

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

**[2023] SGIPOS 2**

Trade Mark Nos. 40201605922U and 40201613994V

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

**BAIDU EUROPE BV**

*... Registered Proprietor*

**AND INVALIDATION THERETO BY**

**BAIDU ONLINE NETWORK TECHNOLOGY (BEIJING) CO.,  
LTD**

*... Applicant*

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**GROUND OF DECISION**

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**Baidu Online Network Technology (Beijing) Co., Ltd**

v

**Baidu Europe BV**

[2023] SGIPOS 2

Trade Mark Nos. 40201605922U and 40201613994V

Principal Assistant Registrar Sandy Widjaja


4 October 2022

4 January 2023

**Principal Assistant Registrar Sandy Widjaja:**

**Introduction**

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

<i>S/N</i>	<i>Registered Proprietor’s Marks</i>	<i>Services</i>
1	<b>baidu</b> Trade mark number: 40201605922U Date of Application: <b>24 February 2016</b>	Class 38: Telecommunications
2	 Trade mark number: 40201613994V Date of Application: <b>24 December 2015</b>	Class 38: Providing access to the internet, extranet, electronic communications networks and electronic databases and advice and information regarding the aforesaid services; providing access (telecommunication services), to collections of information; consultancy and advisory services, all relating to telecommunication services, including

		services in the context of commercial transactions over electronic communications networks, electronic transmission of mail and messages and services over the internet.
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### Background facts

2 Baidu Online Technology (Beijing) Co., Ltd (“**Applicant**”) was established in 18 January 2000 by Mr Robin Li and Mr Eric Xu in Beijing, China. The **Applicant** engages in Chinese web goods, including a Chinese search engine for websites and audio files images. The **Applicant’s** parent company, Baidu Inc., went public on NASDAQ on 5 August 2005.<sup>1</sup>

3 Baidu Europe BV (“**Registered Proprietor**”) was first established as a business on 23 June 2003 by Mr Pieter Frederik Ufkes (“**Mr Ufkes**”), dealing with software consultancy, web portals, management of commercial affairs and electronic documents and data under the name “Baidu Europe” and “Baidu”, amongst others.<sup>2</sup> The **Registered Proprietor** has been in the business of providing telecommunications services since at least 9 August 2006.<sup>3</sup>

4 On or around 14 December 2015,<sup>4</sup> CKL Brands Pte Ltd (“**CKL**”) acquired the **Registered Proprietor**, along with the trade marks and domain names owned by the **Registered Proprietor** at that time.<sup>5</sup>

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<sup>1</sup> **Applicant’s** evidence dated 10 June 2019 at [3] (more below).


<sup>2</sup> **Registered Proprietor’s** evidence dated 6 January 2020 at [5] (more below).

<sup>3</sup> **Registered Proprietor’s** evidence dated 6 January 2020 at [15].

<sup>4</sup> **Registered Proprietor’s** evidence dated 6 January 2020 at [10]. See also Exhibit C of the same at pages 39 – 42; while the **Registered Proprietor** deposed at [11] that the *Sale and Transfer of a Registered Share Agreement* was dated 14 December 2015, this was not indicated anywhere in the said document.

<sup>5</sup> **Registered Proprietor’s** evidence dated 6 January 2020 at [10].

5 This case is related to my earlier revocation decision between the same parties, *Baidu Europe B.V v Baidu Online Technology (Beijing) Co., Ltd* [2021] SGIPOS 8 (“*Baidu Revocation Case*”), which succeeded in relation to Class 38 but not Class 42 of the *Applicant’s* mark T1010624H (“*Applicant’s Earlier Mark*”):

<i>Applicant’s Earlier Mark</i>	<i>Services</i>
	<p><b><u>Class 42:</u></b> Computer software design; maintenance of computer software; computer system design; creating and maintaining web sites for others; providing search engines for the internet; conversion of data or documents from physical to electronic media; quality control; technical project studies; rental of web servers; all included in Class 42.</p>
	<p><b><i>Revoked with effect from 15 January 2016</i></b></p> <p><b><u>Class 38:</u></b> Message sending; communications by computer terminals; communications by telephone; computer aided transmission of messages and images; providing access to databases; providing telecommunications connections to a global computer network; chat room services (telecommunications services); voice mail services; electronic bulletin board services (telecommunications services); electronic mail; all included in Class 38</p>

For clarity, Class 38 above can still be taken into account to some extent; more on this later.

***Link to Mr Michael Gleissner (“Mr Gleissner”)***

6 This case is of particular interest due to its link to ***Mr Gleissner***. Specifically, ***worldwide***, there is a spate of cases which links back to ***Mr Gleissner***. The significance of the reference to ***Mr Gleissner*** is as follows:

- (a) He has an ***expansive*** trade mark portfolio which spans the whole world. As a quick snapshot, in 2017 he applied for, amongst others:<sup>6</sup>
  - (i) 1052 trade mark applications in the United States;
  - (ii) 935 trade mark applications in Benelux; and
  - (iii) 663 trade mark applications in United Kingdom.<sup>7</sup>
- (b) ***Crucially***, his trade mark portfolios include
  - (i) Single commonly used terms such as names;<sup>8</sup> and
  - (ii) Terms linked to ***popular*** brands, including BAIDU.<sup>9</sup>

7 As the late Mr Justice Henry Carr (“***Mr Justice Carr***”) commented in *Trump International Limited v DTTM Operations LLC* [2019] EWHC 769 (Ch) (“***Trump***”)<sup>10</sup> (which is a case that is also related to ***Mr Gleissner***):

[46] The evidence was, in my judgment, both admissible and relevant...The ***similar fact evidence*** was not mere supposition

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<sup>6</sup> See below, World Trade Mark Review (“***WTR***”) article dated 19 May 2019 entitled ***What brands need to know about the trademark activity of Michael Gleissner (“WTR 19 May 2019 Report”)***; ***Applicant’s*** evidence dated 10 September 2020 at Exhibit 4, pages 158 – 164 (more below).

<sup>7</sup> See ***WTR 19 May 2019 Report***, Exhibit 4, at page 160 of the ***Applicant’s*** evidence dated 10 September 2020.

<sup>8</sup> See footnote 7.

<sup>9</sup> See footnote 7.

<sup>10</sup> ***Applicant’s*** evidence dated 10 September 2020 at Exhibit 5, pages 214 – 230.



or rumour. It raised some very serious matters, which required a detailed explanation and refutation, in evidence. The fact that other companies ***owned or controlled by Mr Gleissner*** had numerous other applications to register ***well known trade marks*** with which they have ***no connection*** (for example, EUIPO) was ***potentially probative*** of the issue of bad faith. It made it less likely that the inference of bad faith can be refuted.

[Emphasis in italics and in bold mine]

More on this later.

8 The ***Registered Proprietor*** is linked to ***Mr Gleissner*** as follows:<sup>11</sup>

(a) Morton & Associates Pte. Ltd. ("***Morton & Associates***"; previously known as CKL Brands Private Limited ("***CKL***")) owns the ***Registered Proprietor***; and

(b) ***Morton & Associates***' sole director and shareholder is ***Mr Gleissner***.

9 To close the loop, the ***Registered Proprietor***'s sole director, since 2019, is Mr Jonathan G. Morton ("***Mr Morton***") who is the deponent of the statutory declarations filed on behalf of the ***Registered Proprietor***.<sup>12</sup> ***Mr Morton*** has "***assisted [Mr Gleissner] for most of his trademark activity***".<sup>13</sup> Again, more on this later.

### Procedural history

10 The ***Applicant*** filed the declaration for invalidation for both marks on 5 September 2018. The ***Registered Proprietor*** filed the counter-statement for both marks on 5 November 2018. On 30 November 2021, the ***Applicant*** filed

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<sup>11</sup> See below at [48] setting out the relevant evidence.

<sup>12</sup> See below at [16].

<sup>13</sup> See below at [52].

an amended Statement of Grounds to reflect the partial revocation of the *Applicant's Earlier Mark* as a result of *Baidu Revocation Case*<sup>14</sup> and to add an invalidation ground under section 8(4) of the Trade Marks Act 1998 (“the *Act*”).<sup>15</sup> Accordingly, the *Registered Proprietor* filed an amended counter-statement on 12 December 2021.

11 The evidence filed by the parties is discussed below.

12 Following the close of evidence, a Pre-Hearing Review (“*PHR*”) was held on 28 October 2020. The hearing was originally set down for 16 August 2021. However, on 14 July 2022, the *Applicant* requested for it to be re-scheduled as the lawyer in charge was hospitalised. The hearing was eventually heard on 4 October 2022.

13 For clarity, there was a lapse in the time between the *PHR* and the original hearing date of 16 August 2021 as the current case was held in abeyance pending the expiry of the appeal period for the *Baidu Revocation Case* as well as the amendment of the pleadings (above).<sup>16</sup>

### **Grounds of Invalidation**

14 The *Applicant* relies on Sections 7(6), 8(2)(b), 8(4) and 8(7)(a) of the *Act* in this invalidation.

### **Applicant's evidence**

15 The *Applicant's* evidence comprises the following:

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<sup>14</sup> IPOS letter dated 11 August 2021.

<sup>15</sup> IPOS letter dated 22 Oct 2021.

<sup>16</sup> As well as the filing of the consequential evidence (below).

- (a) statutory declaration by Ms Wang Qiuxiang, Legal Counsel of the *Applicant* (“*Ms Wang*”), dated 10 June 2019 (“*Applicant’s 1<sup>st</sup> SD*”);
- (b) another statutory declaration by the same *Ms Wang*, dated 10 September 2020 (“*Applicant’s 2<sup>nd</sup> SD*”);
- (c) a supplementary statutory declaration by the same *Ms Wang*, dated 12 January 2022 (“*Applicant’s 3<sup>rd</sup> SD*”); and
- (d) a supplementary statutory declaration by Ms Shahera Safrin, a legal associate at M/S Gateway Law Corporation, agents for the *Applicant*, dated 6 October 2022 (“*Applicant’s 4<sup>th</sup> SD*”).

#### **Registered Proprietor’s evidence**

16 The *Registered Proprietor’s* evidence comprises the following:

- (a) a statutory declaration made by *Mr Morton*, Director of the *Registered Proprietor*, dated 6 January 2020 (“*Registered Proprietor’s 1<sup>st</sup> SD*”);
- (b) another statutory declaration by the same *Mr Morton*, dated 18 January 2021 (“*Registered Proprietor’s 2<sup>nd</sup> SD*”).

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

17 The undisputed burden of proof in the present case falls on the *Applicant*.

#### **Ground of Invalidation under Section 23(1) read with Section 7(6)**

18 Section 23(1) and Section 7(6) of the *Act* read:

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

Section 7(6) of the *Act* reads:

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

19 The legal test for determining the presence of bad faith is not in dispute and is encapsulated in *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 (“*Valentino*”). The key principles were helpfully summarised by the Principal Assistant Registrar (“PAR”) in *Christie Manson & Woods Limited v Chritrs Auction Pte. Limited* [2016] SGIPOS 1 at [166]:

[166(a)] “Bad faith” embraces not only actual dishonesty but also dealings which would be considered as commercially unacceptable by reasonable and experienced persons in a particular trade, even though such dealings may otherwise involve ‘no breach of any duty, obligation, prohibition or requirement that is legally binding’ upon the registrant of the trade mark: *Valentino* at [28].

[166(b)] The test for determining bad faith is the combined test of bad faith which contains both a subjective element (*viz*, what the particular applicant knows) and an objective element (*viz*, what ordinary persons adopting proper standards would think). Thus, “bad faith” as a concept is context-dependent. In the final analysis, whether bad faith exists or not hinges on the specific factual matrix of each case: *Valentino* at [29].

[166(c)] Once a *prima facie* case of bad faith is made out by the [applicants], the burden of disproving any element of bad faith on the part of the [proprietor] would arise: *Valentino* at [36].

