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

[2026] SGIPOS 14

Trade Mark No. 40202311095W

IN THE MATTER OF A TRADE MARK APPLICATION

IN THE NAME OF

POROLIS TECHNOLOGIES PTE LTD

…Applicant

AND

AN OPPOSITION BY

OPENAI, OPCO, LLC

…Opponent

GROUNDS OF DECISION

TABLE OF CONTENTS

INTRODUCTION **1**

PROCEDURAL HISTORY **2**

BACKGROUND **5**

THE OPPONENT 5

THE APPLICANT 6

EVIDENCE OF PUBLIC PERCEPTION **8**

CHATGPT 11

GPT & GPT- NUMBERED MODELS 15

SECTION 8(2)(*B*) TMA **22**

SIMILARITY OF MARKS 23

The relevant public *24*

Visual similarity *25*

Aural similarity *29*

Conceptual similarity *30*

Conclusion on marks-similarity *32*

SIMILARITY (OR IDENTITY) OF SERVICES 33

WHETHER THERE IS A LIKELIHOOD OF CONFUSION? 36

SECTION 8(4)(*B*)(I) TMA **41**

SECTION 8(4)(*B*)(II)(A) TMA **45**

SECTION 8(7)(*A*) TMA **48**

SECTION 7(6) TMA **50**

FINAL REMARKS: FOREIGN AND LOCAL DECISIONS.....53

OUTCOME AND COSTS.....55

OpenAI, OpCo, LLC
v
Porolis Technologies Pte Ltd

[2026] SGIPOS 14

Trade Mark No. 40202311095W
Principal Assistant Registrar Ong Sheng Li, Gabriel
4 May 2026, 1 July 2026, 29 July 2026

28 October 2026

Principal Assistant Registrar Ong Sheng Li, Gabriel:

Introduction

1 This trade mark opposition concerns an application by Porolis Technologies Pte Ltd (the "Applicant") to register "GemGPT" (Trade Mark No. 40202311095W) (the "Application Mark") in Class 42 for the following services (the "Claimed Services"):

> Artificial intelligence consultancy; Authenticating diamonds; Authenticating gemstones; Authenticating jewellery; Computer programming; Computer programming for data processing; Gemmological services; Gemstone authentication and certification services; Image processing software design; Online provision of non-downloadable web-based software; Platform as a service [PaaS]; Programming of computer software for evaluation and calculation of data; Programming of computer software for reading, transmitting and organising data; Providing temporary use of non-downloadable software for analyzing financial data and generating reports; Providing temporary use of online non-downloadable computer software for collecting, analyzing and organizing data in the field of deep learning; Software as a service [SaaS]; Software as a service [SaaS] featuring artificial intelligence software for machine learning; Software as a service [SaaS] featuring software for machine learning.

The Application Mark was applied for on 22 May 2023 (the "Relevant Date").

2 OpenAI OpCo, LLC, (the "Opponent") opposed the registration of the Application Mark. The opposition is based on the following five grounds in the Trade Marks Act 1998 ("TMA"): s 8(2)(*b*), s 8(4)(*b*)(i), s 8(4)(*b*)(ii)(A), s 8(7)(*a*) and s 7(6) TMA. In a nutshell, the Opponent contends that the Application Mark should not be registered because it conflicts with its earlier registered trade mark "CHATGPT" as well as various "GPT"-numbered suffix marks: see full list relied on at [13] below.

Procedural history

3 Both sides filed evidence in the usual way: by statutory declaration ("SD"). The Opponent's evidence comprises the following: (a) an SD made by Christopher Weimer, attorney of Pirkey Barber PLLC (the Opponent's counsel since 2021) dated 21 April 2025 ("OSD"); and (b) an SD in Reply made by the same Christopher Weimer dated 21 January 2026 ("OSDR"). The Applicant's evidence comprises an SD made by Vincent Wong Kam Wai, Chief Executive Officer of the Applicant, on 21 November 2025 ("ASD"). Neither party applied for cross-examination.

4 The volume of evidence filed far exceeds the 300-page limit per SD (see HMD Circular 3.3). The OSD spans 1933 pages, while the ASD contains 869 pages.[1] During the oral hearing, both sides were called upon for an explanation. In brief, counsel for the Opponent's justification was that substantial evidence was needed to show that its trade marks had attained well known status within a short period of time.[2] As for the Applicant, its counsel clarified that it had tendered legal decisions from the US Patent and Trademark Office, as well as research papers which show that "GPT" would be regarded as descriptive by

[1] For the record, the OSDR (73 pages) was within the 100-page limit for reply evidence.

[2] The key window was less than 6 months (from the launch date of the public-facing ChatGPT version on 30 November 2022 until the Relevant Date: 22 May 2023).

certain individuals. Part D of HMD Circular 3.3 provides that there may be costs implications if the page limit is exceeded. I will return to this point later under the section on costs.

5 Parties exchanged written submissions (the "Opponent's Written Submissions" and "Applicants Written Submissions", respectively) prior to the hearing in accordance with the usual timelines. On the day of the hearing itself, the Opponent tendered a set of rebuttal submissions (the "Opponent's Rebuttal Submissions"). The Applicant later sought leave to respond to these rebuttal submissions: see [10] below.

6 The matter was heard by the late Principal Assistant Registrar ("PAR") See Tho Sok Yee via videoconference on 4 May 2026. Sadly, my learned colleague passed away before she was able to render her grounds of decision. This was the last case that she heard as a hearing officer exercising the delegated authority of the Registrar under s 63(1) TMA.

7 The law is unclear as to what the Registrar should do in such a situation. Nevertheless, some guidance may be gleaned from O. 15 r. 14 of the Rules of Court 2021, which provides that:

> (1) Where a Judge or a Registrar who has heard a matter has not given his or her decision, or who has heard part of a matter, passes away or becomes incapable of giving his or her decision or continuing with the hearing for any reason, another Judge or Registrar may take over and give his or her decision based on the earlier hearing or continue with the hearing, if all the parties consent.
>
> (2) The Judge or Registrar who takes over the matter may recall any witness to give evidence and also order the parties to make further submissions.
>
> (3) If the parties do not consent under paragraph (1), the matter must be heard anew by another Judge or Registrar.

Notably, a similar provision can be found in O. 20 r. 16 of the Singapore International Commercial Court Rules 2021.

8 When I took over conduct of this matter, I convened a case management conference ("CMC") under rule 81A(1) of the Trade Marks Rules (under which the Registrar has broad case management powers and "may make such order or give such direction as he thinks fit for the just, expeditious and economical disposal of the matter") to discuss how the parties wanted to proceed.

9 Prior to the CMC, the parties were given two options that were loosely based on O. 15 r. 14 of the Rules of Court 2021. First, if they consented, a decision would be given based on the earlier oral hearing, having regard to all documents filed previously as well as any notes of hearing left behind by the late PAR. This first option contemplated the possibility of further submissions if necessary. The second option—which would apply if the parties were unable to agree to the first—was essentially a fresh oral hearing before me. (Similar options were offered to the parties in *NEXT Holdings Limited v NEXTEVO Holdings Pte. Ltd.* [2026] SGIPOS 12, which was the only other case which the late PAR heard, but did not render a decision for, before her passing.)

10 During the CMC, which was held on 10 June 2026, the parties agreed to the first option but wanted the opportunity to make further brief written submissions to address certain points that had arisen during the hearing before the late PAR. (And in the case of the Applicant, it sought leave to respond to the Opponent's Rebuttal Submissions.) I allowed the parties' requests. In accordance with my directions, both sides exchanged their further submissions on 1 July 2026 (the "Opponent's Written Further Submissions" and "Applicant's Further Written Submissions" respectively). Thereafter, the Opponent applied for leave to file an additional written response. I granted

leave. The final set of written submissions was filed by the Opponent on 29 July 2026 (the "Opponent's Additional Written Submissions").[3]

Background

The Opponent

11 The Opponent is an affiliate of the OpenAI group of companies (collectively, "OpenAI"). OpenAI is a multinational artificial intelligence ("AI") research and deployment company headquartered in the United States of America. OpenAI was founded in 2015 by founders who believed that AI has the potential to solve immense global challenges. OpenAI has been at the forefront of AI development, creating AI models used worldwide, including in Singapore.[4] OpenAI's flagship offerings include, among others, (a) "GPT", a natural language and code processing foundational model first made available in June 2018; and (b) ChatGPT, a consumer-facing, conversational AI system launched on 30 November 2022.[5] As no distinction needs to be drawn between the Opponent and OpenAI for present purposes, I use the terms interchangeably.

12 The ChatGPT program is built on OpenAI's foundational "GPT" large language models (GPT-3.5 at the time of launch) and follows a dialogue format which allows users to give instructions and receive text-based responses. Since 2018, the Opponent has come up with improved "GPT" models and designated them with successive numbers, namely: "GPT-2" in 2019, "GPT-3" in 2020, "GPT-3.5" in 2022, "GPT-4" in March 2023 and "GPT-4o" in May 2024. These models are made available to software developers, business and corporate users, as well as the public.[6]

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3 For the record, it was refiled on 30 July 2026 with some formatting errors corrected.
4 OSD at [4]-[5].
5 OSD at [6].
6 OSD at [8]-[11].

13 In Singapore, the Opponent is the proprietor of the following registered trade marks (collectively, the "Opponent's Earlier Marks"), all of which pre-date the Application Mark.[7]

(a) The "ChatGPT Marks":

(i) "CHATGPT" (TM No. 40202306516Y);[8]

(ii) "" (TM No. 40202400208X);[9] and

(b) The "GPT Model Marks":

(i) "GPT-3" (TM No. 40202304935P);[10]

(ii) "GPT-4" (TM No. 40202305044U);[11]

(iii) "GPT-5" (TM No. 40202315974V);[12]

(iv) "GPT-6" (TM No. 40202323542S);[13] and

(v) "GPT-7" (TM No. 40202323544V).[14]

The Opponent does not have an earlier registration for "GPT" on its own.

