

**GAMES INDUSTRY LAW SUMMIT**  
**LEGAL CHALLENGE VIII SEASON**  
**2024/2025**

**Red Dawn Entertainment s.r.l.**

**VS**

**Quantum Heaven, Inc.**

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**Team 122**

**Submission of the Respondent**

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## **TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Phrase</b>
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
WCT	WIPO Copyright Treaty
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 or Games	Twin Blades and Twin Hearts
DQJ	Deus Que Joga
Zanele	Zanele Mbali

## **SUMMARY OF ARGUMENTS**

1. Red Dawn Entertainment’s claims fail on both legal and factual grounds. Quantum Heaven developed Twin Hearts independently through the brilliance of Zanele Mbali, the same visionary who conceived of and developed the predecessor game that inspired Twin Blades. Zanele created another beloved hit with Twin Hearts. She, and Quantum, did not infringe Red Dawn’s rights or engage in unfair competition.
2. Red Dawn’s copyright infringement claim is meritless. Zanele owns the original game that served as Twin Blades’ predecessor—not Red Dawn. Under Baharosa law, copyright initially vests in **Zanele**, the author. Red Dawn never acquired ownership over Zanele’s original, independently developed work; its rights are limited to what it contributed to Twin Blades, which does not include *any* of the elements Zanele created before joining Red Dawn. Furthermore, Twin Hearts does not copy any protectable elements of Twin Blades. The two games share only generic, unprotectable mechanics and commonplace game design elements, all of which predated Twin Blades, and over which nobody—not Red Dawn or any other developer—can hold a monopoly.
3. Quantum did not engage in any “unfair competition” either. Quantum was well within its rights to name its game “Twin Hearts.” And Quantum’s decision to use cutting-edge technologies to develop its games is, in actuality, nothing new—developers always seek to leverage new techniques. Quantum is a believer in the power of GenAI to help smaller studios and independent developers compete in an evolving market. Lowering the barriers to entry is the opposite of competing “unfairly.”
4. Because Red Dawn has failed to establish any violation of copyright or unfair competition law, it is not entitled to any relief, including injunctive relief and damages. There is no evidence that Quantum’s actions caused Red Dawn to lose an investment deal, let alone suffer irreparable harm, nor is there a valid basis to disgorge Quantum’s revenue from Twin Hearts. Accordingly, the Arbitrators should dismiss Red Dawn’s claims in their entirety.

## **LEGAL PLEADINGS**

### **I. Quantum Did Not Infringe Red's Copyright In Twin Blades**

1. Copyright law protects against copying—not independent creation. As an auteur, Zanele’s personal style and ambitious vision, manifest in both Twin Hearts and Twin Blades, cannot be attributed to any game studio.
2. Red now unjustly seeks to stop Zanele from freely pursuing her own creative aspirations by claiming Twin Hearts infringed Red’s copyright in Twin Blades. But Quantum’s development and distribution of Twin Hearts did not violate Red’s copyright in Twin Blades, because (i) Red’s copyright only covers its employees’ contributions to Zanele’s game, and (ii) Quantum independently created Twin Hearts.

#### **A. Red’s Copyright in Twin Blades Is Limited**

3. Years before Red hired her,<sup>1</sup> Zanele independently created an original game involving a dual lead gameplay, which Zanele envisioned playing with a “future special friend.”<sup>2</sup> Under Baharosa law, copyright in this work vested in Zanele as the author.<sup>3</sup>

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<sup>1</sup> Facts of the Case, Chs. 1, 4; *Compare* date of Email\_230178 (Nov. 25, 2019) *with* date of QH\_employment\_ZM (Mar. 1, 2020); Clarifications at pg. 1.

<sup>2</sup> Email\_230178.

<sup>3</sup> CCB § 119.

4. Zanele's original game was protectable. It was an original work of authorship fixed in a tangible medium of expression.<sup>4</sup> Zanele's game was "fixed" for purposes of copyrightability because it was capable of being played when it was delivered to Red.<sup>5</sup>
5. Zanele's game featured a litany of protected expression, contrary to Claimant's characterization as a supposedly bare-bones prototype.<sup>6</sup> This included the storylines involved in each of the city-based levels Zanele created and the underlying computer code (each a protected literary work),<sup>7</sup> as well as her original audio and visual assets (a protected audiovisual work).<sup>8</sup>
6. Zanele never transferred copyright ownership of her game to Red. When preparing to "share *her* work,"<sup>9</sup> she contacted Liam, who—impressed by her story and game mechanics—hired her so that Red could develop a game for commercial release based on Zanele's original game.<sup>10</sup> Red even admits that Twin Blades was "a project based on

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<sup>4</sup> "A work is fixed in a tangible medium of expression when its embodiment in a copy is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." *Hayden v. 2K Games, Inc.*, 629 F. Supp. 3d 736, 744 (N.D. Ohio 2022) (quoting 17 U.S.C. § 101) (cleaned up). *See ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447, 1453 (7th Cir. 1996) (finding that computer files on a CD were fixed in a tangible medium of expression); *Williams Elecs., Inc. v. Artic Int'l, Inc.*, 685 F.2d 870, 873-74 (3d Cir. 1982).