[166(d)] An allegation of bad faith is a serious claim to make and it must be sufficiently supported by the evidence, which will rarely be possible by a process of inference: *Valentino* at [30]...[However] this is not an absolute prohibition...in *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 at [115]...the High Court pointed out that a finding of bad faith is largely, if not invariably, based on **circumstantial evidence**.

[166(e)] Once bad faith is established, the application for registration of a mark must be refused **even though the mark would not cause any confusion**: *Valentino* at [20].

[Emphasis in bold and in italics mine]


20 In addition, *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 (“*Festina*”) provided at [100] and [115]:

[100] Bad faith is to be determined **as at the date of application** and matters which occurred **after** the date of application which may assist in determining the applicant’s state of mind as at the date of application **can be taken into consideration...**

[115] ...despite the broad nature of the notion of bad faith, one must show **some sort of nexus** between the parties in dispute. Otherwise, the notion of bad faith would have to be decided in vacuum...In other words, while the finding of bad faith is largely, if not invariably, based on **circumstantial evidence**, the party alleging bad faith needs to show some link between the parties, perhaps by way of a **pre-existing relationship** or some acts of association with the proprietor or some **nexus** between the two competing marks.

[Emphasis in bold and in italics mine]

21 The relevant dates are (collectively, “*Relevant Dates*”):

<i>Registered Proprietor’s Mark 1</i>	<i>Registered Proprietor’s Mark 2</i>
<b>baidu</b>	
Trade Mark number: 40201605922U Date of Application: <b>24 February 2016 (“Relevant Date 1”)</b>	Trade Mark number: 40201613994V Date of Application: <b>24 December 2015 (“Relevant Date 2”)</b>

22 The *Registered Proprietor* argued that bad faith has not been made out:<sup>17</sup>

[22] First, it is submitted that the subjective element under the ground of bad faith is not satisfied. While the **Registered Proprietor** was aware that the **Applicant** was contending the proprietorship of the mark “Baidu” when the **Applicant** initiated invalidation proceedings against its application for the registration of the word mark “baidu” as a Community Trade

<sup>17</sup> [22] and [23] of the *Registered Proprietor’s* written submissions (“*RWS*”).

Mark,<sup>18</sup> it was dismissed by the Office of Harmonisation in the Internal Market in a decision dated 2 October 2015...[Thus] it was not improper for the **Registered Proprietor** to proceed to register the [**Registered Proprietor's Marks**] in Singapore as it did on the [**Relevant Dates**]. The **Registered Proprietor** submits that mere knowledge of the **Applicant** is not sufficient to constitute bad faith.

[23] Secondly, it is submitted that the **Applicant's** allegations regarding [**Mr Gleissner**] are irrelevant for the purposes of the present proceedings:

- (a) Firstly, bad faith must be shown through a link between the parties or the competing marks, “*by way of a pre-existing relationship or some acts of association with the proprietor*” or “*some nexus between the two competing marks*”.<sup>19</sup> However, the bulk of the allegations of bad faith made by the **Applicant** in [**Applicant's 2<sup>nd</sup> SD**]<sup>20</sup> pertains to **unrelated trade mark applications**.<sup>21</sup>
- (b) Further, even if there is evidence that **Mr Gleissner** has acted in bad faith in relation to some other trade mark (which is denied), it **does not necessarily lead to the conclusion** that the application for registration of the [**Registered Proprietor's Marks**] must similarly be made in bad faith as well.<sup>22</sup>
- (c) Lastly, it is submitted that it is the conduct of the **Registered Proprietor** that is relevant to the inquiry, rather than the conduct of its associated persons and/or corporations.<sup>23</sup> The **Applicant's** allegations regarding **Mr Gleissner's** registration of other trade marks has no nexus and/or relevance to the **Applicant** or to the present proceedings, which pertain to the [**Registered Proprietor's Marks**]. The **Registered**

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<sup>18</sup> *CKL Holdings N.V v Baidu Online Network Technology (Beijing) Co., Ltd* (Case R2431/2013-2 before the then *Office of Harmonisation of the Internal Market* (now known as the European Union Intellectual Property Office); see **Registered Proprietor's 1<sup>st</sup> SD** at Exhibit B, pages 12 - 37).

<sup>19</sup> *Festina* at [100] and [115].

<sup>20</sup> [7] to [10] of **Applicant's 2<sup>nd</sup> SD**.

<sup>21</sup> *CTBAT International Co. Limited v N.V. Sumatra Tobacco Trading Company* [2019] SGIPOS 8 (“**CTBAT**”) at [42] (see **Registered Proprietor's** bundle of authorities (“**RBoA**” at pages 211 – 225).

<sup>22</sup> *CTBAT* at [42]

<sup>23</sup> *Sotheby's v Sichuan Softbill Auction Co, Ltd* [2010] SGIPOS 15 (see **RBoA** at pages 227 – 248).

**Proprietor** is *a separate legal entity* from **Mr Gleissner**, and cannot legally or factually be deemed to be the party that made the registrations.

- (d) By reason of the above, as the **Applicant's** allegations regarding **Mr Gleissner** has **no link** to the parties or the competing marks in the present proceeding, **Applicant's** allegations regarding **Mr Gleissner** should not be given any consideration.

[Emphasis in italics and in bold mine]

23 I will deal with each of these arguments, though not necessarily in the order put forth by the **Registered Proprietor**.

#### **No Bona Fide Intention to Use**<sup>24</sup>

24 The **Applicant's** main argument is that the **Registered Proprietor** has no *bona fide* intention to use the **Registered Proprietor's Marks**. Specifically, the **Applicant** relied on the following observations in *Weir Warman Ltd v Research and Development Pty Ltd* [2007] 2 SLR(R) 1073 ("**Weir Warman**") at [42]:<sup>25</sup>

[42]...the register is also meant to notify rival traders dealing in similar products of the rights over particular trade marks possessed by the registered proprietor. As such, it is also important that these registered marks be in **actual use or be bona fide intended to be used** by the registered proprietors; any contrary approach would result in unjust monopolies where devious registered proprietors could prevent the use of a mark by others despite not having any intention to use it, simply by reason of prior registration. Indeed, such "**squatting**" situations are addressed by most modern trade mark registration statutes, which require that the registrant has at least a bona fide intention to use a mark before registering it...

[Emphasis in bold and italics mine]

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<sup>24</sup> The evidence of use by the **Registered Proprietor** via acting as an Internet Corporation of Assigned Names and Numbers ("**ICANN**") Registrar is scant. The main evidence provided is Accreditation Agreement with **ICANN**. Curiously, there was no submission made in relation to this issue by the **Registered Proprietor** in its written submissions.

<sup>25</sup> **Applicant's** written submissions ("**AWS**") at [70].

25 In this regard, the *Applicant* submitted<sup>26</sup> that there has been no use of the *Registered Proprietor's Marks* as domain names.<sup>27</sup> The *Applicant* has deposited at [11] of the *Applicant's 2<sup>nd</sup> SD* that most of the domain names listed in the *Registered Proprietor's 1<sup>st</sup> SD* cannot be accessed. Further, the *Applicant* deposited that “[o]ut of all 12 domain names registered by the [*Registered Proprietor*], only two domains *display the [Registered Proprietor's Marks]*” (emphasis in bold and italics mine).<sup>28</sup>

26 Crucially, the *Registered Proprietor* has deposited that:<sup>29</sup>

[15]...The *Registered Proprietor* has been in the business of providing *telecommunication services since at least 9 August 2006* when the domain name *www.baidu.eu* was registered.

[16] the [*Registered Proprietor's*] websites [are] accessible by internet users around the world, *including Singapore...*

[Emphasis in bold and italics mine]

27 However, the above is a bare assertion; there is no evidence of, for example, the number of hits from Singapore. Accessibility *per se* is insufficient to support an argument of use within the local jurisdiction.

28 Ironically, the *Registered Proprietor* made the same submission as against the *Applicant* in relation to the issue of goodwill (which is an element that the *Applicant* has to establish for the ground of invalidation under Section 23(3)(b) read with Section 8(7)(a) of the *Act*; discussed below):

[93(a)] At paragraphs [6] to [7] and exhibit D of [*Applicant's 1<sup>st</sup> SD*] the *Applicant* alleges that there is goodwill in the

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<sup>26</sup> See [61] – [64] *AWS*.

<sup>27</sup> See [13] – [16] of the *Registered Proprietor's 1<sup>st</sup> SD*.

<sup>28</sup> *Applicant's 2<sup>nd</sup> SD* at [11].

<sup>29</sup> *Registered Proprietor's 1<sup>st</sup> SD* at [15] and [16].



[**Applicant's Earlier Mark**] as the [**Applicant's Earlier Mark**] is displayed on the website [www.baidu.com](http://www.baidu.com) and the website is **accessible throughout the world, including in Singapore**. Based on the authority *Amanresorts* and *Autozone*, **the Registered Proprietor** submits that this argument **cannot hold any weight whatsoever**. **The presence of the Applicant's Mark on a website which is accessible globally does not show goodwill in Singapore**.

[Emphasis in italics and in bold mine]

### *Hijacking another's trade mark*

29 As submitted by the *Applicant*,<sup>30</sup> the Court in *Weir Warman* continued at [42]:

[42]...Kitchin *et al*, *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 14th Ed, 2005) at p237 helpfully illustrates [such **squatting** situations] by reference to three instances of **hijacking** a mark or **spoiling a competitor's plans** that suggest bad faith:

- (1) The applicant has **no bona fide intention to use** the trade mark at all, but wishes to **prevent a competitor** from using the, or a similar, mark;
- (2) The applicant has **no present or fixed intention** to use the mark, but wishes to **stockpile** the mark for use at some indeterminate time in the future; and
- (3) The applicant becomes **aware** that someone else plans to use the mark, and files a **pre-emptive application** with a view to selling it.

[Emphasis in italics and as underlined mine]

30 The learned author, Professor Ng-Loy Wee Loon (*Law of Intellectual Property of Singapore* (Sweet & Maxwell, Third Edition, 2021) ("**Law of Intellectual Property of Singapore**") explained at [24.1.10]:

[24.1.10]...a classic case of bad faith is where the trade mark applicant is seeking to **misappropriate** a trade mark that rightfully belongs to a third party. In such cases, the bad faith claim is often framed in the following way: the third party is the

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<sup>30</sup> AWS at [70].



rightful proprietor of the trade mark in question (or one that is **similar**) and the trade mark applicant’s attempt to **register** what he **knows** is **not his**, amounts to **“hijacking”** of another’s trade mark.

[Emphasis in bold and italics mine]

***Nexus between the marks***

31 As indicated above, “despite the broad nature of the notion of bad faith, one must show **some sort of nexus** between the parties in dispute. Otherwise, the notion of bad faith would have to be decided in a vacuum”.<sup>31</sup> In other words, the party alleging bad faith needs to show some link between the parties. And this can be shown via some **nexus** between the two competing marks.

32 For ease of reference only, the marks (and the relevant services for which they are registered) are as follows;

<i>Applicant’s Earlier Mark</i>	<i>Registered Proprietor’s Mark 1</i>
 <u>Class 42</u> Computer software design; maintenance of computer software; computer system design; creating and maintaining web sites for others; providing search engines for the internet; conversion of data or documents from physical to electronic media; quality control; technical project studies; rental of web servers; all included in Class 42. <u>Class 38 (revoked with effect from 15 January 2016)</u>	<b>baidu</b> <u>Class 38</u> Telecommunication
	<i>Registered Proprietor’s Mark 2</i>
	 <u>Class 38</u> Providing access to the internet, extranet, electronic communications networks and electronic databases and

<sup>31</sup> See *Festina* above at [115].

