IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 49
3299739

	BETWEEN	BOXSTER LIMITED Applicant
	AND	WEI WILLIAM SONG Respondent

Member of Authority:	Simon Greening
Representatives:	May Moncur, advocate for the Applicant Respondent in person
Investigation Meeting:	11 December 2025
Submissions received:	11 December 2025 from the Applicant 11 December 2025 from the Respondent
Determination:	28 January 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Wei William Song was employed as a sales manager for Boxster Limited (Boxster) on a fixed term employment agreement which commenced on 8 April 2023. Mr Song was initially paid $24 per hour.

[2] Prior to the expiry of this fixed term employment agreement, Mr Song signed a new fixed term agreement (second fixed term agreement) which commenced on 15 September 2023. From 15 September 2023 Mr Song was paid a salary of $70,000 and assigned the title Director - Sales and Marketing.

[3] Mr Song resigned on 25 December 2023. His final day of employment was 19 January 2024.

[4] Boxster sells high end kitchen appliances. Boxster is the exclusive agent for Fotile kitchen appliances in New Zealand. Yiu Ting Samuel Tsang (Mr Tsang) is the sole director of Boxster and has been in business for ten years.

[5] Mr Song previously worked for another company which sells Robam products in New Zealand. The Robam kitchen appliance brand is a direct and major competitor to Fotile.

[6] A key aspect of the claims Boxster has advanced against Mr Song relate to whether he continued to undertake contract work for this company whilst employed by Boxster.

[7] The essence of the employment relationship problem is Boxster's concerns that:

(a) While employed, Mr Song breached clause 20 of his individual employment agreement, which relates to use of confidential information; and

(b) Mr Song breached clause 26 of his individual employment agreement, which sets out post-employment restraints; and

(c) Mr Song deleted Boxster's digitally stored information and diverted sales away from Boxster.

[8] Boxster seeks an award of damages in respect of sales lost by Mr Song's actions, penalties for breaches of the individual employment agreement and penalties under section 4 of the Employment Relations Act 2000 (the Act).

[9] Mr Song denies the allegations made by Boxster.

The Authority's investigation

[10] For the Authority's investigation written witness statements were lodged by Mr Song and Mr Tsang. All witnesses answered questions under oath or affirmation from me. The representative for Boxster also questioned Mr Song. Boxster's representative and the respondent gave oral closing submissions.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[12] The issues requiring investigation and determination are:

(a) Did Mr Song breach clause 20 of his individual employment agreement and, if so, should a penalty be imposed?

(b) Did Mr Song breach clause 26 of his individual employment agreement and, if so, should a penalty be imposed?

(c) If Mr Song did breach either clause 20 and/or clause 26 of his individual employment agreement, should he be required to pay damages for lost sales incurred by Boxster?

(d) Did Mr Song breach s 4 of the Act by deleting digitally stored information and/or diverting custom away from Boxster and, if so, should a penalty be imposed?

(e) Should either party contribute towards the legal costs of the other party?

Did Mr Song breach clause 20 of his individual employment agreement and, if so, should a penalty be imposed?

[13] Clause 20 of the second fixed term agreement reads:

> **CONFIDENTIAL INFORMATION**
>
> You agree at all times during and after your employment with the Employer: to refrain from directly or indirectly disclosing to a third-party Confidential Information except in the proper course of carrying out your duties; and not to use Confidential Information for any purpose other than for the benefit of the Employer; and to keep confidential all company Confidential Information; and comply with the terms of this agreement unless otherwise required by applicable laws or regulations.

[14] The individual employment agreement defines Confidential Information, the relevant part of this definition follows:

> Confidential information includes financial and business information and all other commercially valuable information.

[15] It is appropriate to anonymise the entity Mr Song was previously engaged by and the names of customers.[1] The company Mr Song was previously engaged by, prior to his employment with Boxster, I shall refer to as X.

[16] According to Mr Song's witness statement, F was initially interested in purchasing Fotile's 3-in-1 sink dishwasher. Mr Song said that F was not a standard retail customer but was acquiring kitchen appliances as part of a construction project.

[17] Mr Tsang says that in a WeChat message sent to F, Mr Song disclosed the value of Boxster's trade discount which was 6%.

[18] On 19 September 2023, Mr Song sent a WeChat message to F which read:

> …you will buy from **[W]** or directly buy from me? Buy from her 6% less…we have offered her the wholesale price.

