

When Instagram Evidence Meets The Damages Test: Proving Infringement Is Not The Same As Proving Loss



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Court victories in intellectual property disputes often carry an implicit assumption of financial reward. The recent High Court decision in *Naili Holdings Sdn Bhd v Sabella Holdings Sdn Bhd* [2025] 11 MLJ 169 punctures that assumption. While infringement was clearly established, the court's sharply reduced damages award serves as a cautionary tale for rights holders who conflate online visibility with evidential certainty.

The case offers a timely reminder that in civil litigation, liability and compensation are distinct burdens. Proving wrongdoing may win an injunction. Proving loss requires something far more exacting.

Liability Secured, Damages Dismantled

Naili Holdings, a garment designer specialising in batik-style clothing, succeeded at trial in showing that Sabella Holdings had infringed its registered industrial design. The defendant's floral garments, promoted aggressively online, were found to be substantially similar to Naili's "Coral Orchid" design. A permanent injunction followed.

But the more consequential contest came later, at the assessment of damages. Naili sought nearly RM1.9mn, claiming the defendant had sold roughly 24,000 infringing garments and that half the resulting revenue belonged to the rights holder. The figure was derived largely from social media posts, promotional videos and recommended retail prices.

The High Court was unconvinced. Sabella, by contrast, produced sales records verified by a chartered accountant, showing sales of just over 6,000 units and revenue of RM 395,291. In the absence of credible evidence to the contrary, the court accepted those figures. The result: a drastic recalibration of expectations.

Social Media Is Not A Balance Sheet

The judgment's most striking feature is its treatment of online materials as evidence. Marketing content, the court held, may signal ambition or reach, but it does not establish completed transactions or profit. Sales inferred from Instagram posts and promotional videos were described as speculative and evidentially weak.

This is a significant warning for claimants in the digital economy. Visibility does not equate to verifiability. Courts require primary financial records such as invoices, accounts or audited sales data and not impressions or assumptions drawn from online engagement.

Equally damaging was the plaintiff's failure to pursue discovery. The High Court noted that Naili had ample opportunity to compel production of the defendant's sales records but chose not to do so. Having declined the most direct route to proof, the plaintiff could not expect the court to fill the evidential gap with inference.

Commentary

The gulf between the damages sought and the damages awarded is not merely arithmetic. It underscores a deeper principle: courts compensate proven loss, not assumed harm. Intellectual property owners who neglect evidential rigour risk turning legal victories into financial footnotes.

This ruling is particularly instructive in an era where commercial activity is increasingly mediated through digital platforms. Online prominence may be commercially powerful, but in court it remains a poor substitute for documentary proof. Without discovery, audited figures or demonstrable diversion of sales, even clear infringement may yield only modest compensation.

An appeal against the High Court's ruling is pending. But unless the evidential foundations shift, the broader message is unlikely to change. For claimants, the lesson is plain: winning on liability is only half the battle and often the easier half.

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