

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

**[2024] SGIPOS 5**

Trade Mark Nos. 40202112759X and 40202118455Y

**IN THE MATTER OF TRADE MARK APPLICATIONS**

**IN THE NAME OF**

**DOL TECHNOLOGY PTE LTD**

*... Applicant*

**AND**

**OPPOSITIONS BY**

**BYTEDANCE LTD**

*... Opponent*

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**GROUND OF DECISION**

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**Bytedance Ltd**  
v  
**Dol Technology Pte Ltd**

[2024] SGIPOS 5

Trade Mark Nos. 40202112759X and 40202118455Y  
Principal Assistant Registrar Mark Lim  
18 April 2024

11 June 2024

**Principal Assistant Registrar Mark Lim:**

**Introduction**


1 In these proceedings, Bytedance Ltd (“the Opponent”) opposes the



registration of **Tiki** (“the Application Mark”), which is applied for in several classes of the register of trade marks.

2 The Opponent relies principally on its prior registrations for



**TikTok** (“the Opponent’s Word Mark”) and  (registered as a series of two marks) (“the Opponent’s Device Mark”). These marks are registered in the same classes as the classes for which the Application Mark has been applied.

3 The Opponent also relies on its prior registration for



(“the

Opponent’s Composite Mark”)<sup>1</sup>, which is only registered in Class 25 of the register of trade marks.

4 The Opponent bases its case on various grounds of opposition. I will examine each of these grounds in detail below. In this introduction, I highlight only the most salient points which impact on the decision I have reached.

5 The Opponent argues that the Application Mark is similar to the Opponent’s Word Mark and/or the Opponent’s Device Mark. The Opponent also seeks enhanced protection for its various marks on the basis that they are allegedly well known in Singapore and/or well known to the public at large in Singapore.

6 All these grounds require that the Opponent establish that the Application Mark is similar to the various marks relied upon by the Opponent. As the Opponent has not persuaded me that the relevant marks are similar, the opposition fails on these grounds.

7 In addition, the Opponent asserts that the use of the Application Mark in Singapore is liable to be prevented under the law of passing off. As the Application Mark is not similar to any of the Opponent’s Marks, I also find that the Opponent has not established the element of misrepresentation, which is required to succeed in an opposition on the ground of passing off. Thus, the Opponent fails on this ground as well.

8 A large part of the Opponent’s evidence was intended to establish that its various marks are well known in Singapore and/or well known to the public

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<sup>1</sup> The Opponent relies on various versions and permutations of its Composite Mark, as set out at [83] below.

at large in Singapore. I have therefore examined these assertions in some detail. As explained below, in the former case, the Opponent must establish that its marks are well known to *any relevant sector of the public* in Singapore, while in the latter case it must be established that the marks are recognised by *most sectors of the public*.

9 In summary, I find that: (a) the Opponent’s Word Mark is well known to the public at large in Singapore; (b) based on the evidence adduced, as at the relevant dates in mid-2021, the Opponent’s Device Mark and the Opponent’s Composite Mark were well known in Singapore (but not to the extent that they were well known to the public at large in Singapore).

10 I set out my detailed reasons below.

### **Chronology of proceedings**

11 Dol Technology Pte Ltd (“the Applicant”) applied to register the Application Mark under Trade Mark No. 40202112759X for various goods and services in Classes 9, 35, 38, 41 and 45 on 28 May 2021 (“Relevant Date 1”); and under Trade Mark No. 40202118455Y for various services in Classes 36 and 42 on 4 August 2021 (“Relevant Date 2”). The list of goods and services applied for is set out in **ANNEX A**. Trade Mark No. 40202112759X was published for opposition purposes on 27 August 2021, and Trade Mark No. 40202118455Y was published for opposition purposes on 19 November 2021.

12 The Opponent filed its Notices of Opposition against the applications on 23 December 2021 (“NO1”) and 18 January 2022 (“NO2”) respectively. The grounds of opposition in both cases are the same, namely, that the Application Mark should be refused registration by virtue of ss 8(2)(b), 8(4)(b)(i), 8(4)(b)(ii) and 8(7)(a) of the Trade Marks Act 1998 (“the Act”).

13 In support of the applications, the Applicant filed both its Counter-Statements (“CS1” and “CS2” respectively) on 14 March 2022.

14 The oppositions to the applications were consolidated from the close of pleadings. Accordingly, each party filed a single set of evidence in respect of the consolidated oppositions.

15 The Opponent filed evidence in support of the oppositions on 16 February 2023 and 9 March 2023. The Applicant filed evidence in support of the applications on 11 September 2023. The Opponent filed its reply evidence on 8 December 2023 and 5 February 2024. A Pre-Hearing Review was held on 16 January 2024.

16 The matter was set down for a full hearing on 18 April 2024. Parties elected to only file written submissions without appearing at the hearing to make oral submissions. Both parties filed their written submissions on 18 March 2024 (Applicant’s Written Submissions (“AWS”) and Opponent’s Written Submissions (“OWS”) respectively).

### **Evidence**

17 The following Statutory Declarations (“SDs”) were tendered in evidence:

- (a) SD of Mu Siqi, Legal Counsel of the Opponent, dated 3 February 2023 (“OSD”). Mu filed a Supplementary SD on 9 March 2023 (“OSSD”) to address some deficiencies regarding certain exhibits in the OSD (*eg* legibility, and the absence of both foreign language documents and their English translations).

(b) SD of Ma Yuqin, Legal Counsel of the Applicant, dated 7 September 2023 (“ASD”).

(c) SD in Reply of Guo Wei, Legal Counsel of the Opponent, dated 27 November 2023 (“OSDR”). To correct an erroneous date in the OSDR, Guo filed a Supplementary SD in Reply on 5 February 2024.

### **Background**

18 The Opponent is a multinational internet technology holding company that was incorporated in 2012. It operates various content platforms including the short video sharing platforms 抖音 (Dǒuyīn)<sup>2</sup> and TikTok. The 抖音 (Dǒuyīn) application (“app” or “App”) is (essentially) known as TikTok outside China.<sup>3</sup> The Opponent, its business and its trade marks which are relevant to the current dispute are discussed in greater detail below.

19 The Applicant is a Singapore-incorporated company in the business of providing Voice Over Internet Protocol services and developing software for interactive digital media.<sup>4</sup>



20 One of the Applicant’s main products is an app named “TIKI”, which was launched on 22 February 2021. The TIKI App allows users to create, watch and share short videos with friends. They can also like and comment on these

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<sup>2</sup> 抖(Dǒu) means “to shake” and 音(yīn) means “sound”. According to a senior employee of the Opponent, together, they mean “vibrato”: see OSD at [9], Exhibit-BD05, pp 69–70.

<sup>3</sup> OSD at [4]–[5] and Exhibit-BD02.

<sup>4</sup> ASD at [4].

videos and interact with the creators. The logo for the TIKI App is  or  (i.e. the Application Mark).<sup>5</sup>

21 According to the Opponent, the Applicant is a related company of a Chinese company, Joyy Inc. Joyy Inc is the proprietor of various social media platforms, such as the short-form video sharing platform, Likee. The Likee platform was very similar to, and a direct competitor of, the Opponent's TikTok platform.<sup>6</sup>

22 According to the Opponent, India was formerly the largest international market for the TikTok platform. Following a border dispute with China, the Indian government banned 59 Chinese-made apps on 29 June 2020, including both the TikTok and Likee Apps. The Applicant launched the TIKI App in India in February 2021. The TIKI App is in essence a repackaged version of the Likee App.<sup>7</sup>

23 The Applicant does not address these allegations save to state in its Counter-Statements that these allegations are not admitted and are irrelevant to the current proceedings, and to put the Opponent to strict proof.<sup>8</sup>

24 The Opponent only relies on these allegations in support of its opposition under s 8(7)(a) of the Act (on the basis that use of the Application

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<sup>5</sup> ASD at [4]–[6] and Exhibit-MYQ01.

<sup>6</sup> NO1 at [39]–[41], NO2 at [39]–[41] and OSD at [61].

<sup>7</sup> NO1 at [41] and [46], NO2 at [41] and [45], OSD at [58]–[63] and Exhibit-BD30.

<sup>8</sup> See CS1 and CS2, both at [16]–[20].

Mark is liable to be prevented under the law of passing off).<sup>9</sup> I will therefore address these allegations in my discussion of this ground of opposition at [134]–[144] below.

### **Grounds of opposition**

25 The Opponent relies on ss 8(2)(b), 8(4)(b)(i), 8(4)(b)(ii) and 8(7)(a) of the Act.

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

26 The applicable law is the Act. The Opponent bears the burden of proof to establish the grounds of opposition.

### **Relationship between ss 8(2)(b), 8(4)(b)(i) and 8(4)(b)(ii) of the Act**

27 I will consider each ground of opposition in turn. Before doing so, it is useful to briefly discuss the relationship between ss 8(2)(b), 8(4)(b)(i) and 8(4)(b)(ii).

28 The following are the elements which need to be established to succeed in an opposition under each of these grounds of opposition:

	<b>Section 8(2)(b)</b>	<b>Section 8(4)(b)(i)</b>	<b>Section 8(4)(b)(ii)</b>
(a)	[Intentionally left blank]	The earlier trade mark is well known in Singapore.	The earlier trade mark is well known to the public at large in Singapore.

