

Resisting the Rampage: Winning Tips from Monster Energy’s Losing Streak

In the waning days of 2023, the Intellectual Property Office of Singapore (IPOS) handed Monster Energy Company (“MEC”) two opposition losses in quick succession. Typically, the ordinary Singaporean barely notices a trade mark opposition; however, the public sat up for this news: the applicant in one of the oppositions was K-pop giant YG Entertainment, and the opposed mark was the name of their newest girl group BabyMonster, which debuted in November 2023.

Social media, K-pop websites, and traditional news outlets buzzed with news of the BabyMonster opposition. The sudden interest in trade mark procedure led the national newspaper The Straits Times to publish an article titled “askST: What is a trademark opposition, and can anyone file one?” We dug into the legal decisions and online chatter to pull out three threads which can help weave a solid brand protection strategy.

1. How much enforcement is too much?

MEC’s approach to brand protection is no secret. Recent IPOS decisions involving MEC recount their numerous trade mark oppositions, often including pithy quotes like “not the Opponent’s first rodeo” and “frequent user of this tribunal’s services”. In summary, MEC have filed 52 notices of opposition in Singapore since 2012, with a full hearing held in eight cases:

Opposed Mark(s)	Opposition Outcome
GENTLE MONSTER	Unsuccessful
BABYMONSTER BABYMONSTERS	Unsuccessful
	Unsuccessful
	Unsuccessful
	Unsuccessful
SWEET MONSTER	Unsuccessful
	Unsuccessful
MONSTER STRIKE	Unsuccessful

Consumers too are aware of MEC's attempts to prevent others from using the word "monster" or beastly imagery. On Reddit threads in response to the BabyMonster opposition news, users cited reports of MEC's actions against Ubisoft's game previously known as "Gods and Monsters", Capcom's "Monster Hunter", and Pokémon (short for "Pocket Monsters").

The online sentiment is that MEC is over-zealous. However, as the Hearing Officer in the GENTLE MONSTER opposition pointed out, MEC is well within its legal rights (at least in Singapore). The issue therefore is not strictly legal in nature; rather, can trade mark owners hurt themselves by being too aggressive?

The answer probably depends on the target consumer. Groups that tend to be fiercely loyal to their brands of choice or their community, such as K-pop fans and gamers, may be more upset by oppositions they perceive as unreasonable, and more ready to take their views to the market. Consumers in less litigious jurisdictions, also, may find such behaviour unsettling. On the flip side, if the ardent enforcer itself has strong brand equity, it may be more confident that its customer base will not be rattled and may even view it as welcome publicity.

All of which brings us to **Tip #1**: Consumer characteristics matter in planning trade mark enforcement strategies. A strong global policy will be flexible enough to adapt to different consumer sensibilities in different cases and countries. For this, local counsel can often provide valuable insight into the perspective of the relevant consumer.

2. Are deep pockets needed to win?

The negative sentiment surrounding MEC's enforcement strategy stems from the impression that it is weaponising the system against smaller players. In the BabyMonster decision, the IP Adjudicator noted that MEC won 32 of their oppositions in Singapore simply because the applicants did not defend them. We are left to wonder whether these applicants would have won if the merits of their cases had been heard.

Legal costs to defend an opposition can be high in jurisdictions like the United States and Singapore, where detailed written submissions and oral arguments are involved. Government fees are also payable for participating in opposition proceedings. On the other hand, the winner of an opposition in Singapore may recover only around a third of the costs it incurred.

Some might say that this is just the cost of doing business. And from a legal standpoint, they would be correct (whether the law should be different is beyond the scope of this commentary). The good news is that there are other ways to narrow the resource gap.

Hence, **Tip #2**: Thorough clearance searches can sniff out potential roadblocks early on. A good lawyer can not only analyse the legal strength of those obstacles, but also estimate the real-world costs and risks of a conflict. Trade mark owners can then plan ahead and make an informed decision whether to budget for a potential fight or to tweak their branding before too much time and money has been sunk into it. Skipping these searches might seem tempting, but they're a worthy investment in a long-term brand protection plan.

3. Can we talk about co-opetition?

On social media, a recurring idea stands out: would MEC have done better to collaborate with YG Entertainment instead? Netizens highlighted the hit collab between South Korean eyewear brand Gentle Monster (also a target of an MEC opposition) and Blackpink star Jennie Kim (also a YG Entertainment personality) to illustrate a missed opportunity for MEC.

Brand collaborations are everywhere in today's world, from Supreme Oreos and McDonald's Crocs to Louis Vuitton x Riot Games and Dior x Nike campaigns. MEC itself is familiar with the concept – in the GENTLE MONSTER opposition, it submitted evidence of co-branding with the eyewear brands D.Franklin and Woodzee. Many companies now see collaborations as channels to reach new audiences and opportunities to showcase their brand values. This appeals to consumers who are increasingly brand-savvy and value-conscious, and a successful collab can significantly boost a brand's equity and goodwill in the market.

This is why we suggest **Tip #3**: Think of collaboration as another tool in a trade mark enforcement kit. Enforcement is typically associated with aggression and conflict. Yet its main goal – maintaining the strength and value of a trade mark – can sometimes be achieved by co-operation instead. Speaking of co-operation, a brand's creative and legal experts will need to work together to design an effective collab campaign that represents both parties without diluting either's trade marks.

In conclusion, a winning brand protection strategy balances proactive planning with nimble adaptation, playing both offense and defense in a collaborative world. The right tools, expertly wielded, hold the key to victory.



AnnaToh

Director

anna.toh@amicalaw.com

(65) 6303 6234

This article is intended to provide general information only and should not be relied upon as an exhaustive or comprehensive statement of law. Should you have any specific questions, please speak with one of our above contacts, or your usual contact at Amica Law LLC.

© 2024 Amica Law LLC. All rights reserved.