

## Mediation Success at IPOS

**Kibbles Pte. Ltd.  
&  
Mr Kibbles Pte. Ltd.  
[2023] SGIPOS MED 2**

	<b>Party A</b>	<b>Party B</b>
<b>Name</b>	Kibbles Pte. Ltd. ("Applicant")	Mr Kibbles Pte. Ltd. ("Opponent")
<b>Nationality / Country of Incorporation</b>	Singapore	Singapore
<b>Representation</b>	Withers KhattarWong LLP ("Applicant's Agent")	Gateway Law Corporation ("Opponent's Agent")
<b>Lawyers</b>	Mr Valen Lim	Mr Max Ng Ms Claire Tan

<b>Mediation Institution</b>	Singapore Mediation Centre ("SMC")
<b>Mediator</b>	Mr Lim Tat ("Mediator")
<b>Shadow Mediator<sup>1</sup></b>	Ms Jasmine Teo, IPOS Young IP Mediator <sup>2</sup>
<b>Date of Mediation</b>	21 July 2023
<b>Mode of Mediation</b>	In person

### Introduction

This case involves the opposition of Trade Mark No. 40202131426X:



("Application Mark")

in relation to various business-related services in Class 35.

### The Parties

The Applicant was first founded as a partnership on 13 October 2019, trading under the name of "KIBBLES". Its principal activities include the retail sale of pet birds, pet animals, as well as animal feed and accessories.

The Applicant began trading under the Application Mark some time in or around 1 December 2020. The Application Mark and / or its components were then, amongst others, printed onto the Applicant's name cards and uniforms / shirts, as well as affixed to signage at the Applicant's retail premises.

On 3 December 2021, the Applicant was incorporated.

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<sup>1</sup> It is a condition of funding under the IPOS Revised Enhanced Mediation Promotion Scheme ("REMPS") that parties allow a "shadow" mediator to sit in and observe the mediation.

<sup>2</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 mediation in future.

Founded in August 2021, the Opponent operates an e-commerce platform which allows customers to purchase pet supplies. The Opponent prides itself in its branding and social media marketing activities, which it believes has helped it establish a reputation in its e-commerce website.

Examples of the Opponent's unregistered marks include:



### **The Dispute**

The Applicant became aware of the Opponent's business and engaged the Opponent in communications in relation to their respective marks some time in December 2021.

On 27 December 2021, in the midst of negotiations, the Applicant applied to register the Application Mark without prior notice to the Opponent.

To the Opponent, the Applicant's behaviour appeared to take advantage of the Opponent's good intentions and willingness to settle the matter amicably, and that by applying to register the Application Mark while undergoing negotiations, the Applicant demonstrated behaviour which was seemingly intended to prevent the Opponent from registering its own mark. Thus, the Opponent alleged bad faith under section 7(6) of the Trade Marks Act 1998 in its opposition.

The Applicant disputed this. To the Applicant, there was no bad faith as its use of the Application Mark preceded incorporation of the Opponent's company, and that it was merely protecting its pre-existing rights regarding the mark.

### **IPOS Revised Enhanced Mediation Promotion Scheme (REMPS)**

Under REMPS, the parties in a mediation case can receive reimbursement of mediation costs of up to S\$10,000 (where only Singapore IP rights are involved) or S\$14,000 (where both Singapore and foreign IP rights are involved).<sup>3</sup>

### **Mediation Process**

The mediation session started in the morning, at the Supreme Court building.

Firstly, the lawyers were brought in. The Mediator sought their views on how the mediation should proceed and asked that they help identify underlying issues. He also sought their assistance to think creatively to facilitate the mediation process. The Mediator also informed the lawyers that there would be a hard-stop at 6 p.m.

Secondly, parties too were brought in. Here, the Mediator set the stage for the mediation, informing parties that a mediation, unlike a court judgment, works towards a win-win situation (or interestingly, a lose-lose situation, i.e. a compromise on both parties). He forewarned that hard work and creative thinking would be necessary, and there may be a need for parties to confront issues which may cause

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<sup>3</sup> It is a condition of funding under REMPS that parties agree to named publicity, without the need to disclose specific details of the settlement agreement and thus, this article was written with the parties' consent.

them some discomfort. Everyone was then allowed the opportunity to introduce themselves. The Mediator also informed parties regarding the general mediation process and sought confirmation that parties had authority to sign off on a settlement. The Mediator reminded parties that it may be necessary to move away from a positional standpoint and asked parties to commit to doing their best for a possible mediation success, to which the parties agreed. The Mediator proceeded to ask parties questions on the case, which enabled important issues to be filtered out and helped parties reflect on the matter. He also informed parties that the mediation process is better suited for finding commercial solutions compared to a court process.

Thirdly, the Mediator conducted private caucuses with parties and their respective lawyers. During these caucuses, the Mediator emphasised that such conversations were confidential and would not be revealed to the other party without permission. He took the opportunity to ask parties to reflect on their case. He questioned the parties on their views to help them think through the issues more clearly and see things from the point of view of the other party. Together with the parties, the Mediator brainstormed for solutions with a view to finding out what parties viewed as essential to them.

