

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 1767 OF 2020

BETWEEN

DotPH Domains Inc.	1 st Plaintiff
NSPH Limited	2 nd Plaintiff
and	
Asia Spa and Wellness Promotion Council Limited	1 st Defendant
DotAsia Organisation Limited	2 nd Defendant
Namesphere Limited	3 rd Defendant
Chung Wang On Edmon	4 th Defendant
Lim Choon Sai	5 th Defendant
Sathees Babu Chellikattuveli Sivanandan	6 th Defendant
Atsushi Endo	7 th Defendant
Lianna Galstyan	8 th Defendant
Maureen Moari Marama Hilyard	9 th Defendant

DEFENCE OF THE 2ND DEFENDANT

1. Unless otherwise stated paragraph numbering and defined terms are those appearing in the Plaintiffs' Statement of Claim dated 19 October 2020 and acts of and attributable to each of Joel Disini, William Ng and Edmon Chung are respectively acts of and attributable to DotPH (in the case of Joel Disini), ASWPC (in the case of William Ng) and DotAsia and Namesphere (in the case of Edmon Chung).

PARTIES

2. Paragraph 1 is not admitted. It is averred that Joel Disini as DotPH's representative has from time to time represented to DotAsia that DotPH has carried on operations in the

Republic of the Philippines to administer that country's ".ph" TLD and DotAsia is otherwise unaware of the history and details of DotPH's corporate establishment, purpose and management.

3. Paragraph 2 is not admitted. DotAsia will plead further once the Plaintiffs have given further and better particulars as to the incorporation of the 2nd Plaintiff and the alleged agreement and the parties thereto.
4. Save that the correct name of the 1st Defendant is Asia Spa and Wellness Promotion Council Limited, Paragraph 3 is admitted. DotAsia avers that William Ng and entities owned by or associated with him have been DotAsia customers since around 2008 as purchaser of various ".asia" domain names and later known to Edmon Chung as interested in opportunities to promote the spa and wellness community.
5. Paragraph 4 is admitted, save that –
 - (a) DotAsia is the ICANN-designated registry operator in respect of the .asia TLD and sells ".asia" domain names through accredited registrars, rather than to accredited registrars; and
 - (b) DotAsia has in addition since 2011 supported the Special Administrative Region of Macao in the administration of the ".mo" TLD.
6. Paragraph 5 is not admitted. It is averred that –
 - (a) Namesphere was incorporated in Hong Kong on 21 March 2012 as a private company with liability limited by shares, the entirety of which were taken by DotAsia as founder member on incorporation and have at all material times remained registered in the name of DotAsia;
 - (b) None of the 10,000 issued shares in Namesphere subscribed on incorporation by DotAsia are or ever have been held on trust for any other person or entity;
 - (c) On 24 September 2020 Namesphere's sole shareholder resolved to increase its share capital from 10,000 shares to 33,335 shares by the creation of a further 23,335 shares and further resolved that the directors of Namesphere be granted general and unconditional approval to exercise any power of Namesphere to allot such shares;

(d) By 1 December 2020 Namesphere had received applications from each of DotPH, DotAsia and ER3 Limited (a company beneficially owned by Edmon Chung) to subscribe for the entirety of such shares;

(e) On 4 December 2020 the directors of Namesphere resolved to allot a further 4,667 shares to DotPH, a further 5,704 shares to ER3 Limited and a further 12,964 shares to DotAsia;

(f) As of the date of this Defence DotPH is interested in 14% of the enlarged capital of Namesphere;

(g) Namesphere has at all material times been directly and indirectly interested in the rights to various TLDs (including the .spa TLD) and various corporations carrying on the business of dealing in rights to TLDs.

7. Paragraph 6 is admitted. DotAsia avers that Edmon Chung's responsibilities as its Chief Executive Officer were at all material times subject to scrutiny and supervision of the DotAsia board of directors.

8. Paragraph 7 is not admitted. DotAsia avers that as regards the office of director of DotAsia

(a) The 5th Defendant has held office since 12 September 2006;

(b) The 6th Defendant has held office since 24 February 2018;

(c) The 7th Defendant held office from 12 September 2006 to 30 June 2020;

(d) The 8th Defendant held office from 24 February 2019 to 24 November 2020;

(e) The 9th Defendant has held office since 21 February 2016.

