

Mediation at IPOS

Leonid Kovalkov
&
JNBK Group Private Limited
[2022] SGIPOS MED 1

	Party A	Party B
Name	Leonid Kovalkov	JNBK Group Private Limited / Tan Siew Keng Angeline
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Tito Isaac & Co LLP	Ignatius J & Associates
Lawyers	Adly Rizal	Ignatius Joseph

Mediation institution	Singapore Mediation Centre
Mediator	Assoc Prof Lum Kit-Wye
Shadow Mediator	Mr Tok Boon Leong
Date of Mediation	15 October 2019

The parties in this mediation had been embroiled in several disputes before IPOS since 2012, including several which proceeded to full hearings and resulted in three full grounds of decision¹ issued by the Registrar. While the parties were unable to conclude a mediation settlement agreement, the two proceedings which were the subject of the mediation were withdrawn.² As at 21 December 2021, there are no other pending disputes between the parties. This case showcases the value of mediation even when no final settlement agreement is reached.

Background and Dispute

Mr Leonid Kovalkov (the “Applicant”)³ is in the business of dealing with motor vehicles spare parts. JNBK Group Private Limited (Ms Tan Siew Keng Angeline is the sole director and shareholder of the same) (the “Registered Proprietor”) is in the business of the sale and distribution of brake related components for vehicles including, brake pads. The parties were originally business partners but the relationship deteriorated.

The Dispute



The Registered Proprietor owned the following registered trade marks:

¹ They are:

- (i) *Leonid Kovalkov v Tan Siew Keng, Angeline* [2016] SGIPOS 10;
- (ii) *Leonid Kovalkov v Tan Siew Keng, Angeline* [2012] SGIPOS 5; and
- (iii) *Tan Siew Keng, Angeline v Leonid Kovalkov* [2012] SGIPOS 6.

² Party A’s letter of 10 August 2021.

³ For both the Invalidity and Revocation proceedings (see below).

40201706066P ("Mark 1")	T0312074E ("Mark 2")
	
Class 12 Vehicles; apparatus for locomotion by land, air or water; Vehicle brake pads; Brake components for vehicles; Vehicle brake discs; Wheel brakes; Vehicle brake shoes; Brake linings for vehicles; Brake drums for vehicles; Brake levers for vehicles; Vehicle suspensions; Automobile engines; Actuators for land vehicles.	Class 12 Brake pads for vehicles; brake shoes for vehicles; brake lining land vehicles; suspension parts for vehicles.

The mediation stemmed from two disputes:

- (i) An application to invalidate Mark 1 on the basis that it should not have been registered as a trade mark; and
- (ii) An application to revoke Mark 2 on the basis that has not been used for a period of at least five years.

The effect of a successful invalidation differs from that of a successful revocation. Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.⁴ In contrast, where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from the date of the application for revocation.⁵

At the Pre-Hearing Review ("PHR") for Mark 1,⁶ the Registrar broached the option of mediation to resolve the dispute. Thereafter, the parties agreed to submit the dispute to mediation under the auspices of the Singapore Mediation Centre ("SMC").⁷ Similarly, the parties notified the Registrar at the PHR for Mark 2⁸ that they wished to mediate the dispute together with Mark 1.

The Mediation

Under IPOS' EMPS, 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.⁹

⁴ Although this shall not affect transactions past and closed (Section 23(10) of the Trade Marks Act (Cap 332, 2020 Rev Ed).

⁵ This is the default position and the parties can claim for an earlier revocation date (see Section 22(7) of the Trade Marks Act (Cap 332, 2020 Rev Ed).

⁶ On 13 June 2019.

⁷ As per IPOS letter of 2 Aug 2019, via the Applicant's letter of 23 July 2019.

⁸ 10 July 2019.

⁹ However, given that the parties were unable to reach any settlement, there was no resolution with respect to these either.

The parties indicated in their Request for Mediation that the quantum of dispute was not monetarily quantifiable and they deferred to SMC for the appointment of suitable mediators. Based on the above information as well as the nature of the dispute, SMC then appointed a mediator from its Principal Mediator Panel who had a background in Intellectual Property laws/disputes. The shadow mediator was appointed from SMC's Associate Mediator Panel.

The mediation¹⁰ took place on 15 October 2019.¹¹ As mentioned above, while the parties were unable to reach a settlement agreement then, the proceedings before IPOS were ultimately withdrawn. Had the parties decided to continue fight it out in an adversarial setting, it would have taken much more time and both parties would have incurred substantial costs. It is also notable that, after close to 10 years, there are now no more pending disputes between the parties.

Mr Tok, the shadow mediator, commented that mediation allows for flexibility, in contrast to court proceedings. Mediation procedures are also simple to understand. Mediation is confidential, so that the parties can prevent any negative publicity of their dispute / leakage of sensitive commercial information to their competitors. Last but certainly not least, the informal process of mediation translates into time and costs savings for the parties.

One significant advantage of the mediation process is that the mediator assists the parties to communicate with one another, such that they *understand their differences and aspirations*. Crucially, the parties can actively engage one another so as to reach *win-win solutions which are mutually acceptable*.

Mr Tok commented that at the end of the mediation session, the parties were light hearted and remarked that the mediation has enabled them to *move forward*, which is significant, in light of the differences the parties have accumulated over the *past 17 years* of their business relationship.

In this regard, the Applicant agreed that the process of mediation has allowed both parties to *openly air their views*, which is extremely helpful in light of the fact that there has been a lot of history between the parties.

14 January 2022

¹⁰ At the mediation, the parties were able to come to an agreement with respect to **Mark 1** such that the dispute then solely focused on **Mark 2** which was also the subject matter of a previous action by the **Applicant**.

¹¹ IPOS letter of 21 October 2019.