

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

### Gromark Consumers Enterprise Pte Ltd & Universe Kingdom Pte Ltd [2024] AMP MED 3

	Party A	Party B
<b>Name</b>	Gromark Consumers Enterprise Pte Ltd	Universe Kingdom Pte Ltd
<b>Nationality / Country of Incorporation</b>	Singapore	Singapore
<b>Representation</b>	David Llewelyn & Co LLC	Robertson Chambers LLC
<b>Lawyer</b>	Ms Gladys Tan	Mr Terence Tan

<b>Mediation Institution</b>	WIPO Arbitration and Mediation Center (“WIPO Center”)
<b>Mediator</b>	Mr Lim Tat (“Mediator”)
<b>Shadow Mediator<sup>2</sup></b>	Mr Samuel Teo, IPOS Young IP Mediator <sup>3</sup>
<b>Date of Mediation</b>	30 July 2024
<b>Mode of Mediation</b>	In person

## Background

Party A is Gromark Consumers Enterprise Pte Ltd, a manufacturer, exporter and/or distributor of skincare products and supplements bearing various “CRYSTAL TOMATO” trade marks. Party B is Universe Kingdom Pte Ltd, trading as iQueen and Ujuwon, a manufacturer and distributor of the Ujuwon Miracle+ Tomato Skin Booster product (“Ujuwon Product”).

Sometime in 2023, a dispute arose between the parties in relation to Party B’s use of Party A’s “CRYSTAL TOMATO” trade marks in connection with Party B’s Ujuwon Product. Party A’s claims included trade mark infringement, passing off and malicious falsehood.

To resolve the dispute, the parties entered into a settlement agreement in February 2024 (“Settlement Agreement”). Under the Settlement Agreement, Party B agreed to, among other things, publish an apology on the landing or main pages of two of their websites within 21 days of the date of the Settlement Agreement (“Disputed Clauses”). However, the parties subsequently disagreed on whether Party B had breached the Disputed Clauses.

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

<sup>3</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.

Party A therefore commenced legal proceedings (“Suit”) against Party B in the General Division of the High Court of Singapore, seeking specific performance of the Settlement Agreement.

At the time of the filing of the Request for WIPO Mediation, the Court had already given directions for the progress of the Suit, including deadlines for production of documents, and the filing of affidavits of evidence-in-chief. These deadlines would not be held in abeyance unless a mediation date was fixed. In the premises, the parties requested that a mediator be appointed as soon as possible.

The parties also agreed to the conditions under WIPO-Singapore AMP, through which they can receive reimbursement of their mediation costs, up to S\$8,000.<sup>4</sup>

### **Mediation Process**

The morning began with a joint session, during which the Mediator took the parties through what to expect in the mediation process-wise, as well as the advantages of mediation, which included (among other things) the potential to save time and costs for the parties, as well as the preservation of all rights for the parties in the event the mediation did not bear fruit.

The Mediator reassured the parties that, having looked at the material which had been sent to him by the parties’ lawyers prior to the mediation, he was of the view that the task before the parties (and the Mediator) was a simple and straightforward one. In a nutshell, the disputed point between the parties could be narrowed down to the location of the apology on the relevant websites.

After inviting both parties and their lawyers to give some opening remarks, the Mediator ushered the parties and their lawyers to separate rooms, so that he could meet with the respective parties and their lawyers separately. The remainder of the mediation process proceeded on this basis – the Mediator took turns to meet with the respective parties and their lawyers, taking time to hear them out, unearth their perspectives and concerns, and reality-test their articulated positions and baselines.

At around the mid-point of the mediation process, the Mediator determined that the time was ripe to have a separate discussion with just the parties’ lawyers, in order to take stock of where the parties were at in terms of their articulated concerns and positions conceptually (which he had permission from the respective parties to share), and to try to ascertain how best to move the mediation forward.

Thereafter, things proceeded smoothly and speedily. The Mediator deftly assisted parties in navigating a back-and-forth process of ideating and putting forward solutions, agreeing to compromises that met their interests and addressed their concerns, before the parties’ lawyers finally put pen to paper on a draft consent judgment recording the agreed terms of settlement. After approximately three hours, the mediation concluded with brief closing remarks from the Mediator.

