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Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: VID1315/2019
File Title: ISIGNTHIS LIMITED & ORS v ASX LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 14/04/2022 2:22:12 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

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Form 34
Rule 16.33

**Reply to the Amended Defence
to the Fourth Further Amended Statement of Claim**

No. VID1315/2019

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

**iSignthis Limited (ACN 075 419 715) & Ors
(according to the attached Schedule)**

Applicants

ASX Limited (ACN 008 624 691)

Respondent

By way of Reply to the Amended Defence dated 25 February 2022 ~~28 September 2021~~ 14-
November 2020 (Defence) the Applicants say as follows:

1. Save for the admissions in the Defence and in this Reply, the Applicants otherwise join issue with the matters set out in the Defence.

1A. As to paragraph 5E(b)(iii)(E) of the Defence, the Applicants:

- (a) say that on 4 October 2021 they served a Request for Further and Better Particulars (Request for Particulars);
- (b) say that save for stating that the relevant opinion was held by Kevin Lewis in his capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraph 4 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iii)(E) of the Defence; and

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- (c) otherwise deny each and every allegation in paragraph 5E(b)(iii)(E) of the Defence.

1B. As to paragraph 5E(b)(iv)(A) of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraph 5 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iv)(A) of the Defence; and
- (b) otherwise deny each and every allegation in paragraph 5E(b)(iv)(A) of the Defence.

1C. As to paragraph 5E(b)(iv)(C) of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraph 6 of the Request for Particulars and therefore they do not know and cannot admit the allegation in paragraph 5E(b)(iv)(C) of the Defence; and
- (b) otherwise deny each and every allegation in paragraph 5E(b)(iv)(C) of the Defence.

1D. As to paragraph 5F of the Defence, the Applicants:

- (a) admit sub-paragraph (b); and
- (b) otherwise deny each and every allegation in paragraph 5F of the Defence.

2. As to paragraph 7(a) of the Defence, the Applicants:

- (a) say that by its own admission in paragraphs 5(a) and 52 of the Defence, ASX was obliged to exercise the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances;
- (b) say further that in the circumstances set out in paragraph 6(c) below, or at all, ASX giving ISX four minutes notice before announcing, at 9:53am on 2 October 2019, the suspension from official quotation of ISX's securities:
 - (i) did not constitute notice, alternatively reasonable notice, of ASX's intention to suspend trading in ISX's securities and therefore did not afford ISX procedural fairness appropriate to the circumstances; and/or
 - (ii) did not constitute an exercise of the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances;

and,

(c) otherwise deny each and every allegation in paragraph 7(a) of the Defence.

3. As to paragraph 7(b) of the Defence, the Applicants:

(a) say that in the 12 September Price Query ASX noted the change in the price of ISX's securities from 11 September 2019 to 12 September 2019;

(b) admit that in the 12 September Price Query ASX noted what it considered to be a significant increase in the volume of ISX's securities traded on 12 September 2019;

(c) say that in the 12 September Price Query ASX asked a number of standard questions in relation to the recent trading in ISX's securities; and

(d) otherwise deny each and every allegation in paragraph 7(b) of the Defence.

4. As to paragraph 7(c) of the Defence, the Applicants:

(a) admit that on 13 September 2019 ISX sent a letter to ASX which responded to the 12 September Price Query (**13 September Response**);

(b) say that in the 13 September Response ISX:

(i) told ASX that the company's attention had been drawn to a report authored by James Samson and Dean Paatsch on 10 September 2019, which had been circulated by Ownership Matters Pty Ltd to a number of ISX's shareholders, and likely other parties, as reported in the Australian Financial Review and the Sydney Morning Herald;

(ii) told ASX that the company was not invited to comment by Ownership Matters Pty Ltd during the drafting of the report, and it still had not received the report from Ownership Matters Pty Ltd;

(iii) rebutted the allegations made in the report circulated by Ownership Matters Pty Ltd; and

(iv) told ASX that it will refer the matter and conduct of Ownership Matters Pty Ltd to ASIC and will update the market once it had an opportunity to consider the contents of the report and what further action may be available to it;

and,

(c) otherwise deny each and every allegation in paragraph 7(c) of the Defence.

