

Mediation Success at IPOS

Gromark Consumers Enterprise Pte. Ltd. & GK Laboratory (Asia) Pte. Ltd. [2020] SGIPOS MED 2

	Party	Party
Name	Gromark Consumers Enterprise Pte. Ltd.	GK Laboratory (Asia) Pte. Ltd.
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Harry Elias Partnership LLP	Chow Ng Partnership
Lawyers	(i) Brian Law (ii) Tan Weiyi (iii) Esther Wee	Patrick Chow

Mediation institution	World Intellectual Property Organization Arbitration and Mediation Center (WIPO Center) ¹
Mediator	Andy Leck, of Baker McKenzie Wong & Leow LLC
Shadow Mediator²	Utsav Rakshit, IPOS Young IP Mediator
Date of Mediation	30 October 2020

Note: *This is the first successfully mediated case where a Young IP Mediator had a first hand experience of witnessing how a mediation was steered to success within a day. IPOS is grateful to the WIPO Center, Mediator Andy Leck, the parties and their lawyers for giving Mr Utsav Rakshit this invaluable opportunity. **For more information about the Young IP Mediators initiative and Utsav's experiences in this case, see Annex A below. Please see the accompanying [media release](#).***

Gromark Consumers Enterprise Pte Ltd (the Opponent) is a beauty and supplement manufacturer, exporter and distributor in the cosmetic and cosmeceutical industry. Its products are sold in Singapore and various countries overseas, including China and Japan. Over the years, the Opponent has established its “Crystal Tomato” brand of products and has also registered numerous trade marks in Singapore and overseas.

GK Laboratory (Asia) Pte Ltd (the Applicant) is in the business of health supplements and aesthetic, beauty products and has sales both in the local and overseas market, particularly in China.

The Applicant applied to register “timeless tomato” in Classes 3, 5 and 35 (the goods mainly pertain to cosmetic preparations, nutritional supplements as well as retail / wholesale services relating to the

¹ The WIPO Center's only office outside Geneva, Switzerland is in Singapore.

² It is a condition of funding under the IPOS Enhanced Mediation Promotion Scheme (EMPS) that parties allow a “shadow” mediator to sit in and observe the mediation; or have a co-mediator to assist in the mediation. The objective is to give more exposure on how mediation can resolve IP disputes and build up experience among those who may mediate or represent parties in IP mediation in future.



same) (the Application Mark) as well as the logo in Classes 3 and 5 (similarly, the goods mainly pertain to cosmetic preparations and nutritional supplements).

The Opponent opposed the registration of the Application Mark³ on the basis that it would cause confusion in the market and adversely affect the “Crystal Tomato” brand.

After parties exchanged their initial pleadings in the opposition proceedings, they were invited to consider mediation as an option to resolve the dispute. Parties received information from IPOS on the Enhanced Mediation Promotion Scheme (EMPS), and agreed to try and resolve their dispute through mediation administered by the WIPO Center.

Under IPOS’ EMPS⁴, the parties could receive funding of S\$12,000 for the mediation as the subject matter of mediation involved both Singapore and foreign IP rights. Further, as parties applied for the complimentary mediation service offered by the WIPO Center,⁵ the full amount of the subsidy can be applied towards up to 50% of the parties’ mediation-related lawyer fees and disbursements.

The WIPO Center provided the parties with 3 proposed candidates for appointment as mediator. Parties agreed to appoint one of the candidates, Mr Andy Leck, who is a principal at Baker McKenzie Wong & Leow LLC, as the mediator.

Parties met in person on the day of the mediation and the session lasted about 8 hours. After a series of discussions, some of which took place in the presence of the mediator and some of which were amongst parties themselves, parties were able to resolve the disputed issues and finalise the terms of the settlement agreement. The outcome of the mediation was positive and met the commercial concerns and objectives of both parties, not only in respect of their businesses in Singapore, but also overseas.

Had the parties decided to fight it out in an adversarial setting, it would have taken much more time and both parties would have incurred substantial costs.

Both parties were satisfied with the mediation process.

