



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 FINANCIAL SERVICES DIVISION

CAUSE No. FSD 162 OF 2024 (DDJ)

BETWEEN:

1. TECHNOLOGY INVESTMENT CONSORTIUM LLC
2. POSITION MOBILE SEZC LTD

Plaintiffs

-and-

1. EAST END TECHNOLOGIES LIMITED
2. EIGHTPOINT TECHNOLOGIES SEZC LTD
3. SPIGOT INC
4. GENIMOUS TECHNOLOGY CO. LTD
5. ZHIFENG CHEN
6. JOHN LASH
7. DEEMING HE
8. HUANG YING
9. CODY MILLER
10. ADVANCED COMMERCE SOLUTIONS INC

Defendants

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AMENDED WRIT OF SUMMONS

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TO:

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <p>East End Technologies Ltd<br/>Carey Olsen Services Cayman Limited<br/>Willow House, PO Box 1008<br/>Cricket Square, George Town<br/>Grand Cayman, KY1-1001</p>                                                                                               | <p>Eightpoint Technologies Ltd<br/>SEZC<br/>Carey Olsen Services Cayman Limited<br/>Willow House, PO Box 1008<br/>Cricket Square, George Town<br/>Grand Cayman, KY1-1001</p> | <p>Spigot, Inc<br/>9961 Interstate Commerce Dr<br/>#210Willow<br/>Fort Myers<br/>Florida, 33913<br/>USA</p>                   |
| <p>Genimous Technology Co. Ltd<br/>Room 401 (Part 8), Sector III of<br/>No. 56 Fenghuang South Road,<br/>Xinya Street, Huadu District,<br/>Guangzhou, Guangdong, China<br/>Post Code: 510806<br/>广州市花都区新雅街凤凰南路 56<br/>之三 401 室 (部位之 8) , 邮政<br/>编码: 510806。</p> | <p>Mr Zhifeng Chen<br/>No. 51 Xirongxian Hutong<br/>District Xicheng,<br/>Beijing, China</p>                                                                                 | <p>Mr John Lash<br/>108 Castile Ridge Road<br/>Marianna, PA<br/>USA 15345</p>                                                 |
| <p>Mr Deming He<br/>No. 802, Gate 13, Building 7,<br/>Beiyuan Road #86<br/>Chaoyang District<br/>Beijing, China, 100020</p>                                                                                                                                     | <p>Huang Ying<br/>No. 51 Xi Rong Xian Lane,<br/>Beijing, China</p>                                                                                                           | <p>Mr Cody Miller<br/>The Strathvale House, 90 North<br/>Church Street, George Town,<br/>Grand Cayman, Cayman<br/>Islands</p> |
| <p><a href="#"><u>Advanced Commerce Solutions Inc</u></a><br/><a href="#"><u>10012 Gulf Center Dr., Suite 5, #258</u></a><br/><a href="#"><u>Fort Myers, FL 33913</u></a><br/><a href="#"><u>USA</u></a></p>                                                    |                                                                                                                                                                              |                                                                                                                               |

THIS **AMENDED** WRIT OF SUMMONS has been issued against you by the above-named plaintiffs in respect of the claim set out in the accompanying Statement of Claim.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.



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Issued this 23<sup>rd</sup> day of May, 2024

NOTE - This Amended Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

**THIS Amended Writ** was issued by Dentons, Attorneys for the plaintiffs, whose address for service is 2<sup>nd</sup> Floor, One Capital Place, Shedden Road, George Town, Grand Cayman



COURT OF THE CAYMAN ISLANDS

CAUSE No. FSD 162 OF 2024 (DDJ)

SERVICES DIVISION

- 1. TECHNOLOGY INVESTMENT CONSORTIUM LLC
- 2. POSITION MOBILE SEZC LTD

Plaintiffs

-and-

- 1. EAST END TECHNOLOGIES LIMITED
- 2. EIGHTPOINT TECHNOLOGIES SEZC LTD
- 3. SPIGOT INC
- 4. GENIMOUS TECHNOLOGY CO. LTD
- 5. ZHIFENG CHEN
- 6. JOHN LASH
- 7. DEMING HE
- 8. HUANG YING
- 9. CODY MILLER
- 10. ADVANCED COMMERCE SOLUTIONS INC

Defendants

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AMENDED STATEMENT OF CLAIM

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- 1. Position Mobile SEZC Ltd ('PM') is a Cayman Islands company incorporated within the special economic zone. Technology Investment Consortium LLC ('TIC') is a Cayman Islands company, which at all material times held 49% of the shares in PM. It is the Plaintiffs' case that the intellectual property of PM was unlawfully provided to and/or copied by various companies and individuals as hereinafter described for the benefit of those Defendants, resulting in loss to the Plaintiffs.

