

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

[2026] SGIPOS 9

Trade Mark Nos. 40202307308W, 40202307340Y and 40202263844T

IN THE MATTER OF TRADE MARK APPLICATION BY

Llapingacho, LLC.

... Applicant

AND OPPOSITION THERETO BY

KUESKI, S.A.P.I. DE C.V. SOFOM, E.N.R.

... Opponent

GROUNDS OF DECISION

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KUESKI, S.A.P.I. DE C.V. SOFOM, E.N.R.

v

Llapingacho, LLC.

[2026] SGIPOS 9

Trade Mark Nos. 40202307308W, 40202307340Y and 40202263844T

Principal Assistant Registrar Sandy Widjaja

23 April 2026

21 July 2026

Principal Assistant Registrar Sandy Widjaja:

Introduction

1 This is an opposition against the following marks:

S/N	Application Mark	Goods
1	KUSHKI 40202263844T Relevant Date: 19 October 2022 <i>“Application Mark 1”</i>	Class 36: Electronic foreign exchange payment processing; electronic payment services involving electronic processing and subsequent transmission of bill payment data; merchant services, namely, payment transaction processing services; providing financial transaction and payment processing services via a website portal. Class 42: Application service provider (ASP) featuring e- commerce software for use as

		a payment gateway that authorizes processing of credit cards or direct payments for merchants; application service provider featuring application programming interface (API) software for accepting and sending payments via credit cards, debit cards, wire transfer and cash
2	 40202307340Y Relevant Date: 10 November 2022 “Application Mark 2”	Class 36: Electronic foreign exchange payment processing; electronic payment services involving electronic processing and subsequent transmission of bill payment data; merchant services, namely, payment transaction processing services; providing payment processing services featuring financial transaction services via an internet web site portal Class 42: Application service provider (ASP) featuring e-commerce software for use as a payment gateway that authorizes processing of credit cards or direct payments for merchants; application service provider featuring application programming interface (API) software for accepting and sending payments via

		credit cards, debit cards, wire transfer and cash
3	 40202307308W Relevant Date: 30 November 2022 <i>“Application Mark 3”</i>	Class 36: Electronic foreign exchange payment processing; electronic payment services involving electronic processing and subsequent transmission of bill payment data; merchant services, namely, payment transaction processing services; providing payment processing services featuring financial transaction services via an internet web site portal Class 42: Application service provider (ASP) featuring e-commerce software for use as a payment gateway that authorizes processing of credit cards or direct payments for merchants; application service provider featuring application programming interface (API) software for accepting and sending payments via credit cards, debit cards, wire transfer and cash

Background facts

2 KUESKI, S.A.P.I. DE C.V. SOFOM, E.N.R. (“Opponent”) is a company that specialises in providing various credit lending and payment services. It was founded in 2012 in Guadalajara, Jalisco, Mexico. Since its

establishment, the Opponent has leveraged various technological advancements to become one of the largest providers of “buy-now-pay-later” (“BNPL”), consumer lending and e-payment services in Latin America.¹

3 The Opponent submitted that its current offerings, both for consumers between the ages of 18 and 70, can be broadly split into the following:

- a. “KUESKI Personal Loans”: A direct-to-consumer microloan service.
- b. “KUESKI Pay”: A BNPL service. The Opponent partners with various consumer-facing businesses to integrate the service into their payment methods.²

4 Llapingacho, LLC. (“Applicant”) is in the business of providing a secure online processing platform where consumers are able to perform transactions using different payment options, including credit card as well as cash transactions, securely.³

5 The Applicant’s service can be accessed via an online web browser or a mobile application (an app). The Applicant’s clients are usually businesses who want to utilise the Applicant’s service to transfer money securely between their customer’s credit card or bank account and their business bank account.⁴

¹ Opponent’s statutory declaration dated 16 December 2024 (OSD1) at [4] (more below).

² Opponent’s written submissions (OWS) at [4].

³ The Applicant’s statutory declaration dated 23 September 2025 (ASD) at [5] (more below).

⁴ ASD at [5].

Grounds of Opposition

6 The Opponent had initially intended to rely on both section 8(2)(b) and section 8(4)(b)(i) of the Trade Marks Act 1998 (“Act”) in these proceedings. However, at the Pre-hearing Review on 23 January 2026, the Opponent confirmed that it *no* longer wishes to pursue the ground of opposition under section 8(4)(b)(i) of the Act.

