

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

Trade Mark No. 40201518266U  
Hearing Date: 13 February 2018  
Further Submissions: 28 February 2018; 14 March 2018

**IN THE MATTER OF A TRADE MARK APPLICATION BY**

**TENCENT HOLDINGS LIMITED**

**AND**

**OPPOSITION THERETO BY**

**MONSTER ENERGY COMPANY**

Hearing Officer:                      Ong Sheng Li, Gabriel  
   Assistant Registrar of Trade Marks

Representation:

Mr Just Wang and Mr Lim De-Ming Marcus (Bird & Bird ATMD LLP) for the Opponent

Ms Ang Su-Lin and Ms Loi Choi Sieng (K.L. Tan & Associates) for the Applicant

**GROUND OF DECISION**

**Introduction**

1        This is the fourth case to reach a full hearing before this tribunal involving a bid by Monster Energy Company (the “Opponent”) to prevent the registration of a trade mark containing the word “MONSTER”. For reasons specific to each case, all three earlier cases were unsuccessful. The first, *Monster Energy Company v Mixi, Inc.* [2017] SGIPOS 12 (“*Mixi*”), was not appealed against. The second, *Monster Energy Company v Chun-Hua Lo* [2017] SGIPOS 17 (“*Chun-Hua Lo*”), was upheld by the High Court on appeal. (No written grounds of decision were issued.) The third, *Monster Energy Company v Glamco Co., Ltd.*

[2018] SGIPOS 7 (“*Glamco*”), was decided after this case was heard. The Opponent has appealed the *Glamco* decision to the High Court, and I will not discuss its merits here.

### **Outline of dispute and outcome**

2 The Opponent has now set its sights on an application by Tencent Holdings Limited



(“Applicant”) to register “ ” (Trade Mark No. 40201518266U) in Classes 9, 41 and 42 (the “Application Mark”).

3 In *Mixi*, the Opponent sought to oppose the application mark “MONSTER STRIKE”. In so doing, it materially relied on its earlier trade mark “MONSTER ENERGY”. The case came before me for a hearing. After consideration, I held that the marks were overall more dissimilar than similar (see *Mixi* at [25] – [72]). Since the pleaded grounds of opposition were contingent on a finding of marks-similarity, the opposition failed at the first threshold.

4 Fast forward to the present dispute. The Opponent once again relied on “MONSTER ENERGY” to oppose the Application Mark. Notably, the Opponent did not argue that *Mixi* was wrongly decided. (I am not suggesting it should have: the proper avenue is to appeal, which it chose not to do.) Neither did it seek to distinguish *Mixi*. Instead, it focussed on submitting that: (a) “MONSTER” is the dominant component in the “MONSTER ENERGY” mark; (b) the competing marks are similar in that the Application Mark contains the same element “MONSTER”; and (c) the words “ENERGY” and “CASTLE” are descriptive and should play a lesser role in the assessment. These were substantially the same arguments I had rejected in *Mixi*, and I see no reason to depart from that approach.

5 I will call a spade a spade: the Application Mark is, if anything, even more dissimilar to “MONSTER ENERGY” than “MONSTER STRIKE”. I cannot simply ignore the word “ENERGY” in the Opponent’s earlier trade mark. Neither can I disregard the stylisation in the Application Mark, nor the word “CASTLE”. Since all of the grounds of opposition in this case hinge on a finding of marks-similarity, and I am not persuaded that the marks are similar, this opposition—just like *Mixi*—fails at the first threshold as well.

6 The above is a skeletal outline of my reasons for allowing the Application Mark to proceed to registration. My full grounds are set out below.


## **MAIN DECISION**

### **The parties and a brief background**

7 The Applicant is a publicly-owned holding company listed on the mainboard of the Hong Kong Stock Exchange and headquartered in Shenzhen, China. It has many subsidiaries. Through them, the Applicant provides a plethora of services in China and various other countries. These services include internet and mobile phone value-added services; online advertising services; social networking; web portal services; and multiplayer online gaming services. There were also documents tendered in relation to the Applicant’s general commercial success, but since such evidence is of limited relevance to this case, I will not go into the details.

8 While the Applicant is perhaps better known to some for its instant messenger “Tencent QQ”, its web portal “QQ.com”, and its “WeChat” mobile application service, it is also a well-established online game developer and operator. According to the Applicant, its Interactive Entertainment Service is recognised as the largest online game community in China. The



Application Mark, “”, is used in connection with the Applicant’s “MONSTER CASTLE” game. “MONSTER CASTLE”, launched in 2015/2016, was said to be the world’s number 1 vertical tower defence and strategy game. (A tower defence game is one in which a player builds towers in a strategic fashion to defend against waves of enemy attackers that are seeking to destroy the player’s base or steal the player’s resources.)


9 On 19 October 2015, the Applicant applied to register the Application Mark in Singapore. The priority date claimed under the Application Mark is 25 August 2015. It is this earlier date (i.e. **25 August 2015**) that is the relevant date—that is to say, the date by reference to which parties’ rights are to be assessed—for the purposes of this proceedings. Because the Application Mark is sought to be registered in respect of such a large number of goods and services (658 items in Class 9; 133 items in Class 41; and 78 items in Class 42), the relevant details are not reproduced here. Instead, they are set out in an annex to this decision.

10 After the Application Mark was published for opposition, the Opponent launched these proceedings. There is little that can be said about the Opponent that has not already been said in *Mixi*, *Chun-Hua Lo* and *Glamco*. I can therefore be brief. The Opponent is in the business of energy drinks. The interesting aspect about its business strategy is that unlike other traders in the beverage industry, the Opponent does not engage in direct marketing, advertising and promotion. Rather, its focus is on promoting its trade marks through indirect channels such as athlete endorsements, sponsorships for competitions, sports teams, and various other events.

11 In these proceedings, the Opponent relied on the following trade mark registrations:

- a. “MONSTER ENERGY” registered as:
  - i. T0603081Z in Class 32
  - ii. T0813668B in Classes 9, 16, 18 and 25
  - iii. 40201401724W in Classes 9, 16, 18 and 25
  - iv. 40201501193T in Classes 35 and 41



- b.  registered as:
  - i. T0609605E in Class 32
  - ii. T0813672J in Classes 9, 16, 18 and 25
  - iii. T1402721J in Classes 16 and 25

- c. “MONSTER” registered as:
  - i. T0605638Z in Class 5
  - ii. T0605639H in Class 32
  - iii. T1111969F in Classes 5 and 32

- d. “MONSTER DETOX” registered as T1206503D in Classes 5, 30 and 32
- e. “MONSTER REHAB” registered as T1107597D in Classes 5, 30 and 32
- f. “MONSTER REHABITUATE” registered as T1210719E in Classes 5, 30 and 32
- g. “JAVA MONSTER” registered as:
  - i. T0611182H in Class 32
  - ii. T1402722I in Class 32
- h. “X-PRESSO MONSTER” registered as T1009880F in Classes 5 and 32.

Each of the above registrations pre-date the Application Mark. I refer to them collectively as the “Opponent’s Earlier Trade Marks”.

12 The Opponent has raised the following grounds of opposition under the Trade Marks Act (Cap. 332, Rev Ed. 2005) (“TMA”): Sections 8(2)(b); 8(4)(b)(i); 8(4)(b)(ii)(A); 8(4)(b)(ii)(B); and 8(7)(a) TMA. (It had earlier also pleaded that the Application Mark should not be registered on the ground of bad faith under Section 7(6) TMA, but this ground was withdrawn at the pre-hearing review.)

### **Evidence filed**

13 The following Statutory Declarations (“SD(s)”) were tendered in evidence.

- a. Mr Rodney Cyril Sacks, Chairman and Chief Executive Officer of Monster Beverage Corporation and its subsidiaries (which include the Opponent), gave evidence on behalf of the Opponent by way of SD. I refer to Mr Sacks’ first SD, dated 4 November 2016, as “RCS-SD1”.
- b. Mr Wang Juan, the Applicant’s IP Legal Counsel, gave evidence on behalf of the Applicant by way of SD. His SD was dated 21 April 2017.
- c. Mr Sacks also gave evidence in reply for the Opponent. I refer to his second SD, dated 15 September 2017, as “RCS-SD2”.
- d. Mr Lim De-Ming Marcus, one of the solicitors acting for the Opponent, also gave evidence in support of the Opponent by way of SD. His evidence was confined to certain photographs which he took of the Opponent’s energy drinks. I refer to his SD dated 3 October 2017 as “ML-SD”.

The above SDs formed the totality of the evidence in these proceedings.

### **The procedural skirmish**

14 During the hearing, Mr Wang, counsel for the Opponent, tendered a document titled “Opponent’s Skeletal Arguments”. In the main, the Opponent’s Skeletal Arguments were a summary of the Opponent’s Written Submissions, and were a helpful accompaniment to Mr Wang’s oral submissions. However, Applicant’s counsel, Ms Ang, appeared to have been taken by surprise by paragraph 6 of the Opponent’s Skeletal Arguments, and strongly objected to it.

15 Paragraph 6 of the Opponent’s Skeletal Arguments began with the heading “*Services in Class 42 are similar*”. The thrust of the argument was summarised in its first bullet point, which is reproduced below (the words in square brackets are added for clarity):

“Although not addressed in Written Submissions, the Opponent is not precluded from doing so, and submits that [the claimed] services [under the Application Mark] in Class 42 are similar to Opponent’s services [under the “MONSTER ENERGY” trade mark (40201501193T)] in Class 41”

The second bullet point which followed the first contained a table comparing the services under the Opponent’s registration for “MONSTER ENERGY” in Class 41 (40201501193T) as against the services claimed under the Application Mark in Class 42.

16 The kernel of Ms Ang’s objection seemed to be that the Opponent had not given sufficient notice in its Notice of Opposition that it was pursuing an opposition against the Application Mark in Class 42. In reply, Mr Wang maintained that the Opponent was not precluded from making such a submission since, among various other things, Class 42 had been expressly indicated as one of the classes opposed on the relevant Form TM11.

17 Given the nature of the Applicant’s objections and in light of the Opponent’s acknowledgement that it had not addressed the issue in its written submissions, I gave the Applicant leave to furnish post-hearing written submissions. The Opponent was also given leave to file written submissions in reply. Both parties filed post-hearing written submissions.

***Whether Section 8(2)(b) pleaded against the Application Mark in Class 42***

18 In the Applicant’s 2<sup>nd</sup> Supplementary Written Submissions, it clarified that its objection was specifically in relation to Class 42 of the Application Mark under Section 8(2)(b) TMA. The Applicant argued three main points: (a) that the Opponent had failed to sufficiently plead an opposition against the Class 42 application under Section 8(2)(b) TMA in the Notice of Opposition; (b) that the Applicant had been prejudiced as a result, in a manner that cannot be compensated by costs; and (c) that as a result, the Opponent should be precluded from opposing the Class 42 application under Section 8(2)(b) TMA.