The Applicant

14 The Applicant is a Singapore AI tech start-up founded in 2022. It is part of the BP de Silva group which has its core businesses in the gemstones and

7 OSD at [18] and Exhibit OSD-03.
8 Registered in Classes 9 and 42.
9 Registered in Classes 9 and 42.
10 Registered in Class 42.
11 Registered in Classes 9 and 42.
12 Registered in Classes 9 and 42.
13 Registered in Classes 9 and 42.
14 Registered in Classes 9 and 42.

jewellery sectors.[15] It leverages on technology to improve gemstone identification. More specifically, the Applicant built an object detection application which analyses images and optical data by computer-vision deep-learning models using transformer architecture. The models are trained using in-house image datasets to infer the grade, authenticity and treatment of gemstones, the output of which is provided to the Applicant's users, so that they can access gemstone information and certification more conveniently and at a lower cost.[16] The Applicant was a finalist of the inaugural Design AI and Tech Awards 2025 launched by The Business Times and the Singapore University of Technology and Design because of this technology.[17] Its write-up in The Business Times recognised that the Applicant's system aimed to create a more standardised, efficient and transparent gemstone trade, benefitting miners, traders and consumers.[18]

15 According to the Applicant, it chose the Application Mark "GemGPT" because "Gem", the prefix, designates its domain in gemstones; and "GPT", the second verbal element conjoined to the prefix, designates the mark's use in relation to the Applicant's collection of generative AI models with the underlying architecture built on the transformer algorithm.[19] The Applicant's service is neither built on nor powered by any models offered by OpenAI, and was developed specially based on the transformer architecture, pre-trained in-house with a large dataset of gemmologist labelled samples which are proprietary and/or licensed to the Applicant.[20]

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15 ASD at [5].
16 ASD at [6]-[8].
17 ASD at [10] and Exhibit VWKW-1 at Tab 2.
18 *Ibid.*
19 ASD at [12].
20 ASD at [37].

Evidence of public perception

16 To succeed in this opposition, OpenAI must establish that at least one of the pleaded grounds of opposition has been made out at the Relevant Date (22 May 2023). Stripped of legalese, the Opponent's case is that the Application Mark is objectionable because it contains "GPT". The upshot of OpenAI's arguments is that, at the Relevant Date, no other trader was permitted to use or register a mark comprising or consisting of "GPT"—at least in connection with artificial intelligence software services but arguably extending to other areas of commerce as well—without its consent.

17 Because the competing marks coincide solely in the "GPT" letter string, the outcome of this opposition largely turns on whether, at the Relevant Date, a substantial proportion of the relevant public considered "GPT" to be a badge of origin *designating* goods or services from the Opponent (as contrasted with merely being terminology associated with AI models or technology). Where "GPT" falls on the distinctiveness spectrum can only be resolved by carefully examining the evidence—and in particular the evidence relating to Singapore—concerning "ChatGPT" and "GPT" at the Relevant Date. Before I begin, it behoves me to make five preliminary observations.

(a) First, while it was undisputed that the assessment concerns the situation at the Relevant Date, there were documents in evidence (from both sides) relating to matters after 22 May 2023. Where it was beneficial to their case, each side put forward arguments about why such evidence should still be considered whilst arguing that the other side's documents post-dating the Relevant Date should not be considered or be given little weight. In my view, the proper approach is not to disregard documents dated after the Relevant Date. To the extent that such evidence sheds light on the situation at the key time, I give it due weight.

(b) Second, it is axiomatic that "he who asserts, must prove". The onus is not on the Applicant to establish that a substantial proportion of the public would be able to expand the abbreviation "GPT" to "Generative Pre-trained Transformer". Moreover, whether the public can spell out what "GPT" stands for is not the litmus test for whether it is descriptive or not.[21] Indeed, it is quite the opposite: since the Opponent contends that the Application Mark should not be registered because it contains "GPT", it is the Opponent which bears the burden of showing that the relevant public would regard "GPT" as inherently distinctive of its goods and services or, where appropriate, distinctive through use.

(c) Third, the evidence tendered by *both* parties showed that, at the Relevant Date, "GPT" would have been understood by at least some technologically sophisticated segments of the public in Singapore as standing for, or as a reference to, "Generative Pre-trained Transformer". It is common ground that the Singapore general public forms part of the relevant public under consideration, being actual or potential consumers of artificial intelligence software and related services. However, the parties are divided on the interrelated issues of: (i) what significance should be accorded to technologically sophisticated segments of the public (including technology and AI professionals); and (ii) whether the general Singapore public itself was sufficiently technologically knowledgeable to recognise the alleged descriptive meaning of "GPT". I return to this issue later at [41]-[42] below.

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[21] Consider, for instance, CAPTCHA, which is commonly encountered by users on the internet. While it is common knowledge that CAPTCHA is a type of challenge-response test used to distinguish human users from bots/crawlers, not many would be able to expand the acronym/abbreviation to "Completely Automated Public Turing test to tell Computers and Humans Apart". Other examples in the field of AI technology include RAG (Retrieval Augmented Generation), where the AI retrieves information before generating a response, and LLM (Large Language Model).

(d) Fourth, my findings as to whether "GPT" would have been perceived as designating trade source are principally directed at determining the *weight* that it plays in the marks-similarity assessment (which also impacts on, among other things, the likelihood of confusion evaluation). My findings relating to "GPT" should not be interpreted as expressing a view on the inherent distinctiveness of any of the GPT Model Marks; they are registered trade marks and their validity is not in issue in these proceedings.[22]

(e) Fifth (and this is related to the fourth point above), I have considered the parties' helpful submissions relating to two decisions of this tribunal under ss 7(1)(*b*) and 7(1)(*c*) of the TMA: (i) *Abbott Laboratories v Société des Produits Nestlé S.A.* [2019] SGIPOS 11 (upheld on appeal by the High Court with no written grounds of decision) concerning the registrability of "HM-O"; and (ii) *In the matter of a trade mark application by BioMedical Research Group Inc. & Anor* [2024] SGIPOS 3 which evaluated the registrability of "IP-PA1". While the legal principles discussed therein are of assistance, I will not discuss those cases in detail because they relate to a different provision in the TMA and the issue of registrability of "GPT" is not in issue.

18 I now turn to the evidence at hand, which I think can fairly be described as voluminous (see [4] above).

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[22] I note that the Opponent's Earlier Marks were registered without needing to rely on evidence of use. This was confirmed by Opponent's counsel in post-hearing submissions.

ChatGPT

19 As touched upon earlier, ChatGPT was launched to the public on 30 November 2022 (see [11] above). The public-facing model was said to have "democratised artificial intelligence" and to have been the "gold standard for AI bots" due to its availability and the ability to converse in natural language.[23] Some described its rapid adoption as a "tsunami of popularity".[24] These statements were supported by solid numbers: within the first five days of launch, ChatGPT had been accessed by more than 1 million users. By January 2023, which was just two months after launch, ChatGPT was estimated to have reached 100 million monthly active users with an average of about 13 million unique visitors per day during that same period. And by February 2023, there were 1,722,000,000 global visits to openai.com. (As there was no standalone chatgpt.com site at the time, users had to access ChatGPT through openai.com.)

20 Focusing on Singapore specifically, a data analytics report submitted by the Opponent showed that for 1 November 2022 to 25 December 2022, there were 335,668 visits to openai.com from Singapore (out of a total of 50.8 million views globally for that same time period).[25] There was also extensive coverage in the local media, including on The Business Times, Lianhe Zaobao, The Straits Times, and Channel NewsAsia.[26] Notably, by April 2023, there were over 8,300 OpenAI API accounts with Singapore billing addresses.[27] And by July 2023, there were over 32,000 ChatGPT Plus accounts with a Singapore billing address.[28] (ChatGPT Plus was available in Singapore from February 2023

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23 OSD at Exhibit OSD-10, p 1380.
24 OSD at Exhibit OSD-02, p 49.
25 OSD at Exhibit OSD-10, pp 1279-1280.
26 OSD at [36(f)]-[41], and Exhibits OSD-09 and OSD-10 generally.
27 OSD at [9], Exhibit OSD-02 at pp 61-62.
28 OSD at [46]. This was slightly after the Relevant Date, but remains good evidence.

onwards.[29] The foregoing numbers do not include the free accounts, for which the visit count which follows is a better gauge.) By the Relevant Date, there were almost 11 million monthly visits to openai.com from Singapore.[30] There was also survey evidence from a study conducted by IN-cube, which appears to be affiliated with the Wee Kim Wee School of Communication and Information at Nanyang Technological University (NTU), in June 2023 (very shortly after the Relevant Date). The results of the survey showed that out of 1,000 adult residents in Singapore, 9.1% used ChatGPT "very often", while 16.5% said that they use it "often". The number of respondents who said they have never used ChatGPT decreased from 58.3% in February 2023 to 33.4% in June 2023.[31]

21 There was substantial evidence that ChatGPT had by the Relevant Date become the subject of public discussion in Singapore. I will discuss a small but representative selection, focusing on matters prior to and around 22 May 2023.

(a) On 7 December 2022, The Straits Times carried an article by Parmy Olson titled *ChatGPT could soon be the better way to google*. The article described how the "new chatbot from OpenAI" was taking the world by storm. Among other things, it explained that this was the first time OpenAI was bringing its "powerful language-generating system known as GPT3 to the masses".[32]

(b) In February 2023, "Artificial Intelligence Technologies and ChatGPT" was discussed in Parliament. In essence, the Minister for Education was asked various questions by Members of Parliament about

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29 OSD at [36] and Exhibit OSD-02, p 238.

30 OSDR at [15] and Exhibit OSDR-04, p 33.

31 OSD at Exhibit OSD-09, p 1176. Apart from this specific study, there was other survey evidence as well, but those reports did not clearly relate to ChatGPT and/or Singapore.

32 Exhibit OSD-09, pp 1181–1182.

the impact of ChatGPT and other AI technologies on education, and what the Ministry of Education's plans were.[33]

(c) On 14 February 2023, The Straits Times published an article by Osmond Chia titled *Civil servants to soon use ChatGPT to help with research, speech writing*. In explaining how OpenAI's ChatGPT would be used by civil servants, the article referred to "ChatGPT, or Chat Generative Pre-Trained Transformer".[34]

(d) On 21 February 2023, the Channel NewsAsia website carried a piece by Toby Walsh titled *Commentary: Gaslighting, love bombing and narcissism – why is Microsoft's Bing AI so unhinged?* The article explained that earlier that month, Microsoft announced it had incorporated ChatGPT into Bing (its search engine), giving birth to a new service called Sydney. The author commented that "Sydney may not be built on OpenAI's GPT-3 chatbot (which powers the popular ChatGPT)" and that "it may be built on the yet to be released GPT-4".[35]

(e) On 16 March 2023, TODAY (a local publication) published an article about the use of ChatGPT in the workplace titled *ChatGPT at work: Some S'pore bosses, workers embrace AI tool, others wary or don't admit use to avoid looking 'incompetent'*. The article reported on the differing perceptions of AI use and in so doing, repeatedly referred to ChatGPT. It also recognised a real estate firm, ERA Singapore, as having "integrated the commercial version of the product – GPT-3 – into its inhouse processes".[36]

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33 OSD at [36(b)], Exhibit OSD-09 at pp 1046, 1057.
34 Exhibit OSD-09, p 1037. The article was later updated on 22 November 2024.
35 Exhibit OSD-10, pp 1403–1404.
36 OSD, Exhibit OSD-10, pp 1566–1568.

