

UPDATES FROM IPOS

JULY - SEPTEMBER 2024

Dear readers,

We were very glad to see so many of you at IP Week @ SG 2024 and Singapore Convention Week, as well as at the various associated and side events. Whether you participated or attended, we are grateful for your strong support. Hope you had a meaningful time and look forward to seeing you again next year. For those who were at the Ciarb-IPOS Tech & IP Dispute Resolution Conference: you may be interested to note that the keynote speech delivered by Justice Aedit Abdullah is [available here](#). A write-up by AlixPartners, the event sponsor, is [available here](#).

Below, we also review some interesting developments from July to Sept 2024 in IP & tech dispute resolution in Singapore.

Court Decisions

[3D Infosystems Pte Ltd v Voon South Shiong and anor](#) [2024] SGHC 237

In 2022, the General Division of the High Court [found for the plaintiff](#), 3D Infosystems (an IT company), against two defendants: (1) Voon South Shiong, an ex-employee of the plaintiff who had held a senior management position; and (2) his new employer, Sunway Digital (a competitor IT company in the digital transformation space). The essence of the plaintiff's case was that Voon and Sunway Digital had poached a number of its clients and employees. Voon was found liable for breach of contract and implied duties of good faith and fidelity, as well as fraudulent misrepresentation and breach of confidence. Both defendants were also found to be liable for lawful and unlawful means conspiracy, as well as inducing breach of contractual obligations of confidence.

This present decision assesses the damages to be paid by the defendants. In the result, the court assessed Voon's liability at \$445,685.57. Both defendants were also assessed to be jointly and severally liable for the additional sum of \$433,741.68. The case was reported in a Straits Times [report](#) dated 23 September 2024, where it was observed that the damages awarded are one of the highest in recent years involving employment disputes.

[True Yoga Pte Ltd and ors v Patrick John Wee Ewe Senq](#) [2024] SGHC 228

We previously [covered the dispute](#) between the True Group (which operates True Yoga and other gyms and fitness centres abroad) and its former CEO and director, Mr Wee. In brief, Wee had been found liable to the group for breach of duties under his employment contract and breach of fiduciary duties in his capacity as a director. The plaintiffs claimed, among other things, losses arising from damage to the brand equity of the "True" brand.



In this case, the General Division of the High Court ruled that a historical benchmark approach (based on actual historical financial performance) to calculating damages was to be preferred over the alternative approach based on internal financial budgets (which was what the plaintiffs had proposed). The essential aspects of the decision are outlined in a [Business Times report dated 5 September](#), also available on SLW at the following [link](#).

[Kiri Industries Ltd v Senda International Capital Ltd and anor](#) [2024] SGHC(I) 25

This latest instalment in the long-running Kiri v Senda (DyStar) litigation concerns costs award following a court order for the *en bloc* sale of the shareholdings of Kiri and Senda in DyStar. A decision was necessary because each party took the position that it was entitled to costs.

[Fantom Foundation Ltd v Multichain Foundation Ltd and anor](#) [2024] SGHC 173

This decision grapples with one of the key issues in assessing damages in connection with crypto assets: price volatility.

By way of background, Fantom had deposited various crypto assets onto Multichain's liquidity facility platform. These crypto assets were subsequently lost following a security breach. Fantom sued, alleging that this loss was attributable to Multichain's failure to implement certain security safeguards in breach of a key term of the relevant agreements between the parties. It subsequently obtained default judgment for: (1) damages to be assessed and (2) the return of 4.175m FTM (fantom) tokens or alternatively their equivalent value. For the purposes of the assessment, the claimant proceeded on the "conservative" basis that damages should be assessed by reference to the date of the breach. Even so, the court observed the breach date may not always be the best assessment methodology to value cryptocurrencies in all circumstances (see analysis from [41]-[49]). As regards the FTM claim, the court assessed the value of the tokens by reference to the market value of FTM on 14 April 2023: the date on which the claimant had transferred the tokens to the platform. In so doing, the court acknowledged the various issues posed by valuing a price-volatile asset.

