty to apply to the Tribunal Chairman for directions on
U the carrying into effect the orders on costs and expenses.
V

34. The Amended Agreed Order as made by us are set out in Annex II.

Postscript

35. It seems clear from sections 307A(2), 307B, 307C, and 307G that the breach by a listed corporation of its disclosure requirement may result from the breach or default of its officer(s). Should the amount(s) of the regulatory fines of the officer(s) and the listed corporation better reflect the respective “culpability” of the officer(s). This is a matter which may merit consideration in future cases.



(Mr Kenneth Kwok SC)
Chairman, Market Misconduct Tribunal



(Professor Chen Chien-wen, Kevin)
Member, Market Misconduct Tribunal



(Mr Yu Chun-sing, Sam)
Member, Market Misconduct Tribunal

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Mr Horace Wong SC (SFC) presenting officer, and Mr Roger Phang (SFC), assistant presenting officer, Ms Monica Lai of SFC, assistant presenting officer, and Mr Andre Hui of SFC, assistant presenting officer, for the Securities and Futures Commission

Mr John Brewer (Chiu & Partners) for all 3 Specified Persons

ANNEX I

STATEMENT OF AGREED AND ADMITTED FACTS

Persons and/or corporate bodies who accept breach of a disclosure requirement

- (1) Fujikon Industrial Holdings Limited (“Fujikon”)
- (2) Yeung Chi Hung (“Johnny Yeung”)
- (3) Chow Lai Fung (“Dorothy Chow”)

For the purpose of the disclosure proceedings instituted by the Securities and Futures Commission (the “Commission”) before the Market Misconduct Tribunal (the “Tribunal”) under section 307I(2) of and Schedule 9 to the Securities and Futures Ordinance, Cap. 571 (the “Ordinance”) by way of the notice dated 28 March 2018 (the “Notice”), the facts and matters set out in this Statement of Agreed and Admitted Facts are agreed and accepted by the Commission and each of the Specified Persons. It is agreed by all parties hereto that the Tribunal may make a determination under section 307J(1) of the Ordinance on the basis of the facts and matters set out hereinbelow.

A. Introduction

1. Fujikon is a company incorporated in Bermuda and has been listed on the Main Board of the Stock Exchange of Hong Kong since 11 April 2000. Fujikon is and was at the material times a “listed corporation” as that term is defined in section 307A(1) of the Ordinance. At the material times, Fujikon and its subsidiaries (the “Group”) were principally engaged in the design, manufacture, marketing and trading of electro-acoustic products, accessories and other electronic products.
2. At all material times, Johnny Yeung and Dorothy Chow were executive directors of Fujikon. In particular, Johnny Yeung was the

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Chairman and Chief Executive Officer of Fujikon, whereas Dorothy
Chow was the Chief Financial Officer and Company Secretary of the
Group. By virtue of their positions, both Johnny Yeung and Dorothy
Chow were “officers” of Fujikon as that term is defined in section 1 of
Part 1 of Schedule 1 to the Securities and Futures Ordinance (the
“Ordinance”).

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3. For the financial years ended 31 March 2013 and 31 March 2014, one
of the top customers of Fujikon was Beats Electronics International
Limited (“Beats”). Fujikon manufactured only one product for Beats,
namely, the wireless 1.5 headphone (the “Headphone”).

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The discontinuance of the Headphone

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4. On 12 April 2014, Beats notified Fujikon Industrial Company Limited
 (“Fujikon Industrial”), a wholly owned subsidiary of Fujikon, by
email that the Headphone would be discontinued (the
“Discontinuance”).

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5. On 6 June 2014, Fujikon published an announcement regarding, inter
alia, the Discontinuance entitled “(1) Profit Warning Announcement –
Further Information; and (2) Inside Information” (the
“Announcement”). Under the heading “Inside Information”, the
Announcement stated that:

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“Furthermore, the Board wishes to inform the shareholders of the
Company and potential investors that the Group was informed by one
of its customers that a particular product manufactured for such
customer would be discontinued. Such customer has not placed any
order for such product with the Group since its last shipment in April
2014. Such product had generated revenue of approximately
HK\$157 million for the year ended 31 March 2013 (attributable to
approximately 10% of the Group’s revenue) and approximately
HK\$210 million for the year ended 31 March 2014 (attributable to
approximately 14% of the Group’s revenue). The Group would
continue to use its best endeavours to establish further cooperative
opportunities with such customer as well as other existing and
potential customers.”

