

**IN THE HEARINGS AND MEDIATION GROUP OF
THE INTELLECTUAL PROPERTY OFFICE OF SINGAPORE
REPUBLIC OF SINGAPORE**

Trade Mark No. T0911230B
10 October 2016

**IN THE MATTER OF
TRADE MARK REGISTRATION BY**

LIM CHING KWANG

AND

**APPLICATION FOR
REVOCATION AND DECLARATION OF INVALIDITY
THEREOF BY**

AUDI AG

Hearing Officer: Ms Tan Mei Lin
Principal Assistant Registrar of Trade Marks

Ms Jolena Ang Xiao Wen (Drew & Napier LLC) for the Applicants
Mr Lim Ching Kwang (Registered Proprietor in person)

Cur Adv Vult

GROUND OF DECISION

1 These proceedings have been brought in relation to T0911230B, in particular Class 12, and the representation of the trade mark is as follows ("the Subject Mark"):



2 The Subject Mark was filed on 5 October 2009 and the date of completion of the registration procedure was 18 January 2010. The Subject Mark currently stands in the name of Lim Ching Kwang (“the Registered Proprietor”).

3 The Subject Mark is registered in Classes 7 and 12. In respect of Class 12 which these proceedings concern, the registration is for the following goods (“the Goods”):

Aerial conveyors; aeronautical apparatus, machines and appliances; aeroplanes; air bags [safety devices for automobiles]; air balloons; air cushion vehicles; air pumps [vehicle accessories]; air vehicles; aircraft; airplanes (amphibious-); airships; ambulances; amphibious airplanes; anti-dazzle devices for vehicles; anti-glare devices for vehicles; anti-skid chains; anti-theft alarms for vehicles; anti-theft devices for vehicles; automobile bodies; automobile chains; automobile chassis; automobile hoods; automobile tires [tyres]; automobiles; automobiles (sun-blinds adapted for-); axle journals; axles for vehicles; baby carriages; baby carriages (covers for-); balance weights for vehicle wheels; balloons (air-); balloons (dirigible-); bands for wheel hubs; barges; bars (torsion-) for vehicles; baskets adapted for cycles; bells for bicycles, cycles; berths (sleeping-) for vehicles; bicycle bells; bicycle brakes; bicycle chains; bicycle frames; bicycle handle bars; bicycle pumps; bicycle rims; bicycle saddles; bicycle spokes; bicycle stands; bicycle tires [tyres]; bicycles; boat hooks; boats; boats (masts for-); bodices for vehicles; bogies for railway cars; brake linings for vehicles; brake segments for vehicles; brake shoes for vehicles; brakes for bicycles, cycles; brakes for vehicles; buffers for railway rolling stock; bumpers for automobiles; bumpers (vehicle-); buses (motor-); cable cars; cable transport apparatus and installations; caissons [vehicles]; camping cars; caps for vehicle petrol [gas] tanks; caravans; carriages [railways]; carrier tricycles; carriers (luggage-) for vehicles; cars; cars for cable transport installations; carts; casings for pneumatic tires [tyres]; casters for trolleys [vehicles] [carts (am.)]; casting carriages; casting cars; chains (anti-skid-); chains (cycle-); chains for bicycles, cycles; chairlifts; chassis (automobile-); chassis (vehicle-); cleaning trolleys; cleats [nautical]; clips (spoke-) for wheels; clutches for land vehicles; coaches (motor-); concrete mixing vehicles; connecting rods for land vehicles, other than parts of motors and engines; converters (torque-) for land vehicles; conveyors (aerial-); couplings for land vehicles; couplings (railway-); covers for baby carriages; covers for vehicle steering wheels; covers (seat-) for vehicles; crankcases for land vehicle components, other than for engines; cranks for cycles; cycle bells; cycle brakes; cycle cars; cycle chains; cycle frames; cycle handle bars; cycle hubs; cycle mudguards; cycle pumps; cycle rims; cycle saddles; cycle spokes; cycle stands; cycle tires [tyres]; cycles; davits for boats; delivery tricycles; dining cars; dining wagons [carriages]; direction indicators for bicycles, cycles, etc.; direction signals for vehicles; dirigible balloons [airships]; disengaging gear for boats; doors for vehicles; dredgers [boats]; dress guards for bicycles, cycles; driving chains for land vehicles; driving motors for land vehicles; ejector seats for aircraft; electric vehicles; elevating tailgates (am.) [parts of land vehicles]; engines for land vehicles; engines (traction-); fenders for ships; ferry boats; flanges for railway wheel tires [tyres]; fork lift trucks; frames for bicycles, cycles; freewheels for land vehicles; funiculars; funnels for locomotives; funnels for ships; gear boxes for land vehicles; gearing for land vehicles; gears for cycles; golf carts; goods handling carts; hand cars; handle bars for bicycles, cycles; harness (security-) for vehicle seats; head-rests for vehicle seats; hoods for baby carriages; hoods for vehicle engines; hoods for vehicles; hooks (boat-); horns for vehicles; hose carts; hub caps; hubs for vehicle wheels; hulls (ships'-); hydraulic circuits for vehicles; hydroplanes; inclined ways for boats; inner tubes (adhesive rubber patches

