

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

[2026] SGIPOS 13

Trade Mark No. 40202407334X and 40202407335W

**IN THE MATTER OF A TRADE MARK APPLICATION BY
LOWERCASE VENTURES MANAGEMENT I, L.L.C.**

GROUND OF DECISION

TABLE OF CONTENTS

INTRODUCTION.....	1
PROCEDURAL HISTORY	4
THE LAW UNDER SECTION 7(4)(A)	5
APPLICATION OF SECTION 7(4)(A) TO THE FACTS.....	13
CONCLUSION ON THE OBJECTION UNDER SECTION 7(4)(A).....	15
THE LAW UNDER SECTION 7(1)(B)	15
APPLICATION OF SECTION 7(1)(B) TO THE FACTS.....	18
SECTION 7(1)(B): FIRST APPLICATION MARK	18
SECTION 7(1)(B): SECOND APPLICATION MARK	26
<i>Bona fide intention of Applicant</i>	29
FOREIGN REGISTRATIONS AND STATE OF THE REGISTER	31
CONCLUSION ON OBJECTIONS UNDER SECTION 7(1)(B).....	33
OVERALL CONCLUSION.....	33

**In the matter of a trade mark application by Lowercase
Ventures Management I, L.L.C.**

[2026] SGIPOS 13

Trade Mark Nos. 40202407334X and 40202407335W
IP Adjudicator David Llewelyn
17 July 2026

7 October 2026

IP Adjudicator David Llewelyn:

Introduction

1 The language considered acceptable in human discourse changes over time. It also depends on the context: first, because what is normal in a hawker centre or a karaoke bar would not be acceptable in a courtroom, a church, mosque or temple; and, secondly, because a particular word may have different connotations depending on how it is used.

2 On 5 April 2024, Lowercase Ventures Management I, L.L.C. (the “Applicant”) filed applications to register the following marks (the “Application Marks”):

Trade Mark No.	Mark
40202407334X (“First Application Mark”)	UNFUCK THE PLANET
40202407335W (“Second Application Mark”)	UNF**K THE PLANET

3 The Application Marks were sought to be registered in Classes 25, 35, 36, 41 and 42 in respect of the following goods and services, which were the same for both Application Marks except that the Second Application Mark was also sought to be registered in Class 42 in respect of “Consulting services in the field of engineering”:

Class 25

Clothing; Footwear; Headwear; Costumes.

Class 35

Association services; Promoting awareness of climate change; Online retail services; Brick and mortar retail services; Advertising, marketing and promotional services; Business management, organization and administration; Office functions; Public relations services; Organization of trade fairs and exhibitions for commercial or advertising purposes; Search engine optimization for sales promotion; Commercial administration; Business consultation.

Class 36

Insurance services; Financial services; Monetary services; Real estate services; Financial, monetary and banking services; Financial transaction and payment services; Financial management; Brokerage services; Capital investment services; Investment services, namely, investment of funds for others; Equity capital investment services; Global investment research services; Providing venture capital, development capital, private equity and investment funding; Fund investment services.

Class 41

Entertainment services; Educational services; Sporting and cultural activities; Organization of exhibitions for cultural or educational purposes; Arranging and conducting of conferences, congresses and symposiums; Publication of books and texts; Film production services; Ticket reservation and booking services for entertainment, educational, cultural and sporting events; Providing entertainment and educational information.

Class 42 (for the First Application Mark)

Scientific and technological services; Scientific and technological research services; Testing, analysis and evaluation of businesses of others for the purpose of certification; Industrial analysis and industrial research

services; Services of engineers and scientists who undertake evaluations, estimates, research and reports in the scientific and technological fields, including technological consultancy; Architectural and urban planning services; Software as a service (SaaS) services; Platform as a service (PaaS) services; Computer and technology services; Design services; Surveying services; Oil, gas and mining exploration services.

Class 42 (for the Second Application Mark)

Scientific and technological services; Scientific and technological research services; Testing, analysis and evaluation of businesses of others for the purpose of certification; Industrial analysis and industrial research services; Services of engineers and scientists who undertake evaluations, estimates, research and reports in the scientific and technological fields, including technological consultancy; Architectural and urban planning services; Software as a service (SaaS) services; Platform as a service (PaaS) services; Computer and technology services; Design services; Surveying services; Oil, gas and mining exploration services; Consulting services in the field of engineering.

4 Unsurprisingly, much of the argument in this case has focussed on the word “FUCK”, that forms part of one of the Application Marks and is clearly implied in the other. It is a word used in works such as D.H. Lawrence’s ‘Lady Chatterley’s Lover’ and J.D. Salinger’s ‘The Catcher in the Rye’ that are studied in many schools around the world. Today, it is seen, uttered and heard in an almost commonplace way both in the street and in a variety of media. Its use in literature and the everyday discourse of many is sometimes as a vulgar description of sexual intercourse but more frequently as an unthinking expletive or, in its adverbial form, as a succinct way of describing a person or thing that is in a very bad state.

5 All that having been said, neither of the Application Marks is for the word on its own: instead, it or “F**K” forms part of a phrase that draws attention in a way that a phrase with the same meaning but without it would not.

6 At the outset, it also bears emphasis that whatever official approval may be perceived by those viewing the Trade Marks Register, the right accorded to a trade mark through registration is a negative one, of being able to prevent others from infringing under Section 27 of the Trade Marks Act 1998 (the “Act”), rather than a positive right for the proprietor (or those the proprietor authorises) to use it. For example, there are many trade marks registered for tobacco products whose use in Singapore is prohibited by Regulation 29 of the Tobacco and Vaporisers Control (Appearance, Packaging and Labelling) Regulations 2019.

Procedural history

7 On 28 May 2024, the examiner examining the First Application Mark issued the first office action with objections to the First Application Mark under the grounds of refusal in Sections 7(1)(b) and 7(4)(a) of the Act.

(a) In brief, the examiner found the Application Mark to be devoid of any distinctive character and vulgar in nature due to the presence of the word “FUCK” within it.