<sup>5</sup> Facts of the Case, Ch. 4 ("After a few weeks of hesitation, Zanele found the backups of the code written years ago and brought the prototype up to date. With the gentle support of Ricardo, she finally felt ready to share her work, and uploaded *the playable build* for Red Dawn to test.") (emphasis added).

<sup>6</sup> Claimant Memorandum at ¶ 26.

<sup>7</sup> CCB §102; 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 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").

<sup>8</sup> *Midway Mfg. Co. v. Bandai-Am., Inc.*, 546 F. Supp. 125, 139 (D.N.J. 1982); *Atari, Inc. v. N. Am. Philips Consumer Elecs. Corp.*, 672 F.2d 607 (7th Cir. 1982).

<sup>9</sup> Facts of the Case, Ch. 4 (emphasis added).

<sup>10</sup> Facts of the Case, Ch. 4.

Zanele's original prototype.”<sup>11</sup> Zanele's prototype imbued Twin Blades with the very ambition and inspired mechanics that Red's first project lacked.<sup>12</sup>

7. Contrary to Claimant's argument,<sup>13</sup> Zanele did not assign *any* of her rights in the prototype to Red. The Employment Agreement provides only that Red owns all economic rights to IP developed by its employees during the scope of their employment “from the moment of their occurrence.”<sup>14</sup> This is akin to a work-for-hire provision, not an assignment, and is prospective from the date of hire. Zanele created her original game before the Employment Agreement's effective date; her rights were *not* transferred.<sup>15</sup>
8. Assuming Red holds a valid copyright in Twin Blades, it is limited solely to its contributions to Zanele's original game. Moreover, Zanele retained ownership of the copyright in her original game after she resigned from Red.<sup>16</sup> As copyright owner, she possesses the rights to reproduce, distribute, and create derivative works (e.g., sequels and adaptations) based on her original creation.<sup>17</sup>

## **B. Quantum Did Not Copy Twin Blades**

9. Claimant's infringement claim fails because Quantum independently developed Twin Hearts, and because the protected elements of Twin Hearts and Twin Blades are not substantially similar. Copyright infringement requires either direct or circumstantial evidence of copying.<sup>18</sup> Because direct evidence of copying, like eyewitness testimony, is

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<sup>11</sup> Facts of the Case, Ch. 6.

<sup>12</sup> Facts of the Case, Ch. 5.

<sup>13</sup> Claimant Memorandum at ¶ 26.

<sup>14</sup> Employment Agreement at § 8.1.

<sup>15</sup> Compare date of Email\_230178 (Nov. 25, 2019) with date of QH\_employment\_ZM (Mar. 1, 2020).

<sup>16</sup> Facts of the Case, Ch. 7.

<sup>17</sup> CCB § 106.

<sup>18</sup> *Granger v. Acme Abstract Co.*, 900 F. Supp. 2d 419, 425-26 (D.N.J. 2012) (“The primary goal of whatever test a court employs to determine if a computer program is copyrightable and has been infringed is to delineate between the copyrightable expression and the unprotected elements of the program, then evaluate whether there is substantial

seldom available,<sup>19</sup> copying is typically proven through a showing of access to the copyrighted work and that the two works are substantially similar.<sup>20</sup> Critically, Claimant must show that the allegedly infringing game “did not have an origin independent of [Respondent’s] works.”<sup>21</sup> Proof of independent creation rebuts a presumption of copying.<sup>22</sup>

(i) *Quantum independently developed Twin Hearts*

10. Quantum does not dispute access.<sup>23</sup> Zanele was the primary creative force behind both Twin Blades and Twin Hearts. Quantum’s access to Twin Blades is not dispositive because Quantum never copied Twin Blades.
11. Rather, Quantum independently created Twin Hearts. Zanele had never seen any similar projects before developing her prototype.<sup>24</sup> Before joining, Zanele communicated to Red her intention to fully realize her prototype’s potential by implementing quests involving non-linear time and multiplayer capability.<sup>25</sup> However, Zanele resigned before Twin Blades was finished<sup>26</sup> to pursue her own unrealized creative vision. Twin Hearts includes the very dynamics Red rejected<sup>27</sup> and never intended to pursue.<sup>28</sup> Even Twin Hearts’ title

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similarity between such expression in the infringing program.”); *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018) (discussing differences between direct and circumstantial evidence of copyright infringement).