for repairing-); inner tubes for bicycles, cycles; inner tubes for pneumatic tires [tyres]; inner tubes (repair outfits for-); jet engines for land vehicles; journals (axle-); kick sledges; ladle carriages; ladle cars; launches; lifting cars [lift cars]; lifts (ski-); lifts (tailboard-)[parts of land vehicles]; linings (brake-) for vehicles; locomotives; lorries; luggage carriers for vehicles; luggage nets for vehicles; luggage trucks; masts for boats; military vehicles for transport; mine cart wheels; mirrors (rearview-); mopeds; motor buses; motor cars; motor coaches; motor homes; motorcycles; motors, electric, for land vehicles; motors for cycles; motors for land vehicles; mudguards; non-skid devices for vehicle tires [tyres]; oars; omnibuses; paddles for canoes; panniers adapted for cycles; parachutes; patches (adhesive rubber-) for repairing inner tubes; pedals for cycles; perambulator covers (fitted-); pneumatic tires [tyres]; pontoons; portholes; power tailgates (am.)(parts of land vehicles); prams [baby carriages]; propulsion mechanisms for land vehicles; pumps (air-) [vehicle accessories]; pumps for bicycles, cycles; pushchair covers; pushchair hoods; pushchairs; railway cars (bogies for-); railway couplings; railway wheel tires [tyres];(flanges of-); rearview mirrors; reduction gears for land vehicles; refrigerated vehicles; remote control vehicles, other than toys; repair outfits for inner tubes; reversing alarms for vehicles; rims for vehicle wheels; rims for wheels of bicycles, cycles; rolling stock for funicular railways; rolling stock for railways; rowlocks; rudders; running boards (vehicle-); sack-barrows; saddle covers for bicycles or motorcycles; safety seats for children, for vehicles; scooters [vehicles]; screw-propellers; screw-propellers for boats; screws [propellers] for ships; sculls; seaplanes; seat covers for vehicles; seats (safety-) for children, for vehicles; seats (vehicle-); security harness for vehicle seats; segments (brake-) for vehicles; ships; ships' hulls; ships steering gears; ships (timbers [frames] for -); shock absorbers for automobiles; **shock absorbers (suspension-) for vehicles**; shock absorbing springs for vehicles; shoes (brake-) for vehicles; shopping trolleys [carts (am.)]; side cars; signals (direction-) for vehicles; ski carriers for cars; ski lifts; sleeping berths for vehicles; sleeping cars; sleighs [vehicles]; snowmobiles; space vehicles; spars for ships; spikes for tires [tyres]; spoke clips for wheels; spokes for bicycles, cycles; spokes (vehicle wheel-); sports cars; springs (shock absorbing-) for vehicles; sprinkling trucks; stands for bicycles, cycles [parts of bicycles, cycles]; steering gears for ships; steering wheels (covers for vehicle-); steering wheels for vehicles; stern oars; stroller covers [pushchairs]; strollers; studs for tires [tyres]; sun-blinds adapted for automobiles; **suspension shock absorbers for vehicles**; suspension springs (vehicle-); tailboard lifts [parts of land vehicles]; tailgates (am.)(elevating-, power-)[parts of land vehicles]; telpher railways [cable cars]; tilting-carts; timbers [frames] for ships; tipping apparatus, parts of trucks and waggons; tipping bodies for lorries [trucks]; tires (flanges of railway wheel-); tires for bicycles, cycles; tires for vehicle wheels; tires (non-skid devices for vehicle-); tires, solid, for vehicle wheels; torque converters for land vehicles; torsion bars for vehicles; traction engines; tractors; trailer hitches for vehicles; trailers [vehicles]; tramcars; transmission chains for land vehicles; transmission shafts for land vehicles; transmissions, for land vehicles; transport apparatus and installations (cable-); treads for retreading tires [tyres]; treads for vehicles [roller belts]; treads for vehicles [tractor type]; tricycles; tricycles (carrier-); trolleys; trucks; trucks (luggage-); tubeless tires [tyres] for bicycles, cycles; turbines for land vehicles; turn signals for vehicles; two-wheeled trolleys; tyres (flanges of railway wheel-); tyres for bicycles, cycles; tyres for vehicle wheels; tyres (non-skid devices for vehicle-); tyres, solid, for vehicle wheels; undercarriages for vehicles; upholstery for vehicles; valves for vehicle tires [tyres]; vans [vehicles]; vehicle bumpers; vehicle chassis; vehicle covers [shaped]; vehicle petrol [gas] tanks (caps for-); vehicle running boards; vehicle seats; vehicle suspension springs; vehicle wheel rims; vehicle wheel spokes; vehicle

wheel tires [tyres]; vehicle wheels; vehicle wheels (hubs for-); vehicle (air cushion-); vehicles (anti-glare devices for-); vehicles (connecting rods for land-), other than parts of motors and engines; vehicles (electric-); vehicles for locomotion by land, air, water or rail; vehicles for transport (military-); vehicles (refrigerated-); vehicles (remote control-), other than toys; vehicles (space-); waggons; waggons (refrigerated-)[railroad vehicles]; wagons (refrigerated-)[railroad vehicles]; warning systems (audible-) for cycles; water vehicles; weights (balance-) for vehicle wheels; wheel hubs (bands for-); wheel hubs (vehicle-); wheel tires [tyres](vehicle -); wheelbarrows; wheelchairs; wheels for bicycles, cycles; wheels (spoke clips for-); wheels (vehicle-); windows for vehicles; windscreen wipers; windscreens; windshield wipers; windshields; yachts.

[Emphasis mine]

4 AUDI AG (“the Applicants”) filed this application for revocation and for declaration of invalidity on 30 March 2015. The Registered Proprietor filed his counter-statement, including evidence of use, on 27 May 2015.

5 The Applicants filed evidence in support of their application for revocation and for declaration of invalidity on 8 December 2015. The Registered Proprietor filed evidence in support of the Subject Mark on 22 March 2016. The Applicants filed evidence in reply on 22 May 2016. The hearing took place on 10 October 2016.

Grounds of Revocation and Invalidation

6 The Applicants rely on Section 22(1)(a) and (b) of the Trade Marks Act (Cap 332, 2005 Rev Ed) (“the Act”) for the application for revocation and Section 23(1) read with Section 7(6) of the Act for the invalidation action.

Applicants’ Evidence

7 The Applicants’ evidence comprises the following:

S/No.	Declarant	Designation	Date	Declared in	Referred to as
1	Richard Zollner	Director of Patent Dept. of AUDI AG	3 November 2015	Germany	A1
2	Richard Zollner	Director of Patent Dept. of AUDI AG	8 June 2015	Germany	A2

Registered Proprietor's Evidence

8 The Registered Proprietor's evidence comprises the following:

S/No.	Declarant	Date	Declared in	Referred to as
1	Lim Ching Kwang	26 May 2015	Singapore	RP1
2	Lim Ching Kwang	18 March 2016	Singapore	RP2

Burden of Proof

9 In respect of the revocation action, the Registered Proprietor has the burden of proving genuine use of the Subject Mark in Singapore in relation to the Goods. However, with regard to the invalidation proceedings, the burden of proof falls on the Applicants.