(b) At the conclusion of the first office action, the examiner invited the Applicant to file evidence of use to overcome the Section 7(1)(b) objection.

8 On 6 June 2024, a separate examiner examining the Second Application Mark issued the first office action with an objection to the Second Application Mark under Section 7(1)(b) of the Act.

(a) In brief, the examiner found the Second Application Mark to be devoid of any distinctive character.

(b) At the conclusion of the first office action, the examiner invited the Applicant to file evidence of use to overcome the Section 7(1)(b) objection.

9 On 25 June 2025, the Applicant made submissions in response to the examiner's objections to the First Application Mark but did not file evidence of use to overcome the Section 7(1)(b) objection.

10 On 1 July 2025, the Applicant made submissions in response to the examiner's objection to the Second Application Mark but did not file evidence of use to overcome the Section 7(1)(b) objection.

11 On 24 December 2025, the Applicant was informed that the objections to the First Application Mark under Sections 7(1)(b) and 7(4)(a) were maintained.

12 On 30 December 2025, the Applicant was informed that the objection to the Second Application Mark under Section 7(1)(b) was maintained.

13 On 24 April 2026, the Applicant requested an *ex parte* hearing in respect of the First and Second Application Marks. The *ex parte* hearing was held on 17 July 2026.

The law under Section 7(4)(a)

14 I deal first with the Section 7(4)(a) objection raised by the examiner of the First Application Mark because an objection under this ground of refusal, if found to apply, cannot be remedied with evidence of use of the application mark.

15 Section 7(4)(a) of the Act reads:

7.—(4) A trade mark must not be registered if it is —
(a) contrary to public policy or to morality; ...

16 The examiner maintained the following in support of the objection under Section 7(4)(a) to the registration of the First Application Mark:¹

(a) the use of a strong expletive such as the word “FUCK” in a positive message does not diminish the capacity of the First Application Mark to cause public outrage;

(b) the assessment of whether a mark is offensive to the public must consider the commercial and marketplace context in which the average consumer in Singapore encounters the mark, focusing on the actual language employed rather than the underlying intentions or motivations behind the mark;

(c) use of the prefix “UN-” does not render the word “UNFUCK” not offensive. The mark would still be recognised by the average consumer as incorporating the expletive “FUCK” and confronted by it, albeit in modified form;

(d) in commercial, professional and public settings where trade marks operate, the word “FUCK” would be deemed inappropriate or shocking;

(e) even if the use of the word “FUCK” has become more widespread, this does not necessitate that its capacity to cause outrage in commercial settings has been diminished. Use of the word in

¹ Letter from IPOS to the Applicant dated 24 December 2025.

entertainment media or in casual conversation among friends differs significantly from use in the course of trade, and ordinary members of the public would find the First Application Mark's incorporation of the expletive outrageous when encountered unexpectedly in the course of their daily routines; and

(f) given the goods and services which the First Application Mark has been applied for, the First Application Mark may be used across a wide range of ordinary and everyday goods and services marketed to the public at large, inevitably exposing a significant section of the Singapore public (including children and the elderly) to such strong language in commercial contexts where they would not expect to encounter it, leading to affront and outrage.

17 The present decision is the first time an objection under Section 7(4)(a) has been substantively addressed in Singapore. It is therefore necessary to set out the parameters of, and the considerations relevant to, this absolute ground of refusal.

18 Given the absence of any Singapore case law on the matter, I consider it helpful to look at guidance provided on the corresponding provisions in the UK Trade Marks Act 1994 ("UKTMA") and in Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ("EUTMR").

19 For ease of reference, I set out these provisions below:

Section 3(3) of the UKTMA

(3) A trade mark shall not be registered if it is—

(a) contrary to public policy or to accepted principles of morality; ...

Article 7(1)(f) of the EUTMR

1. The following shall not be registered:

...

(f) trade marks which are contrary to public policy or to accepted principles of morality; ...

20 Whilst absent from Section 7(4)(a) of the Act, I consider it must be the case that the reference to “morality” in that provision must and can only be read as a reference to “accepted principles of morality”, the form of wording found in the UK and EU legislation. Any other construction would render the provision uncertain in its application, as the standard of “morality” would then depend on the subjective views of the decision-maker rather than on an ascertainable and objective standard. This is not to say that such a standard is immutable: what constitutes an accepted principle of morality necessarily evolves with changing social attitudes and the prevailing values of society. The relevant inquiry is nevertheless an objective one, having regard to the standards accepted by society at the material time rather than to the personal moral views of the decision-maker. In this case, the relevant society is Singapore society.

21 Indeed, in explaining the approach to be adopted under Article 7(1)(f) of the EUTMR, the Court of Justice of the European Union (“CJEU”) in *Constantin Film Produktion GmbH v EUIPO* (C-240/18) stated (albeit by reference to the provisions in Council Regulation (EC) No 207/2009, which was the version of the Regulation in effect at the time):

39. As regards that ground of refusal, it should be noted that, since the concept of ‘accepted principles of morality’ is not defined by Regulation No 207/2009, it must be interpreted in the light of its usual meaning and the context in which it is generally used. However, as the Advocate General observes in essence in point 77 of his Opinion, that concept refers, in its usual sense, to the fundamental moral values and standards to which a society adheres at a given time. Those values and norms, which are likely to change over time and vary in space, should be determined according to the social consensus prevailing in that society at the time of the assessment. In making that determination, due account is to be taken of the social context, including, where appropriate, the cultural, religious or philosophical diversities that characterise it, in order to assess objectively what that society considers to be morally acceptable at that time.

40. Moreover, in the context of the application of Article 7(1)(f) of Regulation No 207/2009, the examination as to whether a sign, in respect of which registration as an EU trade mark is sought, is contrary to accepted principles of morality requires an examination of all the elements specific to the case in order to determine how the relevant public would perceive such a sign if it were used as a trade mark for the goods or services claimed.