<sup>19</sup> *Whelan Assocs., Inc. v. Jaslow Dental Lab'y, Inc.*, 797 F.2d 1222, 1231 (3d Cir. 1986) (citing *Roth Greeting Cards v. United Card Co.*, 429 F.2d 1106, 1110 (9th Cir. 1970)).

<sup>20</sup> *Peters v. West*, 692 F.3d 629, 633 (7th Cir. 2012).

<sup>21</sup> *Midway Mfg. Co. v. Dirkschneider*, 543 F. Supp. 466, 482 (D. Neb. 1981); see *Moore v. Lightstorm Ent.*, 992 F. Supp. 2d 543, 559 (D. Md.), aff’d sub nom. *Moore v. Lightstorm Ent., Inc.*, 586 F. App’x 143 (4th Cir. 2014) (quoting *Keeler Brass Co. v. Cont'l Brass Co.*, 862 F.2d 1063, 1066 (4th Cir. 1988) (cleaned up) (“Evidence of independent creation simply tends to prove the reverse of the proposition that the defendants copied the works.”)).

<sup>22</sup> *Calhoun v. Lillenas Publ'g*, 298 F.3d 1228, 1233 (11th Cir. 2002).

<sup>23</sup> Claimant Memorandum at ¶¶ 19, 20, 23.

<sup>24</sup> Email\_230178.

<sup>25</sup> Email\_230178.

<sup>26</sup> Facts of the Case, Ch. 7

<sup>27</sup> Facts of the Case, Ch. 9.

<sup>28</sup> Email\_230922 (“I told them we have no plans for multiplayer...”).

and characters were based on Zanele’s own relationship with her husband and artwork he gifted her.<sup>29</sup> Twin Blades was never the inspiration for Twin Hearts; Zanele was.

12. Claimant’s reliance on Quantum’s recruitment guidelines as requiring an “intimate knowledge of Twin Blades” is misleading.<sup>30</sup> The hiring criteria required knowledge of a dozen popular RPG video games, not just Twin Blades.<sup>31</sup> And Zanele expressly instructed her team that they were not to copy Twin Blades.<sup>32</sup>
13. Claimant’s focus on the Games’ shared combination of plugins and libraries is also misplaced.<sup>33</sup> Zanele developed this very architecture *before* she joined Red.<sup>34</sup> As copyright owner, Zanele had the right to reproduce and prepare derivative works based on her prototype.<sup>35</sup> What Claimant has characterized as unauthorized copying is rather Zanele’s rightful expression of her own artistic vision and an act of independent creation.<sup>36</sup>

(ii) *Twin Hearts and Twin Blades are not substantially similar*

14. Claimant’s allegation that Twin Hearts is a “re-skinne” version of Twin Blades is hyperbolic and untrue.<sup>37</sup> Substantial similarity must be shown by both an objective comparison of the expressive elements and the layperson’s subjective assessment of the total look and feel of the works.<sup>38</sup> Ideas, functional aspects, expressions which “merge” with ideas, and “stock” elements (scènes à faire) of a work are unprotectable and excluded

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<sup>29</sup> Facts of the Case, Ch. 11.

<sup>30</sup> Claimant Memorandum at ¶ 19

<sup>31</sup> Clarifications at pg. 2.

<sup>32</sup> Slack\_extract88305\_.

<sup>33</sup> Claimant Memorandum at ¶ 19.

<sup>34</sup> See paragraphs 2-6, *supra*. See also Facts of Case, Ch. 4; Email\_230178; Clarification at pg. 1 (correcting date of Email\_23078).

<sup>35</sup> CCB § 106.

<sup>36</sup> See Claimant Memorandum at ¶¶ 19, 23-24.

<sup>37</sup> See Claimant Memorandum at ¶¶ 22-23.

<sup>38</sup> *Antonick v. Electronic Arts, Inc.*, 841 F.3d 1062, 1065-66 (9th Cir. 2016).

from the comparison.<sup>39</sup> Comparing the Games' protected elements proves the Games are not substantially similar.

15. Both Games are RPGs featuring two pre-defined leads "with skills that compliment each other."<sup>40</sup> Contrary to Claimant's contention,<sup>41</sup> the ideas of moving two leads independently and in coordination to complete levels, and featuring "mini-stories" at each level do not receive copyright protection.<sup>42</sup> Crafting<sup>43</sup> and being able to "control[] both characters and hav[e] them in specific parts of the map at the correct time"<sup>44</sup> is not unique to Twin Blades. These are a generic gameplay mechanics—which are not copyrightable because they are considered ideas<sup>45</sup>—featured in Zanele's prototype and numerous other games, like:

- a. It Takes Two;<sup>46</sup>

- b. Portal 2;<sup>47</sup>

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<sup>39</sup> *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).

<sup>40</sup> Gas\_Gamer\_extract1024.

