

GAMES INDUSTRY LAW SUMMIT
LEGAL CHALLENGE VIII SEASON
2024/2025

Red Dawn Entertainment s.r.l.

VS

Quantum Heaven, Inc.

Team 122

Submission of the Claimant

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TABLE OF ABBREVIATIONS

Abbreviation	Phrase
CCB	Copyright Code of Baharosa
BPCB	Business and Professions Code of Baharosa
GBR	BPCB Chapter 5 – General Business Regulations
IP	Intellectual Property
\$	USD or United States Dollar
M	Million
WIPO	World Intellectual Property Organization
WCT	WIPO Copyright Treaty
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works
§(§)	Section(s) (in reference to statutory codes)
AI	Artificial Intelligence
GenAI	Generative AI
RPG	Role-playing game
Red or Red Dawn	Red Dawn Entertainment s.r.l.
Quantum or Quantum Heaven	Quantum Heaven, Inc.
The Games	Twin Blades and Twin Hearts
DQJ	Deus Que Joga
Zanele	Zanele Mbali

SUMMARY OF ARGUMENTS

1. Twin Hearts infringes Red Dawn’s copyright in Twin Blades. To prove this, Red will demonstrate that (1) Red owns a valid copyright in Twin Blades and (2) Quantum copied original elements of Twin Blades without authorization.
2. Red’s ownership of the copyright in Twin Blades arises from its authorship of myriad original, protectable elements of the game as well as from the express provisions of its employment agreement with Zanele.
3. The evidence in this case shows overwhelmingly that after Zanele left Red, she and the rest of the team at Quantum willfully copied Twin Blades when creating and releasing Twin Hearts, an unauthorized derivative work that the public mistook as a sequel to Twin Blades—Zanele’s and Quantum’s scheme all along.
4. Quantum cannot rely successfully on a fair use defense, including based on the highly expressive nature and commercial purpose of the works at issue in this dispute. One who copies essential and original elements of an audiovisual work such as Twin Blades when releasing a competing product in the very same channels of trade cannot find safe harbor in the fair use doctrine.
5. Quantum also engaged in unfair and deceptive business practices when it released Twin Hearts—an inferior, AI-slop-filled game with a nearly identical title to Red’s “Twin Blades”—and deliberately misled consumers in order to capitalize on the goodwill Red had built with Twin Blades.
6. This Arbitrators should grant Red comprehensive remedies, including injunctive relief and damages of at least \$130 million, to address the extensive harm caused by Quantum’s misconduct.

LEGAL PLEADINGS

I. Quantum Infringed Red's Copyright In Twin Blades With Twin Hearts

1. The development and distribution of Twin Hearts infringed Red's copyright in Twin Blades because (i) Red holds a valid copyright in Twin Blades and (ii) Quantum copied protected elements of Twin Blades.

A. Red Holds a Valid Copyright in Twin Blades

- (i) *Twin Blades is an original work of authorship fixed in a tangible medium of expression*
2. Copyright protection extends to original works of authorship fixed in a tangible medium of expression.¹ A work is original if it has been independently created by the author and possesses a “modicum of creativity.”²
3. Copyright law defines various categories of protectable works.³ One such category is audiovisual works, which courts recognize as including video games.⁴ Twin Blades is an audiovisual work, as it combines graphics and sound, meeting the criteria in the Copyright Compendium and international treaties.⁵ The WCT classifies computer programs as literary works, ensuring they receive the same protection as other copyrighted materials.⁶

¹ CCB § 102(a).

² *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 340, 345 (1991).

³ CCB § 102(a).

⁴ *Midway Mfg. Co. v. Bandai-Am., Inc.*, 546 F. Supp. 125, 139 (D.N.J. 1982).

⁵ Compendium of U.S. Copyright Office Practices Glossary, “Audiovisual work” <https://copyright.gov/comp3/docs/glossary.pdf>; Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 9(1), 10(1), 14(3), 14(6), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments--Results of the Uruguay Round, 1869 U.N.T.S. 299 (1994); Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, and amended on Sept. 29, 1979, 25 U.S.T. 1341, 828 U.N.T.S. 221; World Intellectual Property Organization Copyright Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17, 36 I.L.M. 65 (1997).

⁶ WCT, art. 4 (“Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their

This classification harmonizes international copyright standards, preventing gaps in protection, aligning with the TRIPS Agreement, and building on the Berne Convention.⁷

4. Twin Blades' storyline, dialogue, and underlying computer code are afforded copyright protection as literary works.⁸ Its characters are similarly afforded copyright protection.⁹
5. Twin Blades easily satisfies the lenient "originality" requirement with its original complex character arcs and its stylized visuals and other audiovisual elements. The images below¹⁰ represent a fraction of the creative expression within Twin Blades.



6. These original elements came from Liam Dube and Rohan Rao, Red's founders. Self-made men who toiled through adversity to develop Twin Blades,¹¹ they recruited Zanele

expression."); Berne Convention, art. 2(1) (defining "literary and artistic works" to include "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression").

⁷ The treatment of computer programs as literary works was already recognized in the TRIPS Agreement, prior to its incorporation in the WCT. See TRIPS Agreement, art. 10.

⁸ CCB 102(a)(i); *Whelan Assocs., Inc. v. Jaslow Dental Lab'y, Inc.*, 797 F.2d 1222, 1234 (3d Cir. 1986) ("Title 17 U.S.C. § 102(a)(1) extends copyright protection to "literary works," and computer programs are classified as literary works for the purposes of copyright."); see also *SAS Inst., Inc. v. World Programming Ltd.*, 64 F.4th 1319, 1326 (Fed. Cir. 2023) (holding that literal elements of computer programs, such as source and object codes, can be subject of copyright protection).

⁹ *Detective Comics v. Bruns Publications*, 111 F.2d 432 (2d Cir. 1940) ("Superman" a protectable element of comic book); *DC Comics v. Towle*, 802 F.3d 1012 (9th Cir. 2015) ("Batmobile" a protectable character associated with Batman).

¹⁰ Twin_Blades_viusals01.

¹¹ Facts of the Case, Ch. 8.

to turn her rudimentary prototype into a “proper commercial game.”¹² Zanele’s prototype was a skeletal framework, replete with “placeholders”¹³ and lacking the artistic and narrative elements that define an expressive work. Email evidence from Zanele confirms that the prototype relied on “temp assets,” basic “mo[d]s” and a “barebones but functional” UI.¹⁴ Ideas for games, gameplay mechanics, and rules alone are not protected by copyright.¹⁵

7. The expressive elements of a game—including the sequence of images and sounds, labels, design and graphical works—**are** copyrightable.¹⁶ Red elevated the prototype beyond mere functionality through the creation of (i) the complex storyline of protagonists Elènaz and Tamir, traversing parallel dimensions to save the world, and (ii) myriad visual elements featuring Rohan’s unique and award-winning artistic style and design¹⁷ of characters, items, and settings. Twin Blades thus possesses the minimal “creative spark”¹⁸ to merit copyright protection.

(ii) **Red has an exclusive copyright in Twin Blades**

8. Having developed Twin Blades, Red is the author and copyright owner of the work.¹⁹ While Zanele contributed along with Liam and Rohan, works created by employees within the scope of their employment are ***presumptively owned by the employer***, absent an agreement to the contrary.²⁰

¹² Facts of the Case, Ch. 4.

¹³ Clarifications at pg.1.

¹⁴ Email_230178.

¹⁵ *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 404 (D.N.J. 2012).

¹⁶ *Id.*

¹⁷ Facts of the Case, Ch. 5.

¹⁸ *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

¹⁹ CCB § 119.

²⁰ CCB § 120.