[Georgios Baizanis v Snap Innovations Pte Ltd & anor](#) [2024] SGHC 200

The plaintiff, Georgios Baizanis, invested in a cryptocurrency arbitrage scheme called "Cryptotrage," operated by Snap Innovations Pte Ltd (the first defendant). The second defendant, Bernard Ong (whom some may recognise as the founder of the [failed crypto trading platform Torque](#)), was listed as a director of Snap Innovations but was not officially registered as such. Although Baizanis initially invested small amounts, he later increased his investment after obtaining what appeared to be a corporate guarantee from Snap Innovations against losses arising from fraud. The guarantee was said to have been signed by Zee, the company's director in Vietnam, as well as Ong.

Subsequently, Zee misappropriated investors' cryptocurrencies (including the plaintiff's) and disappeared. When Baizanis attempted to rely on the corporate guarantee, Snap Innovations denied involvement and Ong claimed that his signature had been forged. Baizanis sued, arguing that the defendants were responsible for his losses. He raised claims of breach of contract, breach of warranty of authority, and failure to supervise Zee.

Ultimately, the plaintiff was unsuccessful. The decision was covered in a Straits Times report dated 5 August 2024 under the headline "[Court dismisses investor's \\$12m claim against Snap Innovations and founder of crypto platform Torque](#)".



[Oon Swee Gek & ors v Violet Oon Inc Pte Ltd and ors](#) [2024] SGHC 170

We previously [covered](#) the dispute between renowned Peranakan chef Violet Oon (the first plaintiff, Oon Swee Gek) and her children on the one hand, and her former business partner Mr Murjani Manoj Murhan, on the other. It culminated in a decision by the General Division of the High Court that Mr Murjani exerted economic duress and undue influence in order to change the shareholder arrangements with a view to taking control of the company. The remedy was a court order for the buyout of Mr Murjani's 50% shareholding by the Oons. (The buyout order was reported in the local media, including in the [Straits Times](#) and the [Business Times](#) on 19 Jan 2024.)

Subsequently, the court issued the above supplementary judgment concerning share valuation and costs. Among other things, the judge examined the factors that the valuer may take into account in determining the "fair value" of the company's shares for the purposes of a buyout. In so doing, the court dealt with two sub-issues: (a) whether the valuation may factor in a discount for the lack of marketability of the company's shares and (b) whether the valuation should factor in a premium for the control of the company that will be acquired by the claimants. Mr Murjani was also ordered to pay costs of \$299,000 to the Oons. Not long after the supplementary judgment was issued, it was reported by the Straits Times that the parties had reached an out-of-court settlement (see [report](#) dated 18 July 2024).

[Three Arrows Capital Ltd & 2 ors v Kyle Livingston Davies & anor](#) [2024] SGHC 164



This chapter of the fallout following the failure of crypto hedge fund Three Arrows Capital (more popularly known as 3AC) concerns an application by Ms Kelly Chen, the wife of 3AC's co-founder Mr Kyle Davies, to discharge a freezing order over her assets in Singapore (including a Good Class Bungalow). She was unsuccessful. The judgment was covered by the Business Times in a [report](#) published on 1 July 2024. (Note: the report incorrectly characterised Ms Chen's discharge application as an appeal. It was not an appeal, although she did apply for permission to appeal.)

IPOS Decisions

[Amazon Technologies Inc v Survivalverse Pte Ltd](#) [2024] SGIPOS 6

Amazon, a leading tech company, was successful in opposing a trade mark application by



Survivalverse, a videogame software publisher, to register  in class 9 for "software" and class 41 for "providing online computer games". Amazon's essential argument was that the application mark should not be registered because it conflicted with its earlier plain word mark "AMAZON" registered in class 9 for "computer software" and in class 41 for "providing on-line computer and educational games and on-line interactive children's stories". Although the applicant accepted that the goods and services were identical, it contended that the marks were dissimilar and that there was no likelihood of confusion. In allowing the opposition, the hearing officer found that  "AMAZON" is what stands out in the application mark. Due to its dominance, the marks are similar to a high degree. Given this, and the identity between the goods and services, a likelihood of confusion would result.



[Craft Drinks Pte Ltd v Tapout Pte Ltd \[2024\] SGIPOS 7](#)

This dispute was between two bars in Singapore in the craft beer industry.



Craft Drinks Pte Ltd operates bars in Singapore under the mark “



”, registered in class 43 for “bar services”. It opposed an application to register “”, filed by Tapout Pte Ltd in class 43 for essentially the same services. The hearing officer ultimately dismissed the opposition, finding (among other things) that in the context of the services of interest consumers would easily recognise that “TAP” alludes to the kind of drinks (beers on tap) offered. Consequently, although the competing marks were conceptually similar to a medium degree, they were overall more dissimilar than similar.