Background

10 The Applicants are a German manufacturer of automobiles, distributing its automobiles through an exclusive distributor in Singapore since 1999.

11 The Registered Proprietor, while owning the Subject Mark in his personal name, holds positions in the following companies:

- (i) Abundant Resources Pte Ltd, Director from 2009 to 2014;
- (ii) Uniglory Pte Ltd, Director from 2004 to present;
- (iii) Uniglory Singapore Pte Ltd, Director from 2012 to present.

12 The Registered Proprietor applied on 5 October 2009 to register the Subject Mark in the name of Abundant Resources Pte Ltd (“Abundant Resources”). On 9 April 2012, the Registered Proprietor notified the Registry to record a transfer of ownership of the Subject Mark from Abundant Resources to himself personally. It is stated on the notification that the effective date of the transfer of ownership to the Registered Proprietor was 2 March 2012. Abundant Resources was subsequently deregistered on 12 March 2014. The evidence of use lodged by the Registered Proprietor in support of his case in these proceedings includes use by both Uniglory Pte Ltd and Uniglory Singapore Pte Ltd.

MAIN DECISION

REVOCAATION

Grounds of Revocation under Section 22(1)(a) and (b)

13 Section 22 of the Act reads:

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 his 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;

...

(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.

(3) The registration of a trade mark shall 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.

...

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

Relevant Dates

14 The Applicants plead and submit that the registration of the Subject Mark should be revoked:

- a. under Section 22(1)(a) of the Act, as there had been no genuine use of the Subject Mark by the Proprietors for a period of 5 years subsequent to 18 January 2010; and/or
- b. under Section 22(1)(b) of the Act, as such use has been suspended for an uninterrupted period of 5 years prior to the filing of the present application on 31 March 2015;

and there are no proper reasons for non-use.

15 In line with the practical parameters of the Applicants' pleadings, the relevant dates under consideration are as follows:

- a. The registration procedure was completed on 18 January 2010. The 5-year period immediately following the completion of registration ended on 18 January 2015. The period of use (or non-use) in issue is *19 January 2010 to 18 January 2015*.
- b. The application for revocation was filed on 31 March 2015. The 5-year period prior to this application for revocation starts from 31 March 2010. The period of use (or non-use) in issue is *31 March 2010 to 30 March 2015*.

16 As the two sets of relevant dates above overlap, if I find that there is use of the Subject Mark for any of the Goods listed in the registration for the period between 31 March 2010 and 18 January 2015 ("the Relevant Period"), the application for revocation under both the grounds must necessarily fail in relation to those goods.

Decision on Section 22(1)(a) and (b)

17 Under this claim, I have to decide, as a matter of fact, whether the Subject Mark has been put to genuine use in relation to the Goods. Having reached a conclusion on that point and if the conclusion is that there has been use in respect of some but not all of the Goods, I must then go on to decide what constitutes a fair specification for the use made.

Whether there is Use of the Subject Mark

18 The Registered Proprietor does not allege that he has used the Subject Mark in relation to all the Goods covered by the registration except “suspension shock absorbers for vehicles”, which is also referred to additionally as “shock absorbers (suspension-) for vehicles” in the specification. As both these terms are identical in meaning, references in this decision to “suspension shock absorbers for vehicles” shall include the latter.

19 In respect of the use on “suspension shock absorbers for vehicles”, the Registered Proprietor’s case is that he has used it specifically on the following goods: torque rods, mountings for engine and cab bushings. (It was clarified at the hearing that mountings for engine come under “suspension shock absorbers for vehicles”.) However, I find no evidence to support the Registered Proprietor’s case of use of the Subject Mark on cab bushings and mountings for engine during the Relevant Period. While a proforma invoice dated 16 December 2009 (Exhibit B1, RP2) was lodged showing sales of goods described as cab bushing and mounting for engine to Sumotori Machinery Group, the invoice does not refer to the Subject Mark and there is no explanation in the Registered Proprietor’s evidence how the Subject Mark was used on these goods. Further, the date of 16 December 2009 falls outside the Relevant Period. I am therefore of the view that there is insufficient evidence of use of the Subject Mark on cab bushings and mountings for engine during the Relevant Period and I will focus my decision only on the case of use of the Subject Mark on torque rods (also known as torque rod bushings or torque rod bushes (Exhibit 18, RP2)).

20 The Registered Proprietor is a spare parts trader. He describes his business in RP2 as follows:

15.2) In the context of the spare parts industry, many long-established companies already represent the provision of most of the branded spare parts in Singapore. As a newcomer in this industry, I found it difficult to break into the market. Hence, the only practical option for me was to promote the “AOne” brand in the provision of non-branded spare parts, as an alternative to the branded spare parts.

21 With regard to the “AOne” torque rods, they are sourced from the Registered Proprietor’s overseas suppliers and packaged in boxes bearing the Subject Mark before delivery to the Registered Proprietor’s customers. In RP2 he describes how he promotes the Subject Mark:

5.1) Most of the marketing and / or promotion, which I have done for the “AOne” goods, is not documented or accounted for on paper. Since 2010, whilst promoting my goods to potential customers, I have showed them a “cut out” sample of the “AOne” torque bush. [At Exhibit 4, RP2, page 31] is a copy of a photograph showing such a “cut-out” sample. As of today, I still have the exact cardboard box and torque bush shown in the photograph at Exhibit 4. I am able and willing to offer them for authentication of their age.

5.2) I have also used the cardboard boxes with the “AOne” stickers on them to deliver goods to my customers. [At Exhibit 5, RP2, pages 33 and 34, are] photographs showing use of the [Subject Mark]. Boxes, which are the size of the box shown in the photographs at Exhibit 5, have been used in delivering goods to the customer in Russia in 2009/2010, Chuan Lim Construction Pte Ltd (hereinafter referred to as “Chuan Lim”) and Scantruck Engineering Pte Ltd (hereinafter referred to as “Scantruck”). However, some of the goods, which were delivered in 2009/2010 to the customer in Russia, were delivered in

cardboard boxes that look the same but were of a different box size and sticker size. As can be seen from the date on the “Today” newspaper in the photographs, I have continued to use such boxes in the course of my business up until as recently as 10th March 2016.

