

**IN THE HEARINGS AND MEDIATION DEPARTMENT OF THE  
INTELLECTUAL PROPERTY OFFICE OF SINGAPORE**

**[2023] SGIPOS 8**

Trade Mark Nos. T9712703Z and T9712704H

**IN THE MATTER OF REGISTERED TRADE MARKS  
IN THE NAME OF**

**UNI-DRIVE SYSTEMS (S) PTE LTD**

*... Proprietor*

**AND**

**APPLICATIONS FOR REVOCATION BY  
NIDEC CONTROL TECHNIQUES LIMITED**

*... Applicant*

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**FOUNDATIONS OF DECISION**

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## TABLE OF CONTENTS

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<b>INTRODUCTION.....</b>	<b>1</b>
<b>BACKGROUND FACTS .....</b>	<b>2</b>
<b>PROCEDURAL HISTORY .....</b>	<b>2</b>
<b> GROUNDS OF REVOCATION .....</b>	<b>7</b>
<b>APPLICANT’S EVIDENCE.....</b>	<b>7</b>
<b>PROPRIETOR’S EVIDENCE .....</b>	<b>7</b>
<b>APPLICABLE LAW AND BURDEN OF PROOF .....</b>	<b>8</b>
<b>GROUND OF REVOCATION UNDER SECTION 22(1)(A) AND (B) .....</b>	<b>8</b>
<b>GROUND OF REVOCATION UNDER SECTION 22(1)(B) .....</b>	<b>11</b>
THE “WHEN” ISSUE: WHETHER THE MARKS HAVE BEEN USED DURING THE RELEVANT TIME PERIODS DEFINED BY THE STATUTE .....	11
THE “WHAT” ISSUE: WHETHER THERE HAS BEEN USE OF THE MARKS, EITHER IN THE FORMS IN WHICH IT HAVE BEEN REGISTERED OR IN FORMS WHICH DO NOT ALTER THE DISTINCTIVE CHARACTER OF THEIR REGISTERED FORMS. ....	13
THE “WHICH” ISSUE: WHETHER THE MARKS HAVE BEEN USED IN RELATION TO THE GOODS FOR WHICH THE MARKS HAVE BEEN REGISTERED .....	21
THE “WHERE” ISSUE: WHETHER THE MARKS HAVE BEEN USED IN SINGAPORE .....	23
TYPES OF USE UNDER SECTION 27(4) .....	25
PARTIAL REVOCATION UNDER SECTION 22(6).....	26
ASSESSING THE EVIDENCE.....	28
<i>Different types of use .....</i>	<i>28</i>

<i>Use in relation to each type of good</i> .....	43
<b>CONCLUSION ON SECTION 22(1)(B)</b> .....	<b>57</b>
<b>OVERALL CONCLUSION</b> .....	<b>59</b>
<b>COSTS</b> .....	<b>59</b>

# Nidec Control Techniques Limited

v

## Uni-Drive Systems (S) Pte Ltd

[2023] SGIPOS 8

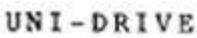
Trade Mark Nos. T9712703Z and T9712704H  
Principal Assistant Registrar Sandy Widjaja  
15 February 2023

27 April 2023

**Principal Assistant Registrar Sandy Widjaja:**

### Introduction

1 This is a revocation action against the following marks (collectively, “*Proprietor’s Marks*”):

<i>S/N</i>	<i>Proprietor’s Marks</i>	<i>Goods</i>
1		Class 7: Power transmission apparatus, mechanisms and parts (other than for land vehicles); power transmission apparatus for machines, power transmission belts, power transmission couplings for machines, power transmission systems for machine tools; drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms; belts for machines, conveyors, motors and engines; pulleys, timing belt pulleys; sprockets for machines; shaft couplings, coupling machines, couplings devices (non-electric) for machines, engines and motors; chain conveyors, chain
	Trade mark number: <b>T9712703Z</b> Date of Completion of Registration: 10 July 2007 (“ <i>Word Mark 1</i> ”)	
2		Class 7: Power transmission apparatus, mechanisms and parts (other than for land vehicles); power transmission apparatus for machines, power transmission belts, power transmission couplings for machines, power transmission systems for machine tools; drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms; belts for machines, conveyors, motors and engines; pulleys, timing belt pulleys; sprockets for machines; shaft couplings, coupling machines, couplings devices (non-electric) for machines, engines and motors; chain conveyors, chain
	Trade mark number: <b>T9712704H</b> Date of Completion of Registration: 31 July 2007	

	( <b><i>Device Mark 1</i></b> )	transmissions other than for land vehicles; brake motors; electrical motors (other than for land vehicles); all included in class 7 (collectively, " <b><i>Class 7 specifications</i></b> ").
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### Background facts

2 Nidec Control Techniques Limited ("***Applicant***") deposed that it is a leading manufacturer of AC and DC variable speed drives ("***VSDs***") and servo drives, as well as power conversion technologies, amongst others.<sup>1</sup> The ***Applicant*** supplies these goods for use in industrial applications, including elevators, crane systems and pump compressors.<sup>2</sup>

3 Uni-Drive Systems (S) Pte Ltd ("***Proprietor***") was established in 1987. The ***Proprietor*** deposed that since its formation, it has steadily grown into a leading distributor and exporter of mechanical power transmission and related hardware products. Currently, it has an international clientele spanning Asia (including Singapore), the Middle East, India, Europe, Australia, New Zealand and the United States.<sup>3</sup>

### Procedural history

4 The ***Applicant*** filed a declaration for revocation for each of the ***Proprietor's Marks*** on 9 October 2020. The ***Proprietor*** filed the corresponding counter-statements ("***Amended CS***") as well as evidence of use on 29 December 2020. Following the case management conference on 15 March 2021, parties

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<sup>1</sup> ***Applicant's*** evidence dated 13 October 2021 at [5] (see below). I discuss what these goods refer to in greater detail below.

<sup>2</sup> ***Applicant's*** evidence dated 13 October 2021 at [5].

<sup>3</sup> ***Proprietor's*** evidence in relation to each of the ***Proprietor's Marks*** dated 28 December 2020 at [4] (see below).

agreed to consolidate the two cases on 29 March 2021.

5 The **Applicant** filed its evidence on 5 November 2021. The **Proprietor** filed its response on 9 May 2022. On 7 June 2022, the **Proprietor** filed amended counter-statements,<sup>4</sup> clarifying that following Section 22(3) of the Trade Marks Act 1998 (“**Act**”), the requirement to show use in the first period<sup>5</sup> can be disregarded as long as satisfactory use can be shown for any period succeeding the first period and prior to the date of application for revocation, namely, the second period.<sup>6 7 8</sup> The **Applicant** did not file any evidence in reply.

6 The Pre-hearing Review was held on 9 August 2022 and the consolidated matter was heard on 15 February 2023. The **Proprietor** was directed to file supplementary evidence<sup>9</sup> and the same was submitted on 21 February 2023.

7 To complete the picture, the **Applicant** filed this revocation action *in response* to the **Proprietor’s Marks** being cited by the IPOS Registry of Trade Marks (“**RTM**”) as part of the examination process for the **Applicant’s** mark as follows:<sup>10</sup>

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<sup>4</sup> The Amended Counter-Statements.

<sup>5</sup> 11 July 2007 to 10 July 2012 inclusive and 1 August 2007 to 31 July 2012 inclusive respectively, more below.

<sup>6</sup> 9 October 2015 to 8 October 2020 inclusive (see below).

<sup>7</sup> [4(c)] of the Amended Counter-Statement in relation to each of the **Proprietor’s Marks** dated 26 May 2022.

<sup>8</sup> Note that this is subject to Sections 22(3) and (4) (see below).

<sup>9</sup> This mainly pertains to definitions of certain specifications.

<sup>10</sup> **Applicant’s** written submissions (“**AWS**”) at [4].

<i>S/N</i>	<i>Applicant's mark</i>	<i>Specification</i>
1	<p><b>UNIDRIVE</b></p> <p>Trade Mark Number 40201613129V</p>	<p>Class 7</p> <p>Drives for motors and machines; drives for manufacturing automation applications; electric motors, namely AC (alternating current) motors not for land vehicles; DC (direct current) motors not for land vehicles; electronic rotary converters; AC (alternating current) motors; AC (alternating current) electrical drives for machines; servomotors, servo-mechanisms, moving coil servomotors, AC (alternating current) servomotors, servomotors (other than for land vehicles), electric motors for machines with a digital servo drive controller; DC (direct current) electrical motors; DC (direct current) electrical drives for machines; drives for vacuum pumps; electrically powered machines; drive mechanisms; drive machines; drives for machines; drives for elevators; drives for conveyors; variable speed drives for machines; drive units, other than for land vehicles; motor drive units (other than for land vehicles); motor drive mechanisms (other than for land vehicles); electric drives for motors (other than for land vehicles); electrical drives for machines with a digital servo drive controller; linear motors; gearboxes for speed, torque and position control; starters for electric motors; parts and fittings for all the aforesaid goods.</p> <p>Class 9</p> <p>Electrical and electronic apparatus and instruments, all for the control of electric motors; alternating to DC (direct current) rectifiers, mains power supply units, and switched</p>

		<p>mode power supplies; DC (direct current) converters, voltage stabilisers and linear regulators; DC to AC (direct current to alternating current) inverters; AC (alternating current) transformers, voltage converters, voltage regulators, cycloconverters, and variable frequency transformers; drives that are used to control motors in applications such as manufacturing automation, manufacturing processes, HVAC and pumps; rotary electrical transformers for use on machines; industrial controls and industrial sensors; software; software for the operation and control of power electronic drives, servos and converters; software for configuring, monitoring, analysing, regulation of and interface with power electronic drives, servos and converters; electronic controllers for motors and machine tools; electronic positioning controllers for servo motors; servo amplifiers; motion control instrumentation; programmable logic control instrumentation; speed and position feedback devices; motion controllers; programmable electrical AC, DC and servo drives for controlling industrial and commercial machines and apparatus; safety devices for industrial converters and controllers; input/output switches and industrial PCs, remote terminal units; human machine interfaces; electric inverters; safety devices; electric cables; electromagnetic compatibility (EMC) filters; electric filters for the suppression of electrical noise and radiation; encoders for use on machines; parts and fittings for all of the aforesaid goods.</p>
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8 In addition, the *Applicant* is also opposing the *Proprietor's* following marks:<sup>11</sup>

S/N	<i>Proprietor's marks</i>	<i>Specification</i>
1	 <p>Trade mark number 40202025813R (<i>"Device Mark 2"</i>)</p>	<p>Class 7</p> <p>Power transmission apparatus, mechanisms and parts (other than for land vehicles); power transmission apparatus for machines, power transmission belts, power transmission couplings for machines, power transmission systems for machine tools; drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms; belts for machines, conveyors, motors and engines; pulleys, timing belt pulleys; sprockets for machines; shaft couplings, coupling machines, couplings devices (non-electric) for machines, engines and motors; chain conveyors, chain transmissions other than for land vehicles; brake motors; electrical motors (other than for land vehicles); all included in class 7.</p>
2	 <p>Trade mark number 40202025814Q (<i>"Device Mark 3"</i>)</p>	<p>Class 7</p> <p>Power transmission apparatus, mechanisms and parts (other than for land vehicles); power transmission apparatus for machines, power transmission belts, power transmission couplings for machines, power transmission systems for machine tools; drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms; belts for machines, conveyors, motors and engines; pulleys, timing belt pulleys; sprockets for machines; shaft couplings, coupling</p>

<sup>11</sup> AWS at [4].

		machines, couplings devices (non-electric) for machines, engines and motors; chain conveyors, chain transmissions other than for land vehicles; brake motors; electrical motors (other than for land vehicles); all included in class 7.
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9 It will become apparent that the *Proprietor* is also relying on both *Device Mark 2* and *Device Mark 3* in the current revocation action following Section 22(2) (see below).