[19] W operated her own kitchen design company.

[20] In the WeChat message Mr Song advises F that if she brought her kitchen appliances from W's company the price would be "6% less".

[21] Mr Song explains that W's company was offered the wholesale price. Mr Song does not disclose the price or whether it was "6% less" than the retail price.

[22] In the same WeChat thread, F wrote:

> Hope to buy from **[W]**, less expensive.

[23] In reply to this message, W wrote *"good"*.

[24] In his witness statement Mr Song says he did not encourage F to purchase the kitchen appliance from a competing brand. By promoting W's company to F and facilitating a conversation between W and F about kitchen design, Mr Song was aiming to promote Fotiles products and expand its presence in the kitchen design market.

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[1] *MW v Spiga* [2024] NZEmpC 147 at [96].

[25] However, in the WeChat thread, Mr Song went further than facilitating a conversation between W and F about kitchen design. Mr Song disclosed commercially sensitive information concerning Boxster's trade discount and the impact this would have on F if she brought directly from W's company instead of Boxster.

[26] F brought the product from W's company instead of purchasing the product from Boxster. This is because Mr Song had disclosed to F the trade discount W's company had received, and the discount F would receive if she purchased the product from W and not Boxster.

[27] Context is important when considering whether information is confidential in nature. F was not aware of the discount amount. F only decided to purchase the product through W's company as a result of the disclosure by Mr Song.

[28] Mr Song's post referring F to a purchase price of "6% less", if she purchased the product from W's company, was confidential in nature.[2]

[29] The information was commercially sensitive and not available to a competitor. It was commercially valuable information, which is consistent with the definition of confidential information in the individual employment agreement and the common law definition.

[30] Mr Song disclosed confidential information to a third party and therefore breached clause 20 of his individual employment agreement.

[31] A penalty is justified in the circumstances because Mr Song is a senior salesperson with significant experience in this industry. Mr Song was well aware of the sensitive nature of information about trade pricing discounts and the importance of keeping this information confidential.

[32] Section 133A of the Act sets out a number of factors the Authority must have regard to in determining an appropriate penalty. In addition, the full Court in *Borsboom v Preet PVT Ltd* has set out other factors that must be considered when determining a penalty application.[3]

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[2] *Caffe Coffee (NZ) Limited v Farrimond* [2016] NZEmpC 65 at [45].
[3] *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141] – [148].

[33] To determine the quantum of the penalty I will follow the steps set out in *Preet* and consider the application of each statutory factor.[4]

[34] An important object of the Act is the recognition that employment relationships must be built on trust and confidence. Mr Tsang should have been able to trust that Mr Song would not act in a manner that would undermine Mr Tsang's confidence in him.

[35] The nature and extent of the breach is an important factor to consider. Mr Song's breach of his employment agreement was significant because of the nature of the information disclosed. Aggravating features include the fact this information was disclosed to a customer and led to lost sales.

[36] Another relevant factor is the extent of the loss suffered by Boxster. Although the loss was minor, equating to $255.36, Mr Song's action was intentional and undermined trust in the employment relationship.

[37] Mr Song did not take steps to address the breach. Mr Song says there is insufficient evidence to establish he breached his employment agreement and therefore denies the alleged breach.

[38] There is one breach of the individual employment agreement for me to consider. The maximum penalty is $10,000. There are no mitigating factors to consider. The provisional starting point is 20 percent of the maximum penalty available which is $2,000.

[39] There is no evidence before the Authority in respect of Mr Song's ability to pay a penalty. Therefore, no weight is given to this factor.

[40] The proportionality test involves a consideration of the circumstances of the breach, and the harm done, to determine if the penalty is just in all the circumstances.[5]

[41] I have also considered another determination of the Authority which considered a penalty in similar circumstances. The penalty issued that determination was $8,000.[6] However, the facts in this case can be distinguished. Mr Song's disclosure involved

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[4] Above n 2 at [151].
[5] Above n 2 at [188].
[6] *Tradestaff Group Limited v Cheryl Bailey* [2019] NZERA 658.

considerably less information. There isn't any evidence that the information Mr Song disclosed was used by a competitor.

[42] The sum of $2,000 is an appropriate penalty in the circumstances. Mr Song is ordered to pay this sum to Boxster.[7]

Did Mr Song breach clause 26 of his individual employment agreement and, if so, should a penalty be imposed?