5. As to paragraph 7(d) of the Defence, the Applicants:

(a) say that in the 19 September Price Query ASX noted the change in the price of ISX's securities from 18 September 2019 to 19 September 2019;

(b) admit that in the 19 September Price Query ASX noted what it considered to be a significant increase in the volume of ISX's securities traded on 19 September 2019;

(c) say that the 19 September Price Query referred to the fact that ISX had responded to the 12 September Price Query on 13 September 2019;

(d) say that in the 19 September Price Query ASX asked a number of standard questions in relation to the recent trading in ISX's securities and asked ISX to address and consider:

(i) an article published earlier that day by the Australian Financial Review in relation to legal proceedings in the Federal Court of Australia; and

(ii) whether the company was aware of any information that its earnings guidance provided in its Half Yearly Report and Accounts is likely to differ materially;

(e) say further that on 19 September 2019 ISX sent a letter to ASX which responded to the 19 September Price Query (**19 September Response**);

(f) say that in the 19 September Response, ISX told ASX:

(i) that the latest update on GPTV dated 9 September 2019 remained supportive of the earnings guidance;

(ii) the company had addressed the purported governance issues raised by Ownership Matters Pty Ltd in their report dated 10 September 2019, which were unsubstantiated and refuted by the company;

(iii) there had been no changes to operations and the business continued to strengthen;

- (iv) the company was continuing to operate as noted in the Half Yearly Accounts and as per the announcements made on 28 August 2019; and
- (v) the article in the Australian Financial Review earlier that day:
 - (A) failed to distinguish between ISX and the company known as iSignthis Ltd incorporated in the British Virgin Islands, which previously held the assets acquired by ISX; and
 - (B) referred to a dispute between historical (pre listing) shareholders and the former company iSignthis Ltd incorporated in the British Virgin Islands, which has no impact on the operations of ISX, its shares on issue and cost base;

and,

- (g) otherwise deny each and every allegation in paragraph 7(d) of the Defence.

6. As to paragraph 7(e) of the Defence, the Applicants:

- (a) deny each and every allegation in paragraph 7(e) of the Defence;
- (b) say that by its own admission in paragraphs 5(a) and 52 of the Defence, ASX was obliged to exercise the power conferred by Listing Rule 17.3 honestly and in good faith and affording procedural fairness appropriate to the circumstances; and
- (c) say further that in the circumstances set out in paragraphs 2 to 5 above:
 - (i) the standard questions raised by ASX in the 12 September Price Query and the 19 September Price Query only concerned the:
 - (A) change in the price of ISX's securities from 11 September 2019 to 12 September 2019 and from 18 September 2019 to 19 September 2019; and
 - (B) volume of ISX's securities traded on 12 September 2019 and 19 September 2019;
 - (ii) ISX addressed each of those matters in the 13 September Response and the 19 September Response; and

(iii) in the period between 19 September 2019 and 2 October 2019 (the day on which ASX suspended trading in ISX's securities), ASX did not:

- (A) issue any further query letters to ISX;
- (B) tell ISX that it was not satisfied with the 13 September Response or the 19 September Response; or
- (C) tell ISX that there were any further issues concerning it about the company and give ISX a reasonable opportunity to respond prior to exercising its power to suspend trading in ISX' securities.

7. As to paragraph 7(f) of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 6(b) and 6(c) above; and
- (b) otherwise deny each and every allegation in paragraph 7(f) of the Defence.

7A. As to paragraph 8A of the Defence, the Applicants:

- (a) say that on 12 October 2021 ASX refused to answer paragraphs 7, 8 and 14 of the Request for Particulars and therefore they do not know and cannot admit the allegations in paragraphs 8A(b)(iii), 8A(b)(iv) or 8A(c)(vii) of the Defence;
- (b) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 11 and 13 of the Request for Particulars and therefore they do not know and cannot admit the allegations in paragraphs 8A(c)(iii), 8A(c)(iv), 8A(c)(v), 8A(c)(vi) of the Defence; and
- (c) otherwise deny each and every allegation in paragraph 8A of the Defence.

7B. As to paragraph 30 of the Defence, the Applicants:

- (a) in relation to sub-paragraph (a):
 - (i) admit that at 10:23am on 4 November 2019 Colin Luxford said by email to HWL Ebsworth that "we ask that you direct enquires in relation to the determination of ISX suspension to the ASX directly"; and
 - (ii) say further that at 11:09am on 4 November 2019 David Clarke of HWL Ebsworth sent an email to Colin Luxford (copied to Jane Fan and Sharon

Concison of ASIC) in which he said “You have not answered the question in our email to Sharon Concison. Did ASIC issue a notice or direction under section 794D of the Corporations Act?”;

(b) in relation to sub-paragraph (b):