9. To determine whether a work was created during the scope of employment, courts assess various factors, including the hiring party's right to control the work, source of tools, location of the work, and duration of the relationship.²¹ Red's employees undeniably worked on Twin Blades in the course of their employment. The design team, including Zanele, developed Twin Blades on-site at Red, using Red's resources. That Zanele developed the underlying concept of the game via her prototype does not override Red's rights in the game because concepts are not copyrightable,²² and because the Employment Agreement states that Zanele's responsibility as Lead Game Designer was to "creat[e] a new video game concept" in the "broadest sense."²³ The Employment Agreement did not state anything contrary to the presumption of ownership.²⁴
10. Red's IP rights in Twin Blades are further safeguarded by the Employment Agreement, which states that "all economic rights to the objects of IP" developed by Zanele in the course of her employment are the exclusive property of Red "from the moment of their occurrence," vesting automatically without any restrictions on territory.²⁵ Furthermore, Zanele's termination of the agreement did not affect Red's rights in any contributions she made while employed by Red.²⁶ Any non-economic rights that Zanele would have retained—*i.e.*, moral rights—still could not be exercised against Red because she waived those very rights.²⁷ All these provisions are compliant with and effective under Marzarian law.²⁸

²¹ *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751–52 (1989).

²² *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 401 (D.N.J. 2012).

²³ QH_employment ZM (the "Employment Agreement"), Lead Game Designer "Job Description."

²⁴ *Id.* at § 8.1; *see also* Clarifications at pg. 2.

²⁵ Employment Agreement at § 8.1.

²⁶ *Id.* at §§ 8.1, 8.5.

²⁷ *Id.* at § 8.6; *Massachusetts Museum Of Contemp. Art Found., Inc. v. Buchel*, 593 F.3d 38, 49 (1st Cir. 2010).

²⁸ Clarifications at pg. 4.

11. Twin Blades' promotional materials additionally include a copyright notice informing the public that the work is protected by copyright and identifying Red as the owner of that copyright.²⁹

B. Quantum Willfully Violated Several of Red's Exclusive Rights in Twin Blades When It Made and Released Twin Hearts

12. Quantum infringed Red's copyright in Twin Blades when it copied and distributed original and protectible elements of Twin Blades in violation of Red's exclusive right to reproduce,³⁰ distribute,³¹ and prepare derivative works³² based upon its copyrighted work.³³

(i) *Quantum copied protectible elements of Twin Blades*

13. To establish infringement, there must be either direct or circumstantial evidence of copying.³⁴ Copying may be proven using circumstantial evidence by showing that the purported infringer had the opportunity to copy the copyrighted work (access) and that the two works are substantially similar.³⁵ The similarity must include protectable expression.³⁶

²⁹ See Twin_Blades_visuals02; Twin_Blades_visuals01.

³⁰ CCB § 106(i).

³¹ CCB § 106(iii).

³² CCB § 106(ii).

³³ CCB § 500.

³⁴ *Gaste v. Kaiserman*, 863 F.2d 1061, 1066 (2d Cir. 1988); *Capcom Co. v. MKR Grp., Inc.*, No. C 08-0904 RS, 2008 WL 4661479 (N.D. Cal. Oct. 20, 2008); *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018) (discussing differences between direct and circumstantial evidence of copyright infringement).

³⁵ *Peters v. West*, 692 F.3d 629, 633 (7th Cir. 2012).

³⁶ *Capcom U.S.A., Inc. v. Data E. Corp.*, No. C 93-3259 WHO, 1994 WL 1751482, at *5 (N.D. Cal. Mar. 16, 1994).

(a) Access

14. Quantum had access to Twin Blades. Zanele, the creator of Twin Hearts, was the Lead Game Designer on Twin Blades while working at Red.³⁷ By virtue of her position, Zanele had unrestricted access to all components of the game, including the “script and structure” of the game, character details, software, and design elements.³⁸ Quantum’s hiring criteria even required developers of Twin Hearts to have “intimate knowledge of Twin Blades.”³⁹ Not only was Twin Blades available on the popular Mega game platform⁴⁰, it was globally recognized for its accomplishments.⁴¹ Anton Li of Bright Horizons 2.0 publicly acknowledged that “Twin Hearts is Twin Blades x 100” and that it was his “mission” to ensure Zanele “release[d] Twin Blades x 100—under the name of Twin Hearts” to “take from Austin to Adelaide, and from London to Lima!”⁴²
15. .PSD source files show that Quantum’s GenAI tools were explicitly prompted to replicate visual elements in the “Twin Blades style”⁴³—i.e., the acclaimed graphic style curated by Rohan—for Twin Hearts. This demonstrates that Quantum also had access to Twin Blades through the GenAI tools (e.g., based on the tools’ training data); otherwise, there would have been no purpose for, and nothing achieved by, prompting the GenAI tools to replicate Twin Blades.
16. Moreover, Twin Hearts’ use of the “same comb[ination] of OSS libraries and plugins that [Red] had for [Twin Blades],” a combination that could have been programmed any

³⁷ Employment Agreement at § 3.1.

³⁸ Employment Agreement, Lead Game Designer “Job Description”; *CSS, Inc. v. Herrington*, 306 F. Supp. 3d 857, 869-870 (S.D.W. Va. 2018).

³⁹ Facts of the Case, Ch. 11.

⁴⁰ Facts of the Case, Ch. 8.

⁴¹ Facts of the Case, Ch. 9.

⁴² Q&A_Singapore_Fintech_excerpt.

⁴³ See discovery_PSD_22; discovery_PSD_171; discovery_PSD_202.

number of ways, is beyond mere coincidence and further demonstrates Quantum's access to the work.⁴⁴

(b) Substantial Similarity

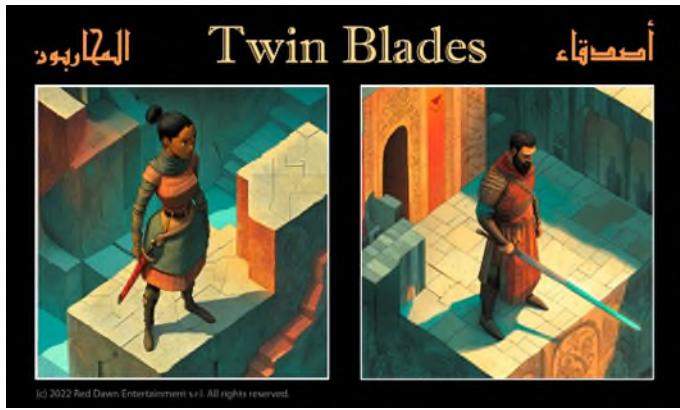
17. A plaintiff must establish that the two works are substantially similar by both an objective comparison of the expressive elements and the layperson's subjective assessment of the total look and feel of the works.⁴⁵ Ideas, functional aspects, expressions which "merge" with ideas, and "stock" elements (*scènes à faire*) of a work are unprotectable and excluded from the comparison.⁴⁶

⁴⁴ Email_230922.

⁴⁵ *Antonick v. Electronic Arts, Inc.*, 841 F.3d 1062, 1065-66 (9th Cir. 2016).

⁴⁶ *Capcom U.S.A., Inc. v. Data E. Corp.*, No. C 93-3259 WHO, 1994 WL 1751482, at *5-6 (N.D. Cal. Mar. 16, 1994).

