

Appeal Court ref: CA-2025-000161 and 000164

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM

Claim No. IL-2023-000037

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

BETWEEN:-

SHORTS INTERNATIONAL LIMITED

Claimant/Appellant

and

GOOGLE LLC

Defendant/Respondent

SHORTS INTERNATIONAL LIMITED'S
REPLY SKELETON

Simon Malynicz KC
Daniel Selmi

13 February 2026

Instructed by Sheridans

References to paragraphs in the form [JX] are to paragraphs in the judgment: [2024] EWHC 2738 (Ch) (the “**Judgment**”) and references documents in the Joint Core Appeal Bundle are in the form [C/tab/page number (paragraph)]. Abbreviations are as they appear in the Judgment.

Introduction

1. This is the Appellant’s (called “**SIL**”, as it is in the Judgment) reply skeleton argument addressing Google’s cross-appeal (and SIL’s Respondent’s Notice) in respect of the validity of the 2018 Marks. It is supplementary to SIL’s skeleton argument dated 21 November 2025 (‘**SIL’s first appeal skeleton**’) [C/4], and we refer back to that skeleton where relevant.
2. The Court may wish to consider at the outset why Google, as the overall winner on infringement below, seeks to challenge the Judge’s findings upholding the validity of SIL’s trade marks and declining to revoke them – and why it does so by invoking almost every ground of invalidity and revocation advanced at trial (belatedly amending to make sure all bases are covered).
3. The reasons are twofold, and they reveal a fundamental tension at the heart of Google’s case.
 - a. Google have filed for (and mostly achieved registration of) trade marks all around the world for YOUTUBE SHORTS. In the UK, UK trade mark application number 3555021, has been opposed by SIL. It is sought to be registered for various audiovisual goods and services in classes 9, 25, 35, 38, 41, 42 and 45 including “*Downloadable software to provide a video sharing portal, namely, a web site featuring temporary use of non-downloadable software allowing web site users to upload on-line videos for sharing with others for entertainment and educational purposes*” in class 9, and “*entertainment services, namely, providing a website featuring audio clips, video clips, musical performances, musical videos, film clips, photographs, and related entertainment information*” in class 41. Those proceedings are currently stayed.
 - b. This trade mark filing activity further shows that Google considers “Shorts” to be a brand (it has had YOUTUBE registered as a brand for years), and an important part of

its own trade mark portfolio, and not merely as a descriptive term. That is a matter to which the Court may wish to have regard when assessing the plausibility of Google’s submission that it is using the term descriptively and that it is nothing more than a generic term.

- c. Second, at trial the parties devoted comparatively little time to the question of whether the signs were similar enough to the marks to amount to infringement, as a matter of comparison (though Google did repeatedly advance the argument that the relevant sign was YOUTUBE SHORTS rather than SHORTS, and that distinctiveness should form part of the comparison exercise, which is incorrect as a matter of law¹). The reason for that is connected to the first point: each party was using “Shorts” as a trade mark, and it could not sensibly be argued that there was no infringement if SIL held valid marks for overlapping goods and services.
 - d. The Judge’s finding of no infringement rested heavily on a specific point about the play symbol: the distinctive character of SIL’s 2018 Marks arose from the particular combination of the word “shorts” and the play symbol rendered in red within the “O” ([J96], [J123] [C/1/28(96)], [C/1/33(123)]), and the absence of that element from Google’s signs was held to be a significant differentiator sufficient to dispel any likelihood of confusion ([J240]–[J242] [C/1/67(240)-(242)]). It is notable that Google did not itself advance that submission at trial; it was the Judge’s own reasoning.
4. On appeal, however, that reasoning requires Google to argue in diametrically opposite directions on infringement and validity. They are forced to defend the Judge’s infringement finding that the play symbol was hugely significant – that its absence from Google’s use of the word “Shorts” was a critical difference sufficient to negate any likelihood of confusion. Yet in support of its cross-appeal on invalidity, Google argues the precise opposite: that the play symbol is merely a “figurative figleaf,” inconsequential and barely noticeable, insufficient to imbue SIL’s marks with any distinctive character.
 5. Google cannot have it both ways. If the play symbol is so insignificant that it cannot save the marks from invalidity, it cannot simultaneously be so significant that its absence from Google’s signs removes any likelihood of confusion. The two positions are irreconcilable,

¹ See Ground 6 of SIL’s first appeal skeleton [C/4/170-172].

and the Court should have that tension firmly in mind when considering Google’s cross-appeal.

