



Wendy Low

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Profile

Wendy is an IP litigator with Eldan Law LLP, and was previously a partner with the IP team of the largest law firm in Singapore and Southeast Asia. Wendy has been profiled as one of the "50 IP Litigators You Should Know" in the Asia Pacific region (Asia IP, September 2013) and had been consistently awarded the IP Star by Managing IP in 2014, 2015, 2016 and 2017.

Qualifications

- LL.B., (Upper Second-Class Honours), National University of Singapore, 2000
- Advocate and Solicitor, Supreme Court of Singapore, 2001

Experience & Expertise

Intellectual Property

Overall, the focus of Wendy's practice is in copyright, trade mark, patent and confidentiality related disputes. She also has experience in patent prosecution work and provides IP and IT related advice to a range of clients including international conglomerates, SMEs, government-linked organizations, media owners, TV artistes, hotels, art galleries, movie production houses, educational institutions, copyright licensing organizations, and providers of electronic commerce and internet services.

Wendy's most recent reported decision concerned a group of 5 defendants in a patent infringement dispute, in the course of which, the plaintiff's applications for patent amendments were entirely dismissed by Singapore High Court for the first time on grounds of the plaintiff's undue delay and seeking unfair

advantage in enforcing a potentially invalid patent based on findings of a corresponding patent filed before the European Patent Office (***Ship's Equipment Centre Bremen GmbH v Fuji Trading (Singapore) Pte Ltd and others and another suit*** [2015] 4 SLR 781).

In the last few years, Wendy was involved in a series of patent revocation proceedings filed by Cargill against Martek which dispute resulted in a landmark appeal concerning an infant formula patent. This is the first time the Singapore Court of Appeal had to consider the jurisdictional powers of the High Court in hearing appeals from patent decisions issued by the Intellectual Property Office of Singapore (***Martek Biosciences Corp v Cargill International Trading Pte Ltd*** [2010] SGCA 51), and the appeal was eventually resolved in favour of Cargill. She had also represented one of the defendants against the proprietor of the famous “thumbdrive” patent infringement claim (***Trek Technology (Singapore) Pte Ltd v Ritronics Components (S'pore) Pte Ltd*** [2007] 1 SLR(R) 846).

For trade mark disputes, Wendy had represented the exclusive licensed distributor of the Rooster brand cordyceps in Singapore to enforce its trade mark rights against an established retailer of chinese traditional herbs through criminal and civil proceedings. The Court of Appeal's decision in ***Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another appeal*** [2009] 2 SLR(R) 814 is the locus classicus for principles on revocation and invalidation of trade marks in Singapore.

Other cases which had been reported in the media included ***MFM Restaurant Pte Ltd and another v Fish & Co Restaurants Pte Ltd and another appeal*** [2010] SGCA 36, in which Wendy had successfully acted for the Appellant in reducing its assessed damages before the Court of Appeal. Another recent reported decision concerns her client's success in having Marina Bay Sands' discovery appeal dismissed notwithstanding their objection that the documents requested concern state secret under the Official Secrets Act. Previously, she had also acted for the plaintiff in ***Golden Village Multiplex Pte Ltd v Golden Harvest Film Distribution (Pte) Ltd and another*** [2006] 3 SLR(R) 599, a reported directors' dispute.

Some of Wendy's cases are reported as follows:

- [2015] 4 SLR 781 - **Ship's Equipment Centre Bremen GmbH v Fuji Trading (Singapore) Pte Ltd and others and another suit**
- Singapore.
- [2014] SGHC 26 – **Elbow Holdings Pte Ltd v Marina Bay Sands Pte Ltd**
- [2012] SGHCR 19 – **Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another**
- [2010] SGCA 36 - **MFM Restaurant Pte Ltd and another v Fish & Co Restaurants Pte Ltd and another appeal**
- [2009] 2 SLR(R) 814 - **Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal**
- [2008] SGDC 351 – **Global Indian International School v Kathikala Vikram Sagar and Another**
- [2008] 2 SLR(R) 350 – **Wu Yang Construction Group Ltd v Mao Yong Hui and another**
- [2007] 3 SLR(R) 673 – **Wee Yue Chew v Su Sh-Hsyu**
- [2007] 1 SLR(R) 1092 - **Wee Yue Chew v Su Sh-Hsyu**
- [2007] 1 SLR(R) 846 - **Trek Technology (Singapore) Pte Ltd v Ritronics Components (S'pore) Pte Ltd**
- [2006] 3 SLR(R) 599 - **Golden Village Multiplex Pte Ltd v Golden Harvest Film Distribution (Pte) Ltd and another**

