

AMP¹ Mediation Success

The Beauty Nation Pte. Ltd. & Kiong Onn Medical Hall Pte. Ltd. [2024] AMP MED 5

	Party A	Party B
Name	The Beauty Nation Pte. Ltd.	Kiong Onn Medical Hall Pte. Ltd.
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Gateway Law Corporation	Amica Law LLC
Lawyers	Mr Max Ng Chee Weng Mr Ryan Wong Ms Dai Jingwen Annie	Mr Aaron Thng Mr Zachery Tan

Mediation Institution	WIPO Arbitration and Mediation Center (“WIPO Center”)
Mediator	Mr Jonathan Choo (“Mediator”)
Shadow Mediator²	Ms Audrey Loo, IPOS Young IP Mediator ³
Date of Mediation	24 October 2024
Mode of Mediation	In Person

Background

The Beauty Nation Pte. Ltd. (“Party A”) is a Singapore-incorporated company in the business of developing, marketing and selling health products. It has, through extensive investment and research and development, established four product lines under the trade names “Root King”, “Vitroman”, “Miri” and “Quan Wei”. Party A is the registered proprietor of the following trade marks, which are the subject of the present dispute:

ROOT KING 根王	VITROMAN 威特猛	MIRI 天丽	Quan Wei 全威
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Kiong Onn Medical Hall Pte. Ltd. (“Party B”) is a Singapore-incorporated company in the business of selling and distributing traditional Chinese medicine supplements. In 2021, Party B entered into a consignment agreement with Root King Pte. Ltd. to distribute traditional Chinese medicine products under the “Root King”, “Vitroman”, “Miri”, and “Quan Wei” brands (collectively, “Party A’s products”).

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 up experience among those who may mediate or represent parties in IP mediations in future.

The dispute between the Parties arose sometime in March 2023 in relation to Party B's use of Party A's trade marks and copyright. Party A claimed that Party B had infringed its trade marks and copyright in affixing the watermark "*theherbalpharmacy.com*" to images created by Party A and in failing to make any reference to Party A when listing Party A's products for sale on its website and other e-commerce platforms.

In turn, Party B claimed, among other things, that Party A had consented to the products being put on the market in Singapore, and highlighted that these were obtained from an authorised sales representative.

After multiple exchanges of correspondence between the Parties' lawyers and proceedings initiated by Party A in court, both Parties agreed to attempt to mediate their 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\$8,000.⁴

Pre-Mediation

Prior to the scheduled mediation, the Parties submitted their respective mediation statements setting out their understanding of the events that have transpired, their respective interests and contentions, and the status of the dispute. The Mediator also held separate without prejudice meetings with the Parties and their lawyers to gain a clearer understanding of the issues at stake. During the pre-mediation meetings, the Parties were encouraged to share their priorities and motivations for the mediation. Through these discussions, the Mediator identified the key issues and potential tripwires for each Party, thereby laying the groundwork for a highly productive mediation.

Mediation Process

The mediation was held at the WIPO Singapore Office, starting at 9.30 am on 24 October 2024 and concluding in the early hours of the following day at 12.52 am on 25 October 2024, when the settlement agreement was signed.

The morning began with the Mediator privately meeting and welcoming the Parties. At 9.50 am, the Mediator commenced the joint session, outlining the key principles of mediation and his role as a neutral facilitator. The Mediator then laid down two ground rules for the mediation: (1) the Parties were reminded to treat each other with respect; and (2) they should refrain from interrupting one another. Following this, the Parties were invited to address each other directly. This led to a back-and-forth dialogue between the Parties. By carefully listening to the Parties' discussion, the Mediator was able to deduce the Parties' positions and interests, effectively identifying the issues in conflict that would form the agenda for the day. The Mediator also highlighted the commonalities between the Parties, helping them to recognise that there was common ground between them, contrary to their initial beliefs.

At a certain point, emotions began to run especially high. The Mediator recognised the Parties' emotions and responded by transitioning to private meetings with each Party. During these private sessions, the Mediator encouraged open communication and sought to build rapport with the Parties. This in turn allowed the Mediator to gain a deeper understanding of the issues, the underlying interests, and the direction the negotiation needed to take for a potential settlement. At a critical juncture, the Mediator invited both Parties to a cross-caucus. In the Mediator's presence, the Parties

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.

shared their mutual desire to move past the unfortunate episode. The conversation was candid, allowing each Party to convey its honest beliefs while also empathising with the other Party's perspective on the conflict. This also provided much-needed emotional closure for the Parties.