22 The Registered Proprietor uses the email account newwine@singnet.com.sg for his business and he is sometimes referred to as Benjamin Lim or CK Lim. Name cards of Benjamin Lim and CK Lim showing the above email address and the same mobile number in all the cards were produced (Exhibit 9, RP2).

23 The evidence lodged by the Registered Proprietor in support of his case of use can be summarised as follows:

No.	Summary of Evidence	Dated	Source
1	Photograph of a box labelled with the Subject Mark	Undated	Exhibit A1, RP1
2	A Bill of Lading, proforma invoice and an email to a customer in Russia, Sumotori Machinery Group	17 Dec 2009, 9 Sep 2010 and 16 Dec 2009 respectively	Exhibit B1, RP1
3	Email correspondence to a client in Myanmar	7 Oct 2014	Exhibit B2, RP1
4	Expenditure on promoting the Subject Mark	2010 – 2013	Exhibit C1 – C5, RP1
5	Photograph of a “cut out” sample of “AOne” torque bush and packaging	Undated	Exhibit 4, RP2
6	Photographs of an “AOne” torque bush in a cardboard box labelled with the Subject Mark	Undated	Exhibit 5, RP2
7	Documents showing the import of torque bushes bearing the Subject Mark in November 2009 from Mord Tech Co Ltd	2009 - 2010	Exhibit 6, RP2
8	Documents showing sale of torque bushes to Chuan Lim Construction Pte Ltd	2011	Exhibit 7, RP2
9	Documents showing sale of torque bushes to Scantruck Engineering Pte Ltd	2012 – 2013	Exhibit 8, RP2
10	Emails between the Registered Proprietor and Elisha Communications Pte Ltd showing the designs of the Subject Mark	2 October 2009	Exhibit 11, RP2
11	Invoice for the payment of the design of the Subject Mark	11 November 2009	Exhibit 12, RP2
12	Bills from a telephone operator showing the Registered Proprietor’s expenditure on calls to potential customers	2010 – 2015	Exhibit 13, RP2

13	Photographs showing use of the Subject Mark on the goods in an exhibition in Russia	Undated	Exhibit 14, RP2
14	A list of local companies to which the Registered Proprietor has promoted the goods bearing the Subject Mark to	Undated	Exhibit 15, RP2
15	Email correspondence between the Registered Proprietor and an Indonesian supplier as evidence of efforts to source for a cheaper supplier of “AOne” torque brushes	April 2011 – May 2011	Exhibit 16, RP2

24 I will not focus individually on each and every item of evidence lodged by the Registered Proprietor as it is clear to me that in considering the evidence for the purposes of examining whether there is genuine use of a trade mark, an overall assessment must be carried out which takes into account of all the relevant factors in the particular case. While genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence, it cannot be ruled out that the totality of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts.


25 In his evidence, the Registered Proprietor gives at least 3 examples of usage of the Subject Mark on torque rods during the Relevant Period.

Email quotation for “AOne” torque bushes (Item 7, Exhibit 6, RP2, page 48)

26 First, an email was sent by the Registered Proprietor on 9 September 2010 to a company in Russia, Sumotori Machinery Group (referred to in [21] as “customer in Russia”), offering to sell 1,500 – 2,000 pieces of “AOne” brand torque bush (Exhibit 6, RP2, page 48). By way of background, Sumotori Machinery Group is a company to whom the Registered Proprietor had previously sold 500 pieces of torque bushes bearing the Subject Mark (Exhibit B1, RP2) but as the transaction took place outside the Relevant Period, being shipped out of Singapore on 17 December 2009 to Russia, I did not take that sale into account as constituting use within the Relevant Period (“2009 sale to Sumotori Machinery Group”).

27 While this quotation did not materialise into an actual sale for the Registered Proprietor, it clearly shows the existence of “AOne” torque bushes being offered for sale by the Registered Proprietor. In the case of *Weir Warman Ltd v Research & Development Pty Ltd* [2007] SGHC 59, the High Court said at [104]:

It is, however, pertinent to note that it now seems fairly settled that genuine use can be established even if there is no evidence of actual sales being made...

28 The Applicants argue that in the email the words “AOne” brand appear in plain font and not in the stylised version  as registered. According to section 22(2) of the Act:

... 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.

29 In *ELLE Trade Marks* [1997] FSR 529 (“*ELLE*”), the registered mark was for the word “elle” in lower case letters encased in a circle with a cross of the bottom right of the circle. The proprietor of the trade mark subsequently used the word “ELLE” in upper case, without the device. It was held at page 533 of *ELLE* that the use of the word “ELLE” in upper case without the device altered the distinctive character of the registered trade mark in a substantial way and did not represent use of the registered mark. This was because the device was as distinctive as the words in the registered mark.

30 The Applicants submit that applying *ELLE* to the present case, where the Subject Mark consists of the distinctive and stylised words “A” and “One”, with an equally distinctive tick device, the use of “AOne” in plain font alters the distinctive character of the Subject Mark and does not amount to use of the Subject Mark as registered.

31 I am unable to agree with the Applicants’ arguments. As mentioned in [24], in examining evidence of use with a view to ascertaining whether genuine use of a mark has been made, the items of evidence must be looked at in totality. The email shows a quotation by the Registered Proprietor for “AOne” torque bushes. It is not unusual in emails, quotations and invoices to type out the brand name in plain font (without using the official stylised trade mark), in the interest of convenience since the purpose is purely for identification. However, this does not mean that the trade mark appearing on actual goods or their packaging would be in the same typeface as that used in the email, quotation or invoice. On the form in which “AOne” appears on the goods, we have the Registered Proprietor’s evidence that the actual torque bushes are delivered to his customers in cardboard boxes pasted with stickers bearing the stylised “AOne” trade mark (the Subject Mark) (RP1 at [6], RP2 at [5.2], RP2 at [6], RP2 at [7.2]-[7.4] and Exhibits 4 and 5) as well as other supporting evidence. Furthermore the Registered Proprietor is communicating with a customer who has previously purchased torque bushes bearing the Subject Mark. In this regard, I therefore find that the reference in the email to “AOne” in plain font does not reflect how the trade mark is actually used in relation to the torque bushes but merely to identify the brand of the torque bushes. The email is thus still good evidence of the fact that the AOne brand of torque bushes are being offered for sale by the Registered Proprietor during the Relevant Period.