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6. The customer referred to in the Announcement was Beats and the particular product manufactured for Beats was the Headphone.
- B. The Discontinuance coming to the knowledge of Fujikon
7. On 4 April 2014, Praveen Narayanan of Beats sent an email to Barbara Ba, a sales executive of Fujikon Industrial (copying, inter alios, Lee Yik Wai, Paul (“Paul Lee”), Vice President of the Sales and Marketing Division of Fujikon Industrial and Francis Mok, a sales manager of the Sales and Marketing Department of Fujikon Industrial) stating that there would be no future demand for the Headphone. On 7 April 2014, Francis Mok requested Praveen Narayanan to confirm whether the Headphone was approaching end of life, i.e. “EOL”. On 8 April 2014, Praveen Narayanan replied that Beats’ internal team was “having a final look at the numbers before officially confirming EOL”.
8. In an email of 12 April 2014 from Praveen Narayanan to Francis Mok, copying Barbara Ba, (the “12 April Email”), Praveen Narayanan confirmed to Francis Mok that “The Wireless 1.5 family is going EOL.”
9. The Discontinuance came to the knowledge of Dorothy Chow on 16 April 2014 in the course of performing her functions as the Chief Financial Officer of the Group when Paul Lee reported the Discontinuance at a bi-weekly internal sales-related meeting. Such meeting was chaired by Li Kai Chuen, Thompson, Executive Vice President of Business Development of Fujikon Industrial, and attended by, inter alios, Dorothy Chow. The Discontinuance therefore came to the knowledge of Fujikon on 16 April 2014.
10. Furthermore, the Discontinuance came, or ought reasonably to have, come to the knowledge of Johnny Yeung on 6 May 2014 in the course of performing his functions as the Chairman and Chief Executive Officer of Fujikon when Fu Yin, a staff of Fujikon, sent an email to various persons, copying Johnny Yeung, attaching the minutes of the bi-weekly internal sales-related meeting held on 16 April 2014, where the Discontinuance was reported by Paul Lee.
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C. Inside Information

11. The Discontinuance falls within the definition of “inside information” in section 307A(1) of the Ordinance as it was:

(1) specific information about Fujikon; and

(2) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of Fujikon but would if generally known to them have been likely to materially affect the price of those securities.

12. In particular, the Discontinuance concerned the sole product which, at the material time, Fujikon manufactured for Beats, accounting for more than 10% of its revenue in the previous two financial years. In view of the fact that Fujikon had already issued a profit warning announcement in January 2014, following which there was a 5.64% fall in the closing share price on the next trading day, the Discontinuance was likely to have been perceived as a further disappointment by those persons who were accustomed or would be likely to deal in the shares of Fujikon. Had the Discontinuance been made known to those persons, the impact on the share price of Fujikon was likely to have been material.

D. Breach of the disclosure requirement under s.307B(1) of the Ordinance by Fujikon

13. A reasonable person acting as an officer of Fujikon would have considered that information about the Discontinuance was inside information in relation to Fujikon as it concerned the sole product which, at the material time, Fujikon manufactured for Beats, accounting for more than 10% of Fujikon’s revenue in the previous two financial years. Thus, by virtue of s.307B(2) of the Ordinance, inside information (about the Discontinuance) had or ought reasonably to have come to the knowledge of Fujikon on or about 16 April 2014, or alternatively by 6 May 2014 the latest.

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14. However, between 16 April 2014 and 29 May 2014, there was no discussion among officers of Fujikon as to whether it was necessary to publish an announcement to disclose the information about the Discontinuance to the public, despite the fact that a meeting of the board of directors of Fujikon (the “Board”) was held on 2 May 2014 (which Johnny Yeung and Dorothy Chow attended) and two internal meetings attended by the senior management of Fujikon Industrial were held on 13 May 2014 and 27 May 2014 respectively (which Johnny Yeung and Dorothy Chow also attended and at which the matter relating to the loss of Beats as a customer was discussed).