41. In that connection, in order to come within the scope of Article 7(1)(f) of Regulation No 207/2009, it is not sufficient for the sign concerned to be regarded as being in bad taste. It must, at the time of examination, be perceived by the relevant public as contrary to the fundamental moral values and standards of society as they exist at that time.

42. In order to establish whether that is the case, the examination is to be based on the perception of a reasonable person with average thresholds of sensitivity and tolerance, taking into account the context in which the mark may be encountered and, where appropriate, the particular circumstances of the part of the Union concerned. To that end, elements such as legislation and administrative practices, public opinion and, where appropriate, the way in which the relevant public has reacted in the past to that sign or similar signs, as well as any other factor which may make it possible to assess the perception of that public, are relevant.

43. The examination to be carried out cannot be confined to an abstract assessment of the mark applied for, or even of certain components of it, but it must be established, in particular where an applicant has relied on factors that are liable to cast doubt on the fact that that mark is perceived by the relevant public as contrary to accepted principles of

morality, that the use of that mark in the concrete and current social context would indeed be perceived by that public as being contrary to the fundamental moral values and standards of society.

22 I agree with the above statements made by the CJEU, save for any suggestion that the relevant inquiry is a contextual one which may vary according to the particular goods or services in respect of which registration is sought: it is not, and should not be. The consideration is an abstract one: whether the mark, on its own, is contrary to accepted principles of morality. By contrast, if the assessment were to be dependent on the particular goods or services specified in the application, the same mark could potentially attract different conclusions as to its registrability depending on how the specifications are framed. I do not consider that the application of the ground of refusal should be dependent on the manner in which an applicant chooses to formulate its application, rather than on the nature of the mark under consideration.

23 This begs the question: through whose eyes, therefore, is the inquiry to be made? In the particular case of the absolute ground of refusal under Section 7(4)(a) of the Act concerning morality, the relevant test is whether, upon exposure to the mark and regardless of what the mark is used on or for, a significant section of the right-thinking members of the public in Singapore would view it with opprobrium.

24 On this, the learned authors' views in *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 17th Ed, 2024) at [10-216] on Section 3(3) of the UKTMA are instructive:

Like other absolute grounds, these provisions are directed at the intrinsic qualities of [the] mark itself, and they are not concerned with circumstances relating to the conduct of the applicant, nor apparently to the way in which the applicant uses the mark. There would appear to be a good deal of overlap between "contrary to public policy" and "contrary to accepted

principles of morality”, although the latter is invoked far more frequently. Of course, these provisions do not prevent *use* of the terms, but they prevent the terms having any “official” approbation which registration might confer. Both phrases are deliberately broad. They are designed to prevent registration of marks which would cause offence to a section of the public. Offence may be caused on matters of race, sex, religious beliefs or general matters of taste and decency. Offence may be caused by words and/or images. It should be remembered that there is a dividing line between offensive marks and trade marks which might be considered by some to be in poor taste – the latter should not fall foul of this provision. A balance has to be struck and if the examiner or tribunal is in doubt, “the right of freedom of expression must always be taken into account without discrimination under section 3(3)(a) and any real doubt as to the applicability of the objection must be resolved by upholding the right to freedom of expression, hence acceptability for registration” [quoting G Hobbs QC in *Jesus Trade Mark* (BL/O/021/05) at [6]].

25 Professor Susanna H. S. Leong expressed a similar view in *Intellectual Property Law of Singapore* (Academy Publishing, 2013) at [28.246] – [28.247]:²

28.246 Marks that are offensive to morality are denied registration but the question remains as to the “standard of morality” against which a proposed mark should be assessed to see if it is indeed “contrary to morality”. Under the law, the courts (and the trade marks registry) are tasked to be final arbiters on issues of morality in Singapore. In their deliberation of what may be offensive to certain sections of society, it is useful to be reminded that there may be a fine line between a mark in poor taste and a mark which is “contrary to morality”. A lot depends on the threshold of tolerance in a given society.

28.247 To be denied registration under section 7(4) of the current TMA, it is not sufficient to show that the proposed mark is distasteful to a large section of the public, it must be such that they would be outraged by the use of mark [*sic*]. ...

26 However, a mark that is merely offensive is not, without more, contrary to accepted principles of morality. Offensiveness can arise from an individual’s personal sensibilities or reaction to a mark, without any broader judgment as to

² Applicant’s Written Submissions for the First Application Mark (“WS1”), at [12].

its moral character. On the other hand, opprobrium connotes a degree of strong public censure (*ie*, societal judgment) going beyond the fact that the mark may be distasteful, shocking or liable to cause offence. For this reason, it is insufficient that some members of the public may regard a mark as vulgar or take offence on seeing or hearing it. However, that is not to say that a finding of opprobrium requires every member of the public to personally regard the mark as offensive.

27 This brings me to the next consideration: the meaning of “significant” in the formulation. On this, I respectfully disagree with Professor Leong’s statements that to be denied registration, it must be shown that “a large section of the public” must be outraged by the use of the proposed mark. It is neither necessary nor appropriate, in my view, to engage in an arithmetical exercise as to what proportion of the public would constitute a “significant” section, or to distinguish between formulations such as “not insignificant”, “large” or “majority”. The word “significant” should be understood in its ordinary and natural sense, as referring to something that *matters*: the section of the public in question must be sufficiently substantial that its views cannot properly be disregarded. The inquiry is therefore not a quantitative one. Equally, the assessment cannot sensibly be driven by the views of outliers at either end of the spectrum: neither the moral prude, at one end, nor the person who is wholly insensitive to the feelings of others, at the other end, is representative of the relevant section of the public.

28 Having laid out the parameters of the applicable test, I now move on to consider the First Application Mark insofar as the objection under Section 7(4)(a) of the Act is concerned.

Application of Section 7(4)(a) to the facts

29 Notwithstanding that the First Application Mark contains the profanity “FUCK”, it must not be forgotten that the mark being applied for is not that word alone but the phrase “UNFUCK THE PLANET”.