2. TIC brings the following claims on its own behalf and/or derivatively on behalf of PM for the reasons hereinafter set out, the majority of the board of PM having refused without cause to intimate, threaten or institute proceedings against any of the Defendants for any of the relief named herein.
3. The shareholders of TIC are Ryan Stephens, Justin Lee, Cody Mahaffey, Daniel Miller and Nicholas Jackson.
4. Genimous Investment (Hong Kong) Co and Genimous Holding (HK) Limited are Hong Kong companies. Between them, those companies hold 51% of the shares in PM. Each of those companies is a wholly owned subsidiary of Genimous Technology Co. Ltd, a listed entity organised under the laws of the People's Republic of China and traded on the Shenzhen stock exchange under ticker SHZ000676 ('GTCL'). Collectively, these companies shall be referred to as 'Genimous Group'.
5. Pursuant to the Articles of Association of PM, Genimous Group were entitled to appoint 3 of the 5 directors required (the 'GGDs'). The GGDs were at all material times:
  - a. Zhifeng Chen;
  - b. John Lash;
  - c. Deming He until 31 December 2022; and
  - d. Huang Ying from 1 January 2023, onwards.
6. The remaining 2 directors of PM at all material times were Ryan Stephens and Cody Mahaffey, who were appointed by TIC.
7. Each of the directors of PM owed the company fiduciary duties including but not limited to:
  - a. to act within their powers;
  - b. to promote the success of PM;
  - c. to exercise independent judgment;
  - d. to exercise reasonable care, skill and diligence;
  - e. to avoid conflicts of interest;
  - f. not to accept benefits from third parties; and
  - g. to declare any interest in a proposed transaction or arrangement with PM.

8. PM was incepted and served as a corporate vehicle for a joint enterprise between TIC and Genimous Group to develop and produce mobile phone applications ('Apps') for sale. PM commenced trading on 1 October 2019.
9. Members of TIC and certain Genimous Group companies, including the Fourth Defendant, signed a non-binding Term-Sheet concerning the venture that would become PM, dated 11 April 2019 (the 'Term-Sheet'). The material terms of the Term-Sheet were as follows:
  - a. PM was to operate a mobile internet advertisement business on the basis of voluntary, equal, mutual benefits and trust (Recital A);
  - b. PM was intended to represent a joint venture (Clause A);
  - c. PM should be owned 49/51 in favour of the Genimous Group (Clause C);
  - d. PM should have 5 directors, 3 appointed by the Genimous Group and 2 by the Petitioner, which board would meet at least once every quarter (Clause G1);
  - e. All transactions between Genimous Group and PM would be conducted at arm's-length (Clause G2).
10. Upon commencement of trading, PM entered into, amongst other agreements, a Research and Development Agreement (the 'R&D Agreement') with Spigot Inc, the Third Defendant in this proceeding ('Spigot'). Spigot is a Nevada company operating predominantly in Fort Myers, Florida, USA. Spigot is wholly owned by Genimous Group. The GGDs were also directors of Spigot at all material times.
11. The purpose of the R&D Agreement was to secure software development services from Spigot for the benefit of PM. The material terms of the R&D Agreement are as follows:
  - a. That Spigot would hold PM's 'Proprietary Information', as defined in the R&D Agreement and set out below, in trust and confidence and would not disclose or use that Proprietary Information in any manner or for any purpose not expressly set out in the R&D Agreement (clause 4.1);
  - b. 'Proprietary Information' would include: '*... (a) non-public information related to [PM]'s current or proposed business, (b) software code, algorithms, mask works, trade secrets, inventions, formulas, source code, executable and object codes, APIs, user interfaces,*

*subroutines, IP cores, net lists, know-how, improvements, developments, drawings, reports, designs, techniques, works of authorship, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces [sic], websites, and other forms of technology...; and (c) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers, and customers.'* (clause 4.1);

- c. That PM would have sole and exclusive ownership of all work product, finished or unfinished, and all related know-how, trade secrets, ideas, software (whether in source, object or executable mode), or other copyrightable or patentable works solely or jointly conceived, authored, created, developed or reduced to practice under the auspices of the R&D Agreement (clause 4.5);
  - d. That Spigot would irrevocably assign any and all rights in all work product to PM and agreed that Spigot would retain no right to use that work product (clause 4.6); and
  - e. That Spigot would not accept work or enter into a contract or an obligation inconsistent with its obligations to PM under the terms of the R&D Agreement (clause 4.3).
12. Further and in any event, the intellectual property ('I/P') developed by Spigot and belonging to PM, along with all marketing strategies, future development and business plans and all know-how developed by Spigot while working on PM projects, were Proprietary Information under the terms of the R&D Agreement and at all material times amounted to confidential information belonging to PM. The Plaintiffs will refer to the R&D Agreement at trial for its full terms and effect.
13. On the same date, PM entered into an Intangible Asset Purchase Agreement ('IAPA') with Eightpoint Technologies SEZC Ltd ('Eightpoint'), a Cayman Islands company wholly owned by Genimous Group. Under the terms of the IAPA, PM purchased certain I/P identified in the IAPA from Eightpoint for the sum of USD 4,400,000, which included mobile intangibles and future mobile monetisation rights that had been developed by Spigot for PM and were housed under Eightpoint until PM was spun up and made operational. Eightpoint retained no interest in any of the I/P purchased by PM under that agreement. The Plaintiffs will refer to the IAPA at trial for its full terms and effect.
14. Cody Miller, the Ninth Defendant, is President of Eightpoint and was, at all material times, Treasurer of PM. Mr Miller is also a director of Spigot.