A more detailed listing of Wendy's contentious and non-contentious IP engagements is set out under **Annex A**.

Media & Technology

- Acted for IPEX Cleantech Asia, an finance and IP assisted brokerage to assist in their matching of buyers and sellers of low carbon technology through a platform developed by the Asian Development Bank. The retainer had included the conducting of IP due diligence on solar and alternative energy interests in Asia and Europe: Business Times.
http://seas.org.sg/index.php?option=com_news&view=details&id=79&Itemid=38
- Advised one of the most established solar energy solutions provider in Southeast Asia on the merits of its claim for groundless threat of patent infringement and rights under the Protection From Harassment Act in respect of demands issued by a competitor.
- Advised one of Asia Pacific's largest solar energy exchange platform on its IP rights protection.
- Advised a US based broadband service provider in its review of a hardware supply and software license agreement with a Malaysian state-owned telecommunication company and drafted a deferred payment scheme in relation thereto.

- Advised and drafted an IT Facilities Management Agreement for a South African company's Singapore subsidiary.
- Advised a French company in the acquisition of a Singapore IT company for the acquisition price of over S\$1 million.
- Advised for a regional IT software company on various insolvency-related matters including termination of lease agreement, breach of licensing agreement and corporate securities matters.
- Advised an electronic Fortune 500 company and its Singapore subsidiary on its breaches under the Strategic Control Goods Act.
- Acted for an established telecommunication company in trade mark opposition proceedings filed by an IT software conglomerate to oppose client's trade mark registration.
- Acted for a component supplier against a telecommunication MNC for claim in excess of US\$1million for breach of their supply contracts.
- Acted for an European insurer in the review of its IT related contracts.
- Advised a high end Indonesian hotel chain on its claim against its consultant for breach of contract in failing to provide the requisite IP TV technology onsite.
- Various alleged infringers of the Dallas Buyers Club were advised by Wendy (Reuters, 13 April 2015).
- Acted for Japanese anime copyright owners in pre-action discovery applications against Internet Service Providers (ISP) and copyright infringement claims against BitTorrent downloaders. Successfully refuted an ISP's claim that the Japanese anime copyright owners did not have *locus standi* over the Japanese television broadcaster who televised the anime film to commence pre-action discovery proceedings.
- Advised a renowned local film director and her company in all licensing agreements entered into with international celebrities (Stephanie Sun, JJ Lin) and local singers (Liang Wenfu) and media companies (Warner Music, Ocean Butterfly, Mediacorp) in the production of her xinyao documentary "The Songs We Sang" which was distributed through Golden Village cinemas to critical acclaim (Straits Times 23, March 2016).
- Advised a local TV production company on its TV production and funding agreements for a popular fashion series.
- Advised a Singapore start-up on various e-commerce and IP issues in setting up a social media platform for an online fashion look book.