The remainder of the mediation was conducted as a shuttle mediation, with each Party in separate rooms while the Mediator moved back and forth to facilitate discussions. During this time, the Mediator communicated each Party's proposals and responses to each other, clarified misunderstandings and explored potential areas of compromise. At times, the Mediator requested to speak with a Party without its lawyers present to better understand its concerns and reality-test its positions and baselines. Throughout the process, the Mediator was attuned to the dynamics of the conversation, and also provided adequate space for the Parties to deliberate or consult their respective lawyers. At certain points, the Mediator also recognised the need for discussions with both Parties' lawyers to assess the Parties' concerns and positions and to determine how to advance the mediation.

Ultimately, the Mediator was able to guide the Parties towards a mutually acceptable outcome. This culminated in an agreement in principle at around 6.40 pm. The remaining time was then spent drafting the settlement agreement, a task efficiently handled by both Parties' lawyers.

Challenge

There were three key challenges to this mediation.

First, the Parties were deeply entrenched in their positions, each firmly convinced of the merits of its respective case. This stalled discussions as neither Party was willing to consider alternative solutions. The lack of openness to compromise also created an environment where constructive negotiation seemed almost impossible.

To overcome this challenge, the Mediator focused on restating and reframing the Parties' thoughts. This approach helped the Parties to articulate and organise their thoughts more effectively, enabling them to identify and acknowledge negative emotions while remaining focused on the issues at hand and the overall objectives of the mediation. The Mediator also astutely highlighted the realities of litigation, reminding the Parties that pursuing further legal action could lead to extended costs, prolonged delays and stress. In contrast, he emphasised that mediation offered them greater control over the resolution process, allowing them to actively shape the outcome rather than leave it in the hands of the court. This perspective encouraged the Parties to adopt a more collaborative approach to resolving their dispute.

Additionally, the Mediator drew on the expertise of the lawyers who played crucial roles in facilitating the resolution of the dispute. They offered valuable insights into the potential consequences associated with each course of action and assisted in clarifying legal terms and concepts. This collaboration fostered an environment where the Parties felt supported and empowered to engage more actively in the discussions. The lawyers also served as a much-needed bridge between the Mediator and the Parties, facilitating communication while ensuring that their clients' interests were effectively represented.

Second, the mediation was fraught with intense emotions. One party, in particular, exhibited a deep emotional connection to the brand and its trade mark, viewing it as a culmination of its hard work, dedication, and personal sacrifice in building the brand. The passion surrounding this issue heightened the stakes of the negotiation, making it challenging for the Parties to engage in rational dialogue. The

strong feelings involved also created a tense environment, which further complicated efforts to find common ground.

Navigating the emotional landscape of the mediation posed significant challenges. However, the Mediator demonstrated remarkable skills in managing the Parties' emotions. He remained focused and committed to fostering a safe and supportive environment where the Parties felt comfortable expressing their feelings. By actively listening and validating their concerns, the Mediator created a space where they could vent their frustrations without fear of judgment. This approach not only helped to alleviate some of the tension but also encouraged the Parties to engage more openly in the mediation process.

Additionally, the Mediator employed reframing techniques that allowed the Parties to express their emotions in a constructive manner. By guiding them to articulate their feelings in a way that focused on their underlying interests rather than entrenched positions, the Mediator facilitated a shift in perspective.

Finally, as Party A's first language was not English, this added an additional layer of complexity to the mediation process.

Despite this, the Mediator skilfully navigated the situation by being especially attentive to the Parties' needs. He ensured that everyone was on the same page and created an environment where all Parties felt comfortable expressing themselves. To further enhance communication, the Mediator took the initiative to occasionally speak in Mandarin, Party A's native language. This not only helped to clarify complex points but also fostered a sense of rapport and trust. By making an effort to connect in Mandarin, the Mediator demonstrated empathy and understanding, which significantly eased tensions and encouraged more open dialogue.

Reflections

The Mediator reflected on this mediation as follows:

The mediation was particularly challenging because the parties took vastly different approaches in the way they perceived some of the key issues in dispute. This presented a big risk to any potential settlement. I was glad that the parties agreed to attend pre-mediation meetings with me because this allowed me to better understand their respective concerns and interests. The mediation process itself went smoothly, thanks to the assistance of parties and their lawyers. Everyone was fully engaged and demonstrated commitment to the mediation process. This meant reassessing options and persevering to find creative solutions to obstacles that we encountered during the mediation itself. I am glad that the parties were eventually able to look past their differences in order to arrive at a settlement.