15. East End Technologies Ltd ('EET'), the Second Defendant, is a Cayman Islands company owned by Genimous Group and held by Eightpoint.
- 15A. Advanced Commerce Solutions, Inc ('ACS'), the Tenth Defendant, is a company incorporated in Nevada and headquartered in Florida, USA. It is a wholly owned, whether directly or indirectly, subsidiary of GTCL. The Eighth Defendant, Huang Ying, is a director of ACS.
16. Following the commencement of trading, PM's business grew rapidly over 2019 and into 2021 and became profitable.
17. In or around the fourth quarter of 2021, Mr Pete Wong, then CEO of Spigot acting on behalf of Genimous Group, sought to persuade TIC to sell its shares in PM for USD 5.5 million. TIC avers that Mr Wong impressed upon its members as part of his attempt that:
- a. Genimous Group had the first right of refusal on TIC's shares;
  - b. TIC could not sell its shares without Genimous Group approval, pursuant to the Articles of PM;
  - c. Should TIC not accept Genimous Group's proposal, no new Apps would be developed for PM;
  - d. Should TIC not accept Genimous Group's proposal, two of its members, Mr Jackson and Mr Miller, would be terminated from their positions at Spigot; and
  - e. Should TIC not accept Genimous Group's proposal, Genimous Group would cause the transfer of the I/P held by PM to other companies wholly owned by Genimous, leaving PM valueless.
18. TIC elected not to engage with Mr Wong's overtures and indicated an unwillingness to sell its shares for USD 5.5 million by text message in late December 2021. At the material time, TIC estimated the true value of its interest in PM to be at or about USD 50 million.
19. On 5 January 2022, Mr Stephens, in his capacity as a director of PM appointed by TIC, wrote to the PM board, setting out various concerns connected with corporate governance and the apparent cessation of directors' meetings. On 13 January 2022, Mr Stephens sent a separate email seeking to arrange a meeting of the board to address corporate governance, amongst other things. No such meeting took place.

20. On 17 January 2022, Mr Jackson, then Chief Marketing Officer of Spigot, sent an email to the directors and officers of Spigot and the GGDs setting out concerns that members of TIC had been threatened with misappropriation of PM's I/P if TIC did not agree to sell its shares to Genimous Group.
21. On 19 January 2022, Mr Jackson sent a further email stating that Mr Wong had threatened him on several occasions with termination from Spigot if TIC did not sell its shares to Genimous Group. Neither email precipitated a substantive reply.
22. On 19 January 2022, Mr Jackson and Mr Miller were terminated from their employment as Chief Marketing Officer and Chief Technology Officer of Spigot, respectively, by Mr Wong.
23. On 1 and 9 February and 9 March 2022, members of TIC variously sought approval of non-disclosure agreements and/or provision of management information in the pursuit of attempts to sell TIC's shares in PM to third parties from Genimous Group. Those requests were eventually denied by Genimous Group, and the potential bidders for TIC's shares withdrew their interest.
24. On or about 1 April 2022, TIC issued proceedings in the Financial Services Division of the Grand Court of the Cayman Islands seeking to wind up PM on a just and equitable basis under cause FSD 79 of 2022 (the 'Petition Proceedings'). Genimous Investment (Hong Kong) Co and Genimous Holding (HK) Limited are the respondents in the Petition Proceedings (the 'Petition Respondents').
25. On 14 April 2022, the Petition Respondents undertook to the Court that they would not cause or permit the transfer of any I/P belonging to PM during the Petition Proceedings. The Petition Proceedings have yet to be determined at the date of filing this statement of claim.
26. From 4 April 2022 at the latest, unbeknownst to TIC, developers at Spigot began copying I/P belonging to PM in the form of programming code with the intention of creating similar versions of apps belonging to PM to be published for sale under EET ('Code Copying'). It will be TIC's case that:
  - a. Spigot entered into this process as a deliberate means of recreating the business and value of PM and reverse engineering its I/P under EET. It will be the Plaintiffs' case that Spigot, Eightpoint, EET, GTCL, Chen, Lash and He or a combination of them took these steps to capitalise on EET's status as a wholly owned Genimous subsidiary;

- b. Eighpoint participated in this process by receiving the copycat apps and other copied I/P under the auspices of a contract or arrangement with Spigot and then providing them to EET for marketing and sale.
27. It will be the Plaintiff's case that Spigot overcharged PM for its services for many months before the Petition was filed and continued to do so thereafter. However, the GGDs continually deflected the investigation of alleged overcharging while occupying a position of conflict by reason of being directors of both parties.
28. In November 2022, TIC discovered that EET had published and made available for download by users a mobile app named 'Scan QR Code' on the Apple iOS store. Scan QR Code:
- a. Was 99.7% identical to the code contained in a mobile app previously developed and published by PM named 'Camera Scanner – PDF';
- b. Contained not less than 17 copyright notices identifying PM as the owner of the copyright in the code that had been directly copied and transposed in the Scan QR Code app. The appearance of such copyright notices indicates that code was largely copied and pasted between the PM App and the EET App by Spigot;
- c. Contained the entire receipt management system deployed across PM's Apple-compatible app book, 'Sally', demonstrating large-scale deliberate copying of PM's code into an EET App and use of PM's supporting infrastructure. Furthermore, the Sally system was integrated into every PM App as a means of tracking user data and receipt management and represented an integral component of tracking positive investment;
- d. Was linked to a website (<http://anycodereader.com/pp/html>) that was a one-to-one copy of a website (<http://planesradar.com>) published by PM to support another mobile app that it had previously developed and published, called 'Flight Tracker Live App'. The only difference between the websites was that the tracking code embedded in the PM website had been removed from the EET website. The Plaintiffs will say that inadvertent copying is unlikely to have resulted in a 1:1 copy of the original PM website, with only the tracking script removed.
- e. Was linked to a terms and conditions website (<http://anycodereader.com/pp/html>) identical to PM's terms and conditions page (<http://planesradar.com/pp.html>) for its Flight Tracker Live App, save that the entity name had been changed from PM to EET. The terms and conditions on the EET site also reproduced certain mistakes that appeared on PM's

website, in identical form. The Plaintiffs will say that this indicates that the copying of the website question was intentional and deliberate.

