

AMP¹ Mediation Success

Captain K F&B Management Pte. Ltd & En Dining Bar Holdings Pte. Ltd. [2024] AMP MED 1

	Party A	Party B
Name	En Dining Bar Holdings Pte. Ltd.	Captain K F&B Management Pte. Ltd
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Mirandah Law LLP	Invictus Law Corporation
Lawyers	Mr Suhaimi Bin Lazim, Mr Jin Wen Rui	Mr Darren Tan, Mr Silas Siew

Mediation Institution	WIPO Arbitration and Mediation Center (“WIPO Center”)
Mediator	Mr George Lim, Senior Counsel (“Mediator”)
Shadow Mediator²	Ms Jean Chai, IPOS Young IP Mediator ³
Date of Mediation	15 December 2023
Mode of Mediation	In person

Background

Party A is En Dining Bar Holdings Pte. Ltd., a company registered in Singapore that operates several Japanese food and beverage establishments. Party A is the registered proprietor of the following trade marks, which it uses in the course of its business (“Party A’s Marks”):



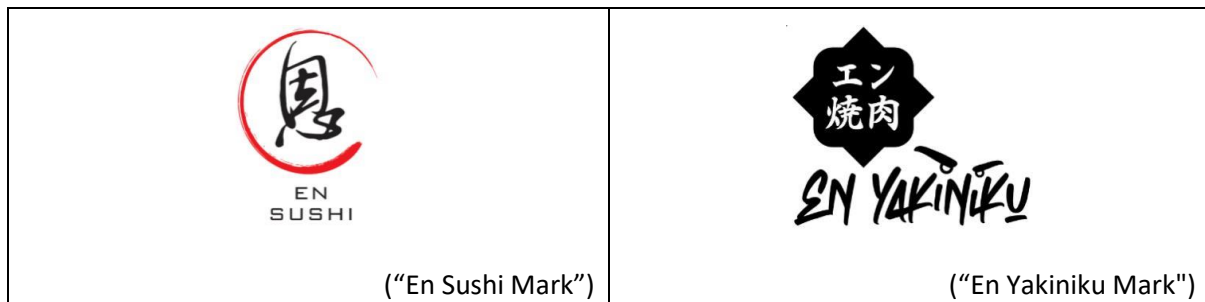
Party B is Captain K F&B Management Pte. Ltd, a company registered in Singapore that operates several food and beverage establishments offering Japanese, Korean, and Chinese cuisines. Among

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.

these establishments, Party B operates Japanese restaurants by the names of “*En Sushi*” and “*En Yakiniku*”, using the following marks (“Party B’s Marks”):



The dispute arose out of proceedings commenced by Party A against Party B on 30 June 2023, alleging that Party B had infringed Party A’s Marks under the Trade Marks Act 1998. Specifically, Party A alleged that Party B’s use of the word “En” in both of Party B’s Marks and the use of a brushed red circle around a Sino-Japanese character in the En Sushi mark attracted a likelihood of confusion.

Following a case conference conducted by the Registrar of the Supreme Court on 22 September 2023, the parties were strongly encouraged to attempt mediation. The parties therefore 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\$8,000.⁴

Pre-Mediation

Prior to the mediation, the Mediator had received each party’s mediation case statement and had spoken to the respective legal representatives. This preliminary step was crucial in helping the Mediator understand the dispute’s legal history, the potential roadblocks to resolution and the Parties’ respective positions, therefore setting the stage for a highly productive session on 15 December 2023.

Mediation Process

The morning began with the Mediator meeting and welcoming the parties privately. At 10am, the joint session commenced with the Mediator inviting the parties to introduce themselves, brainstorm words associated with mediation, and collaboratively list out the benefits of mediation. Notably, the words that parties chose to associate with mediation included “openness”, “peace” and “compromise”. From the outset, it was clear that the parties were knowledgeable about the advantages of mediation, demonstrating a positive attitude to the process by actively contributing at this initial stage. Additionally, to help parties appreciate their alternatives to a negotiated settlement, the Mediator used a paper board to draw out an approximate timeline of legal proceedings, which were estimated to take two and a half to three years to reach a conclusion. In doing so, the Mediator helped the parties to visualise the drawbacks of reverting to litigation, which is a far lengthier and costlier alternative to mediation. This exercise proved to be a salient reminder to the parties that there was much to be gained from the session ahead.

Following this, the Mediator invited the parties to give their opening remarks. The parties were forthcoming in sharing about their perspectives on the present dispute, including personal details on how their respective businesses came to be and the key concerns which they sought to address in this session.

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.

Throughout the remainder of the mediation process, the Mediator was sensitive to the tenor of the conversation, judiciously giving the parties space to speak directly to each other, and stepping in at appropriate points to either suggest a caucus or to otherwise guide the conversation. Through the use of multiple caucuses, the Mediator was able to gain clarity on the parties' desired outcomes and thus was able to help them explore potential solutions and compromises that were amenable to each party's needs and interests.