ALLEGED AGREEMENTS

9. Paragraph 8 is admitted, save that rights to new generic TLDs were announced by ICANN to be open by way of application to be made to ICANN. DotAsia further avers that following discussion between Edmon Chung and William Ng an application for the proposed .spa community generic TLD to serve the global spa and wellness community was submitted by ASWPC to ICANN, with registration completed on 29 March 2012 and full application submitted on or around 30 May 2012.

10. Paragraph 9 is not admitted. It is averred that –

- (a) In January 2012 the DotAsia board considered and adopted a business plan pursuant to which Namesphere would be formed initially as wholly-owned subsidiary and then promoted as a for-profit internet media real-estate company in response to perceived opportunities arising from anticipated deregulation of the domain registry industry (the “**Namesphere Initiative**”). The Namesphere Initiative would be funded by DotAsia and third parties to enable Namesphere to invest in applications for a portfolio of 20 to 25 TLDs, each of which would cost around US\$700,000, comprising US\$185,000 as application fee, US\$65,000 as ICANN processing fee and US\$450,000 to meet ICANN’s 3 years’ escrow requirement;
- (b) On 25 February 2012 DotAsia board discussed causing the Namesphere Initiative to invest in applications for community TLDs such as .movie, .film, .music and .art;
- (c) In or around late March 2012 Edmon Chung approached William Ng with the suggestion that the latter’s idea of promoting the spa and wellness would benefit from securing rights to a new .spa TLD and further suggested that the application for a .spa TLD be submitted as a community based application in the name of a suitable spa and wellness entity, albeit fully supported by the Namesphere Initiative, and William Ng agreed with the suggestion;
- (d) On 28 March 2012 DotAsia’s board noted that potential third party investors had queried whether DotAsia’s own directors were prepared to invest in Namesphere’s proposed applications and Joel Disini and Edmon Chung expressed to the DotAsia board their interest in investing;
- (e) By email of 1 April 2012 Edmon Chung on behalf of DotAsia acknowledged to Joel Disini the latter’s intention to invest US\$300,000 into the Namesphere Initiative, of which US\$60,000 would be dedicated towards the costs of making the application for the .spa TLD;
- (f) Edmon Chung informed Joel Disini that such application was to be made not in the name of Namesphere but in the name of an entity representative of the spa and wellness community;
- (g) Joel Disini intended that his US\$60,000 would represent a share of the rights and obligations of the .spa TLD application, the exact percentage of which remained to be confirmed with the spa and wellness community partner in whose entity’s name the application would be made;

- (h) By email exchange of 10 April 2012 Edmon Chung on behalf of DotAsia acknowledged to Joel Disini that the US\$60,000 of his US\$300,000 remittance would represent 30% of the .spa TLD application, that the .spa TLD would be shared equally with ASWPC and that there would be three participants interested in the .spa TLD application, William Ng as to 50%, Namesphere as to 20% and DotPH as to 30%;
- (i) On 18 April 2012 DotAsia's board noted that Joel Disini had remitted to DotAsia US\$300,000 of which US\$120,000 was to be committed to two TLD applications and that Edmon Chung had committed to invest US\$200,000 in Namesphere;
- (j) On 13 June 2012 ICANN revealed all new generic TLD applications received and posted public portions thereof on their website. The list included ASWPC's .spa community generic TLD application in which Namesphere and ARI Registry Services of Australia were named as partners to serve as front-end and back-end registry services providers respectively;
- (k) On 6 October 2012 DotAsia's board noted that the Namesphere TLD portfolio comprised applications for *inter alia* the .spa and .inc TLDs, both in respect of which Namesphere had a 50% interest and that such 50% interests included DotPH's 30% indirect interest in each of such TLDs;
- (l) On 26 August 2015 DotAsia's board noted that the application for the .spa TLD had met ICANN's community priority evaluation criteria but also that a competing applicant for the .spa TLD had filed a reconsideration request;
- (m) On 5 September 2018 DotAsia's board noted that discussions were underway for the withdrawal of a rival application for the .spa TLD;
- (n) On 12 October 2018 DotAsia's board noted that Joel Disini had begun to demand renegotiation of certain aspects of DotPH's involvement in the .spa TLD, including reevaluating Namesphere's role as front-end services provider, DotPH's potential role as back-end services provider, and the creation of stock options.
- (o) On 16 November 2018 ICANN updated the .spa TLD application status to "OK" indicating that ASWPC may proceed with contracting, and on 20 December 2018, ICANN indicated the expected execution of its registry agreement by 14 February 2019;
- (p) On 28 November 2018 DotAsia's board noted that the .spa TLD application as originally formulated was proceeding into contract negotiations with ICANN;