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<sup>9</sup> NO1 at [56] and NO2 at [55].

(b)	The Application Mark is similar to an earlier trade mark.	The whole or an essential part of the Application Mark is identical with or similar to the earlier trade mark.	The whole or an essential part of the Application Mark is identical with or similar to the earlier trade mark.
(c)	The Application Mark is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected.	[Intentionally left blank]	[Intentionally left blank]
(d)	Because of the similarity of marks and goods or services, there exists a likelihood of confusion on the part of the public.	Use of the Application Mark in relation to the goods or services for which it is sought to be registered would indicate a connection between	[Intentionally left blank]

		those goods or services and the proprietor of the earlier trade mark, and is likely to damage the interests of the proprietor of the earlier trade mark.	
(e)	[Intentionally left blank]	[Intentionally left blank]	Use of the Application Mark in relation to the goods or services for which it is sought to be registered: (i) would cause dilution in an unfair manner of the distinctive character of the earlier trade mark; or (ii) would take unfair advantage of the distinctive character of the earlier trade mark.

29 As can be seen from the above table, these provisions confer increasing levels of protection on: (a) “normal” trade marks (s 8(2)(b)); (b) trade marks

which are well known in Singapore (s 8(4)(b)(i)); and (c) trade marks which are well known to the public at large in Singapore (s 8(4)(b)(ii)).

30 In terms of how well known a trade mark must be to enjoy enhanced protection, the key difference between the last two categories is that a trade mark which is well known to *any relevant sector of the public* in Singapore (eg people born after 1995) is deemed to be well known in Singapore (see *Novelty Pte Ltd v Amanresorts Ltd and Another* [2009] 3 SLR(R) 216 (“*Amanresorts*”) at [139]); in contrast, a trade mark must be recognised by *most sectors of the public* before it can be said to be well known to the public at large in Singapore (see *City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* [2010] 1 SLR 382 (“*City Chain*”) at [94]).

31 I will examine each of these elements in greater detail when I consider each ground of opposition. For present purposes, I highlight the following points:

(a) For trade marks which are well known in Singapore, there is no requirement to establish similarity of goods or services to those for which the Application Mark is applied for (see *Amanresorts* at [229]). However, the connection requirement of s 8(4)(b)(i) requires that there be a likelihood of confusion on the part of the public (*Amanresorts* at [233]).

(b) For trade marks which are well known to the public at large in Singapore, there is also no requirement to establish similarity of goods or services to those for which the Application Mark is applied. In addition, there is no requirement that there exists a likelihood of confusion on the part of the public (see [28(d)] above).

(c) However, in all cases, there is a threshold requirement that the Application Mark must be similar to the earlier trade mark relied on by the Opponent (see [28(b)] above): see *Sarika Connoisseur Cafe Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 (“*Sarika*”) at [70]–[71].

**Opposition under Section 8(2)(b)**

32 Section 8(2)(b) of the Act reads:

(2) A trade mark shall not be registered if because —

...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public.

33 To succeed in an opposition under this ground, the opponent must establish that:

(a) the competing marks are similar;

(b) the goods and services of the competing marks are identical or similar; and

(c) there exists a likelihood of confusion arising from the similarities in (a) and (b) above.

34 Each of these conditions must be established, and they are assessed “step-by-step.” As stated by the Court of Appeal in the landmark decision of *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc and another and another appeal* [2014] 1 SLR 911 (“*Staywell*”) at [15]:

Under the step-by-step approach, the three requirements of similarity of marks, similarity of goods or services, and

likelihood of confusion arising from the two similarities, are assessed systematically. The first two elements are assessed individually before the final element which is assessed in the round.

35 For this ground of opposition, the Opponent relies on its prior registrations for the Opponent’s Word Mark and the Opponent’s Device Mark. These are registered in (among others) the same classes for which the Application Mark has been applied for. The list of goods and services for which the Opponent’s Word Mark and the Opponent’s Device Mark have been registered<sup>10</sup> is set out in **ANNEX A**.

### ***Similarity of Marks***

36 The key principles relating to the evaluation for marks-similarity have been set out in a number of decisions of the Court of Appeal and the High Court, including *Staywell, Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd* [2013] 2 SLR 941 (“*Hai Tong*”) and *V V Technology Pte Ltd v Twitter, Inc* [2023] 5 SLR 513 (“*Twitter*”). These can be summarised as follows:

- (a) The assessment of marks-similarity is “mark-for-mark without consideration of any external matter.” (*Staywell* at [20])
- (b) The relevant marks must be viewed and compared as a whole, and not dissected into their individual elements.
- (c) There are three aspects of the evaluation of marks-similarity, namely, visual, aural and conceptual similarities. These aid the court’s evaluation by signposting its inquiry. There is no requirement that all three aspects need to be made out before the marks or signs being

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<sup>10</sup> OWS at [18]–[20].

compared may be found to be similar. The relative importance of each aspect of similarity will depend on the circumstances, including the nature of the goods or services and the types of marks involved, and a trade-off can be made between the three aspects of similarity. (*Hai Tong* at [40])

(d) The court must ultimately conclude whether the marks, when observed in their totality, are similar or dissimilar. There is no “minimal threshold” whereby it is sufficient for an opponent to establish that “there was some degree of similarity in any one of these three aspects, no matter how weak.” (*Staywell* at [17])

(e) Integrated into the analysis of visual, aural and conceptual similarity is a consideration of whether the earlier mark is distinctive (*Staywell* at [30]). It is “relevant to examine the distinctiveness of the [opponent’s] registered mark in order to determine the extent of the latitude that will be allowed to a user of features that appear in that mark.” (*Hai Tong* at [27])

(f) When discussing the concept of distinctiveness at the marks-similarity inquiry, it is necessary to consider a mark’s inherent technical distinctiveness, acquired technical distinctiveness and non-technical distinctiveness.

(i) Technical distinctiveness refers to the ability of a mark to distinguish the goods or services of one particular trader from those of another. A trade mark can have inherent technical distinctiveness in the sense that it can immediately function as a clear badge of origin of a trader. Technical distinctiveness can also be acquired through subsequent use by the proprietor of the trade

mark. Acquired technical distinctiveness should not be considered at the marks-similarity inquiry based on reasons of precedent, principle, and policy. The issue of acquired technical distinctiveness should be considered at the likelihood of confusion stage of the inquiry to preserve conceptual clarity.

(ii) Non-technical distinctiveness refers to the dominant/outstanding and memorable component of a mark which stands out in the average consumer’s imperfect recollection. The non-technical distinctiveness of an element of a trade mark could depend on factors such as the size of the element, how the element is positioned and whether it was in bold font, *etc.* A mark cannot acquire an outstanding and memorable component through prolonged use. Therefore, non-technical distinctiveness can only be inherent.

(*Twitter* at [41]–[43], [63] and [119])

(g) When assessing two contesting marks or signs, the court does so with the “imperfect recollection” of the average consumer. The two marks or signs should not be compared side by side or examined in detail because “the person who is confused often makes comparison from memory removed in time and space from the marks”. (*Hai Tong* at [40])

37 The average consumer (also referred to interchangeably as the “relevant public”) refers to the actual or potential purchaser of the goods or services in question and those who deal with such goods or services (Ng-Loy Wee Loon SC, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, Revised 3<sup>rd</sup> Ed, 2022) (“*Law of Intellectual Property of Singapore*”) at [21.5.27]).

38 Although the Application Mark is applied for a large variety of goods and services in various classes of the register of trade marks, the parties have focused on the average consumer of video-sharing platforms<sup>11</sup>, which is the main service of interest to both parties. This would be the general public. I therefore proceed on this basis.<sup>12</sup>

39 In the present case, it is also important to note that the Opponent’s Word Mark and the Opponent’s Device Mark cannot be combined to create a composite mark: see *Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd* [2015] 5 SLR 618 (“*Rovio*”) at [70]. In *Rovio*, the opponent relied on its separate registrations for the word mark “ANGRY BIRDS” and the device mark



(“the Red Bird mark”) to oppose the registration of



(“the

Angry Bite Mark”). After holding that the “ANGRY BIRDS” word mark and the Red Bird Mark cannot be combined to create a composite mark, the court proceeded on the basis that the Angry Bite Mark is to be compared against the Red Bird Mark and the “ANGRY BIRDS” Word Mark separately.

40 Therefore, in the present case as well, similarity of the Application Mark to the Opponent’s Word Mark and the Opponent’s Device Mark will be assessed separately. This is not disputed by the Opponent.<sup>13</sup>

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<sup>11</sup> See AWS at [42] and OWS at [56].

<sup>12</sup> In fact, the average consumer of some of the goods and services applied for are likely to be trade professionals. However, taking the average consumer to be the general public would not affect the outcome of the current opposition proceedings. If the general public finds the relevant marks to be dissimilar or is unlikely to be confused between the relevant marks, this would all the more be the case for trade professionals.

<sup>13</sup> OWS at [23].

41 I will first consider whether the Application Mark is similar to the Opponent’s Word Mark, and then compare it to the Opponent’s Device Mark.