### Grounds of Revocation

10 The *Applicant* relies on Sections 22(1)(a) or (b) of the *Act* in this revocation action.

### Applicant's evidence

11 The *Applicant's* evidence comprises the statutory declaration of Mr Miles Andrew Ackerman, Director and Chief Financial Officer of the *Applicant*, dated 13 October 2021 ("*Applicant's SD*").

### Proprietor's evidence

12 The *Proprietor's* evidence comprises the following:

- (a) a statutory declaration made by Mr Ong Swee Whatt, Chief Executive Director of the *Proprietor* ("*Mr Ong*"), dated 28 December 2020 in relation to *Word Mark 1* ("*Proprietor's 1<sup>st</sup> SD*");
- (b) another statutory declaration by the same *Mr Ong*, also dated 28 December 2020 in relation to *Device Mark 1* ("*Proprietor's 2<sup>nd</sup> SD*");

(c) another statutory declaration by the same **Mr Ong**, dated 6 May 2022 (“**Proprietor’s 3<sup>rd</sup> SD**”); and

(d) the final statutory declaration by the same **Mr Ong**, dated 21 February 2023 (“**Proprietor’s 4<sup>th</sup> SD**”).

### **Applicable law and burden of proof**

13 Following Section 105 of the *Act*, the undisputed burden of proof in the present case falls on the **Proprietor**.

### **Ground of Revocation under Section 22(1)(a) and (b)**

14 Section 22(1)(a) and (b) of the *Act* read:

22.—(1) The registration of a trade mark may be revoked on any of the following grounds:

(a) that, within the **period of 5 years following the date of completion of the registration procedure**, it has not been put to **genuine use** in the course of trade in Singapore, by the proprietor or with the proprietor’s consent, **in relation to the goods or services** for which it is registered, and there are no proper reasons for non-use;

(b) that **such use** has been **suspended for an uninterrupted period of 5 years**, and there are no proper reasons for non-use...

[Emphasis in bold and italics mine]

15 I will deal with the issues raised in relation to the law as well as the evidence first, before applying the law to the evidence.

16 The Principal Assistant Registrar (“**PAR**”) in *Lisbeth Enterprises Limited v Proctor & Gamble International Operations SA* [2015] SGIPOS 6 (“**Lisbeth**”) has set out the framework to determine whether there has indeed

been genuine use of the marks within the meaning of Section 22(1)(a).<sup>12</sup> In essence, “[i]n a revocation for non-use, the questions to be asked revolve around the “where”, “when”, “which”, “who” and “what””.<sup>13</sup> That is:<sup>14</sup>

- (a) the “Where” issue: whether the marks have been used *in Singapore*;
- (b) the “When” issue: whether the marks have been used *during the relevant time periods* defined by the statute;
- (c) the “Which” issue: whether the marks have been used in relation to the goods for which the marks have been registered;
- (d) the “Who” issue: whether the marks have been used *by the Proprietor* or with his consent; and
- (e) the “What” issue: whether there has been use of the marks, either in the form in which it has been registered or in forms which do not alter the distinctive character of their registered forms.

17 For the current case, item (d) is not in issue.

18 The justification for an action under Section 22(1)(a) and (b) has been provided by VK Rajah JA (as he then was) in *Weir Warman Ltd v Research & Development Pty Ltd* [2007] 2 SLR(R) 1073 (“**Weir Warman**”):<sup>15</sup>

[41] It is plain that the trade mark register is intended to be a comprehensive and accurate record of trade marks currently in

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<sup>12</sup> The *Proprietor’s* written submissions (“*PWS*”) at [19].

<sup>13</sup> *Lisabeth* at [16].

<sup>14</sup> *PWS* at [19].

<sup>15</sup> *AWS* at [10].

use. As such, it is **crucial to maintain the accuracy of the register** and to ensure that undeserving and invalid trade marks are removed from the register without undue delay and complication...

[42] ...the register is also meant to **notify rival traders** dealing in similar products of the rights over particular trade marks possessed by the registered proprietor. As such, it is also important that these registered marks be in actual use or be bona fide intended to be used by the registered proprietors...

[Emphasis in bold and italics mine]

19 Further, the following principles are relevant for the assessment of genuine use (see *Tan Tee Jim, Law on Trade Marks in Singapore, 4<sup>th</sup> Edition, 2021* at [9.017]):<sup>16</sup>

(1) Genuine use means **actual use** of the trade mark by the proprietor or by a third party with his consent.

(2) The use must be **more than merely “token”** — that is, serving solely to preserve the rights conferred by the registration of the mark.

(3) The use must be consistent with the **essential function** of the trade mark — that is, to **guarantee the trade origin** of the goods or services in question.

...

(5) The use must be by way of **real commercial exploitation** of the mark on the market for the relevant goods or services - that is, use in accordance with the commercial *raison d’etre* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark.

(6) All the **relevant facts and circumstances must be taken into account** in determining whether there is real commercial exploitation of the mark, including, in particular, whether the use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services in question, the nature of the goods or services concerned, the characteristics of the market concerned, the scale and frequency of the use of the mark, whether the mark is used for the purpose of marketing all the goods or services

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<sup>16</sup> This is the equivalent paragraphs to that relied by the Proprietor at *PWS* [24].

covered by the mark or just some of them and the evidence that the proprietor is able to provide.

(7) Use of the mark ***need not be quantitatively significant*** for it to be deemed genuine. ***There is no de minimis rule.*** Even minimal use of the mark can amount to genuine use, if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services...

[Emphasis in bold and italics mine].

20 In summary, there is “***no one single objective formula*** which applies to all situations that can be laid down; much would depend on the fact situation in each individual case” (emphasis in bold and italics mine).<sup>17</sup>

### Ground of Revocation under Section 22(1)(b)

*The “When” issue: whether the marks have been used during the relevant time periods defined by the statute*

21 I will address the “Where” issue last to facilitate the flow of my analysis.

22 For the “When” issue, the relevant periods are as follows:<sup>18</sup>

<i>S/N</i>	<i>Proprietor’s Marks</i>	<i>Relevant Periods</i>	<i>Section</i>
1	UNI-DRIVE	11 July 2007 to 10 July 2012 inclusive <sup>19</sup>	22(1)(a)

<sup>17</sup> PWS at [25] referring to *Wing Joo Loong Ginseng Hong (Singapore) Co Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 (“*Wing Joo Loong*”) at [43].

<sup>18</sup> At [17] PWS (more below).

<sup>19</sup> The *Proprietor* confirmed at the oral hearing that this is the correct period rather than “10 July 2007 to 9 July 2012 inclusive”; see also [4(a)] of *Amended CS* in relation to *Work Mark 1*.

		9 October 2015 to 8 October 2020 inclusive	22(1)(b)
2		1 August 2007 to 31 July 2012 inclusive <sup>20</sup>	22(1)(a)
		9 October 2015 to 8 October 2020 inclusive	22(1)(b)

23 The *Proprietor* argued that the important period is **9 October 2015 to 8 October 2020 inclusive**.<sup>21</sup> This is because Section 22(3) reads:

22(3) The registration of a trade mark **must not be revoked** on the ground mentioned in **paragraph (a) or (b)** of subsection (1) if such use as is referred to in that paragraph is **commenced or resumed after** the expiry of the 5 year period and **before** the application for revocation is made.

[Emphasis in bold and italics mine]

24 Further, Section 22(4) reads:

22(4) Any commencement or resumption of use referred to in subsection (3) after the expiry of the 5 year period but within the period of **3 months before the making of the application for revocation** must be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

[Emphasis in bold and italics mine]

25 Thus, the *Proprietor* submitted:

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<sup>20</sup> The *Proprietor* confirmed at the oral hearing that this is the correct period rather than “31 July 2007 to 30 July 2012 inclusive”; see also [4(a)] of *Amended CS* in relation to *Device Mark 1*.

<sup>21</sup> For the avoidance of doubt, the *Proprietor* also tendered evidence in relation to the period 11 July 2007 to 10 July 2012 inclusive as well as 1 August 2007 to 31 July 2012 inclusive. However, since the period 9 October 2015 to 8 October 2020 inclusive is the *overlapping period* for the *Proprietor’s Marks*, it is more convenient to rely on it.

[41] It is sufficient for the [**Proprietor**] to show that there was genuine use of the [**Proprietor's Marks**] **three (3) months prior to the filing date of the applications...even if** (which is denied) genuine use is not shown in the respective first alleged periods of non-use [that is “11 July 2007 to 10 July 2012 inclusive” and “1 August 2007 to 31 July 2012 inclusive”].

[42] Consequently, as long as the [**Proprietor**] can prove genuine use of the [**Proprietor's Marks**] in the 5-year period **before July 2020**, the applications must fail.

[Emphasis in bold and italics mine]

26 While it would have been *ideal* for the **Proprietor** to be consistent in its submissions, I am of the view that it does *not* materially affect the **Proprietor's** case here as there is sufficient evidence to support use of the **Proprietor's Marks** for either periods, that is, “9 October 2015 to 8 October 2020 inclusive” or “9 July 2015 to 8 July 2020 inclusive”. For my purposes, out of an abundance of caution, I will rely on use during the period of “**9 July 2015 to 8 July 2020 inclusive**” (“**Relevant Period**”).<sup>22</sup>

27 For clarity, the framework as per **Lisbeth** is also applicable for Section 22(1)(b).

*The “What” issue: whether there has been use of the marks, either in the forms in which it have been registered or in forms which do not alter the distinctive character of their registered forms.*

28 As alluded to above, the **Proprietor** is also relying on the following marks / variants:<sup>23</sup>

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<sup>22</sup> Similarly, while the **Proprietor's** evidence refers to the period “9 October 2015 to 8 October 2020 inclusive” (see for example, **Proprietor's 2<sup>nd</sup> SD** at [9]), this does not materially affect the **Proprietor's** case here. Specifically, I have verified that all the references to the **Proprietor's** evidence here falls *within* the **Relevant Period**.

<sup>23</sup> **PWS** at [37].

S/N	Proprietor's Marks	Comments
1		<ul style="list-style-type: none"> <li>The specifications for each mark are identical to that for the <b>Word Mark 1</b> and <b>Device Mark 1</b> respectively.</li> <li>Each mark is registered as a <b>series</b> which means that the colours <b>do not</b> play a major part and that the marks should in essence be assessed as black and white marks.<sup>24</sup></li> </ul>
	<i>Device Mark 2</i>	
2		
	<i>Device Mark 3</i>	

29 The **Proprietor** argued that the above marks can be taken into account as they “do not contain alterations” that change [**Device Mark 1’s**] distinctive character. Section 22(2) reads:

22(2) For the purposes of subsection (1), use of a trade mark **includes** use in **a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered**, and use in Singapore includes applying the trade mark to goods or to materials for the labelling or packaging of goods in Singapore solely for export purposes...

[Emphasis in italics mine]

30 Specifically, the **Proprietor** submitted:

[63] ...there are **two distinctive elements** to [**Device Mark 1**]. **One**, the combination of the words “UNI-DRIVE” which in its ordinary meaning is meaningless and not descriptive of [**Class**

<sup>24</sup> This means that the registrability of the mark is considered in relation to ALL colours (see the IPOS Trade Marks Manual (“**TMWM**”) at Part 3(d) of Chapter 2, which pertains to *Colour Marks*):

**3(d) Black-and-white representations**

...the mark is taken to have been used regardless of whether it appears in colour(s) or it appears in black-and-white as long as the representation conforms to the template or pattern of the mark as registered.

**7 specifications**]. In particular, a search on the Singapore Trade Marks Register will show that only the...**Proprietor** holds the exclusive rights to the combination of the words “UNI” and “DRIVE”.



[64] **Two**, the element (the “**U Device**”), which is a gear enveloped by a large letter “U”.