Opponent’s evidence

7 The Opponent’s evidence comprise the following:

- (a) a statutory declaration of Mr Carlos Antonio Sanchez Almada, Manager, Senior Vice-President of Legal Compliance and Security of the Opponent (“Mr Almada”), dated 16 Dec 2024 (“OSD1”); and
- (b) a statutory declaration in reply of the same Mr Almada, dated 16 Dec 2025.

Applicant’s evidence

8 The Applicant’s evidence comprises a statutory declaration of Mr Sebastian Castro, Managing Member and Co-founder of the Applicant, dated 23 Sep 2025 (“ASD”).

Applicable law and burden of proof

9 The applicable law is the Act. The undisputed burden of proof for the opposition falls on the Opponent.

Ground of Opposition under s 8(2)(b)

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

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

...

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

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

11 The definition of an earlier mark includes a trade mark which has been registered before the Relevant Date(s) (see above and section 2 of the Act). In this regard, the Opponent relies, in the main, on its earlier registered mark:

<i>Opponent's Earlier Mark</i>	Goods
 40202256280C Application Date: 13 October 2022	<u>Class 36</u> Online financial transactions; Electronic money transfer services; Financial loan services; Installment loans; Financing of personal loans; Loan services; Collection of payments; Financial consulting; Financial analysis; Payment processing services; Processing of electronic payments; Sales credit financing; Credit financing.

12 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) (at [15] and [55]):

[15]...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.

...

[55] 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.

13 It is only if the first two threshold requirements have been met that the issue of 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.

Applicable legal principles: Marks-similarity assessment

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

- (i) 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.
- (ii) Technical distinctiveness 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.

- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) The assessment of marks similarity is mark-for-mark without consideration of any external matter.

[Emphasis in italics mine]

15 Further, the Court of Appeal provided in *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd and another and another appeal* [2013] 2 SLR 941 ("*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.

[Emphasis in italics mine]

Preliminary points

16 Before embarking on the marks-similarity analysis, it is helpful for me to first make some preliminary points.

17 The first point is that the *Opponent's Earlier Mark* is registered as a series of two marks:



18 In this regard, section 17(2) of the Act provides:

For the purposes of this Act, “series of trade marks” means a number of trade marks which resemble each other as to their *material particulars* and which differ only as to matters of a non-distinctive character not substantially affecting the identity of the trade mark.

[Emphasis in italics mine]

19 Chapter 8 of the Trade Marks Work Manual further clarifies at Section 3(c)(ii) that:

Any variation in the non-distinctive features in the marks must leave the visual, phonetic and conceptual *identity* of each of the trade marks *substantially the same*. Even if the marks are conceptually similar, they will not constitute a series if there are substantial differences in the visual or aural identities of the marks.

[Emphasis in italics mine]

20 Secondly, it is trite that a mark which is registered in black and white is registered for all colours. The Registrar asked the Opponent about the significance of the colours blue and green in the *Opponent's Earlier Mark*, to which the Opponent submitted that the specific colours is an aspect which the Registrar is free to accord the relevant weight.

21 Finally, I asked the Opponent to rank the Applicant's marks from the one which is most similar, to the one which is least similar, in comparison to the *Opponent's Earlier Mark*. The Opponent submitted as follows:

S/N	Applicant's Mark	Extent of similarity to the <i>Opponent's Earlier Mark</i>
1		Most similar
2	KUSHKI	
3		Least similar

I will deal with the issue of similarity of marks in the same order.

Visual similarity

Application Mark 2

22 For ease of comparison only, the relevant marks are as follows:

<i>Opponent's Earlier Mark</i>	<i>Application Mark 2</i>
	

23 The Opponent submitted that the *Opponent's Earlier Mark* is a composite mark comprising two key elements:

(a) The word “KUESKI”; and

(b) The device “”.

24 The Opponent gave evidence that the word “KUESKI” was derived from the Nahuatl word “Keski” meaning “how much”.⁵ This is a reference to the Opponent’s Mexican origins and was conceived as a reference to the question crucial to the Opponent’s brand message, namely, “how much do you want” and “how much do you want to grow”.⁶

⁵ OSD1 at [7].