Fourthly, the Mediator conducted private sessions with the lawyers, both separately and jointly. It was through these sessions that more concrete solutions began to materialise, and parties' respective stand on possible solutions was obtained. The Mediator also sought assistance from the lawyers to emphasize what would happen if the case proceeded to a full hearing, and reminded the lawyers that outcomes are not certain in the adversarial process. The Mediator also challenged the positions of the parties, asking them to reflect on whether their positions were reasonable. With assistance from the lawyers, parties' positions on the solution generated drew closer, and eventually culminated in a settlement agreement. The lawyers then began negotiations on their own on the granularity of the eventual agreement.

The mediation settlement agreement was ultimately finalised and the parties signed off, ending an approximately 8-hour long mediation. The Mediator intervened when there was a possible impasse to the agreement, but otherwise provided space for the lawyers to carry out their own discussions.

### **Challenges**

The mediation got off to a somewhat emotional start. It was apparent that one party felt strongly about the brand / trade mark as a reflection of its blood, sweat and tears toiled for the business. Managing strong emotions is not easy, but the Mediator remained attentive and assured the party that there would be opportunities to discuss the context of the matter. He did not interrupt or dismiss the concerns conveyed. These emotions, too, turned out to help the other party realise that it was necessary to be more realistic in its proposals if it desired a successful mediation.

Another challenge was that for the first half of the mediation, parties were quite binary in their approach. They spoke of co-existing but were not able to generate plausible solutions that would allow this. To help overcome this challenge, the Mediator reminded the lawyers to provide assistance, see things from the other parties' point of view and be fair to both sides. The Mediator also pressed parties to provide a firm position to solutions generated, rather than to just expect the other side to make the first move.

## Reflections

The Opponent reflected:

... I realised the value of open communication and a neutral third-party perspective in resolving disputes. The mediator's ability to guide the conversation and maintain impartiality was crucial in creating a respectful and productive environment ... Initially skeptical, I found mediation to be an invaluable tool for complex business settings, leading to a mutually beneficial resolution. The process encouraged creative problem-solving, fostering cooperation rather than adversarial attitudes. It enabled us to move past animosity and focus on shared interests, building a more constructive business relationship.

The Opponent's Agent commented:

[We are] happy that [we were] able to play a part in facilitating the amicable resolution of this matter, through the mediation process, thus resulting in a "win-win" situation for the parties. In such cases, members of the public may often have strong views on their rights and positions, and may often overlook the potential benefits of mediation, insisting instead to have their rights vindicated through the judicial process...

The face-to-face mediation process allowed both parties the opportunity to hear out each other, and highlighted the importance of being able to evaluate each individual party's position and interest for them to determine whether they could reach any common ground. This was assisted by the Mediator's efforts acting as a bridge between the parties, and assisting to evaluate practically each proposed solution, and guiding the parties toward the various possible options to finally resolve the matter...

The provision of this mediation scheme and support provided by IPOS and the SMC, is therefore greatly appreciated.

The Applicant's Agent observed:

We were grateful for the kind assistance and practical guidance provided by the [Mediator] during the proceedings. The [Mediator] raised realistic and pragmatic considerations which helped parties move towards a settlement. [He was] also very understanding to both parties' concerns, feelings and passion for pets. We are glad that the dispute, which had been brewing for over a year, could be finally and fully resolved in a manner that works for parties.

The Mediator remarked:

Mediation is a process that enables parties to resolve issues, concerns and disputes in an amicable and non-adversarial setting. Within an appropriate mediation framework and with the involvement of an experienced mediator, the large majority of parties in mediation have been able to achieve closure of their issues, concerns and disputes on their own terms in a cost-effective and timely manner. Even in cases where the substantive matter is not resolved completely during mediation, parties have expressed satisfaction with mediation having addressed their psychological needs and concerns through their participation in a process that is fairly facilitated by an impartial neutral third party.

As for myself, in classes, I learnt the importance of rapport building. Through this experience, I watched such skill being put in action. First, “introduction”, though seemingly procedural, is actually an opportunity for all in attendance to build rapport with each other. During the introductions, initiated by the Mediator, everyone made reference to their affinity (or lack thereof) with pets. With smiles going all around, this helped to bridge the gap between parties and set the stage for an easier mediation. Even where the “introduction” became somewhat emotionally charged, it allowed parties to see where the other party was coming from. Second, the Mediator would “rephrase” what was said in a manner that showed to the parties that they have been heard and their points of view acknowledged and respected. From this, I learnt better the real purpose of “rephrasing”.

I learnt that perseverance (and creativity) is important for a good mediator. During the mediation, neither party wanted to make the first move. Parties were afraid of losing out. I learnt from the Mediator how to press on in such circumstances. First, fairness – both parties were taught to see that it would only be fair that *both* parties come up with and work towards a proposal for settlement. Second, assertiveness – the Mediator caught on to a proposal raised by parties and asked if he could hold them to it. I found that rather insightful.

All in all, I enjoyed watching how the mediation was skilfully conducted. The Mediator was able to anticipate and navigate parties away from potential pitfalls the mediation could fall into. For instance, from the outset, the Mediator alerted parties that the process required hard work, creativity and facing discomfort. This, I believe, helped prepare parties for the mediation process. I also learnt that it is less about what is said, and more about *how* matters are said. During the first half of the mediation, when parties’ views seemed rather far apart, the Mediator conveyed news in a positive manner. This, I believe, helped the lawyers remain optimistic. The Mediator did not shy away from delivering negative news, but he did it at the right time.

## **Conclusion**

I learnt so much from this mediation and look forward to further opportunities to learn and conduct my own mediations.

Written by Jasmine Teo, Young IP Mediator  
20 September 2023