Successful IP Mediation Cases

WIPO-Singapore ASEAN Mediation Programme

- Two Singapore companies in the field of skincare products disagreed over the interpretation and performance of their earlier settlement agreement. Through shuttle diplomacy, the mediator helped parties take a commercial (as opposed to legalistic) approach and settle their dispute: [Gromark Consumers Enterprise Pte Ltd & Universe Kingdom Pte Ltd \[2024\] AMP MED 3](#).
- Helped by the skill and wise counsel of the mediator, two F&B establishments in Singapore moved past their entrenched positions to settle their trade mark dispute after almost 15 hours, much to their satisfaction: [Fun Toast Pte. Ltd. & Fun Tea Pte. Ltd. \[2024\] AMP MED 2](#).

Revised Enhanced Mediation Promotion Scheme

- A Malaysian restaurant chain and an Indian rice exporter had a dispute over trade marks with elements in common. The restaurant modified its trade mark and the parties reached an amicable settlement in 5h: [Restoran India Gate Sdn. Bhd. & KRBL LTD. \[2024\] SGIPOS MED 1](#).

Featured events

- *2024 WIPO Intellectual Property Judges Forum*

The WIPO IP Judges Forum is an annual event organised by the WIPO Judicial Institute. It aims to provide a platform for judges from across the globe to exchange expertise on pressing IP challenges raised by accelerating innovation and the increasingly transnational use of IP. [This year's edition](#) is held on October 9 and 10.



Readers may be interested to note that Justice Dedar Singh Gill is speaking this year at a session on Confidential Information and Trade Secrets, and that *I-Admin* is one of the reference judgments that will be discussed during the panel.

- *Federal Circuit Bar Association (FCBA) Global Series*

The FCBA Global Series will be held for the first time in Singapore on 16 – 18 Oct 2024 at the Fullerton Hotel.

The panel sessions, confirmed speakers to-date (which include several judges, senior government officers, IP lawyers and in-house counsel from the US and other jurisdictions) as well as registration link can be found here: [Global Series Singapore - Federal Circuit Bar Association \(fedcirbar.org\)](https://fedcirbar.org)

FCBA is a US organisation for the bar of the Court of Appeals for the Federal Circuit. This court has exclusive appellate jurisdiction over all US federal cases involving patent and trade mark registrations. FCBA offers a forum for common concerns and dialogue between bar, court and in-house counsel. For more information, please see <https://fedcirbar.org/about/>. The Global Series are part of an ongoing dialogue and address topics of global significance at a senior level of discussion. Working closely with government representatives, adjudicators and corporate leaders (amongst others) in the global community, the Global Series responds in real time to emerging challenges.

The FCBA Global Series is an excellent opportunity for professionals in Singapore to network with fellow professionals from the US and other jurisdictions.

- *APIEx Symposium 2024: A focus on valuation in dispute contexts*

As the complexity of disputes has increased, the rigour and sophistication with which Courts and Tribunals assess valuations has also become more intense. APIEx is delighted to host a half day Symposium dedicated to valuations and supported by the Institute of Valuers and Appraisers, Singapore (IVAS), the Intellectual Property Office of Singapore (IPOS) and the International Valuation Standards Council (IVSC).

One of the panels will discuss the valuation of intellectual property and explore the unique challenges and strategies to deploy in disputes, including the appropriate measure of damages where the terms of the IP protection has been breached and the guidelines which can be followed.

The APIEx Symposium brochure is available [here](#).

Singapore International Dispute Resolution Academy (SIDRA) Survey

SIDRA is a platform for thought leadership in international dispute resolution theory, practice and policy. A research centre at the Singapore Management University School of Law, SIDRA leads the way through projects that promote dynamic and inclusive conversations on how to constructively engage with and resolve differences and disputes at global, regional and national levels.



For the first time, SIDRA has included Intellectual Property and Technology dispute issues in their survey. Please see the link below for the survey report: [SIDRA Survey 2024 | SIDRA | Singapore International Dispute Resolution Academy \(smu.edu.sg\)](#)

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If you know of anyone who 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](#).