⁶ OSD1 at [7].

25 With regard to the device, the Opponent explained that the logo features an inverted “K” that doubles up as a depiction of a seedling. This is a play on the word “KUESKI” and the idea that a seedling is akin to wealth to be grown.⁷

26 The Opponent submitted:⁸

[20]...that word element “KUESKI” is highly distinctive as “KUESKI” is invented and has *no meaning in the English language or any other language known to the average Singapore consumer*. The *technical distinctiveness* of “KUESKI” also means that a *higher threshold* must be crossed before a competing sign will be considered dissimilar to it...

[Emphasis in italics mine]

27 The Applicant, while objecting to the description that “KUESKI” is an “invented word”, agreed that “KUESKI” has “*no meaning in the English language or any other language known to the average Singapore consumer*” (above).

28 Having regard to the above, as well as the relative *size* of the word “KUESKI” within the *Opponent’s Earlier Mark*, I am of the view that the word “KUESKI” is the main *dominant and distinctive* element of the mark.

29 For the avoidance of doubt, this does *not* mean that the device is ignored. However, in light of the *size* of the device within the *Opponent’s Earlier Mark*, the weight accorded to it will be *lower*.

30 In light of the above, I am of the view that the *Opponent’s Earlier Mark* is technically highly distinctive such that it enjoys “a high threshold before a competing sign will be considered dissimilar to it” (above).

⁷ OSD1 at [7].

⁸ OWS at [20], citing *Staywell* at [25].

31 The Opponent relied on *Ozone Community Corp v Advance Magazine Publishers Inc* [2010] 2 SLR 459 (“*Ozone*”) at [49] and submitted that,⁹ visual similarity typically involves looking at:

- (a) the length of the marks;
- (b) the structure of the marks (i.e. whether there are the same number of words); and
- (c) whether the same letters are used in the marks.

32 The Applicant objected to the Opponent’s reliance on *Ozone* on the basis that the marks in *Ozone* are word marks only.¹⁰ However, I am of the view that the analysis in *Ozone* is nonetheless helpful for the purposes of analysing similarity in relation to the *word component* of the marks.

33 Applying the principles above, the Opponent submitted that:¹¹

- (a) Both words comprise six letters and are identical in length;
- (b) Both words share the same opening letters “KU” and the same closing letters “KI”;
- (c) Five out of the six letters are shared – i.e. K, U, S, K, I, with the *sole difference* being the letter “E” in KUESKI versus the letter “H” in KUSHKI, and the *relative positioning* of the letter “S” (emphasis in italics mine).

⁹ OWS at [22].

¹⁰ Applicant’s Reply Written Submissions (ARWS) at [9].

¹¹ OWS at [23].

34 The Opponent submitted that the only visual differences lie in the *middle* of the compared marks, which is arguably the least conspicuous portion, especially when considering the imperfect recollection of the average consumer.¹² It is to be recalled that the two contesting marks are “not to be compared or assessed side by side...and examined in detail...”.¹³ I agree.

35 The Opponent also referred to the case of *Damiani International BV v Dhamani Jewels DMCC* [2020] SGIPOS 11 (“*Damiani*”) at [37] to [38], where visual similarity between “DHAMANI” and “DAMIANI” was found on the basis that the words share seven letters each, starting with the same letter “D” and ending with the letters “ANI”.¹⁴

36 The Applicant once again objected to the above on the basis that in *Damiani*, the marks are both word marks.¹⁵ However, as alluded to above, for the purpose of assessing the *word components* of the marks, the analysis in *Damiani* is helpful.

37 Taking *all* of the above into account, I am of the view that the *word components* of the marks are visually more similar than dissimilar.

38 In relation to the device, as alluded to above, the Opponent gave evidence that it features an inverted “K” that doubles up as a depiction of a seedling, a play on the name “KUESKI” and the idea that a seedling is akin to wealth to be grown.

¹² OWS at [23(d)].

¹³ See *Hai Tong* at [40(d)] above and OWS at [24].

¹⁴ OWS at [26].

¹⁵ ARWS at [10].

39 With regard to *Application Mark 2*, the Applicant gave evidence that its device is also a play between the letter “K” (in the word “KUSHKI”), as well as a “check mark” or a “tick mark of approval”.¹⁶

40 A consumer will only be able to *perceive* devices at “surface value”.¹⁷ In this instance, what can be discerned from the elements present in both devices at *surface value* is that they are both an inverted letter “K” and a play on the first letter of the respective words, “KUESKI” as well as “KUSHKI”.