29. PM had authorised none of the above conduct (collectively referred to as the 'First Wave'), and the Defendants knew that to be the case.
30. On 8 November 2022, TIC caused its legal representative to bring the First Wave to the attention of those representing the Petition Respondents. Separately, Mr Stephens sought to convene a meeting of PM's board to discuss the First Wave and to decide how PM should proceed. The resolutions proposed by Mr Stephens sought an independent investigation of Spigot and EET's actions and that legal action be taken, depending upon the outcome of the investigation. In support of those proposed resolutions, TIC provided the board of PM with a slideshow presentation of their findings concerning Scan QR Code.
31. On 12 December 2022, Mr Chen provided a letter purporting to be written by Spigot and of even date. In that letter, Spigot claimed that the similarities between PM's app and EET's app resulted from inadvertent code-linking and was unintentional. TIC did not believe that explanation to be genuine and considered it incapable of belief in any event.
32. At 10 pm, Cayman Islands time, on 14 December 2022, a meeting of the PM board, re-arranged on a number of occasions, was held to discuss TIC's proposed resolutions. Mr Stephens and Mr Mahaffey did not attend that meeting because:
  - a. The meeting proposed for that time was not confirmed and agreed to by all PM directors.
  - b. The GGDs indicated by email on 12 December 2022 that they did not consider any form of defensive presentation from the GGDs or the Treasurer of PM was necessary, giving the clear impression that the resolutions would be voted down and that the conclusion of the meeting was foregone.
  - c. The GGDs had refused by email on 14 December 2022, in advance of the meeting, to accept that any form of conflict of interest existed that affected them, notwithstanding that all three of them were then serving directors of Spigot.
33. The board resolution proposed by Mr Stephens was voted down at the board meeting.
34. Notwithstanding the presentation to the PM board that Spigot was wrongly providing I/P to Eightpoint and EET, the GGDs caused PM to continue to pay Spigot for research and development

and marketing services, without scrutiny, despite requests by members of the First Plaintiff that itemised invoices should be made available for review.

35. On 23 June 2023, TIC caused its legal representatives to write to those representing the Petition Respondents to report that:
  - a. TIC had discovered a second wave of intellectual property misappropriation resulting in the intellectual property of PM appearing in apps published by EET (the 'Second Wave') ('Category 1');
  - b. TIC had discovered that the Second Wave involved misuse of confidential/proprietary information belonging to PM by the Defendants ('Category 2'); and
  - c. TIC held expert evidence establishing that Spigot's explanation for the First Wave was not capable of belief.
  
36. The Second Wave of misappropriation of I/P and confidential information included:
  - a. In the Category 1 of the Second Wave:
    - i. EET Apps in the Apple App Store referenced many of the same 'event names' that PM used in its Apps to post data back to PM's tracking platforms;
    - ii. PM code that had been removed from Scan QR Code following TIC's earlier complaint had been reintroduced in later versions in cosmetically altered form and then deliberately hidden;
    - iii. Tables and databases contained in PM's 'The Bible – Verse and Prayer' App were copied almost in entirety to EET's 'Holy Bible' app, and the code of the latter app caused users to connect with PM's servers and make use of the PM app infrastructure. It will be the Plaintiffs' cases that attempts were made to delete certain parts of those tables in order to conceal copying;
    - iv. EET's 'Translate Voice and Text' app referenced and actively used PM's 'alltheapps' translation application programming interface ('API') deployed by PM in its 'Translate Anything' app. This meant that EET's app would not function without the support it drew from PM's resources;

- v. EET's 'Track My Flight Now' app utilised an API which was a nearly exact replica of the API owned and used by PM in connection with its 'Flight Tracker Live' app;
  - vi. EET's apps contained a receipt management system referred to as 'Dadi', which was a copy of PM's receipt management system 'Sally' to which certain cosmetic changes had been made;
  - vii. EET deployed a resource developed by PM to detect 'jailbroken' mobile phones across its books of Apple Apps;
  - viii. EET's Android Apps utilised PM's sponsored content feed and internal content, relying on PM's myhomeapps.com ad server.
- b. In Category 2 of the Second Wave:
- i. EET deployed the 2022 Strategic Plan developed for PM, releasing two Apps named 'Inbox Homescreen' and 'Snow Roll', both of which were initiatives that had been planned for release under PM;
  - ii. Spigot, Eightpoint and/or EET used the same Google master account to purchase and direct user traffic to EET apps that were used to secure the same services for PM. The account had been refined for PM over the preceding years to maximise user acquisition for associated spend. EET enjoyed and continues to enjoy the benefits of those refinements and techniques which belong to PM;
  - iii. Spigot, Eightpoint and/or EET used the marketing plans, techniques and know-how developed in their work for and with PM to develop and market EET's apps.
37. At all times, the Defendants knew the I/P and confidential information referred to above belonged to PM, was proprietary information pursuant to the R&D Agreement and that they were not authorised to share, duplicate or use it.
38. Following the Second Wave, by email on or around 4 July 2023, TIC again proposed that the Board of PM sign written resolutions providing for an independent investigation of the matters pleaded in paragraphs 35 and 36 above and for PM to pursue legal action against Spigot, EET and Eightpoint

if the outcome of the investigation supported that course. The GGDs refused to sign those resolutions.