[65] The difference between [**Device Mark 1**] and [**Device Mark 3**] is that the U Device is **further encased in a gear** i.e. there is an addition of the gear.

[66] ...[**Device Mark 1**] and the [**Device Mark 2**] differ in that the **U Device now doubles as the letter “U”**, but the word “UNI-DRIVE” still exists.

[67] These differences **do not alter the distinctive characters** of [**Device Mark 1**] in any way whatsoever... In both **Device Marks 2 and 3**, there are **no shifts** in the placement of the elements...Importantly, “UNI-DRIVE” still appears in both of the **Device Marks 2 and 3**.

[Emphasis in bold and italics mine]

31 The **Applicant** did not make any direct submissions in relation to the issue above, except to say that **Device Mark 2** and **3** respectively is used as a company name rather than as a trade mark.

32 I agree with the **Proprietor** that the two marks “do not contain alterations” that change **Device Mark 1**’s distinctive character.<sup>25</sup> I come to this conclusion applying the 3-step test in *The Patissier LLP v Aalst Chocolate Pte Ltd* [2019] SGIPOS 6 (“**Patissier**”).<sup>26</sup>

33 In short, “[i]n my view, the distinctive character of [**Device Mark 1**], in the form in which it has been registered, resides in the combination or collocation of these **two** distinctive components within a single composite

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<sup>25</sup> **PWS** at [57] – [70].

<sup>26</sup> **Patissier** at [52].

mark”,<sup>27</sup> namely the “U and gear” device as well as the word “Uni-Drive” as follows:<sup>28</sup>



34 In the same vein, the *two* distinctive components, that is the “U and gear” device and the word “Uni-Drive”, are also present in *Device Mark 3*:



35 The only *difference* between *Device Mark 1* and *Device Mark 3* is that the “U and gear” device is now “further encased in a gear”.<sup>29</sup>

36 Similarly, the *two* distinctive components, that is the “U and gear” device and the word “Uni-Drive”, are also present in *Device Mark 2*. The only *difference* between *Device Mark 1* and *Device Mark 2* is that the “U and gear” device now “doubles as the letter “U””:<sup>30</sup>



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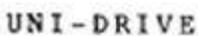
<sup>27</sup> *Patissier* at [54].

<sup>28</sup> [63] – [64] *PWS*.

<sup>29</sup> *PWS* at [65].

<sup>30</sup> *PWS* at [66].

37 In light of the above, my analysis will be focussed on the *following marks* in relation to the *Class 7 specifications* for the *Relevant Period* under Section 22(1)(b):

S/N	<i>Proprietor’s Marks</i>	<i>Comments</i>
1	 <i>Word Mark 1</i>	
2	 <i>Device Mark 1</i>	Use in relation to <i>any</i> of the marks is considered use of the <i>Device Mark 1</i>
	 <i>Device Mark 2</i>	
	 <i>Device Mark 3</i>	

38 In addition to the above, one of the issues to be resolved is whether the use of the *Proprietor’s* corporate name amounts to genuine use of its trade marks. It is obvious that the *Proprietor’s* corporate name bears *Word Mark 1*, that is, “*Uni-Drive* Systems (s) Pte Ltd”.<sup>31</sup>

39 The *Proprietor* argued that use of *Proprietor’s* corporate name amounts to genuine use of the *Proprietor’s Marks*.<sup>32</sup> The *Proprietor* relied on the

<sup>31</sup> At [44] *PWS*.

<sup>32</sup> At [43] – [56] *PWS*.

European Union Intellectual Property Office case of *Fernando Rodríguez Domínguez v Kohler Co. C 49/672*.<sup>33</sup>

The materials submitted, when assessed as a whole, show that the contested mark was used in such a way as to establish a clear link between the goods and the EUTM proprietor. **On all of the submitted invoices the name of the EUTM proprietor or of a parent company of the EUTM proprietor (e.g. Kohler Mira Limited or Kohler France s.a.s.) is clearly indicated...**

Furthermore, some of the **invoices display the contested mark on top of the invoice**. It is admittedly true that, as argued by the applicant, in some of the invoices the verbal element ‘kohler’ is included in the company name of the entity issuing the invoices (i.e. Kohler Mira Limited). **However, even in these invoices, the contested mark is sometimes reproduced in the product description or in the product code (albeit sometimes in its short version ‘Kohl’)...**

Therefore, the Cancellation Division considers that the evidence taken as a **whole** shows use of the contested mark as a trade mark.

[Emphasis in italics and in bold mine]

40 The *Proprietor* also relied on *Floor Xpert Pte. Ltd.* [2022] SGIPOS 9 (“*Floor Xpert*”),<sup>34</sup> where the issue was whether there was sufficient evidence of trade mark use to support a finding that the subject mark, “FLOOR XPERT” had acquired distinctiveness so as to support its registration as a trade mark:

[29] ...company names and trade names can serve **dual functions**: they can be a **corporate name as well as serve as an identifier and badge of origin** for the goods or services in question. Here, the **only difference** between the Application Mark and the Applicant’s corporate name is the element “Pte. Ltd.”. It is **common knowledge** amongst the public in Singapore that this is an abbreviation for “Private Limited”...practically everyone would know that “Pte. Ltd.” refers to a company. This element is therefore **wholly descriptive and functional. Accordingly, consumers would focus on the words that appear in front of “Pte. Ltd.” (here: “Floor Xpert”)**...The whole point of incorporating a company is

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<sup>33</sup> At [51] – [53] PWS.

<sup>34</sup> At [48] – [50] PWS.

to do business. Thus, if anything, the use of “Floor Xpert Pte. Ltd.” would send the message that the Applicant is a company known as “Floor Xpert”. Given this, the public would likely treat the Application Mark as a badge of origin; **a signifier of the trade source for goods and services offered thereunder.**

[Emphasis in bold and italics mine]

41 I am cognisant that ***Floor Xpert*** is an *ex-parte* case and pertains to the issue of acquired distinctiveness rather than revocation for non-use. However, I am of the view that the principle in relation to the possible ***dual function*** of a company name is applicable here, in light of the ***evidence*** tendered by the ***Proprietor***.

42 In fact, this is consistent with the opinion of the ***PAR*** in ***Eley Trading Sdn Bhd v Kwek Soo Chuan*** [2017] SGIPOS 15 (“***Eley***”) (which also does not relate to revocation but the issue of invalidation and acquired distinctiveness) relied on by the ***Applicant***:

[71] ...the purpose of a trade or shop name is not, of itself, to distinguish goods or services. The purpose of a trade name or a shop name is to designate a business which is being carried on. I am not suggesting that a company’s trade or shop name can never be used to designate goods or services but merely that if a Proprietor wants to rely on the use of his trade or shop name as having resulted in the acquired distinctiveness of that name for the purposes of distinguishing goods, ***this has to be borne out by the evidence and it is not a natural consequence.***

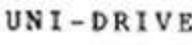
[Emphasis in bold and italics mine]

43 In addition to incorporation of ***Work Mark 1*** within the ***Proprietor’s*** corporate name, the evidence also reflect as follows:

S/N	<i>Use of corporate name</i>
<i>Blend of Device Mark 3 and corporate name</i>	
1	
<i>Blend of Device Mark 1 and corporate name<sup>36</sup></i>	
2	

44 In light of all of the above, I agree with the *Proprietor* that use of its corporate name, whether on its own, or in the ways reflected above, amounts to genuine use of the *Proprietor’s Marks*.

45 In summary, taking all of the above into account, my analysis will be focussed on the *following marks* and in relation to the *Class 7 specifications* for the *Relevant Period* under Section 22(1)(b):

S/N	<i>Proprietor’s Marks</i>	<i>Comment</i>
1	 <i>Word Mark 1</i>	Use in relation to <i>any</i> of the marks is considered as use of <i>Word Mark 1</i>
	<i>Uni-Drive Systems (s) Pte Ltd</i> <i>Word Mark 2</i>	

<sup>35</sup> See for example, the *Proprietor’s 3<sup>rd</sup> SD* at Exhibit 6, page 33.

<sup>36</sup> For clarity, I disagree with the *Proprietor* (at [54(e)] *PWS*) that the “header of the *Proprietor’s* commercial documents is a blend of (1) [*Device Mark 1*]; (2) [*Word Mark 1*]; and (3) its corporate name”. While it is true that *Device Mark 1* comprises of the “U device” (see *PWS* at [64], above) and *Word Mark 1*, I am of the view that *Device Mark 1* is distinctive as a *whole* and such that it *cannot and should not be further split* into its components.

<sup>37</sup> For example, see the *Proprietor’s 3<sup>rd</sup> SD* at Exhibit 9, page 333.

2	 <i>Device Mark 1</i>	Use in relation to <i>any</i> of the marks is considered as use of <i>Device Mark 1</i>
	 <i>Device Mark 2</i>	
	 <i>Device Mark 3</i>	
	 <i>Device Mark 4</i>	
	 <i>Device Mark 5</i>	

The “Which” issue: whether the marks have been used in relation to the goods for which the marks have been registered

46 To provide a systematic way to analyse use of the specifications (above), I sought clarification, and the *Applicant* agreed, that the *Proprietor* will have to show use for each *type* of good as follows:

S/N	<i>Class 7 specifications</i>
1a <sup>38</sup>	Power transmission apparatus, mechanisms and parts (other than for land vehicles);
1b	Power transmission apparatus for machines, power transmission belts, power transmission couplings for machines, power transmission systems for machine tools;
2	Drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms;
3	Belts for machines, conveyors, motors and engines;
4	Pulleys, timing belt pulleys;
5	Sprockets for machines;
6	Shaft couplings, coupling machines, couplings devices (non-electric) for machines, engines and motors;
7	Chain conveyors, chain transmissions other than for land vehicles;
8a	Brake motors;
8b	Electrical motors (other than for land vehicles);

47 This is consistent with the *RTM*'s practice in relation to classification where a semi-colon is used to demarcate *a type of good*:<sup>39</sup>

[5.4] **The use of punctuation in specifications**

The use of correct punctuation is very important in a list of goods and services. Applicants are advised to take note of the following guidelines when using punctuation within a specification:

a. **Use semicolons (;) to separate the different categories of goods or services as segments within a class.** For example,

<sup>38</sup> The reason why the relevant items are grouped in this manner will become apparent later.

<sup>39</sup> See *TMWM*, Chapter 18 on *Classification of Goods and Services*.

“Clothing; footwear; headgear” in Class 25 are separated by semi-colons as they are three ***different categories*** of goods.

b. ***Use commas (,) to separate different items within the same category of goods or services*** where they are related to each other. For example, “Retail services in relation to clothing, footwear, headgear” in Class 35, “clothing, footwear, headgear” are separated by commas as they form part of the item “retail services in relation to...”.

[Emphasis in italics and in bold mine]

*The “Where” issue: whether the marks have been used in Singapore*

48 In relation to invoices, the ***Applicant*** argued that it cannot be verified that the sales were made in ***Singapore***<sup>40</sup> (the particulars of the purchaser have been redacted from the tax invoices).<sup>41</sup> However, the ***Proprietor*** submitted that “the fact that the invoices show that the [7%] ***Goods and Services Tax (“GST”)*** was charged proves that the sale was ***local***” (emphasis in bold and italics mine).<sup>42</sup> In addition, there were also terms such as “Singapore Delivery Only” reflected on some of the invoices.<sup>43</sup> Samples of such evidence are indicated below.

49 In addition, the ***Applicant*** argued that use via the ***Proprietor’s*** website cannot be taken into account, as “[t]here is no evidence that the website is or has been ***targeted to audiences in Singapore***”.<sup>44</sup>

50 Specifically, the ***Applicant*** argued that, applying ***Novelty Pte Ltd v Amanresorts Ltd and anor*** [2009] 3 SLR(R) 216 (“***Amanresorts***”), the

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<sup>40</sup> See for example, paragraph 12, item 7 of ***AWS*** at pages 6 – 7.