42 Before doing so, I briefly address the Applicant’s submission based on the co-existence of the Application Mark on the registers of trade marks in numerous other jurisdictions, as well as the Opponent’s unsuccessful opposition proceedings in Bahrain and the UK.<sup>14</sup>

43 The facts leading to the registration/acceptance of the Application Mark in other jurisdictions may be very different from the situation in Singapore. The legal position in these countries may also be different. Further, as observed by the High Court in *Digi International Inc. v Teraoka Seiko Co., Ltd* [2021] SGHC 165 at [194], a party “is entitled to elect which jurisdiction(s) to contest the registration of the Application Mark in. This is a multi-faceted commercial decision which [a judge is] not in a position to question. As such, the co-existence of identical iterations of the Application Mark and Respondent’s Mark (Singapore) in other jurisdictions merely shows that the respondent has chosen not to oppose the Application Mark’s registration in those jurisdictions.” It follows that the mere fact of coexistence of the marks in other jurisdictions without more is not a relevant consideration.

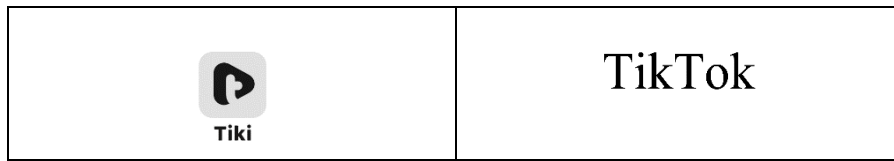
*Similarity of Application Mark to Opponent’s Word Mark*

44 The marks should of course not be compared side-by-side. However, to facilitate discussion and for ease of reference, I reproduce them below:

<b>Application Mark</b>	<b>Opponent’s Word Mark</b>
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<sup>14</sup> AWS at [7]–[15].



### Visual Comparison

45 I consider first the distinctiveness of the Opponent’s Word Mark. The Opponent submits that it possesses a high level of inherent technical distinctiveness as “the coined word ‘Tik’ conjoined to the coined word ‘Tok’... create a fanciful two-syllable compound word, which would not be understood by the relevant consumer to be descriptive of the Opponent’s video-sharing platform related goods and services.”<sup>15</sup>

46 I find that the Opponent’s Word Mark has a normal level of inherent technical distinctiveness. In an article from How-To Geek entitled *Why is it called TikTok?* relied on by the Opponent,<sup>16</sup> the Opponent’s Word Mark “is said to represent the short, snappy videos on the [Opponent’s TikTok] platform. A reference to the tick-tocking sound of the second hand on a clock.” While the Opponent submits that this is just conjecture on the part of the author of the article,<sup>17</sup> I am of the view that the average consumer is likely to associate (or even equate) the Opponent’s Word Mark “TikTok” to the onomatopoeia “tick tock”.

47 I agree with the Applicant<sup>18</sup> that the marks are clearly visually dissimilar. Among other things, the Application Mark contains a large device component

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<sup>15</sup> OWS at [26].

<sup>16</sup> OSD at [12] and Exhibit-BD06 at p 81.

<sup>17</sup> OWS at [37]–[39].

<sup>18</sup> AWS at [23].

which is wholly absent in the Opponent’s Word Mark. The word element is also different; visually, the word element in the Application Mark contains only four letters while the Opponent’s Word Mark contains six letters.

### Aural Comparison

48 For the purposes of an aural comparison, I find that the Opponent’s Word mark has a normal level of inherent technical distinctiveness for the reasons set out in [46] above.

49 The Opponent submits that the Opponent’s Word Mark will be pronounced as “TIK TOK”, while the Application Mark will be pronounced as “TIK-EE”.<sup>19</sup> In my view, the Application Mark can be pronounced as either “TIK-EE” or “TI-KEE”. There is no evidence before me as to which pronunciation is more likely for the majority of average consumers. Notwithstanding this, I am prepared to accept that a reasonable proportion of average consumers may pronounce the mark as “TIK-EE”. In such a situation, both marks would comprise two syllables with an identical first syllable.

50 I agree with the Hearing Officer who heard the corresponding dispute before the UK Intellectual Property Office that “the shortness of the marks at issue means that the average consumer is more likely to notice the differences” as between the two marks: see *Tiktok Information Technologies UK Limited v Dol Technology Pte. Ltd.* (O/0145/24) at [38]. Further, the Application Mark is represented as one word (“Tiki”), while the Opponent’s Word Mark is represented as two words – “Tik” and “Tok” – with the letter “T” capitalized for each syllable.

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<sup>19</sup> OWS at [35].

51 On balance, I am of the view that the marks are only aurally similar to a low extent, or at best to a medium extent.

### Conceptual Comparison

52 The analysis for conceptual similarity “seeks to uncover the ideas that lie behind and inform the understanding of the mark as a whole... the idea connoted by each component [of a mark] might be very different from the sum of its parts.” (*Staywell* at [35])

53 For the purposes of a conceptual comparison, I find that the Opponent’s Word mark has a normal level of inherent technical distinctiveness for the reasons set out in [46] above.

54 In the same paragraph, I found that the idea conveyed by the Opponent’s Word Mark to the average consumer is the sound of a clock.

55 As for the Application Mark, the Applicant submits, based on the dictionary meaning of “Tiki”, that the idea conveyed is “an object in the shape of a human being, made from wood or stone.”<sup>20</sup> The Opponent notes that the dictionary extract relied on by the Applicant expressly states that this meaning of “Tiki” only applies in New Zealand. The Opponent argues that “the average consumer in Singapore is unlikely to be aware of Māori mythology and attach this conceptual meaning to the Application Mark. As such, the average consumer is likely to view the Application Mark as having no obvious concept.”<sup>21</sup>

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<sup>20</sup> ASD at [25(i)]; AWS at [27].

<sup>21</sup> OWS at [40].

56 Although no evidence has been filed by either party as to how the average consumer is likely to perceive the respective marks, I am inclined to agree with the Opponent. In any event, regardless whether I accept the Applicant’s or the Opponent’s submission as to the concept behind the Application Mark, neither concept is remotely similar to the concept conveyed by the Opponent’s Word Mark (*ie* the sound of a clock).

57 It therefore follows that the marks are conceptually dissimilar.

Overall Conclusion on Marks-Similarity

58 As noted above, I must ultimately conclude whether the marks, when observed in their totality, are similar or dissimilar. The three aspects of similarity (visual, aural, and conceptual) are merely signposts to guide in this ultimate inquiry (see [36(c) and (d)] above).

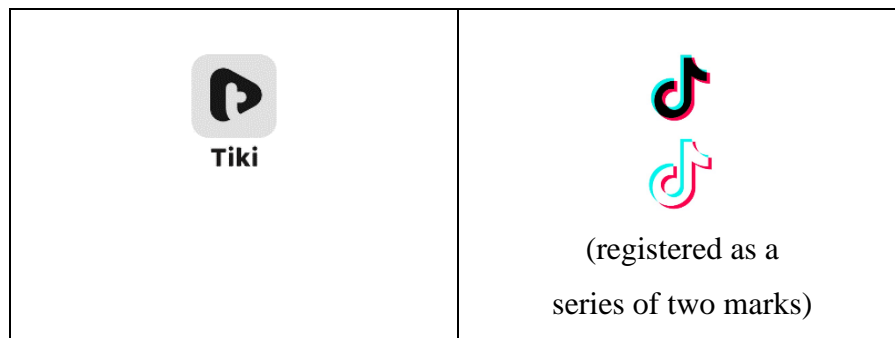
59 I have found that the marks are visually and conceptually dissimilar, and aurally similar only to a low (or, at best, medium) extent.

60 Overall, I conclude that the marks are dissimilar. Indeed, to decide otherwise would mean that all two-syllable words starting with “TIC-” (e.g. “ticket”, “ticker”, “tictac”) would automatically be considered to be similar to the Opponent’s Word Mark. This cannot be the case.

*Similarity of Application Mark to Opponent’s Device Mark*




61 To facilitate discussion and for ease of reference, I reproduce the respective marks below:

<b>Application Mark</b>	<b>Opponent’s Device Mark</b>
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### Visual Comparison

62 I consider first the distinctiveness of the Opponent’s Device Mark. According to the Opponent, the device depicts a musical eighth note (or quaver). It utilises colour and shadow to create the illusion of movement and signify musical vibrations.<sup>22</sup> I find that it has a normal level of inherent technical distinctiveness.

63 The Opponent argues that the device component of the Application Mark is similar to the Opponent’s Device Mark. It appears to reach this conclusion in the following manner: (a) the device component of the Application Mark is a composite mark comprising a play icon superimposed with a “” shaped device; (b) the play icon signals to the average consumer that the goods and services offered under the mark relate to the provision of music ; (c) play icons are commonly used in marks that represent video or music entertainment applications (such as YouTube which is represented by the  logo); (d) therefore, the component with the greatest inherent non-technical distinctiveness in the device component of the Application Mark is the “” shaped device; (e) this device appears to emulate the stem of the eighth note that

<sup>22</sup> NO1 at [9]; NO2 at [9]; OSD at [11].

appears in the Opponent’s Device Mark; and (f) therefore, the Opponent’s Device Mark and the Application Mark are visually similar.<sup>23</sup>

64 I am unable to accept that the average consumer would undertake such a convoluted process of reasoning and dissect the device component of the Application Mark in this manner. It is far more likely that the average consumer will view the device as a stylised letter “t” as this would be consistent with the word component (“Tiki”) of the mark. Further, this word component is wholly absent in the Opponent’s Device Mark.