[43] Clause 26 of the second fixed term agreement reads:

> 26.1 From the date your employment ends, you agree not to solicit or attempt to solicit business from any client for the duration of eighteen (18) months.
>
> 26.2 During the term of your employment and from the date your employment ends, you agree not to solicit, attempt to solicit, entice or encourage any employee of the Client or the Employer to leave their engagement with the Employer for the duration of eighteen (18) months.
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> 26.3 From the date your employment ends, you agree not to interfere or attempt to interfere with the relationship between the Employer and its Clients, employee or suppliers for the duration of eighteen (18) months.
>
> 26.4 From the date your employment ends, you agree not to engage or prepare to engage in a business that competes with the business of the Employer for the duration of 18 months within 40 kilometres from the location described in item 5 of the Schedule.
>
> 26.5 In this provision Client means any person, firm or company who at any time during the period of 10 months prior to the termination of your employment was a Client of the Employer in respect of the part or parts of the business in which you were employed.
>
> 26.6 The restrictions in this clause apply to conduct which is either direct or indirect (e.g. done through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of any other person or entity.
>
> 26.7 Each of the above obligations are separate and independent obligations. In the event that one or more of the obligations are found to be unenforceable, the remaining obligations will continue to apply.
>
> 26.8 You acknowledge that each of the above restrictions are reasonable and necessary to protect the Employer's legitimate interest.
>
> 26.9 You acknowledge that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this provision.

[7] Employment Relations Act 2000, s 136(2).

[44] Mr Song confirmed that Boxster's client (which I refer to as "C") first reached out to him in November 2023 while he was employed by Boxster.

[45] Boxster's claim is that Mr Song either solicited, interfered or otherwise competed with it, by selling competing products to C in February 2024. In short, Boxster points to each of the restraints set out in clause 26 of the individual employment agreement and says that Mr Song breached all of them.

[46] Mr Song contends the restraint of trade clauses in the individual employment agreement are not enforceable on the basis that a restraint period of 18 months is unreasonable.

[47] A restraint of trade clause will be regarded as unenforceable unless it can be justified as reasonably necessary to protect the proprietary interests of the employer.[8]

[48] All of the restraints set out in clause 26 of the individual employment agreement have a duration of 18 months. The key issue is whether the restraint period of 18 months is reasonable. There is no particular formula for determining whether the duration of a restraint is reasonable.[9]

[49] Reasonableness needs to be considered in the context of the whole agreement between the parties including whether an employer is seeking to protect legitimate interests. The restraints do not refer to any form of proprietary interest that Boxster was aiming to protect.

[50] Mr Song said that C reached out to him on 22 February 2024. Mr Song's employment with Boxster concluded on 19 January 2024.

[51] On 22 February 2024 Mr Song issued C an invoice for Robam products. Mr Song accepts he issued an invoice to C for Robam products and C was a client of Boxster.

[52] Mr Song was a senior salesperson with significant experience and networks in the industry. He promoted a range of kitchen products to customers, including products which were in direct competition with Boxster.

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[8] *Gallagher Group Ltd v Walley* [1999] 1 ERNZ 511 at [20].
[9] *Air New Zealand Limited v Kerr* [2013] NZEmpC 153 at [72].

[53] Taking these factors into account, six months would have been a reasonable restraint period, at least in respect of the non-solicit restraint (clause 26.1). I note that twelve months would have been at the higher end of what has been found to be reasonable by the Court.[10]

[54] Each restraint in clause 26 of the individual employment agreement is unenforceable because the duration period of 18 months for each restraint is unreasonable.

[55] Therefore, the claim made by Boxster in respect of an alleged breach of clause 26 of the individual employment agreement is not upheld.

If Mr Song did breach either clause 20 and/or clause 26 of his individual employment agreement, should he be required to pay damages for loss of sales to Boxster?

[56] Boxster has established that Mr Song breached clause 20 of his individual employment agreement.

[57] Mr Song confirmed in his evidence that F's sale was processed through a company, BK, which was managed by W.

[58] BK purchased products from Boxster and received a trade discount. BK subsequently on-sold these products to F.

[59] F purchased these products from BK because Mr Song had advised F that she would receive a discount of "6% less" if she purchased these products from BK.

[60] There was a causal connection between Mr Song's breach of his employment agreement and Boxster's loss.[11]

[61] Mr Tsang gave evidence at the investigation meeting that the estimated loss of business arising from Mr Song's breach of clause 20 was six percent of $4,256. The figure, $4,256, was the total value of the sale processed by BK and sold to F. This sum is $255.36.