(f) On 17 March 2023, Channel NewsAsia carried a Bloomberg Opinion article by Parmy Olson titled *GPT-4 could turn work into a hyperproductive hellscape*. The author explained the upgrade by saying that, if ChatGPT were a car, "the new language model known as GPT-4 adds a more powerful engine." The rest of the article went on to describe some of the features of the GPT-4 model, describing it as a powerful AI system that would raise the bar for humanity.[37]

(g) On 18 April 2023, the School of Computing, National University of Singapore, held an event titled "Chat on GPT", a hybrid workshop for students, faculty, administrators and members of the general public interested in working with and understanding AI tools.[38] There, "ChatGPT" was introduced alongside other technologies such as "GPT4, Midjourney or the new Microsoft Bing". (Notably, the title was wordplay which suggested that it would be a chat not just about "ChatGPT", but also on "GPT" and other AI technologies.)

22 More can be said about the evidence, but I should conclude. I have little difficulty accepting that by 22 May 2023, ChatGPT had achieved considerable public exposure in Singapore. Taken as a whole, the evidence relating to Singapore traffic, institutional adoption, public adoption and public discussion is significant.[39] As a result of OpenAI's activities as well as the message conveyed by the media and various quarters of the public, by the Relevant Date a substantial proportion of the Singapore public would have regarded the sign "CHATGPT" as a badge of origin designating a product and service exclusively provided by OpenAI.

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37 Exhibit OSD-10, pp 1408 onwards.
38 OSD, Exhibit OSD-09, pp 1047–1048.
39 OSD at [35]-[48] and corresponding Exhibits OSD-09 and OSD-10.

GPT & GPT- Numbered Models

23 I accept that, by the Relevant Date, the Opponent was taking active steps to assert proprietary rights over "GPT" and the numbered GPT-models. In Singapore, it had applied to register "GPT-3" on 14 February 2023 and "GPT-4" on 14 March 2023.[40] It had also sought protection for "GPT" alone in certain overseas jurisdictions before the Relevant Date, including in the United Kingdom, the European Union, and Switzerland.[41] The Opponent's own materials likewise made clear that the numbered GPT models were models which it had developed. Pertinently, a March 2021 OpenAI publication stated that more than 300 applications were using GPT-3 through the OpenAI API,[42] while its announcement of GPT-4 in March 2023 began with the words "We've created GPT-4" and explained that the Opponent had trained GPT-3.5 and was releasing GPT-4 through ChatGPT and its API.[43]

24 However, even if: (a) OpenAI itself regarded "GPT" and the GPT Model Marks as proprietary trade marks; and (b) the public in Singapore associated "GPT" and the formulation GPT-with-model-number with OpenAI, it does not necessarily follow that the public would have perceived "GPT" alone as distinctive in the trade mark sense at the Relevant Date. Below, I discuss the evidence relating to "GPT" as a reference to technology.

25 At least in the early months after the release of ChatGPT, OpenAI appeared to be focused on educating the public around the world that ChatGPT was its product built upon "GPT", and that "GPT-3" / "GPT-4" (the versions

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40 OSD at [18]-[20], Exhibit OSD-03.

41 OSD, Exhibit OSD-03, pp 410-412. There were also registration disputes relating to some of the Opponent's applications/registrations, but the point is that by the Relevant Date the Opponent actively sought protection for "GPT" / "GPT"-formative marks.

42 OSD, Exhibit OSD-02, p 139.

43 OSD, Exhibit OSD-02, pp 171-172.

which were current at the time) were version numbers of an AI model which it had developed. For instance, the March 2023 announcement described GPT-4 as a "large multimodal model", compared GPT-3.5 and GPT-4 as "the two models", and elsewhere referred generally to "previous GPT models".[44] Some of the earlier GPT-3 materials spoke of applications "using GPT-3", of GPT-3 "powering" applications, and of developers accessing its capabilities through the OpenAI API.[45] The Opponent's ChatGPT launch material also described ChatGPT as having been fine-tuned from "a model in the GPT-3.5 series".[46]

26 The evidence also suggests that in August to September 2022 (shortly before ChatGPT was launched to the general public), the term "GPT" was already known to, and being used by, researchers in the field of artificial intelligence as technological terminology referring to a family of large language models ("LLMs") pre-trained on massive amounts of data, based on transformer architecture, and which were used for generation-related tasks.[47] Examples of such descriptive-technical use from researchers with no disclosed links to OpenAI include the following:

(a) In an August 2022 paper titled *SGPT: GPT Sentence Embeddings for Semantic Search*, the author, Niklas Muennighoff, from Peking University, referred to "GPT-like decoder-only transformers" as a category of transformer models;[48] and

(b) In an article published in September 2022 by researchers from Microsoft Research titled *BioGPT: generative pre-trained transformer for biomedical text generation and mining*, the authors referred to

44 OSD, Exhibit OSD-02, pp 171, 172, 187.
45 OSD at Exhibit OSD-02, pp 139-142.
46 OSD at Exhibit OSD-02, p 224.
47 ASD at [25], and extracts at VWKW-1 at Tab 12.
48 ASD at Exhibit VWKW-1, Tab 12, p 211.

> "BERT (and its variants) and GPT (and its variants)" as the two principal branches of pre-trained language models and introduced BioGPT as a domain-specific generative Transformer language model.[49] Elsewhere, it described "Generative Pre-trained Transformer (GPT)" as a model for language-generation tasks, before referring to GPT-2 and GPT-3.

27 Tracing back further in time, one might ask: who first used the "GPT" abbreviation? Was it OpenAI? Or someone else? The answer to that question may depend on what one thinks it stands for. It seems that the "T" in "GPT" does not necessarily have to stand for "Transformer"; it could refer simply to "Generative Pre-Training". One of the earliest recorded references to "Generative Pre-Training" in the evidence was OpenAI's paper, published in 2018, titled "Improving Language Understanding by Generative Pre-Training".[50] That paper did not use the term "transformer" in relation to the technology, nor did it contract "Generative Pre-Training" to "GPT". As for "Transformer", that term was arguably first used in the context of machine learning in a paper titled "Attention Is All You Need", published by Google researchers in 2017.[51] It seems that somewhere along the way, OpenAI and others also started using the term "Transformer". Thereafter, the "T" in "GPT" later became known as standing for "Transformer" (with "trained" relegated to a subsidiary role under the letter "P", as in "Pre-trained").

28 Even if "GPT" was known within AI and technical communities as a reference to a type of LLM technology or architecture, that does not end the inquiry. What did the general public think? This thread of discussion brings me to a memorable passage in an article by Billy Perrigo, titled "The A to Z of

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49 ASD at Exhibit VWKW-1, Tab 12, pp 211-213.
50 ASD at [17], Exhibit VWKW-1 at Tab 8.
51 ASD at [17], Exhibit VWKW-1 at Tab 7.

Artificial Intelligence", published by TIME on 13 April 2023.[52] Under the subheading "GPT", the author remarked:

> Perhaps now the most famous acronym in AI, and barely anybody knows what it stands for. GPT is short for "Generative Pre-trained Transformer," which is essentially a description of the type of tool ChatGPT is. "Generative" means that it can create new data, in this case text, in the likeness of its training data. "Pre-trained" means that the model has already been optimized based on this data, meaning that it does not need to check back against its original training data every time it is prompted. And "Transformer" is a powerful type of neural network algorithm that is especially good at learning relationships between long strings of data, for instance sentences and paragraphs.

Both sides considered this piece (published before the Relevant Date) to be of assistance to their case. The Applicant relied on it as evidence that "GPT" was the "most famous acronym in AI" (and hence descriptive), whilst the Opponent pointed out that if "barely anybody knows what it stands for" then it must be meaningless (and hence inherently distinctive).

29 My reading of this extract from TIME above (against the backdrop of all of the evidence) is that at the time, "GPT" was widely recognised in connection with AI, but not necessarily in the trade origin sense. It was featured and discussed alongside other technical jargon in the same article such as AGI (for Artificial General Intelligence), GPU (or graphics processing units), and large language models (or LLMs). Arguably, "GPT" became a "famous acronym"[53] because ChatGPT captured the Zeitgeist. And because ChatGPT was so well known, it would have been only natural to ask (and for the author to address the question in TIME): what exactly is a "GPT" in the first place?

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52 ASD, Exhibit VWKW-1 at Tab 12, p 192.

53 Technically speaking, "GPT" is not an acronym but an initialism (or more broadly, an abbreviation). Acronyms can be pronounced as words (e.g. World Intellectual Property Organization, or WIPO, can be enunciated as WII-PO or WAI-PO), whereas initialisms would be spelled out letter by letter (here: GEE-PEE-TEE).

Ultimately, my takeaway is this: even if barely anyone knew that it stands for "Generative Pre-trained Transformer", a significant proportion of the public would nevertheless be aware that the letter string has something to do with AI because it appears in ChatGPT. This is no mere circular reasoning: it reflects the reality that the general public's first direct and (in many cases) persistent encounter with general-use AI was through ChatGPT.

30 Beyond the public-facing angle, there was evidence that third parties were using (or advertised their intended use of) signs which incorporated the element "GPT". For instance, GPTZero (designed to discern whether a work was AI-generated) was first launched as a web application in December 2022 and formally launched in January 2023; the evidence records that some 30,000 persons accessed the initial version when it was released.[54] BioGPT provides another example of GPT being incorporated into the name of an AI model outside of the Opponent.[55] Relatedly, there was some indication that new corporate entities containing "GPT" in their business/company name were being registered in Singapore. Examples include: THINKGPT (UEN No. 53464251M, incorporated on 10 March 2023), GPT AI PTE. LTD (UEN No. 202314903G, incorporated on 18 April 2023), and GPT DESK PTE. LTD (UEN No. 202319028W, incorporated on 16 May 2023).[56] The Opponent criticised these examples,[57] and argued that they were at best 3 instances in Singapore (2 of which were struck off)—insufficient to amount to normalised third party use.[58] While I acknowledge the point, it shows at the very least that businesses

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54 ASD, Exhibit VWKW-1, Tab 13, pp 280, 285-287.