65 Accordingly, I find that the marks are visually dissimilar.

#### Aural Comparison

66 The Application Mark would be pronounced as “TIK-EE” or “TI-KEE”. The Opponent’s Device Mark has no aural component.

67 The marks are aurally dissimilar.

#### Conceptual Comparison

68 For the purposes of a conceptual comparison, as in the case of the visual comparison, I find that the Opponent’s Device mark has a normal level of inherent technical distinctiveness (see [62] above).

69 The Opponent’s Device Mark depicts a musical eighth note (or quaver).

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<sup>23</sup> See OWS at [28]–[30] & [46].

70 The idea conveyed by the Application Mark is either “an object in the shape of a human being, made from wood or stone” (the Applicant’s position) or has no obvious concept (the Opponent’s position) (see [55] above).

71 In either case, the marks are conceptually dissimilar.

#### Overall Conclusion on Marks-Similarity

72 I have found that the marks are visually, aurally and conceptually dissimilar. It follows that the marks are dissimilar overall.

#### *Decision on marks-similarity*

73 In view of my findings that the Application Mark is dissimilar to both the Opponent’s Word Mark and the Opponent’s Device Mark, the opposition under s 8(2)(b) of the Act fails.

74 In case I am wrong, I briefly consider the other elements which the Opponent must establish to succeed under this ground of opposition.

#### *Similarity of goods and services*

75 In ANNEX A, I have listed the goods and services for which the Application Mark is applied for alongside the goods and services covered by the registrations for the Opponent’s Word Mark and the Opponent’s Device Mark.

76 It is evident there are numerous identical or similar specifications in the parties’ respective goods and services of interest. The Applicant has not addressed this issue in its submissions.

77 I find that this requirement is met by the Opponent.

***Likelihood of confusion***

78 The third element which the Opponent must establish is that there exists a likelihood of confusion arising from the similarities in marks and in goods/services. This issue therefore does not arise as I have found that the relevant marks are dissimilar.

***Conclusion on opposition under s 8(2)(b)***

79 As the Opponent has not established the threshold requirement of marks-similarity (and is also unable to show a likelihood of confusion on the part of the average consumer), this ground of opposition fails.

**Opposition under Section 8(4)(b)(i)**

80 Section 8(4)(b)(i) of the Act reads:

(4) ..... if the whole or an essential part of the trade mark is identical with or similar to an earlier trade mark, the later trade mark must not be registered if —

- (a) the earlier trade mark is well known in Singapore; and
- (b) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered —
  - (i) would indicate a connection between those goods or services and the proprietor of the earlier trade mark, and is likely to damage the interests of the proprietor of the earlier trade mark;

81 The Opponent’s Word Mark, the Opponent’s Device Mark and the Opponent’s Composite Mark are all “earlier trade marks” as defined in s (2)(1)(a) of the Act.

82 Compared to s 8(2)(b) of the Act, s 8(4)(b)(i) confers greater protection on earlier trade marks which are well known in Singapore. Specifically, it is not necessary to establish similarity of goods or services to those for which the Application Mark is applied.

83 Accordingly, under this ground of opposition, the Opponent also relies on the Opponent’s Composite Mark which is registered for clothing in Class 25 of the register of trade marks as a series of four marks<sup>24</sup>, depicted as follows:



For ease of comparison, I will refer to the third mark in this series, as the device and word component are arranged in the same configuration as the Application Mark. This is also the version relied on by the Opponent in its submissions.<sup>25</sup>

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<sup>24</sup> Under Trade Mark no. 40202017814Q, registered on 27 August 2020 for “clothing; shirts; t-shirts; jackets [clothing]; sweaters; sweatshirts; vests; shorts; pants; bodysuits; cloth bibs; jerseys; pullovers; headwear; hats; beanies; visors being headwear; beach shoes; belts [clothing]; caps being headwear; bandanas [neckerchiefs]; gloves [clothing]; socks; footwear; sweat bands” in Class 25.

<sup>25</sup> OWS at [116].

84 To succeed in an opposition under s 8(4)(b)(i) of the Act, the Opponent must establish that:

- (a) the Opponent’s Word Mark, the Opponent’s Device Mark and/or the Opponent’s Composite Mark were well known in Singapore as at the relevant dates;
- (b) the whole or an essential part of the Application Mark is similar to the Opponent’s Word Mark, the Opponent’s Device Mark and/or the Opponent’s Composite Mark;
- (c) the use of the Application Mark in relation to the goods and services for which registration is sought would indicate a connection between those goods and services and the Opponent; and
- (d) the connection is likely to damage the Opponent’s interests.

85 I will examine each of these elements in turn.

***Whether Opponent’s Marks are well known in Singapore***

86 Section 2(1)(a) of the Act defines a "well known trade mark" to include “any registered trade mark that is well known in Singapore.”

87 Section 2(7) of the Act provides that:

Subject to subsection (8), in deciding, for the purposes of this Act, whether a trade mark is well known in Singapore, it shall be relevant to take into account any matter from which it may be inferred that the trade mark is well known, including such of the following matters as may be relevant:

- (a) the degree to which the trade mark is known to or recognised by any relevant sector of the public in Singapore;
- (b) the duration, extent and geographical area of –

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

88 Section 2(8) of the Act states that “[w]here it is determined that a trade mark is well known to any relevant sector of the public in Singapore, the trade mark shall be deemed to be well known in Singapore.”

89 Finally, s 2(9) of the Act defines the “relevant sector of the public in Singapore” in s 2(7) and 2(8) as including any of the following:

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

90 As observed in *Amanresorts* at [139]–[140], s 2(7)(a) of the Act is arguably the most crucial factor when determining whether a trade mark is well known in Singapore. This is because s 2(8) *deems* a trade mark to be well known in Singapore where it is determined to be well known to *any* relevant sector of the public in Singapore.

91 I will examine the evidence furnished by the Applicant in greater detail when I discuss the next ground of opposition (opposition on the basis that the Opponent’s marks are well known to the public at large in Singapore).

92 For present purposes, I am satisfied that the Opponent’s Word Mark, the Opponent’s Device Mark and the Opponent’s Composite Mark are all well known in Singapore. Among other things, there were more than 1 million new downloads of the TikTok App in Singapore between January to July 2020, and the TikTok platform is used by Singapore government agencies to communicate various government initiatives and programmes to the Singapore public (see [125(j) and (k)] below).

93 I also note that, in its submissions, the Applicant has not disputed that these marks are well known in Singapore.<sup>26</sup>

***Similarity of marks***

94 The Opponent must establish that the whole or an essential part of the Application Mark is similar to the Opponent’s Word Mark, the Opponent’s Device Mark and/or the Opponent’s Composite Mark.

95 Although the language used in s 8(4)(b)(i) (“the whole or an essential part of the trade mark is... similar to an earlier trade mark”) is different from

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<sup>26</sup> See AWS at [51].

that in s 8(2)(b) (“similar to an earlier trade mark”), the court in *Sarika* (at [70]–[71]) has made clear that this difference in wording is immaterial.

96 I have already found that the Application Mark is dissimilar to both the Opponent’s Word Mark and the Opponent’s Device Mark.

97 I now consider whether the Application Mark is similar to the Opponent’s Composite Mark.

98 To facilitate discussion and for ease of reference, I reproduce the respective marks below:

Application Mark	Opponent’s Composite Mark
	

### Visual Comparison

99 I consider first the distinctiveness of the Opponent’s Composite Mark. As discussed above (at [62]) in relation to the Opponent’s Device Mark, according to the Opponent, the device depicts a musical eighth note (or quaver). It utilises colour and shadow to create the illusion of movement and signify musical vibrations. As for the Opponent’s Word Mark, I have found that the average consumer is likely to associate or equate “TikTok” to the onomatopoeia “tick tock” (see [46] above). There is some inter-relation between the device and word components of the mark. Taking everything into consideration, I find that the Opponent’s Composite Mark has a normal level of inherent technical distinctiveness.

100 I have found (at [64] above) that the device components of the respective marks are visually dissimilar. As for the word components of the two marks, from a visual perspective, it comprises of four letters in the Application Mark, compared to six letters in the Opponent’s Composite Mark. Further, it is represented as two words in the Opponent’s Composite Mark (“Tik” and “Tok”, with the letter “T” in both components capitalised), compared to one word (“Tiki”) in the Application Mark. However, the first three letters in both marks are identical.

101 Even if I accept that there is a low degree of visual similarity in the word components of the two marks, on the whole, I find that the marks are visually dissimilar.

#### Aural Comparison

102 For the purposes of an aural comparison, I consider only the word component of the respective marks. As discussed above when comparing the Application Mark with the Opponent’s Word Mark (see [51] above), I find that the marks are aurally similar to a low (or at best medium) extent.

#### Conceptual Comparison

103 For the purposes of a conceptual comparison, as in the case of the visual comparison, I find that the Opponent’s Composite Mark has a normal level of inherent technical distinctiveness (see [99] above).