Sale to Chuan Lim Construction Pte Ltd (Exhibit 7, RP2, page 50-53)

32 While the 2009 sale to Sumotori Machinery Group falls outside the Relevant Period, and is not taken into account, the facts surrounding the sale of the 500 pieces of torque bushes to Sumotori Machinery Group is relevant as it leads to the Registered Proprietor’s second use of the Subject Mark, the sale of 15 pieces of torque bushes to local company, Chuan Lim Construction Pte Ltd.

33 As mentioned in [21], the Registered Proprietor explains that to fulfil the order of his customers, he would source for the relevant parts from his suppliers. In the case of the 2009 sale to Sumotori Machinery Group, he sourced for the torque bushes from a Taiwanese supplier, Mord Tech Co Ltd. While the order was for 500 pieces, for palletised quantity, he imported 512 pieces. An invoice from Mord Tech Co Ltd dated 27 November 2009 (Exhibit 6, RP2, page 42) was produced and indicated on the invoice, in addition to the 512 pieces of torque rod bush, is an item for “AOne sticker expense – 2000 pcs”. The Registered Proprietor says in RP2 at [7.2] that Mord Tech Co Ltd shipped the 512 pieces of torque bushes in cardboard boxes with stickers of the Subject Mark pasted on them on 29 November 2009 (Exhibit 6, RP2, page 44). 500 pieces of the torque bushes were shipped to Sumotori Machinery

Group on 17 December 2009, leaving him with a remaining quantity of 12 pieces of torque bushes.

34 The second use of the Subject Mark relied upon by the Registered Proprietor is the sale of the remaining 12 pieces of torque bushes supplied by Mord Tech Co Ltd. These were sold to a local company, Chuan Lim Construction Pte Ltd on 8 February 2011. Evidence of the quotation for these 12 pieces of torque bushes, purchase order and delivery order for these goods were adduced (Exhibit 7, RP2, page 50-53).

35 The Applicants submit that the fact that “AOne” stickers were shipped together with torque bushes does not show that the “AOne” stickers were used in relation to the torque bushes. However, I see no reason to doubt the Registered Proprietor’s evidence in light of Exhibit 6 of RP2, an email from him to a Ryan Pan of King Shua Mao Co Ltd (ryan@ksm.com.tw) dated 19 November 2009 indicating that he would like to get the AOne stickers to be placed on the top/cover of “the box” and attaching an image showing the Subject Mark on a box. The title of the email is “AOne sticker on Bushing box”. Given that the date of the email and the date the torque bushes were shipped by Mord Tech Co Ltd are only 10 days apart, on the balance of probabilities, I am inclined to believe that this instruction was carried out and the stickers were used in relation to the torque bushes.

36 Furthermore, I note from the email correspondence between the Registered Proprietor and Sumotori Machinery Group (Exhibit 6, RP2, page 45) in the context of the quote for torque bushes in 2010 ([26] – [31] above), that Sumotori Machinery Group mentioned “I remember MORD TECH uses AOne brand”. This statement appears to me to lend some support to the Registered Proprietor’s evidence that the torque bushes shipped by Mord Tech Co Ltd in 2009 do bear stickers of the Subject Mark.

Sale to Scantruck Engineering Pte Ltd (Exhibit 8, RP2, pages 55 - 62)

37 Lastly, the Registered Proprietor provides evidence of a sale to another local company, Scantruck Engineering Pte Ltd, for 976 pieces of torque bushes bearing the Subject Mark on 31 December 2012. These torque bushes came from the Registered Proprietor’s Taiwanese supplier, King Shua Mao Co Ltd. The Registered Proprietor says in RP2 at [7.4], the torque bushes were delivered to him in boxes bearing stickers of the Subject Mark on them as described in [5] of RP2 and reproduced at [21] above. This transaction is duly evidenced by an email from the Registered Proprietor to Mr Mark Tan of Scantruck Engineering Pte Ltd on 12 March 2012 in which he attached 2 photographs of the cut-out sample of the torque bush, a purchase order dated 19 December 2012, a packing list, invoice and bill of lading confirming the shipment of 976 pieces of torque bushes from King Shua Mao Co Ltd as well as a tax invoice/delivery order from Uniglory Singapore Pte Ltd to Scantruck Engineering Pte Ltd and a payment voucher from Scantruck Engineering for a sum of S\$13,764.14 (Exhibit 8, RP2, pages 55 - 63).

38 Unfortunately, there is no reference to the Subject Mark in any of these documents which can support the Registered Proprietor’s evidence that the Subject Mark was used in relation to those goods. Unlike the import from Mord Tech Co Ltd where the invoice from Mord Tech Co Ltd includes an item for “AOne sticker expense”, the invoice from King Shua Mao Co Ltd did not indicate so. The Registered Proprietor’s own documents such as his email and the invoice issued by Uniglory Singapore Pte Ltd also make no mention of “AOne”. It is thus not clear to

me whether the goods sold by the Registered Proprietor to Scantruck Engineering were generic torque bushes of an unspecified brand or whether they bore the Subject Mark.

Whether the Use Constitutes Genuine Use of the Subject Mark

39 Having decided that I am satisfied that there are at least 2 uses of the Subject Mark during the Relevant Period, I should now go on to consider whether those acts of use relied upon amount to genuine use. It is trite law that while minimal use may qualify as genuine use, not every proven act of use may automatically be deemed to constitute genuine use of the trade mark in question.

40 In *Laboratoires Goemar SA v La Mer Technology Inc* [2005] EWCA Civ 978 (“*Goemar*”), the English Court of Appeal held (at [22]-[23]):

Token use of a mark does not count as genuine use. Contrary to the tenor of some of his excellent submissions Mr James Mellor, appearing on behalf of La Mer, has never contended that this was a case of token use by Goemar, “serving solely to preserve the rights conferred by the mark.”