18. The amount of Quantum's copying of Twin Blades' expressive, protected elements is overwhelming. Twin Blades and Twin Hearts are each a story-driven RPG featuring two pre-defined leads with skills that complement each other.⁴⁷ Both games feature split-screen promotional layouts, nearly identical character designs, isometric camera angles, and city backdrops rendered in a similar artistic style.⁴⁸ The video game titles—each featuring the term “Twin”—are centered at the top between two title ornaments reminiscent of the respective fictional worlds,⁴⁹ as can be seen below⁵⁰:



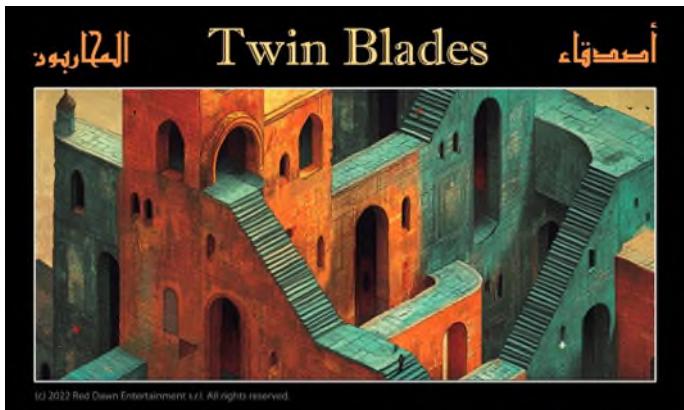
⁴⁷ Gas_Gamer_extract1024; Gas_Store_Page_TB.

⁴⁸ Compare Twin_Blades_visuals02 with Twin_Hearts_visuals01.

⁴⁹ *Id.*

⁵⁰ From left to right: Twin_Blades_visuals01; Twin_Hearts_visuals02.

19. The backdrops for both games prominently feature staircases descending and ascending to varying levels, emphasizing the shared labyrinth-like feel of their worlds.⁵¹ Both studios chose a snapshot of the backdrop with a “vantage point”⁵² in between staircases descending from the left and right. Indeed, the “shapes, windows, and configurations of various edifices” are substantially similar,⁵³ as can be seen below⁵⁴:



20. The design and identity of the characters is nearly identical between the games. In both, there is a young female protagonist of the same race or ethnicity who wears her hair in a bun and is positioned on the left side of the screen.⁵⁵ In Twin Blades, she is known as Elènаз, while in Twin Hearts, she goes by Zanele⁵⁶—*Elènаз spelled backwards*—indicating the character is the same between the Games. Both she and her male co-lead

⁵¹ *Atari, Inc. v. N. Am. Philips Consumer Elecs. Corp.*, 672 F.2d 607 (7th Cir. 1982); *Spry Fox LLC v. LOLApps Inc.*, No. 2:12-CV-00147-RAJ, 2012 WL 5290158 (W.D. Wash. Sept. 18, 2012).

⁵² *Steinberg v. Columbia Pictures Indus., Inc.*, 663 F. Supp. 706, 712 (S.D.N.Y. 1987).

⁵³ *Id.*

⁵⁴ From left to right: Twin_Blades_viuals02; Twin_Hearts_viuals01.

⁵⁵ *Id.*; Twin_Blades_viuals01; Twin_Hearts_viuals02.

⁵⁶ See Gas_Store_Page_TB; Gas_Store_Page_TH.

are dressed in outfits reflective of the limited color palette of the respective landscapes.⁵⁷ Such substantial similarity is copying.⁵⁸

21. Consumer confusion further demonstrates the extent of the Games' similarities. Similarity can be established by comparing the works "as they would appear to a layman concentrating upon the gross features rather than an examination of minutiae."⁵⁹ Gamers and reviewers have repeatedly mistaken Twin Hearts for a sequel to Twin Blades, citing its character arcs and visual elements as compelling evidence.⁶⁰ Players have noted that the games' movement and flow have "the same feeling"⁶¹ and quickly identified the related protagonist names and that at least "one of the lead characters is the same."⁶² For many, Twin Hearts "feels like the same concept" as Twin Blades despite not being as "good looking."⁶³

(ii) *Quantum's copying was willful*

22. Quantum willfully copied Twin Blades. Anton openly admitted it was his "mission" to ensure that Quantum released "Twin Blades x100."⁶⁴ Quantum queried its AI models to generate output for Twin Hearts in the style of Twin Blades, including one prompt calling for "female_figure_black."⁶⁵ These queries violated the Quantum GenAI Policy.⁶⁶ Zanele

⁵⁷ Compare Twin_Blades_visuals01 with Twin_Hearts_visuals02.

⁵⁸ *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394 (9th Cir. 1997); *Narell v. Freeman*, 872 F.2d 907 (9th Cir. 1989); *DuMond v. Reilly*, No. CV 19-8922-GW-AGR, 2021 WL 4772986, at *6 (C.D. Cal. Jan. 8, 2021).

⁵⁹ *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 409 (D.N.J. 2012) (internal quotation marks omitted).

⁶⁰ Gas_Forum斯_TH9210; Reddit_extract1422.

⁶¹ Gas_Forum斯_TH9210.

⁶² Reddit_extract1422.

⁶³ *Id.*

⁶⁴ Q&A_Singapore_Fintech_excerpt at pg. 3.

⁶⁵ discovery_PSD_22.

⁶⁶ QU_policies_AI ("Quantum Heaven Generative AI Policy") at § 6.4.

and her team prompted the model knowing it violated the Policy (which Zanele approved) and knowing it could constitute infringement of third-party IP rights. Quantum is therefore liable for willful infringement.

(iii) *Quantum violated red's exclusive rights*

(a) *Reproduction*

23. With Twin Hearts, Quantum violated Red's right to reproduce its work by engaging in the unauthorized copying of Twin Blades.⁶⁷

(b) *Distribution*

24. Distribution requires a showing that an unauthorized copy of a work was disseminated to the public.⁶⁸ By copying Twin Blades' protectible elements in developing Twin Hearts and promoting and releasing Twin Hearts, including across different platforms,⁶⁹ Quantum violated Red's exclusive right to distribute its copyrighted work to the public.⁷⁰

(c) *Derivative work*

25. A derivative work is a work based upon one or more pre-existing works.⁷¹ By developing a substantially similar game, Quantum created an unauthorized sequel to Twin Blades. Consumers clearly view Twin Hearts as a continuation of the story of Elènatz (“reborn as Zanele”) with a new sidekick.⁷² Red has the exclusive right to create sequels and other

⁶⁷ CCB § 106(i).

⁶⁸ *Hotaling v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199, 203 (4th Cir. 1997).

⁶⁹ Facts of the Case, Ch. 12.

⁷⁰ CCB § 106(iii).

⁷¹ Clarifications at pg. 4.

⁷² Reddit_extract1422.

derivative works based on Twin Blades, and Twin Hearts’ continuation of Elènaz’s adventures unlawfully interferes with that right.⁷³

(iv) *Quantum is not entitled to a fair use defense*

26. All fair use factors weigh in Red’s favor. Fair use balances the (1) purpose and character of the use; (2) nature of the copyrighted work; (3) amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) effect of the use upon the potential market for the copyrighted work. The first and fourth factors are paramount.⁷⁴
27. The purpose and character of Quantum’s use of Twin Blades’ protectible elements was entirely commercial, designed to compete directly with Red in the gaming market. Anton’s mission was to release “Twin Blades x100.”⁷⁵ In querying its AI model to produce output in the style of Twin Blades, Quantum’s use directly competes with the works on which its model was trained.⁷⁶ Such use is **not** transformative. Quantum’s reproduction of existing elements of Twin Blades merely “supersed[es] the objects of the original creation.”⁷⁷ The copied elements are instrumental to its expressive purpose, unlike in *Sega*, where the unauthorized reproduction of a copyrighted work was purely technical in nature and merely incidental to the developer’s game compatibility function.⁷⁸

⁷³ *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1112 (9th Cir. 1998).

⁷⁴ *Thomson Reuters Enter. Ctr. GmbH v. Ross Intel. Inc.*, 694 F. Supp. 3d 467, 481–82 (D. Del. 2023).

⁷⁵ Q&A_Singapore_Fintech_excerpt at pg. 3.

