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

[2026] SGIPOS 2

Trade Mark No. 40202402174Y

IN THE MATTER OF TRADE MARK APPLICATION BY

Vivo Mobile Communication Co., Ltd.

… *Applicant*

AND OPPOSITION THERETO BY

Lenbrook Industries Limited

… *Opponent*

GROUNDS OF DECISION

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Lenbrook Industries Limited
v
Vivo Mobile Communication Co., Ltd.

[2026] SGIPOS 2

Trade Mark No. 40202402174Y

Principal Assistant Registrar Sandy Widjaja
1 December 2025

24 February 2026

Principal Assistant Registrar Sandy Widjaja:

Introduction

1 This is an opposition against the following mark:

S/N	Application Mark	Goods
1	vivo BlueOS 40202402174Y Relevant Date: 1 February 2024	**Class 09**: Operating systems for mobile phones, smartphones, smart watches, smart glasses, tablet computers, notebook computers and smart televisions; Operating system software for mobile phones, smartphones, smart watches, smart glasses, tablet computers, notebook computers and smart televisions.

Background facts

2 The Lenbrook Industries Limited / Lenbrook Group ("Opponent")[1] is a privately-held Canada-based company[2] founded in 1978. It engages in the development, manufacture, distribution and sale of a wide variety of electronic and communications products internationally. The Opponent gave evidence that it is a global leader in the fields of consumer and commercial, audio and communication products and technologies.[3]

3 The Opponent also gave evidence that its global presence is reflected in its five affiliated business units serving different markets,[4] including Lenbrook Asia Pte Ltd (Lenbrook Asia), a wholly owned subsidiary of the Opponent based in Singapore. Singapore is also one of two jurisdictions to have two outlets directly operated by Lenbrook Asia, which is responsible for distribution of the Opponent's Bluesound-branded devices throughout most of the Asian continent outside China, Japan and Thailand.[5]

4 In Singapore, there are also four other outlets operated by three other distinct entities that distribute the Opponent's products.[6]

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1 The Opponent referred to itself as "Lenbrook Industries Limited" at [1] of the Opponent's evidence by Mr Tommy Mack, Manager, Corporate Development, of the Opponent, dated 27 February 2025 ("Opponent's 1st SD") (see more below); see also its Statement of Grounds dated 1 July 2024. However, the Opponent referred to itself as "Lenbrook Group" at [4] of Opponent's 1st SD; see also Exhibit 1 at pages 19 – 21 of the same.

2 Opponent's 1st SD at [4].

3 Opponent's 1st SD at [5(a)].

4 Opponent's 1st SD at [5(b)].

5 Opponent's 1st SD at [9].

6 Opponent's 1st SD at [10].

5 Vivo Mobile Communication Co., Ltd. ("Applicant") is a Chinese multi-national technology company headquartered in Dongguan, Guangdong. It was founded in 2009.[7]

6 The Applicant gave evidence that it has since become a leading developer of smartphones, smartphone accessories, smart watches, software and online services. Since its founding, the Applicant has expanded the distribution of its products to over 60 countries around the world. While the Applicant is headquartered in China, it has a global presence, including in Singapore.[8]

7 In Singapore, the Applicant's products are available through multiple distribution channels including its official retail stores, authorised online platforms and third-party technology retailers.[9]

Grounds of Opposition

8 The Opponent relies on Sections 8(2)(b), 8(4)(b)(i) and 8(7)(a) of the Trade Marks Act 1998 ("Act") in these proceedings. The Opponent confirmed at the hearing that it *no* longer wishes to pursue the ground of opposition under Section 8(4)(b)(ii) of the Act.[10]

Opponent's evidence

9 The Opponent's evidence comprise the following:

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7 The Applicant's evidence by Ms Lian Wei Hua, IP Manager of the Applicant, dated 14 May 2025 ("Applicant's SD") at [4] (see more below).

8 Applicant's SD at [4].

9 Applicant's SD at [6].

10 Pre-Hearing Review notes of 15 August 2025.

(a) a statutory declaration of Mr Tommy Mack, Manager, Corporate Development, of the Opponent ("Mr Mack"), dated 27 February 2025 ("Opponent's 1st SD");

(b) a statutory declaration of the same Mr Mack, dated 18 July 2025 ("Opponent's 2nd SD"); and

(c) a supplementary declaration of the same Mr Mack, dated 25 August 2025 ("Opponent's 3rd SD").

Applicant's evidence

10 The Applicant's evidence comprises a statutory declaration of Ms Lian Wei Hua, IP Manager of the Applicant, dated 14 May 2025 ("Applicant's SD").