(q) Joel Disini was a member of DotAsia's board from January 2012 to February 2020 and was aware of materials considered and discussed in relation to the application for the .spa TLD, the form in which the application was made, the deadline and later extensions thereof by which ICANN expected its Registry Agreement (the "**ICANN RA**") to be executed and the partnering agreements to be made with Namesphere and ARI Registry Services.

11. DotAsia will plead further to Paragraph 9 once the Plaintiffs have given further and better particulars as to the identity of the alleged external partners.

12. The preamble to Paragraph 10 and Paragraph 10(a) are not admitted. DotAsia will plead further to Paragraph 10(a) once the Plaintiffs have given further and better particulars as to in whose name, if it so alleged, the Application was to be made.

13. Paragraph 10(b) is not admitted. DotAsia avers that DotPH's US\$60,000 contribution was towards the costs of making the .spa TLD application.

14. Paragraph 10(c) is denied. DotAsia avers that Edmon Chung consistently represented to Joel Disini that each of ASWPC and Namesphere would hold a 50% interest in the .spa TLD application and that DotPH would hold 60% of the Namesphere 50% interest. Any allegation that DotPH was to hold a direct interest at all in the .spa TLD is denied.

15. Paragraph 10(d) is not admitted. DotAsia will plead further to Paragraph 10(d) once the Plaintiffs have given further and better particulars as to the identity of the parties whose respective interests or stakes would be formally recognized or honoured and the parties who were to use reasonable endeavours to determine and/or negotiate a more detailed holding structure.

16. DotAsia repeats paragraphs 10(e) and 10(h) above and avers that –

(a) Nothing in the email of 1 April 2012 and email exchange of 10 April 2012 addressed the matter of responsibility for negotiating and working with ASWPC, neither did DotAsia make any oral representations to Joel Disini to that effect;

(b) Nothing in the email of 1 April 2012 and email exchange of 10 April 2012 addressed the manner in which the proposed interests in the .spa TLD would be settled, neither did DotAsia make any oral representations to Joel Disini to that effect;

- (c) Nothing in the email of 1 April 2012 and email exchange of 10 April 2012 addressed the manner in which a more detailed holding structure might be formally recognized and honoured, nor (beyond indication from DotAsia's Edmon Chung that a simple letter of understanding would be drawn up) whether and how a more detailed holding structure might be negotiated at a later date, neither did DotAsia make any oral representations to Joel Disini to that effect;
- (d) In response to Joel Disini's email request of 2 April 2012 Edmon Chung deferred the drawing up of a simple letter of understanding;
- (e) There was no discussion between DotAsia and Joel Disini as to how the respective interests of ASWPC, DotPH and Namesphere in the .spa TLD would be reflected until Joel Disini requested to be included in discussions with ASWPC's William Ng, and was included in around July 2018;
- (f) At no time prior to July 2018 had ASWPC inquired of DotAsia whether Namesphere would be representing other parties, nor had Joel Disini requested the interest be disclosed;
- (g) Between July and August 2018 DotAsia discussed with Joel Disini his offer to negotiate with remaining objectors and to take responsibility for launching the .spa TLD;
- (h) In September and October 2018 Joel Disini expressed reservations to DotAsia about the fairness of respective parties' interests in the .spa TLD, indicated his desire to sell his interest, repeatedly raised the prospect of DotAsia and DotPH buying out ASWPC and indicated that DotPH would be interested in being bought out by ASWPC;
- (i) In October 2018 Joel Disini expressed to Edmon Chung that he felt the .spa TLD situation was "quite tentative";
- (j) In December 2018 William Ng, Joel Disini and Edmon Chung had face-to-face meetings in Manila, Philippines where, in preparations for and shortly before the meetings, Joel Disini raised for the first time two preconditions to his participation in the .spa TLD, being (i) that he wished to operate a "storefront" in respect of the .spa TLD, and (ii) that ASWPC would cause the ICANN Agreement, once executed, to be assigned to a new entity to be co-owned by ASWPC, DotPH and Namesphere;
- (k) Edmon Chung and William Ng expressed concerns to Joel Disini's "storefront" precondition on the grounds that it might be perceived as *bona fide* registrar and so mislead the community;