Although token use of a mark is obviously not genuine use, it would be illogical to assert that every case of non-token use qualifies as genuine use. *Ansul* and the reasoned order in this case are clear that, even if the use is not token, it is still necessary to consider other factors in order to decide whether or not the use of the mark is genuine. For example, internal use by the registered proprietor may not be token or sham, but it will fail to qualify as genuine use because it is internal only.

41 On how examination of whether a trade mark had been put to genuine use should be carried out, the Court of Appeal in *Wing Joo Loong Ginseng (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] SGCA 9, at [41], quoted the case of *La Mer Technology Inc v Office for Harmonisation in the Internal Market* [2008] ETMR 9 (*La Mer Technology (2008)*) which said at [57]:

To examine whether...[a] trade mark has been put to genuine use, an overall assessment must be carried out, which takes into account all the relevant factors of the particular case. That assessment entails a degree of interdependence between the factors taken into account. Thus, the fact that [the] commercial volume achieved under the mark was not very high may be offset by the fact that use of the mark was extensive or very regular and vice versa. In addition, the turnover and the volume of sales of the product under the ... trade mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, [the] production or marketing capacity or the degree of diversification of the undertaking using the trade mark and the characteristics of the products or services on the relevant market.

42 The Court of Appeal went on to say at [44]:

...In *La Mer Technology (2008)* ([41] *supra*), the European Court of First Instance stated, based on its past decisions, that “genuine use of a trade mark [could not] be proved by means of probabilities or suppositions” (at [59]), 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 original]

43 Turning to the present case, the Registered Proprietor's evidence is that his trade in the spare parts business covers a wide range of goods and that he has promoted the Subject Mark, "whenever a customer is willing to try it". He explains how he markets torque bushes bearing the Subject Mark with the "cut out" sample of the AOne torque bush and produced pictures showing the packaging for the torque bush with the Subject Mark. This mode of marketing is supported by evidence of his email to Scantruck Engineering Pte Ltd in which an image of the "cut out" sample of the AOne torque bush was attached and subsequent sale to this company. There is independent evidence in the form of an email from an ex-customer, Sumotori Machinery Group, showing awareness of the AOne brand torque bushes and there is evidence of the Registered Proprietor's attempt to make a repeat sale to this company of AOne torque bushes in September 2010. In respect of each use, detailed and objective evidence has been produced, such as quotations, purchase orders, invoices, shipping documents and evidence of payment. In addition to these, he also lists out companies to whom he has tried to sell AOne goods but without success. To my mind, a reasonably clear and credible picture of one genuinely interested in establishing a market in the goods under the mark emerges. Those sales were bona fide transactions, and not merely transactions concocted just to preserve the validity of the registration of the Subject Mark. The use is clearly not token, sham or internal and there is no question of hidden motive behind the use.

44 Taking all of this into account, I am satisfied that the Registered Proprietor has made genuine use of the Subject Mark on torque rod bushes during the Relevant Period. Nevertheless, it still remains that the use shown is not in respect of all the Goods covered by the registration. As such, I must arrive at a fair specification that reflects the use made and in this context I must consider how the average consumer would likely describe the goods.

45 This means that the specification does not need to be limited to the *precise* goods that the mark has been used for, but should also extend to those which the average consumer considers as belonging to the same subcategory. I turned to the Mitsubishi FUSO "Parts Catalogue" which the Registered Proprietor exhibited at Exhibit 1, RP1, for assistance. Based on the catalogue, torque rod bushes fall under the category "suspension rod bushing". I would have considered this as a possible subcategory for the goods however at the hearing the Registered Proprietor conceded that "torque rod bushes" would be a fair specification and I decide accordingly.

INVALIDATION

46 I now turn to the Applicants' case of invalidation of the registration on the basis of bad faith. On this ground, the Applicants rely on Section 23(1) read with Section 7(6) of the Act.

Ground of Invalidation under Section 7(6)

47 Section 23(1) of the Act reads:

23.—(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 7.

48 Section 7(6) of the Act provides that:

7.—(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

The Legal Test of Bad Faith

49 In *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 (“*Wing Joo Loong*”), the Court of Appeal observed at [105] that “[t]he test for determining the presence of bad faith, in the context of the English Trade Marks Act, was settled by the English Court of Appeal” [emphasis in original]. It is to be noted that the provision in the English Trade Marks Act referred to by the Court of Appeal is in pari materia with our section 7(6). As it would be useful, I will set out in full the observations of the Court of Appeal at [104]–[106] which are as follows:

104 The concept of bad faith under s7(6) of the current TMA was first reviewed by the Singapore courts in *Rothmans of Pall Mall Ltd v Maycolson International Ltd* [2006] 2 SLR(R) 551 (“*Rothmans*”) (that case actually concerned s7(6) of the Trade Marks Act (Cap 332, 1999 Rev Ed) (“the 1999 TMA”), which is identical to s7(6) of the current TMA). In *Rothmans*, Lai Siu Chiu J endorsed (at [32]) Lindsay’s J’s formulation of the concept of bad faith in *Gromax Plasticulture*. This approach was also accepted by Rajah JA in *Warman* ([37] supra), where he stated (at [48]):

It would be fair to say that the term ‘bad faith’ embraces not only actual dishonesty but also dealings which would be considered as commercially unacceptable by reasonable and experienced persons in a particular trade, even though such dealings may otherwise involve ‘no breach of any duty, obligation, prohibition or requirement that is legally binding’ upon the registrant of the trade mark: see *Demon Ale Trade Mark* [2000] RPC 345 at 356; and [Tan’s *Law of Trade Marks* ([54] supra)] at p.129.

105 The test for determining the presence of bad faith, in the context of the English Trade Marks Act, was settled by the English Court of Appeal in *Harrison v Teton Valley Trading Co Ltd* [2004] 1WLR 2577, where Sir William Aldous, with whom Arden and Pill LJ agreed, expressed the test as follows (at [26]):

The words ‘bad faith’ suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as [being] in bad faith by persons adopting proper standards.