Applicable law and burden of proof

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

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

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

> (2) A trade mark shall not be registered if because —
>
> …
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public.

13 The definition of an earlier mark includes a trade mark which has been registered before the Relevant Date (see Section 2 of the Act).

14 The Opponent relies, in the main, on its earlier registered mark as follows:

Opponent's Earlier Mark	**Goods**
BluOS Trade Mark No. 40201400191S IR. No. 1153891	**Class 9** Computer software for processing and storing digital music files; downloadable software in the nature of a mobile application for processing and storing digital music files.

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

> [15]…The first two elements - namely similarity or identity of the marks and similarity or identity of the goods / services - are assessed individually before the final element which is assessed in the round. …
>
> [55] Under the step-by-step approach, the three requirements of similarity of marks, similarity of goods or services, and likelihood of confusion arising from the two similarities, are assessed systematically.

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

Applicable legal principles: Marks-similarity assessment

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

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

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

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

(iv) When speaking of the assessment of a mark as a whole, the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components.

(v) The similarity of marks is ultimately and inevitably a matter of impression rather than one that can be resolved as a quantitative or

mechanistic exercise. The court must ultimately conclude whether the marks, when observed in their totality, are similar or dissimilar.

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

[Emphasis in *italics* mine]

18 Further, the Court of Appeal provided in *Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd and another and another appeal* [2013] 2 SLR 941 ("*Hai Tong*") at [40(c)] and [40(d)]):

> [40(c)] The relevant viewpoint is that of the average consumer who would exercise some care and a measure of good sense in making his or her purchases, not that of an unthinking person in a hurry.
>
> [40(d)] It is assumed that the average consumer has "imperfect recollection" such that the two contesting marks are not to be compared or assessed side by side (and examined in detail). Instead, the court will consider the general impression that will likely be left by the essential or dominant features of the marks on the average consumer.

Visual similarity

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

Opponent's Earlier Mark	**Application Mark**
BluOS	vivo BlueOS

20 It can be seen that the key difference between the two marks is the addition of the word "vivo" in the Application Mark. Another (minor)

difference is that the first part of the Opponent's Earlier Mark is spelt "Blu", compared to "Blue" in the Application Mark.

21 Some preliminary points:

(a) One of the key issues here is the extent of distinctiveness of the Opponent's Earlier Mark. In this regard, the court in *V V Technology Pte Ltd v Twitter, Inc*. [2022] SGHC 293 at [119] has clarified that "… the issue of *acquired technical distinctiveness* should be considered at the *likelihood confusion stage* of the inquiry [rather than at the mark similarity stage] to preserve conceptual clarity (emphasis in italics mine);"[11]

(b) Secondly, the fact that "vivo" is a "house mark"[12] is irrelevant at this stage; the word "vivo" is part of the Application Mark and is to be taken into account. In this regard, a "house mark" is an overarching brand for an entity's entire product or service range.

22 To begin with, it is important to note that the Opponent's Earlier Mark consists of only *one word*, since "the letters "Blu" [are] directly joined to "OS"".[13] In contrast, the Application Mark "is longer…and comprises *two separate words"* (emphasis in italics mine).[14]

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11 Opponent's written submission (OWS) at [63].

12 See Applicant's SD at [6].

13 Applicant's written submissions (AWS) at [20].

14 AWS at [21].

23 I agree with the Applicant that the inclusion of the word "vivo" at the beginning of the Application Mark "alters the *structure, proportion, and overall appearance* of the mark" (emphasis in italics mine).[15]

24 The Applicant argued that ""vivo" is not an English dictionary word".[16] Instead, "vivo" is "derived from Latin and is used in several Romance languages such as Spanish, Portuguese, and Italian, where it generally conveys the meaning of "alive" or "living"".[17]

25 The question is whether the average Singapore resident will know the meaning of "vivo" in the foreign languages above. Neither party has furnished any evidence on this point. I am inclined to agree with the Applicant that it is more likely than not that the ordinary public will *not* so understand and regard it as an invented word.[18] Even if I am wrong and the general public in Singapore does understand "vivo" to mean "alive" in Spanish, Portuguese, and Italian, it does not detract from my conclusion below as to the dominance and distinctiveness of "vivo".

26 The positioning of "vivo" at the front before the word "BlueOS" adds to its significance. For clarity, I am of the view that the fact that "vivo" appears in small letters does not affect its dominance and distinctiveness.

27 In relation to the comparison between "BluOS" and "BlueOS", it is not in dispute that "OS" generally refers to "operating system" in relation to Class

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15 AWS at [23].