- (l) William Ng, Joel Disini and Edmon Chung indicated willingness to proceed on the basis of a modified form of Joel Disini's assignment precondition, specifically that ASWPC would commit to assigning the ICANN Agreement in circumstances where either (i) a third party sought to buy out the .spa TLD outright, or (ii) ASWPC sought to liquidate its interest in the .spa TLD, but in all circumstances subject to ICANN approval;
- (m) In January 2019 DotPH's Joel Disini added two additional preconditions to his further participation in the .spa TLD, being that (i) that William Ng would agree not to be involved in day-to-day operational matters, and (ii) the ASWPC, DotPH and DotAsia relationship be reflected in suitable form of shareholder agreement to be drawn up and in which ASWPC's powers as 50% shareholder, in particular its power of veto, would only be exercisable in extreme circumstances;
- (n) Whatever agreement among DotAsia and DotPH as was reflected in the email of 1 April 2012 and email exchange of 10 April 2012 lacked contractual force on account of being so vague and uncertain that no definite meaning could be given to it without the addition of further terms.

17. Paragraph 11 is not admitted. DotAsia will plead further once the Plaintiffs have given further and better particulars as to whom the alleged payment was made and by whom it was made.

18. Paragraph 12 is not admitted. It is averred that DotAsia, acting principally through Edmon Chung, undertook to DotPH to enter into discussions with ASWPC's William Ng for the benefit of DotAsia's Namesphere with the intention of negotiating terms of an agreement to be made between DotAsia's Namesphere (on the one hand) and William Ng's ASWPC (on the other) in relation to proposed cooperation in (a) making a community-based application to ICANN for the .spa TLD and, in the event such application were successful, (b) owning and exercising all rights to and obligations in respect of the .spa TLD and (c) partnering with ASWPC in the provision of front-end and/ or back-end services in respect of the .spa TLD.

19. Paragraph 13 is not admitted. DotAsia avers that –

- (a) Nothing in any email, telephone or face-to-face conversation between Edmon Chung and Joel Disini in or around April 2012 addressed the matter of DotAsia and DotPH cooperating in the provision of services, whether front-end or back-end or otherwise, or partnering with ASWPC in any other manner;

- (b) Nothing in any email, telephone or face-to-face conversation between Edmon Chung and Joel Disini in or around April 2012 addressed the manner in which the provision of services, whether front-end or back-end or otherwise, or partnering with ASWPC might be settled;
- (c) Nothing in any email, telephone or face-to-face conversation between Edmon Chung and Joel Disini in or around April 2012 addressed whether any provision of services, whether front-end or back-end or otherwise, or partnering with ASWPC might be reflected in a more detailed holding structure to be formally recognized and honoured or negotiated at a later date;
- (d) In order for DotPH to have supported the .spa TLD application as alleged by providing any or all of the required operational services DotPH would have had to meet ICANN generic TLD requirements;
- (e) DotPH did not operate a generic TLD under ICANN requirements at the material time, nor does it so operate as of the date of this Defence;
- (f) Joel Disini was at all material times informed that the .spa TLD application was to be made in the name of ASWPC with support of financial and personnel resources, along with Internet-specific expertise and know-how provided by DotAsia, also that DotAsia's Edmon Chung was named as primary contact in the submission of the ASWPC .spa community generic TLD application to ICANN;
- (g) In September 2018 Joel Disini raised with Edmon Chung the prospect of DotPH operating a "storefront" with dedicated storefront domain link to the .spa TLD and the possibility of DotPH providing back-end services to the .spa TLD;
- (h) Discussions between DotAsia's Edmon Chung and Joel Disini in September 2018 also included Joel Disini's proposal that incentive stock options be set aside to be awarded to those entities actually operating the .spa TLD, the effect of which would dilute ASWPC's interest;
- (i) Whatever discussions took place between Edmon Chung and Joel Disini in or around April 2012 did not amount to any agreement among DotAsia and DotPH either as pleaded or at all and in any event lacked contractual force on account of being so vague and uncertain that no definite meaning could be given to the same without the addition of further terms.