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[10] *Hally Labels Ltd v Powell* [2011] NZEmpC 63 at [99].
[11] *Fleming v Securities Commission* [1995] 2 NZLR 514 (CA) at 524.

[62] The Authority has jurisdiction to award damages for a breach of an individual employment agreement.[12]

[63] Mr Song is ordered to pay Boxster the sum of $255.36.

Did Mr Song breach s 4 of the Act by deleting digitally stored information and/or diverting custom away from Boxster and, if so, whether a penalty should be issued?

[64] In its statement of problem, Boxster has not specifically referred to the common law duty of fidelity and loyalty owed by Mr Song to the business while he was an employee.

[65] Instead, Boxster relies on the statutory duty of good faith outlined in section 4 of the Act. The statutory duty of good faith is wider than the implied mutual obligations of trust and confidence.[13] Good faith incorporates an employee's duty of fidelity and loyalty to their employer. The duty of fidelity and loyalty is broken when there is conduct which undermines the relationship of trust and confidence between an employer and employee.[14]

[66] Boxster seeks a penalty against Mr Song because Boxster believes Mr Song did not act in good faith towards the company. Boxster cites two examples in support of its belief. Firstly, Mr Song deleted digitally stored information from devices provided by Boxster to Mr Song, namely a mobile and laptop. Secondly, Mr Song diverted custom away from Boxster.

Deleting digitally stored information

[67] Boxster instructed Datalab Ltd to complete a forensic investigation of Mr Song's company issued devices. This report was provided to Boxster on 19 June 2024.

[68] For the investigation meeting, Boxster provided all of the WeChat correspondence it was able to locate on the iPhone provided to Mr Song by Boxster. Mr Song returned the iPhone to Boxster after his employment had ended.

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[12] *Credit Consultants Debt Services NZ Ltd v Wilson* [2007] ERNZ 205 at [15].
[13] Employment Relations Act 2000, s 4(1A)(a).
[14] *Caffe Coffee (NZ) Limited v Farrimond* [2016] NZEmpC 65 at [35].

[69] The WeChat correspondence on the iPhone refers to two WeChat accounts: William Fotile (a business WeChat account) and William's personal WeChat account.

[70] In his evidence, Mr Tsang said that customers knew Fotile brand. Boxster was a trading name that customers would not have been aware of. Fotile is a very prominent high-end kitchen appliance brand and is a market leader in China. Boxster was simply the name of Mr Tsang's business. Customers ultimately interacted with Fotile.

[71] Each salesperson who worked for Boxster had their own WeChat business account.

[72] The WeChat communications on Mr Song's iPhone covered the period 15 April 2023 to 7 March 2024. Mr Tsang was concerned that for this twelve-month period, there were only WeChat records in respect of ten customers on Mr Song's iPhone when it was retrieved by the company.

[73] Mr Tsang was concerned that potentially 140 customer records had been deleted.

[74] The Datalab report confirmed that two Microsoft Word documents holding WeChat records were created on 3 August and 15 October 2023 respectively. Both documents had been deleted by the time Mr Tsang received the laptop from Mr Song.

[75] On or about 14 April 2024 the user profile "William", used on the laptop, had been deleted and replaced with a new profile of the same name.

[76] The author of the Datalab report was not able to determine whether customer records and communications on WeChat had been deleted by Mr Song. Mr Song denied deleting customer records and communications from WeChat.

[77] The author of the Datalab report was able to confirm that Mr Song's profile had been deleted, and a new profile created, on 14 April 2024, approximately three months after Mr Song's employment had finished.

[78] On the balance of probabilities, I find Mr Song deleted digitally stored information from the iPhone WeChat business account and deleted company information from his laptop. My reasons follow:

(a) The WeChat records for a period of approximately 12 months only exist in respect of ten customers. Given the extensive use of WeChat to engage with customers and discuss products, something that all Boxster sales representatives did, limited WeChat communications left on the recovered iPhone in respect of ten customers suggests other records had been deleted.

(b) I accept Ms Tsang's evidence that Boxster's sales team used WeChat extensively to engage with customers, and based on Boxster's customer records Mr Song would have been engaging with approximately 140 customers at the time his employment with Boxster concluded.

(c) Mr Song's laptop profile was deleted and recreated on 14 April 2024.