<sup>41</sup> See ***PWS*** at [72].

<sup>42</sup> ***PWS*** at [72].

<sup>43</sup> ***PWS*** at [72].

<sup>44</sup> ***AWS*** at [28].

*Proprietor* “has not adduced evidence detailing the traffic to the *Proprietor’s* website during the [*Relevant Period*], such as number of clicks or visits originating from users in Singapore”.<sup>45</sup> In short, the *Proprietor* “has not provided any evidence of any *active steps*... which led consumers to the website featuring the trade mark in question...in the first place” (emphasis in bold and italics mine).<sup>46</sup>

51 However, at the oral hearing, the *Proprietor* argued that *Amanresorts* can be distinguished. This is because in *Amanresorts*, the Respondents have *limited physical presence / exposure* in the Singapore market,<sup>47</sup> and thus the heavy reliance on the number of relevant hits from Singapore.

52 This is in contrast to the current case where the use of its website as a marketing tool is *merely one* of the many avenues utilised by the *Proprietor*. Here, the *Proprietor* clearly has a presence in Singapore.

53 Having regard to the above, I am of the view that use of the *Proprietor’s* website for marketing purposes can be taken into account subject to the weight accorded to it.

54 In addition, the *Proprietor* relied on *Technopharma Limited v Unilever PLC* [2021] SGIPOS 11 (“*Technopharma*”),<sup>48</sup> where the learned IP Adjudicator held that:

[102] ...The printouts of the webpages of these online stores also reveal other indicators that these websites were ***directly reaching out to Singapore customers***...the webpages include

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<sup>45</sup> *AWS* at [28].

<sup>46</sup> *AWS* at [28].

<sup>47</sup> See *Amanresorts* at [57] and [58].

<sup>48</sup> *PWS* at [77].

***the contact details of the physical store in Singapore,***  
with...two Singapore land-line contact numbers displayed...

[Emphasis in bold and italics mine]

Again, samples of the relevant evidence have been indicated below.

### ***Types of use under Section 27(4)***

55 For the purposes of determining “use”, Section 27(4) provides a useful *guide*:<sup>49</sup>

27(4) For the purposes of this section..., a person uses a sign if, in particular, the person —

- (a) ***applies it to goods*** or the ***packaging*** thereof;
- (b) ***offers or exposes goods for sale***, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign;
- (c) ***imports or exports goods*** under the sign;
- (d) uses the sign on an ***invoice***, wine list, ***catalogue***, business letter, business paper, price list or other ***commercial document***, including any such document in any medium; ***or***
- (e) uses the sign in ***advertising***.

[Emphasis in bold and italics mine]

56 It should be highlighted that the above limbs are mutually exclusive, such that ***one type of use***, for example, in relation to advertising, is sufficient.

57 Further, there is the issue of use “in relation to” the goods. In this regard, in ***Aussino International Pte Ltd v Aussino (USA) Inc.*** [2019] SGIPOS 18

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<sup>49</sup> ***PWS*** at [26] referring to ***Capitol Records LLC v Steven Corporation Pte Ltd*** [2010] SGIPOS 14, which is a revocation case, at [26].

(“*Aussino*”), the *PAR* relied on *Céline SARL v Céline SA* (C-17/06) (“*Céline*”):<sup>50 51</sup>

... there is use ‘***in relation to goods***’... where a third party ***affixes the sign ... to the goods which he markets...***

*In addition, even where the sign is not affixed, there is use ‘in relation to goods or services’ within the meaning of that provision where the third party uses that sign in such a way that **a link is established between the sign... and the goods marketed or the services** provided by the third party.*

[Emphasis in bold and italics mine]

As the *PAR* clarified, “[a]lthough the above case dealt with the issue of use in the context of trade mark infringement, the parties did not dispute that the ruling on what constitutes use “in relation to goods or services” is applicable...”<sup>52 53</sup>

#### *Partial revocation under Section 22(6)*

58 The *Applicant* also pleaded partial revocation. Section 22(6) reads

22(6) Where grounds for revocation ***exist in respect of only some of the goods or services*** for which the trade mark is registered, revocation must relate to those goods or services only.

[Emphasis in bold and italics mine]

59 For clarity, in an action for revocation, there is ***no need*** to provide evidence of use for ***each item*** in the specification. As noted in *Patissier* at [77]:<sup>54</sup>

[77] The goal of the partial revocation exercise is ***not to define, with surgical precision, the exact range of goods or services in respect of which registered proprietor has***

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<sup>50</sup> At [46] *Aussino*.

<sup>51</sup> *AWS* at [15].

<sup>52</sup> [47] *Aussino*.

<sup>53</sup> *Aussino* is a revocation case.

<sup>54</sup> The *Proprietor’s* reply submissions (“*PRWS*”) at [29].

**actually used his mark.** Rather, it is to achieve a “**fair specification**” which still gives the registered proprietor **a commercially sensible zone of exclusivity** associated with the inherent semantic nebulosity of the words used by the trade mark framework to classify the goods and services in respect of which the mark may be registered.

[Emphasis in bold and italics mine]

60 The above principle has been consistently applied by Singapore courts and tribunals on more than one occasion (see below).

61 In *Bluestar Exchange (Singapore) Pte Ltd v Teoh Keng Long and others (trading as Polykwan Trading Co)* [2003] 4 SLR(R) 92, Justice Woo Bih Li provided:<sup>55</sup>

[58] On the facts in *Decon*, partial revocation was ordered. Pumfrey J’s judgment was cited with approval by Lord Justice Aldous in *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32. Lord Justice Aldous said:

[31] Pumfrey J in *Decon* suggested that the court’s task was to arrive at a **fair specification of goods having regard to the use made**. I agree, but the court still has the difficult task of deciding **what is fair**. In my view that task should be carried out so as to limit the specification **so that it reflects the circumstances of the particular trade and the way that the public would perceive the use**.

[60] ...it was **not** in the interest of the public or the trade to try and narrow the description of the clothing in the respondents’ classification further to those specific categories for which the RTM was in fact used. To do so would **result in confusion and invite litigation**.

[Emphasis in bold and italics mine]

62 In *Weir Warman*, VK Rajah JA commented:<sup>56</sup>

[112]...Woo Bih Li J explained that the task of the court in partial revocation was to limit the specification so that it

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<sup>55</sup> See [81] *PWS*.

<sup>56</sup> See [82] *PWS*.

**reflected the circumstances of the particular trade and the way that the public would perceive its use.**

[113] On the facts of the present case, I find that there should be revocation of the defendant’s registration of the “Warman” mark in Class 7 with respect to milling equipment and valves. **I do not, however, find it necessary to insert any words of limitation to the remaining specifications namely, pumps and pump parts, in order to further confine the defendant’s registration of the “Warman” mark to the particular types of pump parts which the defendant was able to adduce evidence of use** for, as suggested by the plaintiff...To narrow the specification of “pump parts” into specific *types* of pumps for which the “Warman” mark was in fact used by the defendant would be **unnecessarily confusing and restrictive** as well as **not in the interest of the public or the trade.**

[Emphasis in bold and italics mine]

### *Assessing the evidence*

#### *Different types of use*

63 The **Proprietor** tendered the following types of evidence of use:

- (a) photographs;<sup>57</sup>
- (b) commercial documents;
- (c) advertisements; and
- (d) website.

#### *Photographs*

64 The photographs were tendered to show how the marks were / are affixed onto the goods. The **Applicant** argued that the photographs in the

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<sup>57</sup> At [8] of the **Proprietor’s 2<sup>nd</sup> SD and the Proprietor’s 1<sup>st</sup> SD** respectively.

*Proprietor*'s evidence are **undated** and thus cannot be taken into account. I am of the view that the fact that they are undated may affect the weight to be accorded. Nonetheless, they can be taken into account in light of, and together with, all other evidence tendered by the *Proprietor*. In short, the *Proprietor*'s evidence should be considered as a **whole**.

*Commercial documents*

65 It would appear that for most of the invoices, delivery orders and sales quotations filed as evidence by the *Proprietor*, the full company name is reflected at the top left hand corner of the document.

66 From a quick perusal of the commercial documents, there are four main types of product description:

- (a) unbranded products;
- (b) third party branded products;
- (c) "Uni" branded products; and
- (d) "Uni Drive" branded products.

67 Understandably, the *Applicant* argued that for the commercial documents, only those items which are prefaced by "Uni-Drive" can be taken into account. Specifically, those items which are marked as "Uni" or simply unbranded, should not be taken into account.

68 It is quite obvious that third party branded products cannot be taken into account. In addition, I am prepared to exclude those items which are marked as "Uni" only (and not "Uni Drive"). However, in relation to the unbranded items,

the *Proprietor* deposed that, “[i]f a customer *does not specifically request* a product from a third-party brand, the *Proprietor* will *supply its own products, with the “Uni-Drive” brand*” (emphasis in bold and italics mine).<sup>58</sup>

69 I inquired at the hearing as to why the *Proprietor* does not reflect the above requests as “Uni-Drive” products but instead left the items as “unbranded”. Counsel for the *Proprietor* responded that this is the standard operating procedure of the *Proprietor*.

70 In my view, it would have been *ideal* to list requests pertaining to (i) “Uni-Drive” branded products; as well as (ii) non brand specific products as “Uni-Drive” products in the commercial documents, in particular, tax invoices. Nonetheless, I accept that the *Proprietor* has explained its practice in the evidence it has tendered, and since the *Applicant* has not tendered evidence to counter the same, I will accept it as such.

71 In light of the above, for the purposes of the commercial documents, I will take into account *both* “Uni-Drive” branded products as well as the “unbranded” items (which on the evidence in fact relates to “Uni-Drive” branded products).

72 Last but certainly not least, the *Proprietor* argued that “the *website* functions as an *online catalogue* for prospective and actual customers in Singapore to browse and select the goods they would like to purchase” (emphasis in bold and italics mine).<sup>59 60</sup>

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<sup>58</sup> At [16] of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>59</sup> *PWS* at [78(a)].

<sup>60</sup> See also [18(a)] of *Proprietor’s 1<sup>st</sup>* and *2<sup>nd</sup> SD* respectively.

73 The *Proprietor* deposed as follows:

[4] Since its formation, the [***Proprietor***] has steadily grown into leading distributor and exporter of mechanical power transmission and related hardware products (the “***Power Transmission Products***”)...<sup>61</sup>

[14]...By January 2019 to March 2019, the ***Power Transmission Products*** featured on the ***Uni-Drive Website*** ***included*** the following:

- (i) Belt Pulleys
- (ii) Transmission belts;
- (iii) Shaft couplings, spacers;
- (iv) Mini Shaft couplings;
- (v) Gears, Racks, Pinions and Gearboxes;
- (vi) Cardan Shafts and U-Joints;
- (vii) Uni Sprockets and Chains;
- (viii) Forklift Chains and Leaf Chains;
- (ix) Bearings
- (x) Bushings and adaptors;
- (xi) Motor Baseplates
- (xii) Gearboxes;
- (xiii) [***VSDs***], Controls and Servo Motors;
- (xiv) Electric Motors; and
- (xv) Clutches and Brakes.<sup>62</sup>

[Emphasis in bold and italics mine]

74 I will highlight a few of the items below. Again, there are four main types of product description on the *Proprietor's* website:

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<sup>61</sup> At [4] of the *Proprietor's 1<sup>st</sup> and 2<sup>nd</sup> SD* respectively.

<sup>62</sup> At [14] of the *Proprietor's 3<sup>rd</sup> SD*.