20. DotAsia will plead further to Paragraph 13 once the Plaintiffs have given further and better particulars as to –

- (a) through whom ASWPC acted in reaching the alleged Cooperation Agreement with DotAsia;
- (b) whether it is alleged that intended support for the alleged Application on the part of DotPH in the form of responsibility for actual operations of the .spa TLD was disclosed to ASWPC by Edmon Chung acting for DotAsia;
- (c) whether it is alleged that DotPH's intended direct/indirect 30% interest in the .spa TLD was disclosed to ASWPC by Edmon Chung acting for DotAsia;
- (d) the identities of the parties whose respective interest or stake would be formally recognized;
- (e) whether it is alleged that participation on the part of DotPH in a more detailed holding structure was disclosed to ASWPC by Edmon Chung acting for DotAsia;
- (f) whether it is alleged that Edmon Chung acting for DotAsia disclosed to ASWPC that DotPH was to use reasonable endeavours to determine and/or negotiate a more detailed holding structure; and
- (g) whether it is alleged that the parties' obligations to use reasonable endeavours to determine and/or negotiate a more detailed holding structure were to be fulfilled by a particular date and, if so, the date.

21. Paragraph 14 is not admitted. DotAsia will plead further to Paragraph 14 once the Plaintiffs have given further and better particulars as to the party in whose name the alleged Application had been made and when such Application had been made.

22. Paragraph 15 is not admitted. DotAsia avers that

- (a) Such third party objections as had been withdrawn concerned appeals by competing .spa TLD applicants only;
- (b) From 16 November 2018 when ICANN updated the .spa TLD application status to "OK" indicating that it may proceed to contracting, on 20 December 2018 ICANN imposed

an initial execution deadline of 14 February 2019 followed by multiple extensions to execution deadlines of 21 March 2019, 22 April 2019, 22 May 2019, 19 June 2019, 16 August 2019 and a final execution deadline of 16 September 2019;

- (c) The extended execution deadlines were necessarily sought by ASWPC and obtained from ICANN in part to protracted difficulties in securing DotPH's input to, comments on and execution of suitable agreements with ASWPC and Namesphere as is more particularly pleaded at paragraph 27 below.

23. Paragraph 16 is not admitted. It is averred that ASWPC executed the ICANN RA in standard form (save for Specification 12 on community TLD provisions) on 15 September 2019 with an effective date of 19 September 2019 and pursuant to which ASWPC was designated as registry operator entitled to provide registry services (as defined in the ICANN RA) for the .spa TLD for a renewable term of 10 years. Terms of the ICANN RA inter alia –

- (a) Required ASWPC to register all domain name registrations in the TLD through ICANN accredited registrars and to notify ICANN in the event ASWPC were to become an affiliate or reseller of an ICANN accredited registrar;
- (b) Required ASWPC to maintain in the form of irrevocable standby letter of credit or irrevocable cash escrow deposit financial resources sufficient to ensure continued operation of registry services for a period of up to three years;
- (c) Required ASWPC to abide by a code of conduct requiring transparency and equality of treatment;
- (d) Required ASWPC to implement and comply with ICANN community registration policies;
- (e) Provided that neither ASWPC nor ICANN may unilaterally assign rights and obligations conferred by the ICANN RA;
- (f) Provided that notices served on ASWPC were to be addressed care of DotAsia.

INTERESTS IN THE .SPA TLD

24. Paragraph 17 is not admitted. It is averred that –

- (a) DotAsia through its then wholly-owned subsidiary Namesphere instructed Edmon Chung to engage in discussions with ASWPC to support a community generic TLD application to ICANN for designation of ASWPC as registry operator of the .spa TLD;
- (b) Notwithstanding the fact that Joel Disini had, when holding appointment as director of DotAsia, expressed interest in participating as investor in such application, Edmon Chung was not asked to mention Joel Disini's interest to William Ng until around July 2018 when Joel Disini specifically requested him to do so; paragraph 16(f) above is repeated;
- (c) From around July 2018 Joel Disini joined the course of discussions between Edmon Chung and William Ng in relation to ASWPC's application to ICANN for designation as registry operator of the .spa TLD.

