

**Matter of Douyu Intl. Holdings Ltd. Sec. Litig.
v Consolidated Action**

2021 NY Slip Op 30822(U)

March 16, 2021

Supreme Court, New York County

Docket Number: 651703/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 53EFM

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IN RE DOUYU INTERNATIONAL HOLDINGS LIMITED SECURITIES LITIGATION	INDEX NO.	<u>651703/2020</u>
Plaintiff,	MOTION DATE	<u>08/14/2020, 11/18/2020</u>
- v -	MOTION SEQ. NO.	<u>001 003</u>
THE CONSOLIDATED ACTION,	DECISION + ORDER ON MOTION	
Defendant.		

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for ALTERNATE SERVICE.

Upon the foregoing documents, for the reasons set forth on the record (3/16/2021) and as otherwise set forth below, the defendants' motion to dismiss (mtn. seq. no. 001) is denied and the plaintiffs' motion for an extension of time and alternate service (mtn. seq. no. 002) is granted solely to the extent that the plaintiff is granted an additional one hundred twenty (120) days to effect service under the Hague Convention.

I. The Defendants' Motion to Dismiss is Denied

Putting aside the fiduciary duties of the Tencent Holdings Limited's (**Tencent**) two directors on DouYu International Holdings Limited's (**DouYu**) Board who had a duty to know and disclose

whether Tencent was about to make a major investment that could substantially impair the supposed competitive advantage of DouYu, the motion to dismiss fails because the registration statement was at a bare minimum, as pled, either materially misleading or materially incomplete (*In re Uxin Ltd. Sec. Litig.*, 66 Misc3d 1232[A] [Sup Ct NY Cnty March 9, 2020]). The notion that DouYu's Board did not know that sufficient progress had been made by Tencent in its proposed investment in DouYu's competitor Kuaishou is ludicrous. It bespeaks either a failure of diligence or a failure of disclosure by members of its Board and/or Officers. It is irrelevant at this stage of the pleadings that the ultimate investment increased from \$1 billion to \$2 billion, that the form of the investment may not have been finalized, or that it did not ultimately close for another five months. News of the investment made the tabloids mere hours (given the time difference) after the registration statement became effective. Simply put, the half-truths are actionable whether taken separately or together (*In re Netshoes Sec. Litig.*, 68 Misc3d 788 [Sup Ct NY Cnty June 2, 2020]). First, the offering documents' statement that there were high barriers to entry into the market was, at best, materially misleading. Clearly, there were not as Tencent removed any such hurdles with readily available cash. Second, the offering documents disclosure that Tencent's allegedly amorphous past, current or potential future plans of potential investment in competitors also is actionable because the plans of this **substantial** investment were far more concrete than were disclosed to investors and were, in any event, not in scale with any previous investment made in Kuaishou (*see Basic Inc. v Levinson*, 108 S Ct 978, ft. 19 [1987] [merger negotiations may be material even before final agreement is reached]; *Panther Partners Inc. v Jianpu Tech. Inc.*, 2020 WL 5757628 [SD NY September 27, 2020]). The result is not changed by the fact that Tencent had previously made some comparably smaller investments in Kuaishou. Those investments do not give rise to an expectation or understanding

of the possibility of such a large imminent investment. Stated differently, the failure to disclose the looming substantial investment disproportionate to any prior investment that was far along in its travels through the pipeline, which investment would have a material adverse effect on DouYu's competitive standing, renders the offering documents materially misleading and actionable. Third, the identity of Huya, another live-streaming gaming platform backed by Tencent, as a potential competitor was also misleading under the circumstances. It should also be noted that these alleged failures cast a very harsh light on potential other failures of the disclosure documents. For example, the offering documents did not disclose DouYu's decelerating revenue growth and/or its ability to maintain the quality and profitability of its top streamers when the previous financial quarter results were known at the time the offering documents became effective. The offering documents also did not disclose that DouYu planned to change Lucky Draw within weeks of the effective date of the offering documents. To the contrary, the offering documents touted Lucky Draw's as a lucrative product providing a competitive advantage and indicated that DouYu believed that Lucky Draw complied with Chinese law. The argument that this was the good faith belief of DouYu lacks credibility because DouYu did not change Lucky Draw in response to subsequent government action. Rather, DouYu voluntarily, on its own, and without prompting changed Lucky Draw within weeks of the effective date of the offering documents. Accordingly, the motion to dismiss is denied in its entirety.

II. Motion for Alternate Service and Extension of Time is Granted in Part

The branch of Plaintiffs' motion for alternate service pursuant CPLR § 311(b) on Tencent via its U.S. litigation counsel Latham & Watkins LLP (**Latham**) is denied. However, the branch of their motion for an extension to effect service pursuant to CPLR § 306-b is granted.

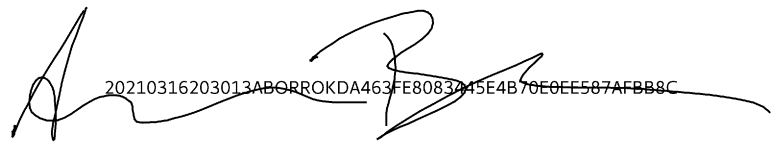
Plaintiffs argue that because Tencent retained Latham & Watkins LLP (**Latham**) to represent it in this action, counsel at Latham should accept service on its behalf notwithstanding that Latham is not a Tencent authorized agent to accept service and has expressly declined to accept service when previously requested to do so by plaintiffs (NYSCEF Doc. No. 61). Plaintiffs are incorrect. They are required to serve Tencent under the Hague Convention or to demonstrate why doing so would be impracticable (CPLR § 311[b]). In the year since this action was commenced, they have done neither. The court declines to hold that service under the Hague Convention would be impracticable because of the COVID-19 pandemic without a showing or attempt by plaintiffs to effect service in compliance with the Hague Convention or to otherwise hold that merely by engaging local counsel, local counsel is necessarily designated as agent for service of process. Thus, the motion for alternate service must be denied. However, inasmuch as plaintiffs seek an extension of time to effect service under the Hague Convention, the motion is granted in the interest of justice (CPLR § 306-b). The plaintiffs are given a final opportunity to effect service under the Hague Convention or otherwise demonstrate that service is impracticable within one hundred twenty (120) days of this decision and order.

Accordingly, it is

ORDERED that the motion to dismiss (seq. 001) is denied and the defendants are directed to serve an answer to the amended complaint within 20 days of this decision and order; and it is further

ORDERED that the motion for alternate service and/or extension of time (seq. 002) is granted in part only and the plaintiffs shall have 120 days from the date of this decision and order to effect service on defendant Tencent Holdings Limited pursuant to the Hague Convention; and it is further

ORDERED that the parties appear for a preliminary conference in this matter on May 17, 2021 at 11:30 A.M.



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3/16/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE