

## UPDATES FROM IPOS

JULY 2022

Dear readers,

We hope this update finds you well.

If you know of anyone that would like to be added to this mailing list (which deals primarily with IP/IT dispute resolution in Singapore), please drop us a note at [ipos\\_hmd@ipos.gov.sg](mailto:ipos_hmd@ipos.gov.sg). IPOS also separately maintains another mailing list for circulars, legislative amendments and other related matters which you can join by contacting [news@ipos.gov.sg](mailto:news@ipos.gov.sg). And, for any comments or feedback (or to draw our attention to any interesting news we might have missed), please email [gabriel\\_ong@ipos.gov.sg](mailto:gabriel_ong@ipos.gov.sg).

### Recent Court decisions

- [\*Kiri Industries Ltd v Senda International Capital Ltd and another and other appeals and other matters\* \[2022\] SGCA\(I\) 5](#)

In this most recent chapter of the long-running DyStar litigation, the Court of Appeal has allowed, in part, an appeal by a minority shareholder against the Singapore International Commercial Court's decision on the valuation of its shares for the purposes of a buyout order made under s 216(2) of the Companies Act. Among other things, the Court of Appeal had to consider issues relating to patent valuation. The full decision, as well as the court case summary, is available via the above link.

- [\*The Wave Studio Pte. Ltd. & 2 Ors v General Hotel Management \(Singapore\) Pte Ltd & Anor\* \[2022\] SGHC 142](#)

This dispute was about copyright in photographs of hotels managed by the defendants. These photographs had been taken by photographers engaged by the plaintiffs. The plaintiffs edited the photographs and provided them to the hotels. All of this was done as part of a range of branding, design, and marketing services which the plaintiffs provided to the hotels. Some years after the working relationship between the parties ended, the plaintiffs' photographs were featured in multiple online issues of the defendants' magazine. The plaintiffs sued for copyright infringement and sought declarations that they owned the copyright in the photographs. Since there was no formal copyright agreement between the parties, the key copyright issues before the court were: (1) who owned the copyright in the photographs; and (2) were the defendants permitted to continue using the photographs? At the conclusion of the trial, the General Division of the High Court ruled in favour of the plaintiffs. The defendants have appealed against the decision. The full decision, as well as the court case summary, is available via the above link.



- [Wong Leng Si Rachel v Olivia Wu Su Han](#) [2022] SGHC 151

The General Division of the High Court has dismissed the appeal against the District Court case which we reported on in our previous update. (The District Court Deputy Registrar had made an order for specific discovery to disclose correspondence relating to ongoing legal proceedings for defamation.) The decision is available at the above link.

#### Recent IPOS decision

- [Pauline New Ping Ping v Eng's Char Siew Wantan Mee Pte. Ltd.](#) [2022] SGIPOS 10

There are various disputes surrounding the successful “wanton mee” hawker stall in Singapore known as “Eng’s”. The present one concerns a trade mark opposition against three

trade marks: , applied for by Eng’s Char Siew Wantan Mee Pte. Ltd. As some readers may be aware, the founder of the Eng’s wanton mee business operated a hawker stall at Dunman Food Centre. In 2012, the founder and his son were approached by a businessman who proposed a collaboration. Eventually, this culminated in the incorporation of a new company, Eng’s Noodle House (“ENH”). The founder’s son, as well as the opponent (who is the businessman’s wife), were shareholders and directors of the new company. In 2013, the founder passed away. In 2017, the relationship between the businessman and the founder’s son started to deteriorate. Seeing this, the latter’s sister registered a sole proprietorship under the name of “Eng’s Char Siew” with a view to carrying on the family business. In 2018, ENH ceased business operations. Various events took place thereafter, but in brief there resulted two competing businesses selling wanton mee under the “Eng’s” name.

The opponent’s case in the opposition was that the three application marks should not be registered on two grounds: (1) passing off; and (2) bad faith. The IP Adjudicator found that both grounds were not established and dismissed the opposition. Interestingly, the opponent’s arguments on the passing off ground were premised on the alleged impingement of ENH’s earlier rights. However, since ENH had ceased business in 2018, the IP Adjudicator found that there was no goodwill attached to the company so as to be capable of sustaining an opposition on the passing off ground.

#### Keynote speech by Minister Edwin Tong, SC at 7<sup>th</sup> ICC APAC Conference

Readers may be interested to note that the Minister’s keynote speech at the 7<sup>th</sup> International Chamber of Commerce (ICC) Asia-Pacific Conference on International Arbitration touched on the growing importance of IP dispute resolution as well as the steps that Singapore has taken in this regard, including: (1) amendments to our International Arbitration Act / Arbitration Act to make clear that IP disputes are arbitrable in Singapore; (2) launching a new IP arbitration course at NUS Law; and (3) launching new courses for expert witnesses acting in IP disputes.

A link to the speech transcript is available [here](#) (see, in particular, paragraph 26(c)).



## Featured articles

- Edwin Neo Xuan Hao & Lee Kwang Chian, [The patent linkage scheme for pharmaceuticals in Singapore: assessment and suggestions for reform](#) (Singapore Academy of Law Journal, published on e-First 24 June 2022)
- Nadja Alexander & Shouyu Chong, [Mediation and Appropriate Dispute Resolution](#) (SAL Annual Review of Singapore Cases, published on e-First 30 June 2022) (Note: the article discusses the mediation / ADR aspects of two IP / tech cases: (1) *Digi International v Teraoka Seiko Co, Ltd* [2021] SGHC 165 (a trade mark dispute); and (2) *EXXA Network Pte Ltd v SQ2 Fintech Pte Ltd* (a case relating to cryptocurrency/fintech).)
- David Tan & Susanna H S Leong, [Intellectual Property Law](#) (SAL Annual Review of Singapore Cases, published on e-First 20 May 2022).

## Featured events

- **IP Mediation Certification Programme (IPMC)**

We are pleased to partner Singapore Mediation Centre to run a 1-day programme designed to enhance a mediator's skills in mediating IP disputes. Find out more [here](#).

- **Thinking Internationally about IP and Dispute Resolution: What Every Lawyer & Corporate Counsel Should Know, an IP Week @ SG 2022 Associated Event**

IPOS is pleased to co-organise the above webinar with University of Chicago and WIPO Arbitration and Mediation Center. Join us on 11 Aug to find out about the role of experts in IP disputes, the pros and cons of different IP dispute options and more [here](#).