30 It bears repeating that care must be taken when assessing a composite mark not to focus unduly on a particular component which, when viewed in isolation, may appear objectionable or capable of attracting opprobrium. The assessment must remain directed at the mark as a whole; a component which may independently attract such censure does not necessarily render the composite mark contrary to accepted principles of morality when considered in its entirety. A disproportionate focus on one such component risks attributing to the composite mark a character which it does not bear when properly considered as a whole.

31 The Applicant’s case before me broadly mirrors its earlier submissions made to the examiner. With respect, I consider that undue weight was placed by the examiner on the inclusion of the profanity in the First Application Mark when concluding that its registration would be contrary to accepted standards of morality.

32 I agree with the Applicant’s submissions that, in today’s society, the use of the term “UNFUCK” is an arresting method of conveying the idea of “*reversing damage*”, “*undoing harm*”, “*repairing what is broken*” and/or suggesting an “*urgent need to correct or restore something*”.³ (Indeed, the examiner himself similarly accepted that the term could mean “*to correct or fix*

³ WS1, at [19] – [20].

(a mistake or problem)”, albeit this was in relation to the separate objection under Section 7(1)(b).⁴

33 Building on this, the Applicant further argues that the First Application Mark is *“an environmental statement urging positive change and sustainability, rather than an expression of profanity”*, that *“[c]onsumers will readily understand that [the phrase] means to remedy and undo the harm inflicted upon planet earth by mankind”*, and that *“[n]othing in this obvious meaning of the phrase will be perceived by the public as being contrary to the fundamental moral values and standards of society”*.⁵

34 Notably, at [45] of the Written Submissions for the First Application Mark, the Applicant submits:

Even if the term “UNFUCK” were mildly offensive, the inclusion of the neutral elements “THE PLANET” offsets any potentially offensive connotation of “UNFUCK”. Indeed, when viewed as a whole, “UNFUCK THE PLANET” is a mark that *conveys an unmistakable message of environmental significance*. It will not be perceived as lewd or vulgar, but instead as *a dramatic call to action to address a widely accepted existential threat*. “UNFUCK THE PLANET” as a whole *will be perceived by the public as a legitimate response to the reality of climate change*, which is disrupting the balance of nature and causing a risk to the existence of all forms of life on Earth. Upon seeing this mark, *consumers will understand the importance and urgency of the objectives behind the company that has been established to invest into and work on projects to tackle the climate disaster that Earth is facing*.

[My emphasis added in italics.]

35 It is difficult to disagree with these statements, and I do not.

⁴ Letter from IPOS to the Applicant dated 28 May 2024 (“Examination Report 1”).

⁵ WS1, at [20] – [21].

Conclusion on the objection under Section 7(4)(a)

36 The objection under Section 7(4)(a) of the Act in respect of the First Application Mark is therefore not sustained.

37 As a final observation, it is in my view important not to conflate the question of whether a sign is registrable as a trade mark with the question of whether its display or use may be considered appropriate in a particular social setting. There are obvious circumstances (for example, when attending a primary school parent-teacher meeting or a place of religious worship) in which an individual should refrain from wearing a shirt emblazoned with the word “FUCK”, whether in that form or any derivative form, even where the word forms part of a longer expression which does not convey an offensive message. Those are matters of individual judgment and social propriety. They do not, however, warrant intervention through the trade mark registration system. Trade mark law is not the appropriate mechanism for determining whether a sign ought to be spoken, displayed or encountered in a particular context because some people may find it offensive. The morality ground of refusal should not be extended to such questions as this would risk involving the Registry in the regulation of matters of personal conduct and social etiquette that fall outside the proper function of trade mark law.

38 Having decided the objection under Section 7(4)(a) is not sustained, I now move to examine whether the objections raised under Section 7(1)(b) of the Act apply nonetheless to prohibit registration of one or both of the Application Marks.

The law under Section 7(1)(b)

39 Section 7(1)(b) of the Act reads:

7.—(1) The following must not be registered:

...

(b) trade marks which are devoid of any distinctive character; ...

40 This is the fourth decision in just over four years to be issued involving the registrability of a slogan. The wheel need not be reinvented: the three earlier decisions involving the same issue (namely, *In the matter of a Trade Mark Application by Arangur UG (haftungsbeschränkt)* [2022] SGIPOS 8 (“Arangur”), *In the matter of a Trade Mark Application by Schweiger, Martin Rainer Gabriel* [2023] SGIPOS 1 (“Schweiger”),⁶ and *In the matter of a trade mark application by Taiwan Semiconductor Manufacturing Company Ltd* [2025] SGIPOS 7 (“Taiwan Semiconductor”)) have already articulated the applicable legal principles, citing the various authorities and legal texts. I distil these principles below:

(a) In order to be registered, trade marks must perform the most basic function of distinguishing the goods of the trader from those of his competitors in the marketplace.⁷ Therefore, the necessary ingredient of a registrable trade mark is distinctiveness, in the sense of indicating the origin of goods or services bearing the mark.⁸

⁶ In passing, I note that in *Schweiger* (at [25] – [26]) the learned IP Adjudicator described *Arangur* as having cited the EU General Court in *Lidl Stiftung & Co. KG v EUIPO* (T-305/16) (“*Lidl Stiftung*”) “with approval” and “appl[ie]d these principles”. With the greatest of respect, that description is not entirely accurate. In *Arangur*, the reference to *Lidl Stiftung* was not an unqualified approval or application of its principles, but a consideration of certain aspects of the decision which were relevant to the analysis. The position is noted here simply to avoid any unintended suggestion that *Arangur* endorsed or applied *Lidl Stiftung* in the manner described.

⁷ *Han’s (F & B) Pte Ltd v Gustimo World Pte Ltd* [2015] 2 SLR 825, at [57].

⁸ *Société des Produits Nestlé SA and another v Petra Foods Ltd and another* [2017] 1 SLR 35 (“*KitKat*”), at [21].

