

UPDATES FROM IPOS

AUGUST 2023

Dear readers,

Here is this month's roundup on developments in IP/IT dispute resolution in Singapore.

Recent Court decisions

- [Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd](#) [2023] SGHC 255

The General Division of the High Court has dismissed an application by the defendant to strike out a copyright claim on grounds that the claimant has no standing to sue for infringement. The defendant's case was that at the time of the alleged infringement, the claimant was not the exclusive licensee of the copyright since it had wholly licensed its exclusive right of distribution (together with other rights) to another party known as HK Tiger. In other words, the argument was that the plaintiff had been supplanted by HK Tiger and therefore ceased to have any rights to commence the action. The claimant disagreed, arguing that it had been granted the exclusive licence and that while it had indeed granted an "exclusive" licence to HK Tiger, this was not a statutory "exclusive licence" (and therefore it did not lose its status as the statutory exclusive licensee).

- [Gillingham James Ian v Fearless Legends Ltd & 3 Ors](#) [2023] SGHCR 13

This was an application for pre-action production of documents and information under O 11 r 11 of the Rules of Court 2021. The application was made by Mr Gillingham James Ian, an entrepreneur and co-founder of "Fearless Legends" (a software and technology company). One of the company's key assets was a proprietary source code used to set up a cryptocurrency trading platform. In April 2022, the applicant (who was then serving as the company's CEO and director) was dismissed from his position. The applicant alleged that he had not been given a reasonable opportunity to defend himself before the board of directors or shareholders. This, coupled with certain other events, gave rise to the applicant's suspicion that there had been a scheme to take control of the company's resources (including the source code and other intellectual property) and to divert them to a competitor cryptocurrency platform: OneX LLC (based in the US). As such, Mr Gillingham James Ian filed the application seeking documents and information connected with two claims: (a) a claim for minority oppression; and (b) under the tort of lawful and/or unlawful conspiracy. The court allowed the application (albeit on a narrower scope than originally sought).



- [Art Ask Agency SL v Person\(s\) Unknown \(“LXS-WL Store”\) and Ors](#) [2023] SGHCR 14

This case concerned an enforcement order under O 22 of the Rules of Court 2021. The claimant (a Spanish company in the business of developing, marketing and distributing products for brand owners) had obtained default judgment in the US courts against more than 200 defendants for wilful use of counterfeit trademarks on products sold through the AliExpress online or e-commerce platform. Under the US Judgment, each defendant was to pay statutory damages of US\$50,000 to the claimant. However, no payment was made. The claimant then commenced an action in Singapore on the basis of the unsatisfied US judgment, and subsequently obtained default judgments against the defendants as well. Again, no payment was made. The claimant then took out enforcement proceedings to attach monies in the defendants’ accounts in Singapore with a non-party: Alipay Merchant Services (which is licensed by the Monetary Authority of Singapore as a major payment institution and held funds on behalf of its registered users). According to the claimant, these were the only identifiable assets belonging to the defendants. Although Alipay Merchant Services did not object to paying the claimant monies falling within in certain categories, there was a dispute as to whether certain other sums of money should be paid. The key issues considered by the court are set out at [9]-[15] of the decision.

- [The Micro Tellers Network Limited & 3 Ors v Cheng Yi Han \(Zhong Yihan\) & 4 Ors](#) [2023] SGHC(I) 13

Readers may be interested in this decision of the Singapore International Commercial Court, which involved claims in negligence, dishonest assistance and conspiracy, as well as breach of trust / fiduciary duties, and fraudulent misrepresentation. The parties to the dispute were engaged in various activities connected with cryptocurrency trading. In one incident, there was a plan to sell bitcoin through “over-the-counter” means to buyers in Europe at a profit. However, the promised cash turned out to be forgeries. A court case summary has been provided in the link above.

- [Concept Math Education Centre Pte Ltd v Aw Bixi, Charlotte](#) [2023] SGDC 194 (note: the decision is publicly available via LawNet Free Resources for three months; a newspaper report on the case can be found [here](#))

In this case, the District Court had to consider the interesting issue of whether a permanent injunction ought to be granted for copyright infringement. The court observed that while Singapore courts frequently grant permanent injunctions for copyright infringement, the reasons for why and when injunctions should be granted have not been sufficiently explored.