39. Separately, the GGDs caused, permitted or allowed marketing spending on PM's Apps to fall away or be vastly reduced, as set out immediately below. Each instance coincided with the release of each of EET's Apps (the 'Copycat Apps'). It will be the Plaintiff's case that, simultaneously, Spigot began to place marketing spend for each Copycat App on behalf of EET:

| PM App                         | EET App                      | Date of Reduction / Cessation on PM Apps and of Spending on Copycat Apps |
|--------------------------------|------------------------------|--------------------------------------------------------------------------|
| The Bible – Verse and Prayer   | Holy Bible †                 | On or about 29 May 2023                                                  |
| Flight Tracker Live            | Track My Flight Now          | On or about 12 June 2023                                                 |
| Camera Scanner – PDF           | Scan QR Code                 | On or about 30 January 2023                                              |
| Translate Anything             | Translate: Voice and Text    | On or about 3 April 2023                                                 |
| NOAA Radar & Weather           | NOAA Live Weather Radar      | On or about 6 June 2023                                                  |
| Weather Home - Live Radar      | Weather Now Launcher - Radar | On or about 29 September 2023                                            |
| Bible Home - Daily Bible Study | Bible Homescreen - Read Now  | On or about 5 November 2023                                              |

40. It will be the Plaintiffs' case that EET's annual earnings are presently run rating at USD 34.5 million or above and that a substantial portion, if not all, of those earnings, wrongly derive from I/P belonging to PM.
41. Notwithstanding attempts by TIC to cause the GGDs to recognise that conflicts existed between their duties and interests to PM on one hand and those relating to Genimous Group's wholly owned subsidiaries, including Spigot, Eightpoint and EET, and the negative impact arising from the conduct of Spigot, Eightpoint and EET on PM's business, the GGDs have refused to address their conflict and discharge their duties as directors of PM. Further, the GGDs have consistently refused to conduct any form of independent investigation into the conduct of Spigot, EET and/or Eightpoint, or to take any action against them.
42. Further, the Defendants' actions have interfered with and negatively impacted contractual relations between PM and Spigot, as well as the Apple and Android app stores.

43. On or about 21 February 2024, TIC wrote to Apple on behalf of PM to complain that EET and its apps were in violation of Apple's developer's policy, seeking to protect PM's apps from unfair competition. Apple forwarded the complaint to EET the same day, seeking that the parties work together to resolve the matter.
44. On or about 22 February 2024, the GGDs and/or EET and/or GTCL caused, permitted or allowed an email to be sent to Apple on behalf of PM:
- a. purporting to answer the complaint;
  - b. defending EET;
  - c. stating that EET and PM were owned and controlled by the same persons;
  - d. stating that none of PM's I/P is infringed by any app published by EET;
  - e. failing to identify the person responsible for investigating the complaint, the investigations undertaken or the qualifications of the investigator; and
  - f. indicating that Walkers (Cayman) LLP represent both Genimous Technology Co., Ltd (one of the Petition Respondents) and EET.
45. It will be the Plaintiffs' case that the response to the Apple complaint directed or permitted by the Defendants was improper and misleading for the following reasons:
- a. EET's Apps do infringe PM's I/P, and the Defendants were at all material times aware of that fact, but the response to the Apple complaint flatly denies any such infringement;
  - b. PM's response email ignored the contents of multiple expert reports on I/P infringement disclosed by the Petition Respondents in the Petition proceedings, in which the instances of infringement by EET against PM were recognised;
  - c. PM's response email is timed a mere 22 hours after the complaint was sent to EET, which provided insufficient time for a proper or adequately thorough investigation of the allegations to be investigated by EET before responding;
  - d. PM was not asked to respond but responded seemingly on EET's behalf in circumstances where EET manifestly was legally represented and should have responded for itself;

- e. By pointing out in the response that PM and EET have a similar controlling parent company, the Defendants highlighted to Apple that two related publishers (PM and EET) with the same developer (Spigot) had published similar Apps between them, which amounts to a breach of the Apple's App Review Guidelines. Thereby, the Defendants placed PM in fresh and unnecessary danger of being found to be in breach of the App Review Guidelines in circumstances where it is the complainant and the innocent party; and
- f. In causing or permitting the response email to address the subject matter of the complaint in a less than fully honest manner, the Defendants allowed the appearance of PM misleading Apple in the purported defence of EET.

45A. On or about 17 April 2024, ACS released an App on the Google store entitled 'NewsNow Home: Breaking & Local' ('NewsNow') and published an update to that App on 21 May 2024. The Plaintiffs will say that:

- a. NewsNow request/response structure used in its ad server is the same as PM's ad server, indicating that the back-end system of NewsNow is nearly identical to PM's app entitled 'News Home: The News You Need', also marketed on the Google store;
- b. While NewsNow's public information suggests that it was developed by ACS, the associated terms and conditions at <https://newsnowhome.com/legal/terms> last updated on 26 February 2024, assert that NewsNow is operated by EET, there described as being a 'tradename' of Eightpoint;
- c. The website address for NewsNow expressly names EET (<https://play.google.com/store/apps/details?id=com.eet.news.launcher>);
- d. The codebase used to construct NewsNow is nearly identical to that used by EET, which was itself wrongly developed from code and know-how belonging to PM;
- e. User data derived from NewsNow is fed to servers belonging to or operated by EET;
- f. NewsNow, in reality, represents a further, second level iteration of I/P misappropriation from PM by the Defendants, particularly Spigot, ACS, Eightpoint, EET and Huang Ying;
- g. Profits derived by ACS, Eightpoint, EET, Spigot or a combination of them from NewsNow ultimately arise from misappropriated I/P belonging to PM.