Message sending; communications by computer terminals; communications by telephone; computer aided transmission of messages and images; providing access to databases; providing telecommunications connections to a global computer network; chat room services (telecommunications services); voice mail services; electronic bulletin board services (telecommunications services); electronic mail; all included in Class 38.	advice and information regarding the aforesaid services; providing access (telecommunication services), to collections of information; consultancy and advisory services, all relating to telecommunication services, including services in the context of commercial transactions over electronic communications networks, electronic transmission of mail and messages and services over the internet.
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33 The issue is whether “Baidu” is the non-technically distinctive<sup>32</sup> component of the *Applicant’s Earlier Mark* and as such whether the marks are similar.

34 While the arguments on this issue were made in the context of the objection under Section 23(3)(a) read with Section 8 of the *Act* by the parties, they are relevant here to the extent that they help to determine the *nexus* between the marks. For the avoidance of doubt, I am mindful that the ground of bad faith is *independent* from the issue of confusion.

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<sup>32</sup> Non-technical distinctiveness refers to the dominant/outstanding and memorable component of a mark which stands out in the average consumer’s imperfect recollection. (*V V Technology Pte Ltd v Twitter, Inc* [2022] SGHC 293 (“*Twitter*”) at [43]) The non-technical distinctiveness of an element of a trade mark could depend on factors such as the size of the element, how the element is positioned and whether it was in bold font, *etc.* (*Twitter* at [41]) The judgement in *Twitter* was issued by Goh Yihan Judicial Commissioner (“*Goh JC*”) after I heard parties. In his judgment (at [119]), *Goh JC* suggested (among other things) that courts and tribunals should consistently use certain expressions (including “non-technical distinctiveness”) when discussing the concept of distinctiveness at the marks-similarity inquiry. As the learned JC noted, the consistent use of these expressions would aid in the formulation of coherent arguments before decision-makers, as well as enhance the comprehensibility of our intellectual property law jurisprudence. I therefore adopt his suggestion in my grounds of decision.

35 As a preliminary note, for the purposes of comparison, I will *only compare* the *Applicant's Earlier Mark* with the *Registered Proprietor's Mark 2*. This is because the *Registered Proprietor's Mark 1* is a plain word mark while the *Registered Proprietor's Mark 2* is a composite mark. It is obvious that the *Registered Proprietor's Mark 1* is relatively more similar to the *Applicant's Earlier Mark*. As such, if I find that the *Applicant's Earlier Mark* is similar to the *Registered Proprietor's Mark 2*, then it will all the more be so between the *Applicant's Earlier Mark* and the *Registered Proprietor's Mark 1*.

36 I agree with the *Applicant* that the main *non-technically distinctive* component of the *Applicant's Earlier Mark* is “Baidu”. The *Applicant* relied on *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd* [2013] 2 SLR 941 (“*Hai Tong*”) at [62(b)]:<sup>33</sup>

[62(b)] The ***textual component of a composite mark*** or sign could be the ***dominant component*** of the mark, and some of the instances where this might be the case might include where...

[64(b)(ii)] The textual component is ***large, and is in a prominent location*** in relation to the other components or stands out from the background of the mark or sign (at [63] – [65] of *Hai Tong*);

[64(b)(iii)] The textual component is in itself already ***widely known*** (at [52] of *Hai Tong*);

[64(b)(iv)] The composite mark or sign is applied to goods or services marketed or sold primarily through ***online trade channels*** as “a customer who wishes to buy the goods or procure the services in question from the online store of the trade mark owner would have to enter the ***textual component*** of the mark into the address bar or search engine to get to the desired website” (at [53] of *Hai Tong*).

[Emphasis in bold and italics mine]

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<sup>33</sup> AWS at [19].

37 Applying the principles above, in particular to the *Applicant's Earlier Mark*:

(a) visually, the word “Baidu” is large and in a *prominent* position. The impression conveyed by the word “Baidu” is *more dominant* than the paw device since “Baidu” takes up about *two thirds* of the mark. In this regard, while the word “du” is enclosed within the paw device, it does *not* detract from the fact that it would still be regarded and understood as part of the word “Baidu” (more on this below).

(b) as submitted by the *Applicant*, the target audience for the marks is the general public (more below). Within the local context, 70% of the population is of Chinese ethnicity and thus understand Chinese to some extent. In this regard, I disagree with the *Registered Proprietor* that there will be a “segregation” of the audience due to the “language barrier”.<sup>34</sup>

(c) aurally the marks will be pronounced as “BAIDU”. This is so for the crowd who do not understand Chinese. For those who understand Chinese, they will also pronounce, in particular, the *Applicant's Earlier Mark* as “BAIDU” as well since they will understand that the English word “Baidu” is simply the transliteration of the Chinese characters, “百度” .

(d) conceptually, the marks are also more similar than dissimilar:

(i) For those who do not understand Chinese, the Chinese characters will be *meaningless*. The English word “baidu” will similarly be viewed as an invented word.

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<sup>34</sup> [57(a)] and [57(b)] *RWS*.

(ii) For those who understand Chinese, they will know that the Chinese characters, “百度”, literally mean “one hundred times” in Chinese and that the English word “Baidu” is simply a transliteration of the Chinese characters, “百度”.

In either case, I am of the view that it renders the *Applicant’s Earlier Mark* as *relatively non-technically distinctive* in relation to the services in Class 42 and Class 38.

38 The *Registered Proprietor* deposed that:<sup>35</sup>

[9] As to the choice of word “Baidu”...the word was chosen by **Mr Ufkes**<sup>36</sup> and follows from the combination of the word “bai” and “du”, which in the dialect of East Gronigen, means “with you” or “at your place”.<sup>37</sup>

39 The *Applicant* submitted that the meaning above should be rejected as the *Registered Proprietor* has provided no evidence to support this, apart from its assertion in its evidence (above) and the reference to the acceptance by *CKL Holdings N.V v Baidu Online Network Technology (Beijing) Co., Ltd* (Case R2431/2013-2) before the then *Office of Harmonisation of the Internal Market* (“*OHIM*”; “*OHIM 2013 Decision*”).<sup>38</sup> I agree; *OHIM* could have come to its decision based on the specific concerns underlying the European Union.

40 Critically, as *per* the case of *Carolina Herrera Ltd v Lacoste* [2014] SGIPOS 3 at [56], “the conceptual analysis of two competing signs is an

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<sup>35</sup> *Registered Proprietor’s 1<sup>st</sup> SD* at [9].

<sup>36</sup> The original founder of the *Registered Proprietor* in 2003; see *Registered Proprietor’s 1<sup>st</sup> SD* at [5].

<sup>37</sup> *Registered Proprietor’s 1<sup>st</sup> SD* at [7].

<sup>38</sup> Now European Union Intellectual Property Office (EUIPO); See *Registered Proprietor’s 1<sup>st</sup> SD* at Exhibit B, pages 12 - 37.

analysis of the concepts that can be derived from the elements present in the sign at *surface value*".<sup>39</sup> This means that within the local context, given the demographic of the local audience, it is more likely than not that the local audience will *not* understand "Baidu" as "with you" or "at your place" in the dialect of East Gronigen.

41 As alluded to above, for those who do not understand Chinese, they will simply regard "Baidu" as an invented word. For those who understand Chinese, they will understand "Baidu" as the transliteration of "百度" which literally means "one hundred times". Either way, since "Baidu" is the non-technically distinctive aspect of the marks, it is more likely than not that the marks will be considered as conceptually more similar than dissimilar.



42 The upshot is that I am of the view that the word "Baidu" is *relatively non-technically distinctive* in relation to the services and since the *Registered Proprietor* has taken this component of the *Applicant's Earlier Mark* for the purposes of the *Registered Proprietor's Mark 2*, the marks are *overall more similar than dissimilar*.

43 In the current case, the *Applicant's Earlier Mark* is also relatively *well recognised*. For clarity, the comment that the *Applicant's Earlier Mark* is relatively "well recognised" *is not and should not* be conflated with the requirement needed to make out an objection under Section 8(4) of the *Act*. This is consistent with the approach that bad faith is an *independent* ground and is not related to the issue of confusion.

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<sup>39</sup> *AWS* at [29] where the *Applicant* relied on *Sarika Connoisseur Cafe Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 for the same principle.

44 In this regard, the *Applicant* has tendered evidence in relation to its *brand value*:

<i>S/N</i>	<i>Description</i>	<i>Relevance</i>
1	<i>BrandZ Top 100 Most Valuable Global Brands 2009 (“Brandz 2009”)</i> <sup>40</sup>	<ul style="list-style-type: none"> <li>• <i>Baidu</i><sup>41</sup> is ranked as 19<sup>th</sup> for the <i>Technology</i> sector<sup>42</sup></li> </ul>
2	<i>BrandZ Top 100 Most Valuable Global Brands 2010</i> <sup>43</sup>	<ul style="list-style-type: none"> <li>•  <sup>44</sup> ranked 75<sup>th</sup> for the top 100 most valuable global brands 2010<sup>45</sup></li> <li>• <i>Baidu</i><sup>46</sup> ranked 15<sup>th</sup> for the <i>Technology</i> sector<sup>47</sup></li> </ul>
3	<i>BrandZ Top 100 Most Valuable Global Brands 2011</i> <sup>48</sup>	<ul style="list-style-type: none"> <li>•  <sup>49</sup> ranked 29<sup>th</sup> for the top 100 most valuable global brands 2010<sup>50</sup></li> <li>• <i>Baidu</i><sup>51</sup> is ranked as 5<sup>th</sup> for the list of Asia top brands<sup>52</sup></li> </ul>

<sup>40</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 152 – 187.

<sup>41</sup> The reference is made to the “brand” Baidu.

<sup>42</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 184.

<sup>43</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 188 – 260.

<sup>44</sup> The “brand” reflects a mark that is identical to the *Applicant’s Earlier Mark*.

<sup>45</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 196.

<sup>46</sup> The reference is made to the “brand” Baidu.

<sup>47</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 253.

<sup>48</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at pages 261 – 313.

<sup>49</sup> The “brand” reflects a mark that is identical to the *Applicant’s Earlier Mark*.

<sup>50</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at pages 267.

<sup>51</sup> The reference is made to the “brand” Baidu.

<sup>52</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 273.



		• <i>Baidu</i> <sup>53</sup> ranked 9 <sup>th</sup> for the <i>Technology</i> sector <sup>54</sup>
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45 In *Brandz 2009*, the “technology” sector has been described as:<sup>55</sup>

Companies in the technology category include **hardware, software, and service providers** aimed at both consumers and business users. They share a common need to rapidly innovate in order to remain competitive in a category that is about constant change. The key changes are driven by the **digitalization of information**.

[Emphasis in italics and in bold mine]

46 Interestingly, the *Applicant* has tendered evidence of an article by the World Trade Mark Review (“*WTR*”) dated 29 January 2019 entitled *The Gleissner Files 2019: brand owners warned as IP office reveals staggering number of trademark applications (“WTR report dated 29 January 2019”)*<sup>56</sup> where there is a picture of the headquarters of “Baidu Europe” in the Netherlands. A mark which is *identical* to the *Registered Proprietor’s Mark 2* is conspicuously emblazoned at the top of the building. Curiously, on a flag pole at the right hand side of the building, the flags of *both* the Netherlands and *China* are flapping in the wind:

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<sup>53</sup> The reference is made to the “brand” Baidu.

<sup>54</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 301.

<sup>55</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 4, at page 184

<sup>56</sup> See the *Applicant’s 3<sup>rd</sup> SD*, Exhibit 2 at page 75 (more below).



Baidu Europe's headquarters in Swalmen, Netherlands. Source: Facebook

47 If it is true that the *Registered Proprietor* is simply continuing what *Mr Ufkes* had tried to establish, why is there a need to fly a *China* flag in addition to the Netherlands flag? When probed, the *Registered Proprietor* replied at the oral hearing that it is simply “speculative” to say that the flag points towards the *Applicant*. I may have accepted this explanation in a “usual” case. But it will become apparent that this case is far from being a “usual” case.