(i) say that at 11:56am on 7 November 2019 David Clarke of HWL Ebsworth sent an email to Colin Luxford (copied to Jane Fan and Sharon Concison) in which he said “Please can you provide me with a reply to my email below. It is not an unreasonable question”;

(ii) say that at 4:59pm on 7 November 2019 Colin Luxford sent an email to David Clarke (copied to Jane Fan, Sharon Concison and Adam Boscoscuro of ASIC) in which he said “[i]n response to an earlier email to Ms Concison where you raised the identical question, I advised that you should refer your enquiry to the ASX”; and

(iii) say further that in his email of 7 November 2019, Colin Luxford also said “To be clear, and to answer your question, the decision by ASX to suspend ISX Ltd from trading on 2 October 2019 was not made with a direction from ASIC”;

and,

(c) otherwise deny each and every allegation in paragraph 30 of the Defence.

8. As to paragraph 48B of the Defence, the Applicants:

(a) admit that the third direction given by ASX to ISX required ISX to include in each quarterly activity report a breakdown by sector of the revenue ISX had derived during the applicable quarter; and

(b) otherwise deny each and every allegation in paragraph 48B of the Defence.

9. As to paragraph 48D of the Defence, the Applicants:
- (a) admit that the second direction given by ASX to ISX required ISX to engage an independent expert, acceptable to ASX, to review its policies and processes to comply with Listing Rule 3.1 and to release to the market the findings of, and any changes ISX proposed to make to its compliance policies and processes in response to, the review;
 - (b) admit that on 19 May 2020 ISX appointed Michael Linehan, a Partner of Clayton Utz, to prepare an independent expert report regarding ISX's continuous disclosure policy; and
 - (c) otherwise deny each and every allegation in paragraph 48D of the Defence.
10. As to paragraph 48E of the Defence, the Applicants:
- (a) refer to and repeat paragraph 11 below; and
 - (b) otherwise deny each and every allegation in paragraph 48E of the Defence.
11. As to paragraph 48F of the Defence, the Applicants:
- (a) say that pages 1 to 5 of the report attached to the draft announcement contained the background and purpose of the report, a summary of the scope of the review, a summary of the findings and the recommendations of the experts and otherwise admit the allegation in sub-paragraph (a);
 - (b) admit the allegation in sub-paragraph (b);
 - (c) in relation to sub-paragraph (c):
 - (i) say that the paragraph pleads a conclusion without any material facts such that it is ambiguous and/or likely to cause prejudice, embarrassment or delay in the proceeding and ought to be struck out; and
 - (ii) under cover of the objection in sub-paragraph (c)(i) above, refer to and repeat paragraph 48FA(c) of the 4FASOC and say that:
 - A. the second direction required ISX "to release to the market the findings of, and any changes ISX [proposed] to make to its compliance policies and processes in response, to the review";

- B. say that pages 1 to 5 of the report attached to the draft announcement contained the background and purpose of the report, a summary of the scope of the review, a summary of the findings and the recommendations of the experts; and
- C. in the circumstances set out in sub-paragraphs A and B above, ISX did not fail to comply with the second direction by 17 July 2020 because the draft announcement did not attach the entire independent experts' report;
- (d) admit that, in the Final Reasons, ASX said that it considered it appropriate for ISX's shares to remain suspended pursuant to Listing Rule 17.3.4 and not reinstated until:

“the matters referred to in these statement of reasons are satisfactorily disclosed to the market; and

acceptable measures are put in place so that the current holders of the Milestone Shares (other than those who were bona fide purchasers for value of those shares on-market) are not able to sell them for a reasonable period while ASIC has an opportunity to pursue its investigations and to determine whether it wishes to take action against those involved in the issue of the Milestone Shares.”

PARTICULARS

Paragraph 12.6 of the Final Reasons.

- (e) say that, insofar as relevant information was sought by ASX from ISX so that ASX could consider ISX's proposed escrow agreement, in the period from 1 May 2020 to 5 May 2020, ISX:
- (i) told ASX:
- (A) the details of all current and former holders of the ordinary shares issued following the achievement of the milestones;