46. The Plaintiffs pursue the following causes of action against the various Defendants:
- a. Unlawful means conspiracy against GTCL and/or Spigot and/or EET and/or Eightpoint and/or the GGDs and/or Cody Miller and/or ACS (collectively, the 'Conspiracy Defendants') or a combination of them;
  - b. Breach of fiduciary duties against GGDs;
  - c. Dishonest assistance against Spigot, ACS, Eightpoint and EET;
  - d. Breach of contract against Spigot;
  - e. Copyright infringement against Spigot and/or EET and/or Eightpoint and/or ACS pursuant to Copyright, Designs and Patents Act 1988 as extended to the Cayman Islands by the Copyright (Cayman Islands) Order 2015;
  - f. Tortious interference;
  - g. Breach of confidence against the Defendants collectively or separately; and
  - h. Unjust enrichment.

#### PARTICULARS OF UNLAWFUL MEANS CONSPIRACY

47. The Plaintiffs will say that the Conspiracy Defendants or a combination of them acting via their various offices and directorships:
- a. Agreed, at the latest in April 2022, but in all likelihood before that time, that the I/P and proprietary information developed for PM and held by Spigot would be misappropriated, copied, unlawfully shared and/or otherwise transmitted away from PM to Eightpoint and/or EET and/or ACS;
  - b. That the purpose of the above scheme was to injure:
    - i. PM directly by copying, removing or misappropriating its I/P;
    - ii. PM by exposing it to competition from ~~an~~ other companies, EET and ACS, using PM's own I/P and proprietary information;

- iii. PM by hamstringing its ability to gain new users by cutting marketing spend;
  - iv. PM by hampering its ability to earn revenue going forward;
  - v. TIC, indirectly, by reducing the value of the shares it holds in PM such that TIC would be driven to sell those shares at a reduced value or, alternatively, to abandon them as worthless.
- c. That the Conspiracy Defendants or a combination of them acted unlawfully in furtherance of the above scheme in that they:
- i. Conspired between themselves to arrange for or to permit Spigot to share PM's I/P with Eightpoint/EET/ACS in breach of the R&D Agreement and in breach of the GGD's and Mr Cody Miller's fiduciary obligations to PM;
  - ii. Infringed PM's copyright in its I/P by causing, permitting or allowing that I/P to be copied and reproduced in apps published by EET and ACS;
  - iii. Caused, permitted or allowed the production of the Copycat Apps;
  - iv. Caused, permitted or allowed EET and/or ACS to market the Copycat Apps in full knowledge that they arose from or were based upon the fruits of misappropriation and misuse of I/P belonging to PM;
  - v. Caused, permitted or allowed EET to receive and adopt certain aspects of PM's strategic plan for the year 2022 and to use marketing know-how and plans developed by and for PM in breach of the R&D Agreement, as set out below;
  - vi. Caused, permitted or allowed the GGDs to refuse to take action against Spigot and/or Eightpoint and/or EET to protect PM's interests, in breach of fiduciary duty;
  - vii. Caused, permitted or allowed the GGDs to place PM at a competitive disadvantage compared to EET and/or ACS by reducing or ceasing marketing spend on any PM app when the EET copycat version of that app was released; and
  - viii. Caused loss to the Plaintiffs thereby as shall hereinafter be particularised.

## PARTICULARS OF BREACH OF FIDUCIARY DUTY

48. The GGDs acted in breach of their fiduciary duties owed to PM in that they:
- a. Deliberately caused or, in the alternative, permitted or allowed I/P belonging to PM to be misappropriated and misused in competition with PM by Spigot, Eightpoint and/or EET and/or ACS;
  - b. Failed to take any step to independently investigate the misappropriation and misuse of I/P belonging to PM by Spigot, Eightpoint and/or EET, despite being urged to do so and in circumstances where such investigation was manifestly in the best interests of PM and in the face of multiple independent expert reports;
  - c. Wrongly and deliberately voted down board resolutions proposing an investigation where it was in the best interests of PM to institute an independent investigation, in order to favour companies forming part of the Genimous Group;
  - d. Accepted excuses for misappropriation of PM's intellectual property put forward by Spigot where those excuses were not capable of reasonable belief in the circumstances and where the GGDs knew or ought to have known as a result of their position as directors of Spigot that those excuses were false;
  - e. Failed adequately or at all to investigate alleged overcharging by Spigot to the obvious disadvantage of PM;
  - f. Failed to exercise independent judgment and to alter their position when presented with independent expert evidence that the excuses provided by Spigot were false when it was obvious that a proper investigation was in the best interests of PM;
  - g. Failed to act in the best interests of PM and acted in a conflicted manner by continuing to pay Spigot for services in circumstances where it was clear that Spigot was in breach of the R&D Agreement and passing PM's I/P to EET, thereby damaging PM's interests;
  - h. Expressly and while in a position of conflict of interest and/or without consulting the PDs, directed Spigot to reduce marketing spend on PM apps immediately after the publication of the associated EET Copycat Apps, thereby crippling PM's ability to acquire new users and/or earn revenue in the future and/or compete with the Copycat Apps, thereby preferring EET and damaging PM's interests;