104 The device component in the Opponent’s Composite Mark depicts a musical eighth note (or quaver). The idea conveyed by the word component is the sound of a clock (see [46] above).

105 The idea conveyed by the Application Mark is either “an object in the shape of a human being, made from wood or stone” (the Applicant’s position) or has no obvious concept (the Opponent’s position) (see [55] above).

106 In either case, the marks are conceptually dissimilar.

#### Overall Conclusion on Marks-Similarity

107 I have found that the marks are visually and conceptually dissimilar, and aurally similar only to a low (or, at best, medium) extent. Overall, I conclude that the marks are dissimilar.

108 As I have found that the Application Mark is dissimilar to the Opponent’s Word Mark, the Opponent’s Device Mark and the Opponent’s Composite Mark, the opposition under s 8(4)(b)(i) of the Act fails.

109 In case I am wrong, I briefly consider the other elements which the Opponent must establish to succeed under this ground of opposition.

#### ***Whether use of the Application Mark would indicate a connection with the Opponent***

110 The Opponent must also establish that use of the Application Mark in relation to the goods or services for which it is sought to be registered would indicate a connection between those goods or services and the Opponent.

111 As explained in some detail in *Amanresorts* (at [161]–[233]), this requires the Opponent to establish a likelihood of confusion.

112 In view of the dissimilarity between the Application Mark and each of the marks relied on by the Opponent, I find that the average consumer would not be confused.

***Whether use of the Application Mark is likely to cause damage to the Opponent***

113 As use of the Application Mark would not cause the average consumer to be confused into thinking that there is a connection between the Applicant's goods or services and the Opponent, it follows that there would not be any damage caused to the Opponent.

***Conclusion on opposition under s 8(4)(b)(i)***

114 As the Opponent has not established marks-similarity, confusion, or damage caused by the use of the Application Mark, this ground of opposition fails.

***Opposition under Section 8(4)(b)(ii)***

115 Section 8(4)(b)(ii) of the Act reads, in relevant part:

(4) ..... if the whole or an essential part of the trade mark is identical with or similar to an earlier trade mark, the later trade mark shall not be registered if –

- (a) the earlier trade mark is well known in Singapore; and
- (b) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered –
  - (i) would indicate a connection between those goods or services and the proprietor of the earlier trade mark, and is likely to damage the interests of the proprietor of the earlier trade mark;
  - (ii) if the earlier trade mark is well known to the public at large in Singapore —

- (A) would cause dilution in an unfair manner of the distinctive character of the earlier trade mark; or
- (B) would take unfair advantage of the distinctive character of the earlier trade mark.

116 To succeed under this ground of opposition, the Opponent must establish that:

- (a) the Opponent's Word Mark, the Opponent's Device Mark and/or the Opponent's Composite Mark were well known to the public at large in Singapore as at the relevant dates;
- (b) a whole or essential part of the Application Mark is similar to the Opponent's Word Mark, the Opponent's Device Mark and/or the Opponent's Composite Mark; and
- (c) either:
  - (i) the use of the Application Mark in relation to the goods and services for which registration is sought would cause dilution in an unfair manner of the distinctive character of the Opponent's Word Mark, the Opponent's Device Mark and/or the Opponent's Composite Mark; or
  - (ii) the use of the Application Mark in relation to the goods and services for which registration is sought would take unfair advantage of the distinctive character of the Opponent's Word Mark, the Opponent's Device Mark and/or the Opponent's Composite Mark.

117 The second element is not satisfied as I have already found that the relevant marks are not similar (see [60], [72] and [107] above). Accordingly, this ground of opposition fails.

118 However, as a large part of the Opponent’s evidence and submissions was directed at establishing that the marks it relies on are well known to the public at large in Singapore, I will consider this element below.

119 The Act does not define what is meant by “well known to the public at large”. However, as observed by the Court of Appeal in *Amanresorts* (at [233]), trade marks which have attained the coveted status of being “well known to the public at large in Singapore” enjoy an extensive level of protection; they are entitled to protection from use of a trade mark on dissimilar goods or services even in the absence of a likelihood of confusion. Marks which attain this status should therefore be confined to a rare and exclusive class.

120 In the same vein, in its subsequent decision in *City Chain* at [94], the Court of Appeal held that the test “well known to the public at large in Singapore” has to mean more than just “well known in Singapore”. The mark has to necessarily enjoy a much higher degree of recognition. It has to be recognised by most sectors of the public (though not so far as to all sectors of the public).

121 Unsurprisingly, only the following marks have thus far been assessed by the Singapore court or this Tribunal to have met this threshold of recognition: Seiko<sup>27</sup>, Clinique<sup>28</sup>, Nutella<sup>29</sup>, Intel<sup>30</sup>, Gucci<sup>31</sup> and gMail<sup>32</sup>.

122 It goes without saying that the onus is on the party asserting that a mark is well known to the public at large in Singapore to adduce sufficient evidence to satisfy a tribunal (or court) that this is indeed the case. I am in full agreement with the IP Adjudicator in *Google LLC v Green Radar (Singapore) Pte Ltd* [2024] SGIPOS 1 at [69] that “[e]ven for internationally famous brands, it should not be taken for granted that the reputation and renown of the mark would speak for itself such that ‘judicial notice’ may be taken that a mark is well known [to the public at large] in Singapore without requiring further proof.”

123 In the present case, the Opponent relies on a variety of evidence from overseas and in Singapore to establish that the Opponent’s Word Mark, the Opponent’s Device Mark and/or the Opponent’s Composite Mark are well known to the public at large in Singapore as at Relevant Date 1 (*ie* 28 May 2021) and Relevant Date 2 (*ie* 4 August 2021).

124 As noted at [120] above, for a mark to be considered as well known to the public at large in Singapore, it has to be recognised by most sectors of the public

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<sup>27</sup> See *Seiko Holdings Kabshiki Kaisha (trading as Seiko Holdings Corporation) v Choice Fortune Holdings Limited* [2014] SGIPOS 8.

<sup>28</sup> See *Clinique Laboratories, LLC v Clinique Suisse Pte Ltd and another* [2010] 4 SLR 510.

<sup>29</sup> See *Ferrero SPA v Sarika Connoisseur Cafe Pte Ltd* [2011] SGHC 17.

<sup>30</sup> See *Intel Corporation v Intelsteer Pte Ltd* [2015] SGIPOS 2.

<sup>31</sup> See *Guccio Gucci S.P.A v Guccitech Industries (Private Ltd)* [2018] SGIPOS 1.

<sup>32</sup> See *Google LLC v Green Radar (Singapore) Pte Ltd* [2024] SGIPOS 1.

in Singapore. The Applicant simply asserts that the Opponent has not adduced any evidence to demonstrate this.<sup>33</sup> In its evidence, the Applicant also highlights that “most of the evidence submitted by the Opponent does not relate to Singapore.”<sup>34</sup>

125 Based on the evidence adduced, I am satisfied that the Opponent’s Word Mark is well known to the public at large in Singapore. In particular, I have taken into account the following evidence:

(a) Article entitled “Bytedance crowned the world’s most valuable internet start-up at \$75bn” (*The Drum*, 28 October 2021). Apart from stating that the Opponent has been valued as the world’s largest internet start-up, the article also states that the TikTok App “was downloaded 45.8 million times in the first quarter of 2018 and topped the Apple App Store’s global non-game download chart, pushing YouTube and WhatsApp to second and third place, respectively.”<sup>35</sup>

(b) Article entitled “How TikTok’s Owner Became the World’s Most Valuable Unicorn” (*CB Insights*, 18 June 2020). Apart from its self-explanatory headline, the article also states (among other things) that “[a]s of May 2020, the [TikTok] app has been downloaded approximately 2B times” and “[i]n Q1’20 alone, TikTok accumulated 315M new downloads worldwide – a record-breaking quarter for an individual app – according to Sensor Tower.”<sup>36</sup>

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<sup>33</sup> AWS at [64].

<sup>34</sup> ASD at [22(c)].

<sup>35</sup> OSD at [6], Exhibit-BD02 at p. 32.

<sup>36</sup> OSD at [6], Exhibit-BD02 at p. 33–34.

(c) Article entitled “How TikTok is Rewriting the World” (*The New York Times*, 10 March 2019). The article states that for “a human adult aged approximately ‘millennial’ to ‘boomer’... [t]he analytics suggest a high likelihood that [they are] aware there is an app named TikTok.”<sup>37</sup>

(d) Article entitled “Social media platforms growth of MAU<sup>38</sup> worldwide 2019-2021” (*Statistica Research Department*, 8 March 2021). The article notes that “TikTok saw an exceptional increase of average monthly users worldwide from 2019-2021, at 38 percent. The short-form video sharing app was used by 689 million individuals monthly as of 2021, compared to 500 million in 2019.” This is the highest growth rate among all the social media platforms selected in the article.<sup>39</sup>

(e) Article entitled “Media usage in an online minute 2021” (*Statistica Research Department*, 6 October 2021). The article notes that, as of August 2021, for every minute in each day, TikTok users around the world view 167 million videos. This compares with 44 million views received by Facebook Live and 694,000 hours streamed by YouTube users.<sup>40</sup>

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<sup>37</sup> OSD at [14], Exhibit-BD08 at pp. 86–89.

