

Mediation Success at IPOS

K & Q Brothers Electrical Engineering Co. Pte. Ltd. & K&Q Fatt Pte Ltd, Quek Jia Ling, Quek Hong Peng, Quek Jia Hao [2021] SGIPOS MED 2

	Party	Party
Name	K & Q Brothers Electrical Engineering Co. Pte. Ltd.	1. K&Q Fatt Pte Ltd 2. Quek Jia Ling 3. Quek Hong Peng 4. Quek Jia Hao
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Kalco Law LLC	Ravindran Associates
Lawyers	Xhuanelado Owen	Alvin Lim

Mediation institution	World Intellectual Property Organization Arbitration and Mediation Center (WIPO Center) ¹
Mediator	Jonathan Agmon, of Soroker Agmon Nordman
Shadow Mediator	Jocelyn Toh, of Soroker Agmon Nordman
Date of Mediation	18 November 2020

Background to the Dispute

The dispute involved two Singapore registered companies, K & Q Brothers Electrical Engineering Co. Pte. Ltd. (the Opponents) and K&Q Fatt Pte Ltd (the 1st Applicants). Both companies are in the business of manufacture, repair and wholesale of a variety of goods including refrigerators, air conditioning and ventilating machinery.

The Opponents have been registered in Singapore since 1989 and had successfully obtained registration of the trade mark “YODA” since 18 May 1994. “YODA” was registered in Class 11 in respect of refrigerators, food and drink chillers, freezers and ice machines. The Applicants have more recently attempted to register a trade mark called “YUDA”, similarly in Class 11, in the same trade and for the same purposes of utilisation as “YODA”.

The Opponents therefore opposed the registration of the Applicants’ trade mark “YUDA” on the alleged grounds of confusing similarity with the Opponents’ earlier trade mark, “YODA”.

Bridging the Divide

Parties had already filed their evidence and the dispute would have proceeded to a hearing had it not been settled. The Principal Assistant Registrar suggested, at the Pre-Hearing Review, that parties

¹ The WIPO Center’s only office outside Geneva, Switzerland is in Singapore.

consider WIPO's offer of free mediation² and attempt to resolve their dispute amicably. In the event that they could not settle, it was still open to parties to have a hearing.

Reaching a settlement was by no means an easy feat. The mediation ran parallel with ongoing shareholder dispute litigation between the parties and they were initially not on speaking terms. This was also essentially a family dispute. Parties have shared history, with the 1st Applicants' founder being a former director of the Opponents, and tensions were understandably high.

Ever the skilful and tactful mediator, Mr Jonathan Agmon managed to get both parties to resolve this trade mark dispute amicably.

The Mediation Process

Prior to the mediation on 18 November 2020, Mr Agmon made extensive preparations, including encouraging parties' mediation advocates to prepare comprehensive mediation statements. This was crucial in allowing Mr Agmon to visualise all angles for the co-existence of the two trade marks and businesses.

Mr Agmon graciously offered the office of Soroker Agmon Nordman as mediation venue. The mediation took place in person and comprised a combination of joint sessions, held in the firm's meeting room; and break-out caucus sessions, held in the rooms of the senior partners. It was a quiet and spacious office which provided a conducive environment for the mediation.

The first joint session was particularly helpful in bringing parties together. This allowed them to discuss and hear each other's positions. The caucuses were important for parties to consider and reflect on each other's positions and offers for settlement. Mr Agmon effectively used these private caucuses to persuade parties to compromise. Another joint session was used towards the end of the mediation to draft the settlement agreement and iron out the final details of the settlement before parties signed the co-existence agreement. All of this was achieved within a day.

Mr Agmon was friendly and kept a cheerful spirit which helped pave the way for parties to open up to each other. At the same time, he was firm and professional and dictated the pace of the mediation with great control. As the neutral mediator, his constant reality testing of the matter allowed parties to focus on commercial sensibilities and put their family dispute aside.

The constant emphasis on facilitating a resolution to the trade mark dispute allowed parties and their mediation advocates to focus on discussing ways of avoiding confusion for customers with the use of the respective marks, which allowed parties to see a possible reality for their respective brands and businesses to co-exist.

Had the parties decided to fight it out in an adversarial setting, it would have taken much more time and they would have incurred substantial costs. Mediation was thus a much more suitable platform for their dispute. The 1st Applicants' Business Development Director, Ms Janelle Quek, found the mediation "beneficial and fruitful" because it provided "a more effective and efficient means to resolve the dispute". She also said that the Applicants are "extremely grateful that the environment provided by the mediator was a very peaceful and pleasant one", which aided the negotiation process.

Mediation for IP Disputes

² In light of the global economic difficulties due to COVID-19, WIPO Center offered mediation services at no charge for mediation requests filed within the period 12 June to 31 August 2020.

With the conclusion of this successful mediation, Mr Agmon shared his views on the suitability of mediation for IP disputes:

“I consider IP disputes to be particularly suited for mediation not only because the process allows the parties to discuss freely and confidentially their interests but also because unlike court or tribunal proceedings, the process allows for out-of-the box solutions. Such solutions could in many cases bring the parties to an agreement where both parties benefit without the need to reach a judicial resolution and the costs involved.”

EMPS Funding

As the subject matter of mediation involved only Singapore IP rights, funding under the IPOS EMPS was capped at S\$10,000 in total (for the entire case involving two parties). The funding was applied to 50% of the parties’ mediation-related lawyer fees and disbursements³. In this regard, the Opponents received funding of S\$5,000 and the Applicants S\$2,675.

Written by Chloe Chua, Young IP Mediator
20 April 2021

Conditions of the Enhanced Mediation Promotion Scheme (EMPS)

The following conditions must be satisfied in order to qualify for funding under the EMPS:

- (i) Parties have an existing dispute before IPOS which is the subject-matter of a mediation on or after 1 April 2019, in any event, no later than 31 March 2022 or until the available funding is drawn down, whichever is earlier.
- (ii) The mediation takes place in Singapore. This may include the use of video-conferencing to involve party representatives who are not able to be present in Singapore during the mediation, as long as the mediator is physically in Singapore during the mediation, and is a Singaporean or is based in Singapore.
- (iii) Parties allow a “shadow” mediator to sit in and observe the mediation; or have a co-mediator to assist in the mediation.
- (iv) Parties disclose their lawyer / agent fees incurred from the start to the end of the IPOS proceedings.

³ EMPS funding did not need to be applied to the mediator’s fees as parties had the benefit of the complimentary mediation service offered by the WIPO Center.

- (v) Parties give feedback on their mediation experience.
- (vi) Parties agree to named publicity, excluding details of the settlement terms (such as the quantum of the settlement). The purpose of the named publicity is to give concrete, relatable examples to other businesses and individuals and thus encourage them to consider mediation. The amount of detail in the publicity is not expected to disclose much more than the identity of the parties, the nature of their disputes, the countries spanned by their disputes, the duration of their disputes, the parties' comments on the mediation process, any advice they have for others facing disputes etc.
- (vii) Parties co-pay at least 50% of their lawyer / agent fees relating to mediation (and mediation-related disbursements charged by the party's lawyer / agent).