25. Paragraph 18 is denied. It is averred that –

- (a) It was only in the immediate preparation for and attendance at face-to-face meetings in Manila that William Ng, Joel Disini and Edmon Chung first discussed proposals to reflect in terms of enforceable contractual agreements the in-principle understanding previously reached that the .spa TLD would be owned by ASWPC as to 50% and by Namesphere as to 50% with DotPH indirectly interested in 30% by virtue of taking 60% of Namesphere's 50% interest;
- (b) As preparation for the Manila meetings DotAsia's Edmon Chung drafted and circulated among ASWPC's William Ng and DotPH's Joel Disini a document titled ".spa kickoff meeting" (the "**Manila Meeting Agenda**") listing items for discussion and agreement, including as to proposed corporate structure (i) contract with ICANN, (b) establishment of a proposed new entity DotSpa Ltd, (c) contract between ASWPC and DotSpa Ltd, and (d) assignment (or not) of the .spa TLD to DotSpa Ltd;
- (c) The Manila Meeting Agenda further listed operational considerations proposing either ARI Registry Services or Neustar as back-end services provider and Namesphere as front-end services provider, along with launch and market development matters including whether or not a retail storefront should be operated by the registry as a registrar;
- (d) No agreement was reached at the meeting in Manila between ASWPC, DotPH and DotAsia as to the immediate assignment of the .spa TLD to a new entity, whether DotSpa Limited or any other entity, as alleged;

- (e) Such agreement as was reached at the meeting in Manila between ASWPC, DotPH and DotAsia on the matter of assigning the .spa TLD from ASWPC, either to the proposed new DotSpa Ltd or any other entity, was predicated and conditional upon ASWPC ceasing to participate in the .spa TLD venture or upon ASWPC, DotPH and DotAsia together causing a sale of the .spa TLD venture and in all circumstances conditional upon securing ICANN consent;
- (f) Joel Disini and Edmon Chung did discuss at the meeting in Manila the prospect of forming a corporate entity such as NSPH, to be owned by DotPH as to 60% and by Namesphere as to 40% but with equal voting rights as was the case with DotAsia's interest in the .mo TLD for Macao but no agreement was reached at the meeting in Manila between DotPH and DotAsia as to the formation of NSPH Limited as alleged.

26. DotAsia will plead further to Paragraph 18 once the Plaintiffs have given further and better particulars as to -

- (a) The identities of the parties alleged to have engaged in discussions concerning the detailed holding structure;
- (b) Through whom it is alleged in the alternative that DotAsia acted on behalf of DotPH;
- (c) Whether the discussions and agreement among Namesphere, DotPH and ASWPC acknowledged that assignment of the .spa TLD was nevertheless conditional upon ICANN approval;
- (d) The identity of the person or party who would grant the alleged unconditional right to Dotspa Limited;
- (e) When Dotspa Limited was formed and by whom;
- (f) The ownership and management of Dotspa Limited.

27. Paragraph 19 is denied. DotAsia avers that –

- (a) In December 2018 and following meetings held in Manila among William Ng, Joel Disini and Edmon Chung, Joel Disini volunteered to draft ideas for a proposed form of agreement to be considered between ASWPC (on the one hand) and Namesphere/ DotPH (on the other hand) but failed to do so;