- (B) that the current holders of these ordinary shares which are associated with Tim Hart, Scott Minehane, Todd Richards, Barneby Egerton-Warburton, John Karantzis and Andrew Karantzis respectively, received them pursuant to agreements made with each of these individuals;
- (C) that the remaining current and former holders of these ordinary shares received them out of the proportion which was to be distributed to John Karantzis (or his nominee), as an incentive to the executive team;
- (D) that iSignthis Ltd (BVI) directed the transfer of the ordinary shares issued following the achievement of the milestones to these individuals or their nominees;
- (E) that 500,000 of the ordinary shares issued following the achievement of the milestones had been sold on 15 May 2019, by a former employee on the market through BNP, such that ISX was unable to determine the exact sale price but the range that day was approximately \$0.405;
- (F) that 500,000 of the ordinary shares issued following the achievement of the milestones were still held by a former employee who had not been in contact with ISX for many months; and
- (G) that notwithstanding the matters in sub-paragraphs (E) and (F) above, the total amount of the 336,666,667 ordinary shares issued following the achievement of the milestones would be subject to escrow as Red 5 Solutions BVI Limited and Select All Enterprises, companies associated with Andrew Karantzis and John Karantzis respectively, would voluntarily contribute the additional 1,000,000 ordinary shares required to cover the ordinary shares sold and held by former employees;

and,

- (ii) sent ASX copies of relevant documents, including ISX's share register and correspondence with Link Market Services in relation to the sale of the 500,000 ordinary shares by the former employee;

PARTICULARS

- A. Insofar as sub-paragraphs (i)(A) to (i)(G) above are concerned, the information was provided in writing. It was contained in the emails and attachments sent by John Karantzis to Kevin Lewis at 9:41am on 2 May 2020 (which referred to the email sent by John Karantzis to Daniel Moran at 2:16pm on 1 May 2020), 2:20pm on 5 May 2020, 6:58pm on 5 May 2020, 9:22pm on 5 May 2020, 9:40pm on 5 May 2020, 10:15pm on 5 May 2020 and 10:21pm on 5 May 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
- B. Insofar as sub-paragraph (ii) above is concerned, the documents were attached to the emails sent by John Karantzis to Kevin Lewis at 9:41am on 2 May 2020, 2:20pm on 5 May 2020 and 6:58pm on 5 May 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.
- (f) say that notwithstanding the information given by ISX to ASX, and the offer to voluntarily contribute an additional 1,000,000 ordinary shares as set out in sub-paragraph ~~(d)~~(e)(i)(G) above, on 5 May 2020 and 11 June 2020, ASX:
- (i) demanded further information from ISX which was irrelevant to ASX's consideration of ISX's offer to escrow the total number of ordinary shares

issued following achievement of the milestones for a period of 12 months;
and

- (ii) refused to consider ISX's escrow offer;

PARTICULARS

A. Insofar as sub-paragraphs (i) and (ii) above are concerned, ASX's demands and refusals were in writing. They were contained in the email sent by Kevin Lewis to John Karantzis at 11:16pm on 5 May 2020 and the letter dated 11 June 2020. A copy of each document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

B. The further information demanded by ASX from ISX was irrelevant to whether the Escrow Offer (as defined in sub-paragraph ~~(f)~~(g) below) would prevent the ordinary shares issued following the achievement of the milestones being sold for a reasonable period of time while ASIC pursued its investigations.

- (g) say that in the circumstances set out in sub-paragraphs ~~(d)~~ and (e) and (f) above:
- (i) as at 5 May 2020, ISX had offered to put 336,666,667 ordinary shares in escrow for a period of 12 months (**Escrow Offer**), being 100% of the total number of ordinary shares issued on conversion of the performance rights approved by shareholders on 22 December 2014;
- (ii) as at 5 May 2020, ISX had given ASX all of the relevant information which it had sought from ISX so that ASX could consider the Escrow Offer in order to lift the suspension of trading in ISX's securities; and
- (iii) to date no escrow arrangement is in place because ASX has failed to consider the Escrow Offer honestly and in good faith, or at all, having regard to the relevant information provided to it by ISX;

- (h) say that after the Final Reasons were published by ASX on the Market Announcements Platform and ISX had made the Escrow Offer, ASX put further obstacles in the way of ISX's securities being reinstated to trading by:
- (i) commencing an entirely new interrogation of ISX's business, this time concerning the suspension and termination of the arrangements between ISX and Visa, including the announcement made on 20 March 2020 by ISX (~~ASX Visa Query~~);

PARTICULARS

- A. The new interrogation by ASX of ISX was first alluded to in the email from Kevin Lewis to John Karantzis sent at 1:51pm on 5 May 2020, which was then followed by:
- (i) ASX's query letter dated 7 May 2020, attached to an email sent at 10:42pm by Kevin Lewis to Elizabeth Warrell;
- (ii) ISX's response dated 13 May 2020, attached to an email sent at 1:08pm by John Karantzis to Kevin Lewis;
- (iii) email sent at 7:20pm on 14 May 2020 by Kevin Lewis to John Karantzis;
- (iv) email sent at 9:10am on 20 May 2020 by John Karantzis to Kevin Lewis; and
- (v) email sent at 8:38pm on 21 May 2020 by Kevin Lewis to John Karantzis;
- (vi) email sent at 8:59am on 22 May 2020 by John Karantzis to Domenic Stevens;
- (vii) email sent at 5:43pm on 23 May 2020 by Daniel Moran to John Karantzis;