6. In case it is suggested that SIL engages in a similar inconsistency, that notion can be firmly rejected. SIL’s challenge to the Judge’s infringement finding is put primarily on the basis that Google’s use of “Shorts” is not descriptive, because the predominant meaning in context (i.e., to at least a significant section of the relevant public at the relevant date, the only meaning) was short films (see Ground 1 in SIL’s first appeal skeleton [C/4/165-166]). To this section of the public the Google offering was not descriptive.
7. As to the play symbol, SIL’s position is that the play symbol did find a counterpart in Google’s YouTube Shorts branding: there is a play symbol within the YouTube logo, and a play symbol within Google’s Shorts logo itself. Moreover, both are red and white like SIL’s play symbol. The Judge’s reasoning that the play symbol was “absent” from Google’s composite signs was, with respect, a finding that SIL challenges on its own appeal. There is no double standard in SIL’s position: its case on infringement and its case on validity are internally consistent and mutually reinforcing.

Outline of Google’s appeal

8. The 2018 Marks are shown at [J27] [C/1/9(27)] (reproduced below for ease), and the validity of SIL’s Marks is addressed at [J82]-[J162] [C/1/23(83)-45(162)]²:

² We focus on the assessment in respect of the 2018 Marks below. The validity of the 383 Mark has been addressed in SIL’s first skeleton under “Grounds 2 & 3” (see §§54-63 of SIL’s first skeleton [C/4/181(54)-184(63)]), because the Judge invalidated that mark as a plain word mark. However, the point arises again in these appeals, and is addressed to that extent below.

No. 917834615 (“the 615 Mark”):

SHORTSTV

No. 917834649 (“the 649 Mark”):

SHORTSTV

No. 917834656 (“the 656 Mark”):

SHORTS

No. 917834664 (“the 664 Mark”):

SHORTS

9. The Judge first considered the validity of the 656/664 Marks under s.3(1)(c), noting that they consisted of the word “shorts” in an ordinary sans serif capitalised font, black on a white background or white on black background, with a red triangle in the “O”. The Judge reiterated his finding that, as of February 2018 (when they were filed), one meaning of “shorts” was short-form audiovisual content, including but not limited to “short films”.
10. Therefore, without more, the Judge would have held the 656/664 Marks to be descriptive of a range of Class 9, 38 and 41 goods and services set out at [J98]-[J108] [C/1/28(98)-29(108)], save for “television games”, “electronic games”, “publication of computer games” and “distribution of computer games” (see [J100] [C/1/28(100)] and [J108] [C/1/29(108)]). However, the 656/664 Marks were held to be distinctive for the reasons set out at [J95]-[J96] [C/1/28(95)-(96)] (**emphasis added**):

“95. I now need to consider whether the presentation of the word “shorts” in the 656/664 Marks means that those Marks do not consist “exclusively” of signs or indications which may serve to designate characteristics of those goods, applying the approach I have explained above. In my judgment the font and the contrast between the lettering and the background are insignificant in the context of the mark as whole.

96. That leaves the red triangle in the “O”. In my judgment the triangle would be recognised by the average consumer as a play symbol, designating a characteristic of the goods, namely that they can be played. **However, I need to consider the effect of the combination of the word “shorts” and the play symbol, rendered in red and located within the “O”. In my judgment the way in which the two elements are combined is such that the mark does not consist “exclusively” of indications which may serve to designate characteristics of those goods.** The combination creates an overall impression which goes beyond a mere juxtaposition of two descriptive indications.”

11. The same reasoning applied to the 615/649 Marks – see [J109] [C/1/30/109)].
12. Google’s first and second grounds of appeal relate to the validity of the 2018 Marks under s.3(1)(c), focussing on the latter finding under the heading of what Google calls “*The “figurative figleaf” point*”. There is nothing “figleaf” about the stylisation in the 2018 Marks, which point we address below³.
13. SIL has also put in a Respondent’s Notice, contending that the Judge’s judgment on the impact of the stylisation in the 2018 Marks was correct, but that he ought to have come to the same conclusion, because the word elements in the 2018 Marks are inherently distinctive for all goods and services for which they are registered, and not just the goods and services at [J100] [C/1/28(100)] and [J108] [C/1/29(108)]. Whatever the case, SIL contends that the Judge ought to have held that the 2018 Marks had acquired distinctive character through use. There is a further Respondent’s Notice point (in the alternative), relating to SIL’s proposed limitation, which the Judge wrongly held lacked clarity or coherence.