- (b) On 18 and 19 December 2018 Edmon Chung circulated among William Ng and Joel Disini draft agreements titled “.spa TLD Agreement” and “DotSpa Shareholder Agreement” (together, the “**December 2018 Agreements**”).
- (c) In January 2019 and following meetings of DotAsia’s directors on 19 December 2018 and 28 December 2018 Edmon Chung sent Joel Disini updated draft agreements titled (a) “.spa TLD Agreement” and (b) “Dotspa Shareholder Agreement” and further sent to Joel Disini a draft “Namesphere Front-End Registry Services Provider Agreement” (together, the “**January 2019 Agreements**”), terms of which, in accordance with Joel Disini’s specific instructions, were to be confirmed firstly by DotPH before being sent to ASWPC;
- (d) DotPH did not and as of the date of this Defence still has not provided comments to Edmon Chung in respect of the January 2019 Agreements;
- (e) William Ng has provided comments on the December 2018 Agreements and has in particular insisted to Edmon Chung that any commitment to assign the .spa TLD otherwise than as was contemplated in the meetings in Manila cannot be unconditional and must recognize ICANN’s right to refuse the same;
- (f) Continued failure on the part of Joel Disini to comment on and negotiate in good faith the terms of the January 2019 Agreements contributed materially towards ASWPC repeatedly deferring meeting ICANN registry agreement execution conditions;
- (g) ASWPC sought six extensions of time from ICANN due in part to DotPH’s continued refusal to enter into negotiations and complete the January 2019 Agreements before finally executing the ICANN RA on 15 September 2019 and immediately prior to ICANN’s stated final deadline of 16 September 2019.

28. Insofar as alleged failings pleaded at Paragraph 20 on the part of Edmon Chung are attributable to DotAsia Paragraph 20 is denied. It is averred that pursuant to the authority vested in him as DotAsia chief executive officer Edmon Chung drafted and circulated agreements as ASWPC, DotPH and DotAsia had agreed in the meeting in Manila and DotAsia repeats paragraph 27 above.

29. Paragraph 21 does not concern DotAsia and DotAsia neither admits nor denies the allegations therein.

30. Paragraph 22 is not admitted. DotAsia will plead further to Paragraph 22 once the Plaintiffs have given further and better particulars as to –

(a) The identities of the relevant parties;

(b) The dates, occasions and circumstances in which Joel Disini allegedly repeatedly reminded the 5th to 9th Defendants to procure DotAsia and in turn Namesphere to ensure that a simple shareholders' agreement with ASWPC was executed;

(c) Whether Joel Disini declared to the board of DotAsia his interest in DotPH when allegedly repeatedly reminding the 5th to 9th Defendants.

31. Paragraph 23 concerns the 5th to 9th Defendants exclusively and DotAsia neither admits nor denies the allegations therein.

32. Paragraph 24 is not admitted. DotAsia will plead further to Paragraph 24 once the Plaintiffs have given further and better particulars as to the nature of the alleged interests of DotPH and/or Namesphere in the .spa TLD.

33. Paragraph 25 as it relates to the allegation of the 18 September 2019 DotAsia board meeting is admitted, save that by email of 30 August 2019 the chairman of the DotAsia board of directors meetings gave Joel Disini tentative notice of the said meeting, followed by formal notice given on 12 September 2019 and on 17 September 2019 caused the agenda to be given, listing under the first item of business “.SPA and related progress and proceeding”. DotAsia avers that it was not until 19 September 2019 that Joel Disini attempted to join the 18 September 2019 DotAsia board meeting.

34. Insofar as it is alleged at Paragraph 25 that the resolutions identified at Paragraph 25(a) and Paragraph 25(b) amounted to an abandonment by DotAsia of the equity interest held through Namesphere in the .spa TLD such allegation is denied. It is averred that prior to passing such resolutions the DotAsia board noted that ASWPC had expressed concerns at delays in coming to an acceptable agreement with Namesphere and the DotAsia board was aware that any continuation of such delays would jeopardise grant of the .spa TLD by ICANN.

35. It is averred that the expression “another partner” in the resolution identified at Paragraph 25(b) concerned the role of providing front-end, back-end and other support services and in no way referenced or concerned any equity interest or commercial rights in the ownership of the .spa TLD.