This test, which was referred to by Sir Aldous (*id* at [25]) as the ‘combined’ test of bad faith, contains both a subjective element (*viz.*, what the particular applicant knows) and an objective element (*viz.*, what ordinary persons adopting proper standards would think).

106 Recently, this combined test of bad faith was succinctly explained in *Ajit Weekly Trade Mark* [2006] RPC 25 as follows (at [35] and [41]):

35 ... Bad faith is to be judged according to the combined test of dishonesty for accessory liability [for] breach of trust set out by the majority of the House of Lords in *Twinsectra Ltd v Yardley* [2002] 2 A.C. 164, with *Gromax Plasticulture* [(103] supra)] ... providing the appropriate standard namely,

acceptable commercial behaviour observed by reasonable and experienced persons in the particular commercial area being examined.

...

41 ... [T]he upshot of the Privy [Council's] decision in [*Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1WLR 1476] is: (a) to confirm the House of Lords' test for dishonesty applied in *Twinsectra*, i.e. the combined test; and (b) to resolve any ambiguity in the majority of their Lordships' statement of that test by making it clear that an enquiry into a defendant's views as regards normal standards of honesty is not part of the test. The subjective element of the test means that the tribunal must ascertain what the defendant knew about the transaction or other matters in question. It must then be decided whether in the light of that knowledge, the defendant's conduct is dishonest judged by ordinary standards of honest people, the defendant's own standards of honesty being irrelevant to the objective element ...

50 The Court of Appeal in *Wing Joo Loong* then applied at [107]–[117] the combined test of bad faith which, to reiterate, contains both a subjective element (*viz.*, what the particular person (*in this case, the Proprietor*) knows) and an objective element (*viz.*, what ordinary persons adopting proper standards would think).

51 It is also clear that bad faith as a concept is context-dependent. In the final analysis, whether bad faith exists or not hinges on the specific factual matrix of each case.

52 Hence, for the Applicants to succeed in invalidating the registration of the Subject Mark on the basis that the application for registration was made in bad faith, the Applicants must show not only that the conduct of the Registered Proprietor in applying for the registration of the Subject Mark fell short of the normally accepted standards of commercial behaviour, but also that he knew of facts which, to an ordinary honest person, would have made the latter realize that what the Registered Proprietor was doing, would be regarded as breaching those standards.

The Relevant Date

53 The relevant time for determining whether there was bad faith is the time of filing the application for registration: *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 ("*Festina*") at [100]. The relevant date in this case is 5 October 2009.

Applicants' Case

54 The Applicants' case is that the Registered Proprietor's specification is overwhelmingly wide. It reproduces the entire list of goods contained in Class 12 of the Alphabetical List of the Nice Classification ("Alphabetical List").

55 Having regard to the overwhelmingly wide width of the specification for which the Subject Mark is registered, the Applicants allege that it is patently obvious that there cannot be any realistic or bona fide intention on the Registered Proprietor's part to use the Subject Mark for all the Goods and consequently, the conclusion must be that the Subject Mark was registered in bad faith.

56 In support of their case the Applicants further rely on the fact that the paid up capital of Abundant Resources Pte Ltd is only SGD200,000.00. They contend that it is unlikely that a company of such a “minor scale” would have the capacity to use the Subject Mark on the whole range of Goods covered by the registration which also includes Class 7 with a specification which also lists all the goods in the Alphabetical List for that class.

The Registered Proprietor’s Case

57 The Registered Proprietor denies the allegation of bad faith. He says that being a spare parts trader, his trade involves a wide range of goods. He provides “specific spare parts, which customers have requested for and which the Company’s suppliers are able to supply, on an ad-hoc basis” and that he has promoted the “AOne” brand of goods whenever a customer is willing to try it. His evidence includes how he had also marketed the “AOne” brand in relation to car batteries in 2014 (Exhibit B2, RP1), which although outside the scope of this registration, shows he “intentionally promoted the AOne” brand at every opportunity and that he has every intention of using the Registered Mark” in relation to the Goods and even more.

58 Further, the Registered Proprietor explains that his co-director, Aye Tun, is an Executive Committee Member of The Union of Myanmar Federation of Chambers of Commerce & Industry (UMFCC) and the Vice-President (ex-Joint Secretary (1)) of the Myanmar Industries Association. He is also the Chairman of United Diamond Motor Co. Ltd, which is the only distributor for NISSAN cars throughout Myanmar. Due to Aye Tun’s various roles and position, he believed that Aye Tun “would have the influence to bring in a lot of business for the company”.

Decision under Section 7(6)

59 First and foremost, I do not see any evidence to support the Applicants’ allegation that the specification is “overwhelmingly wide” to the extent that it exhibits conduct that departs from accepted principles of ethical behaviour or honest commercial business practices.

(i) There is no basis for concluding that a specification is overly wide by the mere fact that the specification lists all the goods in the Alphabetical List of that class. Whether or not a specification is broad should not be determined with reference to the Nice Classification but by taking into account factors such as the Registered Proprietor’s intention, business plans, marketing and promotional activities and other facts and circumstances including what is commercially viable. No evidence has been put forth before me to suggest that the scope of the specification at hand is commercially unrealistic, neither have the allegations of the Registered Proprietor’s lack of intent been backed up.

(ii) The Applicants’ claim that the specification is overly wide having regard to the paid up capital of the Registered Proprietor’s businesses. However, it was not submitted to me what would be a reasonable paid up capital for the specification at hand. In any event, the paid up capital of a business is not static and may increase gradually as a business expands and I do not think that present paid up capital is indicative of the range of goods the Registered Proprietor can trade in and will trade in at a future date.

(iii) The Applicants also submit that the specification is broader than the use which the Registered Proprietor has eventually made of the Subject Mark. To me, this on its own

and without more, is not indicative of bad faith. The fact that the Subject Mark is not used in relation to the full range of goods which it is registered for could be due to many factors some of which are extraneous to the Registered Proprietor's intentions at the point of filing. Therefore, in the absence of any evidence that the actual use shown of the Subject Mark is an accurate reflection of the Registered Proprietor's intentions at the point in time when the application is made, I am unable to make any adverse inference from this fact.

