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

[2026] SGIPOS 15

Trade Mark No. 40202309677U

IN THE MATTER OF A TRADE MARK APPLICATION

IN THE NAME OF

ZYZ GMBH

… *Applicant*

AND

AN OPPOSITION BY

HERMOS AG

… *Opponent*

GROUNDS OF DECISION

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Hermos AG
v
ZYZ GmbH

[2026] SGIPOS 15

Trade Mark No. 40202309677U
IP Adjudicator Vikram Rajaram
20 August 2026

10 November 2026

IP Adjudicator Vikram Rajaram:

Introduction

1 This is my decision on an opposition to the registration of the trade mark "HERMOS", Trade Mark No. 40202309677U (the "Application Mark") filed by CURO GmbH ("CURO"), a German company now succeeded by ZYZ GmbH ("ZYZ") (collectively, the "Applicant"). The Opponent, Hermos AG, is likewise a German company. The Opponent claims to have used the mark "HERMOS" since at least the 1980s. The Opponent opposes the registration of the Application Mark on three grounds: (a) the application to register the Application Mark was made in bad faith; (b) the Application Mark must not be registered because its use in Singapore would be liable to be prevented under the law of passing off; and (c) the Application Mark is identical with or similar to a mark that is well known in Singapore. A key feature in this case is that the Applicant's managing director at the time of this application, Mr Harald Buchmann ("Mr Buchmann"), was a former senior employee of the Opponent. Having considered the evidence and the submissions, I find that the opposition succeeds on the first two grounds but not the third. My reasons are as follows.

Background

The parties

2 The Application Mark that is the subject of the present opposition proceedings was filed by CURO.[1] On 21 August 2023, CURO merged with ZYZ. According to the Statutory Declaration filed by Mr Buchmann, a managing director of ZYZ, following the merger, ZYZ became the successor-in-title to all assets, rights, and liabilities of CURO, including the Application Mark.[2]

3 As will be seen later in these grounds of decision, the Opponent has raised a preliminary objection that CURO was not in existence at the time when the Counterstatement was filed, and that, accordingly, there is no proper party entitled to defend the Application Mark.[3] This preliminary objection will be considered later.

4 The Opponent is part of a group of companies (the "Hermos Group") which includes Hermos International GmbH ("Hermos International"). Hermos International has a wholly-owned Malaysian subsidiary known as Hermos Sdn. Bhd. ("Hermos Malaysia").[4]

5 The Opponent claims to be the first user of the mark "**HERMOS"** (the "Hermos Word Mark") in Singapore.[5] The Opponent further claims to have used the Hermos Word Mark and the mark "", which the Opponent

[1] Statutory Declaration of Harald Buchmann made on 15 January 2026 and filed on behalf of the Applicant ("Mr Buchmann's SD") at para 5.
[2] Mr Buchmann's SD at para 6.
[3] Statutory Declaration of Ms Goh Mui Leng made on 18 July 2025 and filed on behalf of the Opponent ("Ms Goh's 1st SD") at para 8.
[4] Ms Goh's 1st SD at para 2.
[5] Ms Goh's 1st SD at para 19.

refers to as the "Hermos Formative Mark", at least since the early 1980s.[6]

6 I will refer to the Hermos Word Mark and the Hermos Formative Mark collectively as the "Hermos Marks".

The Application Mark

7 The Applicant filed the Application Mark on 4 May 2023 (the "Relevant Date").

8 The Application Mark was in Class 9 for specified goods which include radio frequency identification ("RFID") readers, RFID chips, an antenna for RFID technology, a receiver for RFID technology, integrated writers for RFID technology, a device to connect RFID readers with a computer or host system, and computer hardware for RFID technology (collectively, "RFID Goods"). The goods applied for are not, however, limited to RFID Goods. They included other goods such as "Aerials", "Antennas", "cables", "Transponders" and "Software" which had descriptions that did not contain any references to RFID technology. The full list of goods applied for ("Applicant's Goods") is extracted below for reference:

> Radio-frequency identification [RFID] readers; Memory cards; memory chips; Radio-frequency identification [RFID] chips; Aerials; Transponders; Software; Antennas; cables, electric; electronic audio and visual apparatus and instruments; antenna for RFID technology; receiver for RFID technology [radio-frequency receivers]; integrated writers for RFID technology; device to connect the RFID reader with a computer or host system; computer hardware for RFID technology; antenna for radio technology; reader for radio technology; receiver for radio technology [radio receivers]; integrated writers for radio technology; device to connect a computer or host system for radio technology; computer hardware for radio technology.

[6] Ms Goh's 1st SD at para 19.

Grounds of opposition

9 On 1 August 2024, the Opponent filed a Notice of Opposition to oppose the registration of the Application Mark.

10 In the Statement of Grounds of Opposition dated 1 August 2024, the Opponent stated that it was relying on three grounds to oppose the registration of the Application Mark:

(a) First, pursuant to s 7(6) of the Trade Marks Act 1998 (the "TMA"), the Application Mark must not be registered because the application was made in bad faith (the "Bad Faith Ground").

(b) Second, pursuant to s 8(7)(*a*) of the TMA, the Application Mark must not be registered because its use in Singapore is liable to be prevented under the law of passing off (the "Passing Off Ground").

(c) Third, pursuant to s 8(4)(*b*)(i) of the TMA, the Application Mark must not be registered on the basis that the Hermos Word Mark is well known in Singapore, and the Application Mark is identical with or similar to the Hermos Word Mark such that the use of the Application Mark in relation to goods for which the Application Mark is sought to be registered would indicate a connection between those goods and the Opponent, and this is likely to damage the interests of the Opponent (the "Well Known Mark Ground").

The Opponent's evidence

11 The Opponent has presented the following evidence in support of its opposition:

(a) a Statutory Declaration made by Ms Goh Mui Leng ("Ms Goh"), a Director and the Administrative Manager of Hermos Malaysia, on 18 July 2025 ("Ms Goh's 1st SD"); and

(b) a Statutory Declaration in Reply made by Ms Goh on 28 April 2026 ("Ms Goh's 2nd SD").

12 Ms Goh's evidence is that the Hermos Group established a department specialising in the development of RFID readers and RFID solutions in 1994 under an entity known as Hermos Informatik GmbH ("Hermos Informatik"). The Opponent claims to have "very successfully" sold RFID readers and solutions in Germany and worldwide under the sign "HERMOS".[7]

13 Ms Goh highlights that Mr Buchmann, who is the managing director of the Applicant and the deponent of its Statutory Declaration in these proceedings, was a former employee of Hermos Informatik. His role in that entity included being its authorised signatory from 13 March 1997 to 25 February 2000, and then its managing director from 27 February 2000 until 2002.[8] That was the year in which a group of companies known as the "Brooks Group" took over the Opponent's RFID division. This was done by merging Hermos Informatik with an entity known as Brooks Automation (Germany) GmbH ("Brooks Automation").[9] Ms Goh's evidence is that Mr Buchmann served as managing director of Brooks Automation from 30 March 2006 to 29 December 2014.[10]

14 Ms Goh's evidence is that from 2002 to 2015, Brooks Automation developed and sold RFID readers. During this period, the Hermos Group

[7] Ms Goh's 1st SD at para 12.
[8] Ms Goh's 1st SD at para 38.
[9] Ms Goh's 1st SD at para 13.
[10] Ms Goh's 1st SD at para 40.

collaborated with Brooks Automation on a few RFID reader projects in various countries including Singapore.[11]

15 In 2015, the Brooks Group discontinued the domestic activities of the RFID department within Brooks Automation and relocated its RFID department.[12] Several former employees of Hermos Informatik apparently then returned to work with the Opponent to rebuild the RFID business under the "HERMOS" brand.[13] This allegedly led the Hermos Group to regain "its success of the past".[14] According to the Opponent, its RFID division has been expanding under the "HERMOS" brand in Germany and worldwide.[15]

16 Ms Goh has produced various sales invoices, order confirmations and service reports as evidence in support of the Opponent's case that the Hermos Marks were used in Singapore since 1999.[16] In Ms Goh's 2nd SD, she has produced additional order confirmations, invoices, credit notes and purchase orders concerning sales of various products, which the Opponent claims fall within the scope of the Applicant's Goods.[17]

The Applicant's evidence

17 The Applicant's evidence comprises a Statutory Declaration made by Mr Buchmann on 15 January 2026 ("Mr Buchmann's SD").