55 ASD, Exhibit VWKW-1, Tab 12 and 13, pp 212-213 and 292-296 respectively.

56 Applicant's Written Submissions at [24(d)], and Annex A.

57 The Opponent argued against the eleventh-hour inclusion of these references and the fact that they were not submitted under cover of SD but instead slipped in as an annexure: see footnote 56 above. Even so, ACRA business registration information is a matter of public record, and I do not see why I must necessarily ignore it.

58 Opponent's Rebuttal Submissions at [19].

in Singapore were starting to consider (if not implement) the use of "GPT" in connection with AI and related services; something which is not inconsistent with a finding that "GPT" did not exclusively indicate a single trade origin.

31 Indeed, as far as I can tell, for some months *after* the Relevant Date the incidence and cadence of such third-party use of "GPT" around the globe increased somewhat.[59] In its submissions, the Opponent criticised the third-party use of "GPT" as opportunistic behaviour; designed to deceive the public into thinking that there is some commercial connection with OpenAI when there is not. (Some of this use resulted in trade mark disputes outside of Singapore: see the decisions recorded in the Opponent's evidence[60] and written submissions.[61]) While I do not think that it is necessary for me to make any specific findings about the marketplace evidence—apart from observing that there was certainly some exploitative use of "CHATGPT" in certain quarters of the globe—my takeaway is that at least some third parties considered the use of "GPT" in conjunction with some other element to be fair game. It may be inferred that they thought "GPT" to be a term which was free for all to use.

32 There was other relevant evidence, but the general tenor of it does not differ from what I have already described. I will now proceed to draw this segment to a close. Extrapolating from the material discussed above and the documents considered above in the context of ChatGPT, the key message to the public in Singapore and around the world at the Relevant Date was that "GPT" was a reference to a type of AI technology. This same message was amplified by the media which was eager to explain what "GPT", in the context of ChatGPT, meant. Not every writer, media source, or publication treated "GPT"

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59 See ASD at [26] and documents exhibited at ASD, Exhibit VWKW-1 at Tab 13.
60 OSD at Exhibit OSD-04.
61 Opponent's Written Submissions at Annex A.

as descriptive. There were some who recognised "GPT" as OpenAI's trade mark. (For example, an extract from the online Cambridge Dictionary entry for "GPT", dated 24 July 2023,[62] defined "GPT" both as a "trademark specialized" as well as an "abbreviation for Generative Pretrained Transformer: a type of artificial intelligence that uses deep learning [*definition omitted*] to produce high-quality text".) However, I am *not* persuaded that a substantial proportion of the relevant Singapore public would have perceived "GPT", standing alone, as a badge of trade origin at the Relevant Date.

33 What about the GPT Model Marks? My finding that "GPT", standing alone, was non-distinctive of the Opponent's goods and services at the Relevant Date does not necessarily mean that the GPT Model Marks, considered as wholes, were likewise non-distinctive. I would make two points here.

(a) First, for present purposes, it is unnecessary for me to (and I do not) determine whether the GPT Model Marks possessed inherent or acquired distinctiveness. What I can say is that there were some efforts by the Opponent to convey to the public—through statements such as "created GPT-4" and "trained GPT-3.5"—that these were AI models (or versions of models) developed by and harnessed for the Opponent's purposes. But these efforts do not alter my overall conclusion that "GPT" alone would not have communicated trade origin.

(b) Second, I must emphasise that *recognition* by the general public (or certain sectors of the public, e.g. those that work in AI or technology fields) that "GPT", "GPT-3" or "GPT-4" are AI *models* developed by or connected with OpenAI does not necessarily equate to perception that

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62 OSDR at [9], Exhibit OSDR-02, p 18. This was accessed using the Wayback Machine capturing a snapshot of a time not long after the Relevant Date.

the letter string "GPT" in the models indicate trade source.[63] At the end of the day, the law of trade marks is meant to protect signs used (or intended to be used) in business. But it is not clear to me that OpenAI was monetising its AI models in trade by reference to those signs at the Relevant Date. Its business activity appeared to be conducted primarily by reference to "CHATGPT" rather than the GPT Model Marks.

34 A word of caution. My findings are based on the evidence relating to the Relevant Date: 22 May 2023. It was a time not long after ChatGPT had been launched. As my sketch of the evidence illustrates, it was also a time when other third parties were using "GPT" as part of a trade name or trade mark: see [30]-[31] above. Things may change. How the public in Singapore today—or tomorrow—perceives "GPT" may be very different from the Relevant Date.

Section 8(2)(*b*) TMA

35 Section 8(2)(*b*) TMA provides that:

> 8. (2) A trade mark must not be registered if, because —
>
> (a) [*omitted*]
>
> (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.

36 It is settled law that under s 8(2)(*b*) TMA, the step-by-step approach is to be applied (see *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc and another and another appeal* [2014] 1 SLR 911 ("*Staywell*") at [15]). Under the step-by-step approach, the three requirements (*viz.* similarity of marks, similarity (or identity) of goods or services, and

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63 This argument was advanced by the Opponent in the Opponent's Written Submissions at [40(b)], with variants of the same theme in the rebuttal and further submissions.

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

37 The earlier trade marks relied on by the Opponent against the Application Mark "GemGPT" are the ChatGPT Marks and the GPT Model Marks enumerated at [13] above. Technically speaking, it is necessary to compare each of the ChatGPT Marks and the GPT Model Marks to "GemGPT". However, I propose to focus on one from each category: (a) the plain word mark "CHATGPT" (TM No. 40202306516Y); and (b) "GPT-4" (TM No. 40202305044U), the trade mark which corresponds to the model which had been released in March 2023, around 2 months prior to the Relevant Date (22 May 2023). In my view, they represent the Opponent's best case against the Application Mark; the others do not materially strengthen the Opponent's position beyond what is already covered by these two marks.[64]

Similarity of marks

38 I now begin with the first step: marks-similarity.

39 The applicable legal principles relating to the marks-similarity analysis are trite. They are set out in *Staywell* as well as various leading decisions of our Court of Appeal, which I have had regard to, including *Sarika Connoisseur Café Pte Ltd v Ferrero SpA* [2013] 1 SLR 531 ("*Sarika*"), *Hai Tong Co (Pte) Ltd v*

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64 The reason I do not use "ChatGPT●" as a reference point is because it is registered for the same goods and services as "CHATGPT" and contains an additional black ball device which, if anything, serves as a further point of differentiation. As for the other numbered GPT Model Marks, two points may be made. First, the Application Mark does not contain any numbers and on the facts the different suffixes do not materially change the contours of the analysis. Second, although the GPT Model Marks do not share identical specifications, there is nevertheless substantial common ground between all of them in respect of Class 42.

Ventree Singapore Pte Ltd and another and another appeal [2013] 2 SLR 941 ("*Hai Tong*"), and *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 ("*Caesarstone*"). I have also considered relevant decisions of the High Court, including *Courts (Singapore) Pte Ltd v Big Box Corporation Pte Ltd* [2018] 5 SLR 312 and *V V Technology Pte Ltd v Twitter, Inc* [2023] 5 SLR 513 ("*Twitter*").

40 I am mindful of the reminder in *Twitter* that distinctiveness should not be considered as a threshold enquiry and that it should be integrated into the visual, aural and conceptual analysis: see *Twitter* at [76] citing *Staywell* at [30]. I also bear in mind that evidence relating to acquired technical distinctiveness should not be considered at the marks-similarity stage at all (see *Twitter* at [119]). Nevertheless, general contextual evidence relating to background knowledge (in this case: whether the public considered "GPT" to be descriptive or meaningless) that is independent of the trader's public activities may be taken into account at the marks-similarity stage (see *Twitter* at [115]).

The relevant public

41 Since the issue of similarity is assessed through the eyes of the average consumer of the services in question, this is a good time to address who the relevant public is, and what its characteristics are. As mentioned, the parties accept that the general public in Singapore is relevant to the assessment. However, they do not agree on whether the general public would recognise the descriptive meaning of "GPT". They also disagree about the significance that should be accorded to technologically sophisticated segments of the public (including technology and AI professionals) in Singapore who would be familiar with the term "Generative Pre-trained Transformer".

42 In my view, on the facts of this case it is unnecessary to be fixated on the tech-savvy segments of the public. Arguing about how large or significant these segments of the public are in Singapore is not going to be meaningful, especially since evidence was not led on this specific point. More importantly, given the explosive way in which "ChatGPT" burst upon public consciousness and the resultant efforts (independent of OpenAI) in public discourse to explain what exactly a "GPT" is, it suffices to focus on the general public, which is deemed to be reasonably well-informed and observant. It is true that different sectors of the public in Singapore may have differing degrees of technical familiarity with software and artificial intelligence. But having reviewed the evidence in context, I can accept that a substantial number would have been exposed to articles, publications, and other types of media describing "GPT" as a type of AI model or technology. Consequently, they would have had difficulty perceiving "GPT" as designating trade origin. As I alluded to above (at [17(d)]), it follows that this element should be given less weight in the assessment.

Visual similarity

43 I begin with visual similarity.

44 The Opponent's case on visual similarity was constructed on the following broad lines. "GPT" is the common component in the competing marks. Not only is "GPT" common, but it is also the distinctive and dominant component on both sides.[65] In comparison, "CHAT", "Gem", and the numbered suffixes are less distinctive (having regard to the services in question) and are not dominant. They would therefore have less, or negligible significance in the comparison. Further, "GPT" would be regarded by the average consumer in Singapore as an invented acronym or three letter string without any clear

[65] Opponent's Written Submissions at p 12.

meaning and hence possesses a higher distinctive value. Even if a section of the public may perceive "GPT" as referring to or an abbreviation for "Generative Pre-trained Transformer", it does not follow that this is common knowledge to other relevant segments of the public.