### **Challenge**

In the course of the private sessions between the Mediator and the respective parties and their lawyers, the parties articulated what they initially considered to be hard baselines for what they were willing and unwilling to accept as a mediated outcome. The steadfastness demonstrated by both parties may have been a product of the unfortunate backdrop to the mediation – the parties have already had one attempt at reaching a settlement, but still found themselves embroiled in more disagreements and disputes.

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<sup>4</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.

It was thus of great importance that these hard baselines were articulated in the safe space of confidential private sessions, which gave the Mediator the opportunity to re-frame and temper these positions, before re-packaging the same and presenting it to the other party (with the relevant party's permission).

## Reflections

The Mediator commented:

This was a dispute that arose from a disagreement relating to one of the terms of the settlement agreement entered into between the parties. The issue in dispute resulted from parties' differing interpretation of the term in question. The willingness of parties and their counsel to take a commercial (as opposed to legalistic) approach to problem solving resulted in the dispute being resolved very quickly (within 3 hours of the mediation), resulting in substantial saving of costs and time for all parties. A classic example of the kind of outcomes that one can expect to achieve in mediation, when parties and counsel work hand in glove with the mediator.

Party A summarised its experience below:

We are grateful to the mediator and WIPO for helping to facilitate the negotiations between the parties which led to a resolution that addressed our commercial concerns. This has significant time and cost savings for us as we no longer need to litigate this dispute in Court and can now focus on our brand and business in Singapore and overseas.

Party A also gave feedback that it was likely to use mediation again and to recommend mediation to others.

Party B commended the Mediator for his invaluable role in brokering the agreement between parties at the mediation. It also thanked Party A and its lawyer for being amenable to resolve the dispute at the mediation. Party B also expressed its thanks to the WIPO Center, in particular the administrative team, for its tremendous assistance in making the arrangements and hosting the mediation at the WIPO Singapore Office. Last but not least, Party B also thanked the IPOS Young IP Mediator.

The lawyers for Party A remarked:

We are pleased that the parties were able to resolve their dispute amicably within half a day through mediation. The success of this mediation is testament to the mediator's exceptional skill and the WIPO Center's commitment to providing an expeditious and cost-effective mode of dispute resolution.

The lawyers for Party B remarked that the Mediator was exemplary. He was fair and even handed, and managed to broker an agreement between parties within half a day. The successful mediation resulted in the withdrawal of the action, thereby saving parties much time and inconvenience.

As for myself, as a Young IP Mediator shadowing the Mediator, and with the benefit of having been in private practice myself for a few years, I was able to observe, for the first time, a mediation from the perspective of a mediator, rather than a mediation advocate. My greatest takeaway from this experience is the importance of preparation and understanding the type of conflict(s) present in the mediation beforehand, so that as a mediator, one can formulate an appropriate game plan to resolve the conflict(s), including how best to utilise the mediation process.

For instance, in this mediation, the primary mode of communication between the Mediator and the parties was by way of successive private sessions with each party. On one hand, this gave the parties the space to air their grievances and to articulate their concerns, without risking an escalation of the dispute between the parties. On the other hand, this also gave the Mediator the opportunity to effectively be the intermediary between the parties, receiving information from one party, re-packaging and re-focusing the information, before conveying the same to the other party. In my view, this element of distance was instrumental to the swift resolution of the dispute.

Apart from formulating a game plan on how best to utilise the mediation process, another way that an early reckoning of the type of conflict(s) present helped, was in guiding the overarching approach towards resolving the dispute. I observed how the Mediator masterfully teased out the parties' positions and proposals on a conceptual level, and tried to juggle the discussion at that level, without getting bogged down by the details of the commonalities / differences between their positions. As the point in dispute was a relatively narrow one, this ensured that parties were able to briskly reach an agreement on a conceptual level, thereby generating positive momentum towards resolving their dispute. As a result, the initial differences between the parties' positions were also eventually smoothed out much more easily.

## **Conclusion**

The mediation lasted approximately three hours, and the parties were eventually able to settle their differences in an amicable and mutually acceptable manner, testament to the efficacy of the mediation process.

Written by Samuel Teo, Young IP Mediator  
24 September 2024