18 Mr Buchmann explains that he was the managing director of CURO, together with another individual known as Guido Kenzlers, before its merger

[11] Ms Goh's 2nd SD at Part A, para 4.
[12] Ms Goh's 1st SD at para 15.
[13] Ms Goh's 1st SD at para 16.
[14] Ms Goh's 1st SD at para 17.
[15] Ms Goh's 1st SD at para 17.
[16] Ms Goh's 1st SD at paras 19 to 20.
[17] Ms Goh's 2nd SD at Part A, paras 8 to 13.

with ZYZ on 21 August 2023.[18] Mr Buchmann asserts that following the merger, ZYZ became the successor-in-title to all of CURO's assets, rights and liabilities, including the Application Mark.[19]

19 Mr Buchmann's evidence is that after the Opponent's former RFID department, Hermos Informatik, was sold to Brooks Automation, the Opponent "did not manufacture RFID readers or any other readers for radio identification".[20] Mr Buchmann further explains that after Brooks Automation dissolved its German RFID division in 2014, he was released from his role as managing director and authorised signatory.[21] Mr Buchmann states that he was not subject to any contractual non-competition obligations.[22]

20 Mr Buchmann also testifies that Xedion AG, a German company, which was a sales partner of Brooks Automation since 2010, decided to develop its own RFID reader with a view to selling such readers outside the European Union under the HERMOS brand.[23] Mr Buchmann further states that after Brooks Automation's RFID division was dissolved, Xedion AG hired some of the former employees.[24] This was done because Brooks Automation and the Opponent did not intend to continue manufacturing RFID hardware.[25] In Mr Buchmann's words, "[a]t that time, the Opponent had completely abandoned the RFID reader business".[26]

[18] Mr Buchmann's SD at paras 1 and 5.
[19] Mr Buchmann's SD at para 7.
[20] Mr Buchmann's SD at para 17.
[21] Mr Buchmann's SD at para 18.
[22] Mr Buchmann's SD at para 18.
[23] Mr Buchmann's SD at para 18.
[24] Mr Buchmann's SD at para 19.
[25] Mr Buchmann's SD at para 19.
[26] Mr Buchmann's SD at para 19.

21 Mr Buchmann also identifies himself as being on the executive board of Xedion AG, together with Guido Kenzlers.[27] Xedion AG is the holder of a licence in respect of two registered HERMOS trade marks that CURO registered in South Korea prior to its merger with ZYZ.[28]

Issues arising

22 Three main issues arise for my decision:

(a) whether the Bad Faith Ground is made out ("Issue 1");

(b) whether the Passing Off Ground is made out ("Issue 2"); and

(c) whether the Well Known Mark Ground is made out ("Issue 3").

23 In addition to these three issues, a preliminary issue arises as to whether the Counterstatement filed in these proceedings is invalid on the basis that it was filed in the name of CURO at a time when CURO had already merged into ZYZ (the "Preliminary Objection"). I will deal first with the Preliminary Objection.

Preliminary Objection: whether the Counterstatement is invalid

24 The Preliminary Objection arises from points raised in the Opponent's Statutory Declarations. In Ms Goh's 1st SD, Ms Goh stated that CURO's merger with ZYZ was completed on or around 21 August 2023.[29] Despite this, the Applicant's Counterstatement was filed in the name of CURO on 2 December 2024.[30] Since CURO was not in existence as an entity at that time, Ms Goh

[27] Mr Buchmann's SD at para 13.
[28] Mr Buchmann's SD at para 12.
[29] Ms Goh's 1st SD at para 6.
[30] Ms Goh's 1st SD at para 7.

maintained (on behalf of the Opponent) that the Counterstatement was "invalid or of no legal effect".[31] In Ms Goh's 2nd SD, she maintained the Opponent's position that the Counterstatement was invalid.[32]

25 The Applicant highlights that CURO notified the Intellectual Property Office of Singapore (**"IPOS"**) of its assignment and transfer of the Application Mark to ZYZ. Evidence of the transfer has been exhibited to Mr Buchmann's SD.[33] The Applicant also submits that any procedural irregularity may be corrected under rule 83(1) of the Trade Marks Rules. That provision allows the Registrar to correct any irregularity in procedure that is not detrimental to the interests of any person or party.[34]

26 I note that no submissions were made on the Preliminary Objection in the Opponent's Written Submissions. The point was also not pursued in oral submissions by the Opponent's counsel.

27 I find that the Preliminary Objection is not a basis for allowing the opposition for the following reasons:

(a) There is no evidence before me that suggests that the Application Mark is presently being maintained by a non-existent entity. The Opponent has not put forward any evidence to contradict the Applicant's evidence in Mr Buchmann's SD that ZYZ is the successor-in-title to the assets, rights and liabilities of CURO, including the Application Mark.[35]

[31] Ms Goh's 1st SD at para 8.
[32] Ms Goh's 2nd SD at paras 21 to 23.
[33] Mr Buchmann's SD at Exhibit H-4.
[34] Applicant's Written Submissions at paras 17 to 18.
[35] Mr Buchmann's SD at para 7.

(b) Thus, the filing of the Counterstatement in the name of CURO after the merger had taken effect is a *procedural* irregularity. Essentially, the *wrong name* was used when the Counterstatement was filed.

(c) I correct the procedural irregularity pursuant to rule 83(1) of the Trade Marks Rules. I am satisfied that the irregularity has not caused any detriment to the interests of the Opponent. I do not see any reason why the Opponent is substantively prejudiced by the fact that the Counterstatement was filed in the name of the wrong entity. In any case, the Opponent does not assert that it has suffered any specific prejudice as a result of the procedural irregularity.

28 Thus, I find that the procedural irregularity can and should be corrected. This suffices to dispose of the Preliminary Objection.

Issue 1: Whether the Bad Faith Ground is made out

29 I will begin by outlining the applicable principles before considering the evidence and the arguments that have been made under the Bad Faith Ground.

Applicable principles for a bad faith challenge under s 7(6) of the TMA

30 The basis for opposing a trade mark application on the ground of bad faith is s 7(6) of the TMA. That provision states that "[a] trade mark must not be registered if or to the extent that the application is made in bad faith".

31 The principles that should apply when considering whether a trade mark should not be registered on account of the application being made in bad faith are well settled. The relevant principles may be summarised as follows:

(a) Bad faith operates as an exception to the "first-to-file system" under which the first person to apply to register a trade mark is usually entitled to register it over a later applicant: see *Tomy Inc v Dentsply Sirona Inc* [2020] 5 SLR 424 ("*Tomy*") at [32(a)] citing *Hotel Cipriani Srl and others v Cipriani (Grosvenor Street) Ltd and others* [2008] EWHC 3032 (Ch) ("*Cipriani*") at [185].

(b) The issue of whether the applicant acted in bad faith in making the application is to be determined as at the date of the application. Matters occurring after the date of the application are also relevant if those matters may assist in deciding the applicant's state of mind at the time of the application: see *Tomy* at [32(b)] citing *Festina Lotus SA v Romanson Co Ltd* [2010] 4 SLR 552 ("*Festina Lotus*") at [100].

(c) The opponent bears the legal burden of proof for establishing that a trade mark is to be refused registration on account of bad faith: see *Valentino Globe BV v Pacific Rim Industries Inc* [2010] 2 SLR 1203 ("*Valentino*") at [21] and [23].

(d) Bad faith consists of a subjective element (which considers what the particular applicant knew) and an objective element (which considers what ordinary persons, applying proper standards, would think): see *Valentino* at [29] citing *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 ("*Wing Joo Loong*") at [105]. The test is essentially whether an ordinary person in possession of the knowledge available to the applicant, would have regarded the applicant's conduct as falling below "normally accepted standards of commercial behaviour": see *Valentino* at [31].

(e) A bad faith allegation is a serious claim that must be sufficiently supported by evidence: see *Valentino* at [30]. The standard of proof for establishing bad faith is a "balance of probabilities". However, "cogent evidence is required due to the seriousness of the allegation": see *Tomy* at [32(f)] citing *Cipriani* at [177].

(f) A finding of bad faith is "largely, if not invariably, based on circumstantial evidence": see *Tomy* at [32(f)] citing *Festina Lotus* at [115]. Thus, it may be necessary to draw inferences from the totality of the circumstances.

(g) It is relevant to consider the "nature of the parties' pre-existing relationship" when deciding whether there was bad faith in the registration of the trade mark. For example, it is relevant to consider whether the applicant is seeking to register a trade mark of "a competitor, an ex-employer, a supplier, a licensor or any party with whom the applicant has or had a contractual or pre-contractual relationship": see *Tomy* at [32(g)] citing Tan Tee Jim, *Law of Trade Marks and Passing Off in Singapore* (Sweet & Maxwell, 3rd Ed, 2014) at para 7.178.