Diverting custom away from Boxster

[79] X sells Robam kitchen appliances. Robam products, sold by X, are in direct competition with Fotile products, sold by Boxster.

[80] Initially, Boxster made a claim against X on the basis that X aided and abetted the breaches of Mr Song's employment agreement by engaging him to sell Robam products whilst employed by Boxster.

[81] This claim was subsequently withdrawn on the basis that X and Boxster reached an agreement and concluded a Memorandum of Understanding (MOU). X and Boxster expressly agreed the MOU was not confidential and the Authority could have regard to it as part of its investigative process.

[82] Prior to being employed by Boxster, Mr Song worked as an independent contractor for X. Mr Song contracted to X through a company by the name of Chiwi Media Limited. Mr Song was the director of this company.

[83] Mr Song says that his contract with X concluded in April 2023, prior to employment commencing with Boxster.

[84] Boxster says that Mr Song continued to undertake work for X whilst he was employed by Boxster. In the MOU, X records:

> We sought specific clarification from William Song that Boxster was aware of the continuing contractual relationship between William Song and **[X].** William Song

> assured **[X]** that Boxster was fully aware Mr Song received commission on any subsequent sales for **[X].**

[85] Mr Song's evidence is that he did not engage in any active sales on behalf of X whilst employed by Boxster. Mr Song says that on isolated occasions, and only when clients explicitly indicated that Fotile products did not meet their requirements, he exercised professional discretion and suggested alternative options.

[86] Mr Song says that he would only occasionally invite customers or friends to consider Robam products, if Fotile products were not suitable.

[87] In the WeChat correspondence, Mr Song recommends Robam products to customers. In the same correspondence Mr Song mentions that customers could "buy from me", and he provides his personal WeChat account details. Mr Song discusses the discounts customers would receive if they brought Robam products or purchased through alternative suppliers.

[88] There is sufficient evidence to establish that Mr Song diverted custom away from Boxster whilst he was an employee.

Section 4 of the Act – should a penalty be imposed?

[89] Mr Song deleted digitally stored information and diverted custom away from Boxster. Boxster seeks penalties under section 4 of the Act against Mr Song.

[90] In the context of this employment relationship problem, s 4A of the Act provides a party to an employment relationship who fails to comply with the duty of good faith in section 4(1) of the Act is liable to a penalty if the breach was intended to undermine the employment relationship.[15]

[91] Firstly, I consider the deletion of digitally stored data. Mr Tsang says that the sales team at Boxter use WeChat to engage with customers, discuss product options, and sell Fotile products. The impact of losing WeChat records meant that Boxster was not able to follow up pending customer enquiries. Boxster places significant trust in their sales team to maintain and hold onto WeChat records. If a sales representative concludes their employment with Boxster, then another sales representative would be able to carry on conversations with customers using WeChat records and conversations.

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[15] Employment Relations Act 2000, s 4A(b)(iii).

[92] WeChat is a significant sales tool. Mr Song's decision to delete WeChat records had the effect of undermining the employment relationship. It significantly effected Mr Tsang's ability to manage and follow-up the customers who were part of Mr Song's network. Mr Song's breach of good faith undermined the employment relationship.

[93] According to the Datalab report, the user profile "William" had been deleted and replaced with a new profile on or about 14 April 2024.

[94] However, the duty of good faith only operates while the employment relationship is on foot. There is insufficient evidence to support the conclusion that customer information retained on Mr Song's work issued iPhone was deleted while he was employed by Boxster.

[95] The duty of good faith only operates while the employment relationship is on foot.

[96] Mr Song was not required to act in good faith towards Boxster after the employment relationship had come to an end.

[97] Therefore, Mr Song's alleged breach of s 4 of the Act by deleting digitally stored information has not been established.

[98] Secondly, I consider Mr Song's actions in diverting customers away from Boxster.

[99] Mr Song says that he promoted Robam and other products occasionally because Fotile products did not always meet the needs of customers. However, Mr Song also provided customers with his private WeChat account details and promoted Robam, a major kitchen appliance brand which directly completes with Fotile products. I have reviewed the WeChat messages and record a sample of some of the conversations Mr Song had with clients.

[100] The duty of good faith required Mr Song to be communicative with Boxster about the referrals he was making to competitors.

