

## UPDATES FROM IPOS

NOVEMBER 2021

Dear readers,

Hope this email 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

- *Composers and Authors Society of Singapore Ltd v Fox Networks Group Singapore Pte Ltd* [2021] SGHC 241

Composers and Authors Society of Singapore Ltd is a collecting society incorporated in Singapore. It brought a copyright infringement claim against Fox Networks Group Singapore, a regional broadcasting company based and operating in Singapore. The claim was that the defendant had caused, allowed and/or authorised the up linking of programmes (containing musical works of owners represented by the plaintiff) by satellite transmission to third parties.

The defendant applied to strike out the claim and also submitted two questions of law for summary determination. In the result, the court dismissed the claim for primary infringement and struck out the claim for authorising infringement. The decision and case summary are available [here](#). For convenience, we reproduce below an extract from the summary (which outlines the pertinent and significant points of the judgment).

*“The exclusive right to authorise the doing of an act in relation to a copyright work (“Right of Authorisation”) was separate and distinct from the exclusive right to do the act itself (“Underlying Right”) (at [27]). As a starting point, all Underlying Rights were accompanied by a corresponding Right of Authorisation. However, the Right of Authorisation may be severed from the “parent” Underlying Right such as by way of an assignment or exclusive licence (at [30]). Being the owner or exclusive licensee of the Right of Authorisation did not imply the same over the Underlying Right (at [38]).*

*The uplinking of signals to a satellite in the context of point-to-point (“PTP”) transmissions was not a “broadcast” under s 7(1) of the Copyright Act (Cap 63, 2006 Rev Ed) and therefore did not constitute a communication to the public under s 26(1)(a)(iv) of the Copyright Act (at [54]). PTP transmissions were transmitted to another broadcaster who included the signals in its own transmissions (at [42(b)]).*

However, a broadcast must objectively involve direct transmission to the general public or a part thereof (at [54]).

Persons outside of Singapore did not form part of the “public” under s 26(1)(a) of the Copyright Act (at [107]).”

- *iVenture Card Ltd and others v Big Bus Singapore City Sightseeing Pte Ltd and others* [2021] SGCA 97

One of the issues before the Court of Appeal in this case (full decision and case summary [here](#)) was breach of confidence. For convenience, we reproduce the relevant extract from the case summary below:

*“19. The three elements of an action for breach of confidence by the disclosure or use of information are that the information disclosed must possess the quality of confidentiality, the information must have been imparted in circumstances importing an obligation of confidence and that there must have been some unauthorised use of that information to the detriment of the party from whom the information originated. The appellants having proved the first two elements on the evidence, an action for breach of confidence was presumed and the respondents bore the burden of showing that they had not acted unconscionably. The Judge had accepted, and the evidence showed, that the respondents had not misused the appellants’ confidential information. The appellants’ claim for breach of confidence therefore failed: at [91]–[100]”*

- Appeal against *PP v Li Shun and anor* [2021] SGDC 48

The Chinese language newspapers [[Lianhe Zaobao Online](#), [Lianhe Wanbao](#), [Shin Min Daily News](#), 30 Oct 2021] have published a report that the High Court has dismissed appeals by a couple (Mr Li Shun and his wife Ms Lim Seow Seow) against the above decision. They had been convicted of importing and possessing counterfeit goods for the purposes of trade. Mr Shun and Ms Lim received jail sentences of 11 weeks and 25 days respectively. According to the report, the appellants submitted that a fine should be imposed instead but the court did not accept this argument having regard to the defendants’ conduct, the public interest, and the need for deterrence.

#### Recent IPOS decision

- [Shenzhen Meixixi Catering Management Co., Ltd. v Heetea Pte. Ltd.](#) [2021] SGIPOS 12

This was a trade mark invalidation action against the mark “HEYTEA”, registered in Class 30 for tea and tea-based beverages. The applicant for invalidity had an earlier identical mark, “HEYTEA”, registered in Class 43 for cafés and related services. The hearing officer found the marks to be identical, the goods/services to be similar, and that there would be a likelihood of confusion. There was also un rebutted evidence that the registered proprietor had registered the mark in bad faith. The invalidation was allowed on grounds of s 7(6) as well as s 8(2) of the Trade Marks Act.

#### Updates to Compendium of Hearings & Mediation Department Circulars



HMD Circulars 2.1, 2.3, 3.2, 5.1, 5.2 and 6.1 in the [Compendium of Hearings & Mediation Department Circulars](#) have been updated. You can view the marked-up amendments at [Amendment No. 1 of 2021](#).

(Fully Online) 9th Developments in IP Law Series, 20 January 2022 (Trade Marks / Passing Off), 27 January 2022 (Patents), 10 February 2022 (Breach of Confidence / Privacy and Data Protection), 17 February 2022 (Copyright) (Pending confirmation: 3 Public CPD points per session)

Stay current on the latest IP law developments in Singapore and the UK with this flagship programme for IP professionals. Where relevant, developments in the EU, US, and Australia are also discussed in this series, which typically runs in the first quarter of the year.

Like its previous sell-out editions, this 9th edition returns with a line-up of prestigious speakers, comprising distinguished academics, experienced practitioners, industry representatives, and representatives from the public sector. Anyone with an interest in IP will benefit greatly from this programme. For more information, please click [here](#).