The plaintiff is a successful primary school mathematics tuition business. The defendant is the mother of a student enrolled in the plaintiff’s classes. She took the worksheets that her daughter received during tuition classes and sold them on the Carousell online marketplace. The plaintiff eventually found out about this, and issued cease-and-desist letters demanding that the defendant stop, pay damages, and issue written undertakings. However, the defendant did not meet the demands. As such, the plaintiff commenced legal proceedings. The court found that copyright subsists in the compilation of the worksheets as a literary work, and that copyright had indeed been infringed by the defendant. Nevertheless, the



defendant contended that she had no intention to continue infringing and that an injunction should not be granted.

In ruling that a permanent injunction should be granted against the defendant, the court made the following observations. First, this was not a “once and done” case; the infringements were systematic and repetitive. But for being discovered, the defendant would have likely continued her actions. Second, the infringement was intentional and premeditated. Third, the defendant took active steps to avoid detection, including hiding behind pseudonyms on the internet. Fourth, the defendant was a teacher under the Ministry of Education, an aggravating factor since she should have understood the importance of academic integrity. Fifth, she refused to provide an undertaking not to repeat the infringements. Sixth, she showed no contrition and instead vigorously disputed the claims.

- [CZO v CZP \[2023\] SGHC 237](#)

The General Division of the High Court has dismissed an application to have a final arbitration award set aside. The claimant (which was the respondent in the arbitration) seeking the setting-aside of the award provides original design and manufacturing services for electronic equipment. The respondent (which was the successful claimant in the arbitration) develops electronic devices that use touch, vision and voice technologies and delivers them to customers in the hospitality industry, including restaurants. Pertinently, the respondent had developed and delivered a digital tablet that allows diners to order food and beverage, and to pay for it at their tables. This device also allows diners to play digital games and make in-app purchases. A share of the revenue generated by in-app purchases is paid to the respondent. The claimant manufactured these devices and delivered them to the respondent. The dispute between the parties arose as a result of certain malfunctions that arose which made the devices inoperable.

- [Amber Compounding Pharmacy Pte Ltd & Anor v Priscilla Lim Suk Ling & 5 Ors \[2023\] SGHC 241](#)

In this case, the General Division of the High Court ruled that a plaintiff in a claim for breach of confidence is entitled to plead and claim (in the same lawsuit) that both its wrongful gain interest and wrongful loss interest (a *la I-Admin*) have been infringed by the defendant.

- [CXG & Anor v CXI & 2 Ors \[2023\] SGHC 244](#)

Readers may be interested in this case where the General Division of the High Court rejected the argument that an interim order issued by a tribunal seated in Singapore should be refused enforcement on grounds of *forum non conveniens* (the argument being that Malaysia would be the more appropriate forum since the subject matter of the dispute, parties and performance are connected to that jurisdiction). The dispute is in the area of fin-tech.

Mediation Success at IPOS

Another trade mark opposition – involving two pet supplies companies – has been successfully mediated: [Kibbles Pte. Ltd. & Mr Kibbles Pte. Ltd. \[2023\] SGIPOS MED 2](#). If you are involved in IPOS



proceedings, consider [mediation](#) as a time- and cost- effective alternative for resolving your dispute; funding is available under our [Revised Enhanced Mediation Promotion Scheme](#).

Featured event: Dispute Resolution Presentations, and Tour of Maxwell Chambers

Come and hear about the commercially-driven and innovative services offered by Singapore's globally respected dispute resolution institutions – Singapore International Commercial Court, Singapore International Arbitration Centre and Singapore International Mediation Centre.

Go on an in-person tour of Maxwell Chambers, an integrated dispute resolution complex housing both international dispute resolution institutions and practices, and state-of-the-art hearing facilities.

[Register](#) now for this event on 3 November 2023 (Friday), 3.30pm – 5.30pm. More information is available [here](#).

Featured articles

- Jevon Louis, Tan Jing Han Alvin & Chong Kar Yee Cristel, [Employer's Liability for Copyright Infringement and the Assessment of Damages – Siemens Industry Software Inc v Inziq Pte Ltd \[2023\] SGHC 50 \[case comment\]](#) [2023] SAL Prac 15
- Ben Chester Cheong, [Doctrinal Issues in Recovering NFTs That Have Been Wrongfully Taken Away – Janesh s/o Rajkumar v Unknown Person \("CHEFPIERRE"\) \[2023\] 3 SLR 1191 \[case comment\]](#) [2023] SAL Prac 14

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