

Associates

合夥人

助理律師

Your Ref :
Date : 12th May 2021

Our Ref : LG-21224/EL
Reply to : Mr. S. W. Lung /
Ms. Edith Lee

BY EMAIL

Registrars

and

To Whom It May Concern

URGENT

Dear Registrars,

Re: HCA 1767/2020 – in relation to .spa TLD
1st Plaintiff: DotPH Domains Inc.
2nd Plaintiff: NSPH Limited
1st Defendant: Asia Spa and Wellness Promotion Council Limited (“ASWPC”)
2nd Defendant: DotAsia Organisation Limited
3rd Defendant: Namesphere Limited
4th Defendant Chung Wang On Edmon
and others

We write to update you on the position with selling .Spa domain names.

As you may know, we have been provided with your name, and a copy of the email sent to you on 23 April 2021 by the .Spa Registry (“onboard@nic.spa”), as well as a copy of your Registrar agreement with the .Spa registry. The .Spa Registry was ordered by the Court in Hong Kong to provide us with this information, so that we can monitor whether the .Spa Registry is complying with several Court orders made against it.

The Court orders are very specific:

1. ASWPC must stop selling .spa domains - by itself, or by or through its agents including Registrars;
2. ASWPC cannot allow or permit any of its Registrars to sell any .spa domains.

There is one exception to both of these clauses - where there is an existing contract that mandates that any such sales must go ahead.

The RRA you have with the .Spa Registry is not such a contract - it does not mandate that any domains have to be sold, either specifically, or generally. As you know, the RRA is an accreditation¹ that allows you from time to time to sponsor domains² in the .Spa Registry.

.Spa domains that you sponsor in the .Spa Registry that are not covered by a specific contract existing as at 19 April 2021 should not be accepted by ASWPC. ASWPC is in breach of the Court order in accepting each of those entries in the Registry database, and in billing you on each occasion for such domains.

The RRA does require you³ to warn your registrants, in writing, that the .Spa Registry reserves the right to cancel any registrations, to “correct mistakes”. We believe that breach of a Court order is that kind of mistake. Our clients will seek orders to cancel all registrations accepted by the .Spa Registry in breach of the Court order. You should alert any existing registrants, and any intending registrants of the Court order, and of the likelihood that any .spa domains registered are likely to be cancelled – unless they have a contract dating before 19 April 2021 requiring ASWPC, or you, to register their domains.

The RRA also requires you to notify registrants in writing that they have to “comply with .Spa Registry Acceptable Use policies and terms of service”⁴. Clause 8.1 of the Spa polices provides:

“... the Registry retains the ultimate discretion to reject or refuse any domain name sought to be registered by an applicant”⁵

Further, the Registry may cancel any domain in its sole and absolute discretion⁶, and is not liable for any loss or expenses⁷ arising from cancellation. Finally a registrant agrees that its Spa domain may be cancelled by the Registry as part of resolving a dispute.⁸

The email that you received from ASWPC says :

“For the avoidance of doubt, the Order is made against ASWPC only. These written directions do not affect the rights and obligations arising under contracts entered into between ASWPC and its Agents/Service Providers, including any registry-registrar agreements”

Read together with ASWPC’s earlier email to you dated 20 April 2021, ASWPC appears to be saying that all business under existing RRAs shall continue as usual. If so, this is misleading and mis-states the injunction order.

You should be aware that our clients are seeking a 50% interest in the .Spa TLD, on the basis of long-standing contractual agreements. Once that is achieved, the .Spa Registry will look forward to resuming normal business relations with you, and all other Registrars unfortunately affected by this dispute.

¹ See Clause 2.1 of your RRA

² See Clause 1.23 RRA – and for Registrar Services generally see Clause 1.15

³ See Clause 3.4 RRA

⁴ Also in Clause 3.4 RRA

⁵ See <http://www.nic.spa/doc/REGISTRATION%20POLICY.pdf>

⁶ Clause 8.2, Spa Policies

⁷ Clause 8.3, Spa Policies

⁸ Clause 9.3, Spa Policies

Please do not hesitate to contact us at edith@solung.com or (852) 3896 2600 if any further information is required.

Yours faithfully,



So, Lung & Associates
LSW/EL