<i>S/N</i>	<i>Types of Goods</i>	<i>Marks</i>
1	<p>“Product Range”:<sup>63</sup></p> <p>(a) <b>unbranded products</b> (for example, “AC &amp; DC Electric Motor” under “Electric Motors”);<sup>64</sup></p> <p>(b) third party branded products (for example, “Panasonic” under “Electric Motors”);<sup>65</sup></p> <p>(c) “Uni” branded products (see “Uni-Sprockets and Chains”);<sup>66</sup> and</p> <p>(d) <b>“Uni-Drive” branded products</b> (for example, see under “Belt Pulleys”).<sup>67</sup></p>	<b>Work Mark 1</b> <sup>68</sup>
		<b>Device Mark 5</b> <sup>69</sup>
2	<p><i>Taper Bushing</i>,<sup>70</sup> <i>QD</i><sup>71</sup> &amp; <i>Split Bushing Pulleys</i>:<sup>72</sup></p> <p>(a) <b>unbranded products</b>, including “Taper Bushing Dual-Duty V-pulleys”<sup>73</sup></p>	<b>Work Mark 1</b> <sup>74</sup>
		<b>Device Mark 5</b> <sup>75</sup>

<sup>63</sup> At Exhibit 8, page 209 - 213 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>64</sup> At Exhibit 8, at page 213 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>65</sup> At Exhibit 8, page 213 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>66</sup> At Exhibit 8, page 211 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>67</sup> At Exhibit 8, page 210 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>68</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>69</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>70</sup> A taper bush is a locking mechanism commonly used in power transmission drives for locating pulleys, sprockets and couplings to shafts ([https://www.chainanddrives.com.au/wp-content/imported/media/meg/media/file/Taper\\_Lock\\_Bush\\_Information\\_1.pdf](https://www.chainanddrives.com.au/wp-content/imported/media/meg/media/file/Taper_Lock_Bush_Information_1.pdf)).

<sup>71</sup> “QD” stands for “Quick Detachable” and a QD bushing features a flange that connects the bushing (quickly) to the sprocket (see <https://www.c-rproducts.com/products/sprockets-pulleys-tensioners/qd-bushings/>).

<sup>72</sup> At Exhibit 8, at pages 214 – 218 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>73</sup> At Exhibit 8, at page 215 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>74</sup> At Exhibit 8, at page 214 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>75</sup> At Exhibit 8, at page 214 of the *Proprietor’s 3<sup>rd</sup> SD*.

3	<p><i>Beltings</i>:<sup>76</sup></p> <p>(a) <b>unbranded products</b> (for example, “Canvas Transmission Belts”);<sup>77</sup></p> <p>(b) third party branded products (for example, “Roflex Variable Speed Belting”);<sup>78</sup></p> <p>(c) “Uni” branded products (see “Uni-Poly-Ribs Belt”);<sup>79</sup> and</p> <p>(d) <b>“Uni-Drive” branded products</b> (for example, “Uni-Drive Timing Belt”).<sup>80</sup></p>	<b>Work Mark 1</b> <sup>81</sup>
		<b>Device Mark 5</b> <sup>82</sup>
4	<p><i>Shaft Couplings</i><sup>83</sup> and <i>Mini Couplings</i>:<sup>84</sup></p> <p>(a) <b>unbranded products</b> (for example, “All kinds of coupling elements”);<sup>85</sup></p> <p>(b) third party branded products (for example, “Desch Hadeflex Coupling”);<sup>86</sup></p> <p>(c) “Uni” branded products (see “Uni Pin &amp; Bush Coupling”);<sup>87</sup> and</p>	<b>Device Mark 5</b> <sup>89</sup>
		<b>Work Mark 1</b> <sup>90</sup>

<sup>76</sup> At Exhibit 8, at page 219 – 221 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>77</sup> At Exhibit 8, page 220 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>78</sup> At Exhibit 8, page 220 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>79</sup> At Exhibit 8, page 220 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>80</sup> At Exhibit 8, page 220 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>81</sup> At Exhibit 8, at page 219 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>82</sup> At Exhibit 8, at page 219 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>83</sup> At Exhibit 8, pages 222 – 224 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>84</sup> At Exhibit 8, pages 225 – 231 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>85</sup> At Exhibit 8, page 224 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>86</sup> At Exhibit 8, page 223 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>87</sup> At Exhibit 8, page 222 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>89</sup> At Exhibit 8, page 222 (for “Uni-Shaft Coupling”) and page 225 (for “Uni-Mini Coupling”) of the *Proprietor’s 3<sup>rd</sup> SD* respectively.

<sup>90</sup> At Exhibit 8, page 225 (for “Uni-Mini Coupling”) of the *Proprietor’s 3<sup>rd</sup> SD*.

	(d) <b>“Uni-Drive” branded products</b> (for example, “Uni-Drive Tyre Coupling”). <sup>88</sup>	
5	Electric Motors: <sup>91</sup>  (a) <b>unbranded products</b> (for example, “AC Motors”); <sup>92</sup> and  (b) third party branded products (for example, “Panasonic Motor”). <sup>93</sup>	<b>Device Mark 5</b> <sup>94</sup>

75 Last but not least, the *Proprietor* also deposed that:<sup>95</sup>

[18(b)] The [**Proprietor’s Marks**] are featured prominently on the **business cards** used and distributed by the [**Proprietor**]...[t]he business cards also prominently list the [**Proprietor’s official website**] – which...contains an **online catalogue** of its **Power Transmission Products** bearing the [**Proprietor’s Marks**]...

As the [**Proprietor**] is headquartered in Singapore, all of its marketing and business meetings with prospective Singapore and overseas customers – with respect to the sale of its **Power Transmission Products** – are conducted in **Singapore** and Malaysia. These **business cards**...are typically **distributed to these customers** at the aforesaid meetings.

[Emphasis in bold and italics mine]

76 Samples of the *Proprietor’s* business card are as follows:<sup>96</sup>

<sup>88</sup> At Exhibit 8, page 222 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>91</sup> At Exhibit 8, pages 263 – 265 of the *Proprietor’s 3<sup>rd</sup> SD*.

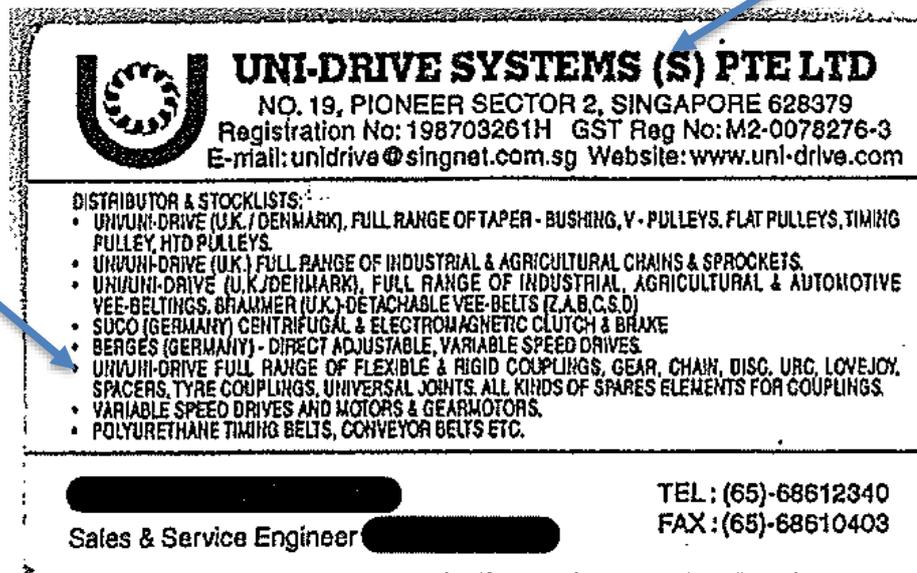
<sup>92</sup> At Exhibit 8, page 264 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>93</sup> At Exhibit 8, page 264 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>94</sup> At Exhibit 8, page 263 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>95</sup> At [18(b)(i)] of the *Proprietor’s 1<sup>st</sup>* and *2<sup>nd</sup> SD* respectively.

<sup>96</sup> At Exhibit 4, page 114 of the *Proprietor’s 1<sup>st</sup> SD* and at Exhibit 3, page 78 of the *Proprietor’s 2<sup>nd</sup> SD*.



**UNI-DRIVE SYSTEMS (S) PTE LTD**  
NO. 19, PIONEER SECTOR 2, SINGAPORE 628379  
Registration No: 198703261H GST Reg No: M2-0078276-3  
E-mail: unidrive@singnet.com.sg Website: www.uni-drive.com

**DISTRIBUTOR & STOCKLISTS:**

- UN/UNI-DRIVE (U.K./DENMARK), FULL RANGE OF TAPER - BUSHING, V - PULLEYS, FLAT PULLEYS, TIMING PULLEY, HTD PULLEYS.
- UN/UNI-DRIVE (U.K.) FULL RANGE OF INDUSTRIAL & AGRICULTURAL CHAINS & SPROCKETS.
- UN/UNI-DRIVE (U.K./DENMARK), FULL RANGE OF INDUSTRIAL, AGRICULTURAL & AUTOMOTIVE VEE-BELTINGS, BRAMMER (U.K.)-DETACHABLE VEE-BELTS (Z,A,B,C,S,D)
- SUCO (GERMANY) CENTRIFUGAL & ELECTROMAGNETIC CLUTCH & BRAKE
- BERGES (GERMANY) - DIRECT ADJUSTABLE, VARIABLE SPEED DRIVES
- UN/UNI-DRIVE FULL RANGE OF FLEXIBLE & RIGID COUPLINGS, GEAR, CHAIN, DISC, URC, LOVEJOY, SPACERS, TYRE COUPLINGS, UNIVERSAL JOINTS, ALL KINDS OF SPARES ELEMENTS FOR COUPLINGS.
- VARIABLE SPEED DRIVES AND MOTORS & GEARMOTORS.
- POLYURETHANE TIMING BELTS, CONVEYOR BELTS ETC.

Sales & Service Engineer [REDACTED] TEL: (65)-68612340  
FAX: (65)-68610403



**UNI-DRIVE SYSTEMS (S) PTE LTD**  
优利传动有限公司  
No. 19, PIONEER SECTOR 2, SINGAPORE (628379)  
E-MAIL: unidrive@singnet.com.sg  
WEBSITE: www.uni-drive.com

Manager [REDACTED] TEL: (65)-68612340  
FAX: (65)-68610403

**POWER TRANSMISSION PRODUCTS SPECIALIST**

77 This issue of the reference to the *Proprietor's* website has been dealt with above. Subject to proper weight being accorded, it is clear that the *Proprietor's Marks* are used in relation to some of the specifications on the *Proprietor's* business cards.

*Advertisements*

78 The **Proprietor** advertises its goods via various advertising media, including:

- (a) the Green Book (“**TGB**”);
- (b) the Yellow Pages (“**TYP**”); and
- (c) the **Proprietor’s** website.

79 Consistent with the commercial documents, a quick perusal of the same reveals that there are also four types of product description/depiction:

- (a) unbranded products;
- (b) third party branded products;
- (c) “Uni” branded products; and
- (d) “Uni Drive” branded products.

80 As deposed by the **Proprietor**, where “products from third party brands are **promoted**...they would be **expressly referred** to by their respective third party brands...[t]he **Proprietor does not promote** or offer such products as originating from the **Proprietor** or by reference to the [**Proprietor’s Marks**]” (emphasis in bold and italics mine).<sup>97</sup>

81 Accordingly, I will take into account “**Uni-Drive**” branded products as well as **unbranded products** (more below).

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<sup>97</sup> At [17] at of the **Proprietor’s 3<sup>rd</sup> SD**.

*Website*

82 Apart from functioning as an online catalogue, the **Proprietor** also markets its products via its website.<sup>98</sup> This is unsurprising since the online catalogue includes a comprehensive list of the **Proprietor’s** products (see above).