*Link with Mr Gleissner*

48 As mentioned above, one of the main issues in contention is the link between the *Registered Proprietor* and *Mr Gleissner*. The evidence supporting this is as follows:

<i>S/N</i>	<i>Description</i>	<i>Relevance</i>
<b><i>Registered Proprietor</i></b>		
1a	<i>Sale and Transfer of a Registered Share</i> <sup>57</sup>	<ul style="list-style-type: none"> <li>• Shows <b><i>Morton &amp; Associates</i></b> is the <b><i>sole shareholder</i></b> of the <b><i>Registered Proprietor</i></b> since 14 December 2015</li> <li>• Shows that <b><i>Mr Morton</i></b> is the sole board member since 20 May 2019</li> </ul>
1b	A copy of the English translation of <i>Trade Register of the Dutch Chamber of Commerce</i> <sup>58</sup>	
1c	<i>Business Register Extract of the Netherlands Chamber of Commerce</i> <sup>59</sup>	
<b><i>Morton &amp; Associates</i></b>		
2	<i>Accounting and Corporate Regulatory Authority (ACRA) Business Profile</i> <sup>60</sup>	<ul style="list-style-type: none"> <li>• Shows that <b><i>Morton &amp; Associates</i></b> <sup>61</sup> was previously known as <b><i>CKL</i></b><sup>62</sup></li> <li>• Shows that <b><i>Mr Gleissner</i></b> was the <b><i>sole director</i></b> since <b><i>31 July 2015</i></b> as well as <b><i>sole shareholder</i></b></li> </ul>

49 Thus, the ***Registered Proprietor*** was / is ***indirectly owned*** by ***Mr Gleissner*** via ***Morton & Associates*** (previously known as ***CKL***) since ***14 December 2015***. In turn, ***Mr Gleissner*** was the ***sole director*** of ***Morton & Associates*** since ***31 July 2015*** (he was also the ***sole shareholder***). Accordingly,

<sup>57</sup> ***Registered Proprietor's 1<sup>st</sup> SD*** at [11] and at Exhibit C of the same, at pages 38 – 42. The document is undated but the ***Registered Proprietor*** deposed at [11] of the same that it is dated 14 December 2015.

<sup>58</sup> ***Registered Proprietor's 2<sup>nd</sup> SD***, at Exhibit A at pages 3 – 7.

<sup>59</sup> ***Applicant's 2<sup>nd</sup> SD***, Exhibit 3 at pages 89 – 90.

<sup>60</sup> Exhibit 3 of the ***Applicant's 2<sup>nd</sup> SD*** at pages 87 – 88.

<sup>61</sup> Registered as at 31 July 2015; ***Applicant's 2<sup>nd</sup> SD***, Exhibit 3 at page 87.

<sup>62</sup> Change of name on 26 October 2016; the ***Applicant's 2<sup>nd</sup> SD***, Exhibit 3 at page 87.

the company that **Mr Gleissner** had complete control over, that is, **Morton & Associates**, owned the **Registered Proprietor**.

50 As alluded to above, **Mr Morton** is the deponent of the **Registered Proprietor's** evidence and became the director (and Board member) of the **Registered Proprietor** on 20 May 2019.<sup>63</sup>

51 The relationship between **Mr Morton** and **Mr Gleissner** can be traced back to 2016. **Mr Morton** was described as “a general counsel and IP attorney at [**Mr Gleissner's**] companies CKL and Fashion One”.<sup>64</sup>

52 In more recent times, the following is gleaned from the **WTR Special Report**:

...in April 2020 USPTO filing data revealed that [**Mr Morton**] – **who had assisted [Mr Gleissner] for most of his trademark activity** – was the leading representative at the office for the first four months of the year... [**Mr Morton's**] **prolific prosecution work was actually due to a new avenue of work: Chinese applicants**. Since the start of 2019, [**Mr Morton**] had been the representative attorney on nearly 3,000 USPTO trademark applications from China.<sup>65</sup>

...In 2017, WTR identified a [**Mr Gleissner** related] entity called Baidu Europe based on the same Swalmen address...Also based on the Swalmen address, according to the business records database is...**Morton & Associates LLP (a law firm operated by [Mr Morton]**, a legal correspondent for most of [**Mr Gleissner's**] US trade mark applications)...<sup>66</sup>

[Emphasis in bold and italics mine]

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<sup>63</sup> The earliest record of a director of the **Registered Proprietor** was one Ivan Seevens, as at 13 January 2016; see **Registered Proprietor's 2<sup>nd</sup> SD**, at Exhibit A, pages 3 – 7.

<sup>64</sup> **WTR** report dated 23 August 2016 entitled *Mystery over entertainment tycoon's web of trademarks, domains and company names*; **Applicant's 3<sup>rd</sup> SD**, at Exhibit 2 at pages 92 – 95.

<sup>65</sup> **Applicant's 3<sup>rd</sup> SD**, Exhibit 2, at page 36.

<sup>66</sup> **Applicant's 3<sup>rd</sup> SD**, Exhibit 2, at pages 54 – 55.

53 In fact, this address is that of the headquarters of “Baidu Europe” in the Netherlands. As alluded above, a mark which is *identical* to the **Registered Proprietor’s Mark 2** is conspicuously emblazoned at the top of the building. On a flag pole at the right hand side of the building, flags of *both* the Netherlands and *China* are flapping in the wind.<sup>67</sup>

***Mr Gleissner’s actions in other cases***

54 In a “normal” case, I would agree with the **Registered Proprietor** that “evidence that **Mr Gleissner** acted in bad faith in relation to some other trade mark... does not necessarily lead to the conclusion that the application for registration of the [**Registered Proprietor’s Marks**] must similarly be made in bad faith as well”.<sup>68</sup> However, this is not a “normal” case.

55 The **Applicant** tendered evidence to support the above, some of which is highlighted below:

<b><i>S/N</i></b>	<b><i>Description</i></b>	<b><i>Relevance</i></b>
1	<b><i>WTR</i></b> article dated 19 May 2019 entitled <i>What brands need to know about the trademark activity of Michael Gleissner</i> <sup>69</sup>	Provides an overview of the extent of <b>Mr Gleissner’s</b> activities globally
2	<b><i>WTR</i></b> article dated 25 January 2018 entitled <i>"Infamous troll" Michael Gleissner involved in 5% of all live contested</i>	Referred to <i>Paper Stacked Limited v CKL Brands N.V and the Opponent is Paper Stacked Limited (Case number</i>

<sup>67</sup> See **WTR report dated 29 January 2019** (above); **Applicant’s 3<sup>rd</sup> SD**, Exhibit 2 at page 75.

<sup>68</sup> See above at [22].

<sup>69</sup> **Applicant’s 2<sup>nd</sup> SD**, Exhibit 4, at pages 158 – 164.

	<i>trademark cases in United Kingdom</i> <sup>70</sup>	O-036-18) (“ <b>Alexander</b> ”; more below) <sup>71</sup>
3	Fieldfisher article dated 22 March 2018 entitled <i>Michael Gleissner: the mysterious trade mark filer</i> (“ <b>Fieldfisher article</b> ”) <sup>72</sup>	Commented on <b>Alexander</b>
4	<b>WTR</b> Special Report Q1 2021 entitled <i>MICHAEL GLEISSNER The “infamous troll” who upended the trademark industry</i> (“ <b>WTR Special Report</b> ”) <sup>73</sup>	An in-depth analysis of <b>Mr Gleissner’s</b> activities over the years and across jurisdictions.
5	<b>WTR report dated 29 January 2019</b> <sup>74</sup>	<ul style="list-style-type: none"> <li>• Made reference in particular to the headquarters of “Baidu Europe” in the Netherlands.</li> <li>• There is a picture of the building with a conspicuous sign which is <b>identical</b> to the <b>Registered Proprietor’s Mark 2</b> together with the flags of both the Netherlands and <b>China</b>.<sup>75</sup></li> </ul>
6	A Lexocology article dated 9 July 2018 entitled “ <i>Flagrant degree of cynicism</i> ” - <i>Michael Gleissner slammed</i>	<ul style="list-style-type: none"> <li>• Commented on the first instance decision of <b>Trump</b></li> <li>• Mentioned that the hearing officer, in granting off the scale costs, referred to the “well-evidenced pattern of <b>abusive behaviour</b> on the part of <b>Mr</b></li> </ul>

<sup>70</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 4, at pages 165 – 166.


<sup>71</sup> Dated 18 December 2017; *Applicant’s 2<sup>nd</sup> SD*, Exhibit 5, at pages 231 – 246.

<sup>72</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 4, at pages 167 – 171.

<sup>73</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 2, at pages 27 – 57.

<sup>74</sup> See above; *Applicant’s 3<sup>rd</sup> SD*, Exhibit 2, at pages 68 – 77.

<sup>75</sup> *Applicant’s 3<sup>rd</sup> SD*, Exhibit 2, at page 75.

	<i>in TRUMP TV opposition decision</i> <sup>76</sup>	<i>Gleissner</i> and his related companies” which included <i>Alexander</i> . <sup>77</sup>
10	An IP Kat article dated 25 January 2018 entitled <i>Bad faith confirmed for ALEXANDER trade mark application</i> <sup>78</sup>	<ul style="list-style-type: none"> <li>• Commented on <i>Alexander</i>.</li> <li>• Mentioned that the “applicant (CKL Holdings NV, a Dutch company owned and controlled by <i>Mr Gleissner</i>), has also registered “more distinctive names, such as EUIPO and TESLA in the Benelux and holds an international registration for <b><i>BAIDU</i></b>” (emphasis in bold and italics mine).<sup>79</sup></li> <li>• Interestingly, the article also reflected</li> </ul>  <p>and described it as “[o]ne of the many famous marks targeted by <i>Mr Gleissner</i>”.<sup>80</sup></p>

56 A few comments in relation to the articles above:

(a) I am mindful that most of the articles are dated *after* the ***Relevant Dates***. However, as indicated above, it is permissible to have regard to matters which occurred after the relevant dates which may assist in

<sup>76</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 5, at pages 197 – 198.

<sup>77</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 5, at page 198.

<sup>78</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 5, at pages 199 – 210.

<sup>79</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 5, at page 200.

<sup>80</sup> See footnote 79 above.

determining the **Registered Proprietor's** state of mind as at the **Relevant Dates**.

(b) The **Registered Proprietor** attempted to discredit the articles above by alleging that they are mainly **WTR** articles written by one person, namely, senior reporter, Tim Lince. However, there are *other articles* which were published / written by other entities / authors (see for example, the **Fieldfisher article** above). Further, the cases referred to in the articles are actual cases and the decisions are *public* documents. Comments / remarks made by the decision makers in relation to **Mr Gleissner** are there for all to see.

57 One such decision is **Alexander**. **Mr Gleissner** is the *sole director* of the applicant in this case. The decision was on appeal from Mr Allan James ("**Mr James**") from the UK Intellectual Property Office ("**UKIPO**") who found the ground of bad faith (Section 3(6) of the UK Trade Marks Act 1994, which is in *pari materia* with Section 7(6) of the *Act*) made out. The Appointed Person, Mr Geoffrey Hobbs Q.C. ("**Mr Hobbs**"), agreed that it was open for **Mr James** to come to his conclusion on the basis of the evidence and materials before him:<sup>81</sup>

[25] The Hearing Officer concluded as follows in paragraphs [34], [35] and [38]:

"34. In my judgment, the opponent has presented a *prima facie* case that the contested mark is part of **a blocking strategy** intended to **obtain financial benefit from third parties** who are likely to be already using, or who are likely in the future to wish to use, trade names including, in this case, the name ALEXANDER in order to distinguish their goods or services.

35. Taken together with the opponent's evidence that[:]

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<sup>81</sup> At [25] of **Alexander**; *Applicant's 2<sup>nd</sup> SD*, Exhibit 5, at page 245.