- Advised an international computer games company on its right of enforcement under the anti-circumvention of technological measures in the Singapore Copyright Act.
- Acted for a TV production house in its claim against a South Korean MNC for copyright infringement in the unauthorized broadcast of commercials for household electric goods.
- Advised a Korean entity of its entitlement to claim copyright and trade mark rights in relation to games jointly developed with another Korean software gaming company.
- Acted for the subsidiary of an internationally renowned film producer and distributor in a claim against its Singapore joint venture partner for contractual breaches. Also acted for members of the subsidiary's management in their defence against a defamation claim commenced by one of the directors of the Singapore joint venture partner.
- Acting for a PRC construction and real estate conglomerate in their online defamation claim against agents of their previous joint venture partners. The trial was reported in the Straits Times, 16 September 2015.
- Acted for an Asian bank to obtain pre-action discovery of information related to proxy server logs against an established internet service provider in Singapore to commence proceedings for online defamation and harassment.
- Acted for an established educational institution in on-line defamation proceedings including filing pre-action interrogatories and discoveries against an international message board provider and several local internet service providers.
- Acted for an ex-beauty queen in serving notices pursuant to the Digital Millennium Copyright Act.
- Acted for an established hair salon chain in drafting contracts for their brand ambassadors.

Medical / Pharmaceutical

A brief description of the patent revocation litigation concerning Cargill International Trading Pte Ltd is set out above under "Intellectual Property". The reported decisions are:

- [2012] 2 SLR 482 - **Martek Biosciences Corp v Cargill International Trading Pte Ltd**
- [2011] 4 SLR 429 - **Martek Biosciences Corp v Cargill International Trading Pte Ltd**
- [2010] SGCA 51 - **Martek Biosciences Corp v Cargill International Trading Pte Ltd**
- [2010] 3 SLR 927 - **Martek Biosciences Corp v Cargill International Trading Pte Ltd**

- Acting for an Indian generics to defend patent infringement allegations arising out of its drug applications under the Health Products Act.
- Advised an Indian generics pharmaceutical company on the merits of its intended patent revocation claim against competitor and its alleged breaches under the Medicines Act.
- Acted for the chief technology officer in a shareholders' fallout in a start-up for a biomedical device.
- Acted for an online medical appointment booking website against a competitor for trademark infringement and passing off in relation to use of similar/ identical term to generate through Google Adword advertisements that incorporate the said term.
- Acted for a cybermedical company against an American software MNC on alleged breaches of a joint venture agreement.
- Acted for a medical practitioner in his trademark infringement claim against a government agency for use of confusingly similar name in its online publicity campaigns.

Employment

- Acted for a boutique IP firm listed on the Australian stock exchange against its competitor concerning a management hire on issues on anticipatory breach of contract, restraint of trade and breach of confidence issues.
- Acted for one of the world's largest IT company to defend its senior executive hire from a competitor on issues concerning restraint of trade, breach of confidence and tort of interference with contract issues.
- Acted for 2 ex-employees against an exhibition company listed on the Hong Kong Stock Exchange on issues concerning restraint of business dealing and breach of confidential information.
- Acting for a social housing investment group based in South America in their proceeding against their Singapore country director and business development director for breach of confidence and restraint of trade obligations. Injunctions were successfully obtained against the ex-directors to restraint them from misusing our clients' trade secrets and confidential information in establishing a competitive business. Additional claims were also filed for breaches of duties of fidelity and fiduciary.
- Acted for 5 defendants in a High Court suit in relation to, *inter alia*, conspiracy to injure arising out of the ex-employees alleged breaches of fiduciary duties and confidentiality obligations and breaches of confidentiality and restraint of trade clauses.

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- Advised on employment contracts for local TV and regional artistes.
- Reviewed the employment templates for a technology giant.
- Acted for a veterinary in advising on termination of employment and restraint of trade covenant issues.
- Advised a consultant in his claim against an internationally reputable consultancy on issues related to termination of employment and relocation claims.

Professional History

June 2017 – present	Partner, Eldan Law LLP
June 2008 – June 2017	Partner, Rajah & Tann / Rajah & Tann Singapore LLP