<sup>41</sup> Claimant Memorandum at ¶¶ 24, 27.

<sup>42</sup> *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 404 (2012); *see Perry v. Mary Ann Liebert, Inc.*, No. 17-CV-5600 (CS), 2018 WL 2561029, at \*6 (S.D.N.Y. June 4, 2018), *aff'd*, 765 F. App'x 470 (2d Cir. 2019) (quoting *Alexander v. Irving Tr. Co.*, 132 F. Supp. 364, 367 (S.D.N.Y. 1955)) ("[T]he author of a scientific article published in a professional journal is certainly not entitled to a monopoly of the ideas presented therein.").

<sup>43</sup> Claimant Memorandum at ¶ 23.

<sup>44</sup> Claimant Memorandum at ¶ 27.

<sup>45</sup> *Atari, Inc. v. N. Am. Philips Consumer Elecs. Corp.*, 672 F.2d 607 (7th Cir. 1982); Elena Gurau, *The Dimensions of Gameplay: Presenting an Alternative to Video Game Copyrights for Games Without Narratives*, 19 J. Bus. & Tech. L. 449, 457 (2024) (citing Sonali D. Maitra, *It's How You Play the Game: Why Videogame Rules Are Not Expression Protected by Copyright Law*, 7 Landslide 34, 36 (2015).; *see also Lotus Dev. Corp. v. Borland Int'l, Inc.*, 49 F.3d 807, 815 (1st Cir. 1995) (asserting that a menu command hierarchy was a method of operation, and therefore uncopyrightable), *aff'd*, 516 U.S. 233 (1996).

<sup>46</sup> Hazelight Studios, *It Takes Two* (Electronic Arts 2021) (A co-op adventure game where players control Cody and May, a divorcing couple turned into dolls, working together through puzzles and platforming to mend their relationship).

<sup>47</sup> Valve Corporation, *Portal 2* (Valve Corporation 2011) (A puzzle game where players can cooperatively control robots ATLAS and P-Body using portal mechanics to solve challenges in Aperture Science's testing facility).

- c. Resident Evil 5;<sup>48</sup> and
- d. Resident Evil 6.<sup>49</sup>

16. Furthermore, the use of ascending and descending stairs to represent a labyrinthine level design is “scènes à faire.”<sup>50</sup> This classic level design appears in countless titles including:

- a. The Legend of Zelda: Ocarina of Time;<sup>51</sup>
- b. The Dark Souls series;<sup>52</sup>
- c. Tomb Raider (2013);<sup>53</sup>
- d. The Binding of Isaac;<sup>54</sup> and
- e. The Assassin’s Creed Series.<sup>55</sup>

17. The only protected expression in Twin Blades includes Rohan’s artwork and each level’s storyline—none of which Quantum copied with Twin Hearts.

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<sup>48</sup> Capcom, *Resident Evil 5* (Capcom 2009) (A co-op survival horror game where players can control Chris Redfield and Sheva Alomar, working together to combat bioterrorism in Africa, featuring a partner-based gameplay system).

<sup>49</sup> Capcom, *Resident Evil 6* (Capcom 2012) (A co-op survival horror game with multiple campaigns, where pairs of characters like Leon & Helena or Chris & Piers fight bioterror threats worldwide).

<sup>50</sup> *Apple Computer, Inc. v. Microsoft Corp.*, 799 F. Supp. 1006, 1021 (N.D. Cal. 1992), *order clarified*, No. C-88-20149-VRW, 1993 WL 207982 (N.D. Cal. Apr. 14, 1993), and *aff’d*, 35 F.3d 1435 (9th Cir. 1994).

<sup>51</sup> Nintendo, *The Legend of Zelda: Ocarina of Time* (Nintendo 1998) (An action-adventure game featuring intricate dungeon designs with significant verticality, including the use of stairs and ladders to navigate multi-level puzzles).

