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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062364
Party	Plaintiff Anom Suheri, Anthony Marcotti, Raymond Wilcoxon, and D3 Holdings, LLC
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Date	05/05/2016
Attachments	2016-05-05 - Lodgment of Indonesian Complaint with Exhibit.pdf(1685592 bytes)

EXHIBIT A

Ref. No. 16/02/DEP/307

By Hand Delivery

Jakarta, 18 February 2016

Attention:
Chairman of Padang District Court
Jalan Khatib Sulaiman No. 80
Padang - Sumatera Barat
The Republic of Indonesia

Subject: Complaint for Breach of Contract

With Respect,

The undersigned below, Dyah Ersita Yustanti, S.H., M.H., advocate of the Law Offices of Dyah Ersita & Partners, having its office address at Graha Aktiva fl. 3, Jalan HR. Rasuna Said Block X-1, Kav. 3, Jakarta 12950, Republic of Indonesia, acting for and on behalf of:

1. Anthony Marcotti, a private individual, a citizen of the United States of America, having his domicile at 629 Camino de los Mares #101, San Clemente, Ca 92673, United States of America, holder of United States of America Passport No. 505908993 ("**Plaintiff 1**") pursuant to the special powers of attorney dated 10 October 2015 (attached hereto);
2. Raymond Wilcoxon, a private individual, a citizen of the United States of America, having his domicile at Komp. Pelangi Regency C.6 RT 05 RW 01 Ampang, Padang, the Republic of Indonesia, holder of United States of America Passport No. 429172258 ("**Plaintiff 2**") pursuant to the special powers of attorney dated 13 October 2015 (attached hereto);
3. D3 Holding LLC, a limited liability company duly established and validly existing pursuant to the laws of Delaware, having its domicile at 134 Indian Head Road Riverside, CT 06878, United States of America ("**Plaintiff 3**") pursuant to the special powers of attorney dated 14 October 2015 (attached hereto); and
4. Anom Suheri, a private individual, a citizen of the Republic of Indonesia, having his domicile at Komp. Pelangi Regency C.6 RT 05 RW 01 Ampang, Padang, the Republic of Indonesia, holder of Indonesia Resident Identity Card No. 1371092411680007 ("**Plaintiff 4**") pursuant to the special powers of attorney dated 13 October 2015 (attached hereto),

(Plaintiff 1 to Plaintiff 4 together shall be referred to as "**Plaintiffs**").



We hereby submit this complaint ("**Complaint**") against:

1. Raihana Heuer, a private individual, a citizen of the Republic of Indonesia, having her domicile at Komplek Cendana Andalas Blok AA/5 RT 003, RW 002 Kelurahan Andalas, Kecamatan Padang Timur Padang, the Republic of Indonesia, holder of Indonesian Resident Identity Card No. 1371024302740001 ("**Defendant 1**");
2. Jordan Heuer, a private individual, a citizen of the United States of America, having his domicile at Komplek Cendana Andalas Blok AA/5 RT 003, RW 002 Kelurahan Andalas, Kecamatan Padang Timur Padang, the Republic of Indonesia ("**Defendant 2**");
3. PT Saraina Koat Mentawai, a limited liability company duly established and validly existing pursuant to the laws of the Republic of Indonesia, having its domicile at Dusun Muara, Desa Muara Siberut, Kecamatan Siberut Selatan, Kabupaten Kepulauan Mentawai, the Republic of Indonesia ("**Defendant 3**");

(Defendant 1 to Defendant 3 together shall be referred to as "**Defendants**").

4. Amen McDonald, a private individual, a citizen of United States of America, having his domicile at 27697 Mineral School Road, Bella Vista, CA 96008 ("**Co-Defendant 1**");
5. Andrew Meredith, a private individual, a citizen of United States of America, having her domicile at 100 Ocean Bay Boulevard, Duck, NC 27949 ("**Co-Defendant 2**");

(Co-Defendant 1 and Co-Defendant 2 together shall be referred to as "**Co-Defendants**").