15. On 30 May 2014, the Board held a meeting during which Johnny Yeung proposed issuing an announcement giving further information in relation to the profit warning announcement issued in January 2014. The Board resolved, inter alia, that Dorothy Chow was to follow up after the Board meeting and consult Fujikon’s legal advisers in relation to the contents of the proposed announcement, in particular whether the Discontinuance constituted inside information which should be disclosed to the public.

16. The public was informed of the Discontinuance when Fujikon published the Announcement on 6 June 2014, i.e. more than 7 weeks after the Discontinuance came to the knowledge of Fujikon.

17. Under s.307A(2) of the Ordinance, a breach of a disclosure requirement takes place if any of the requirements in, inter alia, s.307B of the Ordinance is contravened in relation to a listed corporation.

18. By reason of the matters aforesaid, Fujikon failed to disclose the Discontinuance to the public as soon as reasonably practicable after the Discontinuance had come to its knowledge and was in breach of the disclosure requirement at s.307B(1) of the Ordinance.

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B E. Breach of the disclosure requirement under s.307G(2)(a) of the
Ordinance by Johnny Yeung and Dorothy Chow

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D 19. As officers of Fujikon, Johnny Yeung and Dorothy Chow are
themselves in breach of the disclosure requirement if the breach of
disclosure requirement by Fujikon was the result of their negligent
E conduct (section 307G(2)(a) of the Ordinance).

F
G 20. Both Johnny Yeung and Dorothy Chow were aware of the
Discontinuance long before the publication of the Announcement.
H However, both failed to take sufficient steps to consider the impact of
I the Discontinuance and cause the timely disclosure of the information
about the Discontinuance to the public. This is notwithstanding the
J fact that the Board had on 20 March 2014 approved and adopted a
written procedure for the collection and transmission of inside
K information (the “Internal Procedure”).

L
M 21. Such failure amounted to negligent conduct on the part of Johnny
Yeung and Dorothy Chow. Their negligence resulted in Fujikon’s
N breach of the disclosure requirement. In particular:

O
P (1) Johnny Yeung was the Chairman and Chief Executive Officer of
Fujikon and was responsible for providing leadership to the Board and
Q managing the Group’s day-to-day business. Johnny Yeung failed to
exercise reasonable care and skill in ensuring that Fujikon disclosed
the Discontinuance to the public as soon as reasonably practicable.
R Despite having approved and signed the Internal Procedure, and
S having reviewed the same prior to approving it, Johnny Yeung failed
to properly understand the statutory disclosure obligations and/or seek
T timely professional advice if he was in any doubt. In this regard, he
U failed to seek legal advice from Fujikon’s legal advisers on the
disclosure requirements until 30 May 2014.

V
R (2) Dorothy Chow was the Chief Financial Officer and Company
Secretary of the Group and, pursuant to the provisions of the Internal
S Procedure, was responsible for collecting inside information (or
potential inside information) and providing the same to the Board for
T consideration so as to ensure Fujikon’s compliance with its disclosure
U
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obligations. On 16 April 2014 Dorothy Chow had asked Paul Lee whether the lost sales from Beats could be covered by other sales and she considered that Paul Lee's response was positive. On 13 May 2014, Dorothy Chow felt assured by Paul Lee's presentation of the revised sales forecast which he had drawn up in light of the Discontinuance and presented with his statement "The above forecast is conservative and have confident (sic) to achieve FY15 Sales target of 1,273M". However, as Dorothy began to notice over the ensuing weeks that there were fewer shipments, she began to worry whether the sales target could in fact be met. It was only then that she considered whether it was necessary to publish an announcement to disclose the Discontinuance to the public. Although she learnt of the Discontinuance on 16 April 2014, Dorothy Chow did not promptly report the Discontinuance to the Board for it to consider proper disclosure, nor did she make any suggestion to the Board to issue an announcement to disclose the Discontinuance to the public, or alert the Board to seek legal advice in relation to such disclosure until 30 May 2014. Dorothy Chow was therefore negligent in relying on targeted sales information from Paul Lee as a reason not to treat the Discontinuance as inside information.

22. In these circumstances, both Johnny Yeung and Dorothy Chow were in breach of the disclosure requirement pursuant to s.307G(2)(a) of the Ordinance as their negligent conduct has resulted in the breach of the disclosure requirement on the part of Fujikon.