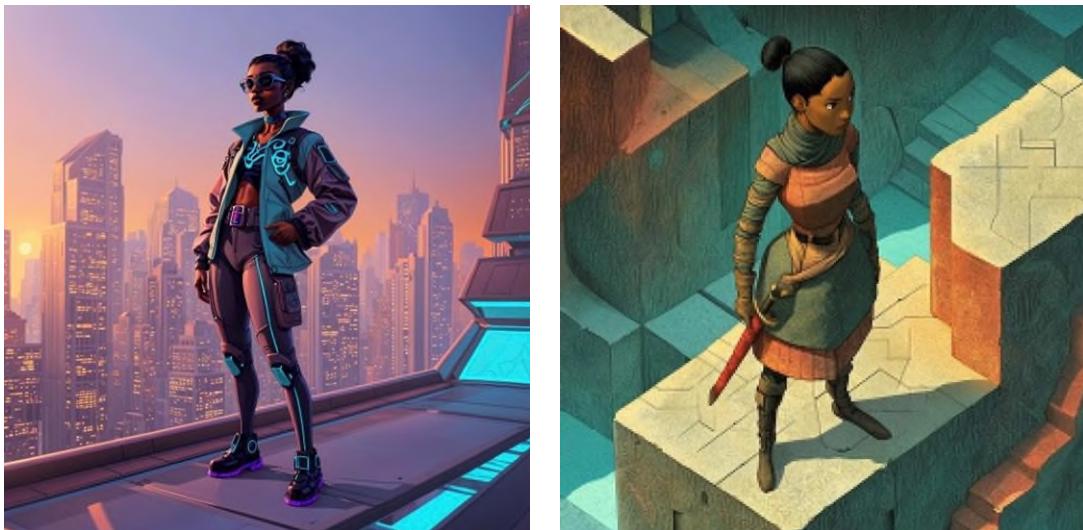
<sup>52</sup> FromSoftware, *Dark Souls* (Bandai Namco Games 2011-2016) (A series renowned for its interconnected world design, utilizing stairs extensively to connect various areas and create complex, labyrinthine environments).

<sup>53</sup> Crystal Dynamics, *Tomb Raider* (Square Enix 2013) (An action-adventure game with a semi-open world structure, incorporating stairs and climbing mechanics to explore ancient tombs and vertical landscapes).

<sup>54</sup> Edmund McMillen & Florian Himsl, *The Binding of Isaac* (2011) (A roguelike dungeon crawler featuring procedurally generated rooms, where players descend through floors via trapdoors).

<sup>55</sup> Ubisoft, *Assassin’s Creed* (Ubisoft 2007-present) (An open-world action-adventure series emphasizing parkour and climbing, with stairs present in buildings and structures, though vertical navigation often relies more on free-running mechanics).

18. The Games' female leads are visually dissimilar.<sup>56</sup>

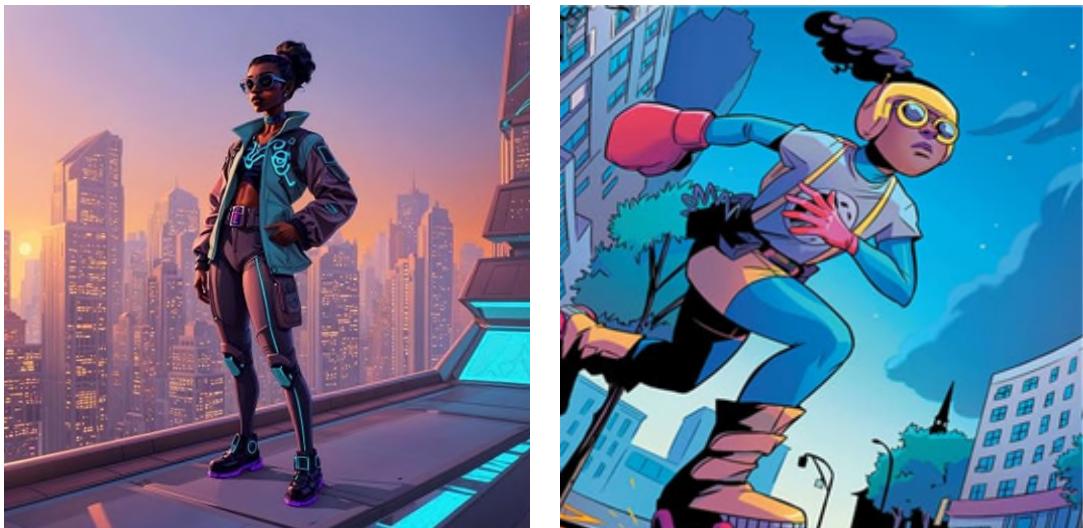


19. Twin Hearts' female lead—Zanele—wears sunglasses with her wavy hair in a ponytail. Posing with her hand on her hip, Zanele dons ankle-length boots and a futuristic blue-and-purple outfit replete with neon accents. Twin Blades' female lead—Elenaz—appears unspectacled with a sleek bun. Posing with both hands at her side, Elenaz sports knee-high boots, an archaic teal-and-orange tabard, and a longsword. The female lead comparison fail both tests for substantial similarity.