83 Applying **Technopharma** above and using the table in relation to the **Proprietor’s** website / online catalogue, it is noted that the **Proprietor’s Singapore landline** is indicated on all of its webpages:

<i>S/N</i>	<i>Types of Goods</i>	<i>Marks</i>	<i>Landline</i>
1	<i>Product Range</i> <sup>99</sup>	<i>Work Mark 1</i>	+65 6861-2340
		<i>Device Mark 5</i>	
2	<i>Taper Bushing, QD &amp; Split Bushing Pulleys</i> <sup>100</sup>	<i>Work Mark 1</i>	
		<i>Device Mark 5</i>	
3	<i>Beltings</i> <sup>101</sup>	<i>Work Mark 1</i>	
		<i>Device Mark 5</i>	
4	<i>Shaft Couplings and Mini Couplings</i> <sup>102</sup>	<i>Device Mark 5</i>	
		<i>Work Mark 1</i>	
5	<i>Electric Motors</i> <sup>103</sup>	<i>Device Mark 5</i>	

<sup>98</sup> At [18(d)] of the **Proprietor’s 1<sup>st</sup> and 2<sup>nd</sup> SD respectively**.

<sup>99</sup> At Exhibit 8, page 209 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>100</sup> At Exhibit 8, page 214 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>101</sup> At Exhibit 8, at pages 219 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>102</sup> At Exhibit 8, page 222 (for “Shaft coupling”) and page 225 (for “Mini-Coupling) of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>103</sup> At Exhibit 8, page 263 of the **Proprietor’s 3<sup>rd</sup> SD**.

*The Green Book (TGB)*

84 The *Proprietor* also advertises via the *TGB* webpage.<sup>104</sup>

85 At the top left-hand corner of the *TGB* webpage, *Word Mark 2* can be seen and there is a list of products under the same. Again, there are the four main types of product description:

- (a) third party branded products (for example “*Berges VSD*”);
- (b) “Uni” branded products (for example, “Uni Mini Couplings”);
- (c) “*Uni-Drive*” branded products (for example “Uni-Drive Chain Coupling”; and
- (d) *unbranded products* such as “electric motor”,

Having regard to items which are branded as “Uni-Drive” and those which are unbranded, the above advertisement reflects use of *Word Mark 1*.

*The Yellow Pages (TYP)*

86 The *Applicant* relied on the cases of *Eley* as well as *Aussino*. Specifically, the *Applicant* argued that:<sup>105</sup>

[29] ...we submit that the advertisements do not show use towards [**Class 7 specifications**]. At most, the evidence demonstrates **use in relation to retail or wholesale services**. It is not apparent from the advertisements that the relevant goods bear the [**Proprietor’s Marks**]. It may be that the goods in question bear third party marks and the [**Proprietor**] is merely **acting as a local distributor** of such goods. Indeed, the Applicant has adduced evidence showing that the

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<sup>104</sup> At Exhibit 9, pages 300 – 304 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>105</sup> *AWS* at [29] – [36].

**[Proprietor] has sold the [Proprietor’s] goods bearing the [Proprietor’s] own “UNIDRIVE” mark and the “BERGES” mark...**

...

[31] The Assistant Registrar in **Aussino** considered whether a link was established between the subject mark and the relevant goods featured in the advertisements. In finding that such **a link** has been established, she took into account the fact that “Aussino” is the **only badge of origin that appears in the advertisements** and that no other trade marks appear in any of the advertisements. Therefore, from the perspective of a consumer viewing these advertisements, **a link** will inevitably be established between “Aussino” and the goods shown in the advertisements...

[32] In **[Eley]**, some of the advertisements relied on by the proprietor were as follows (see [69(d)]):



...

[33] It was found at [73] that the proprietor’s advertisements “do not refer to the Subject Mark [“菩提”] per se. They are **advertisements for his business** “菩提佛教文物批发中心” which

sells goods branded with trade marks such as  and

 . The advertisements and promotion of his business “菩提佛教文物批发中心” at best shows use of “菩提佛教文物批发中心” as a trade mark for **wholesale or retail services** of incense products, **but not for the Subject Goods.**” (Emphasis added)

[34] Drawing **an analogy with the above cases**, we submit that the advertisements adduced by the **[Proprietor]**...cannot be taken as conclusive evidence of use in relation to the **[Class 7 specifications]**. For ease of reference, we reproduce below an

example of one of the [Proprietor's] advertisements...(page 283 of [Proprietor's 3<sup>rd</sup> SD]):



[35] Unlike in *Aussino*, the [Proprietor's] advertisements **contain numerous trade marks other than the [Proprietor's Marks]**. Indeed, the [Proprietor] “offers Power Transmission Products by **both** third-party brands and its “UNI-DRIVE” brand under the [Proprietor's Marks] to its customers” (see paragraph 16 of [Proprietor's 3<sup>rd</sup> SD]). The display of other trade marks in the [Proprietor's] advertisements (for example, UNI-UL, UNI, Berges, Dayco, GoodYear), alongside [Word Mark 1] or [Device Mark 1] would convey the impression that the [Proprietor], as **a retailer or distributor**, sells **a range of goods** which bear various marks, **which may or may not include [Word Mark 1] or [Device Mark 1]** ...

[36] It is submitted that the advertisements adduced by the [Proprietor] are **similar** to those adduced by the proprietor in [Eley], where the advertisements – which do not show the [Proprietor's Marks] – are **advertisements for the [Proprietor's] business**, rather than [Class 7 specifications]. Advertising the company name under various categories of goods (for example, pages 289 and 290 of [Proprietor's 3<sup>rd</sup> SD]) does not go towards showing genuine use in relation to [Class 7 specifications] since use of a company name **does not automatically equate** to use of the company's trade mark even if the trade mark is subsumed in the company name (see [Eley] at [71]). At most, such advertisements show use of the

company name as a trade mark for ***wholesale or retail services***, but not for [***Class 7 specifications***].

[Emphasis in bold and italics mine]

87 To begin with, it is not helpful to attempt to draw an analogy with the cases above. Per the ***PAR*** in ***Eley***, each case must be assessed based on its *own facts*. It is not the case that “a company’s trade or shop name can never be used to designate goods or services but merely that if a Proprietor wants to rely on the use of his trade or shop name...for the purposes of distinguishing goods, ***this has to be borne out by the evidence*** and it is not a natural consequence”.<sup>106</sup>

88 The example above relied upon by the ***Applicant***<sup>107</sup> is dated in 2009.<sup>108</sup> As such I will use a similar advertisement ***within*** the ***Relevant Period***:<sup>109</sup>

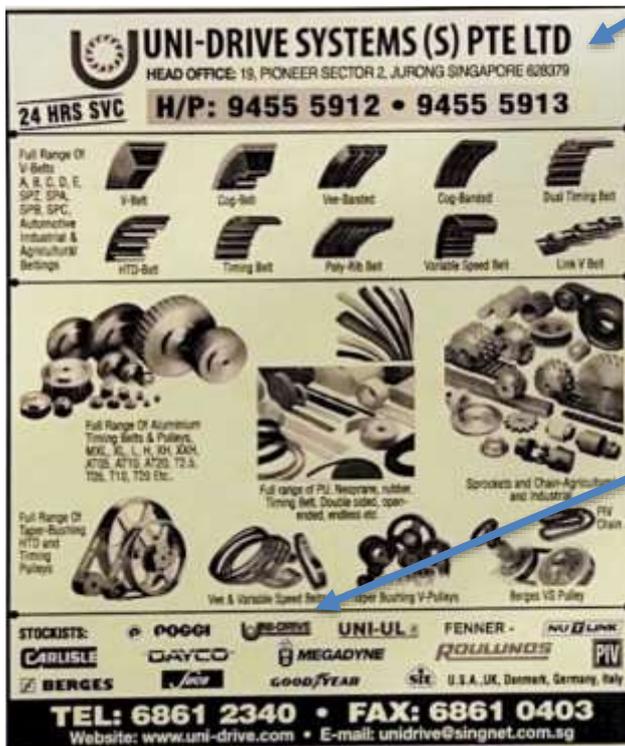
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<sup>106</sup> See above at [42].

<sup>107</sup> At [34] ***AWS***.

<sup>108</sup> See Exhibit 9, page 283 of the ***Proprietor’s 3<sup>rd</sup> SD***.

<sup>109</sup> See Exhibit 9, page 333 of the ***Proprietor’s 3<sup>rd</sup> SD***.



It can be seen that, apart from *Device Mark 4* at the top of the advertisement, *Device Mark 2* can also be found amongst the other third party marks. Taking the advertisement *in totality*, I am of the view that it can be *inferred* that the *Proprietor* sells the products as depicted for a broad range of brands, *including* that of its own *Device Mark 1* (it is to be recalled above that, use of *Device Mark 4* or *2* can be taken to be use of *Device Mark 1*).

89 In addition, the *Proprietor's TYP* advertisements also comes in a format which is similar to that in *Aussino*:<sup>110</sup>

<sup>110</sup> See Exhibit 9, page 329 of the *Proprietor's 3<sup>rd</sup> SD*.



In this case, *Device Mark 4* can be seen and I have already concluded above that use of *Device Mark 4* constitutes use of *Device Mark 1*.

90 It is to be recalled that, as deposed by the *Proprietor*, where “products from third party brands are *promoted*...they would be expressly referred to by their respective third party brands” (emphasis in bold and italics mine).<sup>111</sup> This means that promotion of unbranded products in advertisements can be regarded as promotion of the *Proprietor’s Marks* in relation to *Class 7 specifications*.

*Use in relation to each type of good*

91 Following the table at [46], I will now specifically consider the different types of goods.

*Power transmission apparatus, mechanisms and parts (other than for land vehicles); Power transmission apparatus for machines, power transmission*

<sup>111</sup> Above at [80] and at [17] of the *Proprietor’s 3<sup>rd</sup> SD*.

*belts, power transmission couplings for machines, power transmission systems for machine tools*

92 While I will deal with *each type of goods* within the *Class 7 specifications* (see below, since the revocation is in relation to the *whole* specification), I propose to deal with the two types above together. This is because they are in essence, “power transmission apparatus, mechanisms and parts”. In short, the second group is a *subset* of the first group.

93 As alluded to above, it is the *Proprietor’s* evidence that “Power Transmission Products” encompasses *all* the goods included in the *Class 7 specifications*.<sup>112</sup>

94 In this regard, the *Proprietor* has tendered evidence to the effect that a “power transmission apparatus” refers to all *components* of the mechanical system that *transmit* energy to the part of the machine performing the work. These *components* include...*pulleys, belts... couplings...chains...*” (emphasis in bold and italics mine).<sup>113</sup>

95 Further, the *Proprietor* also tendered evidence to the effect that “apparatus” refers to “a *set* of equipment or tools or machine that is used for a particular purpose” (emphasis in bold and italics mine);<sup>114</sup> while “system” means “a *set* of *connected* things or devices which operate together” (emphasis in bold and italics mine).<sup>115</sup>

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<sup>112</sup> At [4] of the *Proprietor’s 1<sup>st</sup>* and *2<sup>nd</sup>* SD respectively.

<sup>113</sup> At Exhibit 13, page 11 of the *Proprietor’s 4<sup>th</sup>* SD.

<sup>114</sup> At Exhibit 13, page 4 of the *Proprietor’s 4<sup>th</sup>* SD.

<sup>115</sup> At Exhibit 13, page 5 of the *Proprietor’s 4<sup>th</sup>* SD.

96 Putting the two above together, a “[p]ower transmission apparatus” simply refers to *a set of tools, including pulleys, belts and couplings, whether working in tandem as a set or individually, so as to transmit power.*

97 Hence, any use of a **component** which is a **constituent** of a “power transmission apparatus” will be **equivalent** to use of the same respectively.

98 Specifically, any use in relation to “**pulleys, belts...couplings...chains...**”<sup>116</sup> will **translate** into use of a “[p]ower transmission apparatus”.