- (viii) ISX letter to shareholders dated 24 May 2020, a copy of which was sent at 2:33pm that day to Dean Litis of ASX for release on the Market Announcements Platform; and
- (ix) ISX's response dated 25 May 2020, which was released to the market that same day on the Market Announcements Platform.

A copy of these documents is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.

- (ii) engaging in the conduct alleged in paragraphs 48DA and 48DB of the 4FASOC; and
- (iii) notwithstanding the facts alleged in paragraph 48E of the 4FASOC, engaging in the conduct alleged in paragraphs 48FA(a), 48FA(b), 48FB and paragraphs A, B and C of the Particulars under paragraph 48FC of the 4FASOC;
- ~~(ii) notwithstanding the information given by ISX to ASX in response to the ASX Visa Query, which ASX released to the market on 25 May 2020, instructing the independent experts that there had been further breaches by ISX of chapter 3 of the Listing Rules which should be factored into their review of ISX's continuous disclosure policies; and~~

PARTICULARS

~~The instruction was in writing, contained in an email sent at 9:15am on 17 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- ~~(iii) telling the independent experts that:~~

- (A) ~~ASX regarded ISX's failure to properly disclose the Visa suspension and the reasons for it as a clear and serious breach of Listing Rule 3.1 that would appear to raise potential issues about the adequacy of ISX's policies and process to comply with that rule; and~~
- (B) ~~these potential issues fall within the purview of their review and report;~~

PARTICULARS

~~The statements were in writing, contained in an email sent at 1:55pm on 18 June 2020 by Kevin Lewis to, among others, Michael Linehan. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

(g) ~~say further that:~~

- (i) ~~the independent experts said that they were unable to conclude that the decision taken by ISX to not announce the Visa suspension at the time of the initial suspension constituted a breach of its continuous disclosure obligations and that the subsequent disclosure on 29 April 2020 was deficient but the letter to shareholders dated 24 May 2020, released to the market on 25 May 2020, provided a material update in respect of the Visa negotiations, including the likely timeframe in which termination will become final; and~~

PARTICULARS

~~The statements were in writing, contained on pages 9 to 11 of the Independent Expert Review dated 16 July 2020 signed by Michael Linehan and Brendan Groves. A copy of the document is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~(ii) — on 16 July 2020 ISX resolved to adopt all of the recommendations made by the independent experts in the Independent Expert Review dated 16 July 2020;~~

~~(h) — say further that notwithstanding the matters in sub-paragraph (h) above:~~

~~(i) — on and from 17 July 2020 ASX interrogated the independent experts in relation to their Independent Expert Review dated 16 July 2020;~~

PARTICULARS

~~A. — The questions were in writing, contained in emails sent at 1:46pm and 7:06pm on 17 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves and a further email sent at 8:07am on 20 July 2020 by Janine Ryan to Michael Linehan and Brendan Groves. A copy of the emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~B. — The responses from Clayton Utz were in writing, contained in an email sent at 4:03pm on 17 July 2020 by Michael Linehan to Janine Ryan and a document attached to an email sent at 1:10pm on 20 July 2020 by Michael Linehan to Janine Ryan.~~

~~(ii) — in or about mid July 2020, pursuant to section 127(4B) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX obtained~~

from ASIC copies of correspondence between Visa and ISX in relation to Visa's suspension and subsequent termination of the arrangement between ISX and Visa (**Visa Correspondence**);

- (iii) ~~ASX was of the view that the Visa Correspondence raised questions as to whether ISX's response to ASX's letter dated 7 May 2020, and its disclosures to the market about its relationship with Visa since 6 March 2020, had complied with the Listing Rules;~~

PARTICULARS

~~ASX's view was expressed in writing, contained on page 2 of its Market Announcement dated 26 October 2020.~~

- (iv) ~~on 22 July 2020, notwithstanding section 127(4F) of the *Australian Securities and Investments Commission Act 2001* (Cth), ASX sent a copy of the Visa Correspondence to the independent experts;~~