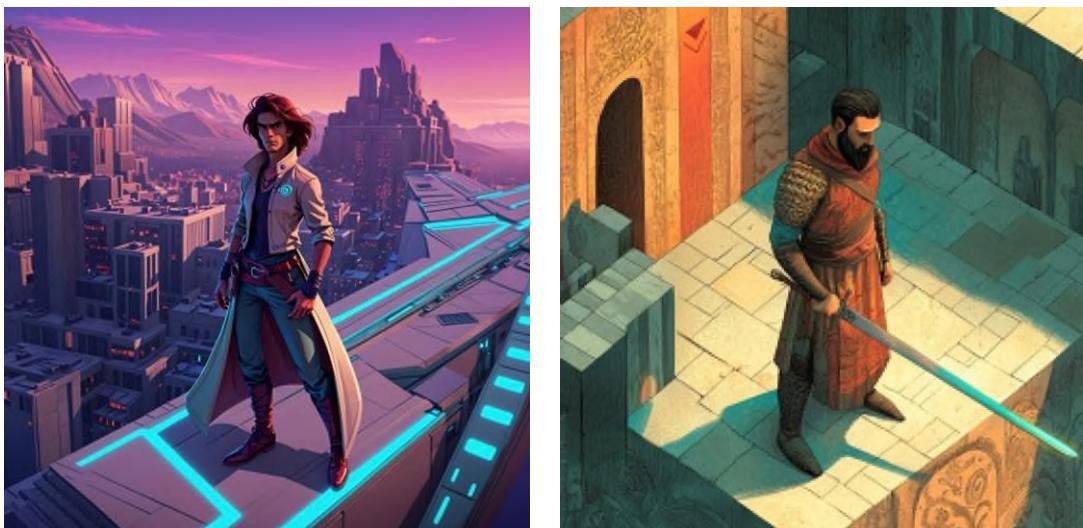
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<sup>56</sup> From left to right: Twin\_Hearts\_viusals02 (female lead); Twin\_Blades\_viusals01 (female lead).

20. In fact, Twin Hearts' Zanele more resembles Marvel's Moon Girl than she does Twin Blades' Elenaz.<sup>57</sup>



21. The Games' male leads are likewise visually dissimilar.<sup>58</sup>



22. Twin Hearts' male lead wears a floor-length jacket, a clean-shaven visage and shoulder-length, tousled hair. Twin Blades' male lead, enrobed in the same antiquated outfit as Elenaz, has short-kept hair and a voluminous beard, carrying his sword in hand. Notably,

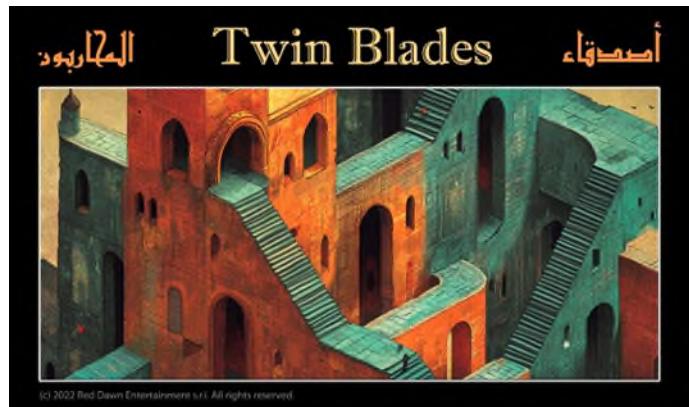
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<sup>57</sup> From left to right: Twin\_Hearts\_viusals02 (female lead); Marvel Fandom, *Lunella Lafayette (Earth-616)*, Marvel Fandom Wiki, [https://marvel.fandom.com/wiki/Lunella\\_Lafayette\\_\(Earth-616\)](https://marvel.fandom.com/wiki/Lunella_Lafayette_(Earth-616)) (image from *Moon Girl and Devil Dinosaur #5*).

<sup>58</sup> From left to right: Twin\_Hearts\_viusals02 (male lead); Twin\_Blades\_viusals01 (male lead).

unlike their purported counterparts in Twin Blades, neither lead in Twin Hearts—a love story—carries a weapon.

23. Claimant points out that Zanele is “Elenaz backwards.”<sup>59</sup> That the developer of Twin Hearts—Zanele—named the lead after *herself* only emphasizes that Twin Hearts is a result of independent creation, further rebutting any inference of actual copying.<sup>60</sup>
24. The layout and backgrounds also illustrate the dissimilarity between the games.<sup>61</sup>



25. “Twin Hearts” is set between two identical ombre lines, whereas “Twin Blades” is set in a different font and between two Arabic words (translating to “fighters” and “friends”). The color palettes are distinct. Twin Hearts features blues, purples, pinks, and light oranges, creating an electric and incandescent atmosphere—a stark contrast to the muted teals and oranges sketched on the buildings in Twin Blades. Twin Hearts presents its setting at eye-level, extending into a foggy distance interspersed with futuristic skyscrapers. Twin Blades has a traditional isometric camera angle that is cast sharply downward.
26. The lack of consumer confusion further highlights the differences between the Games. Similarity can be assessed by comparing the works “as they would appear to a layman concentrating upon the gross features rather than an examination of minutiae.”<sup>62</sup> Gamers

<sup>59</sup> Claimant Memorandum at ¶ 22.