36. Paragraph 26 is not admitted. The agenda for the 18 September 2019 DotAsia board meeting included the item titled “.SPA and related progress and proceeding”. DotAsia repeats paragraph 33 above.
37. Paragraph 27 is not admitted. DotAsia repeats paragraph 23(e) above. DotAsia will plead further to Paragraph 27 once the Plaintiffs have given further and better particulars as to of whom the alleged demands by DotPH were made.
38. Paragraph 28 does not concern DotAsia and is not admitted.
39. Paragraph 29 is not admitted. DotAsia will plead further to Paragraph 29 once the Plaintiffs have given further and better particulars as to when and in what manner DotPH allegedly demanded of DotAsia explanation of steps being taken to protect and secure Namesphere and DotPH’s interests in the .spa TLD.
40. Paragraph 30 is not admitted. DotAsia repeats paragraphs 27 and 28 above and avers that when the .spa TLD application faced the final ICANN RA execution deadline of 16 September 2019 DotAsia encouraged ASWPC to execute the ICANN RA notwithstanding that efforts to formalize a suitable relationship had not materialized and confirmed to ASWPC that DotAsia and its related companies would continue to serve and retain a stake in the .spa TLD. DotAsia will plead further to Paragraph 30 once the Plaintiffs have given further and better particulars as to the nature of the alleged interests of DotPH and/or Namesphere in the .spa TLD.
41. Paragraph 31 is not admitted. DotAsia will plead further to Paragraph 31 once the Plaintiffs have given further and better particulars as to
- (a) The identities of the persons intending that NSPH be the corporate vehicle as alleged;
 - (b) The occasions when and manner in which Namesphere had been invited to nominate directors to the board of NSPH as alleged; and
 - (c) The identities of the persons extending invitations to Namesphere to nominate directors as alleged.
42. Paragraph 32 is not admitted. DotAsia will plead further to Paragraph 32 once the Plaintiffs have given further and better particulars as to
- (a) The issued capital of NSPH;

(b) How the alleged trust in respect of shares alleged held for Namesphere came to exist;

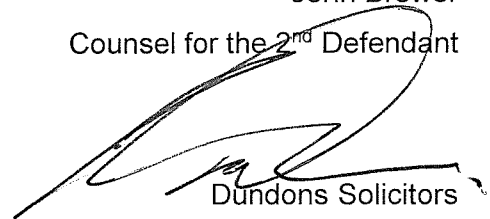
(c) The form of the alleged trust in respect of shares allegedly held for Namesphere.

43. By reasons of the matters pleaded in paragraphs 1 to 42 above the Plaintiffs are not entitled to the relief claimed against DotAsia.

44. Save as expressly admitted in this Defence DotAsia denies each and every allegation contained in the Statement of Claim as if the same were set forth herein and traversed seriatim.

Dated this 7th day of December 2020.

John Brewer
Counsel for the 2nd Defendant

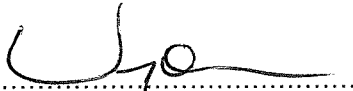
A handwritten signature in black ink, appearing to read 'John Brewer', is written over the typed name and title.

Dundons Solicitors
Solicitors for the 2nd Defendant

STATEMENT OF TRUTH

I, CHUNG Wang On Edmon, director of DotAsia Organisation Limited, being 2nd Defendant named in the action herein, believe that the facts stated in the Defence of the 2nd Defendant are true. I am duly authorized to sign this Statement of Truth for and on behalf of the 2nd Defendant.

For and on behalf of
DotAsia Organisation Limited


.....
CHUNG Wang On Edmon
Director

7 December 2020
.....
Date

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. 1767 OF 2020

BETWEEN

DotPH Domains Inc. 1st Plaintiff

NSPH Limited 2nd Plaintiff

and

Asia Spa and Wellness 1st Defendant

Promotion Council Limited

DotAsia Organisation Limited 2nd Defendant

Namesphere Limited 3rd Defendant

Chung Wang On Edmon 4th Defendant

Lim Choon Sai 5th Defendant

Sathees Babu Chellikattuveli 6th Defendant

Sivanandan

Atsushi Endo 7th Defendant

Lianna Galstyan 8th Defendant

Maureen Moari Marama Hilyard 9th Defendant

DEFENCE OF THE 2ND DEFENDANT

Dated this 7th day of December 2020

Filed on the 7th day of December 2020

Dundons Solicitors
Solicitors for the 2nd Defendant
Rooms 1802-1803, 18/F Lucky Building
39-41 Wellington Street
Central, Hong Kong
Tel: 2971-0386 Fax: 2971-0382
Our Ref: DS193972B-AW
High Court Registry Mail Box No. 199