41 Last but not least, the respective words, occupy about $\frac{3}{4}$ of the respective marks, while both devices only occupy about $\frac{1}{4}$ of the respective marks (even though they appear at the beginning of the marks).

42 Having regard to *all* of the above, I am of the view that the marks are visually similar to a high degree.

Application Mark 1

43 For ease of comparison only, the relevant marks are as follows:

<i>Opponent’s Earlier Mark</i>	<i>Application Mark 1</i>
	KUSHKI

¹⁶ ASD at [8].

¹⁷ See *Carolina Herrera, Ltd v Lacoste* [2014] SGIPOS 3 at [56]; this is also related to the issue of conceptual similarity (more below).

44 As discussed above:

- (a) the *Opponent's Earlier Mark* is highly distinctive such that it enjoys "a high threshold before a competing sign will be considered dissimilar to it". This is because the word "KUESKI", which is the main *dominant and distinctive* component of the *Opponent's Earlier Mark* and takes up about $\frac{3}{4}$ of the same, will not be understood by the average consumer in the local market and would be *regarded* as a meaningless word;
- (b) both words in the respective marks:
 - (i) comprise six letters and are identical in length;
 - (ii) share the same opening letters "KU" and the same closing letters "KI"; with
 - (iii) five out of the six letters being shared, the main difference being in the *middle* portion of the marks.

45 In light of the above, even taking into account of the fact that the *Opponent's Earlier Mark* is a composite mark while the *Applicant's Mark 1* is a word only mark, I am of the view that the marks are visually similar to a moderate degree.

Application Mark 3

46 For ease of comparison only, the relevant marks are as follows:

<i>Opponent’s Earlier Mark</i>	<i>Application Mark 3</i>
	

47 The main difference between *Application Mark 2* and *Application Mark 3* is the additional word “Mundial” in *Application Mark 3*.

48 I agree with the Opponent that “...there remain strong visual similarities between the marks notwithstanding the inclusion of “Mundial” in [*Application Mark 3*]”.¹⁸ This due to the relative *size and positioning* of the word “Mundial”; it is in a much *smaller* font and is placed *below* the word “KUSHKI” on the right most side. For clarity, this does *not* mean that “Mundial” is ignored; it simply means that it plays a *smaller* role.

49 For the avoidance of doubt, I come to the above conclusion *without* reference to *Amazon Technologies Inc v Survivalverse Pte Ltd* [2024] SGIPOS 6 (“*Amazon*”).

50 As discussed above, I am of the view that:

- (a) the *Opponent’s Earlier Mark* is highly distinctive and enjoys a high threshold before a competing sign will be considered dissimilar to

¹⁸ OWS at [57].

it, with the word “KUESKI”, being the main *dominant and distinctive* component of the *Opponent’s Earlier Mark*;

- (b) both words in the respective marks are highly similar; and
- (c) both devices will be seen as an inverted “K”.

51 In light of the above, even taking into account the presence of the word “Mundial” (which is in much smaller font) in *Application Mark 3*, I am of the view that the marks are visually similar to a moderate degree.

Aural similarity

52 The test for aural similarity is 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.

53 A preliminary point is that the devices will be disregarded for the purposes of the aural similarity analysis. This is because the relevant public will, in all likelihood, refer to the “readable portion” of the marks.¹⁹ In this regard, I note that both parties only made submissions in relation to the *word components* of the marks for the purposes of this aural aspect.

¹⁹ See *Seiko Holdings Kabushiki Kaisha v Seiko Advance Ltd* [2011] SGIPOS 3 at [45].

54 The Opponent quoted²⁰ *Seiko Kabushiki Kaisha v Montres Rolex S.A.* [2004] SGIPOS 8 at [30]:

[30] When a person is faced with an *unfamiliar* word, there is a tendency for that person to reach within their own vocabulary of words and mentally look for words that have the *same structure* in the sense that the chronology of the alphabets [*sic*] is the same as the unfamiliar word.

[Emphasis in italics mine]

55 I agree with the Opponent that the above approach “accords with plain common sense”.²¹ In this regard, I do not think there is a need to drill into the technicalities, such as the “phonological structure”²² of the marks.