PARTICULARS

~~Email from Janine Ryan to Michael Linehan and Brendan Groves sent at 6:28pm on 22 July 2020. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

- (v) ~~on 23 July 2020 ASX sent a copy of the Visa Correspondence and a further query letter to ISX;~~

PARTICULARS

~~Email sent at 6:58pm on 23 July 2020 by James Gerraty to Tim Hart, John Karantzis and Elizabeth Warrell. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~(vi) pursuant to ASX's requests, on 16 August 2020 ISX asked the independent experts to review the additional correspondence and update their report as necessary;~~

PARTICULARS

~~A. The ASX request was in writing. It was contained in an email sent at 3:27pm on 30 July 2020 by Janine Ryan and in an email sent at 8:46am on 5 August 2020 by Janine Ryan. A copy of the two emails is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~B. ISX's request was in writing, contained in an email sent at 5:51pm on 16 August 2020. A copy of the email is in the possession of the solicitors acting for the Applicants and may be inspected during business hours by appointment.~~

~~(vii) the supplementary report of the independent experts dated 3 September 2020:~~

~~(A) said that they had considered the additional correspondence relating to the suspension and termination of the arrangements between ISX and Visa;~~

~~(B) said that based on their review of the information available to them, nothing had come to their attention which caused them to believe that ISX's reliance on ASX Listing Rule 3.1A during the periods from 17 April 2020 to 12 May 2020 and 12 May 2020 to 21 May 2020 was not appropriate; and~~

~~(C) — concluded that:~~

~~(1) — the obligation of ISX to disclose the termination of the arrangements between ISX and Visa in accordance with Listing Rule 3.1 first arose on 21 May 2020; and~~

~~(2) — there was a technical breach of ASX Listing Rule 3.1 that arose from a 1 to 2 business day delay by ISX in formally announcing the termination to the market, but that as ISX's shares were suspended at this time ISX did not have the ability to use a trading halt to assist in managing its continuous disclosure obligations, which it may have otherwise done to cover the period of the delay;~~

PARTICULARS

~~The statements in sub paragraphs (A) to (C) above were in writing, contained in paragraphs 2.4 to 2.9 of the supplementary report of the independent experts dated 3 September 2020.~~

- (i) say further that notwithstanding the matters in paragraph 11(h) above and paragraphs 48DA to 48I of the 4FASOC: sub paragraph (i) above:
- (i) on 10 September 2020, ASX issued a further query letter to ISX pursuant to Listing Rule 18.7, purportedly to enable it to be satisfied that ISX was, and had been, complying with the Listing Rules when, in fact, the letter:
- (A) sought to interrogate ISX about the supplementary report of the independent experts dated 3 September 2020 and ISX's disclosures about the Visa suspension and termination; and
- (B) demanded that ISX provide to ASX copies of its legal advice;

- (ii) on 15 September 2020, ISX sent to ASX its response to the further query which said, among other things, that:
 - (A) ASX did not have the power to compel a listed entity to produce its legal advice; and
 - (B) the query letter had not been issued in good faith for a proper purpose as the independent experts had conclusively dealt with the very issue which had been unilaterally added to the scope of their review by Kevin Lewis;
- (iii) on 9 October 2020, ASX sent ISX a further query letter which:
 - (A) persisted with its interrogation of ISX about the supplementary report of the independent experts dated 3 September 2020 and ISX's disclosures about the Visa suspension and termination; and
 - (B) wrongly asserted that ISX had waived legal professional privilege over its legal advice;

and,

- (iv) on 26 October 2020, ASX released to the market its query letters and ISX's responses regarding the suspension and termination of the arrangements between ISX and Visa;

and,

- (j) otherwise deny each and every allegation in paragraph 48F of the Defence.

12. As to paragraph 48J of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 11(~~d~~)(~~e~~) to 11(~~j~~)(~~k~~) above; and
- (b) otherwise deny each and every allegation in paragraph 48J of the Defence.

13. As to paragraph 48K of the Defence, the Applicants:

- (a) say that by ASX's own admission, as at 7 September 2020 ISX had complied with all of the Directions;
- (b) refer to and repeat paragraphs 11(~~e~~)(~~f~~) to 11(~~g~~)(~~h~~) above; and

(c) otherwise deny each and every allegation in paragraph 48K of the Defence.