16 AWS at [21].

17 AWS at [39].

18 AWS at [39].

9 items such that it is descriptive in the current instance.[19] With regard to "Blu", while it is not a dictionary word, I agree with the Opponent that it is clear that it is "easily understood to be a truncated form of "blue"", and that the Applicant appears to have admitted this.[20]

28 The Applicant also gave evidence that there are numerous trade marks filed in Class 9 on the trade mark register containing or beginning with the word "blue" (see some examples below):[21]

S/N	***Trade mark***	***Trade mark number***	***Class***	***Filing Date***
1	BlueWow	40202327076W (National)	9	7 Dec 2023[22]
2	BlueFin	40202317984V (National)	9 ,36 ,42	15 Aug 2023[23]
4	BlueSentry	40202131146R (Madrid) 1634690	9 and 12	1 Dec 2021[24]

19 OWS at [45] and AWS at [11].

20 OWS [52] and Applicant's SD at [37].

21 Applicant's SD at [35] and at Exhibit 10, pages 268 – 285.

22 Applicant's SD at Exhibit 10, page 269.

23 Applicant's SD at Exhibit 10, page 269.

24 Applicant's SD at Exhibit 10, page 270.

29 In relation to the above, the Registrar queried:

(a) that the Register may not accurately reflect the marketplace, since some trade marks would not have entered the market yet;[25] and

(b) Class 9 is widely understood to be a very broad class, emcompassing many varied items, including software related items.

The Applicant acknowledged the issues above but argued that, despite the above, some *weight* should be accorded to the same.

30 The Principal Assistant Registrar discussed this issue in detail in *Fair Isaac Corporation v LAC Co., Ltd.* at [55] – [75]. For our purpose, I will only highlight the following:

> [66] I agree with *British Sugar* that the state of the register does *not* shed light on the realities of the marketplace. This is also the position taken by the local cases endorsing *British Sugar* which I have cited above…
>
> [67] At the same time, in my view, the state of the register *can* be considered when assessing whether a particular mark is inherently technically distinctive. If *numerous* marks registered or applied for by unrelated traders consist of, or contain, a particular word, this suggests that *traders might legitimately want to use the word as (or as part of) a trade mark* for their own goods or services. *No* single trader should be granted a monopoly over such a word…

[Emphasis in italics mine]

Applying the above to the current case, I should be "wary about inadvertently conferring on the Opponent a monopoly…[on the word "Blue"]".[26]

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[25] Among other things, this is due to the fact that a trade mark application has five years from the date of completion of the registration process to begin using the mark, after which it would be vulnerable to a non-use revocation action under Section 22 of the Act.

[26] *Twitter, Inc. v V V Technology Pte Ltd* [2022] SGIPOS 4 at [51].

31 The Applicant's case is that, since the Opponent's Earlier Mark consists of:

(a) "Blu", a truncated version of "blue", which is common for Class 9;[27] and

(b) "OS", which is descriptive in relation to Class 9,

the Opponent's Earlier Mark is at most "distinctive to a low to moderate degree*"*.[28]

32 In addition, the fact that there is *no* evidence of any "consistent"[29] and universally recognised"[30] meaning in relation to the use of the word "blue" in the technology realm does *not* detract from the fact that "blue" related marks are commonly chosen for goods in Class 9.

33 In contrast, the Applicant's Mark consists of the words "vivo" and "BlueOS". Having regard to the above analysis in relation to "Blue" and "OS" in the context of Class 9 services, I agree with the Applicant that "vivo" is the dominant and distinctive component of the Application Mark.[31]

34 Taking all of the above into consideration, namely:

(a) the different "*structure, proportion, and overall appearance"* of the marks;

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27 AWS at [68] and [69].

28 AWS at [12].

29 Opponent's 2nd SD at [17(a)].

30 Opponent's 2nd SD at [17(a)].

31 AWS at [21].

(b) that the Opponent's Earlier Mark consists of only *one word* while the Application Mark consists of *two words*;

(c) my conclusion above that the Opponent's Earlier Mark is at most "distinctive to a low to moderate degree";

(d) the positioning of the word "vivo" at the beginning of the Application Mark; and

(e) the distinctiveness of the word "vivo" in the Application Mark,

I am of the view that the marks are visually more dissimilar than similar.

Aural similarity

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

(a) "Dominant Component Approach", having special regard to the distinctive or dominant components of the marks; and

(b) "Quantitative Assessment Approach", where the competing marks are assessed to see if they have more syllables in common than not.