19 The starting point of the Applicant’s complaint was that in the Notice of Opposition, the Opponent did not cite an earlier trade mark in Class 42 as against the Application Mark in Class 42. (There was a reason for this: none of the Opponent’s Earlier Trade Marks were registered in that class.) From that starting point, the Applicant invited me to hold that the Opponent had not properly pursued an opposition under Section 8(2)(b) TMA against the Class 42 services. Inherent in this was the assumption that one must first have an earlier trade mark in a certain class before one is able to oppose a later trade mark application in that same class.

20 I considered the Applicant’s submissions to be unsustainable for two main reasons.

- a. First, the mere fact that the Opponent did not have an earlier trade mark in Class 42 did not preclude it from opposing the Application Mark in that class. An opponent to a trade mark application is at liberty to make the argument that goods and/or services in one class are similar to goods and/or services in another class. And, there have been cases where such an argument has succeeded. (See, for

example, *Guccio Gucci S.p.A v Guccitech Industries (Pte Ltd)* [2018] SGIPOS 1 (“*Guccitech*”), a decision of IP Adjudicator Prof. David Llewelyn.) Thus, the Opponent was perfectly entitled to rely on any or all of the Opponent’s Earlier Trade Marks as against the Application Mark in Class 42.

- b. Second, it had been plainly indicated on the Opponent’s Form TM11 (which was filed alongside the Notice of Opposition) that the opposition was in relation to Classes 9, 41 and 42. Further, the header of the statement of grounds giving Notice of Opposition contained an express reference to Classes 9, 41 and 42. The Opponent did not, in its statement of grounds, or at any time in the course of proceedings, restrict the opposition to Classes 9 and 41 only. And insofar as Section 8(2)(b) TMA was concerned, the Opponent’s case was clearly based on all of the Opponent’s Earlier Trade Marks (see Notice of Opposition at [10]). The Opponent did not plead or conduct its case in a manner which suggested that it would not be opposing the Class 42 services under Section 8(2)(b) TMA.

21 In my assessment, the Opponent gave sufficient notice of its intention to pursue an opposition against the Application Mark in Class 42 whether under Section 8(2)(b) TMA or any of the other pleaded grounds. Naturally, this means that the Opponent was fully entitled to rely on “MONSTER ENERGY” (40201501193T) in Class 41 as against the Application Mark in Class 42 for the purposes of Section 8(2)(b) TMA.

22 All things considered, the Applicant did not suffer any prejudice from the way the Opponent pleaded its case. Since I have rejected the Applicant’s submissions on this point, the Opponent should have its costs of reviewing the Applicant’s 2nd Supplementary Written Submissions as well as the costs of the Opponent’s Supplementary Written Submissions In Reply. Although this disposes of the Applicant’s contentions, there is a related issue which the Applicant did not address, but which I should discuss.

### ***The Opponent’s letters of 9 and 20 November 2017***

23 During the pre-hearing review (“PHR”), the Opponent was directed by the Registrar to specify which of the sixteen Opponent’s Earlier Trade Marks cited in the Notice of Opposition it would be relying on in its submissions for the purposes of the opposition under Sections 8(2)(b), 8(4) (all sub-grounds) and 8(7)(a) TMA.

24 The material part of the Opponent’s letter of 9 November 2017 in response to the abovementioned direction read as follows:

“2. As directed to specify by the Registry, the Opponent will be relying on the following earlier trade marks in its submissions:

- a. All trade marks at paragraph 3 of the Opponent’s Notice of Opposition dated 29 March 2016 to support the Opponent’s submission [on the basis of well-known trade marks i.e. the sub-grounds of Section 8(4) TMA]; and
- b. In particular, TM No. 40201401724W (MONSTER ENERGY registered in Classes 9, 16, 18, 25) for the relative ground of opposition under section 8(2)(b) of the Trade Marks Act”

25 Since the Opponent's letter of 9 November 2017 lacked clarity in certain respects, the following further directions were issued by the Registrar:

"We note the Opponents' specification of marks that they expect to focus on under Sections 8(4) and 8(2)(b). However, they have not yet specified the mark(s) they would primarily rely on (among other things to be relied on) towards establishing "misrepresentation" under passing off (Section 8(7)(a)). They are directed to do so [within one week]"

26 In its follow up letter of 20 November 2017, the Opponent clarified as follows:

"As directed to specify by the Registry, the Opponent will be relying on TM No. 40201401724W (MONSTER ENERGY registered in Classes 9, 16, 18, 25) for the relative ground of opposition under section 8(7)(a) of the Trade Marks Act"

27 When the Opponent filed its written submissions however, it departed from the position set out in its letters somewhat. In addition to 40201401724W, the Opponent also delved into the issue of whether the services in Class 41 (protected under 40201501193T "MONSTER ENERGY") are similar to the services in Class 41 under the Application Mark. The Applicant raised no objections to this, and I state it as a matter of record only. It was only during the full hearing that the Opponent made the argument that the services protected by 40201501193T in Class 41 are similar to the services claimed under the Application Mark in 42.

28 The material question is this: should the Opponent be precluded or otherwise disqualified from raising such an argument, given that it had not raised it in its written submissions, and in light of the response to the directions at the PHR? To my mind, it could be argued that the Opponent should be disallowed from relying on 40201501193T as against the Application Mark in Class 42. Under this line of argument, the Opponent had committed itself to a certain position in its letters sent in response to directions given at the PHR and should not be allowed to depart from it. However, on these facts, I would prefer the view that the Opponent should not be prohibited from arguing that the services in Class 41 (under 40201501193T) are similar to the services in Class 42 (claimed under the Application Mark). My reasons are as follows.

- a. I begin with Rule 36A of the Trade Marks Rules (Cap. 332, R1) ("TMR"), which concerns the PHR (pre-hearing review). Paragraph 1 of this Rule states that during the PHR, the Registrar may "*give such directions as he considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings*". Paragraph 2 states that the Registrar may, among other things, "*require the parties to furnish him with such information as he may require*". In practice, where the initiating party has cited a number of earlier trade marks in its statement of grounds giving Notice of Opposition, the Registrar is likely to direct the initiating party to specify which mark(s) it intends to place primary reliance on. Such a direction is aimed towards having the initiating party put forward its strongest case at the hearing, so that the defending party can address it without needing to deal with each and every cited trade mark (although this, I must caution, is highly case dependent and there may be exceptions).
- b. There is, however, a distinction between putting forward one's strongest case and abandoning reliance on a ground of opposition or a cited mark. The latter can only be done expressly through an amendment of pleadings or with the

Registrar’s leave, and the fact will then be recorded. (An example of this is the ground of bad faith under Section 7(6) TMA which parties sometimes—as the Opponent did, in this case—abandon at the PHR stage.) In my view, the Applicant had sufficiently pleaded 40201501193T as against the Application Mark in Class 42 (whether in relation to Section 8(2)(b) TMA or otherwise), and it did not abandon this pleaded point in its letters of 9 and 20 November 2017.

29 Notwithstanding the above, the fact remains that the Opponent should have laid out all of the arguments it had wanted to advance in its Written Submissions (filed a month prior to the hearing), but did not do so. Because the Class 42 arguments were only fully fleshed out during the hearing itself, the Applicant was put to the inconvenience of having to deal with them at the eleventh hour through its 3<sup>rd</sup> Supplementary Written Submissions, filed post-hearing, and should therefore be awarded the costs of those submissions.

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

30 I now consider the substantive grounds of opposition. I begin with the Section 8(2)(b) TMA ground of opposition. The provision reads as follows:

“8.

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

(a) -

(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.”

31 In *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc.* [2014] 1 SLR 911 (“*Staywell*”), the Court of Appeal held that the provision requires a 3 step test: First, are the competing marks similar? Second, are the goods (or services) identical or similar? Third, is there a likelihood of confusion arising from (or to use the words of the section: *because of*) the foregoing? All three steps must be established for the opposition under this ground to succeed. If any one step cannot be established, this ground of opposition will fail.

### ***Whether the marks are similar?***

32 The Opponent’s case is that while many of the Opponent’s Earlier Trade Marks are highly similar to the Application Mark in different ways, it is “MONSTER ENERGY” (40201401724W and 40201501193T in Classes 9 and 41 respectively) that is the most similar. Accordingly, I will conduct the analysis by reference to this mark.

### Guiding principles

33 Under this first step, I must decide whether the competing marks are similar. The comparison is mark-for-mark, without consideration of any external matter (see *Staywell* at [20]). There are three aspects of similarity to be considered: the visual, aural, and conceptual. A finding of similarity does not mean that all three aspects have to be made out. Each aspect is a signpost and the ultimate question that I have to decide is whether the marks, when observed in their totality, are similar rather than dissimilar. (See *Staywell* at [17] – [18]; *Sarika Connoisseur Café Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 at [16].)



34 In the assessment, the viewpoint I must adopt is that of the average consumer who would exercise some care and a measure of good sense in making his or her purchases, not that of an unthinking person in a hurry. The average consumer has imperfect recollection and makes comparison from memory removed in time and space from the marks. For this reason, the competing marks cannot be compared or assessed side by side and examined in detail for the sake of isolating particular points of difference. Instead, what must be considered is the general impression that will likely be left by the essential or dominant features of the marks on the average consumer, since it is those features that tend to stand out in the consumer’s imperfect recollection. (See *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 (“*Caesarstone*”) at [27]; *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd* [2013] 2 SLR 941 at [40(c)-(d)] and [62(a)]; and *Staywell* at [23].)

35 While not a separate element under the step-by-step test, distinctiveness is a factor that plays an integral role in the marks-similarity assessment. The term “distinctiveness” is used in two senses: (a) the ordinary and non-technical sense; and (b) the technical sense. The former refers to what is outstanding and memorable about the mark in question – i.e. the parts that tend to stand out in the consumer’s imperfect recollection. As for the latter, it carries a meaning that is the opposite of “descriptiveness”, and refers to the capacity of the mark to function as a badge of origin. Technical distinctiveness may be inherent (e.g. where the words comprising the mark are meaningless) or acquired (through long-standing or widespread use). (See *Staywell* at [23] – [24].) A mark that has greater technical distinctiveness enjoys a “*high threshold before a competing sign will be considered dissimilar to it*” (*Staywell* at [25]).

#### Acquired distinctiveness not in issue

36 It is unclear from *Staywell* whether (and if so, how) evidence that an earlier trade mark has acquired greater distinctiveness through use plays a role in the assessment for marks-similarity in light of the prohibition against considering external matter at this stage (I have elaborated on this elsewhere: see *Clarins Fragrance Group f.k.a. Thierry Mugler Parfums S.A.S. v BenQ Materials Corp.* [2018] SGIPOS 2 at [20] – [25]). Later trade mark decisions of the Court of Appeal have also not dealt with this issue.

37 I mention the above point solely to flag out that it is not an issue that arises in this case. The Opponent did not run the argument that “MONSTER ENERGY” has acquired greater distinctiveness through use. Thus, as far as technical distinctiveness is concerned, I need only focus on inherent distinctiveness.

#### Inherent distinctiveness

38 The Opponent argued that “MONSTER ENERGY” possesses a high, or at the very least a normal, level of inherent distinctiveness in relation to the goods and services for which it is registered in Classes 9 and 41 respectively. This was essentially the same submission it had advanced in *Mixi* where it also placed primary reliance on the “MONSTER ENERGY” mark.