14. As to paragraph 49 of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 11(h) and 11(i)(g) to 11(j) above;
- (b) say that in the circumstances set out in paragraph 14(a) above, ASX would not have had a proper basis to suspend ISX's securities and keep them suspended from around 15 May 2020, or alternatively 20 May 2020;
- (c) say further that in the circumstances set out in paragraphs 13(a), 14(a) and 14(b) above, since at least 7 September 2020, alternatively 26 October 2020:
 - (i) ASX has not had a proper basis to maintain its suspension of trading in ISX's securities; and
 - (ii) by keeping ISX's shares suspended from trading, ASX has:
 - (A) in breach of section 792A(1)(a) of the *Corporations Act 2001* (Cth), failed to apply its operating rules in a fair manner and ensure that ISX is treated in a like manner as other participants whose shares have not been suspended while they have been the subject of ongoing investigations or legal proceedings by regulators, including ASIC and AUSTRAC; and
 - (B) breached its implied obligations to act in good faith and/or honestly and fairly and/or reasonably in exercising its powers under the Listing Rules and do all that is necessary to enable ISX to have the benefit of the agreement;

~~and,~~

- (d) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 12, 13 and 15 of the Request for Particulars and therefore they do not know and cannot admit the allegations in sub-paragraphs 49(a)(iii)(C), 49(a)(iii)(D), 49(a)(iii)(E), 49(a)(iii)(F) and 49(a)(iii)(G) of the Defence; and
- (e) otherwise deny each and every allegation in paragraph 49 of the Defence.

15. As to paragraph 51 of the Defence, the Applicants:
- (a) refer to and repeat paragraphs 14(a) to 14(c) above;
 - (b) say that save for stating that the relevant opinions were held by Janine Ryan in her capacity as Chief Compliance Officer, on 12 October 2021 ASX refused to answer paragraphs 9, 10, 12, 13 and 15 of the Request for Particulars and therefore they do not know and cannot admit the allegations in sub-paragraphs 51(b)(iii)(C), 51(b)(iii)(D), 51(b)(iii)(E), 51(b)(iii)(F) and 51(b)(iii)(G); and
 - (c) otherwise deny each and every allegation in paragraph 51 of the Defence.
16. As to paragraph 51A of the Defence, the Applicants:
- (a) deny each and every allegation in paragraph 51A of the Defence;
 - (b) say that, during ISX's Interlocutory Application in this proceeding, ISX told ASX that the publication of the Final Reasons would lead to a substantial further loss of clients and would make it significantly more difficult for ISX to acquire further new clients; and
 - (c) say further that:
 - (i) on or about 12 March 2015, ISX told ASX that the material business risks the entity faces were set out in section 12 (pages 79-85) of the Prospectus;

PARTICULARS

The statement was in writing, contained in item 34 of the checklist attached to Appendix 1A (ASX Listing Application and Agreement), executed by ISX and accepted by ASX on or about 15 March 2015.

- (ii) sub-paragraph (m) of section 12 of the Prospectus said that:
 - (A) the reputation of ISX and its products is important in attracting and retaining existing business and obtaining new business and key employees; and

- (B) negative publicity could adversely impact the reputation of ISX which may potentially result in a fall in the number of customers seeking the products and services of the company.

17. As to paragraph 73(p) of the Defence, the Applicants:

- (a) say that ISX did not attract adverse media prior to:
 - (i) the publication of a report by Ownership Matters Pty Ltd on 10 September 2019; and
 - (ii) the suspension of trading of its securities on 2 October 2019 by ASX;
 and,
- (b) otherwise deny each and every allegation in paragraph ~~in paragraph~~ 73(p) of the Defence.

18. As to paragraph 73A of the Defence, the Applicants:

- (a) refer to and repeat paragraphs 16(b) and 16(c) above; and
- (b) otherwise deny each and every allegation in paragraph 73A of the Defence.

19. As to paragraph 94A of the Defence, the Applicants:

- (a) deny each and every allegation in paragraph 94A of the Defence;
- (b) say that:
 - (i) as the single largest licenced market operator in Australia, ASX has:
 - (A) significant authority and power which it can, and does, wield over entities listed on the Australian Securities Exchange through the Listing Rules; and
 - (B) a platform whereby it can cause damage to entities listed on the Australian Securities Exchange through the dissemination of misleading or deceptive information on its Market Announcements Platform;
 - (ii) ASX has a statutory obligation pursuant to section 792A(1)(a) of the *Corporations Act 2001* (Cth) to ensure that the market is a fair, orderly

and transparent market, which necessitates that it not engage in conduct which is misleading or deceptive or is likely to mislead or deceive;

- (iii) on about 12 March 2015, ISX told ASX that:
- (A) the reputation of ISX and its products is important in attracting and retaining existing business and obtaining new business and key employees; and
 - (B) negative publicity could adversely impact the reputation of ISX which may potentially result in a fall in the number of customers seeking the products and services of the company;

PARTICULARS

The statement was in writing, contained in item 34 of the checklist attached to Appendix 1A (ASX Listing Application and Agreement), executed by ISX and accepted by ASX on or about 15 March 2015, which referred to section 12 (pages 79-85) of the Prospectus.