45 The Applicant submits that there is no visual similarity. It argues that the "GPT" component should not be regarded as the dominant or distinctive component of the competing marks. It contends that "GPT" is descriptive of a type of AI technology and/or an abbreviation or acronym for "Generative Pre-trained Transformer"—at least within technology and AI industry circles as well as enthusiasts, which in its view forms a large part of the relevant public.[66] The consequence of all of this is that less visual weight should be placed on the common GPT element and greater attention should be given to the other components (namely: "CHAT", "GEM", and the hyphenated model numbers) even as they are compared as wholes. Underlying the Applicant's submissions were variations of the same theme: "GPT" is a descriptive term which other traders may legitimately use and register in connection with machine learning and other AI-related goods and services; and to allow the Opponent to succeed would be tantamount to giving an impermissible monopoly over "GPT".

46 I first begin by analysing "CHATGPT" and "GemGPT".

47 In my assessment, it is important not to give a mere token nod to the fundamental principle that the marks must be assessed as wholes. Here, the competing marks may both contain the letter string "GPT", but those three letters do not stand alone visually. They are melded with the letters that come before: "CHAT" and "Gem" respectively. (It is true, of course, that the

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66 Applicant's Written Submissions at [25].

lowercase letters "e" and "m" in "Gem" result in "GPT" being emphasised a little more, but the point remains that "GemGPT" is presented as one word.) While "CHAT" and "Gem" may be common words in the English language, and each arguably has some descriptive significance in relation to the services in question, the more important point is that the respective combinations with "GPT" must be considered as wholes.

48 Against that backdrop, I turn to address the question of whether "GPT" may be perceived as the distinctive and dominant component of both marks. In my view, at the Relevant Date, a significant proportion of the general public would have understood "GPT" by itself as having some sort of referential significance in relation to artificial intelligence software and other related technologies. They might not have known or been able to spell out that "GPT" was a reference to "Generative Pre-trained Transformer", but that is not the test. The important point is that the Opponent has not shown that "GPT", standing alone, would have been perceived as a badge of trade origin designating goods or services.[67] As regards non-technical distinctiveness (that is: what is outstanding and memorable), visually, "GPT" is merged into "CHAT" and "Gem" respectively and does not stand out except to the very limited extent that it is made up of a string of 3 letters. In my view, "GPT" is not the distinctive or dominant component of both marks. It plays a very ordinary role; one which cannot be ignored but cannot be accorded disproportionate weight.

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[67] For the "CHATGPT" mark, the relevant services in Class 42 are: *Providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable chatbot software for simulating conversations; providing online non-downloadable software for creating and generating text; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.* As for the Application Mark, see the Claimed Services laid out at [1] above.

49 To conclude: while "GPT" is part of both marks, neither "GPT" nor the prefixes ("CHAT" and "Gem", both of which are ordinary English words) can be said to be the dominant or distinctive elements of either mark. Even though "CHAT" and "Gem" may have some descriptive meaning in relation to the services, the assessment focuses on the respective combinations of "CHAT" and "Gem" with "GPT", considered as wholes. In sum, I find that "CHATGPT" and "GemGPT" are visually similar but only to a low degree. More precisely, they are visually similar only in that they coincide in their final three letters "GPT".

50 For completeness, the Opponent advanced the alternative argument that the distinctiveness of "CHATGPT" resides in the combination of "CHAT" with "GPT".[68] It submitted that as a result, the mark enjoys a high technical distinctiveness and therefore the threshold before a competing mark is considered dissimilar to it is likewise higher (referencing *Hai Tong* at [30]). I agree that the joinder of the two elements renders "CHATGPT" inherently distinctive. However, this does not materially assist the Opponent. Because the distinctive character of "CHATGPT" resides in the combination as a whole, whereas the Application Mark does not contain the "CHAT" element, the extent of similarity is limited to a low degree.

51 Next, I address "GPT-4" and "GemGPT".

52 Here, the analysis is slightly different, but the conclusion is similar. The registration is not for "GPT" but "GPT" with a numbered suffix. Numbers do not necessarily add trade mark significance. And the presence of a hyphen in front of a number does not normally tilt consumer perception in any meaningful way. The earlier registered mark is "GPT-4" as a whole, and it is this mark

[68] Opponent's Written Submissions at [54] onwards.

which must be compared with the Application Mark. It would not be right to isolate "GPT" and treat it as the distinctive (whether in the technical or non-technical sense) and dominant component. Even with imperfect recollection, average consumers would not forget that the earlier mark contains a hyphen and number suffix. On the whole, "GPT-4" is visually similar to "GemGPT" only to the extent that they coincide in the letters "GPT" (but in a different way from "CHATGPT" because here "GPT" is the prefix whereas in "GemGPT", "GPT" appears as the suffix). The hyphenated number suffix is not negligible. I find "GPT-4" and "GemGPT" to be visually similar to a low degree.

Aural similarity

53 I turn next to aural similarity.

54 Case law recognises two approaches to the aural similarity assessment (see *Staywell* at [31]-[32]). The first is to consider the dominant and distinctive component of the marks ("Dominant Component Approach") and the second is to undertake a quantitative assessment as to whether the competing marks have more syllables in common than not ("Quantitative Approach"). It is also well established that allowances are rightly made for imperfect recollection and careless pronunciation and speech. First impressions also matter in determining aural similarity between words: see *Sarika* at [31].

55 The Opponent's case is that the Opponent's Earlier Marks are aurally similar to the Application Mark from both a qualitative as well as quantitative analysis. Under the qualitative analysis, it submits that the competing marks are aurally similar on account of "GPT", which in its submission is the dominant and distinctive component in both marks. It argues that the other components in the competing marks are relatively less distinctive and of negligible significance in comparison to the dominant components. And under the quantitative analysis,

the argument is that each of the letters in "GPT" would be naturally read letter by letter (that is: "G-P-T") because it is an abbreviation that is unpronounceable as a word. Since the competing marks have more syllables in common than not, they are aurally similar on the quantitative analysis.

56 The Applicant accepts that the competing marks share the common syllables "G-P-T". However, it contends that the marks are still not aurally similar because of two reasons: (a) in ordinary pronunciation, first position elements (here: "CHAT" and "Gem") carry primacy and anchor listeners' recollection; and (b) there is, in its view, no aurally distinctive component to the Application Mark or the Opponent's Earlier Marks.

57 In my assessment, "GPT" is an aurally material component of the competing marks, but it would not—for similar reasons as those set out in the visual analysis above—be right to regard it as the dominant component of "CHATGPT", "GPT-4", or "GemGPT". In my view, there is no aurally dominant component of these marks. They would be spoken as wholes and no one component should be elevated over the others. The Dominant Component Approach is not necessarily helpful on the facts of this case. As regards the Quantitative Approach, the key point is that "GPT" is an unpronounceable abbreviation where each letter would have to be enunciated in turn, thus creating a three-syllable block "GEE-PEE-TEE". In contrast, "CHAT", "Four", and "Gem" are one syllable words. On the Quantitative Approach, notwithstanding the differences in the marks, there remains moderate aural similarity on account of the common "GEE-PEE-TEE" block of letters.

Conceptual similarity

58 Finally, conceptual similarity.

59 Here, the law is that the analysis seeks to uncover the ideas that lie behind and inform the understanding of the mark as a whole: *Staywell* at [35]. Such ideas must be evident in the look and feel of the mark, and not in something that is known only to the creator of the mark (see *Twitter* at [160]).

60 The parties take diametrically opposing views on conceptual similarity.

61 The Opponent submits that the competing marks are conceptually similar in that they all include the "GPT" acronym which imparts the idea of a technology or AI-related brand, product or model. It argues that "CHAT", "Gem", and the number suffixes are descriptive and will not alter the conceptual identity.

62 The Applicant's response is that there is no conceptual similarity because "GPT" is non-distinctive in relation to the goods or services, and the conceptual ideas behind the marks can only be drawn from the meaning of the English words in the text in connection with "GPT". It argues that: (a) "CHATGPT" conveys the meaning of technology used for informal conversation; (b) "GemGPT" conveys the concept of ideas or gemstones or perhaps some technology relating to the same; and (c) the GPT Model Marks give the impression of generative pre-trained transformer technology.

63 It is undeniable that there are some shared ideas in that "GPT" is evocative of AI technology. But this does not necessarily assist the Opponent's case. When viewed in context, "GPT" has some descriptive significance in relation to the services in question and this means that one cannot give undue conceptual weight to that element. And more importantly, "GPT" does not stand alone. It is fused with the other elements in the marks: "CHATGPT", "GPT-4" and "GemGPT". The effect of their combination is critical. To my mind,

"CHATGPT" conveys the idea of chatting or interacting with a "GPT", whereas "GPT-4" suggests a model number of an AI technology. As for "GemGPT", what is suggested to the viewer is that the "GPT" AI technology is for use in connection with gemstones or jewellery. These are very different ideas. I would conclude that conceptually, the marks are dissimilar to a substantial degree.

Conclusion on marks-similarity

64 It is well established that in assessing marks-similarity, there is no prescribed requirement that all three aspects of similarity must be made out before the marks can be found to be similar. These facets of similarity are not to be assessed in a formulaic fashion; rather, they are signposts towards answering the question of whether the marks are similar or not. Trade-offs can occur between the three aspects of similarity. (See *Staywell* at [17]-[18].)

65 On the facts of this case, the signposts do not point in the same direction. I have found the marks "CHATGPT" and "GPT-4" on the one hand, and "GemGPT" on the other, to be visually more similar than dissimilar, albeit to a low degree. Aurally, "GPT" would be pronounced as a string of three letters in the competing marks whereas the other elements are one syllable only. On that basis, I have found that there is a moderate degree of aural similarity. As for conceptual similarity, having proceeded from the premise that "GPT" does not denote trade origin, I have found that the marks are conceptually dissimilar to a substantial degree. All in all, I consider the competing marks to be more similar than dissimilar, but only barely. To be clear, I am by no means suggesting that a minimal threshold of similarity is sufficient to pass the three-step test. What I am saying is that the first step is satisfied, but only marginally.

66 If I had to decide the point (and I do not), I would describe "GPT-4" as being a hair's breadth closer to "GemGPT" as compared to "CHATGPT". But ultimately, this distinction is academic and makes no practical difference.

Similarity (or identity) of services

67 I proceed to the second step of the three-step test: similarity of services.

68 For convenience, I reproduce the relevant specifications under comparison below. (Since the Application Mark is sought to be registered in Class 42, although "CHATGPT" and "GPT-4" are also registered in goods in Class 9, for present purposes it suffices to focus on the Class 42 specifications.)

