

UPDATES FROM IPOS

NOVEMBER 2023 - JANUARY 2024

Dear readers,

Here is an update on developments in IP/IT dispute resolution in Singapore between Nov 2023 to Jan 2024.

IPOS wishes you and your loved ones a prosperous and blissful new year in the year of the dragon!

Court decisions

[*Beltran, Julian Moreno and another v Terraform Labs Pte Ltd and others*](#) [2023] SGHC 340

A class action lawsuit against Terraform Labs and its co-founders—including the infamous Do Kwon—has been given the green light by the court to proceed. The action was brought following the collapse of TerraUSD (UST) tokens which were supposed to be pegged 1:1 to the US dollar. The defendants had attempted to have the lawsuit thrown out on grounds that the website terms of use contained an arbitration clause. While the court found that there was a *prima facie* case of an arbitration agreement, the request for a stay in favour of arbitration was nevertheless refused on the basis that the defendants had taken steps in the proceedings (including filing a defence on the merits, a counterclaim, as well as various other applications).

[*Millennium Pharmaceuticals, Inc and another v Zyfas Medical Co \(sued as a firm\)*](#) [2023] SGHC 360

Bortezomib is a drug used for the treatment of certain blood cancers. While the chemical compound itself is not protected by patent in Singapore, the process of manufacturing the drug was protected by two process patents owned by the plaintiffs. The plaintiffs alleged that the defendant had infringed the patents by supplying the drug to hospitals in Singapore. The defendant denied infringement and counterclaimed for revocation of the asserted patents. After the trial, the General Division of the High Court found one of the patents to be valid but not infringed, and the other patent to be invalid for lack of inventive step.

The Judge was assisted in his review of the technical evidence by a court assessor, Professor Paul Sharatt. (Incidentally, Prof Sharatt is on the [list of technical experts](#) maintained by IPOS.)

[*Baker, Michael A \(executor of the estate of Chantal Burnison, deceased\) v BCS Business Consulting Services Pte Ltd and others*](#) [2024] SGHC(I) 2

This is the most recent chapter in a long running dispute concerning the patent rights relating to Ethocyn—a product said to make the skin look younger and better toned. The plaintiff, the executor of the estate of Dr Chantal Burnison (a co-inventor of Ethocyn), had contended that the defendants



held the Ethocyn rights as well as the proceeds generated therefrom on trust for the estate. The defendants, on the other hand, argued that they had purchased the Ethocyn rights and that all income earned from it belonged to them.

In 2020, the Singapore International Commercial Court (SICC) found for Baker, the plaintiff. An appeal against the decision was dismissed by the Court of Appeal in January 2021. In June 2021, the plaintiff applied for an anti-suit injunction (ASI) to restrain the defendants from prosecuting or continuing to prosecute proceedings in the USA (or anywhere else) relating to issues that had previously been determined by the Singapore Courts. The SICC granted the ASI, a decision that was upheld on appeal in September 2022. Despite the ASI, the defendants persisted in prosecuting claims in California. The SICC ultimately found the first and second defendants liable for contempt and imposed fines.

[*Oon Swee Gek & 2 Ors v Violet Oon Inc. Pte. Ltd. & 2 Ors*](#) [2024] SGHC 13

Peranakan chef Violet Oon (who is the first plaintiff Oon Swee Gek in the suit) has been known for many things over the years, including restaurateur, food writer, and even food ambassador of Singapore (an appointment conferred by the Singapore Tourism Board since 1988). In recent times, she—together with her two children—have been embroiled in a shareholder dispute with Mr Murjani Manoj Murhan, who controls 50% of the shares in the company that operates the Violet Oon restaurant business. In this decision, the General Division of the High Court found that Mr Murjani exerted economic duress and undue influence in order to change the shareholder arrangements with a view to his taking control of the company. The court set aside the changes and ordered the claimants (namely, Violet Oon and her children) to buy out Mr Murjani's shares at fair value. Pertinently, the court has indicated that it would be fair for the shares to be valued on the basis that the company has the right to use and exploit the name (that is: Violet Oon) in connection with its business without payment of any fee to Ms Oon (see [129] of the judgment). The decision was also covered in the local media, including in the [Straits Times](#) and the [Business Times](#) (both articles, which may be paywalled, dated 19 Jan 2024).

