

## AMP<sup>1</sup> Mediation Success

### Fun Toast Pte. Ltd. & Fun Tea Pte. Ltd. [2024] AMP MED 2

	Party A	Party B
<b>Name</b>	Fun Toast Pte. Ltd.	Fun Tea Pte. Ltd.
<b>Nationality / Country of Incorporation</b>	Singapore	Singapore
<b>Representation</b>	Rajah & Tann Singapore LLP	Nanyang Law LLC
<b>Lawyers</b>	Mr Lionel Tan, Ms Victoria Tan & Mr Ian Ng	Mr Ng Kim Tean, Mr Ng Yi Neng & Ms Tay Yu Shan

<b>Mediation Institution</b>	WIPO Arbitration and Mediation Center (“WIPO Center”)
<b>Mediator</b>	Ms Joyce A. Tan, Director, Joyce A Tan & Partners LLC (“Mediator”), and Mr Lakshmanan Anbarazan <sup>2</sup>
<b>Shadow Mediator<sup>3</sup></b>	Ms Divya Shanaz Kolandaj, IPOS Young IP Mediator <sup>4</sup>
<b>Date of Mediation</b>	9 July 2024
<b>Mode of Mediation</b>	In person

## Background

Fun Toast Pte Ltd (“Party A”) is a company incorporated in Singapore that operates several establishments selling food and beverages. Fun Tea Pte Ltd (“Party B”) is a company incorporated in Singapore that sells food and beverages. Party B was a joint venture pursuant to an agreement in 2012, that included both directors and shareholders of Party A.

Party A is the registered proprietor of the following trade marks, which it uses in the course of its business (“Fun Marks”):

 (“Fun Toast Mark”)	 (“Fun Tea Mark”)	 (“Red Fun Mark”)
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<sup>1</sup> 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.

<sup>2</sup> Mr Anbarazan was assisting Ms Tan in the Mediation. Consent was received from all parties.

<sup>3</sup> It is a condition of funding under AMP that parties allow a “shadow” mediator to attend and observe the mediation.

<sup>4</sup> The IPOS Young IP Mediator initiative was launched with the objective to give more exposure and build up experience among those who may mediate or represent parties in IP mediations in future.

The dispute arose on 22 November 2022 relating to the use of the Fun Tea Mark and Red Fun Mark and the ownership of the Fun Marks.

As they were unable to resolve their issues, the parties mutually agreed to mediate this dispute under the WIPO-Singapore ASEAN Mediation Programme (AMP). Under AMP, the parties in a mediation case can receive reimbursement of mediation costs, up to S\$8,000.<sup>5</sup>

### **Pre-Mediation Discussions**

Prior to the mediation, parties submitted their respective case statements which comprised their versions of events coupled with possible solutions to the dispute. The Mediator held separate online meetings with each party to better understand their perspectives and the parameters of their proposed solutions. These meetings allowed the Mediator to outline key root issues and gain insight into the parties' personalities, setting the stage for a more productive mediation session.

### **Mediation Session**

The venue was kindly provided by Party A's law firm, Rajah and Tann Singapore LLP. It began in the morning at 9.40 am on 9 July 2024 and concluded in the wee hours of the following morning at 12.28 am on 10 July 2024 with the signing of the settlement agreement.

The mediation began with all the parties present in the main meeting room where each participant briefly introduced themselves. The Mediator gratefully acknowledged the hospitality of Party A's lawyers in providing a comfortable venue. This gesture highlighted her observation and validation skills, which are crucial in mediation. The Mediator also acknowledged that both parties were saddled with difficulties and encouraged them to move forward. Further, she expressed her gratitude to both parties for adopting a more rehabilitative stance in attending the mediation that day. This not only fostered an open and welcoming tone but served as a tool to build an environment that facilitated communication.

The tone of the mediation was set as she reminded the parties of the importance of mediation and established some ground rules. This was a key step in setting a conducive environment for parties to express themselves.

To let parties form their agenda for the mediation, she encouraged both parties to share their sentiments through opening statements. The Mediator then skillfully extracted their common intentions which allowed the parties to appreciate their perspectives and how they could culminate into an effective resolution for both of them. At this juncture, she reminded parties of the grave alternative they would face if the mediation were not successful. Highlighting the commonalities allowed parties to shift their perspectives towards the fact that there was a common ground between them, contrary to what they may have initially thought.

At this juncture, the Mediator called for a private caucus. This is a confidential, private meeting between each party, their lawyers, and the Mediator. In these sessions, the Mediator tactfully got parties to partake in a visualization exercise. The exercise involved parties imagining themselves adopting solutions they seemed hesitant to consider. This hands-on approach helped reframe the other party's solutions, encouraging greater consideration of alternative possibilities and even the potential success of alternative solutions. It was also an effective way of easing parties into something new in bite-sized pieces.

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<sup>5</sup> 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.

With that as a starting point, parties were able to work with the Mediator in modifying the new solutions to meet their needs. The privacy of the sessions allowed parties to freely express their emotions while dabbling with the possibility of adopting new solutions. This further enabled the parties to brainstorm and refine the solutions, facilitating the creative process and advancing the mediation. Additionally, the Mediator challenged parties in their current positions and prompted them to consider being flexible and reasonable.

The Mediator adeptly redirected parties to the issue at hand and encouraged them toward a middle ground instead of dwelling on the past contentious issues. This was skillfully done by reminding them about the benefits of a settlement versus the uncertainty and potential drawbacks of prolonged litigation.

### **Challenges**

There was a point in the mediation where parties remained fixated on their diametrically opposing viewpoints. Recognizing the impasse, the Mediator felt it appropriate to outline the various grievances that might have led to the dispute. The Mediator tactfully leveraged their experiences to remind parties about how the settlement agreement would prevent parties from finding themselves in a similar predicament.