The parties' positions

32 The Opponent submits that the Applicant knew of the Opponent's longstanding use of the Hermos Word Mark through Mr Buchmann's former employment in the Hermos Group.[36] Despite this, the Applicant applied to register the Application Mark, which is identical to the Hermos Word Mark, without any credible explanation for how or why the Applicant adopted the

[36] Opponent's Written Submissions at para 34.

Application Mark and sought its registration.[37] The Opponent thus contends that the subjective and objective elements of the test for bad faith are satisfied on the evidence.[38]

33 The Applicant submits that Mr Buchmann's past employment with Hermos Informatik (which ended in 2002) and Brooks Automation (which ended in 2014), and any knowledge that he had regarding the Hermos Marks, "does not in itself" establish that the Applicant's application for registration of the Application Mark "almost 10 years later" (in 2023) amounts to bad faith. The Applicant contends that Mr Buchmann's past employment with Hermos Informatik and Brooks Automation gave it ground for "an honest and *bona fide* belief that the Opponent had abandoned its business in relation to the Applicant's Goods in Singapore (and hence use of the Application Mark in relation to such goods) and therefore that the Applicant may independently seek to register the Application Mark in Singapore (even if identical)".[39]

Analysis and finding on the Bad Faith Ground

34 Having considered the evidence in the Statutory Declarations and the parties' submissions, I find that the Bad Faith Ground is made out on a balance of probabilities. I reach this conclusion for the reasons that follow.

35 To begin with, there are two key circumstances that are not in dispute:

(a) First, the Application Mark is identical to the Hermos Word Mark. This is apparent from a visual comparison of the Application

[37] Opponent's Written Submissions at paras 35 to 36.
[38] Opponent's Written Submissions at paras 33 and 39.
[39] Applicant's Written Submissions at para 22(b).

Mark (see [1] above) and the Hermos Word Mark (see [5] above). The Applicant does not dispute that the marks are identical.[40]

(b) Second, it is not disputed that there was a significant pre-existing connection between the parties through Mr Buchmann. Mr Buchmann, who was a managing director of the Applicant at the time of the application, had previously held senior positions within Hermos Informatik over an extended period. The Applicant's prior connection with the Opponent (through Mr Buchmann) is a relevant consideration when considering whether there was bad faith in the filing of the Application Mark. As noted earlier, it is relevant to consider the "nature of the parties' pre-existing relationship" when deciding whether there was bad faith in the application for registration of the trade mark: see *Tomy* at [32(g)] and [31(g)] above.

36 In addition, there is substantial evidence of the Hermos Word Mark being used in Singapore before the Relevant Date. The Opponent has produced several invoices, order confirmations and service reports pre-dating the Relevant Date in Ms Goh's 1st SD.[41] While I will consider the evidential limitations of those documents in greater detail under the Passing Off Ground, there is nonetheless significant evidence that the Hermos Marks were in use in Singapore before the Relevant Date. For example, the Hermos Marks appear in invoices dated 16 April 2007, 3 September 2008, 30 December 2009, and 1 March 2010 which were billed to entities that had a Singapore address.[42] Some of these invoices were for goods covered by the Application Mark. For example, the 1 March 2010 invoice[43] included a reference to an item which the Opponent

[40] Applicant's Written Submissions at para 22(b)(ii) ("…While the marks may be identical …").
[41] Ms Goh's 1st SD at para 20 and Exhibit E.
[42] Ms Goh's 1st SD at pp 91, 94, 97 and 99.
[43] Ms Goh's 1st SD at p 99.

states is a device to connect an RFID reader with a computer or host system.[44] The Applicant's Goods include a "device to connect the RFID reader with a computer or host system" (see [8] above). These invoices will be considered in further detail under the Passing Off Ground.

37 I accept the Applicant's submission that the above circumstances, by themselves, would not necessarily support a finding of bad faith. If the Applicant genuinely believed that the Opponent had abandoned the Hermos Word Mark, the Applicant would not have acted in bad faith in seeking to register the Application Mark. I also accept that the Applicant would not have acted in bad faith merely because such a subjective belief of abandonment was ultimately erroneous.

38 However, the evidence does not establish that the Applicant, at the time of the application, held the asserted belief that the Opponent had abandoned the Hermos Word Mark. Most significantly, Mr Buchmann does not state in his evidence that the application was made on the basis of such a belief. His evidence instead establishes the following:

(a) After Hermos Informatik was sold to Brooks Automation, "the Opponent did not manufacture RFID readers or any other readers for radio identification".[45]

(b) After Brooks Automation dissolved its German RFID division in around 2014, Mr Buchmann was released from his role as managing director and authorised signatory. Mr Buchmann had no contractual non-competition obligations imposed on him.[46]

[44] Ms Goh's 2nd SD at para 11, Table 2, S/N 6.
[45] Mr Buchmann's SD at para 17.
[46] Mr Buchmann's SD at para 18.

(c) Xedion AG, which had already acted as a sales partner of Brooks Automation since 2010, "subsequently decided to develop its own RFID reader and sell it exclusively outside the European Union under the HERMOS brand".[47]

(d) Following the dissolution of Brooks Automation's RFID division, "Xedion AG also hired some former employees who wished to work for Xedion AG as neither Brooks [Automation] nor the Opponent intended to continue manufacturing RFID hardware".[48]

(e) Mr Buchmann then states that "[a]t that time, the Opponent had completely abandoned the RFID reader business".[49]

39 At no point in his statutory declaration did Mr Buchmann state that the application was made on the basis that the Applicant believed that the Opponent had abandoned *the Hermos Word Mark*. Nor did Mr Buchmann explain why, notwithstanding his prior senior positions within the Hermos Group, the Applicant decided to apply to register a mark identical to the Hermos Word Mark.

40 The absence of such an explanation is significant. The Applicant did not state in Mr Buchmann's SD that the application was made on the assumption or belief that the Opponent had abandoned the Hermos Word Mark. The need for an explanation should have been obvious from the position that the Opponent was taking in Ms Goh's 1st SD. Ms Goh's 1st SD made clear that the Opponent was principally relying on Mr Buchmann's past role in the Hermos Group and his knowledge of the Hermos Word Mark through that role, to establish the Bad

[47] Mr Buchmann's SD at para 18.
[48] Mr Buchmann's SD at para 19.
[49] Mr Buchmann's SD at para 19.

Faith Ground. In the section of Ms Goh's 1st SD that dealt with the Bad Faith Ground, Ms Goh referred to Mr Buchmann's previous role as the former managing director of Hermos Informatik and that Mr Buchmann "would have had access to the Hermos Group's branding strategies, including the use and promotion of the Hermos Word Mark and the Formative Mark by the Opponent".[50] Ms Goh also referred to Mr Buchmann's former role in the Hermos Group and his knowledge in that capacity elsewhere in her 1st SD. In a section dealing with the Applicant's background, Ms Goh stated that "[t]here can be no dispute that [Mr Buchmann], a long-term employee of the companies under the Hermos Group, was fully knowledgeable about the business of the Hermos Group and the HERMOS brand, which is proprietary to the Opponent".[51] It should therefore have been evident that Mr Buchmann's former role in the Hermos Group, and his consequent knowledge of the Hermos Marks, was a key aspect of the Opponent's case on the Bad Faith Ground.

41 The Applicant was plainly put on notice that Mr Buchmann's past role in the Hermos Group was a central part of the Opponent's case on bad faith. Despite this, Mr Buchmann's SD did not address the obvious question arising from that case, which was: why did the Applicant decide to apply for registration of the identical Application Mark?

42 The Applicant only provided an explanation in its submissions. In the Applicant's Written Submissions and in oral arguments, counsel explained that the Applicant had an "honest and *bona fide* belief that the Opponent had abandoned its business in relation to the Applicant's Goods in Singapore (and hence use of the Application Mark in relation to such goods) and therefore that the Applicant may independently seek to register the Application Mark in

[50] Ms Goh's 1st SD at para 54.
[51] Ms Goh's 1st SD at para 39.

Singapore (even if identical)".[52] That explanation by counsel, however, is not evidence of the Applicant's state of mind at the Relevant Date.