I would like to thank the WIPO Arbitration and Mediation Center for doing an excellent job in administering the mediation. Caleb Goh deserves special mention for so capably supporting all of us and accompanying us throughout the entire mediation. I would also like to thank Audrey Loo who was an excellent Shadow Mediator. It was very useful for me to discuss matters with her and to receive her support during the mediation.

Party A summarised its experience below:

It's important to acknowledge the dedication of our mediator, Mr Jonathan Choo, as well as the person in charge at the WIPO office who patiently waited for us to reach a resolution.

Their willingness to extend their hours beyond midnight was crucial in guiding us towards a successful settlement. This level of commitment truly exemplifies the effort that makes a significant difference in mediation outcomes.

Party B expressed its appreciation as follows:

We are glad that the dispute has come to an end with a settlement agreement out of court. We are grateful to the mediator, Mr Jonathan Choo, for his professionalism, relentless efforts and great determination towards the best outcome thus saving us from incurring further unnecessary costs and the waste of precious time. We are also thankful to those who have rendered their kind assistance in one way or another such as our brilliant lawyer & legal associate, shadow mediator and staff of WIPO.

In its feedback, Party B also indicated that this was its first experience with mediation. It was likely to use mediation again, even if there was no funding scheme. It was also likely to recommend mediation to others.

The lawyers for Party A remarked:

We are pleased to report a highly positive experience with the WIPO Arbitration and Mediation Center ("WIPO Center"). Opting for mediation proved to be a sound choice for resolving this matter.

The success of the mediation is largely attributable to the skill and dedication of the mediator, Mr Jonathan Choo. Through his numerous private discussions with both parties, he facilitated a deeper understanding of each side's position, which was instrumental in fostering constructive dialogue and guiding the parties towards a mutually agreeable solution. Mr Choo's perseverance and commitment to identifying a viable path forward were key to achieving the necessary breakthroughs following the extended negotiations. Throughout the mediation, Mr Choo maintained a professional and impartial approach in all interactions.

Ultimately, the mediation resulted in an outcome reflecting both parties' strong commitment to an amicable resolution.

We also extend our gratitude to the WIPO Center for their support, particularly for providing funding to offset mediation costs and for allowing the parties access to their facilities. Special thanks are also due to Mr Caleb Goh from WIPO, who generously stayed well beyond working hours to keep the WIPO Singapore office open, thereby allowing negotiations to proceed uninterrupted.

The lawyers for Party B remarked:

While parties' positions were quite far apart, the appointed mediator, Mr Jonathan Choo, was persistent and effective in bridging the gap between them over the 15-hour mediation session.

As a Young IP Mediator shadowing the Mediator, I gained valuable insights into the art and science of mediation. On one hand, I had the unique opportunity to witness the fluid and adaptive nature of the process. I observed how the Mediator tailored his approach to fit the specific dynamics of the conflict and the personalities of the Parties involved. On another hand, I was struck by the Mediator's clever use of structured processes and techniques to facilitate the conversation effectively.

Prior to this experience, my exposure to mediation had been limited to hypothetical practices in school and during competitions. Those controlled environments did not prepare me for the real-world challenges faced when mediating disputes in a commercial context, especially where the stakes are high and the emotional dynamics can be complex.

In this particular mediation, I was struck by how the Mediator navigated the emotional landscape. His skill in reframing statements helped clarify misunderstandings and reduce emotional tension. This technique not only enhanced communication but also encouraged the Parties to step back from their entrenched positions and consider alternative perspectives. Additionally, I noticed how the Mediator attentively listened to each Party, validating its feelings and ensuring that it felt heard. This approach fostered a safe environment conducive to open dialogue, facilitating more constructive discussions. I came to understand that enabling parties to articulate their thoughts and emotions can significantly ease tension and pave the way for collaboration.

Moreover, witnessing the Mediator's strategic use of private sessions underscored the importance of providing space for more candid discussions. These sessions allowed each party to express its concerns and explore options without the pressure of the other party's presence, creating an opportunity for honest reflection.

Overall, this experience was eye-opening and deepened my appreciation for the complexities inherent in mediation. It reinforced the understanding that successful mediation goes beyond merely resolving disputes; it involves facilitating understanding, fostering empathy, and empowering the parties to take control over the outcome.

Conclusion

The mediation lasted for about fifteen hours and led to a settlement agreement that was mutually acceptable to both Parties. Through this experience, I have a newfound understanding as to how mediation operates in real world scenarios, where the stakes are high and the emotional dynamics can be complex. I am truly grateful for this opportunity to learn from such a seasoned Mediator and to observe how the lawyers adeptly safeguarded their clients' interests while bringing clarity and objectivity to the discussions.

Written by Audrey Loo, Young IP Mediator
14 November 2024