[*Cheong Jun Yoong v Three Arrows Capital Ltd and others*](#) [2024] SGHC 21

The first defendant, Three Arrows Capital (3AC), was a failed cryptocurrency hedge fund incorporated in the British Virgin Islands (BVI). It operated trading activities from premises in Singapore. In June 2022, 3AC was placed under liquidation by a BVI court. (The other defendants in the case were its liquidators.) In November 2022, the claimant filed an application in the Singapore High Court seeking permission to commence proceedings against 3AC in respect of certain assets. The claimant contended that these assets comprised an independent fund which—although on the 3AC platform—were owned and controlled by the claimant. (The liquidators' position was that the assets sought by the claimant were beneficially owned by 3AC.)

In May 2023, the Singapore High Court granted an order allowing the claimant to effect service of court papers on the defendants in the BVI. After they were served, the defendants applied to set aside: (a) the order allowing service out of jurisdiction; and (b) the service of court papers. The questions that the court had to determine were: (i) whether the claimant had a good arguable case that there is a sufficient nexus to Singapore; (ii) whether Singapore is the more appropriate forum; and (iii) whether there is a serious question to be tried on the merits.

In dismissing the defendants' setting aside application, the General Division of the High Court: (a) affirmed the principle that cryptoassets constitute property, the proprietary rights to which may be



enforced in court; (b) recognised that a cryptoasset has no physical identity and is not associated with any physical object; and (c) held that the location of a cryptoasset is best determined by looking at where it is controlled, and the residence of the person who controls the private key should be treated as the *situs* of the cryptoasset linked to that key.

IPOS cases

[*Outschool Inc v ALLSCHOOLS PTE LTD*](#) [2023] SGIPOS 12 (appeal pending)

This decision relates to four consolidated opposition actions against “ALLSCHOOL” in Classes 9, 35, 41 and 42. The application mark was applied for by Allschools Pte Ltd (“applicant”), the Singapore subsidiary of Spark Education Limited, an education technology company headquartered in Beijing, China. “ALLSCHOOL” is the name of the platform through which the applicant offers online classes to children.

The oppositions were filed by Outschool Inc (“opponent”), a California-based company founded in 2015 by former employees of IBM, Google and Airbnb. The opponent operates an online platform known as “OUTSCHOOL”, which provides virtual online classes for children across the world. The opponent’s case was premised on two main contentions. First, that the application mark conflicted with “OUTSCHOOL”, which was said to be protected as a well known trade mark in Singapore. Second, that the application should be refused on grounds of passing off.

In dismissing the oppositions, the hearing officer found that the evidence did not support a finding that “OUTSCHOOL” was a well known trade mark in Singapore at the relevant time. Moreover, she found that the marks are more dissimilar than similar overall – which would mean that there would not be any likelihood of confusion between the two.

[*Monster Energy Company v IICOMBINED Co., Ltd.*](#) [2023] SGIPOS 13

GENTLE MONSTER is a South Korean luxury eyewear brand with two stores in Singapore: one in ION Orchard and the other in the Shoppes of Marina Bay Sands. The brand is owned by IICombined Co., Ltd. (“applicant”), which has had a Singapore trade mark registration for “GENTLE MONSTER” in Class 9 for “spectacles, sunglasses” since 11 June 2013. In 2018, the applicant filed a new application to register “GENTLE MONSTER” in Class 9 for “smartglasses”. Not long thereafter, GENTLE MONSTER and Huawei Technologies launched smartglasses under the label HUAWEI X GENTLE MONSTER eyewear.

The application to register “GENTLE MONSTER” for “smartglasses” was opposed by Monster Energy Company (“opponent”), which relied on its registration (dated 10 December 2014) for “MONSTER ENERGY” in Class 9 which covers goods such as “eye glasses” and “sunglasses”. The hearing officer dismissed the opposition. Central to his decision was the finding that the competing marks are visually and aurally more dissimilar than similar, and conceptually dissimilar to a material degree.

