

AMP¹ Mediation Success

Lee Mei Lie t/a CY Education Centre & Fun with Abacus School Pte Ltd [2024] AMP MED 4

	Party A	Party B
Name	Lee Mei Lie t/a CY Education Centre	Fun with Abacus School Pte Ltd
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Drew & Napier LLC	Chevalier Law LLC
Lawyers	Mr Victor David Lau Mr Wang Shang Yew	Ms Lim Bee Li Mr Wong Zhen Yang

Mediation Institution	WIPO Arbitration and Mediation Center (“WIPO Center”)
Mediator	Ms MOI Sok Ling, SMC IP Certified Mediator (“Mediator”)
Shadow Mediator²	Mr Samuel Wee, IPOS Young IP Mediator ³
Date of Mediation	18 September 2024
Mode of Mediation	In Person

Background

The Parties operate in the education sector by providing abacus classes for young children. Party B is the registered proprietor of the following trade mark, which it uses in the course of its business:



fun with abacus

The dispute arose in September 2022 due to the alleged infringement of the above trade mark within a prospectus issued by a school, which included information about classes run by Party A. Following various exchanges of letters between Parties’ lawyers, and claims brought by Party B in court, both Parties agreed to attempt to mediate their dispute under the WIPO-Singapore ASEAN Mediation

¹ The WIPO-Singapore ASEAN Mediation Programme (AMP) is part of the collaboration between the Government of Singapore and WIPO, under which funding for mediation is available under certain conditions.

² It is a condition of funding under AMP that parties allow a “shadow” mediator to attend and observe the mediation.

³ The IPOS Young IP Mediator initiative was launched with the objective to give more exposure and build experience among those who may mediate or represent parties in IP mediations in future.

Programme. Parties submitted mediation statements to the Mediator three days in advance of the mediation session. During the mediation, Party B was informed that the prospectus was designed without Party A's direct input and clear knowledge, as Party A was not involved in the creation and publication of the prospectus. Furthermore, usage of the trade mark in the prospectus had ceased since then and the latter was no longer in circulation. The Parties eventually successfully settled their dispute.

Mediation Process

The venue of the mediation was at the office of law firm Drew & Napier LLC, which acted for Party A. It began after 10.00 am and concluded before 6.00 pm with the successful signing of a settlement agreement. The process of the mediation was clear, organised and systematic. The Mediator guided both Parties and their lawyers through the adoption of various procedural arrangements that facilitated progress at each stage of the mediation, which is elaborated on below.

First, the mediation began as a joint session. The Mediator opened the session on a positive, upbeat note, highlighted the key tenets of mediation, explained her role as a neutral facilitator, ensured Parties' understanding of their roles, and set an agenda and tentative timetable for the day. The Mediator strongly emphasised the need for Parties (1) to keep an open mind; (2) to be upfront with their interests; and (3) to trust the process of mediation. The Parties were reminded to refrain from unnecessary tactical posturing. Instead, their lawyers were advised to put on their "mediation advocates' cap" and to adopt a more conciliatory approach so as to grant Parties the best possible chance of obtaining a settlement by the end of the mediation. Importantly, during the joint session, the Mediator allowed the Parties to address each other directly and take the chance to communicate face-to-face for the first time. As subsequently observed, this initial engagement between both individuals laid the foundation for Parties to eventually achieve a common vision and understanding on the appropriate way forward.

Second, the mediation occasionally diverged into private sessions. In these private sessions – which were protected by an additional layer of confidentiality – each Party with its lawyers had the opportunity to be transparent with its concerns and to share its thoughts on the progress of the mediation with the Mediator. With incisive inquiries and investigative questioning, the Mediator was able to swiftly ascertain the bottom-line of each Party with regard to an acceptable range of monetary compensation, as well as any factual points in dispute that required further clarification. At the later part of the mediation, the private sessions saw Parties occupying separate rooms while the Mediator shuttled between both locations to coordinate the terms of the eventual agreement. The Mediator also provided much-needed neutral analysis on the effectiveness of specific terms that were being discussed for the purpose of settlement.

Third, at a critical juncture, both Parties had a genuine one-to-one exchange, in the Mediator's presence, where they expressed their common desire to place the unfortunate episode behind them, and their hope to continue with their day-to-day lives without the distraction of legal proceedings. The conversation was candid and both Parties sincerely attempted to understand each other's viewpoints.

Last, the Mediator also provided ample opportunity for each Party to privately consult its own lawyers, so as to ensure that all Parties were sufficiently advised and assured that the final agreement protected their rights and interests, while amicably resolving the dispute.