⁷⁶ Rand Institute, Matt Blaszczyk et al., *Artificial Intelligence Impacts on Copyright Law*, (Nov. 20, 2024) <https://www.rand.org/pubs/perspectives/PEA3243-1.html#:~:text=Summary,use%20or%20assistance%20of%20AI%20>.

⁷⁷ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994) (internal quotation marks omitted).

⁷⁸ *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1522–1523 (9th Cir. 1992), as amended (Jan. 6, 1993).

28. Twin Blades, a highly creative audiovisual work, is entitled to the highest level of protection under copyright law. Its unique and intentional combination of narrative and visual components places it at the core of copyright's protective purpose.⁷⁹
29. Quantum's use was not *de minimis*. Prompting the GenAI tool to reproduce Twin Blades' visual elements and mimic its core expressive elements exceeds any permissible amount of copying. Furthermore, coding the game with identical combinations of plugins and tools—combinations which are the “heart”⁸⁰ of the gameplay—is sufficient to render the “amount and substantiality of copying” factor in Red’s favor.⁸¹
30. Finally, Quantum’s infringement has caused significant market harm. This inquiry “must take account not only of harm to the original but also of harm to the market for derivative works.”⁸² With Twin Hearts, Quantum has diverted sales from Twin Blades, divested Red of a profitable video game franchise, and damaged Red’s reputation with diluted graphics.⁸³ The failed DQJ negotiation, resulting from doubts about Twin Blades’ ability to compete with Twin Hearts and fully embrace the use of AI in development, underscores the financial impact of Quantum’s actions.⁸⁴ Furthermore, immunizing the use of GenAI queries to mimic the style of an artist, like Rohan, would threaten creators’ livelihoods by replacing their skilled labor with an inexpensive and more efficient means to generate art during production. The U.S. Copyright Office recently recognized that “AI-generated content has impacted some creators’ ability to be compensated for their work”⁸⁵ and

⁷⁹ *M. Kramer Mfg. Co. v. Andrews*, 783 F.2d 421, 435-36 (4th Cir. 1986) (clarifying that video games are copyrightable as audiovisual works); *Midway Mfg. Co. v. Dirkschneider*, 543 F. Supp. 466, 479-80 (D. Neb. 1981) (holding that coin-operated electronic video games were copyrightable subject matter as “audiovisual works”).

⁸⁰ *Thomson Reuters Enter. Ctr. GmbH v. Ross Intel. Inc.*, 694 F. Supp. 3d 467, 485 (D. Del. 2023).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Facts of the Case, Ch. 12.

⁸⁴ Facts of the Case, Ch. 13.

⁸⁵ U.S Copyright Office, *Copyright and Artificial Intelligence: Part 2: Copyrightability*, p. 37, (January 2025) <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf> (citing International Confederation of Societies of Authors and Composers, *Study on the Economic Impact of Generative AI in the Music and Audiovisual Industries* (Nov. 2024), <https://www.cisac.org/services/reports-andresearch/cisacpm-strategy-ai-study>).

affirmed “the concerns expressed about the impact of AI-generated material on human authors and the value their creative expression provides to society.”⁸⁶

31. By cutting corners on its art assets with GenAI, Quantum could keep production costs low and expedite development, all premised on misappropriation of the fruits of the many years Red toiled in financial uncertainty.⁸⁷ Unpunished, studios like Quantum can brazenly steal individual artists’ styles, like Rohan’s, without compensation, accelerating their product launches while true creative developers—especially smaller studios lacking the vast resources of major corporations—are left with little incentive to create.⁸⁸

II. Quantum Intentionally Engaged In Unfair Competition And Deceptive Business Practices To Red’s Detriment

32. Quantum’s deceptive marketing practices violate Chapter 5 of the Baharosa Business and Professions Code (“GBR”). By intentionally mimicking Twin Blades’ name, branding, and gameplay, Quantum created a false impression of association between the Games. This conduct constitutes unfair competition, warranting remedial action.

A. Quantum Engaged in Fraudulent Business Practices and Deceptive Advertising By Launching Twin Hearts and Misleading Consumers

33. The GBR proscribes “any unlawful, unfair, or fraudulent business act or practice and unfair deceptive, untrue or misleading advertising.”⁸⁹ The GBR’s text and purpose mirror U.S.

⁸⁶ *Id.* at p. 36.

⁸⁷ Compare Facts of the Case, Ch. 11 with Ch. 6-8.

⁸⁸ Benjamin L. W. Sobel, *Artificial Intelligence’s Fair Use Crisis*, 41 Colum. J.L. & Arts 45, 65, 75 (2017); see Office of Tech. Assessment, U.S. Congress, *Intellectual Property Rights in an Age of Electronics and Information* 76, PB87-100301 (1986), <http://www.princeton.edu/~ota/disk2/1986/8610/8610.PDF> (“If copyright is to be granted to machine-produced works, it would signal a new role for copyright, and a departure from its traditional role as an incentive for authors.”).

⁸⁹ GBR § 5200.

state laws prohibiting unfair competition.⁹⁰ GBR claims are therefore “substantially similar” to those brought under the Lanham Act.⁹¹

34. GBR deceptive advertising and fraudulent business practices claims are evaluated under the same test, which focuses on whether a significant portion of targeted consumers, acting reasonably under the circumstances, is likely to be deceived.⁹² “Advertising” under the GBR is construed broadly, and includes “virtually any statements made in connection with the sale of goods.”⁹³ Similarly, a Lanham Act violation requires a likelihood of consumer confusion between goods that are offered under a protectible trademark, for which the standard remedy is injunctive relief.⁹⁴
35. Quantum’s development, promotion and sale of Twin Hearts is likely to deceive—and has actually deceived⁹⁵—gamers in the industry, including fans of Twin Blades.⁹⁶
36. Before Twin Hearts hit the market, Anton publicly declared his intent to release a version of Red’s own work under a confusingly similar name.⁹⁷ Quantum’s reliance on programmers familiar with the development of Twin Blades and use of GenAI—discussed *supra* at 22—further demonstrates its duplicitous conduct.

⁹⁰ See California Business and Professions Code § 17200; *see also Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy*, 4 Cal. App. 4th 963, 975 (1992) (“The primary purpose of the unfair competition law ... is to protect the public from unscrupulous business practices.”).

⁹¹ *Cleary v. News Corp.*, 30 F.3d 1255, 1263 (9th Cir. 1994); *Academy of Motion Picture Arts & Sciences v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1457 (9th Cir. 1991). *See generally* 15 U.S.C. §§ 1051 *et seq.*

⁹² *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 130 (2009) (deceptive advertising); *Prata v. Superior Court*, 91 Cal. App. 4th 1128, 1136 (2001) (fraudulent business acts).

⁹³ *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008); *Algarin v. Maybelline, LLC*, 300 F.R.D. 444, 452 (S.D. Cal. 2014).

⁹⁴ 4 McCarthy on Trademarks and Unfair Competition § 30:1 (5th ed.) (“A Permanent Injunction is the Customary Remedy.”).

⁹⁵ Instances of actual confusion are discussed in paragraph 21, *supra*, and paragraph 48, *infra*.

⁹⁶ These actions are emblematic of Quantum Heaven’s bad faith.

⁹⁷ Q&A_Singapore_Fintech_excerpt. *See also* paragraph 14, *supra*.