43 The explanation provided in the Applicant's Written Submissions is not found in Mr Buchmann's SD. That omission is significant given that Ms Goh's 1st SD made clear that the Opponent's case on bad faith was premised on Mr Buchmann's prior role within the Hermos Group and his alleged knowledge of the Hermos Marks. Given that clear statement of position, one would have expected the Applicant's evidence to explain why it nevertheless chose to apply to register a mark identical to the Hermos Word Mark in Singapore. If the explanation really was that the Applicant and Mr Buchmann genuinely believed that the Hermos Group had abandoned the Hermos Marks, that would have been a matter readily capable of being stated by Mr Buchmann in his evidence.

44 As held in *Symphony Holdings Limited v Skins IP Limited* [2025] SGIPOS 3 at [29] (citing *PT Swakarya Indah Busana v Dhan International Exim Pte Ltd* [2010] 2 SLR 109 at [90]), a relevant factor in deciding whether bad faith has been established is whether the trade mark applicant failed to address the allegation of bad faith. This consideration is squarely raised in the present case. The Applicant has not provided an explanation under oath for the reason why it decided to apply to register the Application Mark despite its undisputed prior connection to the Hermos Group through Mr Buchmann.

45 Considering all the circumstances, I find that the Opponent has established that the Applicant was acting in bad faith on a balance of probabilities. To summarise the relevant circumstances:

[52] Applicant's Written Submissions at para 22(b).

(a) First, the Application Mark is identical to the Hermos Word Mark.

(b) Second, a key person in the Applicant's management at the time of the application, Mr Buchmann, previously held senior positions within Hermos Informatik and would have been familiar with the Hermos Word Mark.

(c) Third, the Hermos Word Mark was in use in Singapore before the Relevant Date, including in relation to goods within the scope of the application.

(d) Fourth, the Applicant has not provided evidence explaining why, notwithstanding Mr Buchmann's prior connection with the Hermos Group and his knowledge of the Hermos Word Mark, it decided to apply to register an identical mark. The explanation provided by counsel (ie, that the Applicant genuinely believed that the Opponent had abandoned the use of the Hermos Word Mark) is not supported by evidence of the Applicant's state of mind as at the Relevant Date. Mr Buchmann's SD is silent on this point.

46 The Bad Faith Ground is therefore made out.

Issue 2: Whether the Passing Off Ground is made out

47 Since I have found that the Bad Faith Ground is made out, it is not strictly necessary for me to consider the remaining two grounds. Nevertheless, for completeness, I will set out my views on each of them.

48 The Passing Off Ground requires the Opponent to establish three elements: (a) goodwill; (b) misrepresentation; and (c) damage: *Singsung Pte Ltd*

v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading) [2016] 4 SLR 86 ("*Singsung*") at [28]. I will consider each element in turn.

Goodwill

49 Goodwill is the "attractive force which brings in custom": see *Singsung* at [32], citing *The Commissioners of Inland Revenue v Muller & Co's Margarine, Limited* [1901] AC 217 at 223 to 224. In the context of a passing off action, the adjudicator is not concerned with goodwill in a specific mark, logo or get-up, but with the goodwill in the business as a whole: see *Singsung* at [34]. Goodwill may be proved through "evidence of sales or of expenses incurred in promoting the goods and services in association with the mark, brand or get-up" in question: *Singsung* at [34].

The Opponent's evidence of goodwill

50 The Opponent relies on three main categories of documents to establish that it had goodwill in Singapore as at the Relevant Date: (a) sales invoices; (b) service reports; and (c) order confirmations (with purchase orders accompanying some of the order confirmations).[53] In addition, the Opponent relies on evidence that it has promoted its goods and services through electronic channels and via an exhibition in Singapore.[54] The Applicant contends that the evidence is deficient in several respects and is insufficient to establish goodwill.[55]

51 I will first describe the evidence before addressing the Applicant's objections.

[53] Opponent's Written Submissions at para 50.
[54] Opponent's Written Submissions at para 51.
[55] Applicant's Written Submissions at para 59.

52 **Invoices**: The Opponent has produced 47 invoices bearing the Hermos Marks in Exhibit E of Ms Goh's 1st SD, together with further invoices at Exhibit A of Ms Goh's 2nd SD. These invoices contain redactions and some of these invoices are in the German language. Of the invoices that are in the English language, I am able to deduce that 30 invoices were issued to entities with a Singapore address because the word "Singapore" appears in the "Bill to" or addressee segments of the invoices. I infer from this that the goods described in those invoices were supplied to entities based in Singapore. These 30 invoices span the period from 2007 to 2023, before the Relevant Date. In Table 1A below, I tabulate the dates of the invoices, and my observations on the contents of the invoices. In particular, I set out whether the goods described in the invoices match any of the categories of goods for which the Application Mark was filed. I also set out where each invoice may be found in Ms Goh's Statutory Declarations. In addition to these 30 invoices, the Opponent has produced six further invoices which, while more redacted, contain other indications of a Singapore connection: for example, an unredacted reference to "Singapore Pte Ltd" in the name of the invoiced entity, and references to a Singapore-based receiving warehouse. These six invoices are tabulated in Table 1B below with the same information.

Table 1A: Invoices issued to entities with a Singapore address

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
1.	16 April 2007	The invoice was issued for items that had the word	Ms Goh's 1st SD at p 91

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		"Software" in their descriptions. The Applicant's Goods include "Software" (see [8] above).	
2.	3 September 2008	Nil.	Ms Goh's 1st SD at p 94
3.	12 March 2009	The invoice was issued for items that had the word "Software" in their descriptions. The Applicant's Goods include "Software" (see [8] above).	Ms Goh's 1st SD at p 96
4.	30 December 2009	The invoice was issued for an item that had the word "Software" in its description. The Applicant's Goods include "Software" (see [8] above).	Ms Goh's 1st SD at p 97
5.	1 March 2010	The invoice contained an item titled "GWRS232-W1 REV.B	Ms Goh's 1st SD at p 99

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
		UART Gateway Wacker – SSW Part No: 8009687", which the Opponent states is a device to connect an RFID reader with a computer or host system (see Ms Goh's 2nd SD at para 11, Table 2, S/N 6). The Applicant's Goods include a "device to connect the RFID reader with a computer or host system" (see [8] above).	
6.	2 December 2010	Nil.	Ms Goh's 1st SD at p 101
7.	30 December 2010	The invoice was issued for an item that had the word "Software" in its description. The Applicant's Goods include "Software" (see [8] above).	Ms Goh's 1st SD at p 102

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
8.	3 May 2011	Nil.	Ms Goh's 1st SD at p 104
9.	27 September 2018	The invoice was issued for items that had the word "Antenna" in their descriptions. In addition, the invoice contained an item titled "HF Mid Range Reader PoE", which the Opponent states is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). Another item had the word "cable" in its description. The Applicant's Goods include "Antennas", "RFID readers", "cables" (see [8] above).	Ms Goh's 1st SD at pp 134 to 135
10.	13 December 2018	The invoice was issued for an item that had the word "Antenna" in its description. Another item had the word	Ms Goh's 1st SD at pp 136 to 137

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		"transponder" as part of its description. One item had the word "cable" in its description. The Applicant's Goods include "Antennas", "Transponders" and "cables" (see [8] above).	
11.	12 February 2019	Nil.	Ms Goh's 1st SD at pp 142 to 143
12.	18 February 2019	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at pp 144 to 145
13.	30 October 2019	The invoice was issued for an item that had the word "Antenna" in its description. In addition, the invoice contained an item titled "HF Mid Range Reader PoE",	Ms Goh's 1st SD at p 140

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		which the Opponent states is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "Antennas" and "RFID readers" (see [8] above).	
14.	16 December 2019	The invoice was issued for an item that had the word "Antenna" in its description. In addition, the invoice contained an item titled "HF Mid Range Reader PoE", which the Opponent states is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "Antennas" and "RFID readers" (see [8] above).	Ms Goh's 1st SD at p 141
15.	18 September 2020	The invoice was issued for an item that had the words	Ms Goh's 1st SD at p 149

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		"RFID" and "Software" in its description. The Applicant's Goods include various RFID goods and "Software" (see [8] above).	
16.	26 October 2021	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at p 153
17.	30 November 2021	Nil.	Ms Goh's 1st SD at p 156
18.	30 November 2021	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at p 159

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
19.	11 October 2022	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at p 176
20.	7 November 2022	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at p 177
21.	29 November 2022	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at p 163
22.	30 November 2022	The invoice was issued for an item that had the word	Ms Goh's 1st SD at p 171