(b) No single trader should be permitted a monopoly over a mark which is devoid of distinctive character. Other traders should be free to use such a mark in relation to their own goods and services.

(c) The distinctive character of a mark must be assessed by reference to: (i) the goods or services in respect of which registration is applied for; and (ii) the perception of the average consumer of those goods or services, who is deemed to be reasonably well informed, observant and circumspect.⁹

(d) To ascertain whether a mark is inherently distinctive, the critical question to ask is whether the average consumer would appreciate the trade mark significance of the mark in question without being educated that it is used for that purpose.¹⁰ The assessment is done by examining the inherent nature, features and characteristics of the mark, absent consideration of its use, promotion or marketing by the promoter of the mark.¹¹

(e) The criteria for assessing distinctive character are the same for all categories of marks. Nevertheless, the perception of the relevant public may not always be the same for all categories of marks, and it may therefore be more difficult to establish distinctive character in relation to some categories (such as shapes, colours, personal names, advertising slogans and surface treatments) than others.¹²

⁹ *KitKat*, at [22], citing *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 15th Ed, 2011) at para 8-016.

¹⁰ *KitKat*, at [33].

¹¹ *Love & Co Pte Ltd v The Carat Club Pte Ltd* [2009] 1 SLR(R) 561, at [35] and [53].

¹² *KitKat*, at [22], citing *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 15th Ed, 2011) at para 8-016.

(f) It is difficult for slogans, which often comprise ordinary words and phrases which are laudatory (about some aspect or quality of the goods or services in question) or calls to action, to satisfy the basic requirement of distinctiveness as an indication of trade origin that is necessary for registration as a trade mark, especially if no evidence of use is adduced.

Application of Section 7(1)(b) to the facts

41 As the Applicant has not provided any evidence of use of the Application Marks to support a claim that either (or both) has (or have) acquired distinctiveness through use in Singapore, the applications before me turn entirely on the inherent distinctiveness (or lack thereof) of each of the Application Marks.

Section 7(1)(b): First Application Mark

42 In response to the objection under Section 7(1)(b), the Applicant raised the following arguments (with direct quotes italicised):¹³

(a) for the objection to be maintained, “*it must be shown that the phrase is commonly used in the relevant trade as a designation for goods and services, not merely as an expression*”;

(b) “*customers are accustomed to phrases moving from discourse into branding*”, citing “Just Do It” (registered by Nike Inc.) or “Think Different” (registered by Apple Inc.) as “*not inherently unique phrases and yet function as trade marks because they were not customary designations of goods or services*”;

¹³ WS1, at [59], [65] – [67], [69] – [70], [73], [78] and [84].

(c) the First Application Mark is not “*a familiar slogan*” or “*an ordinary laudatory phrase*” as the word “UNFUCK”, while appearing in certain slang dictionaries, is not a “*recognised word in standard English usage*” and does not “*form part of everyday commercial vocabulary*”;

(d) the meaning of the term “UNFUCK” is “*not immediately self-evident*”: “*the average consumer must first recognise that it is derived from the root word “FUCK”, and then understand that the prefix “UN-” transforms it into a figurative expression conveying reversal or remediation. This introduces a cognitive step in the perception of the mark, as the consumer is required to interpret and process the term rather than immediately understand it as a straightforward descriptive or promotional message... The resulting expression is striking, memorable and commercially unusual, and is therefore capable of functioning not merely as a message, but as an indication of trade origin.*”;

(e) “*the construction “UNFUCK THE PLANET” does not yield a clear, grammatically coherent, or semantically direct expression*”, and “*departs from ordinary linguistic structure and requires the consumer to reinterpret the phrase beyond its literal components, arriving only at a broad and imprecise idea through mental inference*”;

(f) the First Application Mark does not describe or designate the kind, quality, intended purpose, value or other characteristic of the goods or services for which the mark is sought to be registered, and “*at most... evokes a broad, hyperbolic and ideological brand attitude*”;

(g) the First Application Mark “*is not part of the ordinary stock of sustainability advertising*”, and that “*isolated rhetorical uses in journalism, activism, commentary or artistic projects* [cited by the examiner]... *do not show that the phrase is a commercial slogan that many traders would wish to use in the ordinary course of trade*”;

(h) the examiner has not provided any evidence that the First Application Mark is “*commonly used across the trade as a slogan*”. Therefore, it is “*far from being customary language as would be prohibited by Section 7(1)(c) of the Trade Marks Act*”. It is also “*not ordinarily used in the course of trade to describe*” the goods and services for which the mark is sought to be registered; and

(i) the First Application Mark is not incapable of performing the function of a trade mark.

43 Unfortunately, as is apparent from the excerpts set out above, the Applicant’s submissions conflate the distinct and separate inquiries under the various grounds of refusal under Section 7(1) of the Act.¹⁴

44 Sections 7(1)(c) and 7(1)(d) address particular situations in which a mark is not registrable, namely where it consists exclusively of signs or indications which may serve to designate characteristics of the goods or services applied for, or which have become customary in the current language or in the bona fide and established practices of the trade. Section 7(1)(b), by contrast, addresses the separate question of whether the mark is devoid of distinctive

¹⁴ I note that this confusion may have been contributed to, in part, by the examiner’s comment that the phrase which makes up the First Application Mark is “commonly used in the industry as a call to action”, that its use is “prevalent” in the relevant industry: see Examination Report 1.

character. That a mark does not fall within either of the particular categories contemplated by Sections 7(1)(c) and 7(1)(d) does not, without more, establish that it possesses distinctive character. Rather, where a mark escapes an objection under those provisions, one still needs to consider whether the mark as a whole possesses the distinctive character necessary to distinguish the goods or services of the applicant from those of other traders.

45 In the same vein, the fact that a sign is capable of functioning as a trade mark for the purposes of Section 7(1)(a) does not necessitate that it possesses distinctive character under Section 7(1)(b) to function as a badge of origin. The threshold under Section 7(1)(a) is a low one, concerned only with whether the sign falls within the statutory definition of a “trade mark”, including whether it is capable of distinguishing goods or services in the abstract. Thus, a mark that passes muster under Section 7(1)(a) does not address the separate question of whether it is devoid of the distinctive character necessary to warrant the grant of exclusive rights.