36 In this case, since I am of the view that "vivo" is the dominant and distinctive component of the Application Mark, I will apply the Dominant Component Approach. The dominant component of the Application Mark, "vivo", is not present in the Opponent's Mark and is also placed at the front of the Application Mark.

37 I also agree with the Applicant that in "ordinary pronunciation, first-position elements carry primacy and anchor listeners' recollection".[32] The Opponent, relying on *The Polo/Lauren Co, L.P. v Shop In Department Store Pte Ltd* [2006] SGCA 14 ("*Polo*") at [23], argued that "there is no rigid principle that the first syllable of a word mark is more important".[33] However, the Opponent has quoted the above out of context. As the Court of Appeal in *Polo* explained:[34]

> Moreover, there is *no* rigid principle that the first syllable of a word mark is more important. We recognise that some marks are inherently distinctive because they consist of *inventive words* without any notional or allusive quality. An example would be "Volvo". "Polo" is certainly *not* an inventive word and could claim *no* inherent distinctiveness.

[Emphasis in italics mine]

38 As alluded above, I am of the view that the Singapore public will regard "vivo" as an invented word and that it is the dominant and distinctive element of the Applicant's Mark. Thus, "vivo", being the "first-position" element of the Application Mark, carries "primacy" and "anchor listeners' recollection". (above).

39 In conclusion, I am of the view that the marks are aurally more dissimilar than similar.

Conceptual similarity

40 The Court of Appeal in *Staywell* expounded at [35] as follows:

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32 AWS at [28].

33 OWS at [50].

34 *Polo* at [23].

> [35] …Unlike the aural analysis, which involves the utterance of the syllables without exploring the composite meaning embodied by the words, the conceptual analysis seeks to uncover the ideas that lie behind and inform the *understanding* of the mark as a whole…*Greater care* is therefore needed in considering what the conceptually dominant component of a composite mark is, because the idea connoted by each component might be very different from the sum of its parts…

[Emphasis in bold and italics mine]

41 I have concluded above that:

(a) it is more likely than not that the ordinary public will regard "vivo" as an invented word;

(b) The component "Blu" in the Opponent's Earlier Mark is a truncated version of the word "blue", which is present in the Applicant Mark; and

(c) "OS", which is present in both marks, is an abbreviation of "Operating System".

42 As the Applicant submitted, "the average Singaporean consumer is unlikely to ascribe any particular meaning to ["vivo"]…[such that]…the conceptual impact of "vivo" is neutral".[35]

43 In light of the above, the marks are both conceptually neutral (or conceptually different if the local public understands the meaning of "vivo", above).

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35 AWS at [39].

Conclusion on mark-similarity assessment

44 In light of all the above, I am of the view that the marks are visually and aurally dissimilar while they are conceptually neutral, such that the marks are overall more dissimilar than similar.

45 As the Opponent has failed at the first step of the 3-step *Staywell* test, the inquiry effectively ends here and the Opponent fails under Section 8(2)(*b*) of the Act. However, for completeness, I will briefly consider the next two steps in the test.

Good similarity assessment

46 For ease of reference, the goods are as follows:

Opponent's Earlier Mark	**Application Mark**
Class 9: *Computer software for processing and storing digital music files*; *downloadable software in the nature of a mobile application for processing and storing digital music files*.	**Class 9**: Operating systems for mobile phones, smartphones, smart watches, smart glasses, tablet computers, notebook computers and smart televisions; *Operating system software for* mobile phones, *smartphones*, smart watches, smart glasses, *tablet computers, notebook computers and smart televisions*.

The overlapping goods are italicised above.

47 It is obvious that both marks are in the *same* class. I am also of the view that the Application Mark's specification is broader, such that there is an *overlap* in the specifications.

48 In light of the above, I am of the view that the goods are similar.

Likelihood of Confusion

49 The law pertaining to the issue of likelihood of confusion is not in dispute. The relevant principles for assessing likelihood of confusion have been expounded by the Court of Appeal in *Staywell* at [60], [64], [83] and [96]:

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

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

the effect of making a finding of confusion automatic upon the establishment of similarity of marks and goods or services.

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

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

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

(1) the *degree of similarity* of the marks themselves;
(2) the *reputation* of the marks (a strong reputation does *not* necessarily equate to a higher likelihood of confusion, and could in fact have the contrary effect);
(3) the *impression* given by the marks; and
(4) the *possibility of imperfect recollection* of the marks.