39 In *Mixi*, I observed that “MONSTER” and “ENERGY” are not invented words. I also took the view that when used (or put) together, they are not descriptive of any of the goods in respect of which the mark in question was registered. As far as Class 9 is concerned, that finding in *Mixi* was made in relation to the following goods:

## Class 9

Protective clothing; protective footwear; protective headwear; protective eyewear; all included in Class 9.


On those facts, I had no difficulty concluding that “MONSTER ENERGY” possesses inherent distinctiveness that is normal, or ordinary, in nature (see *Mixi* at [43] and [45]). However, I found myself unable to accept the submission that the mark has a high level of inherent distinctiveness. And this is what I said (at [44]):

“... Distinctiveness lies on a spectrum and on the high end – at least for plain word marks – lie invented (and hence meaningless) words and names. Word marks which are formed through the combination of two ordinary English words, and which are not descriptive of the goods or services in question, such as “MONSTER ENERGY” probably lie somewhere in the middle. Here, the fact that there is a space between “MONSTER” and “ENERGY” only serves to ensure that each would be read as a separate word.”

In my judgment, that same reasoning applies equally to the goods in Class 9 and services in Class 41 for which “MONSTER ENERGY” is registered (see the specification covered under 40201401724W and 40201501193T).

40 I now turn to the decision of the Opposition Division of the European Union Intellectual Property Office (“EUIPO”) in Opposition Case No. B2628280 (the “EUIPO Decision”). The dispute before the EUIPO paralleled this one: there, the Opponent relied on its earlier trade mark “MONSTER ENERGY” to oppose the Applicant’s European Union trade mark



application for “”. On the specific issue of distinctiveness, the Opposition Division held, among other things, that “MONSTER ENERGY” has a *normal* level of distinctiveness in relation to the goods and services in Classes 9 and 41 (at p 19). My view, at least on this point, is broadly aligned with that of the EUIPO Decision.

41 I am not persuaded by the submission that “MONSTER ENERGY” possesses a high or greater level of technical distinctiveness. In my judgment, “MONSTER ENERGY” possesses inherent distinctiveness that is normal, or ordinary, in nature. As it does not possess a high (or greater) level of technical distinctiveness, it does not enjoy a high threshold before a competing sign (here: the Application Mark) will be considered dissimilar to it.

### Visual similarity

42 While I am mindful of the trite principle that the competing marks are not to be judged for similarity in a side-by-side comparison, it is nevertheless convenient in a decision like this to reproduce them alongside each other.

#### Earlier Trade Mark

“MONSTER ENERGY”

#### Application Mark



43 The Opponent’s case is that there is a high degree of visual similarity between the Application Mark and “MONSTER ENERGY”. The two linchpins of this argument are: (a) that the word “MONSTER” is the dominant component in both marks; and (b) that the competing marks are similar in that they each contain the word “MONSTER”. In advancing this argument, the Opponent downplayed the role of “ENERGY” and “CASTLE”. It did so by dismissing them as elements which served as descriptors and which serve a secondary function in the respective marks. These were the same arguments that I had considered and rejected in *Mixi*, albeit in relation to “MONSTER ENERGY” versus “MONSTER STRIKE”.

44 Naturally, the Applicant argued the opposite, and urged me to consider the overall impression conferred by the marks. It stressed the fact that “MONSTER ENERGY” is registered in plain font, with the words appearing next to each other. The Applicant invited me to contrast this with the fact that the Application Mark has stylisation which gives it, among other things, a three dimensional effect. In addition, the Applicant pointed to the fact that the letters “M” and “R” are featured with a protruding horn each, and that the letter “O” features what looks like a monster’s fangs. My attention was also drawn to the fact that as part of the three-dimensional effect, the word “CASTLE” appears to be not only in front of, but also beneath, the word “MONSTER” above. From these, the Applicant built towards its overarching conclusion: if “MONSTER ENERGY” and “MONSTER STRIKE” are dissimilar (which was my conclusion in *Mixi*) then surely the Application Mark must be even more visually dissimilar, especially when imperfect recollection is taken into account.

#### *Analysis*

45 In my judgment, it is clear that “MONSTER” cannot be said to be the distinctive (in the non-technical sense) component of the “MONSTER ENERGY” mark. Visually, each of the word elements in “MONSTER ENERGY” are well balanced in that they are both equally visually prominent. No element in this mark can be said to be more outstanding or memorable than the other visually. Moreover, the words “MONSTER” and “ENERGY” are relatively common words in the English language. They are not invented words. (See *Mixi* at [46].) Certainly, “MONSTER” cannot be said to be descriptive of the goods or services in question.

46 What about “ENERGY”? In the EUIPO Decision, the Opposition Division took the view that “ENERGY” is of “low” or “weak” distinctiveness in relation to some of the services because “some of the relevant services are related to sport” and “ENERGY” may be “perceived as alluding to the energy required for the performance of these activities” (EUIPO Decision at [18]). Flowing from that premise, the Opposition Division considered that “ENERGY” should be considered as “less relevant”, especially in light of its “position” (see EUIPO Decision at [19]) which presumably refers to the fact that it appears as the second word.

47 With respect, I do not find the views of the Opposition Division to be entirely persuasive. I reproduce the relevant goods and services for which “MONSTER ENERGY” is registered in Classes 9 and 41.

#### Class 9

Protective clothing; protective footwear; protective headwear; protective eyewear, sports helmets; eye glasses; eye glass cases; sunglasses; sunglass cases; video recordings featuring sports, extreme sports, and motor sports; eyeglass cords.

## Class 41


Entertainment services; organizing, conducting and staging sports events, live musical performances, exhibitions and competitions; on-line publication and provision of multimedia content in the nature of multimedia files containing audio, video, text, still images, and graphics in the fields of sports, people, entertainment, and music; providing non-downloadable publications in the nature of multimedia content in the nature of multimedia files containing audio, video, text, still images, and graphics in the fields of sports, people, entertainment and music via a website.

As it can be seen from the above specification of goods and services, some of the items covered under the registration do indeed relate to sports.

48 While I agree that “ENERGY”, being a common word, is not highly distinctive of the goods or services, I do not think that it can be said to be descriptive or allusive of any of them. A person or a machine might need energy to move or operate in order to take part in sporting events or conduct them, but it does not follow that “ENERGY” describes, or alludes to, such goods or services. A word is allusive of something when it suggests or implies that thing. Just because one is able to perform mental gymnastics to connect two very different things does not mean that the first is allusive of the second. It has been observed, in other circumstances, that “*commercial activity does not take place within the arid confines of a courtroom but in the hustle and bustle of the real world*”.<sup>1</sup> I find it difficult to accept that average consumers in the real world would regard “ENERGY” as allusive of, say, “*video recordings featuring sports, extreme sports, and motor sports*” or “*organizing, conducting and staging sports events*”.

49 As regards the fact that “ENERGY” is the second word, I do not think that this plays much of a role in the overall assessment. As stated above, it is neither descriptive nor allusive. For this reason, it is doubtful that consumers would accord “MONSTER” any greater trade mark significance (i.e. as a badge of origin) even if it is the first word. Instead, what would stick in the mind’s eye would be “MONSTER ENERGY” as a whole, especially since this term has no ordinary meaning when used in relation to the goods and services for which it is registered (see *Mixi* at [46(b)]).



50 I now turn my attention to “”.

51 In my judgment, the features of the Application Mark that would leave an impression on the mind’s eye of the average consumer are as follows. First, the fact that the stylised word “MONSTER” appears in block letters which are larger in font as compared to the word “CASTLE” in smaller font and lowercase beneath. Second, the fact that the word elements “MONSTER CASTLE” are not visually distinct but instead are joined together visually. Third, the fact that the Application Mark is stylised. Average consumers might not recall the precise details such as the horns and the fangs, but they would not lose sight of the fact that: (a) the word “MONSTER” in the Application Mark bears fanciful features (i.e. is not simply rendered in regular block letters); and (b) the Application Mark features a shaded border that confers upon it a three-dimensional effect. When taken together, I do not think that “MONSTER” can be said to be sole dominant and distinctive feature of the mark.

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<sup>1</sup> *PP v Koh Peng Kiat* [2016] 1 SLR 753 (CA), a case involving counterfeit trade marks.


52 Even if I am wrong, and average consumers consider the stylised “MONSTER” to be the dominant element of the Application Mark, the fact remains that “CASTLE”—while smaller in size as compared to “MONSTER”—is not so small that it would be overlooked. It would still play a role in the overall assessment. Further, the word “MONSTER” in the Application Mark has some degree of stylisation. (I am aware that registration in block letters confers protection over a very wide range of typefaces. While I would not go so far as to say that the stylisation plays a significant role, I do not think that it can be completely ignored either.) In any event, neither “MONSTER” nor “CASTLE” can be said to be distinctive or descriptive in relation to the relevant goods and services. For these reasons, one cannot simply discount “CASTLE” from the analysis.

53 The Opponent argued that “CASTLE” is descriptive of the goods and services in question. This submission was a bald one, and the Opponent did not develop it in any detail. I disagree with the submission. It is plain and clear that “CASTLE” is not descriptive of any of the goods or services. This was also the view that the Opposition Division took in the EUIPO Decision, wherein it was held (at p18) that “CASTLE” *“will be understood by the relevant public as meaning, inter alia, ‘a fortified building or set of buildings, usually permanently garrisoned, as in medieval Europe. This word is considered distinctive, since it is neither descriptive nor allusive for the relevant goods and services to an extent that would materially affect its degree of distinctiveness”*. Now, it might be argued that “CASTLE” is descriptive in relation to the Applicant’s game in that the game requires a player to defend a castle from virtual invaders, but such an argument misses the point: the focus of the assessment is on the goods/services in respect of which registration is sought, not the actual goods/services to which the Application Mark has been applied.

54 Having compared the marks visually, I consider that they are visually different. To summarise my reasons:

- a. First, I am not persuaded by the Opponent’s submission that “MONSTER” is the distinctive and dominant component of the competing marks. The whole of the mark “MONSTER ENERGY” must be compared against the whole of the Application Mark.
- b. Second, I take the view that “ENERGY” and “CASTLE” play a material role in the visual comparison. Even if they are, respectively, the second word in the competing marks, this does not make a material difference because neither of them are descriptive of any of the relevant goods or services. Because “ENERGY” and “CASTLE” look nothing like one another, they would serve as critical points of distinction.
- c. Third, I acknowledge that “CASTLE” occupies less visual space than the word “MONSTER” in the Application Mark, but it would surely not escape visual notice; after all, the word “MONSTER” does not stand alone. Instead, it visually



overlaps with “CASTLE”, like so: “”. Given this layout, it is the whole of the mark that would leave an impression on the average consumer’s memory.

- d. Fourth, although average consumers having imperfect recollection are unlikely to remember the specific details of the Application Mark, they would not lose sight of the fact that it has a sort of a three-dimensional effect as well as decorative or fanciful features on the word “MONSTER”. In contrast, the Opponent’s “MONSTER ENERGY” is a plain word mark.