B. Red's Twin Blades Mark Is Strong, Distinctive, and Entitled to Protection

37. Registered trademarks are entitled to “significant protection.”⁹⁸ A strong trademark must be either inherently distinctive or distinctive in the marketplace.⁹⁹
38. Inherent distinctiveness is assessed along the following spectrum—“(1) generic, (2) descriptive, (3) suggestive, or (4) arbitrary or fanciful”¹⁰⁰—with arbitrary/fanciful, suggestive, descriptive, and generic names receiving less and less protection.¹⁰¹
39. Suggestive marks, which require imagination, thought, and perception to connect them to the product, and arbitrary or fanciful marks, which bear no inherent connection to the product, are entitled to protection regardless of secondary meaning.¹⁰² Descriptive marks, which convey an immediate idea of a product’s ingredients, qualities, or characteristics, are protectable only if they have acquired secondary meaning.¹⁰³ Generic marks, which refer to a product’s common name or nature, are not eligible for protection.¹⁰⁴
40. Red’s registered Twin Blades mark¹⁰⁵ is suggestive and deserves full protection. It does not describe merely a product, like *Coca-Cola* (cola beverage made with coca leaves), nor does it directly convey the nature of a service, like *American Airlines* (airline operating in

⁹⁸ *Car-Freshner Corp. v. Am. Covers, LLC*, 980 F.3d 314, 328 n.12 (2d Cir. 2020).

⁹⁹ *Id.* at 329; *Tiffany & Co. v. Costco Wholesale Corp.*, 971 F.3d 74, 85 (2d Cir. 2020). *See also* 2 McCarthy on Trademarks and Unfair Competition § 15:1 (5th ed.) (Evidence of Secondary Meaning).

¹⁰⁰ *WSM, Inc. v. Hilton*, 724 F.2d 1320, 1325 (8th Cir. 1984).

¹⁰¹ *Car-Freshner Corp.*, 980 F.3d at 329 (2d Cir. 2020). *See also* § 11:4. Inherently distinctive marks, 1 McCarthy on Trademarks and Unfair Competition § 11:4 (5th ed.).

¹⁰² *Thompson Medical Co. v. Pfizer Inc.*, 753 F.2d 208, 216 (2d Cir. 1985); *Hasbro, Inc. v. Lanard Toys, Ltd.*, 858 F.2d 70, 75 (2d Cir. 1988) (“[Q]uite simply, it is this need to resort to imagination that renders GUNG-HO suggestive rather than descriptive.”); *Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc.*, 780 F.2d 1324, 1329 (8th Cir. 1985).

¹⁰³ *Stuart Hall Co., Inc. v. Ampad Corp.*, 51 F.3d 780, 785-86 (8th Cir. 1995) (internal quotations omitted) (a term is descriptive if it conveys an “immediate idea of the ingredients, qualities or characteristics of the goods”); *Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc.*, 780 F.2d 1324, 1329 (8th Cir. 1985) (a descriptive term is protectible only if shown to have acquired a secondary meaning).

¹⁰⁴ *Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc.*, 780 F.2d 1324, 1329 (8th Cir. 1985).

¹⁰⁵ Clarifications at pg. 2.

America). Instead, Twin Blades strikes the balance between clarity and peculiarity that defines suggestive marks.¹⁰⁶ It requires a leap of imagination to connect it to an adventure-based video game set across parallel dimensions—much like how *Netflix* subtly combines “internet” and “flicks” to hint at its video services without describing them outright.

41. Because Red’s Twin Blades mark is suggestive, establishing marketplace distinctiveness is not required to secure protection.¹⁰⁷
42. Red’s significant commercial success and unsolicited media attention evince that Twin Blades has acquired substantial goodwill and renown. Twin Blades—the biggest game to come from Africa—has earned over \$100M in revenue.¹⁰⁸ The game is “recognized globally,” receiving a BAFTA nomination, “multiple fan translations”¹⁰⁹ and “Overwhelmingly Positive” reviews across 2,699 users.¹¹⁰ Red was also celebrated as “Studio of the Year” by the “famous California-based games conference,” and industry titans from Europe and Asia have tried—and failed—to purchase an interest in Red’s valuable IP.¹¹¹ Only Quantum was brazen enough to steal it.

C. Quantum’s Continued Use of Twin Hearts Has Confused Consumers and Will Continue to Cause a Likelihood of Confusion

43. The Arbitrators should find Quantum liable under the GBR because video game-playing consumers are likely to be (and have been) confused by Quantum’s sale of Twin Hearts.
44. Courts evaluate a likelihood of confusion using the following factors, enumerated in *Polaroid*: (1) strength of the mark; (2) degree of similarity between the marks; (3)

¹⁰⁶ *Heartland Bank v. Heartland Home Fin., Inc.*, 335 F.3d 810, 819-20 (8th Cir. 2003).

¹⁰⁷ See *Car-Freshner Corp. v. Am. Covers, LLC*, 980 F.3d 314, 329 (2d Cir. 2020) (discussing marketplace distinctiveness, also known as secondary meaning).

¹⁰⁸ Facts of the Case, Ch. 10.

¹⁰⁹ Facts of the Case, Ch. 10.

¹¹⁰ Gas_Store_Page_TB.

¹¹¹ Facts of the Case, Ch. 9.

proximity of products; (4) likelihood of bridging the gap; (5) evidence of actual confusion; (6) junior user's bad faith in adopting the mark; (7) quality of the junior user's product; and (8) sophistication of the relevant consumer group.¹¹²

45. *Strength.* Twin Blades is a strong mark that is easily recognized and associated with Red.¹¹³
46. *Degree of Similarity.* There is a high degree of similarity between the Twin Blades and Twin Hearts marks.¹¹⁴ Both begin with the same word, followed by a monosyllabic plural noun in the form suggestive of a commercial franchise producing sequels and spin-offs. Numerous well-known franchises have employed this exact form of naming convention—changing one word in a two-word title—to identify the sequel. This naming convention causes consumers who know the predecessor to associate it with the successor, assuming the two came from the same developer. Examples include:

- *Sunless Sea* to *Sunless Skies*;¹¹⁵
- *Planet Coaster* to *Planet Zoo*;¹¹⁶
- *Chrono Trigger* to *Chrono Cross*;¹¹⁷ and

¹¹² *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir. 1961); *see also Playboy Enterprises, Inc. v. Chuckleberry Pub., Inc.*, 486 F. Supp. 414 (S.D.N.Y. 1980) (applying the *Polaroid* factors); *Kohler Co. v. Bold Int'l FZCO*, 422 F. Supp. 3d 681 (E.D.N.Y. 2018) (same).

¹¹³ *See supra* at paragraphs 38-41 (discussing Twin Blades' inherent distinctiveness and strength).

¹¹⁴ *Gas_Game_extract1024* (showing titles next to each other).

¹¹⁵ *Sunless Sea* was developed and published by Failbetter Games, *Sunless Sea* was released in 2015. *Sunless Skies* was also developed by Failbetter Games, *Sunless Skies* is the 2019 sequel to *Sunless Sea*. *Sunless Skies*, Failbetter Games, <https://www.failbettergames.com/games/sunless-skies>; *Sunless Sea*, Failbetter Games, <https://www.failbettergames.com/games/sunless-sea>.

¹¹⁶ *Planet Coaster* was developed and published by Frontier Developments, *Planet Coaster* was released in 2016. *Planet Zoo* was also developed and published by Frontier Developments, *Planet Zoo* was released in 2019. *Planet Coaster*, Frontier Developments, <https://www.frontier.co.uk/our-games/planet-coaster>; *Planet Zoo*, Frontier Developments, <https://www.frontier.co.uk/our-games/planet-zoo>.

¹¹⁷ *Chrono Trigger* was developed and published by Square (now Square Enix), *Chrono Trigger* was released in 1995. *Chrono Cross* was also developed and published by Square, *Chrono Cross* was released in 1999. *Chrono Trigger*, Chrono Wiki, https://chrono.fandom.com/wiki/Chrono_Trigger; *Chrono Cross*, Chrono Wiki, https://chrono.fandom.com/wiki/Chrono_Cross.