³ Note that §3 of Google’s Amended Grounds of Appeal is not being pursued – see §109 of Google’s appeal skeleton dated 16 January 2026 [C/5/214(109)].

14. The Judge then dismissed Google’s s.3(1)(d) grounds in respect of the 2018 Marks, for the reasons stated at [J118] [C/1/32(118)] (**emphasis added**):

“118. SIL said that in this case “the trade” was consumers, and Google did not dissent. In my judgment the matters I have explained above mean that “shorts”, “TV” and the play symbol had “become customary in the current language or in the *bona fide* and established practices of the trade”. **For essentially the same reasons as under s.3(1)(c) I do not regard the 2018 Marks as consisting exclusively of signs or indications of the type addressed by s.3(1)(d)…**”

15. Google’s third ground of appeal is that the Judge erred in his assessment of the validity of the 2018 Marks under s.3(1)(d), for the same reasons that they complain about in respect of Grounds 1 and 2.

16. The Judge’s assessment of s.3(1)(b) is set out at [J123] [C/1/33(123)].

“123. ...I see no independent basis for considering the 2018 Marks to be objectionable under s.3(1)(b). However, in my view the distinctive character of those marks is low, and arises from the particular combination of the word “shorts” and the play symbol (rendered in red in the “O”).”

17. Google’s fourth ground of appeal⁴ is that the Judge erred in his assessment under s.3(1)(b), because the alleged errors in respect of Grounds 1 and 2 apply here as well, and also because s.3(1)(b) must be considered separately from the other objections. That may be so, but it does not mean that an independent objection arises on the facts. As can be seen from the quotation in the preceding paragraph, the Judge cannot be accused of not considering the independent, non-descriptive scope of section 3(1)(b) when he expressly said he was carrying out that exercise and concluded that it yielded nothing.

⁴ Note that Google is not pursuing its fifth ground of appeal – see §128 of Google’s appeal skeleton [C/5/218(128)], which is why it does not feature below.

18. Finally, the Judge assessed the revocation of the 2018 Marks at [J153]-[J162] [C/1/43(153)-45(162)]. The legal dispute was whether the use of “ShortsTV+” (in the form of the 615/649 Marks but with an additional “+”) counted as use of the 615/649 Marks. Google contended that the addition of the “+” altered the distinctive character of the registered marks, because it was a prominent visual element, had conceptual significance in suggesting that something more is offered, and adds an additional syllable orally.
19. The Judge did not agree that it altered the distinctive character of the 615/649 Marks, holding that “*In so far as those marks have distinctive character, that distinctive character is retained rather than altered*” – see [J154] [C/1/43(154)]. This is Google’s sixth ground of appeal, that legal point then feeding into the Judge’s assessment of genuine use on the facts.
20. We address those points, in that order, below.

Google’s Grounds 1-3: ss.3(1)(c), (d) and the 2018 Marks

21. Section 3(1)(c) provides that trade marks shall not be registered if they (**emphasis**) “*consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services*”.
22. There is no dispute as to the Judge’s summary of the law in respect of s.3(1)(c) set out at [J84]-[J93] [C/1/24(84)-27(93)]. The legal question on appeal is simply whether “exclusively” precludes the registration of the 2018 Marks in this case. As the Judge correctly noted at [J89]-[790] [C/1/26(89)-(90)]:
 - a. As the law currently stands, SIL does not contend that “exclusively” means that a mark which contains any figurative element in addition to a descriptive term (the latter not being the case here) necessarily avoid s.3(1)(c)⁵;
 - b. It is necessary to look at the public policy considerations behind the provision. Section 3(1)(c) must be interpreted in the light of the general interest underlying it, which is

⁵ SIL reserves the position, as a pure point of law, should it be necessary, on any further appeal.

that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see Case C-51/10 P *Agencja Wydawnicza Technopol v OHIM* at [33]-[50]). The provision cannot be avoided by what Arnold J. (as he then was) described as a “*figurative figleaf*” in *Starbucks (HK) Ltd v British Sky Broadcasting Group plc* [2012] EWHC 3074 (Ch); [2013] FSR 29 at [117], or what Geoffrey Hobbs QC, sitting as the Appointed Person, described as figurative content that is “*insignificant in the context of the sign as a whole*” in the FLYING SCOTSMAN TM [2012] RPC 7 at [28].