(1) **none** of the marks applied for in the UK (or US) **appear to have been used**,

(2) the **absence of any apparent commercial logic** for the **filing pattern** of the applicant and/or **Mr Gleissner's** other companies, and

(3) the evidence that companies **controlled** by **Mr Gleissner** have been found to have **abused legal systems**,

I find that opponent has also made out a prima facie case that, at the time of filing the application, **the applicant had no intention of using the mark in accordance with its essential function**. That is to say using the mark to distinguish the goods/services of the applicant from those of other traders.

...

38. The applicant has not really answered the opponent's *prima facie* case. In these circumstances I accept the opponent's case and reject the applicant's denials. Consequently, the opposition based on **s.3(6) succeeds and the application will be refused.**"

[Emphasis in italics and in bold mine]

58 Similarly, in *Trump, Mr Justice Carr* commented:

[51] A finding of bad faith was reached by the Hearing Officer in [**Alexander**] and affirmed on appeal by the Appointed Person. In rejecting CKL's appeal, [**Mr Hobbs**] agreed at [23] with the hearing officer's assessment that the objective which CKL had pursued in filing the mark ALEXANDER was an objective for which the contested application for registration could not be properly filed. In order to reach that conclusion, the Hearing Officer had **relied on the evidence of Mr Gleissner's activities, through his network of companies in filing applications for well known third party marks**.

[52] It can have **come as no surprise** to Trump International, **Mr Gleissner** and his advisers that in the present case, [the hearing officer below]<sup>82</sup> **came to the same conclusion** as in [**Alexander**] ...

[Emphasis in bold and italics mine]

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<sup>82</sup> Mr Matthew Williams (see [4] of *Trump*); *Applicant's 2<sup>nd</sup> SD*, Exhibit 5, page 215.

59 Similarly, in the current case, the *Applicant's Earlier Mark* is relatively *well recognised*. I have already dealt with the evidence above and I will not repeat it here.

60 The upshot is that the *Registered Proprietor* had tried to register a mark which is associated to the Applicant, with whom it had *no connection*. For clarity, even if *Mr Ufkes* had an honest intention to register the word “Baidu” which means “with you” or “at your place” in the dialect of East Gronigen when he started the business in 2003,<sup>83</sup> it is doubtful that the same can be said at the Relevant Dates, which fall after the *Registered Proprietor* changed ownership on 14 December 2015.<sup>84</sup>

61 I am mindful that the factual circumstances in the current case are not identical to that in *Alexander* and *Trump*.<sup>85</sup> Nonetheless, it does *not* detract from the fact that *one of the factors* which was taken into account for the purposes of the objection under bad faith was “evidence of *Mr Gleissner's activities*, through his *network* of companies in filing applications for well-known third party marks”.<sup>86 87</sup>

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<sup>83</sup> *Registered Proprietor's 1<sup>st</sup> SD* at [5] and [9].

<sup>84</sup> *Registered Proprietor's 1<sup>st</sup> SD* at [10].

<sup>85</sup> See for example, at [26(i)] of *Alexander (Applicant's 2<sup>nd</sup> SD*, Exhibit 5 at pages 245 and 246), *Mr Hobbs*, took into account that: “[a]s at 30th November 2017, various legal entities of which [*Mr Gleissner*] is a director...were a party to 97 live contested trade mark cases *before the UKIPO*. This is about 5% of all the live contested trade mark cases *before the UKIPO*”.

<sup>86</sup> Above, *Trump* at [51] (*Applicant's 2<sup>nd</sup> SD*, Exhibit 5, at page 224) and *Alexander* at [25] (*Applicant's 2<sup>nd</sup> SD*, Exhibit 5 at pages 245).

<sup>87</sup> For clarity, the above approach in relation to foreign cases in other jurisdictions in relation to similar fact evidence is consistent with the guidance in the *HMD Compendium at Circular 4.2, Part B*, under *Decisions in other Proceedings*.

***Other issues***

62 As alluded above, and at the oral hearing, the ***Registered Proprietor*** argued vehemently that:

(a) the conduct of ***Mr Gleissner*** is irrelevant in this case since it is a “***separate legal entity***” from ***Mr Gleissner***.<sup>88</sup>

(b) the “subjective element” under the ground of bad faith is not satisfied since it was not improper for the ***Registered Proprietor*** to register the ***Registered Proprietor’s Marks*** given the ***OHIM 2013 Decision*** was dismissed.<sup>89</sup>

63 Again, the above would probably apply in a “normal” case. However, this case is evidently far from “normal”.

64 As alluded to above, the company that ***Mr Gleissner*** had complete control over, that is, ***Morton & Associates***, owned the ***Registered Proprietor*** since ***14 December 2015***, while ***Mr Morton***, an ***agent*** for most of ***Mr Gleissner’s*** trade mark activity, has been the director of the ***Registered Proprietor*** since 20 May 2019. In fact, the relationship between the two men has been in place since 2016.<sup>90</sup> So close is the relationship that ***Mr Morton*** operates from the ***Registered Proprietor’s headquarters in Netherlands***.<sup>91</sup>

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<sup>88</sup> ***RWS*** at [23(c)].

<sup>89</sup> ***RWS*** at [22].

<sup>90</sup> See above at [51].

<sup>91</sup> See above at [46] and [47].

65 It would appear to be part of *Mr Gleissner's modus operandi* to hide behind a corporate vehicle.<sup>92</sup> I am of the view that the issues must be seen in the *context* of everything which has been discussed above, namely:

- (a) No *bona fide* use in relation to both the *Registered Proprietor's Marks*;<sup>93</sup>
- (b) Nexus between the marks;
- (c) Link between this case and *Mr Gleissner*; and
- (d) *Mr Gleissner's* actions in relation to other marks.

Taking into account *all* of the above, I am of the view that the conduct of *Mr Gleissner* can be taken into account to impute subjective knowledge onto the *Registered Proprietor*.

#### **Conclusion on Section 23(1) read with Section 7(6)**

66 To conclude, I am of the view that there has been a “*hijacking*” of the *Applicant's Earlier Mark* such that the ground of bad faith has been *made out*

67 I am mindful that “[a]n allegation of bad faith is a serious claim to make and it must be sufficiently supported by the evidence”.<sup>94</sup> However, in light of

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<sup>92</sup> See *Alexander* at [9] (*Applicant's 2<sup>nd</sup> SD*, Exhibit 5 at page 238) and *Trump* at [16] and [18] (*Applicant's 2<sup>nd</sup> SD*, Exhibit 5, at page 218).

<sup>93</sup> The *Registered Proprietor* argued that that the *Applicant's* reliance on *Weir Warman* is erroneous as *Weir Warman* was discussing “use” for the purposes of revocation under Section 22 of the *Act* rather than bad faith. However, as can be seen, the issue of non *bona fide* use is simply *one of the many factors* taken into account to assess if bad faith has been made out.

<sup>94</sup> Above at [19].

all of the factors above, I am persuaded that the ground of bad faith has been *made out* and the invalidation under Section 23(1) read with Section 7(6) *succeeds*.

**Ground of Invalidation under Section 23(3)(a)(i) read with Section 8(2)(b)**

68 Section 23(3)(a)(i) of the *Act* reads:

23(3) The registration of a trade mark may be declared invalid on the ground —

(a) that there is an earlier trade mark in relation to which —

(i) the conditions set out in section 8(1) or (2) apply...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

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

8(2) A trade mark shall not be registered if because —

...

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

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

69 In *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc* [2014] 1 SLR 911 (“*Staywell*”), the Court of Appeal re-affirmed the 3-step test approach in relation to an objection under Section 8(2)(b) ([15] and [55] of *Staywell*):

(a) Under the step-by-step approach, the three requirements of similarity of marks, similarity of goods or services, and likelihood of confusion arising from the two similarities, are assessed systematically. The first two elements - namely similarity or identity of the marks and

similarity or identity of the goods / services - are assessed individually before the final element which is assessed in the round.

(b) Once the two threshold requirements have been met, the issue of the likelihood of confusion arises and the tribunal / court is directed to look at a. *how* similar the marks are, b. *how* similar the goods / services are, and c. given this, how likely the relevant segment of the public will be confused (emphasis in the original).

***Applicable legal principles: Marks-similarity assessment***

70 The law in relation to this issue is not in dispute and is as follows (at [15] to [30] *Staywell*):

(a) The three aspects of similarity (i.e. visual, aural and conceptual similarities) are meant to guide the court's inquiry. Trade-offs can occur among the three aspects of similarity.

(b) Technical distinctiveness (discussed further below) is an integral factor in the marks-similarity inquiry. A mark which has greater technical distinctiveness enjoys a high threshold before a competing sign will be considered dissimilar to it.

(c) While the components of a mark may be inherently technically distinctive, ultimately the ability of the mark to function as a strong badge of origin must be assessed by looking at the mark as a whole. Conversely, the components of a mark may not be inherently distinctive, but the sum of its parts may have sufficient technical distinctiveness.

(d) When speaking of the assessment of a mark as a whole, the visual, aural or conceptual similarity of the marks in question must be

based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components.

(e) The similarity of marks is ultimately and inevitably a matter of impression rather than one that can be resolved as a quantitative or mechanistic exercise. The court must ultimately conclude whether the marks, when observed in their totality, are similar or dissimilar.

(f) The assessment of marks similarity is mark-for-mark without consideration of any external matter.

71 Further, the Court of Appeal provided in *Hai Tong*" at [40(c)] and [40(d)]:


[40(c)] The relevant viewpoint 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.

[40(d)] It is assumed that the average consumer has "imperfect recollection" such that the two contesting marks are not to be compared or assessed side by side (and examined in detail). Instead, the court will consider the general impression that will likely be left by the essential or dominant features of the marks on the average consumer.

72 The *Applicant* relied on the *Applicant's Earlier Mark* in support of this ground of invalidation:<sup>95</sup>



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<sup>95</sup> The *Applicant* had intended to rely on the marks in Annex A (*List of "Baidu" trade marks owned by the Applicant in Singapore*) ([4] – [6], [16] and [48] AWS) and B (*List of "Baidu" trade marks owned by the Applicant / Applicant's related companies globally in Class 38*) ([48] AWS). However, these cannot be taken into account as they were not included in the amended pleadings. Further, the *Applicant* also did not address the requirements in relation to the issue of "family of marks" (see [48] – [50] AWS).

<i>Applicant's Earlier Mark</i>	<b>Services</b>
	<p><u>Class 42</u></p> <p>Computer software design; maintenance of computer software; computer system design; creating and maintaining web sites for others; providing search engines for the internet; conversion of data or documents from physical to electronic media; quality control; technical project studies; rental of web servers; all included in Class 42.</p> <p><u>Class 38</u> (revoked with effect from <b>15 January 2016</b>)<sup>96</sup></p> <p>Message sending; communications by computer terminals; communications by telephone; computer aided transmission of messages and images; providing access to databases; providing telecommunications connections to a global computer network; chat room services (telecommunications services); voice mail services; electronic bulletin board services (telecommunications services); electronic mail; all included in Class 38.</p>

*Visual similarity*

73 For the purposes of ease of comparison only, the marks are as follows:

<i>Applicant's Earlier Mark</i>	<i>Registered Proprietor's Earlier Mark 1</i>
	<p><b>baidu</b></p>
	<p><i>Registered Proprietor's Earlier Mark 2</i></p> 

<sup>96</sup> See *Baidu Revocation Case*, above.



74 At the outset, I note that:

(a) the *Applicant's Earlier Mark* is a composite mark while the *Registered Proprietor's Earlier Mark 1* is a word mark and the *Registered Proprietor's Earlier Mark 2* is a composite mark; and

(b) the common element in all of the marks is the word “baidu”.

75 As alluded above at [35], the focus of the analysis will only be between the *Applicant's Earlier Mark* and the *Registered Proprietor's Earlier Mark 2*.