Further, due to the high emotions, the Mediator introduced moral philosophies; like the benefit of distancing from commercial realities and reflecting on the broader value of life. Shifting the discussion away from pure commercial concerns led parties to consider more holistic and meaningful solutions. Ultimately, this culminated in a settlement agreement.

Another challenge was the rigour of the mediation. Due to the nature of the dispute, the parties were fixated on their legal position. Noting this, the Mediator decided to privately converse with the lawyers. With the Mediator's expertise on the subject matter, she reminded lawyers about the uncertainty of navigating the litigation terrain. The lawyers also provided further insight on where the parties stood which allowed her to communicate more effectively with the parties and reframe solutions in a manner that made better sense to them. The private conversation with the lawyers also ensured that the legal representatives, who communicated directly with the clients, were aligned with the objectives of the mediation process. This alignment helped direct their clients toward the goal of a settlement.

### **Reflections**

The Mediator commented:

Interestingly, the huge divide between the disputants in this case masked a shared commercial goal, that could have been easily sidelined by each party's focus and arguments on the merit of legal technicalities and factual interpretations in its favour. Due to each party's strong belief in such merit, the threat of parties slugging it out in the courts was ever-present and looming. Mediation presented parties with the holy grail of dispute resolution to prioritise and build on the shared goal, while defocusing each party's belief in the legal merit of its disparate position. In the face of a dispute having direct adverse impact on the conduct of a business as in this case, seeking its resolution is better served by formulating a carefully calibrated solution that balances competing interests, and is practically meaningful and helpful to the business over the longer term, rather than in a gamble of "winner taking all". Despite the great metaphorical distance between them, the parties in this case managed to

mine the golden nuggets of mediation, to resolve an old festering dispute that had plagued them both for too many long years.

Party A commented that they were greatly satisfied with the mediation process, particularly highlighting its efficiency and the professionalism of all parties involved. The confidential and cost-effective resolution of the dispute was highly valued, as it aligned perfectly with their commitment to maintaining harmonious business relationships with their partners while upholding their commercial interests ethically and responsibly. Party A concluded that their positive experience underscores the benefits of mediation as a preferred method for dispute resolution, one that fosters collaboration and preserves business relationships.

The lawyers for Party A remarked:

The mediation process itself was smooth, despite its duration extending late into the night, finally concluding at around 1.00 am. Throughout the sessions, numerous critical points were raised by the parties that had not previously been canvassed in earlier correspondence which contributed to the ultimate resolution of the dispute. The mediator demonstrated a high level of persistence and was well-versed in the IP issues at hand. Her thorough preparation was evident, as she effectively navigated the complexities of the case, ensuring that all perspectives were adequately considered. Notably, the mediator held a preparatory session with the parties before the actual mediation, which was extremely helpful in identifying each party's objectives. This preparatory work was instrumental in shortening the mediation process itself, making it more efficient and focused. Her diligent approach and in-depth knowledge significantly contributed to the successful outcome of the mediation.

Party B remarked:

We wish to convey our gratitude for the mediator going the extra mile to bring both parties to a middle ground and facilitate the eventual amicable settlement.

Party B's lawyer commented:

We are glad that mediation was able to resolve the deadlock between the parties that threatened to escalate into full-blown litigation. At the mediation, parties were able to air their concerns, and, through the mediator, bridge their differences to address each other's concerns.

As for myself, firstly, I appreciated the intricacies of reframing. The Mediator took the art of reframing beyond mere paraphrasing and broke down proposed solutions into smaller, manageable parts. Based on her understanding of the parties, the Mediator was able to map parts of the solutions to the parties' needs so that they would be more receptive to considering alternative possibilities. I was particularly amazed at the Mediator's ability to navigate the fine line between being candid and neutral. The Mediator did this by affirming parties when they were being benevolent and making progress but also highlighted whenever the session was not progressing. This provided parties with an objective perspective without the cloud of emotions. Further, it allowed the Mediator to advance the mediation when parties remained fixated on contentious issues.

My favourite reframe of the session was when the Mediator asked parties to redefine what "winning" would mean. Recognizing that the parties were often fixated on their legal positions, the Mediator posed guiding questions that prompted parties to consider their true losses and gains that went beyond the strength of their cases. It was certainly crucial to the mediation's success.

Secondly, I admired how the Mediator toggled between private caucuses and private sessions with the lawyers. Observing the tenor of the parties, the Mediator was able to spot moments of resistance and struck the balance between validating the parties' emotions and promulgating a forward-looking spirit. At the same time, I was amazed at the Mediator's skillful decision-making to speak with the lawyers alone to further understand these moments of resistance that caused the mediation to come to a standstill. These sessions also provided the opportunity for the Mediator to discuss each party's best possible outcome without a negotiated agreement ("BATNA") and the worst possible outcome without a negotiated agreement ("WATNA"). I realised the importance of reminding parties of both BATNA and WATNA which gave them a more holistic view of their situation.

Lastly, I was impressed at the Mediator's ability to conclude each private caucus with a positive parting thought that encouraged parties to work on their current solutions instead of looking back. A combination of these tactics certainly advanced the mediation and promoted a conducive environment for parties to work towards a common goal.

### **Conclusion**

In total, the mediation lasted for about 15 hours and resulted in a settlement agreement that addressed both parties' interests. This was a preferable outcome as opposed to the unpredictable and arduous process of litigation which would have incurred substantial time and costs.

Written by Divya Shanaz Kolandai, Young IP Mediator  
12 August 2024