Annex A

Contentious

(A) IP Disputes

Patents Dispute

- Acted as co-counsel together with lead counsel Sundaresh Menon S.C. (the current Chief Justice of Singapore) for a Swiss semiconductor manufacturer against an associated company of a Singapore listed company in a High Court case involving a claim for infringement of patents covering optical and air gun loader modules used in IC chip inspection and packaging machine. The matter was successfully resolved in client's favour through a global settlement. The defendant of the earlier suit thereafter mounted a revocation proceeding against another patent owned by the Swiss manufacturer in 2011. Wendy was instructed to act in the follow up dispute which was resolved amicably between parties.
- Acted for a global computing giant in its revocation proceeding against a plaintiff's patent registered in Singapore, and in defending an infringement allegation related to the said patent in suit. The invention in dispute involves packaging devices used by client and their global operations for the packaging and transportation of computers and laptop devices. Parallel patent revocation proceedings were filed by client's U.S. entity against related parties.
- Acted for two marine equipment suppliers in successfully discharging the Anton Pillar and injunction orders obtained by the plaintiff in an unreported decision (Suit No. 738 of 2011/E, 17 November 2011).
- Acting for the second and third defendants in their revocation proceeding against a German company's twistlock patent registered in Singapore, and in defending an infringement allegation related to the said patent in suit. The invention in dispute involves twistlocks used by shipping companies around the world to secure containers. This case will test for the first time in Singapore the effect of a preamble to the scope of a patent claim. With regard to infringement the case raises the question of whether "*offering to sell*" in Singapore constitutes an act of infringement where the goods offered are eventually sold to jurisdictions outside Singapore.
- Advised client on defences, including of innocent infringement to alleged breaches of a thumbdrive patent in its sale of customized devices to the Singapore government.

Trademark & Copyright Dispute

- Advised a subsidiary of one of the world's largest alcoholic beverages company on alleged infringement of geographical indicator and trademark rights raised by proprietor of the "Scotch Whisky" mark.
- Advised for one of the largest property developers in Asia in relation to their rights and potential liabilities where arbitration had been commenced by a casino group

against an internationally renowned architect for alleged breaches of contract arising from his use of an alleged similar building design in client's tender of a Chinese government linked project. The matter involves complex issues of cross-border intellectual property law and technical architectural design.

- Advised an international hotel chain, on the merits of its passing off and trademark claim against a Myanmar hotel of its use of a similar mark, including on its online website.
- Acted for a developer of a luxury condominium project in trade mark and passing-off claims against a furniture maker that had misused the name of the condominium project for its designer furniture.
- Advised a Singapore playground equipment distributor of the merits of its passing off and copyright claims against a competitor which had installed counterfeit equipment for HDB and other developers
- Acted for an international louver company against a several defendants for breach of a secrecy agreement in the manufacture of infringing louvers and for tort of conspiracy and inducement of breach of contract.
- Acted for a Singapore company and its directors against claims by an international door hinge manufacturer for alleged trade mark infringements and passing off of door hinges installed in various condominium sites in Singapore.
- Acting for a leading UK sports retailer and its Asian licensee in potential revocation/invalidation proceedings in respect of an identical trade mark registered by a third party in Singapore, Malaysia, Indonesia, China, Hong Kong and India.
- Acted for a Malaysian based company in its claim against a reputable Singapore company for breach of its confidential information and copyright related to the manufacture of disc cleaning equipment. Related to this proceeding, discovery of documents and inspection of machines had been sought against some of the largest hard disk manufacturers in the world, with presence in Malaysia, Thailand and in the U.S.
- Acted for a major computer games company in the criminal prosecution of trade mark and games software copyright infringement. Procured the successful conviction of an accused who raised a defence of “borderline IQ” against charges for infringement trade mark and copyright infringement.
- Acted for an exclusive copyright licensee in the enforcement of karaoke on-demand licence rights against major night clubs and other entertainment clubs and pubs in Singapore. Successfully obtained the dismissal of an application filed by 5 major club owners alleging that they had the *locus standi* to challenge applications for search warrants filed the exclusive licensee.
- Acted for a private school in defending against a claim for breach of confidentiality and copyright related to computer source codes and data allegedly belonging to a competing school.
- Acted for an Asian chain of seafood restaurants and their director against a competitor in its claim for breach of court injunctions concerning use of secret recipes and similar/ identical serving pans, slogans and phrases.
- Acted for the exclusive trade mark licensee of a reputable brand of Chinese cordyceps in criminal prosecutions and trademark revocation and invalidation proceedings filed by an infringer in the Singapore High Court and Court of Appeal.