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

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

(2) Whether the products are *expensive or inexpensive* items;

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

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

[Emphasis in italics mine]

Factors relating to the impact of mark-similarity

50 I have already concluded above that the marks are visually and aurally dissimilar and conceptually neutral such that the marks are overall more dissimilar than similar. As the marks pertain to goods which are sold online or in physical retail stores, I am of the view that it is the *visual* aspect which take precedence (see *Hai Tong* at [53]).

51 In terms of reputation, the Opponent relied on their arguments in relation to the Opponent's Earlier Mark being a well-known mark as well as the Opponent's Earlier Mark having acquired distinctiveness through use (more below).[36]

[36] OWS at [63].

Extent of Sales in Singapore

52 The strongest evidence relied upon by the Opponent to support its arguments that the Opponent's Earlier Mark has acquired distinctiveness through use and that it is well known to the relevant sector of the public is its sales figures over the years in Singapore.

53 The Opponent's case is that "[*a*]*ll* Bluesound-branded devices, namely digital music players and speakers, *come installed with BluOS*, which is a music management system that enables the multi-room, wireless operation of, and audio streaming through, interconnected Bluesound-branded devices" (emphasis in italics mine).[37]

54 Following the above, the Opponent tendered evidence as to the extent of sales for "Bluesound branded products" (rather than sales in relation to "BluOS" software *per se*):[38]

S/N	Period	Amount (S$)	Sales Volume[39]
1	May 2017 – Apr 2018	198,242.85	161
2	May 2018 – Apr 2019	210,791.36	172
3	May 2019 – Apr 2020	393,401.42	321
4	May 2020 – Apr 2021	530,615.43	433

37 OWS at [7]; Opponent's 1st SD at Exhibit 1, pages 24 and 25.

38 Opponent's 1st SD at [16] and [17] and also at Exhibit 14, page 143.

39 Based on average price of S$ 1,224 per item (see below).

5	May 2021 – Apr 2022	630,927.30	*515*
6	May 2022 – Apr 2023	475,438.98	388

55 The Opponent gave evidence that the above include sales to dealers as well as direct consumer sales.[40] However, the evidence tendered in support of the above is not ideal for the reasons below.

56 Firstly, it is curious that on the Opponent's website under the description of "Premium Consumer Audio, *Bluesound*"[41] there is no reference to "BluOS", in contrast to the heading for "Distributed Audio Solutions, Bluesound Professional"[42] where there is a specific reference to "BluOS":

> *Powered by BluOS*, an award-winning multizone audio management software platform…Bluesound Professional makes commercial audio installation projects easy to configure, deliver, and use.

[Emphasis in italics mine]

57 In relation to the invoices tendered:

(a) some of them do not fully spell out that they are in relation to "Bluesound" products; only product codes are utilised.[43] While I understand that this may be a common commercial practice, subject to evidence to the effect that "BLS" *is* the code used to refer to "Bluesound products", it is short of being conclusive evidence.

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40 Opponent's 1st SD at [18].

41 Opponent's 1st SD at Exhibit 1, pages 21 – 22.

42 Opponent's 1st SD at Exhibit 1, pages 24 – 25.

43 Opponent's 1st SD at Exhibit 5, pages (i) 82 – 83; and (ii) 85 – 86.

(b) for those which pertain to online sales to individuals, it is unclear if the products were delivered to a Singapore consumer since the address, including the country, has been redacted[44] / omitted.[45]

58 The Applicant submitted that having regard to the price range of the products, the number of products sold annually is not extensive. The Applicant relied on the examples in the Opponent's evidence, including:

S/N	Description	Price (S$)
1	Bluesound Node[46]	649
2	Bluesound Vault 2i[47]	1,799

59 Based on the above, the average price of a Bluesound product is [649 + 1,799] / 2 = 1,224 and the approximate number of products sold annually is indicated above at [54]. Based on the calculations, the highest number of "Bluedsound" products sold annually was *515* for the period May 2021 – Apr 2022.

60 Having regard to my conclusion above that the Opponent's Earlier Mark is at most "distinctive to a low to moderate degree", I am of the view that the sales figures above are *not* sufficient to have any tangible impact on the confusion analysis.

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44 Opponent's 1st SD at Exhibit 15, page 145.

45 Opponent's 1st SD at Exhibit 15, page 147.

46 Opponent's 1st SD at Exhibit 9, page 112.

47 Opponent's 1st SD at Exhibit 10, page 124.

61 For completeness, the following evidence relied on by the Opponent cannot be taken into account or at most can only be accorded little weight:

(a) Promotional materials: the Opponent's Earlier Mark is not reflected[48] / there is no indication that the advertisements related to the Opponent's Earlier Mark.[49]

(b) Awards: the articles appear to be published overseas[50] and as such, not targeted at the Singapore audience.