55 For completeness, and although nothing turns on it, a final point before moving on. The Opponent cited *Caesarstone* and *Lancôme Parfums et Beauté & Cie v Focus Magazin Verlag GmbH* (Case R 238/2009-2) in support of its argument that “MONSTER” is the distinctive and dominant element of both marks. These were the same arguments I had rejected in *Mixi* at [48] – [53] and I would reject them here for those same reasons.

#### Aural similarity

56 It is clear from *Staywell* that there are two possible approaches that can be taken in the comparison for aural similarity (see [23] – [33]). The first is to have special regard to the distinctive or dominant components of the marks (“Dominant Component Approach”). The second is to undertake an assessment as to whether the competing marks have more syllables in common than not (“Syllables Approach”). An important principle to bear in mind in this regard is that the aural analysis involves the utterance of syllables without exploring the composite meaning embodied by the words (*Staywell* at [35]).

57 In advancing its case on aural similarity, the Opponent focussed on the Dominant Component Approach. As with its case on visual similarity, the Opponent argued that the dominant component of the competing marks is “MONSTER”. In its submission, the marks are similar in that they have this same identical dominant component.

#### *Analysis*

58 Above, I have held that “MONSTER” is not the distinctive (in both the technical and non-technical senses of the term) and dominant component of the competing marks. This applies to the aural analysis as well. I have also held that “ENERGY” and “CASTLE” are not descriptive or allusive of the relevant goods and services. This case is different from *Staywell* where the “REGIS” component was found to be technically distinctive (in relation to hotel services) as well as distinctive in the non-technical sense (in that the “REGIS” will stand out in the imperfect recollection of the consumer).

59 To my mind, there can be no doubt that “MONSTER”, “ENERGY” and “CASTLE” are commonly encountered words in the English language (or at least much more so than, say, “REGIS”) and the average consumer in Singapore would not have any difficulty pronouncing them. No element of either mark can be said to be aurally dominant. And, to the ear, “ENERGY” and “CASTLE” sound completely different. Therefore, while it is true that there is commonality in the element “MONSTER”, once a speaker moves on to the next word in each mark (here: “ENERGY” and “CASTLE”), those words would be aural points of distinction that would set the respective marks apart (see *Mixi* at [59]).

60 The Opponent did not have any submissions on the Syllables Approach. All I need to say about it is that “MONSTER ENERGY” is made up of 5 syllables, like so: “MON-STER EN-ER-GY”. As for “MONSTER CASTLE”, it is made up of 4 syllables, as follows: “MON-STER CAS-TLE”. The marks cannot be said to have more syllables in common than not.

61 For the above reasons, my view is that the marks are aurally more dissimilar than similar.

### Conceptual similarity

62 The analysis for conceptual similarity seeks to uncover the ideas that lie behind and inform the understanding of the mark as a whole. (*Caesarstone* at [48]; *Staywell* at [35].) It is important to bear in mind that greater care is needed in considering what the conceptually dominant component of a composite mark is, because the idea connoted by each component might be very different from the sum of its parts (*Staywell* at [35]).

63 Under this facet of similarity, the Opponent once again focussed on the “MONSTER” element. In its submission, the marks are conceptually similar in that they both contain “MONSTER” as the distinctive and dominant component. It was also argued that “CASTLE” and “ENERGY” both conveyed the impression of strength and thus did not serve to differentiate the marks conceptually.


64 As for the Applicant, it first referred to the following portion of *Mixi* where it was stated as follows (see [67]):

“... “MONSTER ENERGY” could mean one of two things. It could refer to some sort of mythical monster or bestial creature that is great, powerful, and full of energy. Or it could refer to someone or something possessed of such great and powerful energy that is akin to that which is possessed by a monster.”

(emphasis in underline added)

65 From that starting point, it submitted that the words in underline would be better applied in relation to “ENERGY MONSTER” rather than “MONSTER ENERGY” because an adjective generally precedes a noun. The Applicant then argued that the better view is that “MONSTER ENERGY” refers to the second of the two things, i.e. “*someone or something possessed of such great and powerful energy that is akin to that which is possessed by a monster*”, and which has “*huge potential*”. It rounded off the point by arguing that “MONSTER ENERGY” is therefore an abstract concept.



66 The Applicant contrasted this abstract concept with “” which, in its submission, conveys the idea of a geographical location or destination and physical structure or fortification in which a monster or monsters dwell. It was argued that the stylisation in the mark only served to reinforce this very theme.

### *Analysis*

67 I am not persuaded by the Opponent’s submissions, which centred on the “MONSTER” component in each mark without sufficient consideration of the concepts underlying the sum of the elements making up the competing marks.

68 Instead, I would prefer the Applicant’s submission that “MONSTER ENERGY” is more likely to refer to someone or something that has huge or powerful energy potential. I also agree with the Applicant that the concept underlying “MONSTER ENERGY” is abstract in the sense

that what comes most readily to mind is not so much a monster but the idea of powerful energy,



and that the primary concept underlying “” is that of a physical castle inhabited by monsters.

69 While I accept that the competing marks are conceptually different overall, I would not go so far as to say—which the Applicant invited me to—that the stylisation conveys the impression of cartoons, games and fairy tales. All that I will say about the stylisation is that it is consistent with, and does not detract from, the central concept.

#### Conclusion on marks-similarity

70 The Opponent’s case on marks-similarity hinged on the contention that “MONSTER” is the distinctive and dominant portion of both marks. I have rejected this submission for the reasons set out above. Having assessed the marks visually, aurally, and conceptually, I find that the marks are more dissimilar than similar overall.

71 Since the Opponent has taken the position that “MONSTER ENERGY” (40201401724W and 40201501193T) is the most similar mark to the Application Mark overall (see Opponent’s Written Submissions at [11]), it logically follows that it has committed to having its case stand or fall on the basis of this trade mark. Accordingly, I will not analyse whether the Application Mark is similar to any of the other Opponent’s Earlier Trade Marks.

72 Before I move on to the next point, a final observation. It is interesting to note that in the EUIPO Decision, the Opposition Division considered the competing marks to be visually, aurally and conceptually similar to an “*average degree*” (see EUIPO Decision at p 19). While I must respectfully disagree for the reasons already stated, the point is that the Opposition Division did not consider the marks to have a strong degree of similarity.

#### ***Outcome of opposition under Section 8(2)(b) TMA***

73 In light of my finding that the competing marks are more dissimilar than similar, the opposition under Section 8(2)(b) TMA fails at this first step.

#### ***Observations on partial oppositions and whether the goods and services are identical/similar***

74 My conclusion on marks-similarity renders it unnecessary for me to proceed with the second (and third) step of the assessment. Nevertheless, I note that the parties have argued at some length on whether the goods and services (for which registration is sought under the Application Mark) are identical with or similar to those for which the Opponent’s “MONSTER ENERGY” mark (40201401724W and 40201501193T) is registered. In so doing, the parties addressed the issue of whether partial oppositions are permitted under the TMA. For these reasons, in the paragraphs that follow, I will first outline the applicable general principles. Next, I will state my views on partial oppositions under the TMA. Finally, I will set out my observations on whether the relevant goods and services are identical/similar.

#### Guiding principles



75 As a general rule, registration in the same specification establishes a *prima facie* case for identity. This is because it is not within the scheme of the classification system to make distinctions within a specification based on whether the particular product (or service) is targeted at one or another market segment (*Staywell* at [40]). It appears from *Staywell* that in considering the specification of goods or services, one should not adopt too liberal an interpretation such that the “*limits [of the language] become fuzzy and imprecise*”; neither should the language be strained “*unnaturally so as to produce a narrow meaning which does not cover the goods in question*”, especially where the ordinary and natural meaning is apt to cover the category of goods or services in question. Furthermore, where a good or service in relation to which registration is sought “*falls within the ambit of the specification in which the incumbent mark is registered*”, they would be regarded as identical. (*Staywell* at [41].)

76 As regards the assessment for similarity, it was undisputed that I should have regard to the factors or guidelines set out in *British Sugar plc v James Robertsons & Sons Ltd* [1996] RPC 281 at 296 (“*British Sugar*”), which have been looked to and applied in a number of local cases. A similar approach was taken in *Mixi* (at [75] onwards). I have also borne in mind the principle that these *British Sugar* factors or guidelines are not rigid requirements, and ultimately it is for this tribunal to consider them having regard to the relevant circumstances. The question is how the goods or services in question are regarded, for the purposes of trade (see *Staywell* at [43]). I also respectfully agree with the learned IP Adjudicator in *Guccitech* where he stated (at [37]) as follows:

“...What is required is to use practical common sense, whilst bearing in mind that the presence or absence of a particular description of goods in a specification does not have the consequence that it had under the old pre-1999 trade mark law (which protected only against use on or in relation to the same goods as those in the specification), now that under the Act a trade mark owner may be protected against use (or registration) of an identical or similar mark in relation to similar goods or services which may not even fall within the same class....”

77 Regardless of whether one is considering the respective goods/services for identity or similarity, an important consideration to bear in mind in the opposition context is this: unlike infringement proceedings, where the focus is on the defendant’s allegedly infringing *use*, in opposition proceedings, an applicant is seeking to obtain a registration in respect of certain goods or services. Consequently, the Registrar must necessarily consider the full range of actual and notional fair uses covered under the Opponent’s earlier mark (here: “MONSTER ENERGY” in Classes 9 and 41) against the full range of actual and notional fair uses to which the Applicant may put his mark should registration be granted. (See *Staywell* at [60] – [63].)

#### Whether partial oppositions are allowed under the TMA

78 It appears to be trite law that once the respective goods or services are found to be identical or similar in any relevant respect, the enquiry can then proceed to the third step: likelihood of confusion. (For a recent example, see *Guccitech*.)

79 The reverse also appears to hold true: *even if* some of the goods or services applied for are dissimilar to those protected under the earlier trade mark, that fact seems to be irrelevant so long as any of the goods or services are identical or similar. Assuming this is correct, then if an application is refused under Section 8(2)(b) TMA, it is refused in its entirety. Put in other words, the Registrar cannot, under this line of reasoning, allow partial oppositions. (For the

avoidance of doubt, it is uncontroversial that the Registrar can refuse an opposition in one class and allow it in another; the issue is whether the Registrar can refuse the registration of certain goods or services in a certain class, but allow it for others in the same class.)

80 In these proceedings, the Applicant challenged the notion that the Registrar cannot allow partial oppositions. The essential thrust of its submission was strikingly simple in its formulation, yet far reaching in its import. The Applicant highlighted that the words touching on the second step of the Section 8(2)(b) TMA test read: “...*is to be registered for goods and services identical with or similar to those for which the earlier trade mark is protected*...”. From a plain reading of those words, what was meant—in its submission—was that registration of the remaining goods and services not in issue should be allowed.

81 The difficulty I had with the Applicant’s submission was that it required me to read words into the provision that are not there. Section 8(2)(b) TMA prohibits the registration of “*A trade mark*” if it falls within the ambit of the provision. The trade mark application in question is treated as a singular entity. There is nothing to suggest (at least in the provision itself) that the Registrar has the power to hive off the goods or services which are deemed to be objectionable and to allow registration of the mark in respect of the remainder of the goods or services only.