46 It is therefore insufficient, in an answer to an objection under Section 7(1)(b), to demonstrate that the First Application Mark does not designate the characteristics of the goods or services applied for, is not commonly or customarily used in the relevant trade, or is not incapable of functioning as a trade mark (all of which relate to separate grounds of objection, none of which are in issue in the present case).

47 Having clarified the applicable inquiry, I turn to the perception of the average consumer of the relevant goods and services. The Applicant submits that the average consumers of the goods applied for in Class 25 are “*the general public at large, comprising ordinary consumers purchasing clothing, footwear, and headwear*”, whereas the average consumers for the services in Classes 35,

36, 41 and 42 are “*significantly more specialised and discerning, comprising business entities, professionals, investors, and individuals seeking technical, financial, or educational services*”.¹⁵ While I am prepared to accept that the average consumer varies across the classes of goods and services applied for, I do not consider this distinction makes any difference in the case of the First Application Mark.

48 Also, the Applicant’s submissions in relation to the First Application Mark are internally inconsistent. In addressing the Section 7(4)(a) objection, the Applicant submitted that the First Application Mark “*conveys an unmistakable message of environmental significance*” and that “[*u*]pon seeing this mark, consumers will understand the importance and urgency of the objectives behind the company that has been established to invest into and work on projects to tackle the climate disaster that Earth is facing.” Then, when addressing the Section 7(1)(b) objection, the Applicant submits, for the reasons described at [42(c)] to [42(e)] above, that its meaning is not immediately apparent.

49 While the relevant tests under the two provisions are not identical, there is necessarily substantial overlap between the notional people whose perceptions are relevant to each inquiry. The average consumer of the relevant goods or services (the object of the inquiry under Section 7(1)(b)) is, after all, drawn from the right-thinking public (the object of the inquiry under Section 7(4)(a)). There is no reason to suppose that either would approach or comprehend the same linguistic expression in materially different ways for the purpose of the two different inquiries. The Applicant cannot, in my view, maintain that the same phrase is readily and immediately comprehensible as a

¹⁵ WS1, at [90].

call to action for one ground of refusal, while contending that its meaning is not immediately apparent for the purposes of another.

50 In any event, I consider the Applicant has overstated the interpretative effort required on the part of the average consumer – who is reasonably well informed, reasonably observant and circumspect, and has also been described as literate, educated, and exposed to the world through travel and media¹⁶ – to arrive at the meaning of (or message behind) the First Application Mark. On this, it suffices to repeat my words in *Arangur* (at [31]):

... even if I accept the Applicant’s assertions that the Application Mark will trigger a cognitive process in the mind of the average consumer, I do not consider this per se is sufficient to endow the Application Mark with the distinctive character required by the TMA. ...

It seems to me that the “cognitive process” must follow from the “originality or resonance” of the trade mark in question. This would make more sense given that even a task as basic as reading entails a cognitive process and I do not consider that the CJEU [in *Audi AG v OHIM*] intended to suggest that marks that require reading, for example, would necessarily be distinctive in a trade mark sense. Further, the fact that a slogan is able to trigger a cognitive process in the minds of the relevant public was not the sole or decisive basis for the finding of distinctive character in the cases cited by the Applicant.

... it bears emphasis that the critical question is whether the average discerning consumer is able to immediately perceive the Application Mark to be a badge of origin, not whether the Application Mark triggers any cognitive process. ...

51 On the Applicant’s submissions that the First Application Mark would only convey “*a broad and imprecise idea through mental inference*” and evoke “*a broad, hyperbolic and ideological brand attitude*”, I refer to the Trade Marks

¹⁶ *McDonald’s Corp v Future Enterprises Pte Ltd* [2005] 1 SLR(R) 177, at [64].

Work Manual which, in relation to the example “AMAZING STARTS NOW”, states:¹⁷

The relevant consumer would generally not expect advertising slogans to be precise or to fully describe the characteristics of the goods and services. Rather, *it is a common characteristic of advertising slogans to merely convey abstract information of the claimed goods and services*. In other words, it is *customary in trade to use short and succinct phrases* when promoting the goods or services so as to capture the attention of potential customers. They are *not intended to provide a full picture* about the goods or services being advertised.

In this case however, the fact that “amazing starts now” contains *a grammatical flaw does not alter the perception of the relevant public to view the expression as laudatory*. The flaw does not stop the consumer from understanding the expression nor does it add any element which would open the expression to any additional interpretation.

[My emphasis added in italics.]

52 The Trade Marks Work Manual also states, in relation to the use of slogans by other traders:¹⁸

The assessment of the registrability of an expression is to be *based on the nature of the trade mark itself – not by reference to whether traders other than the applicant are using the expression in relation to similar goods and services*.

However, if other traders are using the expression, that fact may confirm a finding that the mark is an expression of everyday speech, used in common parlance, or uses no element of fancifulness, sense of humour or surprise. Therefore, such an expression lacks the inherent capacity to distinguish the applicant’s goods and services from those of others.

Even if the applied-for expression has not been used by other traders, *the applicant’s pioneer use of it does not attribute to the overall distinctiveness of the mark. Assessment of distinctiveness of a mark is based on whether it is perceived as a badge of trade origin*.

¹⁷ Intellectual Property Office of Singapore, *Trade Marks Work Manual*, Chapter 14: Slogans (Version 3.1, November 2022), at pp 10 – 11.

¹⁸ Intellectual Property Office of Singapore, *Trade Marks Work Manual*, Chapter 14: Slogans (Version 3.1, November 2022), at p 14.

[My emphasis added in italics.]