- *Demon's Souls to Dark Souls.*¹¹⁸

By naming its game “Twin Hearts,” Quantum led consumers to mistakenly believe Twin Hearts is a sequel to Twin Blades, intentionally trying to profit off of Red’s goodwill and Twin Blades’ success.

47. *Proximity of Products.* The Games directly compete in the same product market, which increases the likelihood of confusion and renders the “bridging the gap” factor irrelevant.¹¹⁹ Both games are distributed through the same channel of trade—the Gas Store—and target the same audience: players seeking a non-customizable, story-driven RPG.¹²⁰ Players apply identical “user-defined tags” to the Games on the Gas Store, highlighting both for showcasing “Two Leads” with a “Female Protagonist,” while also labeling them “Story Rich” “RPGs” focused on “Exploration.”¹²¹ Even Gas Gamer describes both as featuring “two pre-defined leads with skills that complement each other.”¹²²
48. *Evidence of Actual Confusion.* Quantum’s sale of Twin Hearts has already caused significant consumer confusion. Gamers on popular community pages, including Gas Forums¹²³ and Reddit,¹²⁴ have mistaken Twin Hearts as the sequel to Twin Blades.
49. *Bad Faith.* Bad faith should be inferred from Quantum’s actual knowledge of Twin Blades and decision to launch Twin Hearts anyway.¹²⁵ That Zanele stated she “d[id] not set out to

¹¹⁸ *Demon's Souls* was developed by FromSoftware and published by Sony Computer Entertainment, *Demon's Souls* was released in 2009. *Demon's Souls*, Dark Souls Wiki, Fandom, https://darksouls.fandom.com/wiki/Demon%27s_Souls. *Dark Souls* was also developed by FromSoftware, *Dark Souls* was released in 2011. *Dark Souls*, Dark Souls Wiki, Fandom, https://darksouls.fandom.com/wiki/Dark_Souls.

¹¹⁹ *The Sports Auth., Inc. v. Prime Hosp. Corp.*, 89 F.3d 955, 963 (2d Cir. 1996).

¹²⁰ Compare Gas_Store_Page_TB with Gas_Store_Page_TH; see Gas_Gamer_extract1024.

¹²¹ Compare Gas_Store_Page_TB with Gas_Store_Page_TH.

¹²² Gas_Gamer_extract1024.

¹²³ Gas_Forum_TH9210.

¹²⁴ Reddit_extract1422.

¹²⁵ *RiseandShine Corp. v. PepsiCo. Inc.*, No. 21 CIV. 6324 (LGS), 2023 WL 4936000, at *10 (S.D.N.Y. Aug. 2, 2023), *aff'd sub nom. RiseandShine Corp. v. PepsiCo, Inc.*, No. 23-1176-CV, 2024 WL 5165388 (2d Cir. Dec. 19, 2024) (citing *Star Indus., Inc. v. Bacardi & Co.*, 412 F.3d 373, 389 (2d Cir. 2005)).

make a copy of Twin Blades”¹²⁶ is belied by Anton’s public statements about launching “Twin Blades x100” under a near-identical title¹²⁷ (with similarly-named characters¹²⁸) and documentary evidence showing Zanele prompted Quantum’s GenAI program to produce art in Twin Blades’ style.¹²⁹ Because “an intent to mirror the appearance of an existing product may result in the products being confusingly similar,”¹³⁰ this factor favors Red.

50. *Quality.* Although disparate quality of product traditionally counsels against confusion, Quantum’s use of GenAI—and its degrading effect on the game—has nevertheless caused consumers to mistake the visually-marred Twin Hearts for a Red release and damaged Red’s reputation.¹³¹ While it is not uncommon for an industry leader to incorporate GenAI into its game artwork development and face fan backlash, the decision to embrace such technology is rife with reputational risk.¹³² Quantum took that decision away from Red, and, in so doing, irrevocably damaged Red’s reputation. Red is now unfairly associated with “AI slop” and “AI sh*t” by the relevant public.¹³³
51. *Sophistication of Consumers.* The more sophisticated the purchaser, the less likelihood of confusion can be expected. “Sophistication” is correlated with the nature of the products at issue: consumers of relatively inexpensive goods are generally considered

¹²⁶ Slack_extract88305.

¹²⁷ Q&A_Singapore_Fintech_excerpt.

¹²⁸ Reddit_extract1422.

¹²⁹ See discovery_PSD_22; discovery_PSD_171; discovery_PSD_202.

¹³⁰ *RiseandShine Corp. v. PepsiCo, Inc.*, No. 21 CIV. 6324 (LGS), 2023 WL 4936000, at *10 (S.D.N.Y. Aug. 2, 2023), *aff’d sub nom. RiseandShine Corp. v. PepsiCo, Inc.*, No. 23-1176-CV, 2024 WL 5165388 (2d Cir. Dec. 19, 2024).

¹³¹ *Morningside Grp. Ltd. v. Morningside Cap. Grp., L.L.C.*, 182 F.3d 133, 142 (2d Cir. 1999); *accord Jackpocket, Inc. v. Lottomatrix NY LLC*, No. 22 Civ. 5772, 2022 WL 17733156, at *51 (S.D.N.Y. Dec. 7, 2022).

¹³² See paragraph 59, *infra*.

¹³³ Gas_Gamer_extract1024 (97% positive vs. 80% positive); Gas_Forum_TH9210 (“Despite the graphics, which is the usual AI slop.... Not paying prime \$\$ for the AI sh*t.”).

“unsophisticated.”¹³⁴ Because both games cost under €40¹³⁵ and can be easily purchased online, this factor favors Red.

52. *Weighing the Polaroid Factors.* The Court must “focus on the ultimate question of whether consumers are likely to be confused” in assessing each factor’s weight.¹³⁶ The strength of the mark is “often the most important factor,”¹³⁷ and actual confusion is “often the best evidence of likelihood of confusion.”¹³⁸
53. Because Red’s registered Twin Blades mark is inherently distinctive, consumers are already confused between the Games, and the weight of the *Polaroid* factors favors Red, the Arbitrators should find Quantum liable under the GBR.

III. Red Is Entitled To Comprehensive Remedies To Address Quantum’s Infringement Of Intellectual Property And Unfair Competition

A. Red is Entitled to Injunctive Relief

54. Red requests an injunction permanently prohibiting Quantum from distributing, developing, or supporting Twin Hearts.¹³⁹ Continued distribution of Twin Hearts will continue to cause irreparable harm to Red’s business and IP rights.

¹³⁴ *RiseandShine Corp. v. PepsiCo. Inc.*, No. 21 CIV. 6324 (LGS), 2023 WL 4936000, at *10 (S.D.N.Y. Aug. 2, 2023), *aff’d sub nom. RiseandShine Corp. v. PepsiCo, Inc.*, No. 23-1176-CV, 2024 WL 5165388 (2d Cir. Dec. 19, 2024). *See also E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1293 (9th Cir. 1992) (wine and cheese purchasers are unsophisticated). *Cf. Tiffany & Co. v. Costco Wholesale Corp.*, 971 F.3d 74, 91 (2d Cir. 2020) (diamond ring purchasers are sophisticated).

¹³⁵ Gas_Game_extract1024 (showing prices).

¹³⁶ *RiseandShine Corp. v. PepsiCo. Inc.*, No. 21 CIV. 6324 (LGS), 2023 WL 4936000, at *10 (S.D.N.Y. Aug. 2, 2023), *aff’d sub nom. RiseandShine Corp. v. PepsiCo, Inc.*, No. 23-1176-CV, 2024 WL 5165388 (2d Cir. Dec. 19, 2024).

¹³⁷ *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112, 119 (2d Cir. 2022).

¹³⁸ *King of the Mountain Sports, Inc. v. Chrysler Corp.*, 185 F.3d 1084, 1092 (10th Cir. 1999).