- Acted for a high-end gourmet meat retailer in its claim against its ex-shareholders and directors for breach of fiduciary duties and tort of conspiracy in setting up a competing business.
- Advised a famous Chinese chain restaurant on potential passing-off claims against a restaurant which had used a similar mark for its food business.
- Acted for an international recording company in a defamation proceeding commenced by an established record distributor in Singapore with a counterclaim based on copyright infringement of our clients' televised advertisement and CD compilations.
- Advised a private institution on its rights disputed by the estate of a late famous artist over works which were donated to the institution.
- Acted for a renowned geomancer against a temple association in Singapore to enforce the copyright in his authored work.
- Acted for a cigarette importer for importation of alleged counterfeit cigarettes through Cambodia and Malaysia.
- Acted for a garment manufacturer in relation to a global zipper manufacturer's claim for misuse of counterfeit zippers.

(B) Non-IP Disputes

- Acting for a reputable Australian restaurant in a claim for *inter alia* misrepresentation, breach of collateral agreement and proprietary estoppel concerning a lease for use of a waterfront promenade within a prestigious entertainment/ shopping complex in Singapore.
- Acted for client in a cross-border dispute over Indonesian properties and hotel claims worth an estimated US\$ 8 million.
- Acted for clients in an appeal against trial judge's decision in relation to the Oilpods Ponzi scheme which had defrauded over 2,000 investors who had invested about US\$46 million worth of working interest in the Colorado-based Powder River Petroleum.
- Acted for a plaintiff in a complex divorce proceedings involving assets of about S\$45million in value. Successfully obtained numerous injunctions, including worldwide mareva injunction against the defendant's assets, some breaches of which had also led to contempt proceedings commenced on client's behalf.
- Acted in an arbitration involving an international group of companies and an Indonesian GLC, on issues of mismanagement and breach of directors' duties, for claims in excess of S\$60 million.
- Acted for a reputable group of companies, in a claim for over S\$48 million of monies and assets in bank accounts in Singapore, London and Hong Kong, founded on breach of trust, tracing and other equitable remedies.
- Acted for a plaintiff in a complex divorce proceedings involving assets estimated to be worth over S\$200 million.
- Acted for the eldest son of a reputable family in Singapore in 7 out of the 16 Suits involving himself, various members of the family and/or various subsidiaries in

Singapore and Indonesia owned by the family, concerning issues on loan, account of monies to estate, breach of directors' duties and trust over funds of about USD\$4.6 million.

- Acted for an UAE company in its claim for over S\$2 million on the basis of monies had and received and tracing of fund transfers through the UAE, London and Singapore.
- Acted for an education media supplier against its main contractor's claim in excess of S\$1 million for alleged breaches of a supply contract.
- Acting for a national mountain climbing team in its claim against a book production company for repudiatory breach of contract.

IP Non-contentious

- Advised a local film director on IP issues for her documentary which was released to critical acclaim in Singapore and Asia.
- Advised an international audit firm on intellectual property rights issues in relation to its harmonization of terms for its member firms in ASEAN and other jurisdiction.
- Advised an American consultant on intellectual property issues in relation to his joint research and development of a bioretention system for use by a Singapore utilities authority. The key technology concerned is patented in Singapore, U.S. and Australia and our client has filings of corresponding patents pending in another 14 countries including China, Japan, Korea, India and the European Union.
- Advised client on the registration, renewal and assignment of its global portfolio of trademarks to PRC investors which had acquired a reputable SME in Singapore.
- Advised a Singapore company in relation to a US patent licensing agreement for the use of a crystal imaging technology.
- Advised an arithmetic educational franchisor on its standard franchising agreement to be signed with its 22 franchisees in Singapore.
- Advised a national mountain climbing team on its publication and photograph licensing agreements related to its publication of a commemorative book.
- Advised an established regional supplier in the drafting and reviewing of "back-to-back" agreements for hotel supplies to an international chain of hotels with a focus on IP issues.