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		"Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	
23.	12 December 2022	Nil.	Ms Goh's 1st SD at p 166
24.	12 January 2023	The invoice was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 2nd SD at p 20
25.	31 January 2023	Nil.	Ms Goh's 1st SD at pp 181 to 182
26.	31 January 2023	Nil.	Ms Goh's 2nd SD at pp 47 to 48
27.	8 March 2023	Nil.	Ms Goh's 2nd SD at p 33

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
28.	8 March 2023	The Opponent states that the item described as "HRF.R.LFM.4S.XE.10.10A LFM Mid Range Reader, 4x SMA, ASCII+SECS, Eth" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 2nd SD at p 34
29.	28 March 2023	The Opponent states that the item described as "HRF.R.LFM.4S.XE.10.10A LFM Mid Range Reader, 4x SMA, ASCII+SECS, Eth" is a RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 2nd SD at p 35

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
30.	28 March 2023	The invoice was issued for items that had the words "RFID Reader" and "Antenna" in their descriptions. The Applicant's Goods include "RFID readers" and "Antennas" (see [8] above).	Ms Goh's 2nd SD at pp 80 to 81

Table 1B: Invoices with other indications of a Singapore connection

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
1.	11 January 2008	Nil.	Ms Goh's 1st SD at p 93
2.	17 May 2011	Nil.	Ms Goh's 1st SD at p 107

S/N	**Date**	**Comments**	**Reference in the SDs to where the invoices may be found**
3.	17 May 2011	Nil.	Ms Goh's 1st SD at p 109
4.	29 May 2011	Nil.	Ms Goh's 1st SD at p 111
5.	29 May 2018	The invoice was issued for an item that had the word "Antenna" in its description. Another item had the word "cable" in its description. The Applicant's Goods include "Antennas" and "cables" (see [8] above).	Ms Goh's 1st SD at pp 132 to 133
6.	30 October 2018	The Opponent states that the item described as "HRF.R.LFP.0I.YU.10.30A LFP Handheld Reader USB" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's	Ms Goh's 1st SD at p 138

S/N	Date	Comments	Reference in the SDs to where the invoices may be found
		Goods include "RFID readers" (see [8] above).	

53 **Service reports**: The Opponent has also produced documents titled "Service Report" dated 10 May 2010 and 26 May 2010, which bore the Hermos Marks.[56] These documents contain a field described as "End Customer". The entry in that field was partially redacted, but the word "Singapore" appears, indicating that the services were provided to an entity with a Singapore connection.

54 **Order confirmations and purchase orders**: The Opponent has produced 17 documents titled "Order-Confirmation", all of which bear the Hermos Marks and were issued to entities with a Singapore address. These documents are dated before the Relevant Date. The word "Singapore" appears in the address of the entity to which each order confirmation was addressed. For five of the order confirmations, the Opponent has also produced the purchase orders issued by the customers which led to the order confirmations being issued.[57] The order confirmations are tabulated in Table 2 below. As with Table 1A and Table 1B, I have stated the dates of the order confirmations, my observations on the contents of the order confirmations (focusing on whether the goods described in the order confirmations match any of the categories of

[56] Ms Goh's 1st SD at pp 108, 110 and 112.
[57] Ms Goh's 2nd SD at para 8, Table 1.

goods included in the Application Mark), and where each order confirmation may be found in Ms Goh's statutory declarations.

Table 2: Order confirmations issued to entities with a Singapore address

S/N	**Date**	**Comments**	**Reference in the SDs to where the order confirmations may be found**
1.	23 September 2021	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at pp 151 to 152
2.	11 November 2021	Nil.	Ms Goh's 1st SD at pp 154 to 155
3.	11 November 2021	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at pp 157 to 158

S/N	**Date**	**Comments**	**Reference in the SDs to where the order confirmations may be found**
4.	12 September 2022	Nil.	Ms Goh's 1st SD at pp 164 to 165
5.	27 September 2022	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at pp 172 to 175
6.	21 October 2022	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 1st SD at pp 161 to 162
7.	17 November 2022	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's	Ms Goh's 1st SD at pp 167 to 170

S/N	Date	Comments	Reference in the SDs to where the order confirmations may be found
		Goods include "Antennas" (see [8] above).	
8.	17 November 2022	The Opponent states that the item described as "HRF.R.LFP.01.YU.10.30A LFP Handheld Reader USB" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 1st SD at pp 179 to 180
9.	17 November 2022	Nil.	Ms Goh's 2nd SD at pp 45 to 46
10.	1 December 2022	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 2nd SD at pp 18 to 19

S/N	**Date**	**Comments**	**Reference in the SDs to where the order confirmations may be found**
11.	1 December 2022	The Opponent states that the item described as "HRF.R.LFM.4S.XE.10.10A LFM Mid Range Reader, 4x SMA, ASCII+SECS, Eth" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 2nd SD at pp 29 to 30
12.	11 January 2023	The order confirmation was issued for an item that had the word "Antenna" in its description. The Applicant's Goods include "Antennas" (see [8] above).	Ms Goh's 2nd SD at pp 27 to 28
13.	25 January 2023	The order confirmation was issued for items that had the words "RFID Reader" and "Antenna" in their	Ms Goh's 2nd SD at pp 72 to 73

S/N	Date	Comments	Reference in the SDs to where the order confirmations may be found
		descriptions. The Applicant's Goods include "RFID readers" and "Antennas" (see [8] above).	
14.	22 February 2023	The Opponent states that the item described as "HRF.R.LFM.4S.WA.18.10A LFM Mid Range Reader, 4x SMA, ASCII+SECS, Eth" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 2nd SD at pp 52 to 54
15.	8 March 2023	The Opponent states that the item described as "HRF.R.LFM.4S.XE.10.10A LFM Mid Range Reader, 4x SMA, ASCII+SECS, Eth" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N	Ms Goh's 2nd SD at pp 43 to 44

S/N	Date	Comments	Reference in the SDs to where the order confirmations may be found
		1). The Applicant's Goods include "RFID readers" (see [8] above).	
16.	6 April 2023	The Opponent states that the item described as "HRF.R.LFM.1L.XR.L0.10A LFM Loadport Reader, 1x LEMO, RS232" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include "RFID readers" (see [8] above).	Ms Goh's 2nd SD at pp 55 to 57
17.	21 April 2023	The Opponent states that the item described as "HRF.R.LFM.1L.XR.L0.10A LFM Loadport Reader, 1x LEMO, RS232" is an RFID reader (see Ms Goh's 2nd SD at para 11, Table 2, S/N 1). The Applicant's Goods include	Ms Goh's 2nd SD at pp 58 to 60

S/N	Date	Comments	Reference in the SDs to where the order confirmations may be found
		"RFID readers" (see [8] above).	

55 As can be seen from Tables 1A, 1B and 2, several of the documents described above relate to goods included in the Application Mark. The documents contain references to goods such as "RFID Readers", "Antennas" and "Software". These documents therefore provide evidence that the Opponent has supplied goods covered by the Application Mark in Singapore in connection with the Hermos Marks before the Relevant Date.

56 **Promotional activity**: I turn finally to the evidence that the Opponent has adduced in connection with its promotional activity. The Opponent relies on extracts from its website,[58] and its participation as an exhibitor at the SEMICON Southeast Asia 2025 event (the "SEMICON Event") held at the Sands Expo and Convention Centre in Singapore from 20 to 22 May 2025.[59]

The Applicant's objections to the evidence

57 The Applicant raises the following objections to the Opponent's evidence: (a) a significant number of the invoices are in German without accompanying English translations;[60] (b) the Opponent has redacted the names

[58] Exhibit D of Ms Goh's 1st SD.
[59] Opponent's Written Submissions at para 51 and Ms Goh's 1st SD at para 23 and Exhibit G.
[60] Applicant's Written Submissions at para 59 read with paras 33 to 34.

and other information of its customers from the face of the invoices and other documents that it has produced, leaving the name of only one entity, identified as "Siltronic", disclosed;[61] (c) the Opponent's invoices were retroactively generated using the Opponent's modern corporate letterhead and they therefore do not reflect the actual contemporaneous documents issued to customers at the time of the transactions;[62] (d) many of the goods described in the invoices appear to originate from third-party brands;[63] (e) there is no evidence that the Hermos Marks were used on the actual products sold;[64] (f) the Opponent has no presence in Singapore;[65] and (g) the total number of sales transactions (58 instances over 24 years) and the total sales volume (which the Applicant estimates to be approximately S$497,506.08 over 24 years) are too small to establish goodwill.[66] I will address each of these objections in turn.