<sup>38</sup> MAU is an acronym for “monthly active users”.

<sup>39</sup> OSD at [27]; Exhibit-BD16 at p 160. The other social media platforms selected were Pinterest, Reddit, Facebook Snapchat, Instagram, LinkedIn and (as it then was) Twitter.

<sup>40</sup> OSD at [32]; Exhibit-BD16 at p 161. A clearer copy of the article can be found at OSSD, Exhibit-BD16 at p 56. The other data provided in the article were: 575,000 tweets posted by Twitter (as it then was) users; 240,000 photos shared by Facebook users; and 65,000 photos shared by Instagram users. Although the date at which the survey was conducted (August 2021) postdates the relevant dates by a short period of time, it can be readily assumed that the usage statistics as at the relevant dates (just a few months prior) would also be very high.

(f) “TikTok Usage Statistics” obtained from the Business of Apps website. These statistics show that TikTok’s monthly active users increased from 85 million in the first quarter of 2018 to 812 million in the first quarter of 2021; the number of TikTok annual users increased from 65 million in 2017 to 700 million in 2020; and the number of TikTok users in South-East Asia increased from 62 million in 2018 to 198 million in 2020 (these figures are much higher than the corresponding numbers in North America and Europe).<sup>41</sup>

(g) “TikTok Download Statistics” extracted from Benchmark Report 2022 (*Influencer Marketing Hub* website, with the statistics indicated to have been last updated on 15 February 2022). The statistics provided indicate that the TikTok App was installed on devices more than three billion times worldwide as at mid-2021 (it passed one billion in February 2019 and two billion in April 2020). It was also the second most downloaded iPhone app for 2020, ahead of Facebook, Messenger, Gmail, Netflix, YouTube and Instagram.<sup>42</sup>

(h) “TikTok Revenue Statistics” extracted from Benchmark Report 2022 (*Influencer Marketing Hub* website, with the statistics indicated to have been last updated on 15 February 2022). The statistics provided indicate, among other things, that TikTok was the top-grossing non-

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<sup>41</sup> OSD at [28] and [32]; Exhibit-BD16 at pp 162–163. The exhibit in the OSD cannot be read as the format of the PDFs was incompatible with the printers used by the Opponent’s agent (OSSD at [7]), and a clear copy of the article can be found at OSSD, Exhibit-BD16 at pp 57–58.

<sup>42</sup> OSD at [34] and [35]; Exhibit-BD17 at p 178. The rest of the document in the OSD cannot be read as the format of the PDFs was incompatible with the printers used by the Opponent’s agent (OSSD at [7]), and a clear copy of the document can be found at OSSD, Exhibit-BD17 at pp 65–68.

gaming app worldwide for February 2021, with more than US\$110 million in user spending.<sup>43</sup>

(i) Numerous articles evidencing awards and accolades received by the Opponent on account of the recognition and strength of the “TikTok” brand.<sup>44</sup>

(j) Article entitled “More TikTok users in Singapore amid Covid-19 even as concerns mount over security and privacy issues” (*The Straits Times*, 4 August 2020). Citing information obtained from mobile apps analytics firm Sensor Tower, the article states that there were approximately 1.04 million new downloads of the TikTok App in Singapore between January to July 2020; and there were around 3.4 million users of the TikTok App in Singapore on or about 4 August 2020 when the article was written, based on downloads from the Google Play Store and Apple’s App Store. In terms of users in Singapore, the corresponding figures for Twitter (as it then was), Facebook and Instagram were 2.3 million, 8.7 million and 5.2 million respectively.<sup>45</sup>

(k) Two articles featuring the use of the TikTok platform by Singapore government agencies to communicate various government

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<sup>43</sup> OSD at [37]; Exhibit-BD18 at p 183.

<sup>44</sup> OSD at [43] and [44]; Exhibit-BD23 at pp 233–253. These include the following articles: “Amazon brand value soars above \$400 billion, as TikTok joins ranks of Kantar and WPP’s top 100 brands for the first time” (30 June 2020); “Ad Age names TikTok ‘Marketer of the Year’” (7 December 2020); “How TikTok became the emerging brand of the year at The Drum Awards for Marketing” (9 July 2021); and “TikTok was the best-rated of 2020’s top U.S. iOS apps” (December 2021).

<sup>45</sup> OSD at [31] and [32]; Exhibit-BD16 at pp 170–172. These figures must be somewhat inflated since the alleged number of Facebook users in Singapore (8.7 million) exceeds our total population. Notwithstanding, it is clear that the number of TikTok users in Singapore is very significant.

initiatives and programmes to the Singapore public. To give just one example, a campaign to remind Singaporeans to celebrate Chinese New Year safely amid the COVID-19 pandemic garnered 23.3 million video views.<sup>46</sup>

126 In my view, the evidence set out at [125(j)] and [125(k)] is sufficient to establish that the Opponent’s Word Mark is well known to the public at large in Singapore.

127 Evidence from overseas, as a general proposition, would not be relevant in assessing whether a mark is well known to the public at large in Singapore.

128 In the present case, however, the evidence establishes that the Opponent’s “TikTok” brand is one of the most recognised in the world. Singapore as a nation is well-connected globally. The average consumer in Singapore is well-travelled and reasonably well-informed. Information such as the Opponent becoming the world’s most valuable start-up and the exceptionally rapid rise in popularity of the “TikTok” platform around the world are details which the average consumer here would be aware of. By analogy, although we are not Americans, it is likely that many Singaporeans would know that the current US President is Joe Biden and the previous President was Donald Trump.

129 Further, a large percentage of Singaporeans use social media. It is certainly not ideal that much of the statistics provided by the Opponent does not include a country-by-country breakdown. Nonetheless, given the huge numbers involved (*eg* downloads of more than 3 billion as at mid-2021, which is slightly

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<sup>46</sup> OSD at [50]; Exhibit-BD25 at pp 265–270.

less than half of the world's population at that time), it is more likely than not that at least a corresponding percentage of average consumers in Singapore would be included in these statistics. This is in fact borne out by the statistics set out in [125(j)] above.

130 However, I am not persuaded that the Opponent's Device Mark is well known to the public at large in Singapore. Most of the articles mentioned above do not include an image of the Opponent's Device Mark. Even if they do, it is not the focus of the various articles. The Opponent also does not operate a business which has numerous consumer-facing store fronts (in contrast to, for example, retail or food and beverage chains whose physical outlets prominently display their logos).

131 While the Opponent's Device Mark is the app icon that appears when a person downloads the TikTok App on a smart device, it does not necessarily follow that this person would recall the icon after the initial download. The average consumer is likely to have a large number of apps downloaded on his/her smart devices. Unless the app is one that is frequently used, it is unlikely that the person who downloaded it would remember clearly how the app icon looks like. In this regard, the evidence shows that most of the users of the TikTok App are young adults and teenagers.<sup>47</sup> This would suggest that average consumers that do not fall within this demographic may not use the TikTok App and may not be familiar with the Opponent's Device Mark. The Opponent has not put forward evidence to contradict this supposition. I am therefore of the view that the Opponent has not met the burden of proof to establish that the

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<sup>47</sup> See, for example, the article entitled "More TikTok users in Singapore amid Covid-19 even as concerns mount over security and privacy issues" (*The Straits Times*, 4 August 2020) referred to at [125(j)] above.

Opponent's Device Mark is well known to the public at large in Singapore (at least not at the relevant dates of 28 May 2021 and 4 August 2021).

132 As the Opponent's Device Mark is a prominent component of the Opponent's Composite Mark, it follows that the Opponent has also not established that its Composite Mark is well known to the public at large in Singapore.

133 Although I am satisfied that the Opponent's Word Mark is well known to the public at large in Singapore, as I have found that the Application Mark and the Opponent's Word Mark are not similar (see [60] above), this ground of opposition fails. It is not necessary for me to examine the other elements of s 8(4)(b)(ii) of the Act.

#### **Opposition under Section 8(7)(a)**

134 Section 8(7)(a) of the Act reads:

(7) A trade mark shall not be registered if, or to the extent that, its use in Singapore is liable to be prevented —

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade

135 The three elements of passing off are (a) goodwill, (b) misrepresentation, and (c) damage to goodwill: *Amanresorts* at [37]; affirmed in *Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading)* [2016] 4 SLR 86 at [28] ("*Singsung*"). All three elements must be established to succeed in a claim for passing off.

136 In most trade mark opposition cases, if an opponent fails in an opposition under s 8(2)(b) of the Act, it would generally also fail under s 8(7)(a) of the Act.

This is because the test for misrepresentation under passing off is substantially the same as that for “likelihood of confusion” under s 8(2)(b) of the Act (*Sarika* at [76]–[77]). In the present case, I have found that the competing marks are dissimilar, and that the average consumer is unlikely to be confused. Accordingly, it would normally follow that there would also not be a misrepresentation under passing off. Indeed, this is the position taken by the Applicant.<sup>48</sup>

137 Of course, this is not an immutable rule. As observed in *Law of Intellectual Property of Singapore* at [21.5.57], “success in the objection raised under ss 8(1)-(4) does not necessarily mean success in the objection raised under s 8(7)(a) or *vice versa*.” The learned author cites the landmark case of *Staywell* as an example of this. In *Staywell*, the opponent succeeded in its case under s 8(2)(b) but failed to prove its case for passing off under s 8(7)(a). This was because it was found that the opponent did not have the necessary goodwill at the relevant date.