(iv) Furthermore, it is legitimate for businesses to seek registration of a mark, not only for the categories of goods and services which it markets at the time of filing the application, but also for other categories of goods and services which it intends to market in the future. There is no bad faith in applying for a broader specification than one which a trader currently trades in. A possible or contingent intention to use the mark at some future date may suffice. In the case of *Kenzo v Tsujimoto Kenzo* [2013] SGIPOS 2, the Principal Assistant Registrar highlighted at [125] that:

Merely drafting a specification broadly does not necessarily mean that the application is made in bad faith. A line should be drawn between excessively wide specifications and ones which merely provide some room for possible brand extension: Bently & Sherman, para 4.4.1 at page 853. To support a finding of bad faith, there must be something more to suggest that there has been some unconscionable business conduct and/or moral impropriety on the applicant's part.

(v) On the facts before me, there does not appear to be any evidence of unconscionable business conduct and/or moral impropriety on the Registered Proprietor's part. The Registered Proprietor clearly operates a legitimate spare parts business covering a wide range of goods. His evidence shows that he has spent considerable effort to promote the Subject Mark, his desire to expand the market under the mark and his subjective belief in the business influence of his co-Director to help him expand his market further.

(vi) There is nothing in the Act or Rules that prohibit the registration of a large variety of goods or services if it is justified by the applicant's intention. Rule 19(4) of the Rules state:

In the case of an application for registration in respect of all the goods or services included in a particular class in the Third Schedule, or of a large variety of goods or services, the Registrar *may* refuse to accept the application unless he is satisfied that the specification is justified by the use of the mark which the applicant has made, or intends to make if and when it is registered.

There is therefore no basis to conclude that an application is made in bad faith merely by reference to the length or breadth of the specification in the application for registration independently of the intention of the Registered Proprietor. In any event, from my check of the file of this case, no objection under Rule 19(4) was raised by the Registrar in respect of the specification at the examination stage.

60 Secondly, the Applicants' submit and I agree, that bad faith may be found on the part of an applicant if, at the time of application, he had no bona fide intention to use the mark in relation to the goods applied for. This is especially given that the application form for the registration of a trade mark requires a declaration by or on behalf of the applicant agreeing that:

"The trade mark is being used by the applicant or with his consent, in relation to the goods or services stated, or there is a bona fide intention that it will be so used."

61 However the allegation of lack of intent has not been fully substantiated in this case. In light of my finding that the Registered Proprietor has made genuine use of the Subject Mark in respect of torque rod bushes, the Applicants' case that the Registered Proprietor lacked intention to use the Subject Mark in relation to all the Goods must necessarily fail. While the Applicants did plead alternatively that, "where grounds for invalidation exist in respect of only some of the goods which the Subject Mark is registered in Class 12, the ... Subject Mark [is] to be invalidated in relation to those goods", I do not think that it can be assumed that the only reason for non-use after 5 years must be attributable to a lack of intention to use by the Registered Proprietor and this lack of intention exists at the point of application. I therefore cannot arrive at the conclusion that merely because the Registered Proprietor did not make genuine use of the remaining goods in the specification, the Registered Proprietor must have lacked a bona fide intent to use the Subject Mark in relation to those goods and the application must therefore be made in bad faith.

62 As stated in *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 ("*Valentino*") at [30] citing *Nautical Concept Pte Ltd v Jeffery Mark Richard and another* [2007] 1 SLR(R) 1071 at [15] that was in turn citing the English decision in *Royal Enfield Trade Marks* [2002] RPC 508 ("*Royal Enfield*"):

30 Furthermore, it is pertinent to note that an allegation of bad faith is a serious claim to make and it must be sufficiently supported by the evidence (see *Nautical Concept Pte Ltd v Jeffery Mark Richard* [2007] 1 SLR(R) 1071 at [15] which we reproduced below):

An allegation that a trade mark has been applied for in bad faith is a serious one. In *Royal Enfield Trade Marks* [2002] RPC 508, it was held (at [31]) that:

A plea of fraud should not be lightly made ... and if made should be *distinctly alleged and distinctly proved*. It is not permissible to leave fraud to be inferred from the facts (see *Davy v. Garrett* [1878] 7 CH.D 473 at 489). In my judgment precisely the same considerations apply to an allegation of ... bad faith made under section 3(6) [of the UK Trade Marks Act 1994]. *It should not be made unless it can be fully and properly pleaded and this will rarely be possible by a process of inference.*

[Emphasis added; emphasis in original omitted]

63 While I acknowledge the difficulties faced by the Applicants in attempting to prove a negative, the Applicants' lack of evidence cannot assist them in the face of the rebuttal and explanations of the Registered Proprietor. As stated earlier, the onus rests with the Applicants and on the evidence before me the Applicants have not shown and I feel unable to infer that, the application was made in bad faith in respect of all or some of the Goods for which registration is sought. Furthermore, in light that the Applicants did not apply to cross-examine

the Registered Proprietor, the issue of bad faith is left to be decided based on the documents filed.

64 I therefore find that the Applicants have not met the high standard of proof that is required to establish bad faith and the action for invalidation therefore fails.

Conclusion

65 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that:

(a) In respect of the revocation, the Applicants succeed partially under Section 22(1)(a) and (b). The Registered Proprietor has shown genuine use only in respect of *torque rod bushes*. He has not shown genuine use of any other goods in the registration for which the Applicant sought revocation in either of the relevant periods under Section 22(1)(a) or (b). Accordingly, the registration in Class 12 shall be revoked with effect from 19 January 2015, which is the first day after the 5-year period following the date of completion of the registration procedure, save for the following goods:

Torque rod bushes

(b) In respect of the invalidation, the application fails.

66 The Applicants are to have 40% of their costs having regard to the fact that the Applicants succeeded only partially in their application under Section 22(1)(a) and (b), and failed in their application under Section 23(1) read with 7(6). These costs are to be taxed, if not agreed.

Dated this 10th day of January 2017

Tan Mei Lin

Principal Assistant Registrar of Trade Marks

Hearings and Mediation Group

Intellectual Property Office of Singapore