58 **German language invoices**: I accept that several of the invoices produced by the Opponent are in German without accompanying English translations.[67] As the Applicant submits, rule 3A(2) of the Trade Marks Rules requires documents filed at the Registry to be in English or accompanied by an English translation of the document.[68] However, I find that this does not materially affect the analysis. Even disregarding the German-language invoices, there remains a substantial body of English-language invoices, service reports, and order confirmations spanning from 2007 to 2023. Tables 1A, 1B and 2 above have excluded the German-language invoices. These English-language

[61] Applicant's Written Submissions at para 59 read with para 35.
[62] Applicant's Written Submissions at para 59 read with paras 36 to 37.
[63] Applicant's Written Submissions at para 59 read with para 38.
[64] Applicant's Written Submissions at para 59 read with paras 22(c)(ii) and 38.
[65] Applicant's Written Submissions at para 59 read with paras 22(c)(i), 22(c)(iii), 39 and 44(c).
[66] Applicant's Written Submissions at para 59 read with paras 40 to 42.
[67] See for example Ms Goh's 1st SD at pp 116 to 118, 120 to 122, 124 to 125 and 127.
[68] Applicant's Written Submissions at para 33.

documents show substantial commercial activity by the Opponent in Singapore in connection with the Hermos Marks.

59 **Redactions**: The redactions applied by the Opponent do not lead me to conclude that insufficient evidence has been shown of the Opponent's goodwill in Singapore. The Opponent does not have to establish that it had a large number of named customers in Singapore. It is sufficient for the Opponent to show that it conducted business in Singapore in association with the Hermos Marks before the Relevant Date. The unredacted references to "Singapore" in the "Bill to" or addressee segments of the invoices and order confirmations (see [52] and [54] and Tables 1A and 2), and the other indications of a Singapore connection in six of the invoices (see [52] and Table 1B), are sufficient for me to draw an inference that the Opponent has been supplying goods and services in Singapore in connection with the Hermos Marks.

60 **Retroactively generated invoices**: The context to this objection is that Ms Goh stated in her 1st SD that some of the invoices exhibited in her 1st SD at Exhibit E were "generated and maintained in electronic form in the ordinary course of business".[69] When the invoice is retrieved from the electronic system and printed out, the Opponent's current letterhead would be applied to the document.[70] I do not find that this issue with some of the invoices produced by the Opponent should lead to the conclusion that there is insufficient evidence of the Opponent's goodwill. I reach this finding for two reasons:

(a) First, the fact that the invoices in question were maintained electronically and had the current letterhead applied when the invoices were printed does not undermine the reliability of the invoices. Ms

[69] Ms Goh's 1st SD at para 22.
[70] Ms Goh's 1st SD at para 22.

Goh's evidence is that "the content and data on the invoices accurately reflect the original information generated and maintained in the ordinary course of the Opponent's business."[71] The Applicant has not adduced any evidence to contradict this.

(b) Second, and in any event, not all the documents in evidence are affected by the retroactive application of the Opponent's current letterhead. In her 1st SD, Ms Goh refers specifically to the invoice at pages 88 and the documents from pages 116 to 159 of her 1st SD.[72] This is an invoice issued in 1999 as well as a series of invoices and order confirmations issued from 2014 to 2021. The remaining invoices and order confirmations are not stated to be impacted by the application of the current letterhead during the printing exercise. Even if the affected invoices were entirely disregarded, there would remain substantial evidence of the Opponent's commercial activity in Singapore in connection with the Hermos Marks.

61 **Third-party branded products**: I accept that sales of goods manufactured by third parties under their own brands would not, without more, establish goodwill in the Hermos Marks. However, this issue does not impact all the documents tabulated in Tables 1A, 1B and 2. The issue only appears to arise in connection with one invoice issued on 12 March 2009 which contains a reference to "Brooks".[73] Even if that invoice is disregarded, there is a substantial number of documents showing the Opponent conducting business in Singapore in association with the Hermos Marks.

[71] Ms Goh's 1st SD at para 22.
[72] Ms Goh's 1st SD at para 22.
[73] Ms Goh's 1st SD at p 96. This invoice is listed at S/N 3 of Table 1A.

62 **No evidence of use on actual products**: It would have been helpful if the Opponent had been able to produce evidence of the Hermos Marks being used on the actual products themselves. For example, it would have been helpful if the Opponent had produced photographs of the underlying products that were sold, or the product packaging. However, the absence of such evidence does not lead me to conclude that goodwill has not been shown. As I noted earlier, goodwill may be proved through evidence of sales in association with the mark in question: see *Singsung* at [34] and [49] above. The invoices, service reports, and order confirmations produced by the Opponent bear the Hermos Marks prominently and constitute evidence of sales made in association with those marks.

63 **No presence in Singapore**: I do not accept that the Opponent's lack of a physical presence in Singapore means that it has no goodwill in Singapore. The Applicant has not cited any authority that suggests that a trader must maintain a physical establishment in a jurisdiction before it can acquire goodwill in that jurisdiction.

64 **Low sales volume and quantum**: I do not accept the argument that the low total sales volume is insufficient to establish goodwill. The authority that the Applicant cites in support of its argument, *Rovio Entertainment Ltd v Kimanis Food Industries Sdn Bhd* [2015] 5 SLR 618 ("*Rovio Entertainment*") at [179] stands for the proposition that "mere proof of a few occasional sales to a very limited group of people" is unlikely to be sufficient to establish goodwill. The evidence that the Opponent has produced does not meet that description. The Opponent has produced a substantial number of invoices, service reports and order confirmations that evidence that it had a sustained course of business in Singapore in connection with the Hermos Marks over a period from at least 2007 to 2023. The consistency and duration of the commercial activity is

sufficient to establish that the Opponent has goodwill in Singapore, notwithstanding the relatively modest average annual volume of sales.

Overall conclusion on the goodwill element

65 Having considered the evidence and the parties' submissions, I find that the goodwill element has been established on a balance of probabilities. The Opponent has produced a substantial body of documentary evidence (as summarised in Tables 1A, 1B and 2) which bears the Hermos Marks and shows a supply of goods to entities in Singapore over a period from 2007 to 2023. While there are indeed some deficiencies in the evidence, these deficiencies do not undermine the weight of the evidence for the reasons I have explained. The documents considered as a whole establish that the Opponent had goodwill in the business in Singapore in connection with the Hermos Marks before the Relevant Date.

66 For completeness, in reaching the conclusion that goodwill has been shown, I am not taking into consideration the Opponent's evidence of its promotional activity in Singapore for the following reasons:

(a) First, the Opponent's evidence of its participation in the SEMICON Event is irrelevant because of the date of the event. The event was held in Singapore from 20 to 22 May 2025.[74] Such promotional activity *after* the Relevant Date is obviously not evidence that the Opponent had goodwill before the Relevant Date.

(b) Second, the extracts from the Opponent's website that have been exhibited to Ms Goh's 1st SD are undated.[75] It is therefore not possible

[74] Ms Goh's 1st SD at para 23.
[75] Ms Goh's 1st SD at para 23, Ms Goh's 2nd SD at para 33 and Exhibit D of Ms Goh's 1st SD.

to infer from the website extracts that the Opponent had undertaken promotional activity in Singapore in connection with the Hermos Word Mark before the Relevant Date.

Misrepresentation

67 I turn next to the element of misrepresentation. The Court of Appeal in *Singsung* set out the analytical framework for this element. The threshold question is whether the mark is distinctive of the claimant's goods: *Singsung* at [38], [39] and [70]. If that threshold requirement is met, the adjudicator then considers whether there was a misrepresentation on the defendant's part by its goods being "strikingly similar or identical" to the claimant's goods and that "actual confusion or a likelihood of confusion" arose because of the misrepresentation: see *Singsung* at [70]. The likelihood of confusion analysis is conducted from the perspective of "a notional customer with imperfect recollection": see *Singsung* at [40].

68 The Opponent submits that the element of misrepresentation is made out because: (a) the Hermos Word Mark featured in connection with the Opponent's goods in sales invoices, order confirmations, service reports, purchase orders and credit notes over a period spanning 1999 to 2023;[76] (b) the Hermos Word Mark is inherently distinctive or it has acquired distinctiveness;[77] (c) there is misrepresentation because the Hermos Word Mark is identical to the Application Mark;[78] and (d) the Applicant's Goods are identical to or highly similar to the goods in respect of which the Opponent has earned goodwill in Singapore.[79]

[76] Opponent's Written Submissions at para 56.
[77] Opponent's Written Submissions at paras 57 to 58.
[78] Opponent's Written Submissions at para 61.
[79] Opponent's Written Submissions at para 62.