ANNEX II

Order made by MMT on 8 April 2019

	<u>Section</u>	<u>Fujikon</u>	<u>Johnny Yeung</u>	<u>Dorothy Chow</u>
	307N(1)(d)	HK\$1 million to be paid within 28 days from 8 April 2019	HK\$300,000 to be paid within 28 days from 8 April 2019	HK\$200,000 to be paid within 28 days from 8 April 2019
	307N(1)(e)	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Government the costs and expenses reasonably incurred by the Government in relation or incidental to these proceedings,	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Government the costs and expenses reasonably incurred by the Government in relation or incidental to these proceedings,	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Government the costs and expenses reasonably incurred by the Government in relation or incidental to these proceedings,

		to be taxed if not agreed	to be taxed if not agreed	to be taxed if not agreed
	307N(1)(f)(i)	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission the costs and expenses, including without limitation legal costs, counsel fees, expert costs and disbursements, reasonably incurred by the Commission in relation or incidental to these proceedings, to be taxed if not agreed, and the Tribunal certifies that the attendance and handling of two counsel as being proper in the circumstances of this case	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission the costs and expenses, including without limitation legal costs, counsel fees, expert costs and disbursements, reasonably incurred by the Commission in relation or incidental to these proceedings, to be taxed if not agreed, and the Tribunal certifies that the attendance and handling of two counsel as being proper in the circumstances of this case	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission the costs and expenses, including without limitation legal costs, counsel fees, expert costs and disbursements, reasonably incurred by the Commission in relation or incidental to these proceedings, to be taxed if not agreed, and the Tribunal certifies that the attendance and handling of two counsel as being proper in the circumstances of this case
	307N(1)(f)(ii) & (iii)	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission a sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigations carried out before these proceedings were instituted or for the purposes of these proceedings	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission a sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigations carried out before these proceedings were instituted or for the purposes of these proceedings	Each of Fujikon, Johnny Yeung and Dorothy Chow, on a joint and several basis, to pay to the Commission a sum the Tribunal considers appropriate for the costs and expenses reasonably incurred by the Commission in relation or incidental to the investigations carried out before these proceedings were instituted or for the purposes of these proceedings
	307N(1)(h)	An order for Fujikon to appoint an independent professional adviser (at its own cost), to be approved by the Commission, within 4 weeks from 8 April 2019, to review Fujikon's procedures for compliance with Part XIVA of the	NA	NA

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		Ordinance and to advise Fujikon on matters relating to compliance with Part XIVA of the Ordinance within 16 weeks from the appointment of the independent professional adviser		
	307N(1)(i)	NA	An order for Johnny Yeung to undergo and complete a training programme, to be approved by the Commission, on compliance with Part XIVA of the Ordinance, directors' duties and corporate governance within 20 weeks from 8 April 2019.	An order for Dorothy Chow to undergo and complete a training programme, to be approved by the Commission, on compliance with Part XIVA of the Ordinance, directors' duties and corporate governance within 20 weeks from 8 April 2019.
	§5 of the Order made on 8 April 2019	<p>5. The parties shall follow the directions below:</p> <p>(a) The Commission shall lodge and serve within 14 days from 8 April 2019 a statement of costs and expenses not exceeding two pages for each of Fujikon, Johnny Yeung and Dorothy Chow;</p> <p>(b) Each of Fujikon, Johnny Yeung and Dorothy Chow shall lodge and serve its/ his/ her respective succinct Points of Objection (if any) in bullet-point format of not more than two pages to the Commission's statement of costs and expenses within 14 days after receipt of the Commission's statement of costs and expenses; and</p> <p>(c) Unless otherwise directed, the Tribunal's summary assessment of costs and expenses will be by paper disposal.</p>		
	§6 of the Order made on 8 April 2019	<p>6. Where the time prescribed by this order for doing any act expires on:</p> <p>(a) a Saturday;</p> <p>(b) a general holiday;</p> <p>(c) a gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1, laws of Hong Kong); or</p> <p>(d) a black rainstorm warning day as defined by that section;</p> <p>the act shall be in time if done on the next day on which the office of the Tribunal is open.</p>		
	§7 of the Order made on 8 April 2019	<p>7. Liberty to the parties to apply to the Tribunal Chairman for directions on the carrying into effect the orders on costs and expenses ... above</p>		

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