138 In the present case, the Opponent relies on various “*surrounding circumstances*” to argue that a misrepresentation has taken place.<sup>49</sup> I briefly summarise these (alleged) circumstances:

- (a) The Opponent and Joyy Inc (a Chinese company with which the Applicant is related) are competitors. Joyy Inc operates a short-form video sharing platform, Likee, which is very similar to, and a direct competitor of, the Opponent’s TikTok platform.

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<sup>48</sup> AWS at [79].

<sup>49</sup> OWS at [81]–[91] read with [6]–[15].

(b) In particular, the Opponent and Joyy Inc competed in India, which was formerly the largest international market for the TikTok platform.

(c) Following a border dispute with China, the Indian government banned 59 Chinese-made apps on 29 June 2020, including both the TikTok and Likee Apps.

(d) Shortly thereafter, the Applicant launched the TIKI App in India in February 2021. The TIKI App is in essence a repackaged version of the Likee App.

(e) Specifically, the Application Mark, which in use is depicted in yellow () , takes design elements from the Opponent's news aggregator platform known as TopBuzz () , video-streaming platform known as BuzzVideo () and TikTok platform () .

(f) The design of the Application Mark was to create the impression that the Applicant was economically linked to the Opponent in order to leverage on the reputation of the TikTok platform and attract the former users of the TikTok App in India to the Applicant's new platform.

139 The Opponent submits that it can rely on the above circumstances as whether misrepresentation has occurred is to be assessed having regard to all the surrounding circumstances. Further, the assessment is not confined to factors which stem from the similarity between the conflicting marks and

goods/services. It cites *Singsung* at [40] and *Hai Tong* at [110] in support of this submission.<sup>50</sup>

140 I am not convinced that these cases stand for the proposition put forward by the Opponent, at least not to the extent that it covers all the circumstances set out in [138] above. I note that both *Singsung* and *Hai Tong* are cases relating to trade mark infringement and passing off, and were not trade mark oppositions. Further, reading the paragraphs relied on in full, they do not seem to support the assertion that any and all circumstances can be taken into account in a trade mark opposition based on s 8(7)(a). I reproduce these paragraphs below for ease of reference:

(a) *Singsung* at [40]; proposition put forward by the Opponent highlighted in bold

**Whether misrepresentation has occurred is a question to be determined by the court in the light of the surrounding circumstances.** The misrepresentation in question must give rise to confusion (or the likelihood thereof) in order to be actionable under the law of passing off. This is ultimately a matter for the court's judgment and it is not to be determined on a visual side-by-side comparison. Rather it is to be assessed from the vantage point of a notional customer with imperfect recollection. While evidence of actual confusion, such as the testimony of a witness, may be helpful in the court's determination of the question, the lack of such evidence is not fatal to a claim (*Novelty* at [80]; *Hai Tong* at [106])...

(b) *Hai Tong* at [110]; proposition put forward by the Opponent highlighted in bold



Moreover, even in relation to the element of misrepresentation, it has been observed in *Kellogg Co v Pacific Food Products Sdn Bhd* [1998] 3 SLR(R) 904 ("*Kellogg*") that at least in relation to the corresponding provision of the 1992 TMA, the test in the tort of passing off is probably a more demanding one than the corresponding inquiry in a trade mark infringement action (see *Kellogg* at [32]). In the former, it is necessary to show that the defendant's actions amount to a misrepresentation that is likely

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<sup>50</sup> OWS at [81].

to deceive the relevant segment of the public, whereas in a trade mark infringement action, the question is whether, because of the similarities between the registered mark and the allegedly infringing mark and between the goods or services on which these marks are applied, there is likely to be confusion. Moreover, as observed in *Polo (HC)* at [23] and endorsed by this court in *Polo (CA)* at [33], **in an action in passing off, the likelihood of deception is to be assessed having regard to all the circumstances, whereas in a trade mark infringement action under s 27(2)(b) of the Act, the likelihood of confusion must stem from the similarity between the contesting marks and the similarity between the goods or services to which they are applied.** Lastly, whereas passing off is concerned with protecting the plaintiff's goodwill in his business, the action for infringement is geared towards protecting the trade mark owner's proprietary rights in respect of his trade mark. With these observations, we turn to consider Hai Tong's claim for passing off.

141 In any event, it is not necessary for me to decide on this issue for the purposes of the current proceedings, and I decline to do so. The issue of precisely what circumstances can be taken into account in an opposition under s 8(7)(a) is an important one, and best left to be considered in an appropriate case where full arguments on the issue have been advanced by both parties.

142 In the present case, I note that the Opponent's news aggregator platform known as TopBuzz () and video-streaming platform known as BuzzVideo () were not mentioned at all in the Opponent's notices of opposition or statutory declaration in support of the oppositions. They were mentioned for the first time in the Opponent's statutory declaration in reply.<sup>51</sup> The Applicant therefore did not have the opportunity to respond to these assertions.

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<sup>51</sup> OSD R at [25] and [26].

143 In any event, these additional circumstances relied on by the Opponent pertain to the alleged situation in India. There is no evidence as to the relevance of these circumstances from the perspective of the average consumer in Singapore, or whether the average consumer in Singapore would even be aware of these alleged circumstances.

144 The opposition under s 8(7)(a) of the Act fails.

### **Overall Conclusion**

145 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the opposition fails on all the grounds relied on by the Opponent. The Application Mark may therefore proceed to registration.

### **Costs**

146 As the opposition fails on all grounds, the Applicant is entitled to costs. Rule 75(2) of the Trade Mark Rules (the “Rules”) provides that costs awarded in proceedings before the Registrar are not intended to compensate the parties for the expense to which they may have been put. The Fourth Schedule in the Rules prescribes a Scale of Costs, which caps the costs claimable. Section F of HMD Circular 6.1 (Costs) provides parties with detailed guidance on the factors which the Registrar takes into account when deciding on the quantum of costs to be awarded for each item in the Scale of Costs.

147 For most trade marks hearings fixed from 2 June 2022, costs are assessed summarily. This approach saves time and costs for parties.

148 In the present case, on the assumption that the oppositions succeed, the Opponent sought costs of \$13,047.25.<sup>52</sup> The Applicant sought the sum of \$8,795 plus US\$550<sup>53</sup> as costs on the assumption that the oppositions are dismissed.<sup>54</sup>

149 I also note that the evidence filed by the Opponent exceeded the page limits which the Registrar expects for proceedings before IPOS – the OSD consisted of 345 pages (compared to the 300 pages prescribed by HMD Circular 3.3) and the OSDR consisted of 103 pages (compared to the 100 pages prescribed by HMD Circular 3.3). The purpose of the page limits is to avoid unnecessary costs to parties, particularly since IPOS is a low-cost tribunal.

150 The circular took effect from 2 June 2022. During a two-year pilot preceding the introduction of the circular, it was noted that almost all parties were able to file their evidence within the page limits prescribed. Further, the feedback from parties on the pilot was also overwhelmingly in favour of page limits.<sup>55</sup>

151 The consequences of exceeding the page limits could pertain to costs. The Registrar will apply a test based on the relevance and proportionality of the evidence.<sup>56</sup>

152 The Opponent acknowledged that it was advised of the costs implications of exceeding the recommended page limits during the Pre-Hearing

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<sup>52</sup> OWS at [151] read with the Schedule to the OWS.

<sup>53</sup> As at the date of this Grounds of Decision, US\$550 amounts to approximately S\$744 (exchange rate retrieved from [www.oanda.com](http://www.oanda.com) on 11 June 2024).

<sup>54</sup> AWS at [84].

<sup>55</sup> See Sections A and C of HMD Circular 3.3.

<sup>56</sup> See Section D of HMD Circular 3.3.

Review.<sup>57</sup> The Opponent sought to justify why the page limits were exceeded on various grounds. Among other things, the Opponent asserted that “there is a very huge volume of information relevant to the present opposition” due to “the global nature of the Opponent’s business and the vast extensiveness of the Opponent’s online presence.”<sup>58</sup>

153 I accept that the volume of evidence (and hence the number of pages in an SD) is likely to be greater where a party seeks to establish that its marks are well known to the public at large in Singapore. However, the fact remains that the other party would have to spend more time and resources in reviewing a longer SD. Further, in the present case, the Opponent had to file a supplementary SD to address some deficiencies regarding certain exhibits in the OSD (*eg* legibility, and the absence of both foreign language documents and their English translations) (see [17(a)] above). This supplementary SD comprises 148 pages, and the Applicant would of course have had to analyse it.

154 All things considered, I award the Applicant costs of S\$9,000 (inclusive of disbursements).

Mark Lim  
Principal Assistant Registrar



Harry Zheng, Jasmin Kang and Soh Wing Tim (Kelvin Chia  
Partnership) for the Applicant;  
Margaret Law (Margaret Law Corporation) for the Opponent.

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<sup>57</sup> OWS at [152].

<sup>58</sup> OWS at [154(iv)].