23. Whether the stylisation in a mark is a “figurative figleaf” or is “insignificant in the context of the sign as a whole” is a multifactorial assessment. Google contends that the Judge’s assessment at [J96] [C/1/28(96)] was wrong, because the Judge noted that the combination of the stylised elements in the 2018 Marks meant that they do not consist “exclusively” of descriptive indications, without applying the more nuanced Starbucks and FLYING SCOTSMAN tests above.
24. There is nothing to that point, because the Judge clearly recited the correct legal tests and had them in mind in concluding as he did at [J96] [C/1/28(96)]. It is well established that an appellate court should not treat a judgment as containing an error of principle even if it believes that a judgment or decision could have been better expressed, which is not even the case here (see Smith J. in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch); [2022] E.C.C. 19 at [24](viii)).
25. Second, at §100 of its reply skeleton [C/5/28(100)], Google takes the plainly contradictory point in arguing that the Judge substituted the approach to the assessment of compound marks from Case C-363/99 *Koninklijke KPN Nederland BV v Benelux-Merkenbureau (“Postkantoor”)*, for the approach in *Starbucks* and FLYING SCOTSMAN. In essence, Google’s complaint is that the Judge did not assess the visual, aural and conceptual impact of the figurative elements in the 2018 Marks, as he was allegedly required to do.
26. There is nothing to that point either. There is no requirement in law that the stylisation in a mark needs to be compared visually, aurally and conceptually (against what?) when assessing its importance in the context of the sign as a whole. In *Starbucks* at [96], Arnold

J. expressly noted Sky’s counsel’s submission that a sign remains objectionable under s.3(1)(c) “*if it is basically descriptive by reason of the visual (and hence aural and conceptual) dominance of the wording it contains, even if it contains some other visual content*”. Plainly, the visual dominance is what matters in the assessment, and that is also the only assessment that can be made by comparing elements in a mark to itself.

27. Third, Google seeks to emphasise some sort of inconsistency between the Judge’s approach to the “+” symbol when considering revocation and considering the play symbol when considering validity. He is alleged to have exaggerated the importance of the play symbol rendering the marks valid, whilst minimising the “+” symbol rendering the plus form permissible variant use.
28. This argument is thoroughly misconceived.
29. First, the factual appraisals are different, and the judge was entitled to reach a different factual evaluation of the significance of two different symbols. Secondly, the issues are dealt with quite differently under the two different legal provisions. It is well established that as a matter of distinctiveness a mark can acquire distinctiveness when used alongside or as part of another mark (e.g., *Société des Produits Nestlé SA v Cadbury Ltd* [2014] EWHC 16 (Ch); ETMR 1) at [45]). However, the approach when it comes to considering variant use is only concerned with whether the distinctive character of the registered form is *altered*. These are legally and factually distinct evaluations.
30. Ultimately, Google’s complaint is that the Judge should have held the stylisation to be insignificant in the context of the 2018 Marks, and that the “*addition of the play symbol was insufficient to imbue the 2018 Marks with any distinctive character*”⁶. But that is just Google’s preference for the purposes of its appeal; it has not identified any error of law or principle that would allow this Court to airbrush those elements out of the 2018 Marks.
31. Accordingly, Google’s first and second grounds of appeal should be dismissed. That also disposes of Google’s third ground of appeal, which is predicated on the same complaint (see §§117-119 of Google’s appeal skeleton [C/5/216(117)-(119)]).

SIL’s Respondent’s Notice

⁶ Google’s reply skeleton at §108 [C/5/213(108)].