¹³⁹ § 30:1. An injunction is the standard remedy in trademark infringement cases, 4 McCarthy on Trademarks and Unfair Competition § 30:1 (5th ed.) “A Permanent Injunction is the Customary Remedy.”

(i) *Red is entitled to injunctive relief for Quantum's copyright infringement and unfair competition*

55. Red is entitled to a permanent injunction to prevent and restrain Quantum's future and ongoing copyright infringement of Twin Blades and continued harm to Red's business and reputation.
56. Courts have broad discretion to fashion equitable remedies to serve the needs of justice, including granting permanent injunctive relief where the prohibited conduct is likely to reoccur, and the claimant suffers irreparable harm.¹⁴⁰ Red has demonstrated a likelihood of confusion between the Games and that Quantum violated the GBR. Permanent injunctive relief is therefore necessary to prevent Quantum from continuing to cause irreparable harm to Red's business and reputation,¹⁴¹ and all copies of Twin Hearts must be removed from Gas, Mega, and other platforms, and destroyed.¹⁴²

(a) Absent an injunction, Quantum will continue to tread on Red's IP rights

57. Quantum's financier announced that on Twin Hearts' release, the copycat game would saturate the global market.¹⁴³ Quantum refused to de-list Twin Hearts from Gas, falsely claiming it did not copy Twin Blades.¹⁴⁴ Because Quantum's infringing conduct will not cease on its own, permanent injunctive relief is necessary to protect both Red and consumers.

¹⁴⁰ See, e.g., *Long Beach Mem'l Med. Ctr. v. Kaiser Found. Health Plan, Inc.*, 71 Cal. App. 5th 323, 342 (2021), as modified (Nov. 24, 2021) (injunctive relief is the primary form of relief for violations of unfair competition law).

¹⁴¹ 4 McCarthy on Trademarks and Unfair Competition § 30:1 (5th ed.) ("A Permanent Injunction is the Customary Remedy."); *Video Pipeline, Inc. v. Buena Vista Home Ent., Inc.*, 192 F. Supp. 2d 321 (D.N.J. 2002), *aff'd*, 342 F.3d 191 (3d Cir. 2003), as amended (Sept. 19, 2003).

¹⁴² *E.I. DuPont De Nemours and Co. v. Magic Touch Cleaning and Restoration, Inc.*, 2011 WL 2631854, at *1 (M.D. Fla. 2011) ("Destruction of infringing materials is a common term and form of relief in trademark infringing actions.") *Marquis Who's Who, Inc. v. North American Advertising Associates, Inc.*, 426 F. Supp. 139, 143 (D.D.C. 1976), *aff'd without op.*, 574 F.2d 637 (D.C. Cir. 1978).

¹⁴³ Q&A_Singapore_Fintech_excerpt ("[F]rom Austin to Adelaide, and from London to Lima!").

¹⁴⁴ Facts of the Case, Ch. 13.

(b) *Red is irreparably damaged by its continued association with Quantum's "AI slop"*

58. Due to Quantum's illicit conduct, Red's consumers now believe Red uses GenAI to shortcut its intensive development process, a potential death knell for a company that was globally lauded for its art style.¹⁴⁵ Gamers—associating the slop-riddled Twin Hearts with Red's careful creation, Twin Blades—called the graphics “AI slop” and lambasted Red for charging full price for “AI sh*t.”¹⁴⁶
59. Across the industry, consumers condemn studios for using GenAI to cut corners and avoid paying artists. Call of Duty fans criticized Activision for using AI-generated visual assets in Black Ops 6¹⁴⁷ while laying off artists.¹⁴⁸ Similar outrage erupted when video game artists in China faced the same fate.¹⁴⁹ Twin Hearts players likewise blamed Gas for allowing “this sort of crap” in the store, and it is clear that Quantum—bankrolled by Anton—could afford to pay artists to design its own art, yet chose to steal Red's work instead.

¹⁴⁵ Facts of the Case, Ch. 13; Ch. 12 (Liam: “the plagiaristic output of AI tool cannot be compared to the talent and direction of studios like his; the human touch in art is simply irreplaceable.”)

¹⁴⁶ Gas_Forumz_TH9210.

¹⁴⁷ IGN, *Call of Duty Fans Give Black Ops 6's Zombie Santa Loading Screen the Finger Amid 'AI Slop' Backlash* (Dec. 9, 2024), <https://www.ign.com/articles/call-of-duty-fans-give-black-ops-6s-zombie-santa-loading-screen-the-finger-amid-ai-slop-backlash>; Reddit, https://www.reddit.com/r/Steam/comments/1h8d6e7/call_of_duty_black_ops_6_challenges_stems_stance/?rdt=52659 (“What's even more frustrating is that there is ZERO disclaimer on the Black Ops 6 store page indicating the use of AI Art.”).

¹⁴⁸ Reddit, https://www.reddit.com/r/CODZombies/comments/1h8qbd0/its_genuinely_pathetic_how_much_activision_uses_ai/ (“It's genuinely pathetic how much Activision uses AI”). See also Wired, *AI Is Already Taking Jobs in the Video Game Industry*, (July 23, 2024) https://www.wired.com/story/ai-is-already-taking-jobs-in-the-video-game-industry/?utm_brand=wired&utm_medium=social&mbid=social_twitter&utm_social-type=owned&utm_source=twitter.

¹⁴⁹ Ars Technica, *AI Replaces Artists in Chinese Game Company Layoffs*, (Apr. 15, 2023) <https://arstechnica.com/civis/threads/ai-replaces-artists-in-chinese-game-company-layoffs.1491402/>. See also Rest of World, *AI is already taking video game illustrators' jobs in China*, (Apr. 11, 2023) <https://restofworld.org/2023/ai-china-video-game-layoffs-illustrators/>.

60. That Quantum has garnered commercial success despite using GenAI for its graphics does not lessen the harm suffered by Red; Catly was recently nominated for the 2024 Game Awards, yet consumers still decried its use of AI art.¹⁵⁰

(c) Red has lost multi-million-dollar business opportunities and control over its franchise due to Quantum's unfair competition

61. Not only has Twin Hearts tarnished Red's image in the eyes of its consumers, but it also threatens Red's future business opportunities. Already, Quantum's illegal conduct has caused Red to lose a \$50M investment, as DQJ insisted that Red implement GenAI into its games and questioned whether Twin Blades' true sequel could ever outperform the infringing Twin Hearts.¹⁵¹

62. Quantum's fraudulent and deceptive conduct has ruined Red's well-planned vision for its Twin Blades franchise. Video game franchises can be extremely valuable—good franchise management, including sequels and strategic technology decisions, is critical to almost all successful video game companies.¹⁵² The bestselling video games on the market typically are sequels,¹⁵³ and Quantum's deliberate marketing of Twin Hearts as a sequel to Twin Blades undoubtedly contributed to its commercial success. Before Twin Hearts was publicly released, Liam announced that Red's sequel, Twin Blades 2, would be released in the next few years.¹⁵⁴ If the infringing Twin Hearts remains on the market, Twin Blades 2 may never come out.

¹⁵⁰ VGR, *Meet Catly: the bizarre “AI slop” cat game that snuck into The Game Awards* (Dec. 17, 2024), <https://www.vgr.com/forum/topic/20166-meet-catly-the-bizarre-ai-slop-cat-game-that-snuck-into-the-game-awards/>; Yahoo, *Meet Catly: the bizarre “AI slop” cat game that snuck into The Game Awards* (Dec. 16, 2024), <https://www.yahoo.com/tech/meet-catly-bizarre-ai-slop-160000234.html?guccounter=1>.

¹⁵¹ Facts of the Case, Ch. 13.