69 The Applicant contends that misrepresentation has not been shown because the Applicant's Goods (which are RFID readers and related technical hardware and software) are high-value and niche assets which would not be casually purchased. Prospective purchasers will likely pay close attention during the procurement process.[80]

70 I find that the misrepresentation element is made out for the following reasons.

71 I begin with the threshold requirement of whether the Hermos Word Mark is distinctive of the Opponent's goods. I am satisfied that it is for the following reasons.

72 First, the Hermos Word Mark is inherently distinctive. The word "Hermos" does not have any dictionary meaning. It is also not descriptive of any of the goods described in the invoices, order confirmations and service reports produced by the Opponent.

73 Second, the Hermos Word Mark has acquired distinctiveness from its longstanding use. As I found when considering the goodwill element, the Hermos Word Mark appears consistently on a large number of invoices, order confirmations and service reports as set out in Tables 1A, 1B and 2 above. Further, the Hermos Formative Mark (which also contains the word "HERMOS") appears on these sales documents. These documents provide cogent evidence that the word "Hermos" is associated with the Opponent's goods.

[80] Applicant's Written Submissions at paras 60 to 62 read with para 53.

74 Third, as the Opponent has submitted, there is no evidence before me of the Applicant selling any goods in Singapore under the Application Mark. Thus, it is likely that any consumers in Singapore would have encountered the word "Hermos" only in connection with the Opponent. This reinforces the conclusion that the Hermos Word Mark is distinctive of the Opponent's goods in Singapore.

75 I turn next to consider whether there was a misrepresentation. The analysis here is straightforward. The Application Mark and the Hermos Word Mark are strikingly similar such that there is a likelihood of confusion if the Applicant were to use the Application Mark in connection with its goods. As I found when considering the Bad Faith Ground, the Application Mark and the Hermos Word Mark are identical (see [35(a)] above). The Applicant, quite fairly, does not dispute this. In its Written Submissions at para 22(b)(ii), the Applicant accepted that "the marks may be identical".[81]

76 The Application Mark covers goods that substantially overlap with goods that the Opponent has supplied in the past in Singapore in connection with the Hermos Word Mark. As explained in my analysis of the goodwill requirement, several of the invoices and order confirmations produced by the Opponent included descriptions of goods that overlapped with the Applicant's Goods. This includes goods described as "RFID Reader", "software" and "antenna".

77 I do not accept the Applicant's submission that there will be no confusion because the goods in question (namely, RFID readers and related hardware and software) are "high-value, niche industrial assets" which would

[81] Applicant's Written Submissions at para 22(b)(ii).

be acquired by specialised and technically informed corporate buyers.[82] I reject this submission for two reasons.

78 First, the Applicant has not adduced any evidence to establish that the customer base for the goods covered by the Application consists of sophisticated corporate buyers with specialised technical knowledge. The Applicant's submission is not supported by any evidence in Mr Buchmann's SD.

79 Second, and more fundamentally, when assessing whether there is a likelihood of confusion, I am to consider the perspective of "a notional customer with imperfect recollection": see *Singsung* at [40]. Even if some of the customer base comprises well-informed and sophisticated corporate buyers, I am not required to assess the likelihood of confusion from the perspective of such buyers. I find that an ordinary person with imperfect recollection encountering goods sold under the Application Mark (which is identical to the Hermos Word Mark) will likely be confused as to the origin of the goods.

80 For these reasons, I find that the misrepresentation element is established.

Damage

81 I turn finally to the element of damage. The Opponent does not have to show actual damage. It is sufficient to show "a real tangible risk of substantial damage" including "by way of blurring or tarnishment": see *Singsung* at [41].

82 The Opponent submits that a likelihood of damage has been shown due to the identical or highly similar nature of the Application Mark and the Hermos

[82] Applicant's Written Submissions at para 53 read with para 61.

Word Mark. As a result, consumers who encounter the Application Mark in connection with the Applicant's Goods are likely to believe that those goods are connected with the Opponent.[83]

83 The Applicant puts forward the same arguments for the damage element as were presented for the misrepresentation element.[84] The Applicant's contention, in essence, is that there is no likelihood of confusion, and hence no likelihood of damage, because of the sophisticated nature of the prospective purchasers of the goods in question.

84 I find that the Opponent has shown a likelihood of damage. As I have found above, the Hermos Word Mark is identical to the Application Mark. Given that the Applicant's Goods cover goods that the Opponent has sold in the past in Singapore in connection with the Hermos Word Mark, consumers encountering goods sold by the Applicant under the Application Mark are likely to confuse those goods with the Opponent's goods. This may, in turn, divert sales from the Opponent.

85 I reject the Applicant's submission on damage for the same reasons I rejected it under the misrepresentation element. The Applicant has not adduced evidence that the relevant consumer base consists of sophisticated buyers, and the applicable standard is in any event that of a notional customer with imperfect recollection. The risk of damage is not lowered by a mere assertion that the goods in question are niche or high-value.

[83] Opponent's Written Submissions at paras 65 to 71.
[84] Applicant's Written Submissions at paras 51 to 53 read with para 61.

Conclusion on Issue 2

86 In sum, all three elements for a passing off claim are made out on the evidence before me. Thus, the Opposition succeeds under the Passing Off Ground as well.

Issue 3: Whether the Well Known Mark Ground is made out

87 I turn finally to the Well Known Mark Ground. Since I have already found that both the Bad Faith Ground and the Passing Off Ground are made out, I will address this ground briefly.

88 The Well Known Mark Ground is premised on s 8(4)(*a*) read with s 8(4)(*b*)(i) of the TMA. The relevant parts of s 8(4) are reproduced below:

> (4) Subject to subsection (5), where an application for registration of a trade mark is made on or after 1 July 2004, if the whole or an essential part of the trade mark is identical with or similar to an earlier trade mark, the later trade mark must not be registered if —
>
> (a) the earlier trade mark is well known in Singapore; and
>
> (b) use of the later trade mark in relation to the goods or services for which the later trade mark is sought to be registered —
>
> (i) would indicate a connection between those goods or services and the proprietor of the earlier trade mark, and is likely to damage the interests of the proprietor of the earlier trade mark; or
>
> …

89 From a reading of the provision, the Opponent must establish the following:

> (a) the whole or an essential part of the Application Mark is identical with or similar to the Hermos Word Mark (the "**Identity Requirement**");

(b) the Hermos Word Mark is well known in Singapore (the "**Well Known in Singapore Requirement**");

(c) the use of the Application Mark in relation to the Applicant's Goods would indicate a connection between those goods and the Opponent (the "**Connection Requirement**"); and

(d) the Opponent's interests are likely to be damaged (the "**Damage Requirement**").

90 The Identity Requirement, the Connection Requirement and the Damage Requirement may be disposed of shortly, as they substantially overlap with the misrepresentation and damage elements that I have considered under the Passing Off Ground:

(a) The Identity Requirement and the Connection Requirement are established for the same reasons as the misrepresentation element under the Passing Off Ground (see [70] to [80] above). To reiterate, I have found that: (i) the Application Mark and the Hermos Word Mark are strikingly similar such that there is a likelihood of confusion if the Applicant were to use the Application Mark in connection with its goods (see [75] above); (ii) the Application Mark covers goods that substantially overlap with goods the Opponent previously supplied in connection with the Hermos Marks (see [76] above); and (iii) an ordinary person with imperfect recollection who encounters goods sold under the Application Mark will likely be confused as to its origins (see [79] above). These findings logically also lead to the conclusion that the Identity Requirement and the Connection Requirement are established.

(b) The Damage Requirement is likewise satisfied for the same reasons as the damage element under the Passing Off Ground. The identity of the marks and the overlap in the goods create a real risk of diversion of sales, and this would be damaging to the Opponent's interests (see [84] to [85] above).

91 The Well Known in Singapore Requirement is a distinct requirement that arises only under the Well Known Mark Ground, and not the Passing Off Ground. I will set out the applicable principles before considering whether the requirement is made out on the evidence.

Applicable principles for deciding whether a mark is well known in Singapore

92 The statutory framework for deciding whether a trade mark is well known in Singapore is set out in ss 2(7) to 2(9) of the TMA. The framework may be summarised as follows:

(a) Section 2(7) of the TMA provides that in deciding whether a trade mark is well known in Singapore, it is relevant to take into consideration any matter from which it may be inferred that the trade mark is well known.