32. SIL raises three points in its Respondent's Notice.
33. First, that the Judge should have concluded that the 2018 Marks were inherently distinctive for all goods and services, and not just for the goods and services at [J100] [C/1/28(100)] and [J108] [C/1/29(108)]. SIL's arguments on distinctiveness are essentially the same as for the 383 (word) Mark for SHORTSTV, and we repeat the points at §§13-17 and 54-58 of SIL's first appeal skeleton [C/4/165(13)-166(17)] [C/4/181(54)-182(58)]. In essence, SIL contends as follows.
34. The case law suggests that putting two descriptive words or elements together does not automatically mean that the whole is descriptive. Where a trade mark is composed of several elements which themselves are not distinctive, judges must base their evaluations on the overall perception of that trade mark by the relevant public and not on the presumption that elements individually devoid of distinctive character cannot, on being combined, present such character. The mere fact that each of those elements, considered separately, is devoid of distinctive character does not mean that their combination cannot present such character (Case C-37/03 P *BioID/OHIM* [2005] ECR I-7975 at [29]).
35. There is a plethora of individual channels which contain a descriptive or allusive word followed by the letters TV to form a new word e.g., ITV, MTV, Fashion TV, etc. In effect, the word "TV" indicates that the mark in question functions as a proper name, and consumers have been educated to understand that formula by exposure to many other TV undertakings distinguishing their channels in that way.
36. It is also a very clear principle of trade mark law that the assessment of distinctive character should not take place in the abstract; but rather should take into account all of the facts and circumstances of the case. See Case C-363/99 *Koninklijke KPN Nederland NV (POSTKANTOOR)* at [19]-[30].
37. With so many undertakings adopting this formula for the name of their channels, consumers have learnt to read these marks as indicators of a single trade or origin. Nobody expects to see two "Baby TVs", any more than they expect to see two "Shorts TVs". The terms are not understood solely to be descriptive of content. They are also functioning as badges of trade origin. It is equally well established as a principle of trade mark law that

provided that a trade mark indicates origin, it can have other functions too, for example a descriptive function: see by way of example Case C-398/08 P - *Audi v OHIM* at [45].

38. SIL's second Respondent's Notice point relates to acquired distinctiveness. At [J124]-[J133] [C/1/33(124)-36(133)], the Judge assessed the acquired distinctiveness of SIL's Marks and held that none of them had acquired distinctive character (the point only mattered in respect of the 383 Mark, which was held to be descriptive/non-distinctive). SIL contends that if the 2018 Marks are not inherently distinctive (contrary to the Judge's judgment) when they were filed on 20 February 2018, it could only ever be marginal, such that it would only take a small amount of use for the 2018 Marks to have acquired distinctive character in respect of those goods and services as at the later date of 8 February 2022 (the date of Google's counterclaim). The evidence of use in this case set out at [J128]-[J130] [C/1/35(128)-36(130)] clearly showed that SIL has used the 2018 Marks, and the Judge should have held that they had acquired distinctiveness on that basis
39. SIL's third Respondent's Notice point relates to SIL's proposed fall back limitations, which the Judge held lacked clarity or coherence. SIL contends that the Judge ought to have held that "short films" was a clear and coherent and well-established category of goods and that SIL's proposed limitation did not offend the principle of legal certainty – see SIL's Ground 3 at §§59-62 of SIL's first appeal skeleton (in respect of the 383 Mark) [C/4/182(59)-184(62)], with the same points applying to the 2018 Marks as well. Accordingly, the Judge ought to have held that SIL's proposed limitation would have overcome the invalidity objections to the 2018 Marks, if those objections had succeeded (at [J140] [C/1/38(140)]).

Google's Ground 4: s.3(1)(b) and the 2018 Marks

40. Section 3(1)(b) provides that trade marks shall not be registered if they are "*devoid of any distinctive character*". The Judge dismissed this complaint on the basis that he could see no independent basis for considering the 2018 Marks to be objectionable under s.3(1)(b), although he held that the distinctive character of those marks was low, and arises from the particular combination of the word "shorts" and the play symbol (rendered in red in the "O") – see [J123] [C/1/33(123)].
41. Google contends that the Judge's analysis was wrong for two reasons.