- (iv) in December 2019 and January 2020, ISX warned ASX that if it made and published its “*findings*”:
- (A) it would be acting beyond its responsibility for “*operational matters*” and would therefore be acting ultra vires;
 - (B) it would likely mislead the market; and
 - (C) ISX would likely suffer irreparable loss and damage, even if a Court ultimately determined that those “*findings*” were unfounded;

PARTICULARS

The warnings were in writing, contained in:

- (i) the letter dated 17 December 2019 from Colin Almond and Anthony Seyfort of HWL Ebsworth Lawyers to Daniel Moran of ASX; and

- (ii) paragraph 3 of the ISX Response (as defined in paragraph 68 of the Third Further Amended Statement of Claim).
- (v) ISX attempted to prevent ASX from publishing the Final Reasons on the basis that:
 - (A) the Final Reasons did not contain an accurate representation of the facts and circumstances concerning ISX and were likely to mislead the market and other persons who read the document;

PARTICULARS

Paragraph 101 of the written submissions filed in support of ISX’s Interlocutory Application.

- (B) by reason of ASX’s lack of proper investigatory powers, the Final Reasons contained incomplete and/or speculative “*findings*” apparent on their face and it was not appropriate that this kind of information be released to the market in circumstances where ISX wished to challenge them in this proceeding;

PARTICULARS

Paragraph 102 of the written submissions filed in support of ISX’s Interlocutory Application.

- (C) the suspension of trading has damaged the company’s reputation with a number of its clients and the publication of the Final Reasons by ASX would lead to a substantial further loss of clients and would make it significantly more difficult for ISX to acquire further clients;

PARTICULARS

Paragraph 108 of the written submissions filed in support of ISX’s Interlocutory Application.

- (vi) the decision of this Court to refuse ISX’s Interlocutory Application was not an imprimatur for ASX to publish the Final Reasons, particularly in

circumstances where the Court accepted that the evidence before it showed a serious question to be tried in respect of the accuracy of particular findings made by ASX as detailed in the Final Reasons;

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Isignthis Limited v ASX Limited [2020] FCA
567 at [37].

and,

- (c) say further that having regard to all the circumstances of the case and each of the matters in sub-paragraph (b) above, ASX ought not be excused from liability under sections 1041I(4) and 1317S of the *Corporations Act 2001* (Cth).

20. As to paragraph 94B of the Defence, the Applicants:

- (a) refer to and repeat paragraph 19(b) above; and
- (b) otherwise deny each and every allegation in paragraph 94B of the Defence.

21. The Applicants admit the allegations in paragraph 94C of the Defence.

22. The Applicants admit the allegations in paragraph 94D of the Defence.

23. As to paragraph 94E of the Defence, the Applicants:

- (a) refer to and repeat paragraph 19(b) above;
- (b) say that, before it published the Final Reasons, ASX also received four affidavits of Anthony Seyfort and the written submissions filed on behalf of ISX in support of its Interlocutory Application; and
- (c) otherwise deny each and every allegation in paragraph 94E of the Defence.

24. As to paragraph 98 of the Defence, the Applicants:

- (a) admit the allegation in sub-paragraph (e); and
- (b) otherwise deny each and every allegation in paragraph 98 of the Defence.

25. As to paragraph 107A of the Defence, the Applicants:
- (a) refer to and repeat paragraphs 16(b) and 16(c) above; and
 - (b) otherwise deny each and every allegation in paragraph 107A of the Defence.

DATED: ~~27 November 2020~~ 27 October 2021 14 April 2022

P W Collinson

J S Mereine

HWL Ebsworth

HWL Ebsworth Lawyers
Solicitors for the Applicants

Schedule of Parties

iSignthis Limited (ACN 075 419 715)

First Applicant

iSignthis eMoney Ltd

(a company incorporated in Republic of Cyprus allocated number HE348009)

Second Applicant

Probanx Solutions Ltd

(a company incorporated in the Republic of Cyprus allocated number HE111921)

Third Applicant

Authenticate Pty Ltd (ACN 600 573 233)

Fourth Applicant

ASX Limited (ACN 008 624 691)

Respondent