- i. Preferred the interests of EET, and of ACS, and of Spigot over those of PM in circumstances where it was plain that a conflict of interest existed between EET, ACS and Spigot on the one hand and PM on the other, where PM's interests were being damaged and required protection;
- j. Failed to acknowledge the conflict of interest inherent in holding office as directors of Spigot and PM at the same time in all the circumstances;
- k. Failed to take any action against Spigot, Eightpoint and/or EET when action was reasonably required and in the best interests of PM in the circumstances;
- l. Caused, permitted or allowed PM to continue to pay fees to Spigot upon demand during the currency of all of the above where it was plain that Spigot had breached the R&D Agreement with PM and was no longer actively developing apps for PM;
- m. Allowed themselves to come to be and to remain in a position of manifest conflict between the best interests of PM and the interests of Spigot, EET, ACS, GTCL and Eightpoint; and
- n. Failed to act in the best interests of PM in all the circumstances.

And it will be the Plaintiffs' case that the GGDs above breaches of fiduciary duty were committed wilfully and deliberately or, in the alternative, that those actions amounted to gross negligence.

#### PARTICULARS OF DISHONEST ASSISTANCE

49. The Plaintiffs repeat the contents of paragraphs 47 and 48 above:
- a. The actions of the GGDs set out above amounted to breaches of their fiduciary duties to PM in the manner set out in paragraphs above and those actions were taken deliberately and in the knowledge that they were unlawful and dishonest;
  - b. Spigot, EET, ACS and/or Eightpoint assisted and facilitated the GGDs in the execution of their breach of fiduciary duties by misappropriating, receiving and marketing I/P belonging to PM as if it were their own or, alternatively, Spigot and/or the GGDs deliberately provided EET and/or Eightpoint and/or ACS with that material when they knew it was unlawful and dishonest to do so;

- c. Spigot, EET, ACS and/or Eightpoint acted dishonestly in that they knew that the GGDs were acting in breach of their fiduciary duties to PM by causing, permitting or allowing Spigot, EET, ACS and/or Eightpoint to act as alleged or, in the alternative, they deliberately chose not to seek to confirm the bona fides of the GGDs' actions.

#### PARTICULARS OF BREACH OF CONTRACT

50. Spigot, by its employees or agents acting in the course of their employment, breached the R&D Agreement with PM in that it:
  - a. Caused, permitted or allowed I/P in the form of code to be taken or copied from the code repository belonging to PM and placed into EET's and ACS's Apps in breach of clause 4.1 of the R&D Agreement;
  - b. Caused, permitted or allowed proprietary information in the form of strategic plans and marketing know-how and strategies belonging to PM to be provided to Eightpoint and/or EET and/or ACS in breach of clause 4.1 of the R&D Agreement;
  - c. Provided I/P and/or proprietary information belonging to PM to EET and/or ACS and/or Eightpoint in circumstances where the terms of the R&D Agreement forbade such actions;
  - d. Failed to adhere to their duty to remain free of conflicts by providing services to a direct competitor of PM, namely Eightpoint and/or EET and/or ACS in breach of clause 4.3 of the R&D Agreement;
  - e. Overcharged PM for the services that it provided or charged for PM for services that it did not in fact provide.

#### PARTICULARS OF COPYRIGHT INFRINGEMENT

51. The Plaintiffs will say that the copyright of PM was infringed by the Conspiracy Defendants as follows:
  - a. By misappropriation, reproduction and/or publication of code (collectively the 'Code') belonging to PM by Spigot, Eightpoint and EET in the following apps:
    - i. Scan QR Code;
    - ii. Holy Bible;
    - iii. Track My Flight Now;

- iv. Translate: Voice and Text; ~~and~~
  - v. NOAA Live Weather Radar;
  - vi. Weather Now Launcher – Radar; ~~and~~
  - vii. News Home: The News You Need.
- b. By misappropriation, reproduction and/or publication of Code contained in PM's Sally receipt management system to Dadi, which was deployed across each EET Apple app;
  - c. By misappropriation, reproduction and/or publication of Code contained in PM's ad server system at myhomeapps.com, which was deployed across each EET Android app;
  - d. The Code belonging to PM was developed for PM and existed as PM I/P before it appeared in the Copycat Apps;
  - e. The Code was not licensed or sold to Spigot, ACS, Eightpoint and EET, and no permission was given by PM for it to be used by Spigot, ACS, Eightpoint or EET in its apps;
  - f. By misappropriation, reproduction and subtle alteration of the website for Flight Tracker Live, belonging to PM without license or permission;
  - g. By misappropriation and misuse of the content of the Terms and Conditions website belonging to PM and associated with the iOS store by Eightpoint and/or EET in connection with Scan QR Code.