(c) Local reviews: as the "BluOS" software is "pre-installed" into the Bluesound products, it is not surprising that the reviews appear to pertain to the "Bluesound" products and "only make passing references to "BluOS" when describing the features of the "Bluesound" products."[51]

62 On the other hand, the Applicant gave evidence that in *Singapore*, it has two physical retail stores, including one at Bugis Junction which opened on 8 April 2022.[52] The Applicant also gave evidence that its products are available via numerous third-party authorised resellers including:[53]

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48 Opponent's 1st SD at Exhibit 19, page 192.

49 Opponent's 1st SD at Exhibit 19, page 193.

50 See Opponent's 1st SD at Exhibit 12, pages 130 – 134 (London) and Opponent's 1st SD at Exhibit 12, pages 136 – 141 (Canada).

51 AWS at [61].

52 Applicant's SD at Exhibit 3, pages 132 – 136.

53 Applicant's SD at [9].

S/N	***Description***	***Comments***
1	Singtel	Collaborated since 2018
2	Challenger	Collaborated since 2018
3	Courts	Collaborated since 2019

63 I agree with the Applicant that its authorised resellers include:

(a) "the top three communication providers in Singapore…M1, Singtel and Starhub";[54] and

(b) "well established electronic and appliances stores and shopfronts"[55] such as Courts, Best Denki and Harvey Norman.

However apart from the table above, most of the evidence in relation to the same (screen shots of the webpages of the stores) are undated.[56]

64 For completeness, the Applicant also tendered evidence as to its social media presence[57] via Instagram, Facebook, Youtube and Tiktok. However, the evidence are all undated.[58]

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54 Applicant's SD at [10].

55 Applicant's SD at [8].

56 For example, see screen shots of (i) Courts's website (Applicant's SD at Exhibit 3, pages 139 – 141); (ii) and M1's website (Applicant's SD at Exhibit 3, page 151).

57 Applicant's SD at [16].

58 See for example for (i) Instagram at Applicant's SD at Exhibit 5, pages 160 – 161; and (ii) Tiktok at Applicant's SD at Exhibit 5, pages 166 – 167.

65 Last but not least, the Applicant also submitted that it "has…undertaken extensive global marketing…efforts, including "a six-year sponsorship agreement with FIFA…in 2017".[59] However, any weight to be accorded to the above will be low as there is no indication as to the extent to which its "extensive exposure and association" with FIFA reached the Singapore population.

66 Following the above, the extent of the Applicant's reputation in relation to its house mark "Vivo" in Singapore is unclear, such that any impact on the confusion analysis, if any, would also be low.

67 In any event, I note that at the end of the day, "the exact effect which the reputation of a mark has as regards the likelihood of confusion inquiry is a fact specific inquiry".[60]

68 Last but not least, having regard to the extent of (visual) dissimilarity, even taking into account the possibility of imperfect recollection, the overall impression is that the marks are more dissimilar than similar.

Conclusion

69 Taking into account the evidence adduced for the purposes of the "likelihood of confusion" inquiry, I maintain my conclusion at stage one that the respective marks are more dissimilar than similar.

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59 AWS [62(c)] and Applicant's SD at [12].

60 See *Twitter, Inc. v V V Technology Pte Ltd* [2022] SGIPOS 4 at [124].

Factors relating to the impact of good / service similarity

70 The Applicant submitted that:[61]

> [74]…the nature of the goods in question, namely, *software and operating systems*, is such that they command a *higher level of attention* from the relevant consumer. [They]…require *deliberate selection, installation, and compatibility considerations*. Consumers must typically search for, evaluate, and download such products from online platforms or official stores, often after reading descriptions, reviews, and *technical specifications*.…

[Emphasis in italics mine]

71 I agree. I am of the view that the nature of the goods is such that they are highly technical in nature and require an intentional assessment as to their specific function, performance and thus suitability.

72 The Opponent's own website touts its capacity to produce music of a "high fidelity":[62]

> Home Entertainment Meets *High Fidelity*
>
> BluOS® is an *advanced* operating system and music management software that allows you to access and stream *lossless* music up to 24-bit/192kHz to every room using your home network…This *powerful* software…allows music lovers and custom integrators to connect, manage and control networked music in a connected home…

[Emphasis in italics mine]

73 *Per* the Principal Assistant Registrar in *Apple Inc v Penta Security Inc* [2024] SGIPOS 10 ("*Penta*") at [55]:[63]

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61 AWS at [74].