*Drives for machines, driving motors other than for land vehicles, drive belts, drive chains, drive machines, drive motors and mechanisms*

99 The above item essentially relates to “drives”. The **Proprietor** tendered evidence to the effect that a “drive” refers to a “**means** by which a force, motion or power is **transmitted** in a mechanism” (emphasis in bold and italics mine).<sup>117</sup>

100 Since “a set of **tools**, including pulleys, belts and couplings, whether working in tandem as a set or individually, so as to **transmit** power” is a “**means** by which a force, motion or power is **transmitted** in a mechanism”, there is clearly an overlap between a “[p]ower transmission apparatus” and “drives”.<sup>118</sup>

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<sup>116</sup> See above at [94].

<sup>117</sup> At Exhibit 13, page 9 of the **Proprietor’s 4<sup>th</sup> SD**.

<sup>118</sup> I observe that this is consistent with the **Proprietor’s** evidence where it stated “[a **VSD**] is a term referring to a **class of devices** providing variable speed driving functions to mechanical or electrical [or] electronic devices” (emphasis in italics and in bold mine; see the **Proprietor’s 3<sup>rd</sup> SD** at [21]).

101 In light of the above, it would mean that any use of a **component** which is a **constituent** of a “power transmission apparatus” will be **equivalent** to use of a “drive”.

102 Specifically, any use in relation to “**pulleys, belts...couplings...chains...**”<sup>119</sup> will **translate** into use of a “drive”. This is the reason why in some tax invoices, the description is “[a]ssembly of **drive** on site” (emphasis in bold and italics mine).<sup>120</sup>

103 It is clear from the above that there is an *overlap* among these three items (that is, items 1a, b and 2). It would be obvious by now that these are the relatively more general specifications which include the more specific specifications as per items 3 – 8 (above).

104 This is not surprising, “since the **Proprietor** deals with mechanical power transmission and related hardware products”, and the specifications were “drafted at both a general *and* specific levels to cover all products relating to power transmission products”.<sup>121</sup>

105 The **Proprietor** further submitted that it “also markets its goods in the same way”.<sup>122</sup> For example, in the **Proprietor’s** website, the **Proprietor** has referred to a “comprehensive range of **power transmission** and general hardware products” (emphasis in bold and italics mine).<sup>123</sup>

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<sup>119</sup> See above at [94].

<sup>120</sup> At Exhibit 6, page 79 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>121</sup> **PWS** at [14].

<sup>122</sup> **PWS** at [16].

<sup>123</sup> At Exhibit 8, page 209 of the **Proprietor’s 3<sup>rd</sup> SD**.

106 In any event, the specific evidence pertaining to the item “drive” is as follows (in this regard, I have endeavoured to show the *different types of use*, including the categories as per Section 27(4) of the *Act*):

<i>S/N</i>	<i>Description of goods</i>	<i>Mark</i>	<i>Use</i>	<i>Date / period</i>
1	Pulley and belt drive <sup>124</sup>	<i>Device Mark 1</i>	Photograph	Undated
2	Drive <sup>125</sup>	<i>Device Mark 4</i>	Sales Quotation <ul style="list-style-type: none"> <li>• 7% <i>GST</i> indicated</li> <li>• “Singapore Delivery” indicated</li> </ul>	20 Oct 2015
3	Drive <sup>126</sup>	<i>Device Mark 5</i>	Tax Invoice <ul style="list-style-type: none"> <li>• 7% <i>GST</i> indicated</li> </ul>	5 Nov 2015
4	<i>VSD</i> <sup>127</sup>	<i>Device Mark 5</i> <sup>128</sup>	Website	2019
		<i>Word Mark 1</i> <sup>129</sup>		
5	<i>VSD</i> <sup>130</sup>	<i>Device Mark 5</i> <sup>131</sup>	Website	2019

<sup>124</sup> At [8], page 10 of the *Proprietor’s 2<sup>nd</sup> SD*.

<sup>125</sup> At Exhibit 6, pages 145 – 146 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>126</sup> At Exhibit 6, pages 78 – 79 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>127</sup> At Exhibit 8, page 213 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>128</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>129</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>130</sup> At Exhibit 8, page 258 – 259 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>131</sup> At Exhibit 8, page 258 of the *Proprietor’s 3<sup>rd</sup> SD*.

6	VSD <sup>132</sup>	Word Mark 2	TGB Advertisement	2017
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*Belts for machines, conveyors, motors and engines*

107 In essence, this group of items relates to “belts”. The evidence in relation to the same are as follows:

<i>S/N</i>	<i>Description</i>	<i>Mark</i>	<i>Use</i>	<i>Date / Period</i>
1	Vee belt <sup>133</sup>	Word Mark 1	Photograph	Undated
2	Transmission Belts <sup>134</sup>	Device Mark 5 <sup>135</sup>	Website	2019
		Word Mark 1 <sup>136</sup>		
3	Beltings <sup>137</sup>	Device Mark 5 <sup>138</sup>	Website	2019
		Word Mark 1 <sup>139</sup>		
4a	Belt <sup>140</sup>	Device Mark 5	Tax Invoice • 7% GST indicated	1 Sept 2019
		Word Mark 1		

<sup>132</sup> At Exhibit 9, page 301 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>133</sup> At [8], page 9 of the *Proprietor’s 1<sup>st</sup> SD*.

<sup>134</sup> At Exhibit 8, page 210 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>135</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>136</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>137</sup> At Exhibit 8, pages 219 – 221 of the *Proprietor’s 3<sup>rd</sup> SD*. For example, see “Canvas Transmission Belts” at page 220.

<sup>138</sup> At Exhibit 8, page 219 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>139</sup> At Exhibit 8, page 219 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>140</sup> At Exhibit 6, pages 122 – 123 of the *Proprietor’s 3<sup>rd</sup> SD*.

4b		<b>Device Mark 5</b>	Delivery Order	
		<b>Word Mark 1</b>		
5	Belt <sup>141</sup>	<b>Device Mark 4</b>	Sales Quotation <ul style="list-style-type: none"> <li>• 7% <b>GST</b> indicated</li> <li>• “Singapore Delivery” indicated</li> </ul>	27 May 2019
		<b>Word Mark 1</b>		
6	Timing Belts <sup>142</sup>	<b>Word Mark 1</b>	<b>TGB</b> Advertisement	2017
		<b>Word Mark 2</b> <sup>143</sup>		
7	Different types of belts, including V-belt and Dual Timing Belt <sup>144</sup>	<b>Device Mark 4</b>	<b>TYP</b> Advertisement	2017
		<b>Device Mark 2</b>		

*Pulleys, timing belt pulleys*

108 In essence, this group of items relates to “pulleys”. The evidence in relation to the same are as follows:

<sup>141</sup> At Exhibit 6, page 160 – 161 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>142</sup> At Exhibit 9, page 302 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>143</sup> At Exhibit 9, page 301 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>144</sup> At Exhibit 9, page 333 of the *Proprietor’s 3<sup>rd</sup> SD*.

<i>S/N</i>	<i>Description of goods</i>	<i>Mark</i>	<i>Use</i>	<i>Date / period</i>
1	Pulley and HTD timing pulley <sup>145</sup> respectively <sup>146</sup>	<b>Word Mark 1</b>	Photograph	Undated
2	Taper-bushing Vee-pulley, Timing and Poly-ribs pulley <sup>147</sup>	<b>Device Mark 5</b>	Chemical Cluster Directory of Singapore (“ <b>Chemical Directory</b> ”) Advertisement	2017 – 2018
3	Many types of pulleys, including Taper-bushing, QD & Split Bushing Pulleys <sup>148</sup>	<b>Device Mark 5</b> <sup>149</sup>	Website	2019
		<b>Word Mark 1</b> <sup>150</sup>		
4	Pulley <sup>151</sup>	<b>Device Mark 4</b>	Sales Quotation <ul style="list-style-type: none"> <li>• 7% <b>GST</b> indicated</li> <li>• “Singapore Delivery” indicated</li> </ul>	18 May 2019
		<b>Word Mark 1</b>		

<sup>145</sup> The **Proprietor** submitted that this is simply a type of timing pulley (see **PWS** at [35(a)]).

<sup>146</sup> At [8], pages 6 – 7 of the **Proprietor’s 1<sup>st</sup> SD**.

<sup>147</sup> At Exhibit 9, page 297 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>148</sup> At Exhibit 8, pages 214 – 218 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>149</sup> At Exhibit 8, pages 214 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>150</sup> At Exhibit 8, pages 214 of the **Proprietor’s 3<sup>rd</sup> SD**.

<sup>151</sup> At Exhibit 6, pages 158 – 159 of the **Proprietor’s 3<sup>rd</sup> SD**.

5a	Pulley <sup>152</sup>	<b>Word Mark 1</b>	Tax Invoice • 7% <b>GST</b> indicated	8 August 2018
		<b>Device Mark 5</b>		
5b		<b>Word Mark 1</b>	Delivery Order	
		<b>Device Mark 5</b>		
6	Pulley <sup>153</sup>	<b>Word Mark 1</b>	Sales Quotation • 7% <b>GST</b> indicated	9 July 2018
		<b>Device Mark 4</b>		

*Sprockets for machines*

109 In essence, this group of items relates to “sprockets”.<sup>154</sup> The evidence in relation to the same is as follows:

<b>S/N</b>	<b>Description of goods</b>	<b>Mark</b>	<b>Use</b>	<b>Date / period</b>
1	Sprocket <sup>155</sup>	<b>Word Mark 1</b>	Photograph	Undated
2	Sprocket <sup>156</sup>	<b>Device Mark 4</b>	Sales Quotation	28 March 2016

<sup>152</sup> At Exhibit 6, pages 102 – 103 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>153</sup> At Exhibit 6, pages 152 – 153 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>154</sup> These are wheels with teeth that mesh with a chain, track or other perforated or indented material”; as per above.

<sup>155</sup> At [8], page 10 of the *Proprietor’s 1<sup>st</sup> SD*.

<sup>156</sup> At Exhibit 6, page 149 of the *Proprietor’s 3<sup>rd</sup> SD*.

			<ul style="list-style-type: none"> <li>• 7% <i>GST</i> indicated</li> <li>• “Singapore Delivery” indicated</li> </ul>	
3a	Sprocket <sup>157</sup>	<i>Device Mark 5</i>	Tax Invoice	28 March 2016
3b			<ul style="list-style-type: none"> <li>• 7% <i>GST</i> indicated</li> </ul>	
4	Sprocket <sup>158</sup>	<i>Device Mark 4</i>	<i>TYP</i> Advertisement	2017
		<i>Device Mark 2</i>		

*Shaft couplings, coupling machines, couplings devices (non-electric) for machines, engines and motors*

110 In essence, this group of items relates to “couplings”.<sup>159</sup> The evidence in relation to the same are as follows:

<sup>157</sup> At Exhibit 6, pages 86 – 87 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>158</sup> At Exhibit 9, page 333 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>159</sup> A coupling is a device used to connect two shafts together at their ends for purposes of transmitting power; as per above.

<i>S/N</i>	<i>Description of goods</i>	<i>Mark</i>	<i>Use</i>	<i>Date / period</i>
1	Grid coupling <sup>160</sup>	<b>Word Mark 1</b>	Photograph	Undated
2	Disc coupling <sup>161</sup>			
3	Coupling <sup>162</sup>	<b>Device Mark 1</b>	Photograph	Undated
4	PB <sup>163</sup> Coupling <sup>164</sup>			
5	Coupling <sup>165</sup>	<b>Device Mark 5</b>	<b>Chemical Directory</b> Advertisement	2017/2018
6	Coupling <sup>166</sup>	<b>Device Mark 5</b>	Singapore Ship- repairing, Ship- building & Offshores Industries Directory (“ <b>Shipping Directory</b> ”) Advertisement	2017/2018

<sup>160</sup> At [8], page 7 of the *Proprietor’s 1<sup>st</sup> SD*.