(b) Sections 2(7)(*a*) to 2(7)(*e*) of the TMA are a list of the matters that may be taken into account in deciding whether a trade mark is well known in Singapore. These matters are as follows:

(i) the degree to which the trade mark is known to or recognised by any relevant sector of the public in Singapore;

(ii) the duration, extent and geographical area of: (a) any use of the trade mark; or (b) any promotion of the trade mark (which

includes any advertising, publicity or any presentation at any fair or exhibition of the goods or services to which the trade mark is applied);

(iii) any registrations or applications for registration of the trade mark in any country or territory in which the trade mark is used or recognised; the duration of any such registration or application is to also be considered;

(iv) any successful enforcement of any right in the trade mark in any country or territory, as well as the extent to which the trade mark was recognised as well known by the competent authorities of that country or territory; and

(v) any value associated with the trade mark.

(c) If a trade mark is determined to be well known to any "relevant sector of the public in Singapore", the trade mark is deemed to be well known in Singapore: see s 2(8) of the TMA.

(d) Under s 2(9) of the TMA, the term "relevant sector of the public in Singapore" in ss 2(7) and 2(8) of the TMA is defined to include any of the following:

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

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

(iii) all businesses and bodies corporate in Singapore dealing in the goods or services to which the trade mark is applied.

93 The Court of Appeal in *Novelty Pte Ltd v Amanresorts Ltd and another* [2009] 3 SLR(R) 216 ("*Novelty*") held (at [137]) that the list of factors in ss 2(7)(*a*) to 2(7)(*e*) of the TMA is not exhaustive. The factors listed are, essentially, guidelines: *Novelty* at [137]. The most crucial of the factors to be considered is the one listed at s 2(7)(*a*), ie, the degree to which the trade mark is known to or recognised by any relevant sector of the public in Singapore. This is so because of the deeming provision in s 2(8) of the TMA, which states that a trade mark that is well known to a relevant sector in Singapore is deemed to be well known in Singapore: see *Novelty* at [140].

Analysis and finding on the Well Known in Singapore Requirement

94 The Opponent relies on the following in support of its contention that the Well Known in Singapore Requirement is established:

(a) First, the Opponent cites the evidence it has produced of substantial sales made in Singapore in association with the Hermos Word Mark to the relevant sector of the public, which it describes as "actual and potential purchasers, distributors and businesses involved in communication and identification technology, including RFID-related products".[85] The evidence in this connection is the invoices, order confirmations (with the accompanying purchase orders) and service reports which were considered earlier under the Passing Off Ground (see [52] to [54] above).

(b) Second, the Opponent points to its registrations of the Hermos Word Mark in various jurisdictions including Singapore, Germany and the European Union.[86]

[85] Opponent's Written Submissions at para 82.
[86] Opponent's Written Submissions at para 86.

(c) Third, the Opponent refers to its promotion of goods and services through its website and its participation as an exhibitor at the SEMICON Event.[87]

95 Having considered the evidence and submissions, I find that the Well Known in Singapore Requirement has not been established on a balance of probabilities.

96 First, it is not possible to infer from the body of evidence adduced by the Opponent of its commercial activity in Singapore (namely, the sales invoices, service reports, order confirmations and purchase orders) that the Hermos Word Mark is well known in any relevant sector. The difficulty lies in the redactions that the Opponent has applied to the names of its customers. As the Applicant highlights, only one customer, an entity known as "Siltronic", can be identified from the unredacted parts of the documents.[88] There is accordingly no basis on which to assess the breadth of the Opponent's customer base in Singapore. Without knowing the number of distinct customers that are represented in the sales invoices, service reports and order confirmations, I cannot infer that the Hermos Word Mark was well known in the relevant sector of the public, even if I were to accept the Opponent's definition of the relevant sector.

97 Second, as the Applicant has submitted,[89] the registrations of the Hermos Word Mark in Singapore and other jurisdictions do not establish that the Hermos Word Mark was well known in the relevant sector in Singapore as at the Relevant Date:

[87] Opponent's Written Submissions at para 87.
[88] Applicant's Written Submissions at para 35.
[89] Applicant's Written Submissions at paras 47 to 48.

(a) The Opponent's applications in Singapore in respect of the Hermos Marks were made on 26 July 2023 and 4 August 2023,[90] after the Relevant Date (4 May 2023). The Opponent's Singapore applications therefore post-date the Relevant Date and cannot support a finding that the Hermos Word Mark was well known in Singapore as at the Relevant Date.

(b) The registrations in Germany and the European Union do not support a finding that the Hermos Word Mark was well known in Singapore. The Court of Appeal in *Ceramiche Caesar SpA v Caesarstone Sdot-Yam Ltd* [2017] 2 SLR 308 ("*Ceramiche*") held (at [113]) that while registrations of the mark in question in other jurisdictions and the successful enforcement of rights in any country are relevant factors under ss 2(7)(*c*) and 2(7)(*d*) of the TMA, the underlying requirement is that the mark be well known *in Singapore*. The Opponent needs to establish that the overseas registrations have led to the Hermos Word Mark being well known in Singapore. The Opponent here has not shown any nexus between the overseas registrations and the Hermos Word Mark being well known in Singapore. All that the Opponent has done is to point to the existence of overseas registrations. No attempt was made to draw a link between the overseas registrations and the recognition of the Hermos Word Mark in Singapore.

98 Third, the promotional activity evidence does not show that the Hermos Word Mark was well known in the relevant sector in Singapore as at the Relevant Date. As I observed under the Passing Off Ground, the promotional activity either post-dates the Relevant Date or cannot be shown to pre-date it:

[90] Ms Goh's 1st SD at para 27.

(a) The SEMICON Event was held on 20 to 22 May 2025,[91] after the Relevant Date. The Opponent's participation in the SEMICON Event cannot therefore establish a well-known status as at the Relevant Date.

(b) The website extracts exhibited to Ms Goh's 1st SD are undated.[92] It is therefore not possible to infer from them that the Hermos Word Mark was well known in Singapore as at the Relevant Date. Further, as the Applicant submitted, the website extracts themselves do not show that the Hermos Word Mark was well known in Singapore.[93] The Opponent has not produced evidence of the number of Singapore-based users who have viewed the website. In *Ceramiche*, the Court of Appeal agreed (at [109]) with the High Court's finding that evidence of an online presence via a website did not establish that the relevant marks were well known in Singapore because there was no indication of whether the website was viewed by members of the relevant sector of the public in Singapore. In a similar vein, the absence of any evidence that the Opponent's website was viewed by members of the relevant sector in Singapore means that the website extracts do not support a finding that the Hermos Word Mark was well known in Singapore.

99 For these reasons, I find that the Well Known in Singapore Requirement has not been established on a balance of probabilities.

[91] Ms Goh's 1st SD at para 23 and p 197.
[92] Ms Goh's 1st SD at para 23, Ms Goh's 2nd SD at para 33 and Exhibits D and G of Ms Goh's 1st SD.
[93] Applicant's Written Submissions at para 44(b).

Conclusion on Issue 3

100 The Opponent therefore does not succeed on the Well Known Mark Ground, as it has failed to establish the Well Known in Singapore Requirement.

Costs

101 The Opponent sought costs and disbursements in the amount of S$11,000 (comprising S$9,580 in costs and S$1,420 in disbursements).[94] The Applicant sought costs in the amount of S$11,350 and disbursements of S$1,360.[95]

102 If the Opponent had succeeded on all three grounds, I would have awarded costs of S$11,000 as sought by the Opponent. The amount sought by the Opponent is fair and reasonable having regard to the volume of documents adduced, the nature of the arguments and the duration of the oral hearing. Since the Opponent did not succeed in the Well Known Mark Ground, I will adjust the costs award downwards to S$7,500 (inclusive of disbursements). This is approximately a one-third reduction in the amount sought by the Opponent.

[94] Opponent's Written Submissions at para 96.
[95] Applicant's Written Submissions at para 65.

Overall conclusion

103 Having considered the evidence presented and the submissions, I find that the opposition succeeds under the Bad Faith Ground and the Passing Off Ground. I thus allow the opposition and refuse registration of the Application Mark. I also award costs in favour of the Opponent fixed at S$7,500 (inclusive of disbursements).

Vikram Rajaram
IP Adjudicator

Foo Maw Jiun and Lim Jun Rong (Dentons Rodyk & Davidson LLP, instructed by Spruson & Ferguson (Asia) Pte. Ltd.) for the Applicant; Sukumar Karuppiah and Dinesh Kumar (Mirandah Law LLP) for the Opponent.