56 Applying the above, the Opponent submitted that the average consumer is likely to pronounce:²³

(a) “KUESKI” as "koos-ki" or "k[oo]-es-ki", the former by reference to familiar English vowel sounds in words such as "blue" or "clue";

(b) “KUSHKI” as "koosh-ki" or "kush-ki", the "ush" sound being a familiar English phoneme as in "rush", "push" and "hush."

²⁰ OWS at [31]; see also Chapter 7 of the Trade marks work manual in relation to “Relative Grounds for Refusal of Registration” at 5.2.5.3.4

²¹ OWS at [32].

²² ARWS at [19].

²³ OWS at [32] – [33].

57 Thereafter, applying the Quantitative Approach to "koos-ki" / "koo-es-ki" versus "koosh-ki":²⁴

- (a) Both conclude on the same sound "KI";
- (b) The first syllable of each mark leads with the "KOO" sound.

58 The Opponent further submitted that:²⁵

- (a) the first syllable of a word is aurally the most important and there is a tendency to slur subsequent syllables. This is especially so for "cases where the marks comprise only one word" (see *Doctor's Associates Inc v Lim Eng Wah* [2012] 3 SLR 193 at [35]); and
- (b) there is a general tendency to imperfectly recollect and/or resort to careless pronunciation and speech (see *Sarika Connoisseur Cafe Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 at [31]).

I agree.

59 In light of all the above, I am of the view that *Application Mark 2* and *Application Mark 1* are each aurally similar to the *Opponent's Earlier Mark* to a high degree.

60 *Application Mark 3* has an additional word, "Mundial", which is in a smaller font and placed below the word "KUSHKI".

²⁴ OWS at [37].

²⁵ OWS at [38].

61 The Opponent submitted that “due to the *size* differential between “KUSHKI” and “Mundial”, a greater verbal *emphasis* is likely to be placed on “KUSHKI” when read aloud”.²⁶ I agree.

62 The Applicant objected to the Opponent’s reliance on *Amazon* and argued that the size of the words is not a factor to be taken into account for aural similarity. Quite apart from *Amazon*, I am of the view that not only the (font) *size* but the *placement* of the word “Mundial” will have an *impact* on the issue of aural similarity.²⁷ This is because the consumer can only necessarily *read* the marks by *looking* at the marks.

63 Following the above, I am of the view that *Application Mark 3* is also aurally similar to the *Opponent’s Earlier Mark*, albeit to a moderate degree.

Conceptual similarity

64 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 italics mine]

65 As discussed above, I am of the view that while the word “KUESKI” is derived from the Nahuatl word “Keski” meaning “how much”, it is more likely

²⁶ OWS at [63], relying on *Amazon*.

²⁷ The Applicant argued that this case is inapplicable at [37] of ARWS.

than not that the average consumer in Singapore will *regard* it as a meaningless word.

66 As for the word “KUSHKI”, the Applicant gave evidence that it is inspired by the term “cullqui”, which means money in Quechuan, an indigenous language spoken in the Andes region of South America.²⁸ I am of the view that it is also highly likely that the average consumer in Singapore will also *regard* it as an arbitrary and meaningless word.

67 In relation to the devices, as alluded to above:

(a) the Opponent gave evidence that the device features an inverted “K” that doubles up as a depiction of a seedling”, and that it is a play on the word “KUESKI” and the idea that a seedling is akin to wealth to be grown; while

(b) the Applicant gave evidence that its device is a play on the letter “K” in the word “KUSHKI” as well as a “check mark” or a “tick mark of approval”.

68 As alluded to earlier, the only relevant issue is how the consumer will ascertain the device from the elements present at a *surface* level; the genesis of the device is irrelevant. I have already concluded above that the devices will be perceived as an inverted letter “K”, and a play on the first letter of the respective words, “KUESKI” and “KUSHKI”.

²⁸ ASD at [8].

69 In summary:

- (a) the respective word components of the marks will be *regarded* as meaningless words and are thus conceptually neutral; while
- (b) both the devices will be perceived as an inverted “K”,

such that *Application Mark 2* is conceptually similar to the *Opponent’s Earlier Mark* to a low extent.