76 As per the case of *The Polo/Lauren Co, LP v Shop In Department Store Pte Ltd* [2005] 4 SLR(R) 816,<sup>97</sup> in cases where there is a common denominator, it is important to look at the differences between the mark and the sign in order to decide whether the challenged sign has been able to distinguish itself sufficiently and substantially:<sup>98 99</sup>

[26] In cases where there is a common denominator, it is important to look at the differences between the mark and the sign in order to decide ***whether the challenged sign has been able to distinguish itself sufficiently and substantially...***

[Emphasis in bold and italics mine]

77 In addition, as alluded to above, the test for composite marks as provided in *Hai Tong* is that the textual component of a composite mark or sign could be the ***non-technically distinctive*** component of the mark where:

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<sup>97</sup> ***RBoA*** at pages 273 – 289.

<sup>98</sup> See [26] of the said case.

<sup>99</sup> ***RWS*** at [31].

- (a) The textual component is **large**, and is in a **prominent location** in relation to the other components or stands out from the background of the mark;
- (b) The textual component is in itself already widely known; and
- (c) The composite mark or sign is applied to goods or services marketed or sold primarily through **online trade channels**.

78 I have earlier concluded that the word “Baidu” is the main **non-technically distinctive** component of the **Applicant’s Earlier Mark**, because, **amongst others**:

- (a) The word “Baidu” is in a **prominent** position within the **Applicant’s Earlier Mark**.
- (b) The word “Baidu” is **large** and the impression conveyed by the word “Baidu” is more **dominant** than the paw device since the words take up about **two thirds** of the mark.
- (c) While the word “du” is enclosed within the paw device, it **does not detract** from the fact that it can still be understood or read as part of the word “Baidu”.<sup>100</sup>

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<sup>100</sup> For clarity, *Apple Inc. v Xiaomi Singapore Pte Ltd* [2017] SGIPOS 10 (“*Apple Inc.*”; *Registered Proprietor’s* supplemental bundle of authorities) relied on by the *Registered Proprietor* can be distinguished. For one, in *Apple Inc.*, the first distinctive feature of the earlier mark, namely the letter “I”, is conjoined to form another distinctive feature “MI” in the latter application mark. Overall, the latter application mark captures neither the first distinctive feature above nor the second distinctive feature “IPAD” of the earlier mark (see [50(iv)] *Apple Inc.*).

(d) The word “baidu” is relatively inherently technically distinctive<sup>101</sup> in relation to the services. The word can either be seen as *meaningless* or understood to be a transliteration of the Chinese characters “百度” which literally means “one hundred times”. Either way, “Baidu” is relatively inherently technically distinctive in relation to the services.

79 Applying the above, I am of the view that the marks are *visually more similar than dissimilar*.

*Aural similarity*

80 The test for aural similarity is also not in dispute. The Court of Appeal in *Staywell* at [23]-[33] provided two main approaches, namely:

- (a) "Dominant Component Approach", having special regard to the distinctive or dominant components of the marks; and
- (b) Quantitative Assessment Approach”, where the competing marks are assessed to see if they have more syllables in common than not.

In this case, since I have concluded that the main non-technically distinctive component of the *Applicant’s Earlier Mark* is “Baidu”, I will apply option (a).

81 Again, I have already made some comments in relation to this issue under the ground of bad faith. In short, aurally the marks will simply be

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<sup>101</sup> Technical distinctiveness refers to the ability of a mark to distinguish the goods or services of one particular trader from those of another. A trade mark can have inherent technical distinctiveness in the sense that it can immediately function as a clear badge of origin of a trader. (*Twitter* at [42]-[43]).

pronounced as “BAIDU”. This is so for the crowd who do not understand Chinese. For those who understand Chinese, they will also pronounce the *Applicant’s Earlier Mark* as “BAIDU” which is a transliteration of the Chinese characters, “百度” .

82 I agree with the *Applicant* that it is unlikely for those who understand Chinese to pronounce the *Applicant’s Earlier Mark* as “Baidu Baidu” (i.e., “Baidu” repeated twice) since it would be obvious that the English words “Baidu” is simply a transliteration of “百度” .

83 I therefore find that the marks are *aurally similar*.

#### *Conceptual similarity*

84 Similarly, the test for conceptual similarity is trite. The Court of Appeal in *Staywell* expounded at [35] as follows:

[35] ...Unlike the aural analysis, which involves the utterance of the syllables without exploring the composite meaning embodied by the words, the conceptual analysis seeks to uncover the ideas that lie behind and inform the understanding of the mark as a whole...**Greater care** is therefore 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...

[Emphasis in bold and italics mine]

85 Again, I have alluded to this issue above and will only make brief comments here. Within the target audience, for those who **do not** understand Chinese, the word “baidu” would be considered as an invented word. At the same time, the Chinese characters will be *meaningless* as well. For those who understand Chinese, they will know that the Chinese characters “百度” literally means “one hundred times” in Chinese and that the English word

is simply a transliteration of the Chinese characters “百度”. In either case, I am of the view that it renders the *Applicant’s Earlier Mark* as *relatively inherently technically distinctive* in relation to the services in Class 42 and Class 38.

86 As the *distinctive* element of the marks is the word “baidu”, the marks are conceptually similar, at least to a low extent.

*Conclusion on marks-similarity assessment*

87 In light of all the above, the *Applicant’s Earlier Mark* is inherently technically distinctive. The marks are *visually similar to some extent, aurally similar* and *conceptually similar to a low extent*, such that the marks are *overall more similar than dissimilar*.

*Service-similarity assessment*

88 For ease of reference, the services are as follows:

<i>Applicant’s Earlier Mark</i>	<i>Registered Proprietor’s marks</i>
<u>Class 38</u> Application date: 18 August 2010 <b>Revoked with effect from 15 January 2016</b> Message sending; communications by computer terminals; communications by telephone; computer aided transmission of messages and images; providing access to databases; providing telecommunications connections	<b>Registered Proprietor’s Mark 1</b> <u>Class 38</u> Application Date: <b>24 February 2016</b> Telecommunications.

<p>to a global computer network; chat room services</p> <p><u>Class 42</u></p> <p>Application Date: 18 August 2010</p> <p>Computer software design; maintenance of computer software; computer system design; creating and maintaining web sites for others; providing search engines for the internet; conversion of data or documents from physical to electronic media; quality control; technical project studies; rental of web servers; all included in Class 42.</p>	<p><b><i>Registered Proprietor's Mark 2</i></b></p> <p><u>Class 38</u></p> <p>Application Date: <b><i>24 December 2015</i></b></p> <p>Providing access to the internet, extranet, electronic communications networks and electronic databases and advice and information regarding the aforesaid services; providing access (telecommunication services), to collections of information; consultancy and advisory services, all relating to telecommunication services, including services in the context of commercial transactions over electronic communications networks, electronic transmission of mail and messages and services over the internet.</p>
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89 As a preliminary note:

(a) the *Applicant's* services in class 38 are relevant for comparison with the ***Registered Proprietor's Mark 2 only*** (which is also registered for Class 38 services), since it was ***revoked with effect from 15 January 2016***, which is after the ***Relevant Date 2***.

(b) This is an invalidation action and as such in an ideal situation, the *Applicant* should address the issue of partial invalidation under Section 23(9):

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 must be declared invalid ***as regards those goods or services only***.

[Emphasis in bold and italics mine]

However, the *Applicant* did not plead the same.

90 Nonetheless, I have perused the specifications of, in particular, the *Registered Proprietor's Mark 2* carefully and I am satisfied that they can be broadly described as “telecommunication services”. This is so having regard to the *Registered Proprietor's* arguments that “specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities”.<sup>102</sup> In coming to this conclusion, I have mindful of the *Registered Proprietor's* submissions that “[w]hen it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a *practical matter*, regarded for the purposes of *trade*” (emphasis in bold and italics mine).<sup>103</sup>

91 As such, I will use this term to refer to the specifications, in particular, for the *Registered Proprietor's Mark 2*.

*Applicant's Earlier Mark – Class 42*

92 The comparison here is between Class 42 (*Applicant's Earlier Mark*) and Class 38 (*Registered Proprietor's Mark 2*).

93 The *Applicant's* submissions in relation to the issue of similarity for this class is as follows:

[34(ii)] In respect of the [*Applicant's Earlier Mark...Class...42*], and [*Registered Proprietor's Marks*] in Class 38, the services are similar as they [are]...*complementary* services.

[Emphasis in italics and in bold mine]

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<sup>102</sup> *RWS* at [37].

<sup>103</sup> *RWS* at [37].

94 As a starting point, it is clear that services in different classes may be similar. In addition, the *Applicant* submitted as follows:

[41] The General Court of the European Union in *Sunrider Corporation v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (Case T-222/12) ("**Sunrider**"),<sup>104</sup> the General Court of the European Union stated at [84] that in assessing whether the relevant goods were competing/complementary: "*it should be borne in mind that, according to settled case-law, goods or services are complementary where there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that consumers may think that the **responsibility for the production those goods or provision of those services** lies with the **same undertaking***".

[Emphasis in bold and italics mine]

95 My understanding of "same undertaking" includes subsidiaries. Applying this to the above scenario, it is not far-fetched that one undertaking can potentially own entities, via its subsidiaries, to provide services in Classes 42 as well as 38.

#### *Applicant's Earlier Mark – Class 38*

96 In addition, there is an overlap in terms of the specifications in Class 38.

97 Accordingly, this element has been made out in relation to the *Registered Proprietor's Mark 2*.

#### *Likelihood of Confusion*

98 Again, the law pertaining to the issue of likelihood of confusion is not in dispute. The relevant principles for assessing likelihood of confusion have been expounded by the Court of Appeal in *Staywell* at [64], [83] and [96]:

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<sup>104</sup> *Applicant's* bundle of authorities, at Tab 6.



(a) Once similarity between the competing marks and goods or services has been established, the *impact* of these similarities on the relevant consumers' ability to understand where those goods and services originate from falls to be considered. The only relevant confusion is that which results from the similarity between marks and goods or services. However, the plain words of Section 8(2) do *not* have the effect of making a finding of confusion automatic upon the establishment of similarity of marks and goods or services.

(b) On the effect of the foregoing (i.e. similarity of marks and goods or services) on the relevant segment of the public – *extraneous* factors may be considered to the extent that they inform the court as to how the *similarity of marks and goods* will likely *affect* the consumer's perception as to the source of the goods.

(c) The following represents a non-exhaustive list of factors which are regarded as admissible in the confusion inquiry:

(i) Factors relating to the impact of *marks-similarity* on consumer perception:

(A) the *degree of similarity* of the marks themselves;

(B) the *reputation* of the marks (a strong reputation does *not* necessarily equate to a higher likelihood of confusion, and could in fact have the contrary effect);

(C) the *impression* given by the marks; and

(D) the *possibility of imperfect recollection* of the marks.

(ii) Factors relating to the impact of *goods-similarity* on consumer perception (factors concerning the very nature of the goods without implicating any steps that are taken by the trader to differentiate the goods):

(A) The normal way in, or the circumstances under which, consumers would purchase goods of that type;

(B) Whether the products are expensive or inexpensive items;

(C) Whether they would tend to command a greater or lesser degree of fastidiousness and attention on the part of prospective purchasers; and

(D) The likely characteristics of the relevant consumers and whether the relevant consumers would or would not tend to apply care or have specialist knowledge in making the purchase.

[Emphasis in italics mine]

*Factors relating to the impact of marks-similarity*<sup>105</sup>

99 I have already concluded above that the marks are *visually similar to some extent, aurally similar* and *conceptually similar to a low extent* such that the *marks are more similar than dissimilar*. Having regard to the fact that the marks relate to services in Classes 38 and 42, I am of the view that the *visual and conceptual* aspects take precedence.

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<sup>105</sup> This will be only in relation to *Registered Proprietor's Mark 2* (see [75] above).

*Applicant’s Earlier Mark – Class 38*

100 I am of the view that the *Applicant* has **no reputation** in Singapore in relation to services in **Class 38**. This is consistent with my earlier decision in ***Baidu Revocation Case***, which resulted in the revocation in Class 38 with effect from 15 January 2016. I have perused through the *Applicant’s* evidence for the current case and the evidence appears to be largely similar to that filed in the ***Baidu Revocation Case*** for the purposes of this issue (more below).