After approximately five hours, the parties successfully reached an agreement, during which parties managed to break for lunch before returning to finalise the settlement terms. During the finalisation of terms, parties were also highly cooperative in exchanging edits. Few difficulties were faced in this stage, with legal representatives expertly leading the drafting process. Upon completion, copies of the final settlement document were printed and circulated for signing. The mediation concluded with closing remarks from the parties and the Mediator, with each expressing gratitude and satisfaction with the process.

Challenge

Within the first hour of the joint session, significant progress was achieved concerning the En Yakiniku Mark. However, challenges emerged when addressing the En Sushi Mark. Each party held strong views on the issue of possible variation, making it initially difficult to find a middle ground between their distinct positions.

In overcoming this roadblock, private sessions were of crucial importance. These confidential discussions enabled the parties to express their concerns openly, creating a secure space for them to seek the Mediator's guidance and to explore potential strategies for resolution. Most importantly, the parties were forthcoming with creative ideas on how to potentially resolve tension points, thus setting a positive, forward-looking tone to the conversation. Indeed, this resolution-focused attitude was crucial in allowing the parties to move past disagreements, towards a mutually satisfactory outcome.

Reflections

The Mediator commented:

The outcome of this mediated settlement was truly win-win. Both parties negotiated in good faith and made significant accommodations. This was possible because the process allowed the parties to talk openly and frankly, and share their stories as to how they each started their respective businesses. It turned out that both were professional engineers who got into the food business due to certain circumstances. At one point, with the permission of counsel, I got the parties to talk directly in my presence, and that helped to move them much closer to a deal. After the settlement agreement was signed, we held a closing session. The older party told the other: "I saw a little of myself in you." This was the magic of mediation at work; allowing parties to understand and see each other's perspective, and move towards a resolution of the dispute.

Party A commented:

We are likely to consider mediation to resolve future disputes, given the efficiency of the process that we enjoyed during this mediation.

Mediation allows for much more cordial and friendly exchanges as opposed to litigation. We got to directly engage with the counterparty as well, something which would be unlikely to be possible in formal proceedings.

Party B summarised its experience below:

I thank WIPO and the appointed mediator for assisting to resolve the dispute through WIPO-Singapore ASEAN Mediation Programme, so that I can put the dispute to rest and focus on my business.

When asked how likely they would use mediation again if there was no funding, both parties thought that they were likely to do so. Party B added that the prospect of time-consuming and costly litigation as an alternative to mediation was a reason for it to consider mediation in future.

The lawyers for Party A remarked:

We are heartened to see that parties were willing to work together to resolve the dispute from the get-go, and we admire the grace with which both parties conducted themselves as they talked their way into an eventual settlement and made compromises on both their ends. Most saliently, we felt that during the mediation, we were not bound tightly by our roles as disputing parties and their counsel. Rather, we were all working towards a common solution that would be in the parties' best interests. It was especially helpful that both parties' directors could empathise well with each other due to the commonalities in how they both started out in their respective businesses.

The lawyers for Party B remarked:

We are very satisfied with the mediator and the mediation process under the auspices of WIPO Arbitration and Mediation Center, and grateful for the funding under the WIPO-Singapore ASEAN Mediation Programme, which contributed in no small way to our client's eventual decision to refer the dispute to mediation.

As a Young IP Mediator shadowing the Mediator, I had the pleasure of witnessing first-hand the tangible benefits of mediation. Observing how the parties were able to craft mutually satisfactory solutions, in a personalised and expeditious manner, has reaffirmed my belief in the efficacy and transformative potential of mediation. Most of all, I am in admiration of how the Mediator skilfully facilitated the conversation and how both parties continuously championed the cooperative spirit of mediation. This session was a testament to mediation's profound ability to foster genuine connections and resolve conflicts at their root.

From this session, two observations stand out to me as key contributors to its success.

Firstly, the deliberate efforts by the Mediator to create a comfortable and conducive environment for the parties were pivotal to the mediation's positive outcome. By initiating one-on-one conversations with the parties before the joint session, the Mediator aimed to put them at ease and establish a foundation of trust. Furthermore, by emphasising the confidential and without-prejudice nature of mediation, the Mediator gave parties the confidence to express themselves openly.

Secondly, the session's success was underscored by the parties' willingness to actively listen and empathise with each other on a personal level. A crucial moment that moved the needle towards resolution was when the two parties, without their respective counsel, stepped away from the main room to have a private conversation in the presence of the Mediator. This direct and sincere communication proved instrumental in helping the parties understand each other and bridging the final gap towards resolution.

Conclusion

The mediation, spanning approximately five hours, culminated in a successful settlement that adeptly addressed the interests of both parties. The unanimous satisfaction expressed by all participants attests to the efficacy of the process, marking the conclusion of another productive and mutually beneficial mediation.

Written by Jean Chai, Young IP Mediator
12 January 2024