70 *Application Mark 1* is a word mark consisting of the word “KUSHKI” only, while the *Opponent’s Earlier Mark* is a composite mark. Following the analysis above, *Application Mark 1* is conceptually neutral (or at most dissimilar to a low extent) in comparison to the *Opponent’s Earlier Mark*.

71 Last but not least, *Application Mark 3* has an additional word “Mundial” which is in a smaller font and placed below the word “KUSHKI”. The Opponent clarified at the hearing that “Mundial” means “world-wide” in Spanish.

72 While Spanish is relatively better known to the average consumer in Singapore in comparison to Nahuatl / Quechuan, I am of the view that the average consumer is still unlikely to know the meaning of “Mundial” in Spanish. Even if I am wrong, and the average consumer understands “Mundial” to mean “world-wide”, it will become apparent below that this does not have a significant impact on my conclusion.

73 In light of the above, I am of the view that, when compared to the *Opponent’s Earlier Mark*, *Application Mark 3* is at most conceptually similar to a low extent.

Conclusion on mark-similarity assessment

74 Accordingly, I am of the view that *each* of the application marks is similar to the *Opponent's Earlier Mark*. I summarise my findings in the table below:

<i>Opponent's Earlier Mark</i>	<i>Application Mark 2</i>	Comments
		• Visually similar to a high extent • Aurally similar to a high extent • Conceptually similar to a low extent • Overall, more similar than dissimilar to the <i>Opponent's Earlier Mark</i> to a high degree
	<i>Application Mark 1</i>	<i>Comments</i>
	KUSHKI	• Visually similar to a moderate extent • Aurally similar to a high extent

		• Conceptually neutral or at most dissimilar to a low extent • Overall, more similar than dissimilar to the <i>Opponent's Earlier Mark</i> to a moderate degree
	<i>Application Mark 3</i>	<i>Comments</i>
		• Visually similar to a moderate extent • Aurally similar to a moderate extent • Conceptually similar to a low extent • Overall, more similar than dissimilar to the <i>Opponent's Earlier Mark</i> to a moderate degree

Service similarity assessment

75 For ease of reference, the services of interest are as follows:

<i>Opponent's Earlier Mark</i>	<i>Application Marks 2 and 3²⁹</i>
Class 36 <i>Online financial transactions;</i> Electronic money transfer services; Financial loan services; Installment loans; Financing of personal loans; Loan services; Collection of payments; Financial consulting; Financial analysis; Payment processing services; Processing of electronic payments; Sales	Class 36: Electronic foreign exchange payment processing; electronic payment services involving electronic processing and subsequent transmission of bill payment data; merchant services, namely, payment transaction processing services; <i>providing payment processing services featuring financial transaction services via an Internet website portal.</i>
	<i>Application Mark 1</i>
	Class 36: Electronic foreign exchange payment processing; electronic payment services involving electronic processing and subsequent transmission of bill payment data; merchant services, namely, payment transaction processing services; <i>providing financial transaction and payment processing services via a website portal.</i>
	<i>Application Marks 1, 2 and 3</i>
	Class 42: <i>Application service provider (ASP) featuring e-</i>

²⁹ AWS at [2]

credit financing; Credit financing.	<i>commerce software for use as a payment gateway that authorizes processing of credit cards or direct payments for merchants; application service provider featuring application programming interface (API) software for accepting and sending payments via credit cards, debit cards, wire transfer and cash.</i>
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The overlapping services are italicised above.

Preliminary points

76 Some preliminary points to note:

(a) as can be seen from the table above, the *Opponent's Earlier Mark* as well as all of the three application marks are registered / sought to be registered, in relation to Class 36. Of course, all of the three application marks are also sought to be registered in Class 42 as well; and

(b) as submitted by the Opponent, this stage is satisfied as long as *one* item registered pursuant to the *Opponent's Earlier Mark* is considered to be similar to *one* item sought to be registered for *Class 36* as well as *42* respectively in relation to *Application Mark 1, 2 or 3* individually. It has been made clear in *Damiani* at [65] – [82], that there can be *no* partial opposition (in this regard, *Damiani* was cited with approval in *Sunrise Plus Pte Ltd v The Sunrider Corp dba Sunrider International* [2025] SGHC 51 at [5]).