[101] In a WeChat conversation Mr Song mentions to S that she can buy the appliances from W and would receive a "better offer for both Fotile and Robam products".[16]

[102] In another WeChat conversation, Mr Song advises a customer he has worked for Robam, knows both products, and notes he can provide the details for both brands. He tells the same customer about a discount they would receive if they brought Robam products from a competitor.

[103] Mr Song diverted custom away from Boxster. Mr Song is adamant that he did not receive any form of referral fee. Mr Song says he did not undertake any work for X after he commenced employment with Boxster. However, there is significant WeChat material correspondence which confirms Mr Song promoted and was involved with the supply of Robam products whilst employed by Boxster.

[104] The WeChat examples I have considered, involve situations where Mr Song has promoted Robam products to Boxster customers and advised them they would receive a better price if they brought Robam products.

[105] In diverting customers away from Boxster, Mr Song breached his statutory obligation to deal with Boxster in good faith.

[106] Mr Song is liable to a penalty because the breach of the duty of good faith intended to undermine the employment relationship.[17] This is because Boxster should have been able to rely on Mr Song's obligation to promote Boxster's products to its customers. Mr Song diverted custom away from Boxster. In addition, Mr Song did not disclose to Boxster the fact that he was making referrals to competitors. All of these actions support the conclusion that Mr Song intended to undermine the employment relationship.

Quantum of penalties – section 4 of the Act

[107] In determining a penalty for a breach of section 4 of the Act, it is appropriate the adopt the same approach discussed earlier in the determination when considering a penalty for a breach of Mr Song's employment agreement.

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[16] Respondent Bundle of Documents, WeChat, 29 May 2023.
[17] *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71 at [51].

[108] To determine the quantum of the penalty I will follow the steps set out in *Preet* and consider the application of each statutory factor.[18]

[109] The maximum penalty for an individual breach of section 4 of the Act is $10,000.

[110] Although WeChat conversations provided significant evidence Mr Song was promoting and recommending other products and brands whilst employed by Boxster, Mr Song said he was only advising customers of the range of products available.

[111] Mr Song says he remained loyal to Boxster as his employer.

[112] However, Mr Song's behaviour led to customers buying products from competitors and not from his employer. This is evident from the WeChat records supplied to the Authority. The WeChat evidence provides examples of Mr Song recommending other kitchen appliance brands to customers and advising customers when visiting the kitchen appliance store of a competitor they should use his name to obtain a discount. Other examples include Mr Song promoting W's company and the discounted price a customer would receive if they brought products from W's company instead of Boxster. On one occasion Mr Song advises a customer he can sell a competitor's product directly to them.

[113] In his witness statement Mr Song says that when recommending Fotile products to customers he primarily used WeChat as his method of communication.

[114] It is clear from the WeChat records that Mr Song advised customers they would obtain a better price if they didn't purchase Fotile products from Boxster. Aggravating features include, Mr Song providing his personal WeChat details to customers on occasions, promoting the discounts associated with competing brands, and on occasion advising customers to mention his name when purchasing Robam products.

[115] The provisional starting point is 30 percent of the maximum penalty which is $3,000. This sum is proportionate to the circumstances of the case. Mr Song's behaviour caused Boxster to lose sales, which, given the amount of information deleted from WeChat is difficult to quantify.

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[18] Above n 2 at [151].

[116] I order Mr Song to pay Boxster the sum of $3,000 as a penalty for breaching section 4 of the Act in respect of him diverting custom away from Boxster.

Special Damages

[117] Boxster seeks $6053.60 in special damages for the forensic work undertaken by Datalab. The invoices provided to the Authority support the conclusion this expense incurred by Boxster was necessary, reasonable and properly incurred. It was reasonable for Boxster to undertake this forensic analysis of Mr Song's devices given its concerns about deleted data on both the laptop and iPhone.

[118] Mr Song is ordered to pay Boxster the sum of $6053.60 in special damages.

Orders

[119] Within 21 days of the date of this determination I order:

(a) Mr Song pays Boxster the sum of $255.36 in lost sales; and

(b) Mr Song pays Boxster the sum of $2,000 for breaching his individual employment agreement; and

(c) Mr Song pays Boxster the sum of $3,000 in respect of one breach of section 4 of the Act; and

(d) Mr Song pays Boxster the sum of $6053.60 in respect of special damages.

Costs

[120] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[121] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Boxster may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Mr Song will then have 14 days to lodge any reply memorandum.

[122] On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[123] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment upwards or downwards.[19]

Simon Greening
Member of the Employment Relations Authority

[19] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.