A. Background

1. Around 2004, Plaintiff 4, Defendant 1, Defendant 2, Plaintiff 1, John Ocean, Plaintiff 2 and Co-Defendant 1 (together the "**Founders**") came together to create the surfing resort called Kandui Resort on Karangmajat Island.
2. The Founders agreed to name the resort Kandui Resort. Kandui Resort was the first surfing resort to use the word "KANDUI" in the Republic of Indonesia or anywhere in the world..
3. On or about 11 July 2005, a Kandui Resort Contract Letter of Agreement ("**Kandui Resort Agreement**") was signed by the following parties:
 - a. Anthony Marcotti (Plaintiff 1);
 - b. Raymond Wilcoxon (Plaintiff 2);
 - c. Jordan Heuer (Defendant 2);



e. PT Saraina Koat Mentawai (Defendant 3), as represented by Raihana Heuer (Defendant 1) and Anom Suheri (Plaintiff 4); and

f. John Ocean ("John");

(collectively referred to as the "Agreement Participants").

Anthony Marcotti (Plaintiff 1), Raymond Wilcoxon (Plaintiff 2), Jordan Heuer (Defendant 2), John Ocean and Amen McDonald (Co-Defendant 1) shall sometimes be collectively referred to as the "Foreign Participants".

Anom Suheri (Plaintiff 4) and Raihana Heuer (Defendant 1) may sometimes be collectively referred to as the "Local Participants".

4. The Kandui Resort Agreement identifies Amen McDonald (Co-Defendant 1) as a party, but the agreement is not signed by him. However, it has been acknowledged by the Plaintiffs, the Defendants and the Co-Defendants that Amen McDonald (Co-Defendant 1) has agreed and performed his obligations and the provisions as set forth in the Kandui Resort Agreement as reflected through his action throughout the years in relation with the Kandui Resort.

5. The Kandui Resort Agreement provided that the Agreement Participants would hold shares in Kandui Resort in the following percentages:

a. Anom Suheri (Plaintiff 4)	: 20%
b. Raihana Heuer (Defendant 1)	: 10%
c. Anthony Marcotti (Plaintiff 1)	: 20%
d. Jordan Heuer (Defendant 2)	: 10%
e. John	: 20%
f. Amen McDonald (Co-Defendant 1)	: 10%
g. Raymond Wilcoxon (Plaintiff 2)	: 10%
Total	: 100%

(Article 2 of the Kandui Resort Agreement).

6. Since the Kandui Resort Agreement was entered into, there have been several capital transactions by some of the Agreement Participants, including the following:



- a. In 2006/2007, a portion of Amen McDonald's (Co-Defendant 1) interest was transferred to Andrew Meredith (Co-Defendant 2) and Raymond Wilcoxon (Plaintiff 2).
- b. In 2009, Anom Suheri (Plaintiff 4) transferred a portion of his interest to Anthony Marcotti (Plaintiff 1) and a portion to Raymond Wilcoxon (Plaintiff 2).
- c. In 2010, John sold his interest to D3 Holdings LLC (Plaintiff 3).

Article 4.e. of the Agreement provides that anyone who fails to fulfill his capital contribution obligations may transfer his interest to other shareholders or offer his interest to third parties.

7. Following the aforementioned transfers, the participants in the Kandui Resort business, and their corresponding ownership rights percentages are acknowledged by all the parties to be as follows:

Plaintiff 4	14.5%
Defendant 1	20.0%
Plaintiff 1	20.5%
Plaintiff 2	16.0%
Plaintiff 3	20.0%
Co-Defendant 1	5.0%
<u>Co-Defendant 2</u>	<u>4.0%</u>
Total:	100.0%

The above persons or entities shall hereafter be referred to as the "**Current Participants**"

8. Defendant 1 and Defendant 2 are a married couple. Defendant 1 and Defendant 2 decided that their entire ownership rights to shares in the Kandui Business would be held in the name of Defendant 1. Thus, pursuant to the Kandui Resort Agreement, Defendant 1 was intended to own a total of 20% of the shareholding percentage in the limited liability company to be formed for purposes of organizing the Kandui Business.
9. The Kandui Resort Agreement provides that Plaintiff 4 and Defendant 1 own a company duly established and validly existing with licenses pertaining to engagement in the marine tourism sector. (Recital 1 of the Kandui Resort Agreement).



10. The Kandui Resort Agreement stipulates that Defendant 1 and Plaintiff 4 own 7.5 hectares of land and promised that the Kandui Resort would be built on that land ("**Land for Kandui Resort**") (Recital 2 of the Kandui Resort Agreement).

Please note that this land was initially purchased with funds originating from one or more of the Foreign Participants.

Other adjacent land around the Land for Kandui was later purchased with funding from the Foreign Participants and from revenue generated by Kandui Resort operations ("**Additional Land**").

The Land for Kandui Resort and the Additional Land shall be referred to as the "**Land of Kandui Resort**"

11. Infrastructure was built on the Land with funding from the Foreign Participants and from revenue derived from Kandui Resort operations.