**ANNEX A: Goods and Services for which Applicant’s and Opponent’s Marks are applied for or registered**

	<b>Application Mark<sup>59</sup></b>	<b>Opponent’s Word Mark<sup>60</sup></b>	<b>Opponent’s Device Mark<sup>61</sup></b>
		<p>TikTok</p>	
Class 09	Computer operating programs, recorded; computer software, recorded; Computer software applications, downloadable; Downloadable applications for use with mobile devices; Computer game software, downloadable; Downloadable music files; Downloadable image files; Computer programs for editing images, sound and video; Computer software for controlling the operation of audio and video devices; Downloadable e-wallets; Electronic publications, downloadable; Downloadable ring tones for mobile phones; Animated cartoons; Cinematographic film,	Application software; Application software for smart phones; Downloadable computer software applications; Downloadable smart phone applications (software); Covers and protective cases for smart phones; Holders adapted for smart phones; Smart phone and mobile phone accessories, namely, ear phones, keypads and USB cables.	

<sup>59</sup> Trade Mark Nos. 40202112759X and 40202118455Y.

<sup>60</sup> Trade Mark Nos. 40201924683W and 40202115954V. The goods and services listed are those relied on by the Opponent (see OWS at [19]–[20]).

<sup>61</sup> Trade Mark Nos. 40201924684U and 40202115955Q. The goods and services listed are those relied on by the Opponent (see OWS at [19]–[20]).

	<p>exposed; Video game cartridges; Recording devices for sound and image carriers; Playing devices for sound and image carriers; Audio-and video-receivers; Combination video players and recorders; Electronic book readers; Smartphones; Eyeglasses; Navigational instruments; Camcorders; Portable media players; Projection apparatus; Audiovisual teaching apparatus; Video screens; Remote control apparatus; Anti-theft warning apparatus; Batteries, electric.</p>	
<p>Class 35</p>	<p>Advertising; Advertising agency services; Rental of advertising space; Online advertising on a computer network; Rental of advertising time on communication media; Production of advertising films; Pay per click advertising; Web indexing for commercial or advertising purposes; Business management and organization consultancy; Compilation of information into computer databases; Systemization of information into computer databases; Presentation of goods on communication media, for retail purposes; Marketing; Search engine optimization for sales promotion; Web site traffic optimisation; Updating and maintenance of data in computer databases; Providing business information via a web site; Provision of an online marketplace for buyers and sellers of goods and services; Commercial information and advice for consumers in the</p>	<p>Advertising services; advertising agencies; on-line advertising on computer networks; pay per click advertising; preparing advertisements for others; dissemination of advertising matter; advertising through all public communication means; sales promotion for others; providing advice in the field of business management and marketing; search engine optimization for sales promotion; providing and rental of advertising space on the Internet; business advice and information; assistance in management of business activities; commercial information agency services; providing business information via a website; personnel management consultancy; updating and maintenance of data in computer databases.</p>

	<p>choice of products and services; Provision of commercial and business contact information; Import-export agency services; Cost price analysis; Procurement services for others [purchasing goods and services for other businesses].</p>	
<p>Class 36</p>	<p>Banking; capital investment; charitable fund raising; debt collection agency services; electronic funds transfer; exchanging money; financial evaluation [insurance, banking, real estate]; financial management via the Internet; financial analysis; financial consultancy; financial research; financing services; insurance brokerage; investment of funds; loans [financing]; online banking; real estate agency services; trusteeship; e-wallet payment services; processing of electronic credit card transactions.</p>	<p>Insurance; financial affairs; monetary affairs; real estate affairs; clearing and reconciling financial transactions via a global computer network; online banking services and financial services; credit card services; processing of bill payments, and providing insurance for financial transactions; funds transfer services; transfer of funds by electronic means for others; transfer of payments for others via the internet; financial services in the nature of bill payment services and payment processing services; arrangement and management of leases and tenancy of real estate; renting and leasing of real estate; real estate appraisal; real estate valuation, real estate financing, real estate investment; real estate brokerage services; housing agency services; actuarial services; real estate management and consultancy services; rent collection; rental of offices (real estate); capital investments; financial evaluation [insurance, banking, real estate]; financial and asset management services; financial services provided by telecommunication means; financial consultancy and advisory services; online banking; information services relating to finance and insurance, provided online from a computer database or Internet; antique appraisal; art appraisal; jewelry appraisal; used car</p>

		<p>appraisal; tax information supply (financial services); charitable fund raising; organizing of charitable collections; charitable collections; online payment services; safe deposit services; arranging finance for construction projects.</p>
<p>Class 38</p>	<p>Providing on-line chat rooms for social networking; Providing internet chatrooms; Providing instant messaging services; Computer aided transmission of messages and images; Message sending; Communications by computer terminals; Providing on-line forums for transmission of messages among computer users; Video-on-demand transmission; Videoconferencing services; Streaming of data; News agency services for electronic transmission; Broadcasting programs via a global computer network; Teleconferencing services; Providing access to databases; Transmission of digital files; Transmission of podcasts; Voice mail services; Providing user access to global computer networks; Providing telecommunications connections to a global computer network; Telecommunications routing and junction services; Providing telecommunication channels for teleshopping services; Electronic bulletin board services (telecommunications services); Providing information in the field of telecommunications; Communications by cellular phones; Radio broadcasting;</p>	<p>Transmission of text, photo or video via smart phone applications; Transmission of information via applications for smart phones; Transmission, broadcasting and reception of audio, video, still and moving images, text and data; Transfer of data via on-line services; Providing access to Peer-to-peer (P2P) sharing portal; Providing access to a video sharing portal; Communication services provided over the Internet; Short message services [SMS]; Message sending services via smart phone applications; Transmission of application information via the Internet; Search engine user access services via smart phone applications; Communication via virtual private networks [VPN]; Electronic delivery of images and photographs via a global computer network; Data transmission and telecommunication services; Telecommunications services for providing access to data, sound or images.</p>

	<p>Television broadcasting; Wireless broadcasting; Rental of message sending apparatus; Rental of modems; Satellite transmission; Rental of smartphones; Rental of telecommunication equipment.</p>	
<p>Class 41</p>	<p>Entertainment services; Entertainment information; Providing online videos, not downloadable; Production of radio and television programmes; Production of videos; Distribution (other than transportation) of videos; Providing on-line music, not downloadable; Organization of games; organization of electronic game competitions; Publishing of electronic publications; Providing amusement arcade services; Providing on-line computer games; Electronic games services provided by means of the internet; Organization of shows (impresario services); Production of shows; Arranging of beauty contests; Dubbing; Presentation of live performances; Club services (entertainment or education); Educational services; Publication of electronic books and journals online; Layout services, other than for advertising purposes; Film production, other than advertising films; Rental of motion pictures; Videotape editing; Music composition services; Photography; News reporters services; Translation; Production of radio and television programmes; Scriptwriting services for non-advertising purposes; Organization of</p>	<p>Presentation of music videos via mobile devices on-line; Providing of on-line electronic publications (not downloadable) via mobile devices; Multimedia publishing of printed matter, books, magazines, journals, newspapers, newsletters, tutorials, maps, graphics, photographs, videos, music and electronic publications; Electronic publication of information on a wide range of topics on-line; Provision of entertainment information via the Internet.</p>

	<p>exhibitions for cultural or educational purposes; Arranging and conducting of workshops (training); Booking of seats for shows; Ticket agency services (entertainment); Health club services (health and fitness training); Modelling for artists.</p>	
<p>Class 42</p>	<p>Recovery of computer data; hosting computer sites [web sites]; computer security consultancy; computer technology consultancy; computer software consultancy; installation of computer software; design and development of computer software; upgrading and maintenance of computer software; user authentication services using technology for e-commerce transactions; computer virus protection services; monitoring of computer systems by remote access; consultancy in the design and development of computer hardware; conversion of computer programs and data, other than physical conversion; cloud storage services for electronic data; off-site data backup; cloud computing; software as a service [SaaS]; platform as a service [PaaS]; development of computer platforms; creating and designing website-based indexes of information for others [information technology services]; server hosting; rental of web servers; design and development of virtual reality software; providing information relating to computer technology and programming via a web site; design and development</p>	<p>Provision of software applications through a website; Hosting on-line web facilities for others for sharing on-line content; Hosting platforms on the Internet; Computer programming; Computer software design; Electronic data storage; Software as a service (SAAS); Cloud computing; Hosting a website for the electronic storage of digital photographs and videos; Hosting digital content on the Internet; Hosting multimedia entertainment content platforms; Website hosting of multimedia and interactive applications; Website hosting services.</p>

	<p>of electronic data security systems; data migration services; database development services; development and creation of computer programmes for data processing; Provision of research services; Research in the field of telecommunications technology; Information services relating to information technology; computer programming of video games; design and development of software for instant messaging; computer system integration services; research in the field of artificial intelligence.</p>	
<p>Class 45</p>	<p>Licensing of computer software [legal services]; Legal services relating to the exploitation of broadcasting rights; Copyright management; On-line social networking services; Dating services; Licensing [legal services] in the framework of software publishing; Alternative dispute resolution services; Licensing of intellectual property; Marriage counseling; Personal background investigations.</p>	<p>On-line social networking services.</p>