82 As the Opponent rightly pointed out, the Registrar’s powers are derived from and circumscribed by statutory provisions. Section 8(2)(b) TMA, which does not expressly provide for partial oppositions, may be contrasted against Sections 22(6) and 23(9) TMA, which expressly provide for the power to allow partial revocations and declarations of invalidity respectively. The relevant provisions read as follows:

“22—

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

“23—

(9) Where the ground of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.”

(emphasis added)

83 Now, I would certainly agree that it is unclear what the basis for this distinction is. But, the fact of the matter is that Sections 22(6) and 23(9) TMA expressly provide for the power, whereas Section 8(2)(b) TMA does not, and in the circumstances I find it difficult to accept that I should read into a provision something that is not there.

84 During oral argument, Applicant’s counsel also referred me to Rule 17 TMR, which concerns divisions of applications for registration. It states, in material part, as follows:

“17.—(1) Subject to the provisions of this rule, an application for registration of a trade mark (referred to in this rule as the original application) made on or after 2nd July 2007 may, at the request of the applicant made on Form TM 8 at any time after the date of the original application but before the registration of the trade mark, be divided into 2 or more separate applications for registration of the trade mark.”

- (2) Where the original application is made in respect of 2 or more goods or services, a request under paragraph (1) may be made to divide the original application into 2 or more separate applications, each in respect of —
- (a) one or more classes of those goods or services, being classes of goods or services to which the original application relates; or
  - (b) one or more of those goods or services included in one or more of the classes of goods or services to which the original application relates.
- (3) —
- (4) Upon the division of the original application into 2 or more separate applications —
- (a) each separate application shall have the same date as the original application;
  - (b) any notice of opposition to the registration of any trade mark which is a subject of the original application shall —
    - (i) if the notice relates only to some (but not all) of the goods or services in respect of which the original application is made, be treated as having been given in relation only to each separate application made in respect of any of the goods or services to which the notice relates; or
    - (ii) subject to sub-paragraph (i), be treated as having been given in relation to all of the separate applications, and the opposition proceedings shall continue as if the notice had been so given; and
  - (c) —”

(emphasis added)

It was argued that this rule (and in particular the portions underlined above) appeared to support partial oppositions. The Applicant did not, however, develop the argument in any great detail.

85 It seems that two arguments could be made in connection with Rule 17 TMR. First, it could be argued that the Rule recognises that a notice of opposition may relate to only some (but not all) of the goods or services in respect of which an application is made. Second, it could be argued that the Rule allows an application to be divided in such a manner as to allow the registration of a mark to the extent that it is sought to be registered in respect of so-called non-objectionable goods or services.

86 However, it is not clear that the first argument is correct. And even if it does recognise that a notice of opposition may relate to some (but not all) of the goods and services, this is different from saying that the Registrar has the power to allow partial oppositions. In other words, unlike Sections 22(6) and 23(9) TMA which I have discussed above, Rule 17 TMR is not a power conferring one.

87 With regard to the second argument, while I note that a request for division is a useful mechanism that could be employed *by the parties* (e.g. if an opponent agrees to not object to the registration of a trade mark if it is confined to certain goods or services only), it does not necessarily follow that the *Registrar* can draw upon this Rule to permit partial oppositions.

88 Further and in any case, Rule 5A of the Trade Marks (International Registration) Rules (Cap. 332, R 3) (“TMIRR”) excludes the operation of Rule 17 TMR, which effectively means that there can be no division of an international registration designating Singapore. While the

instant dispute did not involve an international registration, the existence of Rule 5A TMIR casts doubt on the validity of any argument based on Rule 17 TMR.

89 As far as I am aware, the courts in Singapore have not, to date, ruled on whether partial oppositions are permitted. Nevertheless, the issue was discussed in some detail in *Christie Manson & Woods Limited v Chrित्रs Auction Pte. Limited* [2016] SGIPOS 1 (“*Christie*”), a decision of this tribunal.

90 In *Christie* it was argued that partial oppositions should be allowed (see *Christie* at [106]). While the Hearing Officer was inclined to the view that the provisions of the TMA suggest that the Registrar does *not* have the power to allow partial oppositions, there were a number of considerations which weighed on his mind that, in his judgment, militated against this conclusion.

- a. First, he considered it unclear as to which provision partial oppositions were permitted in the UK, and whether a corresponding provision existed under the Singapore TMA.
- b. Second, he observed that the Registrar previously permitted a partial opposition in *Nike International Ltd v Campomar SL* [2001] SGIPOS 4 (“*Nike*”).
- c. Third, he took the view that there did not appear to be any strong policy reasons for not permitting partial oppositions. In this connection, he was not persuaded that disallowing trade mark applications would result in trade mark applications being filed with overly broad specifications since there are other provision in the Act that discourage such conduct.
- d. Fourth, he observed that it could be unfair if an application was refused—in a hypothetical case—in its entirety despite there being only a single point of overlap/similarity between the parties’ respective services (or goods) or interest.

91 In its written Supplementary Submissions on Partial Oppositions in Singapore, the Opponent sought to address the concerns raised in *Christie* by giving the following reasons. In relation to each, I set out my brief views.

- a. First, it referred to *Sensornet Ltd’s Trade Mark Application* [2007] RPC 10 (“*Sensornet*”). My attention was drawn to the fact that Art. 13 of the Council Directive 89/104 expressly provided for partial oppositions. The Opponent then argued that the Directive was binding on the UK even in the absence of an express provision to that effect and cited *MISTER LONG Trade Mark* [1998] RPC 401 (“*MISTER LONG*”) and *Sensornet* at [42] – [43] in support of that proposition. In the *MISTER LONG* case, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, stated thus (at 406):

“... Although the words [in Art. 13 of the Council Directive 89/104] I have emphasised do not appear to have found their way into the text of the 1994 Act, they are binding upon the registrar of Trade Marks as the person whose task it is to implement Article 13 on behalf of the State in Registry proceedings in the United Kingdom. Article 13 serves to confirm that no grounds for refusal of registration should exist in respect

of any of the goods or services for which a trade mark is to be registered. It envisages that the coverage of an application will (where possible) be restricted to the extent necessary to confine it to goods or services for which the trade mark in question is fully registrable. The 1994 Act leaves it to the applicant to achieve the required degree of restriction by amending his application (see sections 37(4), 39(1) and 39(2) of the Act) and/or subjecting it to a limitation (see section 13 of the Act).”

In the Opponent’s submission, since Singapore is not a member state of the European Union, Art. 13 of the said Council Directive was and is not binding on Singapore; consequently, UK cases (including those which held that partial oppositions are permitted) are not persuasive in Singapore. I consider this argument a persuasive one that addresses the PAR’s concern in *Christie*. In any case, the mere fact that partial oppositions are allowed in the EU (indeed, the EUIPO Decision was also a partial opposition ruling) should have no bearing on the position in Singapore.

- b. Second, the Opponent pointed out that *Nike* was based on the pre-1999 version of the Trade Marks Act (Cap. 332, Rev. Ed. 1992) (“TMA 1992”), which was materially different from the present version of the TMA. In my assessment, this submission is correct. It seems that the Hearing Officer in *Nike* did not, strictly speaking, allow a partial opposition but instead ordered the applicant in that case to amend “*the subject specification in the manner set out above within 4 weeks from the date hereof, failing which the application shall be refused*” (see *Nike* at [41]). Such an order was made pursuant to Section 12(2) of the TMA 1992 which conferred upon the Registrar the power to “*refuse the application or... accept it absolutely or subject to such conditions, amendments, modification, or limitations, as he may think right to impose*”. It seems that there is no direct equivalent of this power in the present day incarnation of the TMA. As such, *Nike* should be viewed in that specific context.
- c. Third, and in response to the Hearing Officer’s concerns in *Christie* about the apparent lack of policy considerations militating against partial oppositions, the Opponent emphasised that allowing partial oppositions could not only lead to applications being filed with overly broad specifications in the hope that at least some may succeed in getting through, but also reduce the pressure for parties to be judicious in their selection of items for the specification of goods/services, since there is little to no fear of being opposed. It was also argued that the practice of filing overly broad specifications would also stifle competition. As regards the Hearing Officer’s observation in *Christie* that there are other provisions that discourage such conduct, the Opponent argued that revocation for non-use under Section 22 TMA would be an insufficient safeguard because a registration can only be revoked for non-use, at the soonest, 5 years from the date of the completion of the registration procedure. Moreover (so the argument went), the fact that a third party must commence proceedings results in increased time and costs for the entire system as a whole. And, insofar as bad faith under Section 7(6) TMA is concerned, the Opponent stressed that this is a fact specific enquiry and it may not be easy to prove, with evidence, in contentious proceedings. While I do not necessarily disagree with all of the foregoing points, what I will say is

this. There do appear to be some valid policy considerations that weigh against allowing partial oppositions.

- d. Fourth, the Opponent argued that it would not be unfair to refuse an application on the basis of a single point of overlap/similarity of goods/services because the incumbent mark is registered on the register which is public, and the trade applicant cannot say that there was no notice of the earlier mark. Following this line of argument, it is always open for the applicant of the later mark to take steps to ensure that his trade mark application does not encroach on the rights of the proprietor of the earlier mark; indeed, if the application gets through, the applicant only stands to gain, and if it does not—well, the applicant must be treated as having willingly adopted that risk. I agree with this submission as well.

Accordingly, I am inclined to the view that in the absence of an express statutory provision conferring upon the Registrar the power to order partial oppositions, such a power cannot be read into Section 8(2)(b) TMA. Although I have considered the issue in the context of Section 8(2)(b) TMA, I see no reason why the same reasoning cannot apply to Section 8(4) TMA as well.

92 What is less clear, however, is whether partial oppositions are possible under Section 8(7) TMA. The provision reads as follows:

“8.—

(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; or  
(b) virtue of an earlier right other than those referred to in subsections (1), (2) and (3) or paragraph (a), in particular by virtue of the law of copyright or any law with regard to the protection of designs.

(emphasis added)

What do the words “*or to the extent that*” refer to? Do they permit the Registrar to allow partial oppositions? Since the point was not argued, I shall not say any more about it and merely flag it out in case it is of relevance elsewhere.

#### Whether the respective goods/services are identical/similar?

93 To recapitulate, the Opponent relied on “MONSTER ENERGY” (40201401724W) in Class 9 as against the Application Mark in Class 9, and “MONSTER ENERGY” (40201501193T) in Class 41 as against the Application Mark in Classes 41 and 42.

##### *(1) Application Mark in Class 9*

94 The Opponent’s “MONSTER ENERGY” (40201401724W) trade mark is registered in Class 9 in respect of various goods including “*Protective clothing; protective footwear; protective headwear; protective eyewear*”. The Application Mark is sought to be registered in Class 9 in respect of more than 650 items (!) including “*Protective helmets; Protective helmets for sports; Protective masks; Protective suits for aviators; Workmen's protective face-shields*”.

95 In the Applicant’s Written Submissions, the Applicant (correctly, in my view) accepted that the abovementioned goods are identical with or similar to each other. That being the case, there is no need to examine the remaining items in the specification for identity/similarity.