All the aforementioned assets of Kandui Resort shall be referred to as the "**Resort Property**".

12. The Kandui Resort Agreement stipulates that:

- a. all the Agreement Participants together will invest their capital for the establishment of Kandui Resort (Recital 3 of the of Kandui Resort Agreement);
- b. Defendant 3 will perform ground handling for Kandui Resort (Article 1 of the Kandui Resort Agreement);
- c. the following individuals are named as the primary investors with the obligation to invest the sum of USD500,000 in the following proportions (Articles 2 and 4.a. of the Kandui Resort Agreement):

- i. John: USD 250,000 (20%)

John has paid in this amount and fulfilled his obligation.

- ii. Plaintiff 2: USD 125,000 (10%)

Plaintiff 2 has paid in this amount and fulfilled his obligation.

- iii. Co-Defendant 1: USD 125,000 (10%)

Co-Defendant 1's capital investment of USD125,000 was partially contributed by Co-Defendant 1. The remainder was contributed in a series of capital transactions involving the transfer of Co-Defendant 1's interest and obligations to Plaintiff 2 and a new third party not named



in the Kandui Resort Agreement, Co-Defendant 2. This was permitted, as Article 4.e. of the Kandui Resort Agreement provides that anyone who fails to fulfill his capital contribution may sell his interest to other shareholders or offered to third parties (Article 4.e. of the Kandui Resort Agreement),

- d. the remaining individuals – Plaintiff 4, Plaintiff 1, Defendant 1 and Defendant 2 – were obliged to invest capital (Articles 4.c. and 4.d. of the Kandui Resort Agreement);
 - e. sales of shares are subject to a first right of refusal of the other shareholders of Kandui Resort (Article 5 of the Kandui Resort Agreement);
 - f. Plaintiff 4, Defendant 1 and Defendant 3 would be jointly and severally liable for the management of all documentation and all permits which are required to establish Kandui Resort [as a PMA limited liability company allowing foreign investment participation]. (Article 6 of the Kandui Resort Agreement);
 - g. management for the development of Kandui Resort was to be performed by Plaintiff 1, Defendant 2, John, Co-Defendant 1 and Plaintiff 2. (Article 7 of the Kandui Resort Agreement);
 - h. profits were to be divided according to shareholding percentages. (Article 8 of the Kandui Resort Agreement);
 - i. management and marketing of the Kandui Resort would be conducted by Defendant 3. (Article 9 of the Kandui Resort Agreement);
 - j. all shareholders have the right to construct a house and stay on a part of the land of the Kandui Resort with the size and location to be agreed among the parties and Kandui Resort, with sales of said homes to Kandui Resort or other shareholders of Kandui Resort and with ownership remaining at all times with Kandui Resort. (Article 10 of the Kandui Resort Agreement).
13. In or around 2010, without the consent or permission of the other Agreement Participants or Current Participants, Defendant 1 and Defendant 2 opened a competing surfing resort on Karangmajat Island called "**Kandui Villas**".
14. Where as up to the date that this complaint is submitted, due to the violation and negligence of Defendant 1 and Defendant 2, the PMA PT has not been established to operate the Kandui Resort business activities and legalize and vest the share ownership interests of the Agreement Participants even though a PMA PT is crucially needed so that the business activities of Kandui Resort can be operated in accordance with the applicable laws in the Republic of Indonesia.



Breach of Agreement

15. The Agreement Participants and their successors and assigns are bound to the Kandui Resort Agreement pursuant to Indonesian contractual law. In the Indonesian civil law system, there are four main overarching principles that govern the performance and the interpretation of the Agreement.
16. The first is set forth in Article 1338 of the Indonesian Civil Code (the "ICC"). This provision states that an agreement must be performed in good faith and constitutes law as between the parties.
17. The second is set forth in Article 1339 of the ICC which provides that the Agreement is governed not only by its express provisions, but also by all matters which according to the nature of the agreement may be implied based upon fairness, custom and the law.
18. The third is set forth in Article 1246 and 1247 of the ICC which provides that damages for breach of an obligation include lost expected profit, expenses, losses and interest.
19. The fourth is set forth in Articles 1618 of the ICC which provides that the parties to an Agreement constitute a civil company and have various obligations to one another as set forth in Book III, Chapter VIII of the ICC concerning Civil Companies.
20. Pursuant to normative contract law doctrine, breach of contracts arises if an obligor fails to fulfill his obligations as promised. Furthermore, it is also explained that breaches of contract (negligence or omission) of a debtor can be in four forms:
 - a. not conducting what he promised to do;
 - b. conducting what he promised, but not in a way/form as promised;
 - c. conducting what he promised but too late;
 - d. conducting some actions which according to the contract should not be conducted.
21. Whereas pursuant to Art. 1338 of Indonesian Civil Code ("ICC"), all agreements made in accordance with applicable law constitute the law between the parties. Agreements cannot be retracted other than by agreement of both parties or because of reasons which are stipulated by law. Agreements must be performed in good faith.

