






WENDY LOW

PARTNER

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.

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QUALIFICATIONS

- Advocate and Solicitor, Supreme Court of Singapore, 2000

PUBLICATIONS

- Halsburys laws of Singapore on e-commerce (2018)
- “Restraint of Trade: Freedom to Contract v Freedom to Trade in the Free Trade World”, Singapore Law Gazette article (April 2013)
- “A Commentary on Amendments to the Electronic Evidence Provisions in the Singapore Evidence Act”, Singapore Law Gazette (July 2012)

SELECT EXPERIENCE

Front-end & advisory 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

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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 “thumb drive” 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:

- [2016] SGHC 142 - *Qingdao Bohai Construction Group Co., Ltd v Goh Teck Beng & Ng Teck Chuan*
 - [2015] 4 SLR 781 - *Ship's Equipment Centre Bremen GmbH v Fuji Trading (Singapore) Pte Ltd and others and another suit*
- [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*

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- [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*

Media & Technology

- Acted for IPEX Cleantech Asia, a 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:

BusinessTimes

http://seas.org.sg/index.php?option=com_news&view=details&id=79&Itemid=138

- Advised one of the most established solar energy solutions providers 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.

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- 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 a 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.

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- 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:

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- [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 companies 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.

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- 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.
- 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.