The Opponent’s Managing Director, Ms Catherine Tan, said, “We are grateful to the mediator for helping to facilitate the negotiations between the parties. It means a lot to us and our business that this mediation was successful. We not only managed to resolve the underlying disputes to reach an amicable resolution, but we also took a step forward in safeguarding the reputation of our brand and business in Singapore and overseas.”

³ The mediation additionally included the logo mark, which was not opposed.

⁴ It is a condition of funding under the IPOS EMPS that parties agree to named publicity, without the need to disclose specific details of the settlement agreement.

⁵ In light of the global economic difficulties due to COVID-19, WIPO Center offered mediation services at no charge for mediation requests filed within the period 12 June – 31 August 2020.

The Applicant's Director, Mr Stanley Siu, indicated that it is likely to use mediation again and commented that mediation is "[l]ess stressful and quicker in result. Parties have the opportunity to understand each other's case and to negotiate in a more business-like manner with less animosity".

The Opponent's agent, Ms Tan Weiyi, Partner at Harry Elias Partnership LLP added, "[a]s solicitors for our client, we are pleased that parties were able to resolve the dispute through the mediation process and reach a resolution that addressed the commercial concerns and objectives of both parties."

7 December 2020

Annex A

Young IP Mediators Initiative – Student Mediator Participates in his First Mediation Success Case

1 The Young IP Mediators initiative (YIPMI) was launched by Second Minister for Law Edwin Tong on 26 August 2020 during the annual IPOS flagship event, IP Week@SG. The initiative seeks to nurture and build up IP mediation experience among our youth by giving them an opportunity to be involved in mediation.

2 This is the first successfully mediated case where a Young IP Mediator had a first hand experience of witnessing how a mediation was steered to success within a day. Under the lead of experienced mediator, Mr Andy Leck, Mr Utsav Rakshit, a final year student at the National University School of Law (NUS), participated in a mediation involving a multi-jurisdictional trademark dispute.

3 About the YIPMI, Professor Joel Lee from NUS opined, “The YIPMI allows for the nurturing of the next generation by giving them an opportunity to be involved in mediation, and specifically in Intellectual Property mediations. This will grow a generation of mediation-friendly IP mediators and advocates which will then feed into the mediation ecosystem.”

4 Similarly, Professor Nadja Alexander, from the Singapore Management University School of Law (SMU), commented, “The [YIPMI] is a wonderful initiative that allows students and young mediators to get their teeth into real life mediation cases by shadowing an experienced mediator in an actual case. Students learn practical skills and mediation theory at courses we teach...The [YIPMI] allows them the opportunity to complete the practical experience by seeing how a real-life dispute is mediated. This is a precious opportunity for our students, especially since they are also given the opportunity to interact with a seasoned mediator and to learn from his/her experiences.”

5 Indeed, Mr Rakshit has found this experience extremely meaningful. He reflects, “I had thoroughly enjoyed the process and had the chance to learn a lot just from observing Mr Leck in terms of his demeanour, how he reframed matters, his choice of words, and how he kept the parties on track and assisted in generating options.” Commenting on the Young IP Mediator, Mr Leck shared “I hope [Utsav], as a shadow mediator, managed to experience first-hand how a mediation is conducted from the perspective of the mediator. This initiative may hopefully spark interest in mediation and IP in the future generation of young lawyers.”

6 Ms Chiara Accornero, representative of the World Intellectual Property Organisation (WIPO) Arbitration and Mediation Center in Singapore (the only office outside Geneva), commented, “ As effective mediation proceedings depend to a large extent on the quality of the mediator, we fully support IPOS new [YIPMI] to offer hands-on training and exposure to real mediation practice to motivated law graduates interested in mediation. We are delighted that a number of IPOS Young IP Mediators were able to shadow some WIPO mediations and we hope that this will contribute to further build IP mediation experience and awareness.”

7 Commenting on the early success of the YIPMI, Mr Mark Lim, Chief Legal Counsel, and the Director of the Hearings and Mediation Department of IPOS, which played an integral role in the genesis of this initiative, stated, “We are delighted that our appointed Young IP Mediators have been offered hands-on induction and exposure to real mediation practice. This move is part of our continuous capability building effort to raise the next generation of IP mediation expertise, and it complements Singapore’s drive towards becoming a global IP dispute resolution hub.”