Therefore, as a matter of law the Defendants must perform all of their obligations under the Kandui Resort Agreement in good faith. However, after 10 (ten) years following the execution of the Kandui Resort Agreement, the Defendants have failed to perform their legal and contractual obligations.

22. Whereas in relations with the elements of a breach of contract, the Defendants especially Defendant 1 and Defendant 2, have failed to perform their obligations as



required under the Kandui Resort Agreement and have performed some actions which according to the Kandui Resort Agreement, ethical rules and healthy business competition should not be conducted. Therefore, the Defendants have conducted two forms of breach of contract. To provide a clear picture regarding the breaches of contract committed by the Defendants, our detailed explanation follows.

Breaches of Establishment of PT PMA

23. Whereas to legally establish Kandui Resort, a limited liability company in the framework foreign capital investment ("PT PMA") must first be established. This PT PMA should be owned by the Current Participants.

This is the purpose of the Kandui Agreement and thus should be performed in accordance with applicable laws.

Article 1339 of ICC provides that Agreements are not only binding for that which is expressly stipulated within them, but also for all matters which according to nature of agreement [may] be claimed based on justice, custom, or law.

Additionally, Article 1348 of the ICC also stipulates that all promises given in an agreement must be interpreted in its connection to one (promise) to another, every promise should be interpreted in its connection to the entirety of the agreement.

24. Whereas Article 6 of the Kandui Resort Agreement stipulates that, Defendant 3 shall be responsible for the management of all documentation and licenses required for the establishment of the Kandui Resort.
25. Whereas Defendant 1 and Defendant 3 are jointly and severally liable for their breaches of their obligations as stipulated in Article 6 of the Kandui Resort Agreement to form the PT PMA. Plaintiff 4 has always been willing to form the PT PMA but was unable to do so without the cooperation of Defendant 1 and Defendant 3.
26. Whereas joint and several liability is founded upon Article 1280 of the ICC which provides that "on the side of the debtors joint and several liability arises when all the debtors are obligated to conduct the same matter, as such one of the debtor can be claimed to perform for them all, and the full payment by one of the debtors can release the other debtors against the creditors."
27. Up to the date of the submission of this Complaint, the PT PMA has not been established. Therefore, Defendant 1 and Defendant 3 have not performed their obligations under Article 6 of the Kandui Resort Agreement.
28. The non-performance of Article 6 of the Kandui Resort Agreement by Defendant 3 was caused by Defendant 1 and Defendant 2 who intentionally delayed and failed to



permit the establishment of the PT PMA which should have been conducted in accordance with the provisions stipulated in the Kandui Resort Agreement.