> CHATGPT
>
> **Providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable chatbot software for simulating conversations; providing online non-downloadable software for creating and generating text**; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.
>
> GPT-4
>
> Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models; providing online non-downloadable software for the artificial production of human speech and text; providing online non-downloadable software for natural language processing, generation, understanding and analysis; providing online non-downloadable software for machine-learning based language and speech processing software; providing online non-downloadable software for the translation text or speech from one language to another; providing online non-downloadable software for sharing datasets for the purpose of machine learning, predictive analytics, and building language models; providing online non-downloadable software for conversion of audio data files into text; providing online non-downloadable

> software for software for voice and speech recognition; providing online non-downloadable software for creating and generating text; providing online non-downloadable software for developing, running and analyzing algorithms that are able to learn to analyze, classify, and take actions in response to exposure to data; providing online non-downloadable software for developing and implementing artificial neural networks; application service provider featuring application programming interface (API) software; research and development services in the field of artificial intelligence; research, design and development of computer programs and software.
>
> GemGPT
>
> Artificial intelligence consultancy; Authenticating diamonds; Authenticating gemstones; Authenticating jewellery; Computer programming; Computer programming for data processing; Gemmological services; Gemstone authentication and certification services; Image processing software design; **Online provision of non-downloadable web-based software**; Platform as a service [PaaS]; Programming of computer software for evaluation and calculation of data; Programming of computer software for reading, transmitting and organising data; Providing temporary use of non-downloadable software for analyzing financial data and generating reports; Providing temporary use of online non-downloadable computer software for collecting, analyzing and organizing data in the field of deep learning; Software as a service [SaaS]; Software as a service [SaaS] featuring artificial intelligence software for machine learning; Software as a service [SaaS] featuring software for machine learning.
>
> (emphasis in bold and underline added)

69 The bold text under "CHATGPT" reflects the specifications which the Opponent considers to be a subset of the bold "GemGPT" Claimed Services. As for the underlined "GPT-4" specifications, although the Opponent did not specifically list all of these services in its arguments, I understand that its case is that some, or all, of these are a subset of the non-downloadable online software for machine learning services and/or SaaS (that is, software as a service) services covered by the Claimed Services in the Application Mark.[69]

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[69] Opponent's Rebuttal Submissions at [41].

70 The Applicant's case is that there is no similarity between the Claimed Services for which the Application Mark is sought to be registered, and the specifications for which the Opponent's Earlier Marks are registered. It argues, by reference to factors set out in *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 ("*British Sugar*") and discussed in *Staywell* (at [43]), that notwithstanding the apparent limited similarity in respect of artificial intelligence software and machine learning, a broad interpretation of computer software should not be taken (referencing *Christie Manson & Woods Limited v Chritrs Auction Pte. Limited* [2016] SGIPOS 1 ("*Christie Manson*") at [123]).

71 In particular, the Applicant contends that the Claimed Services under the Application Mark are for the purposes of gemmology—including analysing the inputs sent from the Applicant's proprietary hardware devices to make inferences related to gemstone identity, grade, authenticity, value, and provenance—and targeted to users in the gemstone trade and industry;[70] a sector which the services under the Opponent's Earlier Marks do not extend to. It says, referring to the *British Sugar* factors, that the respective uses, users, trade channels, are all different. It refers to the Opponent's focus on software in the artificial intelligence field and related services, and asserts that the services are for these reasons not substitutes and not in competition.

72 With respect, I am unable to agree with the Applicant. As the Opponent rightly points out, trying to distinguish the specifications in this way cuts against the long-standing principle that in trade mark opposition proceedings, one must consider not only the actual uses of the marks but also the notional uses (see *Staywell* at [60]). In *Staywell*, an attempt to distinguish the parties' services based on actual use (Park Regis being a four-star hotel and the other, St. Regis,

[70] ASD at [36].

a six-star hotel) was rejected. As the Court of Appeal held in *Staywell* (at [41]), "hotel services are hotel services, whether these concern a luxury hotel or a more modest one". Here, the Applicant's business may be focused on the use of artificial intelligence and technology in connection with gemstones and jewels, but the specifications claimed are not so narrow. Assuming the Application Mark is registered, it would be protected for the full range of the Claimed Services including "Online provision of non-downloadable web-based software" and "Software as a service [SaaS]". At the same time, the coverage under the Opponent's Earlier Marks is not so restricted such that gemstones are excluded from their ambit. (For completeness, I observe that *Christie Manson* was not an overlap situation: it concerned, among others, whether auctioneering in Class 35 is similar to computer software and related services in Class 9.)

73 I agree with the Opponent's submission that the respective services are identical to the extent that some of the services under "CHATGPT" and "GPT-4" are sub-sets of the Claimed Services. For example, the service of "Online provision of non-downloadable web-based software" is broad and covers online non-downloadable software under the "CHATGPT" mark (including the artificial production of human speech and text, natural language processing, generation, understanding and analysis, the creation and generation of text). As for "GPT-4", "Software as a service (SaaS) services, namely, providing online non-downloadable software for using language models" is a subset of "Software as a service [SaaS]" (in the Claimed Services under the Application Mark). More examples can always be given, but the point has been sufficiently made.

74 I therefore find that the second step of the three-step test is satisfied.

Whether there is a likelihood of confusion?

75 Finally, the third and final step: likelihood of confusion.

76 There are at least two aspects to the element of confusion: (a) mistaking one mark for another; and (b) where the relevant segment of the public may well perceive that the contesting marks are different, but may yet remain confused as to the origin which each mark signifies and may perceive that goods bearing the two marks emanate from the same source or from sources that are economically linked or associated (see *Caesarstone* at [57]).

77 The Opponent's case is that the following factors point towards a finding of a likelihood of confusion: (a) the high degree of similarity between the marks; (b) the impression, arising from "GPT", that the competing signs are both used in connection with some sort of tech or AI product/service; (c) the distinctive and dominant nature of "GPT" which plays an important role given the possibility of imperfect recollection; (d) the context at the Relevant Date and the strong reputation of the Opponent's marks; (e) the fact that the relevant public (here: the general public) does not have specialist knowledge or exercise extra care in purchasing decisions; (f) the fact that some AI products are available for free (at the basic tier), thus reducing scrutiny on the marks whilst increasing consumer focus on the product's functionality; and (g) the existence of a "GPT" family of marks, which would lead the public into assuming that marks with the "GPT" element would also originate from the Opponent.

78 The Applicant's case that there is no likelihood of confusion was advanced along the following lines: (a) there is no similarity in the marks; (b) there is no similarity in the services; (c) the alleged reputation of "CHATGPT", if any, has the effect of reducing the likelihood of confusion rather than strengthening it; (d) the relevant consumers of AI technology are sophisticated, and are likely to have specialist knowledge; (e) the usual way in which software services are procured involve searching websites or downloading third-party apps, and consumers would be naturally more attentive to the origin of the

services; and (f) it is common for businesses in the technology or software industry to use descriptive acronyms (such as "CAD", for "computer-aided design") in naming their services or products, and consumers would be less likely to be confused into thinking that "GPT" is an indicator of origin.

79 Likelihood of confusion is not presumed just because the first two steps of the three-step test have been fulfilled. After considering all the circumstances, I think that this third step has not been established. My reasons for finding that the opposition fails under the third step of the three-step test are as follows.

80 First, while I have found the marks to be similar, my finding is that they are similar only to a marginal degree. It is well established that the greater the similarity between the marks, the greater the likelihood of confusion (see *Staywell* at [96]). Naturally, the converse must also be true: where the marks have a marginal level of similarity, there would be a lessened likelihood of confusion. Here, whatever similarities between the marks arise solely out of the common element "GPT". But that element is non-distinctive in the technical sense, and so would not play a significant role even with imperfect recollection. Moreover, the strongest facet of similarity between the marks is aural: however, the services in question are typically procured and purchased online where aural similarity would arguably have a lesser significance in comparison to the visual and conceptual facets. All in all, notwithstanding that I have found the first step of the three-step test to be established, I think this factor does not weigh in the Opponent's favour.

81 Second, the effect of reputation can cut both ways. The guidance from case law is that "a strong reputation does not necessarily equate to a higher likelihood of confusion, and could in fact have the contrary effect" (see *Twitter* at [191] citing *Staywell* at [96(a)]). On the evidence before me, I have no

difficulty accepting that "CHATGPT" enjoyed a strong reputation among the general public in Singapore in connection with AI chatbots and related technology services. However, this reputation did not extend to "GPT" standing alone. If the opposed mark had been "CHATGPT GEM" or "GEMCHATGPT", I would agree that the reputation of "CHATGPT" would have increased the likelihood of confusion. But the Application Mark does not contain "CHAT". Its absence is material. It has the effect of diminishing rather than increasing the likelihood of confusion. The ultimate impression given is that "GemGPT" concerns an unrelated AI or technology product or service for gemstones.

82 Third, and this is somewhat related to the issue of reputation, I do not find the Opponent's submissions relating to an alleged "GPT" family of marks to be persuasive. To establish a family of marks, there must be sufficient proof of use of a number of marks bearing a common element such that consumers would be aware that the common element (here: "GPT") constitutes a family. The issue is not just whether the marks have been in use but whether consumers associate the marks which bear a common element as originating from a single source (here: OpenAI) such that if there is another mark in the marketplace bearing that common element, the consumer is likely to be confused. (See *Monster Energy Company v Glamco Co, Ltd* [2021] 3 SLR 319 at [76]-[79] and *Bridgestone Corporation and Bridgestone Licensing Services, Inc. v Deestone Limited* [2018] SGIPOS 5 at [36] and [39].)

83 The flaw with the Opponent's family of marks argument is not that the public in Singapore had not been exposed to "GPT"; they most certainly have. But the central message that reached the public in Singapore—at least at the Relevant Date—was that "GPT" was a type of AI model upon which ChatGPT is built. What is missing, however, is sufficient evidence that the public would have perceived the common "GPT" element in the Opponent's various marks

as indicating a common trade origin. Therefore, the presence of other marks in the marketplace (here: "GemGPT") bearing the "GPT" element would not give rise to confusion as to trade source. Instead, they are likely to think that some other trader has launched a chatbot or service built on "GPT" technology.