<sup>60</sup> *Watt v. Butler*, 744 F. Supp. 2d 1315 (N.D. Ga. 2010), *aff'd*, 457 F. App'x 856 (11th Cir. 2012).

<sup>61</sup> From left to right: Twin\_Hearts\_viuuals01; Twin\_Blades\_viuuals02.

<sup>62</sup> *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 409 (D.N.J. 2012) (internal quotation marks omitted).

and reviewers rightly observe that Twin Hearts is not a sequel, citing the difference in graphics style,<sup>63</sup> storyline, gameplay mechanics, and setting.<sup>64</sup>

27. That some gamers pegged Twin Hearts a sequel to Twin Blades, is a testament to Zanele’s personal style and not copying—like other industry visionaries like Ken Levine and Hideo Kojima.
28. Levine developed *System Shock* while at Looking Glass Studios, and co-developed *System Shock 2* with Looking Glass at his new studio, Irrational Games. When Levine and Irrational Games then created *BioShock*, which was heavily influenced by and referred to as a “spiritual successor” to *System Shock 2*, consumers were not confused about its origin and understood the connection between the games was through Levine as developer, not through the studio that released the prior product. Like Twin Blades and Twin Hearts, *Bioshock* takes place in the past and *System Shock* occurs in the future, yet, due to their common auteur, they share similar themes and gameplay mechanics.<sup>65</sup>
29. Kojima similarly spent decades developing stealth games in the *Metal Gear* franchise for Konami, before splitting and launching Kojima Productions independently. Just like with Zanele, Kojima’s first independent game—*Death Stranding*—retained the auteur’s unique, personal style,<sup>66</sup> while nevertheless existing as a distinct product offered by a different studio. Likewise, that Twin Blades and Twin Hearts have “the same feeling”<sup>67</sup> is a credit to Zanele’s own creative vision, not Quantum’s copying. Therefore, Quantum did not infringe Red’s copyright.

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<sup>63</sup> Gas\_Forumz\_TH9210.

<sup>64</sup> Reddit\_extract1422.

<sup>65</sup> Nathaniel Ng, *New Castles with Familiar Bricks - Balancing Copyrights, Spiritual Successor Video Games, and Competition*, 58 IDEA: J. Franklin Pierce for Intell. Prop 337, 357 (2018).

<sup>66</sup> u/MetalheadZ, *Is Death Stranding Similar to MGS at All?*, Reddit (Dec. 27, 2022), [https://www.reddit.com/r/metalgearsolid/comments/zp9qu6/is\\_death\\_stranding\\_similar\\_to\\_mgs\\_at\\_all/](https://www.reddit.com/r/metalgearsolid/comments/zp9qu6/is_death_stranding_similar_to_mgs_at_all/), Comment of u/Twidom (“You can 100% feel the ‘Kojima’ aura around the game.”); Comment of u/Solivagant (“It’s a different side of [Kojima] while still being 100% him.”).

<sup>67</sup> Gas\_Forumz\_TH9210.

### **C. Quantum's Alleged Copying Was Not Willful**

30. Twin Hearts is the original Twin Blades envisioned by Zanele.<sup>68</sup> Zanele was clear she did not set out to copy Twin Blades—she aimed to pursue her own original vision.<sup>69</sup> The realization of her prototype was a lawful exercise of her derivative work right—not willful infringement.
31. That Quantum allegedly queried its AI model to create visual assets in the style of Twin Blades is also of no import. Quantum's internal limitations on the use of style prompts is solely to minimize risk where “legal regulation of [GenAI] remains undeveloped.”<sup>70</sup> Indeed, it is black-letter law that style is not copyrightable.<sup>71</sup> Such purported violation of an internal company policy does not equate to knowing infringement. Moreover, Claimant's allegation that Quantum input assets like the “campfire” layer from Twin Blades<sup>72</sup> that are **nowhere** to be found in Twin Hearts' output<sup>73</sup> refutes an inference of willful copying.

### **D. Claimant's Focus on GenAI Is a Distraction; the Copying That Claimant Alleges—Without Evidence—Would Be Fair Use**

32. Claimant's focus on GenAI is a red herring.<sup>74</sup> The GenAI model in question is not Quantum's—it belongs to Bright Horizons 2.0.<sup>75</sup> Claimant ignores this fact, instead targeting Quantum, despite Quantum not playing any role in the creation or training of the

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<sup>68</sup> Q&A\_Singapore\_Fintech\_excerpt.

<sup>69</sup> Slack\_extract88305.

<sup>70</sup> QH\_policies\_AI at §§ 1, 9.