29. Whereas the Plaintiffs have since the signing of the Kandui Resort Agreement, requested Defendant 1 to immediately cooperate with and complete the establishment of the PT PMA.
30. Whereas Defendant 2 as the husband of the Defendant 1, who has informed the Plaintiffs that he himself represents and assists Defendant 1 for the transaction related to the Kandui Resort, has provided the Plaintiffs with a draft of PT PMA deed of establishment but it stipulates provisions which are harmful and against the rights and interest of the other Agreement Participants, including Plaintiff 1 and Plaintiff 2 ("**Draft Deed of Establishment from the Defendants**").
31. In the Draft Deed of Establishment from the Defendants, Defendant 1 and Defendant 2 together intentionally did not include Plaintiff 1 and Plaintiff 2 as the shareholders of the PT PMA. While, in Article 2 of the Kandui Resort Agreement it is stipulated clearly that Plaintiff 1 and Plaintiff 2 have the right to be the shareholders in the PT PMA. Defendant 1 and Defendant 2 also failed to agree to contribute the land to the capital of the PT PMA as the Kandui Resort Agreement required them to do.
32. Whereas the foregoing matter shows that Defendant 1 and Defendant 2 do not respect the Kandui Resort Agreement, have breached the Kandui Resort Agreement and have acted in bad faith. Whereas Defendant 1 and Defendant 2 intentionally foiled the establishment of the PT PMA by offering a Draft Deed of Establishment which they knew would not be accepted and signed by the other Current Participants because the Draft Deed of Establishment from the Defendants violates the Kandui Resort Agreement and the rights of Plaintiff 1 and Plaintiff 2 as the parties who are entitled to become the shareholders of the PT PMA.
33. Whereas the Plaintiff have made several attempts to request that Defendant 1 and Defendant 2 establish the PT PMA in accordance with the Kandui Resort Agreement. The Plaintiffs through their attorney have sent a Demand Letter No. Ref: 15/11/DEP/1868 dated 2 November 2015 concerning Indonesian Joint Venture regarding Kandui Resort, Demand for Organization of PT PMA for Kandui Resort, Legal Analysis of Claims against Raihana and Jordan, Somasi I ("**Demand Letter**").
34. Whereas together with this Demand Letter, the Plaintiffs and the Co-Defendant 1 have provided Defendant 1 and Defendant 2 with a draft of a deed of establishment for their review and further action ("**Correct Draft Deed of Establishment**"). However, up until the date of the submission of this Complaint, the Defendants continue to reject the Correct Draft of Deed of Establishment.
35. Whereas with respect to the foregoing, Defendant 1 and Defendant 2 have violated Recital 3 of the Kandui Resort Agreement.



36. Whereas pursuant to Recital 3 of the Kandui Resort Agreement, all the Agreement Participants would together invest money for the establishment of Kandui Resort. Therefore, the Agreement Participants and the Current Participants are obliged to establish the Kandui Resort as a PT PMA.
37. The Plaintiffs have tried to establish PT PMA in accordance with Kandui Resort Agreement without harming any Agreement Participants and the Current Participants by facilitating the drafting of the Correct Deed of Establishment, but Defendant 1 and Defendant 2 did show any good faith to proceed the execution of the Correct Deed of Establishment of the PT PMA.

Whereas, because the foregoing actions of Defendant 1 and Defendant 2, the PT PMA has not yet been established by the Current Participants. This prevention of the establishment of the PT PMA committed by Defendant 1 and Defendant 2 is a breach of the Kandui Resort Agreement.

Breaches of Contract concerning Required Property Transfer

38. Whereas pursuant to Article 4(b) of the Kandui Resort Agreement, the Land of Kandui Resort controlled by the Defendant 1 and Co-Defendant 1 will be bought by Kandui Resort with the price of USD65,000 ("**Transfer of Kandui Resort Land**").
39. Whereas Defendant 1 and the Defendant 2 who are a married couple have refused to participate in the formation of the PT PMA because they have decided that they want to own the land themselves forever even though the land was initially purchased in the joint names of Defendant 1 and Plaintiff 4 and required to be transferred to the PT PMA.
40. Whereas the Plaintiffs have provided an offer to Defendant 1 to conduct the Transfer of Kandui Resort Land to the PT PMA as a form of her performance to her obligation to pay up her share capital in the PT PMA.

However, Defendant 1 has refused to perform this obligation.

41. The rejection of the Defendant 1 to the Transfer of Kandui Resort Land to the PT PMA constitutes a violation and breach of Article 4(b) of the Kandui Resort Agreement.

Breach of Capital Contribution Commitments

42. Whereas because of the breaches committed by Defendant 1 and Defendant 2 in relation to the establishment of the PT PMA, the legal relations between the Current Participants can be classified as a Civil Partnership as governed under Article 1618 of the ICC which provides as follows:



"A civil company is an agreement between two or more persons, who promise to contribute something to that company with the intention so that the profit that will be obtained from company will be divided among themselves."

Article 1625 of the ICC provides that each participant is obligated to contribute to the company all things to which he/she has already agreed to contribute, and if this contribution consists of a specific thing, then the participant is obligated to provide a guarantee in accordance with the same method as that provided in a sale and purchase.

43. Whereas based on Article 4.c and 4.d. of the Kandui Resort Agreement, Defendant 1 and Defendant 2 are obliged to invest capital. However, neither Defendant 1 and Defendant 2 have provided any contribution of capital in the form of cash or goods in kind, nor provided significant contributions towards the development of the business and operations of the Kandui Resort. Instead, in bad faith, they have opened a competing resort.
44. Therefore, both Defendant 1 and Defendant 2 breach their obligation under Article 4.c and 4.d. of the Kandui Resort Agreement.