84 The fact that the Opponent has applied to register, and has successfully obtained registration of, the GPT Model Marks ("GPT-3", "GPT-4" and so on) in Singapore and in various jurisdictions around the world and made efforts to assert its trade mark rights in connection with "GPT" has not been lost on me. But on the other hand, there has also been third party use of "GPT" as part of a trade name or mark: see [30] above. Even if other traders think it unjustified that OpenAI is seeking to monopolise the term "GPT", the market as whole might decide that the battle is not worth fighting and so avoid all trade mark use involving "GPT" as an element. Eventually, consumers might be educated into thinking that "GPT" is an indicator of origin. And so, in some future case, involving a different relevant date, the "GPT" family of marks argument might be accepted based on the evidence at that time. But assessed at the Relevant Date, I think that the evidence does not meet the necessary threshold.

85 Fourth, I do not think that it is worthwhile to be overly fixated on the qualities or the perception of the technologically-savvy segments of the public in Singapore. Although these sectors are relevant and material to the overall assessment, the key point, as I have stressed earlier, is that even the general public in Singapore would have been exposed to the message that "GPT" holds some descriptive significance in relation to AI models (even if they might not have been able to necessarily spell out "Generative Pre-trained Transformer"). In my view, the general public—who would not have specialist knowledge and would pay an ordinary level of attention in purchasing such services—would nevertheless not be likely to be confused into mistaking the Application Mark

for the Opponent's Earlier Marks or that the marks are from the same or related trade sources just because both sides contain "GPT".

86 Fifth, I have found that there is an overlap between the services and that the services are therefore identical to that extent. By itself, such a finding typically supports a finding of confusion. However, this one factor cannot outweigh the others which, overall, point the other way on balance.

87 For these reasons, I find that the likelihood of confusion element is not established. These observations are not intended to be exhaustive, especially since there was a considerable volume of evidence and both parties presented lengthy written submissions. But in my view, these are the key determinative points upon which this case turns. I dismiss the opposition under s 8(2)(*b*) TMA.

Section 8(4)(*b*)(i) TMA

88 Next, I turn to s 8(4)(*b*)(i) TMA.

89 Section 8(4)(*a*) and (*b*) TMA provide as follows:

> (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;

> (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) [*omitted*]

90 A "well known trade mark" is defined in s 2(1) TMA as:

> (a) any registered trade mark that is well known in Singapore; or
>
> (b) any unregistered trade mark that is well known in Singapore and that belongs to a person who –
>
> (i) is a national of a Convention country; or
>
> (ii) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country,
>
> whether or not that person carries on business, or has any goodwill in Singapore.

91 In determining whether a mark is well known in Singapore, the factors and considerations in s 2(7) to 2(9) TMA are relevant. I set them out below.

> (7) Subject to subsection (8), in deciding, for the purposes of this Act, whether a trade mark is well known in Singapore, it is 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.
>
> (8) Where it is determined that a trade mark is well known to any relevant sector of the public in Singapore, the trade mark is deemed to be well known in Singapore.
>
> (9) 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 bodies corporate in Singapore dealing in the goods or services to which the trade mark is applied.

92 In a nutshell, to succeed on this ground, the Opponent must show that: (a) the Application Mark is similar to the Opponent's Earlier Marks; (b) the Opponent's Earlier Marks were well known in Singapore at the Relevant Date; (c) the use of the Application Mark would indicate a connection between the Claimed Services and the Opponent; and (d) the connection is likely to damage the interests of the Opponent.

93 Although the Opponent relies on all the Opponent's Earlier Marks for the purposes of this ground, its submissions and evidence are largely focussed on "CHATGPT". The Applicant does not seriously dispute that there is evidence which goes towards showing that "CHATGPT" was well known in Singapore at the Relevant Date. However, it argues that any such evidence primarily relates to "CHATGPT" and does not extend to the GPT Model Marks.

94 I am satisfied, based on the evidence as a whole (including but not limited to the aspects discussed earlier) that "CHATGPT" was well known in Singapore at the Relevant Date. Although the duration of use was relatively short since ChatGPT was only publicly available from 30 November 2022 onwards, its popularity skyrocketed rapidly. It quickly became known to and recognised by many sectors of the public in Singapore. However, the same cannot be said of the GPT Model Marks. Although there was some evidence of use and exposure, I am not persuaded that the GPT Model Marks were well known trade marks in Singapore at the Relevant Date.

95 I turn to the remaining requirements under this ground of opposition with a focus on "CHATGPT".

96 The parties agree that there is no difference between the similarity of marks comparison under s 8(2)(*b*) and that under s 8(4) TMA (see *Caesarstone* at [96], *Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd* [2015] 5 SLR 618 ("*Rovio*") at [142]-[146]). Naturally, the parties' arguments mirrored those which they advanced under s 8(2)(*b*) TMA. I have found the competing marks to be more similar than dissimilar, albeit barely. This finding applies here as well.

97 Next, the requirement of a "connection". Here, the parties' arguments also tracked their cases under s 8(2)(*b*) TMA. The parties do not dispute that the element of "connection" will be satisfied where there is a likelihood of confusion under s 8(2)(*b*) TMA (see *Staywell* at [120] and *Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 ("*Amanresorts*") at [226]). As I understand it, the converse is also true: where there is no likelihood of confusion, the "connection" requirement will also not succeed based on similar lines of reasoning.

98 Earlier, in the context of s 8(2)(*b*) TMA, I found that the Opponent has not established a likelihood of confusion. For substantially similar reasons, I find that there is no "connection" and therefore dismiss the opposition under s 8(4)(*b*)(i) TMA. My finding makes it unnecessary—indeed, academic—to consider whether the alleged connection is likely to damage the Opponent's interests. Since there is no "connection", damage does not arise.

Section 8(4)(*b*)(ii)(A) TMA

99 I now proceed to examine the ground of opposition under s 8(4)(*b*)(ii)(A) TMA, which may only be wielded by the holder of a trade mark that is well known to the public at large (as opposed to merely being well known to any relevant sector of the public) in Singapore. To qualify, it must be shown that the mark is recognised by most, although not necessarily all, sectors of the public in Singapore (see *Formula One Licensing BV v Idea Marketing SA* [2015] 5 SLR 1349 at [131] and *City Chain Stores (S) Pte Ltd v Louis Vuitton Malletier* [2010] 1 SLR 382 at [92] and [94]).

100 For largely the reasons set out earlier, I find that "CHATGPT" was well known to the public at large at the Relevant Date. I recognise that this places "CHATGPT" in the category of a rare and exclusive class (see *Amanresorts* at [233]), and that such a finding requires proper proof—especially where the period of public use is as short as it is (from 30 November 2022 to 22 May 2023). Thus far, not many trade marks have met this high threshold of being well known to the public at large in Singapore. Examples include "Seiko", "Clinique", "Nutella", "Intel", "Gucci", and "gMail". All of the foregoing were mentioned in *Bytedance Ltd v Dol Technology Pte Ltd* [2024] SGIPOS 5 at [121], where it was found that "TikTok" likewise qualified. (A more recent addition is "Olympic" / "The Olympics": see *Comité International Olympique*

v Olimp Laboratories Spolka Z Ograniczona Odpowiedzialnoscia [2026] SGIPOS 10 ("*Olympique*").) Nevertheless, having regard to the evidence discussed earlier, I am satisfied that "CHATGPT", but not any other mark relied on by the Opponent, crosses this level. After all, by June 2023 around two-thirds of Singapore residents had tried using ChatGPT and a significant proportion of them used it regularly (see [20] above).

101 The Opponent's case under s 8(4)(*b*)(ii)(A) TMA is that the use of the Application Mark, "GemGPT", in relation to the Claimed Services, would cause dilution in an unfair manner of the distinctive character of "CHATGPT". The term dilution is defined in s 2(1) TMA as follows:

> "dilution", in relation to a trade mark, means the lessening of the capacity of the trade mark to identify and distinguish goods or services, regardless of whether there is —
>
> (a) any competition between the proprietor of the trade mark and any other party; or
>
> (b) any likelihood of confusion on the part of the public;

102 In *Amanresorts*, the Court of Appeal held (at [225]) that dilution encompasses both blurring and tarnishment. The Opponent's case appears to be confined to dilution by blurring. The key elements of dilution by blurring can be found in the Court of Appeal's decision in *Sarika*, which examined the corresponding anti-dilution provision in s 55(3)(*b*)(i) TMA and ultimately arrived at the conclusion that the appellant's use of the "Nutello" sign, over an extended period, on the appellant's drink, would result in dilution by blurring with the respondent's well known "Nutella" marks.

103 There appear to be two elements to dilution by blurring (see *Sarika* at [99]-[101]). First, the public must make a connection or establish a link between the Application Mark and the earlier well known trade mark. Second, there is

consequently a real and serious likelihood of damage to the distinctive character of the well known trade mark. It has been suggested that although these two elements appear to be distinct, it seems that once the first is established, the second is likely to follow: *Olympique* at [87], referring to *Sarika* at [101].

104 In determining whether the public will form a mental association or link, the following factors (based on *Sarika* at [100]) are relevant: (a) the degree of recognition of the earlier trade mark; (b) the distinctive quality of the earlier trade mark given the invented nature of the word; (c) the close similarity between the marks increasing the likelihood that the public will make a mental connection between them; (d) any admission to intended association; and (e) the similarity of the parties' respective goods increasing the likelihood that consumers would draw a mental link between the competing marks. I also bear in mind that the mental association or link does not require a "confusing connection": see *Amanresorts* at [226], which distinguishes between a "confusing connection" under s 8(4)(*b*)(i) TMA on the one hand, and "non-confusing connection" which is covered by s 8(4)(*b*)(ii)(A) TMA on the other.

105 I would analyse the factors in light of my earlier findings as follows: (a) "CHATGPT" enjoys a strong degree of recognition in Singapore; (b) "CHATGPT" is inherently distinctive; (c) "CHATGPT" is similar to "GemGPT", but only marginally; (d) there is insufficient evidence that the Applicant intended to associate the Application Mark with "CHATGPT", and the absence of "CHAT" from the Application Mark is a material point of differentiation; and (e) the services overlap and are identical to that extent.

106 Clearly, not all of the factors point the same way. However, I think that on the facts of this case, greater weight must be accorded to the first three factors. First, the fact of the matter is that at the Relevant Date, the reputation

and fame in "CHATGPT" was confined to that mark alone and did not extend to any others. Second, the distinctive character of "CHATGPT" resides in the combination of "CHAT" with "GPT", whereas the "CHAT" element is absent from the Application Mark. This is quite different from a "NUTELLA" versus "NUTELLO" situation. Third, the degree of similarity is only marginal, especially on account of the non-distinctive nature of "GPT". Having regard to these considerations, I think that the necessary mental link or association would not be established. In my view, blurring does not arise simply because both marks contain "GPT". To find dilution on that basis would be akin to saying—incorrectly, in my opinion—that because "gMail" (see [100] above) is well known to the public at large in Singapore, no other undertaking is able to use the non-distinctive element "MAIL" in connection with email or traditional mail services (or indeed any goods or services, since the protection conferred by s 8(4)(*b*)(ii)(A) TMA can extend to any sector of trade).