77 Following the above, in relation to Class 36, it is obvious that:

- (a) “providing payment processing services featuring financial transaction services via an Internet website portal”; and
- (b) “providing financial transaction and payment processing services via a website portal”;

is respectively, a *subset* of “[o]line financial transactions” such that the services are similar.

78 Applying the test in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 (“*British Sugar*”) to the above specifications:³⁰

- (a) The use is the same, namely, to process online payments;
- (b) The users are also the same, namely, business owners; and
- (c) The physical nature is the same, namely, they are digital in nature.

In light of the above, I am of the view that the services in Class 36 are *similar*.

79 In relation to Class 42, it is trite that “the Nice Classification numbers are “purely administrative” and are not determinative of the goods-similarity”.³¹ It is obvious that the services in Class 42 provide a means³² through which financial services in Class 36 are provided.

³⁰ OWS at [75].

³¹ OWS at [81], relying on *Sarika* at [51].

³² OWS at [83].

80 In this instance, “Application service provider (ASP) featuring e-commerce *software for use as a payment gateway that authorizes processing of....direct payments*” and “application service provider featuring application programming interface (API) *software for accepting and sending payments*” (emphasis in italics mine) are clearly the *modalities* through which “[o]nline *financial transactions*” are provided.

81 Applying the *British Sugar* factors to the above specifications:

- (a) The use is similar, namely, to process or transmit electronic payments;
- (b) The users are the same, namely, business owners;
- (c) The physical nature is the same, namely they are digital in nature; and
- (d) The services are complementary in nature.

In light of the above, I am of the view that the services in Class 36 are *similar* to those in Class 42 as well.

82 It is not in dispute that *today*, the Opponent appears to only provide personal loans as well as BNPL services,³³ which are credit services falling within “[f]inancial loan services” and “[i]ninstallment loans”. But given that the Opponent’s registration includes “[o]nline financial transactions”, it is certainly

³³ OSD1 at [5].

open to the Opponent to provide, amongst others “...financial transaction and payment processing services via a website portal”³⁴ *in future*.

83 In light of the above, this element is satisfied.

Likelihood of Confusion

84 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 [60], [64], [83] and [96]:

- (i) In opposition proceedings, the inquiry must take into account the full range of the competing monopoly rights that are already enjoyed on the one hand, namely the *actual and notional* fair uses to which the incumbent proprietor has or might fairly put his registered trade mark, and compare this against the full range of such rights sought by the applicant by reference to any *actual use* by the applicant (assuming there has been prior use) as well as *notional* fair uses to which the applicant may put his mark should registration be granted.
- (ii) 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

³⁴ For clarity, such services do *not* need to be “embedded or tied in within its financing products and loan facilities” (AWS at [114]).

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.

- (iii) 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.
- (iv) The following represents a non-exhaustive list of factors which are regarded as admissible in the confusion inquiry:
 - (a) Factors relating to the impact of *marks-similarity* on consumer perception:
 - (1) the *degree of similarity* of the marks themselves;
 - (2) 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);
 - (3) the *impression* given by the marks; and
 - (4) the possibility of *imperfect recollection* of the marks.
 - (b) 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):

- (1) The *normal way* in, or the *circumstances* under which, consumers would *purchase goods* of that type;
- (2) Whether the products are *expensive or inexpensive* items;
- (3) Whether they would tend to command a greater or lesser degree of *fastidiousness and attention* on the part of prospective purchasers; and
- (4) 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 mark-similarity

85 I have already concluded above that, in comparison to the *Opponent's Earlier Mark*:

- (a) *Application Mark 2* is visually and aurally similar to a high extent while they are conceptually similar to a low extent, such that it is overall, *more similar than dissimilar* to the *Opponent's Earlier Mark* to a *high* degree;
- (b) *Application Mark 1* is visually similar to a moderate extent, aurally similar to a high extent and at most conceptually dissimilar to a low extent, such that it is overall, *more similar than dissimilar* to the *Opponent's Earlier Mark* to a *moderate* degree; and

(c) *Application Mark 3* is visually and aurally similar to a moderate extent and at most conceptually similar to a low extent, such that it is overall, *more similar than dissimilar* to the *Opponent's Earlier Mark* to a moderate degree.

86 In addition, as the marks pertain to online services, I am of the view that it is the *visual* aspect which takes precedence (see *Hai Tong* at [53]).