Breaches of the Duties of Good Faith and Healthy Business Competition

45. In accordance to Article 1339 of the ICC, the Agreement Participants must respect the main purpose of the Kandui Resort Agreement which is to build a resort which should be owned together by the Current Participants and in good faith to support, develop and build the business activities of the Kandui Resort for everyone's interests.
46. Whereas Defendant 1 and Defendant 2, in about the year of 2011, opened a competing resort located on the same small island as the Kandui Resort called "Kandui Villas". This was not approved by the other Current Participants.
47. The actions of Defendant 1 and Defendant 2 as abovementioned absolutely does not reflect the good faith of Defendant 1 and Defendant 2 towards Kandui Resort Agreement. Those actions instead prove that Defendant 1 and Defendant 2 have acted in bad faith and that they have no desire to support, develop and build the business activities of Kandui Resort for everyone's interest. Because it is obvious that with the existence of Kandui Villas, (i) that is located on the same small island as Kandui Resort; and (ii) that utilizes the name "Kandui", will affect the operations and success of the Kandui Resort in negative manner and create market confusion, and in fact has created significant market confusion. Customers of Kandui Resort often are confused as to the relationship or association between Kandui Resort and Kandui Villas. Furthermore, Defendant 1 and Defendant 2 have taken actions to intentionally mislead consumers into believing that Kandui Villas and Kandui Resort are associated, and have demeaned the reputation of Kandui Resort for the purpose of taking customers away from Kandui Resort for the benefit of Kandui Villas.



48. Therefore, the foregoing actions of Defendant 1 and Defendant 2 breached their duty to act in good faith and with fairness which as a matter of law attached to the Kandui Resort Agreement.
49. Other than the foregoing matters, the actions of Defendant 1 and Defendant 2 that have prevented the establishment of the PT PMA are intentional actions to prevent and to stop the business activities of the Kandui Resort so that the Kandui Villas owned by Defendant 1 and Defendant 2 can over the market and customers of the Kandui Resort.
50. Whereas, the trade mark "Kandui" was built through the hard work of the Agreement Participants and the Current Participants (other than Defendant 1, Defendant 2 and Defendant 3) for more that 10 years so that it is internationally known as a very highly regarded world surfing resort destination with an excellent reputation.

However, Defendant 1 without the approval of other parties (other than Defendant 2) and in breach of her obligations to said other parties has conducted various Trade Mark Registrations for her own interests and utilizes the trade name "Kandui" in relation with and for the benefit of Kandui Villas.

51. On 7 December 2010, and without prior notice to or agreement from the other Agreement Participants or Current Participants, Defendant 1, in her own name and personal capacity, applied to register the following trademark in the United States:

Trademark	KANDUI
Services	Class 43: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services. FIRST USE: 20040115. FIRST USE IN COMMERCE: 20061020
Serial Number	85191810
Filing Date	December 7, 2010
Published for Opposition	August 23, 2011
Registration Number	4078032
Registration Date	December 27, 2011



Owner (REGISTRANT) RAIHANA HEUER INDIVIDUAL
INDONESIA P.T. KANDUI BEACH VILLAS
POLAMAS BLOK L # 3 PADANG WESTERN
SUMATRA INDONESIA 25000

Register PRINCIPAL

In her United States trademark application, Defendant 1 provided a sworn affidavit under United States law that to her knowledge, no other person or company had the right to use the KANDUI trademark in the United States, when in fact it was the owners of Kandui Resort who had the collective right to use the KANDUI trademark in the United States, and not Defendant 1 in her personal capacity. On information and belief, Defendant 1 filed the United States trademark application with the intention of obtaining an unfair legal advantage over Kandui Resort.

52. On 17 December 2010, and without prior notice to or agreement from the other Agreement Participants or Current Participants, Defendant 1, in her own name and personal capacity, applied to register the following trademark in Indonesia, which achieved registration on 6 September 2012:

Trademark	:	KANDUI VILLAS
Type of mark	:	Word
Applicant/Proprietor	:	Raihana, Indonesia
Application No.	:	J00 2010 045875
Application Date	:	17 December 2010
Registration No.	:	IDM000367908
Registration Date	:	6 September 2012
Class	:	43
Services	:	Hotel accommodation services and resort hotel



Status : Registered

On information and belief, Defendant 1 filed the aforementioned Indonesian trademark application with the intention of obtaining an unfair legal advantage over Kandui Resort, knowing that Kandui Resort had not previously applied to register either the KANDUI trademark or the KANDUI RESORT trademark in Indonesia.