<sup>161</sup> At [8], page 7 of the *Proprietor’s 1<sup>st</sup> SD*.

<sup>162</sup> At [8], page 7 of the *Proprietor’s 2<sup>nd</sup> SD*.

<sup>163</sup> “PB” stands for “Polybutylene”; see <https://www.pexuniverse.com/pex-x-pb-polybutylene-coupling-kits>; as per above.

<sup>164</sup> At [8], page 10 of the *Proprietor’s 2<sup>nd</sup> SD*.

<sup>165</sup> At Exhibit 9, page 297 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>166</sup> At Exhibit 9, page 298 of the *Proprietor’s 3<sup>rd</sup> SD*.

7	Shaft Coupling <sup>167</sup>	<i>Device Mark 5</i> <sup>168</sup>	Website	2019
		<i>Word Mark 1</i> <sup>169</sup>		
8a	Coupling <sup>170</sup>	<i>Device Mark 5</i>	Tax Invoice <ul style="list-style-type: none"> <li>• 7% <b>GST</b> indicated</li> </ul>	11 Jan 2017
8b			Delivery Order	
9	Coupling Assembly Kit <sup>171</sup>	<i>Device Mark 4</i>	Sales Quotation <ul style="list-style-type: none"> <li>• 7% <b>GST</b> indicated</li> <li>• “Singapore Delivery” indicated</li> </ul>	28 Jan 2016

*Chain conveyors, chain transmissions other than for land vehicles*

111 In essence, this group of items relates to “chains”. The evidence in relation to the same are as follows:

<sup>167</sup> At Exhibit 8, page 210 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>168</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>169</sup> At Exhibit 8, page 209 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>170</sup> At Exhibit 6, pages 90 – 92 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>171</sup> At Exhibit 6, pages 162 – 164 of the *Proprietor’s 3<sup>rd</sup> SD*.

<i>S/N</i>	<i>Description of goods</i>	<i>Mark</i>	<i>Use</i>	<i>Date / period</i>
1	Roller chain <sup>172</sup>	<b>Device Mark 1</b>	Photograph	Undated
2	Many types of chain including Trolley Chain and Anchor Chain <sup>173</sup>	<b>Device Mark 4</b>	<b>TYP</b> Advertisement	2017
3	Chains <sup>174</sup>	<b>Device Mark 5</b>	<b>Chemical Directory</b> Advertisement	2017 / 2018
4	Chains <sup>175</sup>	<b>Device Mark 5</b>	<b>Shipping Directory</b> Advertisement	2017 / 2018
5	Forklift Chains and Leaf Chains <sup>176</sup>	<b>Device Mark 5</b> <sup>177</sup>	Website	2019
		<b>Word Mark 1</b> <sup>178</sup>		
6	Forklift and Leaf Chain <sup>179</sup>	<b>Word Mark 2</b>	<b>TGB</b> Advertisement	2017

<sup>172</sup> At [8], page 11 of the *Proprietor's 2<sup>nd</sup> SD*.

<sup>173</sup> At Exhibit 9, page 329 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>174</sup> At Exhibit 9, page 297 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>175</sup> At Exhibit 9, page 298 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>176</sup> At Exhibit 8, page 211 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>177</sup> At Exhibit 8, page 209 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>178</sup> At Exhibit 8, page 209 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>179</sup> At Exhibit 9, page 301 of the *Proprietor's 3<sup>rd</sup> SD*.

*Brake motors; Electrical motors (other than for land vehicles)*

112 For the next two types of items, I am of the view that they can be considered together as they are essentially “motors”. The evidence in relation to the same are as follows:

<i>S/N</i>	<i>Description of goods</i>	<i>Mark</i>	<i>Use</i>	<i>Date / period</i>
1	DC Motor <sup>180</sup>	<i>Device Mark 1</i>	Photograph	Undated
2	Motor <sup>181</sup>			
3	AC, DC, Marine Motors <sup>182</sup>	<i>Device Mark 5</i>	<i>Chemical Directory</i> Advertisement	2017 / 2018
4	Electric Motors, Ex proof, AC, DC, Marine Motors <sup>183</sup>	<i>Device Mark 5</i>	<i>Shipping Directory</i> Advertisement	2017 / 2018
5	Many different types of motors, including electric motors <sup>184</sup>	<i>Device Mark 5</i> <sup>185</sup>	Website	2019
6a	Motor <sup>186</sup>	<i>Device Mark 5</i>	Tax Invoice	7 Dec 2019
6b			<ul style="list-style-type: none"> <li>• 7% <i>GST</i> indicated</li> </ul>	
			Delivery Order	

<sup>180</sup> At [8], page 8 of the *Proprietor’s 2<sup>nd</sup> SD*.

<sup>181</sup> At [8], page 9 of the *Proprietor’s 2<sup>nd</sup> SD*.

<sup>182</sup> At Exhibit 9, page 297 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>183</sup> At Exhibit 9, page 298 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>184</sup> At Exhibit 8, pages 263 – 265 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>185</sup> At Exhibit 8, pages 263 of the *Proprietor’s 3<sup>rd</sup> SD*.

<sup>186</sup> At Exhibit 6, pages 128 – 129 of the *Proprietor’s 3<sup>rd</sup> SD*.

7	Motor <sup>187</sup>	<b>Device Mark 4</b>	Sales Quotation • 7% <b>GST</b> indicated	26 Oct 2019
8a	Motor and Brake System <sup>188</sup>	<b>Device Mark 5</b>	Tax Invoice • 7% <b>GST</b> indicated	25 Jan 2017
8b			Delivery Order	
9	Electric Motor <sup>189</sup>	<b>Word Mark 2</b>	<b>TGB</b> Advertisement	2017

### Conclusion on Section 22(1)(b)

113 In light of all of the above, I am of the view that there has been use of the *Proprietor's Marks* in relation to *each type of good* as specified above for the *Relevant Period*.

114 The *Applicant's* main objection, at its highest, is that there must be evidence of the *Proprietor's Marks* affixed onto the goods:<sup>190</sup>

[12]...[t]he invoices show the goods being described as "UNI-DRIVE BELT". We submit that this is *not conclusive evidence of use* of the [**Proprietor's Marks**] for [**Class 7 specifications**] without any further evidence showing these goods *bearing* the [**Proprietor's Marks**].

[Emphasis in bold and italics mine]

<sup>187</sup> At Exhibit 6, page 130 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>188</sup> At Exhibit 6, pages 95 – 96 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>189</sup> At Exhibit 9, page 301 of the *Proprietor's 3<sup>rd</sup> SD*.

<sup>190</sup> See for example, at [12], page 11 of the *AWS* at Item 24.

115 The above would be the *ideal* type of evidence for revocation based on non-use. However, I agree with the *Proprietor* that there is “case law setting out the different kinds of trade mark use, which extends *beyond* affixing the mark on the goods”.<sup>191</sup>

116 In coming to my decision above, I have taken into consideration the *Applicant’s* submission that:

(a) “genuine use of a trade mark [could not] be proved by means of probabilities or suppositions” but must instead be “demonstrated by *solid and objective evidence* of effective and sufficient use of the trade mark on the market concerned” (emphasis in bold and italics mine);<sup>192</sup> and

(b) “[t]he *requirement of "use" of a trade mark* in a jurisdiction (in the context of trade mark law) is...pegged at *a higher standard* than the standard which applies when determining whether goodwill exists in a name (in the latter context, exposure, as opposed to use, of the name in question is the relevant criterion)”.<sup>193</sup>

117 Here is an unfortunate case where the *Applicant* entered the local market *later* than the *Proprietor*. The Applicant’s attempt to seek to revoke the full specification, while understandable, is not persuasive.

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<sup>191</sup> *PRWS* at [5].

<sup>192</sup> *AWS* at [8], referring to *Wing Joo Loong* at [44].

<sup>193</sup> *AWS* at [26] referring to *Amanresorts* at [53].

### Overall conclusion

118 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the revocation *fails* under Section 22(1)(b) in relation to the *Proprietor's Marks*.

119 In light of the above, *both Proprietor's Marks*, specifically, *Word Mark 1* and *Device Mark 1* will *remain on the Register* in relation to their *respective Class 7 specifications in full*.

### Costs

120 Both parties have provided written submissions on costs.<sup>194</sup>

121 Having regard to the fact that the revocation *failed* in relation to the *Proprietor's Marks in totality*, the *Proprietor* is entitled to costs as follows:

<i>S/N</i>	<i>Description</i>	<i>Amount / fee (\$)</i>	<i>Award (\$)</i>	<i>Reasons</i> <sup>195</sup>
<i>Institution of Proceedings</i>				
1	Draft Counter-Statement x 2 (this included amended counter-statement x 2)	390	390 x 2 = 780	Standard item

<sup>194</sup> Annex B and E of the *PWS* and *PRWS* respectively.

<sup>195</sup> Having regard to HMD Circular 6.1 in relation to *Award and assessment of costs* at Part F which pertains to *Drafting a Bill of Costs* where appropriate.

2a	Draft and prepare <i>Proprietor's 1<sup>st</sup> SD</i>	390 – 2,080 per statutory declaration	1,000	Some evidence of use
2b	Draft and prepare <i>Proprietor's 2<sup>nd</sup> SD</i>		800	Some evidence of use which overlaps with item 2a
3	Review <i>Applicant's SD</i>	195 – 1,040 per document	500	Consolidated, limited evidence
4	Draft and prepare <i>Proprietor's 3<sup>rd</sup> SD</i>	390 – 2,080 per statutory declaration	1,600	Consolidated substantial evidence
5	Draft and prepare <i>Proprietor's 4<sup>th</sup> SD</i>		500	Consolidated limited evidence
<b><i>Interlocutory Hearings</i></b>				
6	Case Management Conference on 15 March 2021	65 – 650 per proceeding / review / conference	100	1 hour or less
7	Pre-Hearing Review on 3 August 2022		100	1 hour or less
<b><i>Full Hearing</i></b>				
8	Preparing for full hearing	650 – 2,600	1,300	2 grounds raised with other related provisions
9	Attending for full hearing	260 – 1,040	850	Hearing lasted for slightly more than half a day
<b><i>Total for work done</i></b>			<b><i>\$7,530</i></b>	

<i>Disbursements</i> <sup>196</sup>				
1	Filing fee for Form HC6	360	360 x 2 = 720	Generally common disbursements will be awarded as claimed
2	Filing fee for Form HC3	180	180 x 2 = 360	
3	Filing fee for Form HC1	1,000	1,000	
4	General disbursements <ul style="list-style-type: none"> <li>• 2 copies of cause papers (pleadings and evidence) for the <i>Applicant</i> and the Registrar</li> <li>• 1 copy of <i>PRWS</i> for the Registrar</li> <li>• 1 copy of cause papers (pleadings and evidence) and submissions for <i>Proprietor</i></li> <li>• Transport to and from IPOS</li> </ul>		1,290	
<i>Total for disbursements</i>				\$3,370
<i>Grand Total</i>				<b>\$10,900</b>

<sup>196</sup> Annex E of the *PRWS*.

122 For clarity, while it is not unexpected that the *Applicant* had pleaded for revocation in relation to the *full* list of specifications despite being mainly interested in “drives”,<sup>197</sup> where the *Applicant* fails to make out its case, it will have to bear the brunt of the costs of the *Proprietor* having to defend the use of its marks across the full spectrum of goods for which the marks are registered.

Sandy Widjaja  
Principal Assistant Registrar

Ms Gillian Tan (That.Legal LLC) for the *Applicant*;  
Mr Tony Yeo and Mr Bryan Soon (Drew & Napier LLC) for the  
*Proprietor*.

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<sup>197</sup> See the *Applicant’s SD* at [14].