87 In terms of reputation, the Applicant gave evidence that it has used *Application Mark 2* as well as *Application Mark 1* in trade in Singapore “from at least as early as July 2017...and continues to the present”.³⁵ In this regard, the Applicant relied on its evidence in relation to the number of transactions involving a Singapore bank as well as originating from a Singapore IP address.³⁶

88 However, the Applicant’s evidence tendered is not helpful as:

- (a) most of the evidence are dated *after* the Relevant Dates (see above) and cannot be taken into account; and
- (b) it is also unclear as to *which* of the application marks have been used in Singapore on or before the Relevant Dates.

89 Following the above, I am of the view that the Applicant does not have sufficient reputation in Singapore for the purposes of this element. In any event, it is to be recalled that “the exact effect which the reputation of a mark has as regards the likelihood of confusion inquiry is a fact specific inquiry” (see *Twitter, Inc. v V V Technology Pte Ltd* [2022] SGIPOS 4 at [124]).

³⁵ ASD at [28].

³⁶ ASD at [19] and at Exhibit 3 at pages 42 – 43.

90 In terms of overall impression, I have already concluded above that:

- (a) the devices will be perceived as an inverted “K”, a *play* on the first letter of the respective words, “KUESKI” and “KUSHKI”; and
- (b) the words “KUESKI” and “KUSHKI” are highly similar while the local public will *regard* “Mundial” as a meaningless word (more below).

91 It is to be recalled that the average consumer has “imperfect recollection” and that the marks are “not to be compared or assessed side by side...and examined in detail...” (above).

92 Having regard to all of the above, the overall impression is that the marks are similar, and this increases the likelihood of confusion.

Factors relating to the impact of good / service similarity

93 The Opponent submitted that “[a] critical feature of the relevant public in this case is its *breadth and diversity*. Businesses that procure payment and transaction processing services span an exceptionally wide spectrum across various *scales and fields*...this ranges from large enterprises such as multi-national and regional corporations, to small-and-medium sized enterprises” (emphasis in italics mine).³⁷ I agree. In this digital age where online purchase is now the default mode of shopping, “electronic payments and e-commerce”³⁸ are ubiquitous and “cuts across the commercial sector and a wide range of businesses”.³⁹

³⁷ OWS at [107].

³⁸ OWS at [101].

³⁹ OWS at [101].

94 At the hearing, the Opponent requested that I take judicial notice that about “80%” of the Singapore business entities are “small-and-medium sized enterprises” which would “lack specialist knowledge of the payments industry and who are therefore more susceptible to confusion”.⁴⁰ Be that as it may, there is still a need to take into account non-local business entities which are *based* in Singapore as they also form part of the market in Singapore.

Conclusion

95 I have concluded above that the marks are visually similar to the *Opponent’s Earlier Mark* to a high degree (*Application Mark 2*) / moderate degree (*Application Mark 1* and *Application Mark 3*) such that the overall impression is that the marks are more similar than dissimilar.

96 It is also to be recalled that confusion includes not only mistaking one mark for another but also that the marks are economically linked.⁴¹ So for example, in the event the local market understands that “Mundial” means “world-wide” in Spanish, they may (mistakenly) think that *Application Mark 3* is simply the “international arm” of the Opponent.

97 I am mindful that, the average consumer is “not...an unthinking person in a hurry” (above). Further, for likelihood of confusion to be found, the applicable standard is “above *de minimis*”.⁴² However, in view of the extent of the similarity of the marks and the services, I am of the view that there is a likelihood of confusion.

⁴⁰ OWS at [108].

⁴¹ OWS at [98(f)].

⁴² OWS at [99], relying on *Sarika* at [57].

Conclusion on Section 8(2)(b)

98 The ground of opposition under Section 8(2)(b) therefore *succeeds*.

Costs

99 Both parties have provided written submissions on costs.⁴³ The Applicant asked for a total of S\$25,015 while the Opponent claimed costs in the amount of S\$17,336.

100 As the Opponent succeeded on the sole ground of opposition, it is entitled to costs and disbursements, which I assess to be *S\$14,296*. Among other things, I have taken into account the fact that the Opponent dropped one ground of opposition at a late stage of proceedings.

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for the Applicant

⁴³ OWS at [125] – [131] and AWS at [143] – [146].