62 Opponent's 1st SD at Exhibit 2, page 32.

63 AWS at [78].

> [55]…in respect of Class 9 goods, such as computers and computer software, whether the consumers are individuals or organizations, *whether the goods are high end and costlier or at the lower end and less costly*, these goods still serve a *technical function* and prospective purchasers need to *consider the specification* and trade origin, and *exercise care and diligence* to determine whether the goods are in fact what they need and what they are looking for.

[Emphasis in italics mine]

74 Having regard to the nature of the goods, following *Penta* above, the issue of price does not come into play here. This is so since "[u]ltimately, the aim of the exercise is to determine the degree of care that the average consumer is likely to pay when purchasing that type of goods...and [i]n this exercise, there may be factors other than price".[64]

Conclusion

75 Taking into account in particular the nature of the goods, I am of the view that there is *no* likelihood of confusion.

Conclusion on Section 8(2)(b)

76 The ground of opposition under Section 8(2)(b) therefore fails.

Ground of Opposition under Section 8(4)(b)(i)

77 Section 8(4) of the Act reads:

> 8(4) Subject to subsection (5), where an application for registration of a trade mark is made on or after 1st July 2004, if the whole or an essential part of the trade mark is identical with or similar to an earlier trade mark, the later trade mark shall not be registered if —

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64 The Polo/Lauren Company, L.P. v United States Polo Association [2015] SGIPOS 10 at [109].

> (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…

78 In summary, to succeed in an opposition under s 8(4)(b)(i), the Opponent must establish that:

(a) The whole or essential part of the mark is similar to an earlier trade mark;

(b) The earlier mark is well-known in Singapore;

(c) Use of the mark in relation to the goods / services for which the mark is sought to be registered would indicate a confusing connection between those goods and the earlier mark; and

(d) Such use is likely to cause damage to the earlier mark.

Similarity of marks

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

80 Hence, with regard to this factor, my conclusion is the same as that for the objection under Section 8(2)(b), that is, I find that the marks are more dissimilar than similar.

Well-known in Singapore

81 The critical question is whether the Opponent's Earlier Mark was well known in Singapore as at the Relevant Date. The Court of Appeal in Court of Appeal in *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 at [101] - [102] has made clear that there is *no* general rule that "the threshold for a trade mark to be regarded as well-known in Singapore i*s a low one"*.

82 To establish that its mark is well-known to the relevant sector of the public, the Opponent relies on the same evidence which allegedly shows that the mark has acquired distinctiveness through use and enjoys reputation in the local market.[65]

83 I have already concluded above that I am of the view that the Opponent's Earlier Mark does *not* enjoy sufficient reputation in the local market. For the same reasons, I am of the view that the Opponent's Earlier Mark is *not* well-known to any relevant sector of the public in Singapore.

Confusing connection

84 In relation to this element, *Staywell* provided that "*Amanresorts* has put it beyond doubt that the connection requirement of s 8(4)(b)(i) and s 55(3)(a) of the Act will be satisfied where there is a likelihood of confusion".[66]

85 Thus, I am of the view that there will *no* confusing connection here for largely the same reasons that I have provided for my conclusion in relation to the likelihood of confusion under Section 8(2)(b).

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65 OWS at [63].

66 See at [120].

86 Following the above, there is *no* need for me to consider the element of damage for this ground.

Conclusion on Section 8(4)(b)(i)

87 The ground of opposition under Section 8(4)(b)(i) fails.

Ground of Opposition under Section 8(7)(a)

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

> (7) A trade mark shall not be registered if, or to the extent that, its use in Singapore is liable to be prevented —
>
> (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade…

89 The Court of Appeal in *Singsung Pte Ltd v LG 26 Electronics Pte Ltd* [2016] 4 SLR 86 summarised, at [28], as follows:

> … the main elements of the tort of passing off are encapsulated in the classical trinity of goodwill, misrepresentation and damage (see for example, *Novelty* at [37] and *Nation Fittings (M) Sdn Bhd v Oystertec plc* [2006] 1 SLR(R) 712 ("*Nation Fittings*") at [148]).

90 It is clear from the above that misrepresentation is an essential element of the tort of passing off.

Misrepresentation

91 I have concluded above that there is *no* likelihood of confusion under Section 8(2)(b) of the Act.

92 However, the Opponent argued that "in practice…the Application Mark is referred to by both the Applicant itself,[67] as well as various tech media sources,[68] as "BlueOS" rather than "Vivo BlueOS".[69]

93 Most of the items of evidence relied by the Opponent for the above statement are problematic such that any weight to be accorded to them will be *low*, for example, (i) several of the articles do not appear be targeted at the Singapore audience, as there is no indication as to the place of publication;[70] and (ii) most of the screen shots of the online platforms[71] are undated.