107 For these reasons, I find that blurring under s 8(4)(*b*)(ii)(A) TMA has not been established. I therefore dismiss the opposition under this ground.

Section 8(7)(*a*) TMA

108 Section 8(7)(*a*) TMA provides as follows.

> 8.—
>
> (7) A trade mark must not be registered if, or to the extent that, its use in Singapore is liable to be prevented —
>
> > (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade; or
> >
> > (b) [*omitted*]

109 To succeed under s 8(7)(*a*) TMA, the Opponent must establish a notional case of passing off: see *Rovio* at [164]. The classic elements of the tort

of passing off are: (a) goodwill; (b) misrepresentation; and (c) damage. In essence, the tort of passing off does not protect the claimant's use of a mark, name or get-up per se; rather, it seeks to prevent the defendant (or in this case: the Applicant) from causing damage to the claimant (here: the Opponent) by committing an actionable misrepresentation (see *Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading)* [2016] 4 SLR 86 ("*Singsung*") at [28]).

110 First, goodwill. It is trite law 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]). In *Singsung*, the Court of Appeal held that "goodwill clearly exists in Singapore when a business offers a product or service for sale in this jurisdiction, and a customer purchases the product or consumes the service here" (at [67]). The existence of goodwill is typically proved with evidence of sales figures in Singapore as well as evidence relating to marketing and advertising efforts in Singapore (see *Rovio* at [180]).

111 It is clear that the Opponent has indeed conducted business in Singapore: although the vast majority of ChatGPT accounts are free accounts, at the Relevant Date there were clearly paying subscribers in Singapore. This was not in serious dispute, and for good reason. I find that the element of goodwill has been established.

112 Next, misrepresentation. In *Singsung* (at [40]), the Court of Appeal held that:

> Whether misrepresentation has occurred is a question to be determined by the court in the light of the surrounding circumstances. The misrepresentation in question must give rise to confusion (or the likelihood thereof) in order to be

> actionable under the law of passing off. This is ultimately a matter for the court's judgment and it is not to be determined on a visual side-by-side comparison. Rather it is to be assessed from the vantage point of a notional customer with imperfect recollection. While evidence of actual confusion, such as the testimony of a witness, may be helpful in the court's determination of the question, the lack of such evidence is not fatal to a claim [...]

113 I am mindful that succeeding (or failing) in s 8(2)(*b*) TMA does not automatically guarantee the same outcome under s 8(7)(*a*) TMA, for they are somewhat related but independent inquiries (see *Twitter* at [207]). Nevertheless, having regard to the circumstances, I consider that substantially the same factors which led me to find no likelihood of confusion under s 8(2)(*b*) TMA also weigh against a finding of actionable misrepresentation. After all, the similarity between the competing signs lies solely in the common "GPT" element (which I have found to be non-distinctive of the services at the Relevant Date). Ultimately, I find that misrepresentation has not been established and thus dismiss the opposition under this ground.

114 If there is no misrepresentation, then the issue of damage to the Opponent's goodwill becomes academic.

Section 7(6) TMA

115 Section 7(6) TMA provides that a trade mark "shall not be registered if or to the extent that the application is made in bad faith".

116 The applicable legal principles are trite and not in dispute. They are set out in the Court of Appeal's decision in *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 ("*Valentino*"), which have been restated in numerous decisions of this tribunal (including my earlier decision in *Chua Beng*

Hock v FM Skincare Pte Ltd [2025] SGIPOS 2 at [90]). For convenience, I reproduce the key principles below.

(a) First, an allegation of bad faith is a serious claim to make, and it must be sufficiently supported by the evidence. A finding of bad faith needs to be distinctly proved, and this will rarely be possible by a process of inference (*Valentino* at [30]).

(b) 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]).

(c) The test for determining the presence of bad faith is a "combined" one, in that it contains both a subjective element (*viz*, what the particular applicant knew) and an objective element (*viz*, what ordinary persons adopting proper standards would think). Bad faith as a concept is context-dependent and hinges on the specific factual matrix of each case (*Valentino* at [29]).

(d) The legal burden of proof lies on the party bringing the application (here: the Opponent). Once a *prima facie* case is made out, the evidential burden of disproving any element of bad faith lies on the other party (here: the Applicant). (See *Valentino* at [36].)

(e) 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": *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 at [100].

117 The Opponent's case under s 7(6) TMA was structured as follows. The Applicant subjectively knew of the Opponent and its family of "GPT" marks and their extensive reputation and goodwill in Singapore. And, on an objective assessment, there is a nexus between the parties in that the Application Mark was based on copying the distinctive "GPT" component; something which ordinary persons adopting proper standards would think to be dishonest. The Applicant's services do not use the Opponent's GPT models; instead, they use their own application which is described as a "generative AI [model] (i.e artificial intelligence with the capability to create new content output / inferences) with the underlying architecture built on the transformer algorithm".[71] Other traders with AI offerings do not use the term "GPT", even where "GPT" is used for the underlying product. Examples include Harvey (then built on GPT-4)[72] and Pair (built for the Singapore public service)[73]. In the circumstances, the inference is that the Applicant chose "GPT" to ride on the Opponent's reputation by copying the "GPT" component. In particular, the timing of the Application Mark was opportunistic, having been filed less than 6 months after the launch of ChatGPT.

118 The Applicant's counter was that mere knowledge of the Opponent's "CHATGPT" was insufficient; after all, the evidence showed that "GPT" was an acronym for "Generative Pre-trained Transformer", a descriptive term for a type of AI model used by others in the industry. Moreover, this term was not coined by the Opponent itself.

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71 ASD at [12] and [37].
72 OSD at Exhibit OSD-12, p 1704.
73 OSD at Exhibit OSD-09, p 1037.

119 I can accept that the Applicant subjectively knew or must have known of OpenAI and the ChatGPT mark. It did not really dispute this. The question is whether from an objective standpoint, the Applicant's conduct fell short of acceptable commercial behaviour. Earlier, I declined to find in the Opponent's favour concerning its "GPT" family of marks argument: see [82]-[84] above. I would also observe that the Opponent does not have a registration for the plain word mark "GPT". I have also found that at the Relevant Date, "GPT" would have been perceived as the name of a technology or AI model, and not a badge of origin. Moreover, the Application Mark does not contain "CHAT".

120 Against this backdrop, the mere fact that the Application Mark contains the letter string "GPT" does not, without more, justify a finding of bad faith. As observed above, at least at the Relevant Date, the public would not have perceived "GPT" standing alone as designating trade origin (see discussion at [25]-[33] above). The Application Mark may have been filed close to the launch of ChatGPT, but that fact is neither here nor there: all it shows is that there were others in the marketplace keen to mark out a foothold in this brave new world and signal to others that they, too, were using AI technology in their goods or services. All in all, I do not think that reasonable and experienced persons in the trade adopting proper standards would think that the Applicant's conduct fell short of acceptable commercial behaviour.

121 I dismiss the opposition under s 7(6) TMA.

Final remarks: foreign and local decisions

122 It is clear from the record of the oral hearing maintained by the late PAR that the parties were ably represented by counsel. This fact also came across through the comprehensive written submissions submitted by both sides. In discharging their duty to put forward their respective clients' best case, I was

referred to numerous decisions of foreign competent authorities concerning "GPT" and GPT-formative marks.[74] Some of them related to distinctiveness and registrability, whereas others concerned enforcement efforts on the part of OpenAI targeting third-party use/applications of signs incorporating "GPT" and in some cases "CHATGPT". These decisions have reached differing conclusions, and I understand that some are under appeal.

123 While I have looked at these decisions and considered the parties' submissions about them, I do not consider it necessary to examine each individually. The foreign competent authorities were applying their respective domestic laws to different marks, goods/services, relevant dates and evidential records. Indeed, the divergence in their conclusions illustrates the importance of the particular factual context. One might also observe that how non-English speaking populations perceive a sign that comprises or contains "GPT" may be very different from English-speaking populations. My decision relates to the perception of the relevant Singapore public at the Relevant Date of 22 May 2023, based on the evidence adduced in these proceedings. While the foreign decisions act as useful comparators, they cannot substitute for my assessment.

124 There were also local court and IPOS decisions that were submitted for this tribunal's consideration which I have not specifically dealt with. The principles from these decisions have been of guidance but each case must ultimately turn on its own facts. This decision is no exception. It does not follow that OpenAI will never be able to establish that "GPT" is distinctive. At a future relevant date, based on some other evidence, it could be possible. But at the

74 Applicant's Written Submissions at [27]-[28], Applicant's Further Written Submissions at [60] and [70]-[72]; Opponent's Written Submissions at Annex A; and Opponent's Rebuttal Submissions at [20]-[21].

Relevant Date, the public in Singapore would not have considered "GPT", standing alone, as having trade origin significance.

Outcome and costs

125 The Opponent has not been able to establish any of the grounds of opposition. I dismiss the opposition with costs. The Application Mark will be allowed to proceed to registration.

126 I now turn to the quantum of costs. The practice of this tribunal is to assess costs summarily so that parties do not have to incur additional costs in taxation proceedings. As regards the issue of exceeding SD page limits, I note that both parties exceeded the limit and have given explanations for their conduct. I accept their reasons and consider this factor to be neutral in the costs assessment. In any event, I note that the Scale of Costs in the Fourth Schedule of the Trade Marks Rules does not, as presently drafted, appear to permit me to award costs outside the scale.

127 The parties submitted their costs submissions and having considered them, I award the Applicant the sum of $10,000 (inclusive of disbursements). My acceptance of the parties' reasons for exceeding the SD page limits does not mean that a similar approach will be adopted in every case. Costs are not the only lever which may be pulled. Egregious breaches of this limit, without due justification, may be met with appropriate case management controls.

Ong Sheng Li, Gabriel
Principal Assistant Registrar

Marcus Liu and Teo Shu Xiang (Amica Law LLP) for the Opponent;
Aileen Chua (Bih Li & Lee LLP) instructed by Zheng Pei (Viering, Jentschura & Partner LLP) for the Applicant.