53 Having accepted at [32] to [35] the Applicant’s submissions that the First Application Mark would be viewed by right-thinking members of the public as “*an environmental statement urging positive change and sustainability*” and “*a dramatic call to action to address a widely accepted existential threat*” (that is, climate change), it is entirely consistent with this that I also consider that the relevant public would not immediately perceive the First Application Mark as a badge of origin *without first being educated that it is one*.

54 The First Application Mark would, in my view, be immediately perceived by the average consumer as a call to action or as conveying a particular message, irrespective of the goods or services in respect of which registration is sought. The message conveyed is one of environmental consciousness and sustainability: an ethos of being environmentally responsible, climate-conscious or committed to greener practices. This is the message that would be conveyed regardless of which undertaking used the phrase. The Applicant’s own submissions support this position:¹⁹

(a) that, for Class 35, “[t]he mark will be used so that consumers can identify online retail services, association services and other business services as sponsored by, affiliated with and/or endorsed by Applicant (sic) and its agenda of carbon mitigation” and that it “informs consumers that the promoted business services are part of Applicant’s (sic) environmental mission of change”;

(b) that, for Class 36, the phrase “advis[es] consumers that the financial services at issue are part of a larger environmental agenda”;

¹⁹ WS1, at [92], [94] – [97].

(c) that, for Class 41, the mark “*evokes a broad environmental attitude or brand ethos*”;

(d) that, for Class 42, the mark “*puts consumer (sic) and niche industry specialists on notice that scientific and technical services marketed under the [First Application Mark] are aligned with an overreaching environmentally-friendly movement*”; and

(e) that, for Class 25, the mark would “*assure consumers that they are patronising the goods and services of legitimate causes*” and convey “*a broader environmental attitude*”.

55 The fact that a word or phrase is distinctive (in the sense of its being memorable) does not mean it has any distinctiveness as an indication of trade origin. In the absence of any evidence of use by the Applicant of the First Application Mark to support an argument that the mark has acquired distinctiveness, I consider that the First Application Mark is devoid of distinctive character and should be rejected under Section 7(1)(b) of the Act.

Section 7(1)(b): Second Application Mark

56 I now come to the censored version of the same expression: two letters have been replaced by asterisks. But has anything thereby been changed?

57 The Applicant submits that, unlike in the case of the First Application Mark, the inclusion of asterisks causes a “*visual break*” which “*prevents immediate and automatic recognition of the censored word*”. The consumer “*must first process the stylized and non-standard term “UNF**K”, recognize that the asterisks substitute omitted letters, appreciate that the prefix “UN-”*

*has been applied to a colloquial and emphatic root word, and then understand the resulting expression figuratively rather than literally”.*²⁰

58 I accept that consideration of the Second Application Mark requires somewhat greater cognitive effort than consideration of the First Application Mark. That said, the additional effort required is minimal. Asterisks are a familiar convention for censoring or obscuring letters in words, particularly where the underlying word is profane, and the average consumer would ordinarily understand them immediately as signalling the deliberate concealment of particular letters, rather than the introduction of a different or indeterminate word. In the context of modern written communication, the average consumer in Singapore can reasonably be taken to be familiar with this convention and capable of readily inferring the word which has been partially obscured. That some additional cognitive effort is required to arrive at the same expression does not, in my view, materially alter the visual, aural or conceptual perception of the mark. Therefore, I consider the Second Application Mark must be rejected as devoid of distinctive character as a badge of origin without first having educated the public through use.

59 At the hearing, I asked the Applicant’s counsel how she would pronounce the Second Application Mark and how the average consumer would refer to it in oral conversation, particularly the first element. To both questions, her answer was: /un-bleep/ (referencing the sound commonly used to censor a swear word on radio, television and other forms of media). While I appreciate counsel’s attempt to further distinguish the Second Application Mark from the First Application Mark, I am afraid I cannot accept this submission. I consider

²⁰ Applicant’s Written Submissions for the Second Application Mark (“WS2”), at [26], [34].

it inconceivable that the letters “F” and “K” in the element “UNF**K” would not feature at all in any articulation of the word.

60 The Applicant further submits that the “*presence of asterisks introduces ambiguity, allowing for multiple interpretations*”, that “*the asterisks could technically be replaced with any combination of letters*”, and that “[g]iven this uncertainty, there is no basis to assume that all consumers will automatically perceive “UNF**K” as “UNFUCK””.

61 To be clear, the inquiry does not require the mark to be perceived in precisely the same manner by *every* consumer; what matters is how the mark would be perceived by the *average* consumer of the goods or services in question. It is therefore neither necessary nor appropriate to account for every possible individual reaction.

62 Whilst it is *possible* that the word “UNF**K” could be read as “unfork”, “unfunk” or “unfolk”, as submitted by the Applicant,²¹ I must take judicial notice of what goes on in the real world. Consequently, I do not consider it is *plausible* that it would be read as anything other than “UNFUCK” by the average consumer who is reasonably well informed, observant and circumspect.

63 The fact that the applications for the uncensored First Application Mark and Second Application Mark were made at the same time only supports the commonsensical conclusion that the “UNF**K” element is, at all times, intended to mean “UNFUCK” and not any other four-letter word beginning with the letter “F” and ending with the letter “K”.

²¹ WS2, at [21], [26].

64 Indeed, by advancing in relation to the Second Application Mark the same arguments concerning the environmental consciousness and sustainability-related message that it conveys as it did in respect of the First Application Mark, the Applicant implicitly acknowledges that the Second Application Mark would be viewed and read (*ie*, perceived) in the same way as the First Application Mark. (Surely, “UNFORK THE PLANET” and “UNFOLK THE PLANET” would not send the same message as that contended by the Applicant.)

65 Insofar as the Applicant’s submissions relate to the “UNF**K” element and the Second Application Mark being read by the average consumer as “UNFUCK” and “UNFUCK THE PLANET” respectively (*ie*, identical to the First Application Mark), and consequently mimic earlier arguments concerning the First Application Mark, I repeat my analysis above.