#### PARTICULARS OF TORTIOUS INTERFERENCE

52. The Defendants were at all material times aware of the R&D agreement and that PM published and marketed its apps on the Apple and Android App Stores. Nevertheless, in the face of that knowledge and with the intent to interfere with PM's contractual relationships with Spigot, Apple and Google:
- a. The Conspiracy Defendants or a combination of them caused, induced, permitted or allowed Spigot to breach its contract with PM;
  - b. The GGDs and/or Spigot caused, induced, permitted or allowed Spigot to pass PM's I/P and/or proprietary information to Eightpoint and/or EET and/or ACS when they knew this to be unlawful;

- c. The Conspiracy Defendants or a combination of them caused, permitted or allowed PM's contractual relations with Apple and Google to be placed in jeopardy by causing or permitting EET and ACS to publish similar or substantial apps on the App Stores to versions owned and previously published by PM when such conduct represents a breach of the developer codes of both App Stores and exposes the collection of apps of both companies to a risk of de-platforming.

#### PARTICULARS OF BREACH OF CONFIDENCE

53. The Conspiracy Defendants or a combination of them caused permitted or allowed I/P and/or confidential information belonging to PM to be shared between them and to be misused without PM's authorisation:
  - a. In the execution and the development of Scan QR Code in the First Wave;
  - b. In the execution and the development of the apps appearing in Category 1 of the Second Wave; ~~and~~
  - c. In the execution and development of the matters contained within Category 2 of the Second Wave; ~~and~~
  - d. In the execution and development of NewsNow.
54. Each Defendant was in a position under a duty of confidence because at all material times, they knew or ought to have known that PM's I/P was confidential and that no authority had been given to share it.
55. By reason of the aforesaid, the Defendants were unjustly enriched and/or the Plaintiffs suffered loss and damage.

#### PARTICULARS OF UNJUST ENRICHMENT

56. Spigot and/or EET and /or Eightpoint and/or GTCL and/or ACS or a combination of them have been unjustly enriched by the provision of I/P and proprietary information belonging to PM to EET and/or Eightpoint and/or ACS, which the latter parties deployed for financial gain. Spigot was unjustly enriched in receiving fees from PM while undertaking such conduct. GTCL was unjustly enriched by the profits made by EET by using PM's I/P and/or proprietary information. EET and/or Eightpoint were unjustly enriched by receiving the profits arising from the Copycat Apps, where each such App was based on I/P and/or proprietary information belonging to PM. ACS was unjustly enriched by the profits derived from NewsNow. Furthermore, Spigot was unjustly enriched by the

overpayment of fees by PM. Yet further, it will be the Plaintiffs' case that GTCL was unjustly enriched in that it received profit on its interest in EET and/or ACS and/or Eightpoint and/or Spigot, while simultaneously failing to disclose the existence of the Petition proceedings within its public filings.

57. The Plaintiffs have a proprietary entitlement to the sums that EET and/or Eightpoint and/or ACS have generated and that Spigot has earned from its conduct in connection with PM's I/P and over that I/P.

#### PARTICULARS OF LOSS

58. The Plaintiffs suffered the following losses upon the conduct of the Defendants in the following ways:
- a. Payment of over-inflated fees to Spigot consequent upon overcharging;
  - b. Loss of revenue arising from the cessation of research and development services by Spigot, at the apparent direction of the GGDs, Cody Miller and GTCL ;
  - c. Loss of revenue arising from reduction or cessation of marketing spend on PM's existing Apps by Spigot, at the apparent direction of the GGDs, Cody Miller and GTCL;
  - d. Loss of revenue as a result of unfair competition from the Copycat Apps released by EET and/or ACS;
  - e. Loss of revenue arising from the failure of the GGDs to seek any form of arrangement with EET and/or ACS by which PM's I/P might be licensed or other manner in which PM might be compensated for the use of its I/P by a competitor;
  - f. Diminution in the value of PM's Apps and user base in that PM's Apps fell and continue to fall in relative rankings by reason of the above failures to market PM's Apps or to update them, rendering them less attractive to potential buyers;
  - g. Diminution in the value of PM's I/P on the open market, arising from the existence of the same or similar I/P within the wrongful custody of a competitor, namely EET and/or ACS and/or Eightpoint; and
  - h. Diminution in the value of PM and, as a result, in the value of its shares.
59. To the extent that any Defendant made profits as a result of the conduct complained of above, the Plaintiffs are entitled to the benefit of those profits, such damages to be assessed.

60. The Plaintiff claims interest upon such sums as may be awarded to them pursuant to s 34 of the Judicature Act (2021 Revision) at such rate and for such period as the Court finds fit.

AND the Plaintiffs Claim:

1. Damages against each of the Defendants;
2. Delivery up of PM's I/P by Spigot, Eightpoint and EET;
3. Permanent injunctive relief against Spigot, Eightpoint and EET preventing future use of PM's I/P and/or confidential information;
4. Proprietary injunction over PM's existing I/P appearing in the Copycat Apps;
5. Accounting of the profits improperly earned by Spigot, Eightpoint and EET by misuse of PM's I/P and/or its confidential information;
6. Declarations that each of the GGDs acted in breach of their fiduciary duties to PM;
7. Interest as aforesaid;
8. Costs;
9. Such further or other relief as the Court finds just.

DATED this 23<sup>rd</sup> day of May 2024



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Dentons

TO: The Defendants

AND TO: The Clerk of Court

**THIS AMENDED STATEMENT OF CLAIM** is filed by Dentons, attorneys for the Plaintiffs, whose address for service is that of his said attorneys, namely Dentons of 2<sup>nd</sup> Floor, One Capital Place, Shedden Road, P.O. Box 10190, Grand Cayman KY1-1002 Cayman Islands.