53. On 31 December 2010, and without prior notice to or agreement from the other Agreement Participants or Current Participants, Defendant 1, in her own name and personal capacity, applied to register the following trademark in the United States:

Trademark	KANDUI VILLAS
Services	Class 43: Resort lodging services. FIRST USE: 20101201. FIRST USE IN COMMERCE: 20101201
Serial Number	85208671
Filing Date	December 31, 2010
Published for Opposition	August 23, 2011
Registration Number	4052051
Registration Date	November 8, 2011
Owner	(REGISTRANT) RAIHANA HEUER INDIVIDUAL INDONESIA P.T. KANDUI BEACH VILLAS POLAMAS BLOK L # 3 PADANG WESTERN SUMATRA INDONESIA 25000
Register	PRINCIPAL

On information and belief, Defendant 1 filed the above United States trademark application with the intention of obtaining an unfair legal advantage over Kandui Resort.

54. On 10 December 2013, and without prior notice to or agreement from the other Agreement Participants or Current Participants, Defendant 1, in her own name and personal capacity, applied to register the following trademark in the United States:



Trademark	KANDUI
Services	Class 25: Clothing, namely, T-shirts, shirts, pants, shorts, sweatshirts, hooded sweatshirts, headwear, hats, jackets, footwear, flip flops, tank tops, swimsuits, tops, bottoms. FIRST USE: 20150120. FIRST USE IN COMMERCE: 20150120
Serial Number	86140129
Filing Date	December 10, 2013
Published for Opposition	May 27, 2014
Registration Number	4717526
Registration Date	April 7, 2015
Owner	(REGISTRANT) RAIHANA HEUER INDIVIDUAL INDONESIA P.T. KANDUI BEACH VILLAS POLAMAS BLOK L #3 PADANG WESTERN SUMATRA INDONESIA 25000
Register	PRINCIPAL

On information and belief, Defendant 1 filed the above United States trademark application with the intention of obtaining an unfair legal advantage over Kandui Resort.

55. Whereas, the various trade mark registrations conducted by Defendant 1 constitute bad faith towards the Kandui Resort Agreement. Judging by the timeline of the trade mark registrations, it is clear that Defendant 1 intentionally and with the intention to harm the Kandui Resort by taking the advantage of the market and the good name of the Kandui Resort, conducted such registrations for Defendant 1 and Defendant 2's sole benefit and the benefit of their competing resort, Kandui Villas.
56. The actions committed by Defendants have breached the principles and the obligations to act in good faith and justice which as a matter of law is incorporated into the Kandui Resort Agreement.



C. Damages of the Plaintiffs

57. Whereas due to the breaches of contract and the law committed by the Defendants, the Plaintiffs have suffered great loss.
58. Based on Article 1246 and 1427 of the ICC, which provide, inter alia, that damages for breach of an obligation include lost expected profit, expenses, losses and interest.
59. Whereas in the years 2014 and 2015, a foreign investor (the "**Buyer**") offered to purchase the interests of Anthony Marcotti (Plaintiff 1) dan D3 Holdings LLC (Plaintiff 3) (comprising 40.5% of the participating interests in Kandui Resort) for USD1,500,000.

As a condition of the transaction, the Buyer requested that the Current Participants properly organize the legal affairs of Kandui Resort by forming a PT PMA company, securing the rights in the land by conveyance to the PT PMA and clarifying ownership/settling disputes relating to the KANDUI trademark. Defendant 1 and Defendant 2 refused to allow the formation of a PT PMA company, refused to convey the Land for Kandui Resort to the PT PMA, refused to transfer the KANDUI trademark to the PT PMA, and generally refused to allow the sale to go through unless the sale was on their terms.

The Buyer offered to purchase the interests of Defendant 1 and Defendant 2 (comprising 20% of the participating interests in Kandui Resort, including all right, title and interest they had in the Land) for USD2,000,000 (the "**Buyout Offer**"). This Buyout Offer was at a premium price to the price otherwise being offered for the interests of Plaintiff 1 and Plaintiff 3. The premium price was specifically made in order to induce Defendant 1 and Defendant 2 to transfer their interest in the Land of Kandui Resort to the PT PMA, to transfer their rights in the KANDUI trademark to the PT PMA, and to permanently separate Defendant 1 and Defendant 2 from the future business of Kandui Resort.

Defendant 1 and Defendant 2 initially signaled to the other Current Participants that they would accept the Buyout Offer.