Bona fide intention of Applicant

66 I emphasise at the outset that the examiner did not raise any objection concerning the Applicant’s bona fide intention to use the Second Application Mark, and I do not treat this as a separate ground of refusal. It is nevertheless relevant to note that every application for registration of a mark is made on the basis of the applicant’s declaration of a bona fide intention that the mark be used in the course of trade, by the applicant or with the applicant’s consent, in relation to the goods or services for which registration is sought, as required by Section 5 of the Act and IPOS’s Form TM4.

67 This brings to mind the English case of *Imperial Group Ltd v Philip Morris & Co Ltd* [1982] FSR 72. There, the plaintiff wished to use “MERIT” as the brand name for its cigarettes but was advised by its patent department that, being a word with laudatory meaning, it would not be registrable. Instead,

it was suggested that a ‘ghost mark’ (a registrable word as similar as possible to the unregistrable word) be registered instead. This led to the similar mark “NERIT” being registered although the evidence showed that the plaintiff did not intend to use the registered mark in the ordinary course of its business; the intention was to use it only if necessary to protect its use of “MERIT” or to prevent a competitor from using “MERIT”. When the defendant subsequently began using “MERIT” for cigarettes, the plaintiff sought to rely on its registration of “NERIT” to challenge that use. The English Court of Appeal held that the registration of “NERIT” was not supported by a bona fide intention to use that mark as a trade mark; the intended use was, in substance, a means of obtaining protection for the unregistrable mark “MERIT”. Brightman L.J. further opined that the *“registration of ghost marks in order to secure a monopoly in words which a trader is not entitled to monopolise is in my opinion a reprehensible practice and an abuse of the Register which the courts ought not to condone”*.²²

68 Against that backdrop, the relationship between, and simultaneous applications for, the Application Marks merits some consideration. Given that the Applicant had already sought registration of the First Application Mark, its decision to also seek registration of the Second Application Mark raises a question as to whether the latter was genuinely intended to be used as a trade mark in its own right, or whether the application was made principally to secure protection against the use by other traders of the First Application Mark or similar marks. After all, the registration of the Second Application Mark would have the practical effect of indirectly affording protection to the First Application Mark notwithstanding that the latter itself may not qualify for registration.

²² *Imperial Group Ltd v Philip Morris & Co Ltd* [1982] FSR 72, at 90.

69 That said, I make no finding as to the Applicant’s true intentions in seeking registration of the Second Application Mark but the circumstances are nevertheless a useful reminder that the requisite intention should be directed to the use of the mark applied for, rather than principally to the protection which registration may afford.

Foreign registrations and state of the Register

70 The Applicant highlights in its submissions that: (a) the Application Marks have been registered in Australia, Brazil, Europe, India, Mexico and the United States of America, for one or more of the classes of goods and services applied for in the present applications; and (b) “UNFUCK THE ECONOMY” is registered in the United Kingdom for various goods and services similar to the Application Marks (which the Applicant argues is persuasive given that Singapore trade mark law historically developed from, and continues to be closely aligned with, United Kingdom trade mark principles).²³

71 A concise explanation as to the relevance of, and weight to be given to, foreign registrations was given by the learned Principal Assistant Registrar in *Taiwan Semiconductor*:

76 On the surface, there is certainly some attraction in the argument that the position in Singapore should not differ from other jurisdictions whose laws relating to inherent technical distinctiveness are generally aligned with Singapore law. It is, however, trite (and accepted by the Applicant) that foreign registrations are not binding in Singapore. This is because trade mark law is territorial, and the relevant laws and practices in different jurisdictions may differ. The submissions made and evidence adduced before the trade mark registries in these jurisdictions may also be different.

77 Further, trade mark registries around the world receive and process a vast number of trade mark applications, of which only a very minute number will be contested. In the present

²³ WS1, at [103] – [105]; WS2, at [62] – [64].

case, I note that none of the various jurisdictions where the corresponding application has been accepted for registration has issued a decision explaining the reasons for such acceptance. There is therefore no way to assess the cogency of the position taken in these other jurisdictions, and no way to know whether these positions would survive a challenge by a third party.

72 The Applicant also sought to rely on “*analogous*” marks accepted by the Trade Marks Registry, arguing that “[j]ust as the prior marks were deemed more than mere advertising slogans and were instead found capable of functioning as indicators of brand origin, the same applied to the present mark”, and that the Applicant “do[es] not see any realistic difference between the elements and entitlement of such marks to get onto the register when compared with [the First Application Mark]”.²⁴ I disagree, not least because several of the prior marks cited by the Applicant were composite marks.

73 As has been oft repeated, the state of the Trade Marks Register is irrelevant to the factual inquiry on distinctiveness: it does not inform as to what is actually happening in the marketplace or the circumstances which led to the Registry’s acceptance of the marks concerned.²⁵

74 The “*realistic difference*” which the Applicant overlooks is that the applicants in respect of the prior marks may well have adduced evidence sufficient to establish that the marks had acquired distinctiveness through use, notwithstanding any lack of inherent distinctiveness. The mere fact that those prior marks were ultimately registered does not, therefore, establish that they are inherently distinctive.

²⁴ WS1, at [106] – [112]; WS2, at [65] – [71].

²⁵ *Arangur*, at [32], citing *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 at 305.

75 Finally, I repeat the observation of the learned Principal Assistant Registrar in *Taiwan Semiconductor*: “[s]ince there is no clear bright line between a mark that is “devoid of distinctive character” and one which barely crosses this threshold, a diligent applicant will almost certainly be able to locate prior registrations which purportedly support its own application”.²⁶

Conclusion on objections under Section 7(1)(b)

76 The objections under Section 7(1)(b) of the Act in respect of both Application Marks are therefore maintained.

Overall conclusion

77 Having considered all the submissions made, both Application Marks are refused registration by virtue of Section 7(1)(b) of the Act.

David Llewelyn
IP Adjudicator

Millicent Lui and Ruth Teh (Ghow's LLC) for the Applicant

²⁶ *Taiwan Semiconductor*, at [85].