94 Importantly, *even if* the above evidence can be taken into account, the *context* of the various webpages and publication above put it *beyond doubt* that "BlueOS" is *not* the same or connected to the Opponent's Earlier Mark:

(a) For example, in a screenshot from Mobilekishop in relation to the promotion of Vivo Watch 3:[72] the heading of the website reads "*Vivo* Watch 3 Price, Specification, The *Vivo* Watch 3 released on Nov 2023 at price S$ 224 in Singapore" (emphasis in italics mine) while the reference to "BlueOS" is further below under "Specifications".

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67 Applicant's SD at Exhibit 8, pages 191 - 215.

68 Applicant's SD at Exhibit 6, at pages 168 – 179.

69 OWS at [61].

70 See for example, *Huawei and Xiaomi, Vivo announced BlueOS its own mobile operating system* dated 1 Nov 2023 at Applicant's SD at Exhibit 6, pages 171 – 172.

71 See for example, a screenshot from the website of GSMARENA in relation to vivo watch 3 at Applicant's SD at Exhibit 9, pages 222 – 223.

72 Applicant's SD at Exhibit 9, pages 217 – 221.

(b) For example, for the article, *After Huawei and Xiaomi,* ***Vivo*** *is here with its self-developed operating system, BlueOS* (emphasis in bold mine),[73] the title makes this clear.

95 In light of the above, I am of the view that misrepresentation is *not* made out and as such there is no need for me to look into the element of damage.

Conclusion on Section 8(7)(a)

96 The ground of opposition under Section 8(7)(a) therefore fails.

Overall conclusion

97 Having considered all the pleadings and evidence filed and the submissions made in writing and orally, I find that the opposition fails on all grounds. As such the Application Mark shall proceed to registration.

98 As a parting observation, I note that the Opponent's reference to the Opponent's Earlier Mark on its *own* website is as follows:[74]

[73] Applicant's SD at Exhibit 6, pages 175 – 176.

[74] Opponent's 1st SD at Exhibit 1, page 26.

It is curious that the Opponent does not rely on the Opponent's Earlier Mark but rather on a more fanciful iteration of the same.

Costs

99 Both parties have provided written submissions on costs.[75] The Applicant asked for costs and disbursements of S$11,170.00 in total, while the Opponent claimed costs of S$4,696.50.

100 As the Opposition failed on all three grounds, the Applicant is entitled to costs and disbursements in the sum of S$7,440. For clarity, I set out my calculations as follows:[76]

S/N	Description	Amount / fee ($)	Award ($)	Reasons
Institution of Proceedings				
1	Review Notice of Opposition	195 – 1,040 per document	800	3 or more grounds
2	Prepare Counter - Statement	390	390	Standard item
3	Review Opponent's 1st SD	195 – 1,040 per document	800	3 or more grounds

75 OWS at [104] and AWS at [145] – [146].

76 Having regard to HMD Circular 6.1 in relation to *Award and assessment of costs* at Part F which pertains to *Drafting a Bill of Costs* where appropriate.

4	Prepare the Applicant's SD	390 – 2,080 per statutory declaration	800	Some evidence of use
5	Review Opponent's 2nd SD	195 – 1,040 per document	500	3 or more grounds
6	Review Opponent's Supplementary SD	195 – 1,040 per document	390	Limited evidence
Interlocutory Hearings				
7a	Preparing the Pre-Hearing Review on 15 August 2025	65 – 650 per proceeding / review / conference	200	No written submissions / authorities
7b	Attending the Pre-Hearing Review on 3 August 2022		200	30 minutes or less
Full Hearing				
8	Preparing for full hearing	650 – 2,600	1,000	3 grounds relied on
9	Attending for full hearing	260 – 1,040	700	Hearing lasted for half a day
Total for work done			*S$5,780*	

Disbursements		
S/N	***Description***	***Amount***
1	*Printing, photocopying and other incidentals*	*300*
2	*HC6 filing fees*	*360*
3	*HC1*	*1,000*
Total for disbursements		*1,660*
Grand Total		***S$7,440***

Sandy Widjaja
Principal Assistant Registrar

Mr Kevin Wong and Ms Jin Wen Rui (Ella Cheong LLC)

for the Opponent;

Ms Millicent Lui (Ghows LLC)

for the Applicant