[*Monster Energy Company v YG Entertainment Inc*](#) [2023] SGIPOS 14

YG Entertainment, the South Korean entertainment agency behind BabyMonster, one of the newest K-pop girl groups, applied to protect “BABYMONSTER” and “BABYMONSTERS” (both international registrations) in Singapore in Classes 9, 25, 28 and 41. The marks were opposed by Monster Energy



Company on the grounds of confusing similarity and passing off, premised on its earlier “MONSTER ENERGY” trade marks. In dismissing the opposition, the IP Adjudicator found that “BABYMONSTER” / “BABYMONSTERS” are not visually, aurally, nor conceptually similar to “MONSTER ENERGY”, and that “the differences between the marks are sufficient for there to be no likelihood of confusion”.

Featured articles

Readers may be interested in the following published articles:

- Cheng Lim Saw, *Distinguishing the fair use and fair dealing doctrines in copyright law—much ado about nothing?* (2023) 18(12) Journal of Intellectual Property Law & Practice 848-866 (link [here](#); subscription required)
- Gavin Foo and Trina Ha, *Sustaining innovation and AI in a data-driven climate: Industry and critical reception to Singapore’s computational data analysis exception* [2023] SAL Prac 28 (link [here](#))
- David Tan, *Generative AI and copyright – Part 1: Copyright Infringement* [2023] SAL Prac 24 (link [here](#))
- David Tan, *Generative AI and copyright – Part 2: Computational data analysis exception and fair use* [2023] SAL Prac 25 (link [here](#))

INTA interview with Justice Dedar Singh Gill (Supreme Court of Singapore)

The INTA has recently published a video interview with Justice Gill as part of the “IP Judiciary of the Future Think Tank Video Series”. The link to the video, hosted on YouTube, where Justice Gill discusses a case where he found that “Parmesan” is a translation of “Parmigiano Reggiano”, is available [here](#).

IPOS Decisions 2023: Year-in-Review

A [write-up](#) detailing selected issues, holdings and comments of interest for the legal decisions we issued in 2023 has been made available on our website under [Home](#) > [Manage IP – Resolve IP Disputes](#) > [Guides](#).

Year-in-Review 2023: Spotlight on Sample IP/Tech Decisions from the Singapore Courts

We have compiled a [sampling](#) of some of the decisions that the Singapore courts have handed down in 2023, which provide useful insights relating to intellectual property, intangible assets or technology.

Second Successful Mediation under WIPO-Singapore ASEAN Mediation Programme (AMP)

Two F&B establishments in Singapore settled their trade mark dispute amicably after a five-hour mediation: [Captain K F&B Management Pte. Ltd & En Dining Bar Holdings Pte. Ltd. \[2024\] AMP MED 1](#).



ASEAN parties with IP/technology disputes or negotiations are welcome to apply for WIPO mediation and AMP funding of up to SGD 8,000. More details on AMP can be found [here](#). Readers may be interested to note that the funding under AMP is available until December 31 2024, or until the fund is drawn down (whichever is the earlier).

Intellectual Property & International Dispute Resolution: What Every Lawyer and Corporate Counsel Needs to Know

IPOS is pleased to co-organise the above with the Pennsylvania State University and WIPO Arbitration and Mediation Center.

[Join](#) more than 450 registrants from all over the world for these free webinars on **22 February 2024 (Thursday) 3.00am – 5.30am (SGT) and 23 February 2024 (Friday) 10.00pm – 12.30am (SGT)**, featuring experienced speakers from government, international organizations, academia, and industry, for an honest and practical discussion of related topics, including:

- The state of IP dispute resolution in the US
- Standard essential patents (SEP) and alternative dispute resolution
- Singapore IP Strategy 2030 and more.

The events also feature keynote speeches by Etienne Sanz de Acedo, CEO, International Trademark Association (on 22 February 2024) and Kathi Vidal, Under Secretary of Commerce for Intellectual Property, Director, US Patent and Trademark Office (on 23 February 2024).

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. 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. 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. Archived copies of our previous updates are available at the following [link](#).