*Applicant’s Earlier Mark – Class 42*

101 On the other hand, the *Applicant* would have **some reputation** in Singapore in relation to services in **Class 42**. Again, this is consistent with my earlier decision in the ***Baidu Revocation Case***.

102 The evidence arises mainly from the collaboration between the *Applicant* and the Agency for Science, Technology and Research (“**A\*STAR**”),<sup>106</sup> including.<sup>107 108</sup>

<i>S/N</i>	<i>Description</i>	<i>Comments</i>
1	<b><i>A*STAR Institute for Infocomm Research (“IR”)</i></b> <sup>109</sup> Media	

<sup>106</sup> **A\*STAR** is Singapore’s lead public sector agency that fosters world-class scientific research and talent to drive economic growth and transform Singapore into a vibrant knowledge-based and innovation driven economy; *Applicant’s 1<sup>st</sup> SD*, Exhibit D, at page 100.

<sup>107</sup> As indicated above, this is largely consistent with my earlier decision in the ***Baidu Revocation Case*** for this issue.

<sup>108</sup> The evidence in relation to the collaboration with the Singapore Tourism Board cannot be taken into account as the draft was dated 17 July 2017 which is **after** the ***Relevant Dates***.

<sup>109</sup> The ***Institute for Infocomm Research*** is a member of the **A\*STAR** family; *Applicant’s 1<sup>st</sup> SD*, Exhibit D, at page 100.

	Release dated 30 November 2012 <sup>110</sup> entitled <i>Baidu-I<sup>2</sup>R Research Centre (“BIRC”)</i> <i>Brings First Speaker Verification Technology Into Smart Phones With Built-In Voiceprint Feature</i>	
2a	Collaborative Joint Agreement between A*STAR and Baidu Hong Kong Limited (“ <i>Baidu HK</i> ”) <sup>111</sup> dated 23 February 2012 <sup>112</sup> (“ <i>Collaborative Joint Agreement</i> ”)	<ul style="list-style-type: none"> <li>• A photo of the signage of <i>BIRC</i> with the <i>Applicant’s Earlier Mark</i><sup>113</sup></li> <li>• Clause 4.2 relating to <i>Contribution of Parties</i> indicated that <i>Baidu HK</i> is to make “a non-refundable cash payment” equivalent to <i>S\$3,240,000,000</i>.<sup>114</sup></li> <li>• Clause 6 relating to <i>Contract Duration</i> indicated that it is to last for three years from the effective date of 15 March 2012.<sup>115</sup></li> <li>• Tax invoice issued by <i>A*STAR I<sup>2</sup>R</i> addressed to <i>Baidu HK</i> dated 3 March 2014 for the amount of <i>S\$1,080,000.00</i><sup>116</sup></li> </ul>

<sup>110</sup> *Applicant’s 1<sup>st</sup> SD*, Exhibit D, at pages 99 – 101.

<sup>111</sup> One of the *Applicant’s* associated companies; see *Applicant’s 1<sup>st</sup> SD* at [3].

<sup>112</sup> *Applicant’s 1<sup>st</sup> SD*, Exhibit D, at pages 105 – 134.

<sup>113</sup> *Applicant’s 2<sup>nd</sup> SD* at Exhibit 12, at page 418.

<sup>114</sup> *Applicant’s 1<sup>st</sup> SD* at Exhibit D, pages 109 - 110. Clause 4.2 was subsequently amended on 14 March 2012 but the amendment does not affect my conclusion above (see pages 103 and 104 of the same).

<sup>115</sup> *Applicant’s 1<sup>st</sup> SD*, Exhibit D, at page 107.

<sup>116</sup> *Applicant’s 2<sup>nd</sup> SD*, Exhibit 12 at page 411.

103 As to the effect of the reputation, the *Applicant* relied on *Twitter, Inc. v V V Technology Pte Ltd* [2022] SGIPOS 4 at the oral hearing and submitted:

[129] However...a likelihood of confusion can also be established by showing that consumers may perceive **an economic link** between the two marks. According to the Opponent, this could arise in **two ways**: (1) that the Application Mark is **a new iteration** of the Opponent's Mark; and/or (2) that the Application Mark is a modified mark that the Opponent is using for **new closely-related digital services** which are **extensions** of the Opponent's **existing range of services**.

[Emphasis in italics and in bold mine]

104 I agree. I am of the view that here, in particular, the target audience may think that “the [*Registered Proprietor's Mark 2*] is a modified mark that the [*Applicant*] is using for new closely-related...services [in class 38]...”

105 Taking all of the above into consideration, I am of the view that, even having regard to the imperfect recollection of the consumers, the **overall impression of the marks**<sup>117</sup> **is that they are similar to a high extent**.

*Factors relating to the impact of service-similarity*

*Applicant's Earlier Mark – Class 38*

106 Since the specifications are in the same Class 38, it is quite clear that there is a likelihood of confusion.

*Applicant's Earlier Mark – Class 42*

107 The *Registered Proprietor* argued that **telecommunication services** in general are sold via a sales person such that there is no likelihood of confusion

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<sup>117</sup> That is, the *Applicant's Earlier Mark* and the *Registered Proprietor's Mark 2* (see above at [75]).

on the basis of *Singapore Telecommunications Limited v Megaport (Services) Pty Ltd* [2018] SGIPOS 17 (“*SingTel Decision*”).<sup>118</sup> The relevant date in that *SingTel Decision* was 27 December 2013.<sup>119</sup> Several years have elapsed since then. In this case, the relevant dates are 24 February 2016 (*Relevant Date 1*) and 24 December 2015 (*Relevant Date 2*).

108 The telecommunication services market in more recent times is different. There are service providers in the market which sell telecommunication online such that there is no middleman involved. A related point is that in terms of price, telecommunication services packages come in a broad price range. It can vary from as low as S\$10 to as high as S\$200. The target audience is the public.

109 On the other hand, the *Applicant’s Earlier Mark* in Class 42 includes a broad range of services from services such as “computer system design” as well as “providing search engines on the internet”. As such, I am of the view that it may be difficult to find a reference point from which to assess factors such as mode of sale and price. Nonetheless, even if I am wrong in relation to this issue, it does not affect my conclusion below.

110 To begin with, I disagree with the *Registered Proprietor* that “[t]he users of the *Applicant’s* services are likely to be software designers, engineers and/or other software professionals”.<sup>120</sup> The services in Class 42 are information technology-related services. In this digital age, it is critical to be “clued into” such services. For example, having a website is critical for one’s business. It

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<sup>118</sup> [58] and [59] *RWS*.

<sup>119</sup> [25] at *SingTel Decision*.

<sup>120</sup> [52] *RWS*.

would not be surprising for a small business to purchase services pertaining to “creating and maintaining websites for others”. In short, I am of the view that the purchasers of the *Applicant’s* Class 42 services can include individuals as well.

111 *Crucially*, I am of the view that taking into account both types of factors relating to the impact of marks as well as services similarity, it is the *overall high degree of marks similarity* which will prevail.

**Conclusion on Section 23(3)(a)(i) read with Section 8(2)(b)**

112 Accordingly, taking *all* of the factors relating to the impact of marks and services similarity, I am of the view that having regard to, in particular, the *high degree of similarity* of the marks, there is a *likelihood of confusion*.

113 The ground of invalidation under Section 23(3)(a)(i) read with Section 8(2)(b) therefore *succeeds* in relation to *both the Registered Proprietor’s Marks*.

**Ground of Invalidation under Section 23(3)(a)(iii) read with Section 8(4)(b)(i)**

114 Section 23(3)(a)(iii) of the *Act* reads:

23(3)The registration of a trade mark may be declared invalid on the ground —

(a) that there is an earlier trade mark in relation to which —

(iii) where the trade mark has been registered pursuant to an application for registration of the trade mark made on or after 1 July 2004 — the conditions set out in section 8(4) apply...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

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

8(4) Subject to subsection (5), where an application for registration of a trade mark is made on or after 1 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 must not be registered if —

(a) the earlier trade mark is well known in Singapore; and

(b) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered —

(i) would indicate a connection between those goods or services and the proprietor of the earlier trade mark, and is likely to damage the interests of the proprietor of the earlier trade mark...

### *Similarity of Marks*

115 In relation to this ground, it is clear that the first element that must be satisfied is that "the whole or essential part of the trade mark must be identical or similar to an earlier mark". This element is essentially the same as the similar element under Section 8(2)(b) (see *Sarika Connoisseur Cafe Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 (“*Sarika*”) (at [70] and [71])).

116 I have already found that the *Applicant* has satisfied this element.<sup>121</sup>

### *Well known in Singapore*

117 The critical question is whether the *Applicant’s Earlier Mark* is well known in Singapore as at the *Relevant Dates*.

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<sup>121</sup> That is, the *Applicant’s Earlier Mark* and the *Registered Proprietor’s Mark 2* (see above at [75]).



118 The starting point for this inquiry is Section 2(7), (8) and (9) of the *Act*.  
Section 2(7) of the *Act* states:

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

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

Section 2(8) of the *Act* reads:

Where it is determined that a trade mark is well known to *any relevant sector of the public in Singapore*, the trade mark shall be *deemed* to be well known in Singapore

Section 2(9) states:

In subsections (7) and (8), “relevant sector of the public in Singapore” includes any of the following:

- (a) all actual consumers and potential consumers in Singapore of the goods or services to which the trade mark is applied;

(b) all persons in Singapore involved in the distribution of the goods or services to which the trade mark is applied;

(c) all businesses and companies in Singapore dealing in the goods or services to which the trade mark is applied.

119 The provisions have been the subject of further exposition by the Courts:

(a) Section 2(7)(a) is arguably the most crucial factor when determining whether a trade mark is well known in Singapore. This is because Section 2(8) *deems* a trade mark to be well known in Singapore where it is determined to be well known to *any* relevant sector of the public in Singapore (see [139] of *Novelty Pte Ltd v Amanresorts Ltd and another* [2009] 3 SLR (R) 216 ("*Amanresorts*").

(b) Aside from Section 2(7)(a), the court is ordinarily free to disregard any or all of the factors listed in Section 2(7) as the case requires and to take additional factors into consideration (*Amanresorts* at [137]).

(c) In relation to Section 2(8), the Court of Appeal in *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 clarified that:

[101] ...we said in *Amanresorts* that it is “not too difficult” for a trade mark to be regarded as well known in Singapore<sup>122</sup>...

[102] We do not think that this comment in *Amanresorts* was made to lay down a general principle...the context of this comment was the desire to clarify that, in order for a mark to be well known in Singapore, the relevant sector to which a mark must be shown to be well known

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<sup>122</sup> The Court of Appeal in *Amanresorts* commented that it is *not too difficult* for a trade mark to be regarded as “well known in Singapore” since the trade mark in question need only be recognised or known by “*any* relevant sector of the public in Singapore” which could in certain cases be *miniscule* ([229] *Amanresorts*).

can be **any** relevant sector of the Singaporean public, and this sector **need not be large** in size. Beyond this, it should **not be read** as suggesting (more generally) that the threshold for a trade mark to be regarded as well known in Singapore is a **low one**.

[Emphasis in italics mine]

(d) Last but not least, with regard to the ambit of Section 2(9)(a), the inquiry is into the specific goods or services to which the Applicant's trade mark has been applied on the Applicant's goods or services ([152] *Amanresorts*).

*Applicant's Earlier Mark - Class 38*

120 As mentioned above, the *Applicant's Earlier Mark* has **no** reputation to speak of in relation to Class 38.

*Applicant's Earlier Mark - Class 42*

121 I have already dealt with the relevant evidence under the issue of "reputation" for element of confusion for the objection under Section 8(2)(b) and I will not repeat my analysis here.