(2) *Application Mark in Class 41*

96 The Opponent’s “MONSTER ENERGY” (40201501193T) trade mark is registered in Class 41 in respect of various services including “*Entertainment services; organizing, conducting and staging sports events, live musical performances, exhibitions and competitions*”. The Application Mark is sought to be registered in Class 41 in respect of more than 130 items including “*Entertainment; Organization of sports competitions*”.

97 In the Applicant’s Written Submissions, it accepted (correctly, in my view) that the abovementioned services are identical with or similar to each other. That being the case, there is no need to examine the remaining items in the specification for identity/similarity.

(3) *Application Mark in Class 42*

98 The Opponent relies on the following services under its registration for “MONSTER ENERGY” (40201501193T) in Class 41 as against the following services applied for under the Application Mark in Class 42. In its submission, the services are similar (see Opponent’s Skeletal Arguments at p 4 – 5):

<b>"MONSTER ENERGY" (40201501193T) in Class 41</b>	<b>Application Mark in Class 42</b>
On-line publication and provision of multimedia content in the nature of multimedia files containing audio, video, text, still images, and graphics in the fields of sports, people, entertainment, and music	Conversion of data or documents from physical to electronic media; Data conversion of computer programs and data [not physical conversion]; Digitization of documents [scanning]; Hosting computer sites [web sites]; Installation of computer software; Maintenance of computer software; Monitoring of computer systems by remote access; Providing search engines for the internet; Recovery of computer data; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks;
Entertainment services	computer programming of computer games; computer programming of video games

99 In reply, the Applicant stressed that I should bear in mind that in approaching the specification, I should confine myself to the substance or the “*core of possible meanings*” attributable to the phrase (see *Avnet Incorporated v Isoact Limited* [1998] FSR 16; Intellectual Property Office of Singapore (IPOS) Trade Marks Work Manual, Chapter 18 at p 11). In other words, I should be careful to avoid adopting too broad an approach.

100 As regards the service of publishing and providing content on the internet, the Applicant contended that it was essentially concerned with *content distribution*. In its submission, such a service is very different from services relating to the underlying software or technology, which require professional computing expertise of a different nature. I would agree with the Applicant. To use tech jargon, the former is a “front-end” or public-facing service; whereas the latter is a “back-end” service which does the background work that is typically invisible to end-users. The latter may enable or facilitate the former, but it does not mean that they are identical or similar for present purposes.

101 Roughly the same reasoning would apply to the comparison between entertainment services (which are concerned with and aimed at end-consumers seeking entertainment) and computer programming of video or computer games. Some may enjoy computer or video games as a form of entertainment, but the programming of such software seems to be rather different from the service of entertainment. The uses and users and how they would be regarded for the purposes of trade would be, to my mind, very different. To put it in simple terms, the latter is concerned with work, whereas the former is concerned with play.

102 To conclude, I take the view that none of the “MONSTER ENERGY” (40201501193T) services in Class 41 are identical with or similar to the services for which registration is sought under the Application Mark in Class 42.

### **Opposition under Sections 8(4)(b)(i) and 8(4)(b)(ii) TMA**

103 The Opponent is relying on Section 8(4)(b)(i) as well as 8(4)(b)(ii) TMA (both sub-grounds (A) and (B)). The former relates to marks that are well known in Singapore, whereas the latter relates to marks that are well known to the public at large in Singapore.

104 Section 8(4) TMA provides that:

“(4) Subject to subsection (5), where an application for registration of a trade mark is made on or after 1st July 2004, 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; or

(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.”

105 As can be seen from the above, two elements are common to the sub-grounds of opposition within Section 8(4) TMA.

- a. First, the whole or an essential part of the later trade mark must be shown to be identical with or similar to the earlier trade mark.
- b. Second, the earlier trade mark must be shown to be well known in Singapore. (Although Section 8(4)(b)(ii) TMA concerns marks that are well known to the public at large in Singapore, it goes without saying that a mark that is not well known in Singapore cannot be well known to the public at large in Singapore.)

If either (or both) of these elements cannot be established, the opposition under all the sub-grounds of Section 8(4) TMA will fail.

### ***Whether the marks are similar?***

106 Although the Opponent stated in its letter of 9 November 2017 that it would be relying on all sixteen of the Opponent’s Earlier Trade Marks for the purposes of Section 8(4) TMA (all sub-grounds), the Opponent’s Written Submissions focussed solely on “MONSTER ENERGY” (see Opponent’s Written Submissions at [53] and [54]). The Opponent did not run arguments in relation to any other mark. Indeed, Opponent’s counsel clarified during the hearing that it was not submitting that “MONSTER” *simpliciter* was well known; rather its case was that, on the evidence, “MONSTER ENERGY” was well known and well known to the public at large (Opponent’s Skeletal Arguments at p 9).

107 This mark, “MONSTER ENERGY”, is the same mark I have found to be dissimilar to the Application Mark under the Section 8(2)(b) TMA ground of opposition. It was undisputed that there is no material difference between the similarity of marks enquiry under Section 8(2)(b) TMA as compared to Section 8(4) TMA. Moreover, the Opponent was content to repeat its submissions on marks-similarity under Section 8(2)(b) TMA for the purposes of Section 8(4) TMA.

108 Accordingly, for the same reasons given under Section 8(2)(b) TMA, I find that the whole or essential part of the Application Mark is not identical with or similar to the Opponent’s Mark.

### ***Outcome of the opposition under Section 8(4) TMA***

109 My finding that the whole or essential part of the Application Mark is not identical with or similar to the Opponent’s Mark is sufficient to dispose of all sub-grounds of opposition under Section 8(4) TMA. In other words, the opposition under Section 8(4)(b)(i), 8(4)(b)(ii)(A) and 8(4)(b)(ii)(B) TMA fails.



### ***Observations on whether MONSTER ENERGY was well known***

110 Although it follows from my conclusion on marks-similarity that I am not required to decide on the further issue of whether “MONSTER ENERGY” was well known to the public

at large in Singapore, or well known to at any relevant sector of the public in Singapore, I shall set out some observations.


111 In *Mixi*, the Opponent sought to prove that “MONSTER ENERGY” was well known (as at the relevant date of 23 June 2014) to: (a) the public in Singapore; and (b) the public at large in Singapore. After undertaking a detailed analysis of the Opponent’s evidence (which was given by Mr Sacks by way of SD), I found that the evidence was insufficient to meet even the lower threshold. Although the Opponent’s evidence was voluminous, it showed that what had been widely advertised and used was not the plain words “MONSTER ENERGY” but rather



the composite mark “” and the claw device “”. There was, to be certain, some use of the plain “MONSTER ENERGY” on the internet (e.g. website and social media accounts). And this was what I said:

“151 First, individuals who access these pages or accounts would already be familiar with the Opponent. Even if they were not, upon navigating to or around these sites, they



would be educated of the Opponent’s: “”. The words “MONSTER ENERGY” may appear in certain limited cases, but always in conjunction with that stylised composite mark and/or the claw device. It is those elements that would, more likely than not, be recognised as a badge of origin designating the Opponent’s goods rather than the plain “MONSTER ENERGY”.

152 Second, in this day and age, as the saying goes, “content is king”. And the content on the Opponent’s website and social media platforms was not so much about energy drinks (although there is some evidence of that on the website at least) but more of sporting events, athletes and the like. I am certain that this was by design, and intended to go hand in hand with the Opponent’s sponsorships and endorsements which I have discussed at length above (see [139] to [147]).

153 But it also cuts both ways, because the numerous photographs, videos and news updates concerning sponsored athletes, events and teams tell me very little about whether the plain “MONSTER ENERGY” trade mark (as opposed to the composite mark) is known to or recognised by consumers of energy drinks in Singapore. One could be a sports fan and not a consumer of energy drinks and vice versa. The point is that I am not sure how I can draw any meaningful conclusions from pure eyeball numbers or mouse-clicks or finger-taps alone when I do not know whether individuals from Singapore follow the Opponent’s website and social media accounts for the sports content or because they are consumers of energy drinks who wish to show their support for the Opponent by “liking” and “following” its social media pages.”

112 In this case, the Opponent’s Mr Sacks, Chairman and Chief Executive Officer of Monster Beverage Corporation, gave evidence by way of SD (see RCS-SD1 and RCS-SD2). Mr Sacks also gave SD evidence in *Mixi*. Although the evidence was not identical, most of the documents were the same. This was perhaps not surprising since the Opponent had essentially run the

same case against different parties, and was represented by the same firm in both cases. More importantly, Mr Sacks' SDs were dated less than three months apart (here: 4 November 2016, *Mixi*: 16 August 2016). The relevant dates in the respective proceedings were also not far apart (here: 25 August 2015, *Mixi*: 23 June 2014).

113 During oral submissions, Mr Wang pointed out that it is always easy to criticise evidence as being lacking in some way or another. However, or so he argued, it is important to consider the aggregate effect of the evidence as a whole. After explaining that the Opponent's case is that "MONSTER ENERGY" (and not "MONSTER" *simpliciter*) is well known, he referred me to various examples of instances in the evidence where "MONSTER ENERGY" was said to have been used widely in Singapore and across the world (see Opponent's Skeletal Arguments at p 9 – 11). My attention was drawn, in particular, to the following pages of RCS-SD1, namely: pp 656 – 659, 661 – 682, 684, 687, 688, 690, 836, 857, 945, 948, 951, 952, 985, 988, 992, 1012, 1030, 1031, 1301, 1302, 1204 – 1206, 1354 – 1363, and 1373. I was also referred to the photographs of the Opponent's energy drinks in Singapore exhibited to ML-SD.

114 Having looked through the documents listed above as well as the rest of the documents as best as I can, I can only conclude that their aggregate effect is no different to the documents in *Mixi*. None of the documents in this case disclosed any facts that would persuade me to take a different view about the evidence as a whole. In my assessment, for substantially the same reasons I gave in *Mixi* (at [113] – [163]) the plain "MONSTER ENERGY" was not well known to any relevant sector of the public, let alone well known to the public at large.

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

115 Section 8(7)(a) TMA provides that a trade mark shall not be registered if, or to the extent that, its use in Singapore is liable to be prevented "*by 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*".

116 In its letter of 20 November 2017, the Opponent indicated that it would be relying on "MONSTER ENERGY" (40201401724W in Classes 9, 16, 18 and 25) for the purposes of the opposition under this ground.

117 The basic elements of passing off are trite. Three must be established in turn: (a) goodwill, (b) misrepresentation, and (c) damage. The fundamental principles relating to each element are set out in the Court of Appeal's decision in *Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading)* [2016] 4 SLR 86 ("*Singsung*"). (I also restated some of the salient points in *Mixi* at [180], and will not repeat them here.)

118 Under the first element, the key question is whether the Opponent enjoys goodwill in Singapore in its business as a whole. In *Mixi*, I found that the Opponent had a business presence in Singapore in the form of a local subsidiary and that it had sold its energy drinks in Singapore through a local distributor. On that basis, I held that the element of goodwill had been established (at [183]). While the evidence in this case is not completely identical to that which was tendered in *Mixi*, a significant number of documents overlap. In any case, I am able to also make those same findings on the present evidence. I hold that this element has been established.