Challenges

The main challenge in this mediation arose from the fact that the Parties' starting positions were very far apart. The Parties also held a firm belief in the merits of their respective cases and their potential of obtaining a favourable outcome in court. Their lawyers thus appropriately and rigorously defended their client's individual legal positions during the mediation.

However, it was also clear that the effectiveness of mediation strongly depended on Parties' willingness to eschew strict legal positions in favour of a more bespoke and tailored solution. The breakthrough came when the Parties had a one-on-one conversation without their lawyers present. The personal communication was instrumental in assisting both Parties in better understanding their equally logical but distinct viewpoints. With greater mutual understanding, the Mediator was able to encourage Parties to reciprocally adjust their original positions, thereby expanding common ground between both Parties that led to the eventual settlement.

The Mediator also rightly pointed out that further legal proceedings would be highly costly and stressful to both Parties, since Party A was a retiree teaching classes on a voluntary basis while Party B had a commercial entity to manage. In such a situation, the truly win-win solution would be for Parties to avoid incurring further legal costs and to refrain from undertaking the additional risk of an unforeseen court-determined outcome. Indeed, unlike judge-made awards, parties in mediation are able to personally define the scope and features of their eventual solution and thus possess greater control over the terms of their final agreement.

Reflections

The Mediator reflected:

The parties met for the first time at the mediation and had the opportunity to directly communicate with each other in their own words. The sincere tone of the interaction was in sharp contrast to the typical hardline/defensive/legalistic stance conveyed through the lawyers' correspondence. With malicious intent ruled out and misunderstanding unravelled, the dispute was cleared for resolution ... like magic. In my opinion, the success of the mediation was due largely to the parties' willingness to speak from their hearts, listen to understand the other's perspective and adopt a give-and-take approach, with grace and mutual respect.

I fully support the Young IP Mediators Initiative and hope that Samuel Wee (as shadow mediator) was able to observe how reality-testing was conducted in a real life setting and better appreciate the motivations behind the judgement calls and tactical manoeuvres made by the mediator at various junctures of the mediation process.

Party A expressed her appreciation as follows:

I was very pleased that the mediator was able to speak in Mandarin.

The lawyers for Party A remarked:

Ms Moi was instrumental in persuading the opposing party to settle. Although our client's position and the opposing party's were initially very far apart, she was able to help them see past the emotional grievances and strict legal principles involved and to come to a pragmatic

compromise. We were also impressed by her fluency in Mandarin as it is our client's first language.

Party B and their lawyers jointly remarked:

We are grateful for Ms Moi's efforts in bringing this dispute to a close. There was a great gap between parties' positions prior to attendance at the mediation, and Ms Moi assisted parties in evaluating their cases, positions on costs and the value of compromise.

As a Young IP Mediator shadowing the Mediator, I observed first-hand how the Mediator effectively encouraged Parties and their lawyers to keep an open mind to new possibilities and options as the mediation progressed. I observed through this mediation that flexibility is an important element leading to a successful settlement, where there must exist a mutual willingness by Parties to move beyond the comfort of their original legal positions. Furthermore, during the private sessions, the Mediator helpfully explained the practical implications flowing from each potential decision contemplated by Parties, thereby acting as a "window to the future." Together with their lawyers, each Party was able to capitalise on the Mediator's insights and appropriately amend their requests to increase the acceptability of the proposed terms of settlement to their counter-party.

It was eye-opening to see theory put into practice as the Mediator skilfully assisted Parties in building up their rapport while providing them with insightful advice on the practical ramifications of their legal positions. She facilitated communication between the Parties and assisted them to negotiate in good faith. As expressed by the Mediator at one point, the welfare of the Parties was paramount and should take precedence over the mere chance of winning potential arguments on the legal principles of each case. The fairness, transparency, skill and efficiency of the Mediator was a significant factor contributing to the Parties' amicable settlement.

Conclusion

The WIPO-Singapore ASEAN Mediation Programme provided Parties with an effective and efficient platform to resolve their IP dispute. Additionally, under the AMP, Parties can receive reimbursement of mediation costs up to S\$8,000.⁴ This is a highly beneficial arrangement, especially for a party in financial need. In sum, it was heartening to see how the mediation had provided both Parties with the precious opportunity to achieve a mutually acceptable and satisfactory outcome, hopefully leading to a greater enjoyment of peace of mind.

Written by Samuel Wee, Young IP Mediator
16 October 2024

⁴ It is a condition of funding under AMP that parties agree to named publicity, without the need to disclose specific details of the settlement agreement; hence this article.