122 Having regard to the guidance above that "in order for a mark to be well known in Singapore, the relevant sector to which a mark must be shown to be well known can be **any** relevant sector of the Singaporean public, and this sector **need not be large** in size"<sup>123</sup> I am of the view that this element has been **made**

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<sup>123</sup> See above at [120(c)].

**out.** For example under the *Collaborative Joint Agreement*, **Baidu HK** is to make “a non-refundable cash payment” equivalent to **S\$3,240,000,000**.<sup>124</sup>

123 As this element has only been made out in relation to Class 42, I will only proceed to consider the next element in relation to this class.

### ***Confusing Connection***

124 In relation to this element, the Court of Appeal in *Staywell* provided as such at [120]:

...As for the third element, the detailed analysis in *Amanresorts* has put it beyond doubt that the connection requirement of s 8(4)(b)(i) and s 55(3)(a) of the Act will be satisfied where there is a likelihood of confusion...

125 Applying the above, for largely the same reasons in relation to the issue of the likelihood of confusion for the objection under Section 8(2)(b),<sup>125</sup> I am of the view that this element has been made out.

### ***Likelihood of Damage***

126 In light of the confusion between the marks, there is also the likelihood of damage in terms of expansion into a related industry.

### **Conclusion on Section 23(3)(a)(iii) read with Section 8(4)(b)(i)**

127 The ground of invalidation Section 23(3)(a)(iii) read with under **Section 8(4)(b)(i) succeeds** in relation to **both** the **Registered Proprietor’s Marks**.

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<sup>124</sup> Clause 4.2; see *Applicant’s 1<sup>st</sup> SD* at Exhibit D, pages 109 - 110. Clause 4.2 was subsequently amended on 14 March 2012 but the amendment does not affect my conclusion above (see pages 103 and 104 of the same).

<sup>125</sup> The comparison is between the *Applicant’s Earlier Mark* (Class 42) and the *Registered Proprietor’s Mark 2* (see above).

**Ground of Invalidation under Section 23(3)(a)(iii) read with Section 8(4)(b)(ii)**

128 Section 23(3)(a)(iii) of the *Act* reads:

23(3)The registration of a trade mark may be declared invalid on the ground —

(a) that there is an earlier trade mark in relation to which —

(iii) where the trade mark has been registered pursuant to an application for registration of the trade mark made on or after 1 July 2004 — the conditions set out in section 8(4) apply...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

Section 8(4)(b)(ii) of the *Act* reads:

8(4) Subject to subsection (5), where an application for registration of a trade mark is made on or after 1 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 must not be registered if —

(a) the earlier trade mark is well known in Singapore; and

(b) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered —

(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.

***Well known to the public at large***

129 The critical question is whether the *Applicant's Earlier Mark* is well known to the public at large in Singapore as at the *Relevant Dates*.

130 It is clear that the relevant provisions and case law which relate to the limb “well known in Singapore” (above) apply. Further, the following are pertinent:

(a) The test “well known to the public at large in Singapore” has to mean *more* than just “well known in Singapore”. The mark has to necessarily enjoy a much *higher* degree of recognition. It has to be recognised by *most* sectors of the public though not so far as to all sectors of the public (*City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* [2010] 1 SLR 382 at [13]).

(b) A much more *extensive* level of protection is granted to trade marks which have attained the *coveted* status of being “well known to the public at large in Singapore”. These form *a rare and exclusive class*, and are entitled to protection from use of a trade mark<sup>126</sup> on dissimilar goods or services even in the absence of a likelihood of confusion (*Amanresorts* at [233]).

131 A snapshot of the cases where the element was made out is as follows (for the avoidance of doubt, the table is a guide only):

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<sup>126</sup> Similar.

<b>All figures pertain to activities in Singapore</b>					
<b>S/N</b>	<b>Mark</b>	<b>Expenditure on marketing</b>	<b>Exposure via physical sales outlets</b>	<b>Sales figures</b>	<b>Survey, if any</b>
1	<b>Seiko</b> <sup>127</sup>	More than \$4 million <i>each year</i> for 5 years	100 optical shops	\$14 million <i>per annum</i> for 5 years	70% of consumer awareness
2	<b>Clinique</b> <sup>128</sup>	\$3 million <i>each year</i> for 4 years	13 stores and counters	\$10 million <i>per annum</i> for 4 years	
3	<b>Nutella</b> <sup>129</sup>	NA	94-98% of stores in Singapore that sell food items	2 million units of "Nutella" bread spread sold <i>every year</i>	70% of consumer awareness
4	<b>Intel</b> <sup>130</sup>	US\$600 million per annum for 4 years		US\$1 billion <i>per annum</i> for 7 years	85% of consumer awareness
5	<b>Gucci</b> <sup>131</sup>	- “[I]n the region of hundreds of thousands of euros”...	- Changi Airport, the Paragon shopping mall in Orchard	“[M]ore than tens of millions	

<sup>127</sup> *Seiko Holdings Kabshiki Kaisha (trading as Seiko Holdings Corporation) v Choice Fortune Holdings Limited* [2014] SGIPOS 8

<sup>128</sup> *Clinique Laboratories, LLC v Clinique Suisse Pte Ltd and another* [2010] 4 SLR 510.

<sup>129</sup> *Ferrero SPA v Sarika Connoisseur Cafe Pte Ltd* [2011] SGHC 176

<sup>130</sup> *Intel Corporation v Intelsteer Pte Ltd* [2015] SGIPOS 2

<sup>131</sup> *Guccio Gucci S.P.A v Guccitech Industries (Private Ltd)* [2018] SGIPOS 1 (“*Guccitech*”).

		<p>“for many years, including in Singapore”<sup>132</sup></p> <ul style="list-style-type: none"> <li>- Exposure via approximately 30 publication.</li> <li>- Exposure via social media (Facebook with 15.9 million likes; Instagram with 17.8 followers; Twitter with 4.97 followers; Youtube with 136,000 subscribers)</li> </ul>	<p>Road, the Takashimaya department store in Orchard Road and at The Shoppes retail complex in Marina Bay Sands</p>	<p>SGD” for 5 years<sup>133</sup></p>	
6	<b>SWATC H</b>	<p>An average of approximately SGD 751,102 promotional expenditure per annum for 6 years.</p>	<p>21 retail stores</p>	<p>An average of approximately SGD 9,406,109 per annum for 6 years.</p>	NA

<sup>132</sup> See [14] of *Guccitech*.

<sup>133</sup> See [13] of *Guccitech*.



*Applicant's Earlier Mark - Class 38*

132 Similar to the objection under Section 8(4)(b)(i), the ***Applicant's Earlier Mark*** has ***no*** reputation to speak of in relation to Class 38 and thus this element is ***not*** satisfied.

*Applicant's Earlier Mark - Class 42*

133 In relation to class 42, having regard to the Court's caution that this ground confers an "***extensive*** level of protection" to trade marks which have attained "the ***coveted*** status" of being "well known to the public at large" and that they form a "***rare and exclusive*** class" I am of the view that this element has not been made out based on the evidence adduced by the Applicant.

134 In particular, I am of the opinion that the ***Applicant's Earlier Mark*** for Class 42 services has not reached the level such that it is "recognised by ***most*** sectors of the public in Singapore".<sup>134</sup>

135 In light of the above, it is not necessary for me to look into the other elements which the Applicant needs to establish to succeed under this ground of invalidation.

**Conclusion on Section 23(3)(a)(iii) read with Section 8(4)(b)(ii)**

136 In light of the above, the ground of invalidation under Section 23 read with Section 8(4)(b)(ii)(B) ***fails*** in relation to ***both*** the ***Registered Proprietor's Marks***.

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<sup>134</sup> I am of the view that the penetration into the relevant market is deep rather than broad.

**Ground of Invalidation under Section 23(3)(b) read with Section 8(7)(a)**

137 Section 23(3)(b) reads:

23(3) The registration of a trade mark may be declared invalid on the ground —

(b) that there is an earlier right in relation to which the condition set out in section 8(7) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

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

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...

138 In relation to this ground, there are three elements to be established:

- (a) Goodwill;
- (b) Misrepresentation; and
- (c) Damage.

139 Some further elaboration as to the law in relation to passing off:

(a) The *Applicant* must establish that they have acquired goodwill as at the *relevant date*, that is, the date on which the defendant's conduct complained of started. Applying this principle, it is the *Relevant Dates* in this instance: see *Law of Intellectual Property of Singapore* at [17.1.6]).

(b) Goodwill, in the context of passing off, is concerned with goodwill in the *business as a whole*, and not specifically in its constituent elements. The issue of *whether a mark or get-up is distinctive* of a plaintiff’s products or services is a question best dealt with in the context of the inquiry as to whether the defendant has made a misrepresentation (*Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading* [2016] 4 SLR 86 (“**Singsung**”) at [34] and [37] respectively). Evidence of sales and income of the business are a “proxy for the attractive force of the business” (**Singsung** at [58]). The “get up” can include various aspects of the business and is not pegged to any particular mark (*Law of Intellectual Property of Singapore* at [17.2.10] – [17.2.20]).

(c) Section 8(7)(a) of the *Act* at the very least requires an applicant to adduce sufficient evidence to establish a *prima facie* case on goodwill, misrepresentation and damage (*Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd* [2015] SGHC 216 at [164]).

### ***Goodwill***

140 As alluded to above, the Court of Appeal in **Singsung** has clarified that “goodwill, in the context of passing off, is concerned with goodwill in the *business as a whole*, and not specifically in its constituent elements, such as the mark, logo or get-up that it uses” (**Singsung** at [34]).

141 In line with my conclusion above in relation to the element of “well known in Singapore” under the objection for Section 8(4)(b)(i), this element has been made out.

142 For clarity, in light of the above I disagree with the Registered Proprietor that there is no goodwill on the basis of the collaboration under *BIRC*.<sup>135</sup> In summary, I have already mentioned above that the evidence tendered in relation to this issue is largely similar to that in the *Baidu Revocation Case* and my conclusion is consistent with that reached in the same.

### ***Misrepresentation***

143 For reasons that are largely similar to that for the element of a likelihood of confusion for the ground of invalidation under Section 23(3)(a)(i) read with Section 8(2)(b), this element has been made out.

### ***Damage***

144 Again, for largely the same reasons for the element of a “likelihood of damage” under the ground of invalidation under Section 23(3)(a)(iii) read with Section 8(4)(b)(i), this element has been satisfied.

### **Conclusion for Section 23(3)(b) read with section 8(7)(a)**

145 The ground of invalidation under Section 23(3)(b) read with Section 8(7)(a) *succeeds* in relation to *both* the *Registered Proprietor’s Marks*.

### **Overall conclusion**

146 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the invalidation under Section 23:

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<sup>135</sup> *RWS* at [93(f)].

(a) **Succeeds** in relation to **both Registered Proprietor's Marks** in relation to the ground of objection under:

- (i) Section 23(1) read with **Section 7(6)**;
- (ii) Section 23(3)(a)(i) read with **Section 8(2)(b)**;
- (iii) Section 23(3)(a)(iii) read with **Section 8(4)(b)(i)**; and
- (iv) Section 23(3)(b) read with **Section 8(7)(a)**.

(b) **Fails** in relation to **both the Registered Proprietor's Marks** in relation to the ground of objection under:

- (i) 23(3)(a)(iii) read with **Section 8(4)(b)(ii)**.

147 In light of the above, **both Registered Proprietor's Mark 1** and **Registered Proprietor's Mark 2** are **invalidated** and deemed never to have been made, but this does not affect transactions past and closed.

148 The **Applicant** is also entitled to costs to be taxed, if not agreed.

Sandy Widjaja  
Principal Assistant Registrar

Mr Max Ng, Ms Shahera Safrin, Ms Claire Tan (Gateway Law Corporation) for the **Applicant**;  
Ms Jin Ziwei, Ms Chong Kah Wai, Kimberly and Ms Dimple Rajpara (Tan Peng Chin LLC) for the **Registered Proprietor**.