119 Under the second element, the essential issue is whether there is such a similarity between the Application Mark and "MONSTER ENERGY" such that in all the circumstances, it is sufficiently likely to result in the relevant segment of the public being deceived into thinking

that the Applicant's goods are, or emanate from a source that is linked to, the Opponent's. Above, I have found the competing marks to be dissimilar. Consequently, this question must be answered in the negative. I thus find that the element of misrepresentation has not been made out, and it is not necessary for me to comment further on the final element of damage.

***Outcome of opposition under Section 8(7)(a) TMA***

120 For the reasons above, this ground of opposition fails.

**Conclusion**

121 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the opposition fails on all grounds. Save for the costs orders that I made in [22] and [29] above, which are to be treated separately, the Applicant is entitled to costs of this action to be taxed, if not agreed.

Date of issue: 12 June 2018

[An appeal from this decision to the High Court is pending.]

## ANNEX

### TM No. 40201518266U Specifications of Goods or Services

#### Class 9

Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Compact discs, DVDs and other digital recording media; Mechanisms for coin-operated apparatus; Cash registers, calculating machines, data processing equipment, computers; Computer software; Fire-extinguishing apparatus; Abacuses; Accounting machines; Accumulators, electric; Acid hydrometers; Acidimeters for batteries; Acoustic conduits; Acoustic couplers; Actinometers; Adding machines; Aerials; Aerometers; Agendas (Electronic -); Air analysis apparatus; Alarm bells, electric; Alarms; Alcoholmeters; Alidades; Altimeters; Ammeters; Amplifiers; Amplifying tubes; Anemometers; Animated cartoons; Anode batteries; Anodes; Answering machines; Anti-glare glasses; Anti-glare visors; Anti-interference devices [electricity]; Anti-theft warning apparatus; Anticathodes; Apertometers [optics]; Armatures [electricity]; Asbestos clothing for protection against fire; Asbestos gloves for protection against accidents; Asbestos screens for firemen; Astronomy (Apparatus and instruments for -); Audiovisual teaching apparatus; Automated teller machines [ATM]; Azimuth instruments; Balances [steelyards]; Balancing apparatus; Bar code readers; Barometers; Batteries, electric; Batteries, electric, for vehicles; Batteries for lighting; Battery boxes; Battery chargers; Battery jars; Beacons, luminous; Bells [warning devices]; Betatrons; Binoculars; Blinkers [signalling lights]; Blueprint apparatus; Boiler control instruments; Branch boxes [electricity]; Breathing apparatus, except for artificial respiration; Breathing apparatus for underwater swimming; Buzzers; Cabinets for loudspeakers; Cables, electric; Calculating disks; Calculating machines; Calibrating rings; Calipers; Camcorders; Cameras [photography]; Capacitors; Capillary tubes; Carpenters' rules; Carriers for dark plates [photography]; Cases especially made for photographic apparatus and instruments; Cases fitted with dissecting instruments [microscopy]; Cash registers; Cassette players; Cathodes; Cathodic anti-corrosion apparatus; Cell phone straps; Centering apparatus for photographic transparencies; Central processing units [processors]; Chargers for electric batteries; Chemistry apparatus and instruments; Chips [integrated circuits]; Choking coils [impedance]; Chromatography apparatus for laboratory use; Chronographs [time recording apparatus]; Cinematographic cameras; Cinematographic film, exposed; Circuit breakers; Circuit closers; Cleaning apparatus for phonograph records; Clinometers; Clothing especially made for laboratories; Clothing for protection against accidents, irradiation and fire; Clothing for protection against fire; Coaxial cables; Coils, electric; Coin-operated apparatus (Mechanisms for -); Coin-operated mechanisms for television sets; Collectors, electric; Commutation (Electric apparatus for -); Commutators; Compact disc players; Compact discs [audio-video]; Compact discs [read-only memory]; Comparators; Compasses (Directional -); Compasses [measuring instruments]; Computer game programs; Computer keyboards; Computer memory devices; Computer operating programs, recorded; Computer peripheral devices; Computer programmes [programs], recorded; Computer programs [downloadable software]; Computer software, recorded; Computers; Conductors, electric; Connections for electric lines; Connectors [electricity]; Contact lenses; Contacts, electric; Containers for contact lenses; Containers for microscope slides; Control panels [electricity]; Converters, electric; Copper wire, insulated; Correcting lenses [optics]; Cosmographic instruments; Counter-operated apparatus (Mechanisms for -); Couplers [data processing equipment]; Couplings, electric; Covers for electric outlets; Crash test dummies; Cupels [laboratory]; Current rectifiers; Cyclotrons; Darkroom lamps [photography]; Darkrooms [photography]; Data processing apparatus; Decompression chambers; Demagnetizing apparatus for magnetic tapes; Densimeters; Densitometers; Detectors; Diagnostic apparatus, not for medical purposes; Diaphragms [acoustics]; Diaphragms for scientific apparatus; Diaphragms [photography]; Dictating machines; Diffraction apparatus [microscopy]; Discharge tubes, electric, other than for lighting; Disk drives for computers; Disks, magnetic; Distance measuring apparatus; Distance recording apparatus; Distillation apparatus for scientific purposes; Distribution boards [electricity]; Distribution boxes [electricity]; Distribution consoles [electricity]; Divers' masks; Diving suits; DNA chips; Dog whistles; Dosimeters; Downloadable image files; Downloadable music files; Downloadable ring tones for mobile phones; Drainers for use in photography; Dressmakers' measures; Drying apparatus for photographic prints; Drying racks [photography]; Ducts [electricity]; DVD players; Dynamometers; Ear plugs for divers; Editing appliances for cinematographic films; Egg-candlers; Electric door bells; Electric installations for the remote control of industrial operations; Electric loss indicators; Electricity conduits; Electricity mains (Materials for -) [wires, cables]; Electrified fences; Electrified rails for mounting spot lights; Electro-dynamic apparatus for the remote control of railway points; Electro-dynamic apparatus for the remote control of signals; Electrolysers; Electromagnetic coils; Electronic notice boards; Electronic pens [visual display units]; Electronic pocket translators; Electronic

publications, downloadable; Electronic tags for goods; Encoded identification bracelets, magnetic; Encoded magnetic cards; Enlarging apparatus [photography]; Epidiascopes; Ergometers; Exposure meters [light meters]; Extinguishers; Eyeglass cases; Eyeglass chains; Eyeglass cords; Eyeglass frames; Eyepieces; Eyepieces (Instruments containing -); Facsimile machines; False coin detectors; Fermentation (Apparatus for -) [laboratory apparatus]; Fibre [fiber (Am)] optic cables; Film cutting apparatus; Films, exposed; Filters for respiratory masks; Filters for ultraviolet rays, for photography; Filters [photography]; Fire alarms; Fire beaters; Fire blankets; Fire boats; Fire engines; Fire escapes; Fire hose; Fire hose nozzles; Flash-bulbs [photography]; Flashlights [photography]; Floppy disks; Fluorescent screens; Fog signals, non-explosive; Food analysis apparatus; Frames for photographic transparencies; Franking (Apparatus to check -); Frequency meters; Furniture especially made for laboratories; Fuse wire; Fuses; Galena crystals [detectors]; Galvanic batteries; Galvanic cells; Galvanometers; Garments for protection against fire; Gas testing instruments; Gasometers [measuring instruments]; Gauges; Glass covered with an electrical conductor; Glazing apparatus for photographic prints; Global Positioning System [GPS] apparatus; Gloves for divers; Gloves for protection against accidents; Gloves for protection against X-rays for industrial purposes; Goggles for sports; Grids for batteries; Hands free kits for phones; Head cleaning tapes [recording]; Headphones; Heat regulating apparatus; Heliographic apparatus; Hemline markers; High-frequency apparatus; Holders for electric coils; Holograms; Horns for loudspeakers; Hourglasses; Hydrometers; Hygrometers; Identification sheaths for electric wires; Identification threads for electric wires; Identity cards, magnetic; Igniting apparatus, electric, for igniting at a distance; Incubators for bacteria culture; Inductors [electricity]; Integrated circuit cards [smart cards]; Integrated circuits; Intercommunication apparatus; Interfaces for computers; Inverters [electricity]; Invoicing machines; Ionization apparatus not for the treatment of air or water; Jigs [measuring instruments]; Juke boxes for computers; Juke boxes, musical; Junction boxes [electricity]; Junction sleeves for electric cables; Knee-pads for workers; Laboratory centrifuges; Laboratory trays; Lactodensimeters; Lactometers; Laptop computers; Lasers, not for medical purposes; Leather (Appliances for measuring the thickness of -); Lens hoods; Lenses for astrophotography; Letter scales; Levelling instruments; Levels [instruments for determining the horizontal]; Life belts; Life buoys; Life jackets; Life nets; Life saving apparatus and equipment; Life-saving rafts; Light conducting filaments [optical fibers fibres]; Light dimmers [regulators], electric; Light-emitting diodes [LED]; Light-emitting electronic pointers; Lighting ballasts; Lightning arresters; Limiters [electricity]; Locks, electric; Logs [measuring instruments]; Loudspeakers; Magic lanterns; Magnetic data media; Magnetic encoders; Magnetic tape units for computers; Magnetic tapes; Magnetic wires; Magnets; Magnets (Decorative -); Magnifying glasses [optics]; Manometers; Marine compasses; Marine depth finders; Marking buoys; Marking gauges [joinery]; Masts for wireless aerials; Material testing instruments and machines; Mathematical instruments; Measures; Measuring apparatus; Measuring devices, electric; Measuring glassware; Measuring instruments; Measuring spoons; Mechanical signs; Megaphones; Mercury levels; Metal detectors for industrial or military purposes; Meteorological balloons; Meteorological instruments; Meters; Metronomes; Micrometer screws for optical instruments; Micrometers; Microphones; Microprocessors; Microscopes; Microtomes; Milage recorders for vehicles; Mirrors for inspecting work; Mirrors [optics]; Modems; Money counting and sorting machines; Monitoring apparatus, electric; Monitors [computer hardware]; Monitors [computer programs]; Motor fire engines; Mouse [data processing equipment]; Mouse pads; Nautical apparatus and instruments; Naval signalling apparatus; Navigation apparatus for vehicles [on-board computers]; Navigational instruments; Neon signs; Nets for protection against accidents; Nose clips for divers and swimmers; Notebook computers; Objectives [lenses] optics; Observation instruments; Octants; Ohmmeters; Optical apparatus and instruments; Optical character readers; Optical condensers; Optical data media; Optical discs; Optical glass; Optical goods; Optical lamps; Optical lenses; Oscillographs; Ovens for laboratory use; Oxygen transvasing apparatus; Ozonisers [ozonators]; Parking meters; Particle accelerators; Pedometers; Peepholes [magnifying lenses] for doors; Periscopes; Personal stereos; Petrol gauges; Phonograph records; Photocopiers [photographic, electrostatic, thermic]; Photometers; Phototelegraphy apparatus; Photovoltaic cells; Physics (Apparatus and instruments for -); Pince-nez; Pipettes; Plane tables [surveying instruments]; Planimeters; Plates for batteries; Plotters; Plugs, sockets and other contacts [electric connections]; Plumb bobs; Plumb lines; Pocket calculators; Polarimeters; Portable media players; Portable telephones; Precision balances; Precision measuring apparatus; Pressure indicator plugs for valves; Pressure indicators; Pressure measuring apparatus; Printed circuit boards; Printed circuits; Printers for use with computers; Prisms [optics]; Probes for scientific purposes; Projection apparatus; Projection screens; Protection devices against X-rays, not for medical purposes; Protection devices for personal use against accidents; Protective helmets; Protective helmets for sports; Protective masks; Protective suits for aviators; Protractors [measuring instruments]; Punched card machines for offices; Push buttons for bells; Pyrometers; Quantity indicators; Radar apparatus; Radio pagers; Radiological apparatus for industrial purposes; Radiology screens for industrial purposes; Radios; Radiotelegraphy sets; Radiotelephony sets; Railway traffic safety appliances; Readers [data processing equipment]; Receivers (Audio-- and video- -); Record player needles (Apparatus for changing -); Record players; Reducers [electricity]; Reflecting discs for wear, for the prevention of traffic accidents; Refractometers; Refractors; Regulating apparatus, electric; Relays, electric; Remote control apparatus; Resistances, electric; Respirators for filtering air; Respirators, other than for artificial respiration;