42. First, for the same reasons already explained in respect of Google's Grounds 1 and 2. SIL repeats the same points above.
43. Second, because the Judge allegedly erred in law by failing to consider whether the 2018 Marks possessed any or sufficient distinctive character to escape the s.3(1)(b) objection as a separate matter. Google is right, of course, as a matter of law that a mark may lack distinctiveness for reasons other than descriptiveness.
44. But the Judge had those points firmly in mind – see [J120] [C/1/32(120)], where he specifically noted that “*As is apparent from Technopol, s.3(1)(b) is broader in scope than s.3(1)(c) or (d)*”. The Judge then went on to cite specific legal points relating to distinctiveness (under its own heading), before undertaking the assessment and specifically noting that “*the distinctive character of [the 2018 Marks] is low, and arises from the particular combination of the word “shorts” and the play symbol (rendered in red in the “O”)*”.
45. That clearly shows the Judge undertaking his own assessment of distinctiveness on these facts, and doing so with the specific public interest that underpins s.3(1)(b) firmly in mind; namely, that only distinctive marks should be registered.
46. Google also relies on paragraphs [96]-[97] of *Starbucks*, where Arnold J (as he then was) made the point that, even if figurative elements mean that a mark does not consist “exclusively” of a descriptive indication under s.3(1)(b), an alternative approach which European and national courts have frequently adopted is to say that it is caught by s.3(1)(c) instead. A range of examples are cited.
47. That may be so, but just because a mark has stylisation, which stylisation means that it is not descriptive, does not automatically make it lack distinctiveness. It is a question of fact and degree in each case. Compare, for illustrative purposes only, the BioID mark below (which was held not to be registrable under s.3(1)(b) in Case C-37/03 P *BioID v OHIM* [2005] ECR I-7975), with the 649 Mark which was held to be registrable:



48. The Judge was therefore perfectly well entitled (and correct, as well) to conclude that the 2018 Marks were distinctive, and Google’s fourth ground of appeal should be dismissed.

Google’s Ground 6: revocation for non-use of the 2018 Marks

49. The Judge comprehensively set out the law on genuine use at [J145]-[J152] [C/1/40(145)-43(152)], and none of that is challenged by Google on appeal. Google objects to this paragraph in the Judgment (**emphasis added**):

“154. The dispute was whether the use of “ShortsTV+” (in the form of the 615/649 Marks but with an additional “+”) counted as use of the 615/649 Marks. Google contended that the addition of the “+” altered the distinctive character of the registered marks, because it was a prominent visual element, had conceptual significance in suggesting that something more is offered, and adds an additional syllable orally. I do not agree that the addition of the “+” alters the distinctive character of the 615/649 Marks as registered. **While I agree that the “+” adds a visual element, and an additional syllable orally, and has some conceptual significance in suggesting something more, I do not agree that it adds anything significantly distinctive to the 615/649 Marks. In so far as those marks have distinctive character, that distinctive character is retained rather than altered.**”

50. Google contends that the Judge made two errors of law in his analysis.

51. First, by allegedly failing to consider the “very low” distinctive character of the 615/649 Marks as registered.

52. That is wrong because the Judge expressly held the 2018 Marks to be distinctive at [J123] [C/1/33(123)], noting that “*the distinctive character of those marks is low*” (not “very low”, as Google wrongly suggests the Judge held). But just because marks have low distinctive character does not mean that the addition of a “+” element, being a point of difference, *alters* that distinctive character (see Arnold J (as he then was) in *Walton International Ltd v Verweij Fashion BV* [2018] EWHC 1608 (Ch); [2018] RPC 19 at [120], cited in the Judgment at [J149(ii)] [C/1/41(149(ii))]).
53. Second, Google contends that the Judge asked himself the wrong question at [J154] [C/1/43(154)], by considering whether the “+” element adds anything “significantly distinctive”. The Judge did say that, but in doing so he was not altering the legal test: he was simply making the point that the “+” element was not *that* distinctive, his relevant conclusion being that the distinctive character in the 615/649 Marks was not altered by the addition of that element. It is not just a stretch to say that the Judge erred in law by reasoning as he did – it is plainly wrong to say that.
54. Here again, Google’s real complaint is that it does not like the Judge’s multifactorial assessment on the facts, which point is clear from §137 of Google’s skeleton [C/5/221(137)], where it emphasises the significance of the “+” symbol as a “prominent visual element”, with conceptual and aural significance. The Court will note that Google is prepared to airbrush the visual elements in SIL’s Marks *out* of the analysis, but to exaggerate the impact of the “+” symbol for its purposes here.
55. It is also worth noting that on Google’s case, the “+” symbol has distinctive force and confers distinctiveness on SHORTSTV. Therefore, Google’s stance does not support its case on revocation (for the reasons above), but, instead, positively supports SIL’s case on acquired distinctiveness, because a mark can acquire distinctiveness when used alongside or as part of another mark (see §29 above). If SHORTSTV+ is distinctive, as Google contends, so too is SHORTSTV.
56. There is no error of law or principle here. Google’s Ground 6 should therefore also be dismissed.