For the sense of justice the Buyer also requested that all trademark rights to KANDUI be conveyed to Kandui Resort as part of the transaction because essentially the trademark "Kandui" was born and raised by Kandui Resort. The Buyer in fact offered to license back the trademark "Kandui" back to Kandui Villas indefinitely and on a royalty-free basis.

Defendant 1 and Defendant 2 refused to agree to the terms relating to the trademark, and as a result, the Buyer revoked his offer. Defendant 1's and Defendant 2's actions as described above effectively rendered Anthony Marcotti's (Plaintiff 1) dan D3 Holdings LLC's (Plaintiff 3) interests unmarketable and worthless.



60. The breaches committed by the Defendants have caused the Plaintiffs to spend significant legal fees. Other than that, the breaches committed by the Defendants have also caused Kandui Resort to suffer a great financial loss.
61. Therefore costs, compensation pay to the Plaintiff in the amount of USD 5,000,000 (five million United States Dollar), plus interest 6% (six percent) per year starting from this Claim registered in the District Court of Jakarta Pusat until fully paid.

PURSUANT TO THE ABOVE MATTERS, the Plaintiff humbly request to the District Court of Padang to decide this case with dictum as follows:

In Provision

1. Stipulate the conservatory attachment (conservatoir beslag) over all the Resort Property controlled by the Defendants in the form of land and property.

In the Case Principal

1. Grant the Plaintiff's claim in its entirety;
2. Declare as a true and proven that the Syndicate Defendants individually and jointly have committed breaches of Kandui Resort Agreement which adverse the Plaintiff;
3. Instruct the Defendants and Co-Defendants together with the Plaintiffs to establish the PT PMA based on the shareholding percentage of the Current Participants in the form of the Correct Draft Deed of Establishment.
4. Instruct the Defendants and Co-Defendants together with the Plaintiffs to create and sign the Deed of Establishment and Articles of Association provided by the Plaintiffs which i) defines commercially reasonable rights, duties and obligations of all owners in Kandui Resort, ii) provides for fair and proportional voting on decision-making matters; iii) outlines a commercially reasonable procedure for buying and selling ownership interests within the current ownership group, iv) outlines a commercially reasonable procedure for selling ownership interests to third parties, and v) includes other terms customarily found in ordinary ownership agreements;
5. Instruct the Defendants and Co-Defendants so that the Land of the Kandui Resort and the Resort Property controlled by any of the Defendants and Co-Defendants to be conveyed to the PT PMA so that no land or assets are hereafter held in the name of any individual owner.
6. Instruct so that all licenses possessed/controlled by the Defendants and Co-Defendants relating or affecting the operations of Kandui Resort shall be transferred to PT PMA or otherwise re-applied for in the name of the PT PMA



7. Instruct Kandui Villas to change its name and permanently cease and desist all use of KANDUI as the name of its resort or in connection with any other goods or services, and assign all its trademark registrations to the PT PMA;
8. Adjudge the Defendant 1 and Defendanty 2 to jointly and severally, immediately in cash, pay to the Plaintiff compensation in the amount of USD 5,000,000 (five million United States Dollar), plus interest 6% (six percent) per year starting from this Claim registered in the District Court of Jakarta Pusat until fully paid.
9. Declare valid and enforceable under the law any conservatory attachment (*conservatoir beslag*) which has been placed) over all the Resort Property controlled by the Defendants in the form of land and;
10. Penalize Defendants to jointly and severally pay all costs of this case;
11. Declare this decision is executable even Defendants file for verzet, appeal or cassation (*uitvoerbaar bij voorraad*).

If the Court has another opinion for this case, the Plaintiffs humbly request to make the fairest decision (*ex aquo et bono*).

Respectfully submitted by

Duly authorized Attorneys of Plaintiffs

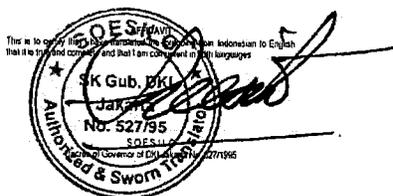
DYAH ERSITA & PARTNERS

[signature]

[signature]

Aulia Dasril, S.H.

Sri Wahyu Ningsih, S.H.



CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2016, the foregoing document and exhibit was sent via first class mail to Respondent's correspondent of record

Lindy M. Herman
Fish & Tsang LLP
2603 Main Street, Suite 1000
Irvine, CA 92614

Dated: May 5, 2016

/Amanda Costa/

Amanda Costa