Resuscitation mannequins [teaching apparatus]; Retorts; Retorts' stands; Revolution counters; Rheostats; Riding helmets; Road signs, luminous or mechanical; Rods for water diviners; Rods [surveying instruments]; Rulers [measuring instruments]; Rules [measuring instruments]; Saccharometers; Safety restraints, other than for vehicle seats and sports equipment; Safety tarpaulins; Salinometers; Satellite navigational apparatus; Satellites for scientific purposes; Scales; Scanners [data processing equipment]; Screens for photoengraving; Screens [photography]; Screw-tapping gauges; Semi-conductors; Sextants; Sheaths for electric cables; Shoes for protection against accidents, irradiation and fire; Shutter releases [photography]; Shutters [photography]; Sighting telescopes for firearms; Signal bells; Signal lanterns; Signalling buoys; Signalling panels, luminous or mechanical; Signalling whistles; Signals, luminous or mechanical; Signs, luminous; Simulators for the steering and control of vehicles; Sirens; Skins (Apparatus for measuring the thickness of -); Slide calipers; Slide projectors; Slide-rules; Slides [photography]; Smoke detectors; Socks, electrically heated; Solar batteries; Solderers' helmets; Solenoid valves [electromagnetic switches]; Sonars; Sound alarms; Sound locating instruments; Sound recording apparatus; Sound recording carriers; Sound recording strips; Sound reproduction apparatus; Sound transmitting apparatus; Sounding apparatus and machines; Sounding leads; Sounding lines; Spark-guards; Speaking tubes; Spectacle cases; Spectacle frames; Spectacle glasses; Spectacles [optics]; Spectrograph apparatus; Spectroscopes; Speed checking apparatus for vehicles; Speed indicators; Speed measuring apparatus [photography]; Speed regulators for record players; Spherometers; Spirit levels; Spools [photography]; Sprinkler systems for fire protection; Stage lighting regulators; Stands for photographic apparatus; Starter cables for motors; Steering apparatus, automatic, for vehicles; Step-up transformers; Stereoscopes; Stereoscopic apparatus; Stills for laboratory experiments; Styli for record players; Sulphitometers; Sunglasses; Surveying apparatus and instruments; Surveying chains; Surveying instruments; Surveyors' levels; Switchboards; Switchboxes [electricity]; Switches, electric; Tachometers; Tape recorders; Taximeters; Teaching apparatus; Teeth protectors; Telegraph wires; Telegraphs [apparatus]; Telemeters; Telephone apparatus; Telephone receivers; Telephone transmitters; Telephone wires; Teleprinters; Teleprompters; Telerupters; Telescopes; Television apparatus; Temperature indicators; Terminals [electricity]; Test tubes; Testing apparatus not for medical purposes; Theft prevention installations, electric; Theodolites; Thermionic tubes; Thermometers, not for medical purposes; Thermostats; Thermostats for vehicles; Ticket dispensers; Time clocks [time recording devices]; Time recording apparatus; Time switches, automatic; Tires (Automatic indicators of low pressure in vehicle -); Tone arms for record players; Totalizers; Traffic-light apparatus [signalling devices]; Transformers [electricity]; Transistors [electronic]; Transmitters of electronic signals; Transmitters [telecommunication]; Transmitting sets [telecommunication]; Transponders; Triodes; Tripods for cameras; Urinometers; USB flash drives; Vacuum gauges; Vacuum tubes [radio]; Variometers; Vehicle breakdown warning triangles; Vehicle radios; Verniers; Vests (Am) Bullet-proof -; Video cassettes; Video game cartridges; Video recorders; Video screens; Video telephones; Videotapes; Viewfinders, photographic; Viscosimeters; Voltage regulators for vehicles; Voltage surge protectors; Voltmeters; Voting machines; Wafers [silicon slices]; Waling glasses; Walkie-talkies; Washing trays [photography]; Water level indicators; Wavemeters; Weighbridges; Weighing apparatus and instruments; Weighing machines; Weights; Whistle alarms; Wind socks for indicating wind direction; Wire connectors [electricity]; Wires, electric; Word processors; Workmen's protective face-shields; Wrist rests for use with computers; X-ray apparatus not for medical purposes; X-ray films, exposed; X-ray photographs, other than for medical purposes; X-ray tubes not for medical purposes; X-rays producing apparatus and installations, not for medical purposes; computer game software; Mobile phones; mobile phone accessories; Cases adapted for mobile phones; Tablet computers; cases adapted for tablet computers; Computer game software for use on mobile and cellular phones; Electronic game software for mobile phones; Downloadable graphics for mobile phones; Application software for mobile phones; Computer game software for computers, mobile phones and tablet computers; software for tablet computers.

#### Class 41

Education; Providing of training; Entertainment; Sporting and cultural activities; Academies [education]; Amusement parks; Amusements; Animal training; Arranging and conducting of colloquiums; Arranging and conducting of concerts; Arranging and conducting of conferences; Arranging and conducting of congresses; Arranging and conducting of seminars; Arranging and conducting of symposiums; Arranging and conducting of workshops [training]; Arranging of beauty contests; Boarding schools; Booking of seats for shows; Bookmobile services; Calligraphy services; Casino facilities [gambling] (Providing -); Cinema presentations; Circuses; Club services [entertainment or education]; Coaching [training]; Conducting fitness classes; Correspondence courses; Disc jockey services; Discotheque services; Dubbing; Education information; Educational examination; Electronic desktop publishing; Entertainer services; Entertainment information; Fashion shows for entertainment purposes (Organization of -); Film production, other than advertising films; Gambling; Game services provided on-line from a computer network; Games equipment rental; Golf facilities (Providing -); Gymnastic instruction; Health club services [health and fitness training]; Holiday camp services [entertainment]; Language interpreter services; Layout services, other than for advertising purposes; Lending libraries; Live performances (Presentation

of -); Microfilming; Modelling for artists; Movie studios; Museum facilities (Providing -) [presentation, exhibitions]; Music composition services; Music-halls; News reporters services; Night clubs; Nursery schools; Operating lotteries; Orchestra services; Organization of balls; Organization of competitions [education or entertainment]; Organization of exhibitions for cultural or educational purposes; Organization of shows [impresario services]; Organization of sports competitions; Party planning [entertainment]; Personal trainer services [fitness training]; Photographic reporting; Photography; Physical education; Practical training [demonstration]; Production of music; Production of radio and television programmes; Production of shows; Providing amusement arcade services; Providing karaoke services; Providing on-line electronic publications, not downloadable; Providing sports facilities; Publication of books; Publication of electronic books and journals on-line; Publication of texts, other than publicity texts; Radio entertainment; Recording studio services; Recreation facilities (Providing -); Recreation information; Religious education; Rental of audio equipment; Rental of camcorders; Rental of cine-films; Rental of lighting apparatus for theatrical sets or television studios; Rental of movie projectors and accessories; Rental of radio and television sets; Rental of show scenery; Rental of skin diving equipment; Rental of sound recordings; Rental of sports equipment, except vehicles; Rental of sports grounds; Rental of stadium facilities; Rental of stage scenery; Rental of tennis courts; Rental of video cassette recorders; Rental of videotapes; Scriptwriting services; Sign language interpretation; Sport camp services; Subtitling; Television entertainment; Theatre productions; Ticket agency services [entertainment]; Timing of sports events; Toy rental; Translation; Tuition; Videotape editing; Videotape film production; Videotaping; Vocational guidance [education or training advice]; Vocational retraining; Writing of texts, other than publicity texts; Zoological garden services; Providing online games; providing computer games and video games that can be accessed, played and downloaded over computer networks and global communications networks; providing entertainment via computer networks; arranging and conducting competitions for video game players and computer game players; entertainment in the nature of contests, competition and games; organising of games; interactive games, interactive entertainment, interactive competitions and interactive quizzes; providing information on video games and computer games; provision of multimedia entertainment content via computer networks; publishing and providing of computer games; provision of information and advice relating to all the aforementioned services; electronic games services provided from a computer database or by means of the internet; electronic games services, including provision of computer games on line or by means of a global computer network; Entertainment services, namely, providing temporary use of non-downloadable computer games.

#### Class 42

Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Design and development of computer hardware and software; Analysis for oil-field exploitation; Architectural consultation; Architecture; Authenticating works of art; Bacteriological research; Biological research; Calibration [measuring]; Chemical analysis; Chemical research; Chemistry services; Cloud seeding; Computer programming; Computer rental; Computer software consultancy; Computer software design; Computer software (Updating of -); Computer system analysis; Computer system design; Computer virus protection services; Construction drafting; Consultancy in the design and development of computer hardware; Consultancy in the field of energy-saving; Conversion of data or documents from physical to electronic media; Cosmetic research; Creating and maintaining web sites for others; Data conversion of computer programs and data [not physical conversion]; Design of interior decor; Digitization of documents [scanning]; Dress designing; Duplication of computer programs; Engineering; Evaluation of wool (Quality -); Geological prospecting; Geological research; Geological surveys; Graphic arts designing; Handwriting analysis [graphology]; Hosting computer sites [web sites]; Industrial design; Installation of computer software; Laboratory (Scientific -) services; Land surveying; Maintenance of computer software; Material testing; Mechanical research; Monitoring of computer systems by remote access; Oil-field surveys; Oil prospecting; Oil-well testing; Packaging design; Physics [research]; Project studies (Technical -); Providing search engines for the internet; Provision of scientific information, advice and consultancy in relation to carbon offsetting; Quality control; Recovery of computer data; Rental of computer software; Rental of web servers; Research and development for others; Research in the field of environmental protection; Styling [industrial design]; Surveying; Technical research; Textile testing; Underwater exploration; Urban planning; Valuation of standing timber (Quality -); Vehicle roadworthiness testing; Water analysis; Weather forecasting; Design of computer games software; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; computer programming of computer games; computer programming of video games.