¹⁵² Bain & Company, *Level Up: The Future of Video Games Is Bright* (Oct. 12, 2022), <https://www.bain.com/insights/level-up-the-future-of-video-games-is-bright/>.

¹⁵³ André Marchand, Thorsten Hennig-Thurau, *Value Creation in the Video Game Industry: Industry Economics, Consumer Benefits, and Research Opportunities*, Journal of Interactive Marketing, Volume 27, Issue 3, 2013, 141-157, ISSN 1094-9968, <https://doi.org/10.1016/j.intmar.2013.05.001> (“Of the top 20 bestselling videogames, no less than 18 (90%) were sequels in 2011.”) (p. 151).

¹⁵⁴ Facts of the Case, Ch. 12.

B. Red is Entitled to Damages

(i) Red is entitled to damages for quantum's copyright infringement

63. Quantum's violation of Red's exclusive rights in Twin Blades renders it liable for either (i) actual damages and any additional profits of Quantum, or (ii) statutory damages.¹⁵⁵
64. Red is entitled to recover its actual damages suffered as a result of Quantum's infringement and Quantum's profits attributable to the infringement.¹⁵⁶ To establish profits, the copyright owner need only present proof of the infringer's gross profits.¹⁵⁷
65. As a result of Quantum's infringement, DQJ pulled out of negotiating a 30% stake in Red for \$50M.¹⁵⁸
66. Quantum is further liable to Red for *at least* \$100M less any deductible expenses¹⁵⁹ (\$6M¹⁶⁰). Quantum's sales profits are directly attributable to the unauthorized copying of Twin Blades. By using GenAI to replicate the artistic style of Twin Blades for Twin Hearts, Quantum cut costs and development time, allowing it to achieve unprecedented marketplace success.
67. Alternatively, where infringement was committed willfully, a court may award a copyright owner \$300,000 in statutory damages. Infringement is willful when it is done "with knowledge that [one's] conduct constitutes copyright infringement."¹⁶¹ Quantum

¹⁵⁵ CCB § 504(a).

¹⁵⁶ CCB § 504(b).

¹⁵⁷ *Id.*

¹⁵⁸ See *supra* at paragraph 61 (citing Facts of the Case, Ch. 13).

¹⁵⁹ CCB § 504(b).

¹⁶⁰ Facts of the Case, Ch. 12.

¹⁶¹ *Princeton Univ. Press v. Michigan Document Servs., Inc.*, 99 F.3d 1381, 1392 (6th Cir. 1996) (quoting Melville B. Nimmer & David Nimmer, 3 Nimmer on Copyright § 14.04 [B] [3] (1996)).

indisputably acted with the requisite knowledge that its conduct constituted infringement, thereby warranting an alternative statutory damages award.¹⁶²

(ii) *Red is entitled to maximum statutory damages for quantum's unfair competition*

68. Red is entitled to \$5,000—the maximum statutory penalty—for *each* of Quantum's GBR violations due to the severity of Quantum's misconduct. Where, as here, an unfair competition law fails to specify what constitutes a single violation, the court must determine appropriate penalties on a case-by-case basis.¹⁶³ Courts may “us[e] the number of sales to calculate the number of corresponding violations.”¹⁶⁴
69. GBR statutory damages are based on the: (1) nature and seriousness of the misconduct; (2) number of violations; (3) persistence of the misconduct; (4) length of time over which the misconduct occurred; (5) willfulness of the defendant's misconduct; and (6) defendant's assets, liabilities, and net worth.¹⁶⁵ The maximum statutory penalty of \$5,000 should be assessed against Quantum for each sale of Twin Hearts. With \$100M in sales at €39.99 per unit, Quantum has committed ***more than two million GBR violations***, and thus faces ***billions*** of dollars in statutory penalties.

(a) *Quantum's misconduct is serious, in bad faith, and willful*

70. Quantum's misconduct could not be more pervasive. As detailed *supra*, Quantum set out to (and did) copy Red's flagship game, confusing consumers, tarnishing Red's reputation, and interfering with Red's business opportunities in the process.
71. Quantum, *inter alia*, hired engineers familiar with Twin Blades' development; copied Twin Hearts' protected, celebrated artwork and prompted its GenAI tool to produce graphics in the same style; publicly announced its intent to release Twin Blades as “Twin Hearts”;

¹⁶² See *supra* at paragraph 22.

¹⁶³ *People v. Toomey*, 157 Cal. App. 3d 1, 22 (1984).

¹⁶⁴ *Id.* at 22-23.

¹⁶⁵ GBR § 5206(b).

deceived players who believed its “AI slop” actually came from Red; cratered a lucrative investment deal; and stole Red’s control over its own IP, including franchise opportunities. These actions demonstrate Quantum’s willful and bad faith efforts to trade off Red’s goodwill and deceive consumers, supporting the maximum statutory damages award.

(b) Quantum’s misconduct has persisted despite Red’s outreach¹⁶⁶

72. Quantum ignored Red’s attempts to stop its infringing conduct. After Twin Hearts’ launch, Red requested that Quantum de-list its game from the Gas platform due to its infringement upon Red’s IP rights, but Quantum refused.¹⁶⁷ Quantum’s benefactor made clear his plans to bring Twin Hearts worldwide,¹⁶⁸ which was effectuated through cross-platform release in 36 languages.¹⁶⁹ Furthermore, despite rampant consumer confusion and industry attention to the games’ similarities,¹⁷⁰ Quantum has announced **no plans** to change its game (or its title).

(c) Quantum profited significantly due to its misconduct¹⁷¹

73. In **one month** of selling Twin Hearts, Quantum grossed \$100M in revenue, matching Twin Blades’ lifetime earnings. By appropriating Red’s masterpiece using GenAI, Quantum created Twin Hearts in under a year, spending only \$2M on production with estimated profits of \$94M (inclusive of marketing costs).¹⁷² What took Red years to create, develop, and earn became Quantum’s in mere months through Quantum’s IP theft—a fate facing all game developers if Quantum’s conduct is left unpunished.

¹⁶⁶ Facts of the Case, Ch. 13 (Liam emailed Zanele with request to take Twin Hearts down.).

¹⁶⁷ Facts of the Case, Ch. 13.

¹⁶⁸ Q&A_Singapore_Fintech_excerpt.

¹⁶⁹ Facts of the Case, Ch.12.

¹⁷⁰ Facts of the Case, Ch. 12; Gas_Gamer_extract1024.

¹⁷¹ Facts of the Case, Ch. 12 (Twin Hearts grossed \$100M in revenue in first month, matching the lifetime earnings of Twin Blades, but spent only \$2M on production and \$4M on marketing).

¹⁷² Facts of the Case, Ch. 12.

REQUEST FOR FINDINGS

For the foregoing reasons, Red seeks the following relief from the Arbitrators:

1. A permanent injunction against Quantum and any individuals or entities acting in concert or participation with Quantum, prohibiting them from continuing to infringe Red's intellectual property rights and from engaging in further unlawful, unfair, and/or fraudulent business conduct;
2. An order requiring Quantum to remove all versions of *Twin Hearts* and any similarly infringing games from distribution, and to immediately cease development and support of those games;
3. An award of statutory damages for willful copyright infringement in the amount of \$300,000.00; or, alternatively, at Red's election, actual damages, and Quantum's profits from the infringement, in amounts to be proven at trial, pursuant to the Copyright Code of Baharosa;
4. An award of statutory damages for unlawful, unfair, and/or fraudulent business conduct, to be calculated by multiplying the number of violations by \$5,000.00, in accordance with the Business & Professions Code of Baharosa;
5. A declaration that Quantum has infringed Red's copyright under the Copyright Code of Baharosa; and
6. A declaration that Quantum has violated unfair competition laws under the Business & Professions Code of Baharosa.