<sup>71</sup> *McDonald v. West*, 138 F. Supp. 3d 448, 455 (S.D.N.Y. 2015), aff'd, 669 F. App'x 59 (2d Cir. 2016); *Roberts v. Gallery*, No. 22-CV-4516 (LDH) (TAM), 2024 WL 4654113, at \*3 (E.D.N.Y. Nov. 1, 2024); *Attia v. Soc'y of New York Hosp.*, 201 F.3d 50, 54 (2d Cir. 1999); *Mattel, Inc. v. Goldberger Doll Mfg. Co.*, 365 F.3d 133, 135-36 (2d Cir. 2004).

<sup>72</sup> Claimant Memorandum at ¶ 23; *see* discovery\_PSD\_22.

<sup>73</sup> Gas\_Forum斯\_TH9210.

<sup>74</sup> *See generally* Claimant Memorandum at ¶ 23.

<sup>75</sup> *See* Facts of the Case, Chs. 10-11.

GenAI model.<sup>76</sup> Accordingly, Claimant states no claim against Quantum for creating or training the GenAI model.<sup>77</sup>

33. There is also no evidence that the GenAI was trained on any copyrighted material, let alone Red's. That Quantum queried the model for "Twin Blades" and received a result does not suggest, much less prove, that any copyrighted material was involved in the training.<sup>78</sup> This is not a case of "*res ipsa loquitur*": GenAI's capacity to generate responses based on vast pools of publicly available data cannot be confused with unlawful copying. As the output is not a reproduction of Twin Blades, no reasonable inference can be drawn that any copyrighted works were used to train the model.
34. Moreover, the copying that Claimant, suggests occurred involves the application of GenAI technology to generate novel game elements, thus raising the issue of fair use.<sup>79</sup> To the extent Claimant could assert GenAI-based copying by Quantum (which it cannot), such copying would constitute fair use under the four-factor fair use test: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the use, and the effect of the use on the market.<sup>80</sup>
35. First, the purpose and character of the use is transformative because Twin Hearts adds new meaning and function rather than merely copying Twin Blades.<sup>81</sup> Training a GenAI model on existing video games involves analyzing design principles rather than replicating

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<sup>76</sup> See Clarifications at pg. 3 ("The employees of Quantum Heaven do not operate the Bright Horizons engine, and have no knowledge or access to its training set.").

<sup>77</sup> See *Andersen v. Stability AI Ltd.*, 700 F. Supp. 3d 853 (N.D. Cal. 2023) (Dismissing claims for direct and vicarious copyright infringement against platform operator and software company using generative-AI image-generation product; only sufficient claim was for direct infringement by software company based on allegations that copyrighted works were included in training data for generative-AI library.).

<sup>78</sup> See Claimant Memorandum at ¶ 23.

<sup>79</sup> See Assoc. of Rsch. Libraries, *Training Generative AI Models on Copyrighted Works Is Fair Use*, ARL BLOG (Feb. 9, 2025, 1:30 PM), <https://www.arl.org/blog/training-generative-ai-models-on-copyrighted-works-is-fair-use/>.

<sup>80</sup> 17 U.S.C. § 107; see *Google LLC v. Oracle America, Inc.*, 141 S. Ct. 1183 (2021) (applying fair use analysis to code); see also *Accolade, Inc. v. Distinctive Software, Inc.*, No. C9020202RFP, 1990 WL 180239 (N.D. Cal. June 17, 1990) (applying fair use analysis to video games).

<sup>81</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994); see *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1203 (2021) (finding that copying elements of a software interface was transformative as it added new functionality).

specific content.<sup>82</sup> GenAI analyzes the core elements of gameplay mechanics,<sup>83</sup> level structures,<sup>84</sup> and interactive principles,<sup>85</sup> rather than copying games verbatim. This process is akin to reverse engineering which courts have long recognized qualifies as fair use.<sup>86</sup> It is also analogous to how human game developers learn from existing games: just as an art student studying Picasso and Van Gogh may adopt certain brush strokes and techniques to create a new and distinct painting, a GenAI model trained on video game mechanics, level structures, and interactive storytelling principles synthesizes these elements in novel ways. The result is an entirely new creation, not a copy of any individual game.

36. Twin Hearts is indisputably transformative—introducing new layers of meaning, expression, and functionality nowhere in Twin Blades. Twin Hearts also breaks new ground with innovations like co-op play, an open-world structure, and a narrative centered around a love story—distinct from Twin Blades’ linear design and traditional “save the world” plot.<sup>87</sup> Twin Hearts features a fresh artistic direction, with a setting inspired by Cyberpunk 2077’s vision of Dubai, while Twin Blades evokes a more traditional, Prince of Persia-esque atmosphere.<sup>88</sup>
37. Second, the nature of the copyrighted works includes both functional and expressive elements. While video games are undoubtedly creative works in part, they are also functional works comprised of gameplay mechanics, physics engines, and interactive

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<sup>82</sup> See *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 818 (9th Cir. 2003) (holding that reproducing and transforming images for a search engine was fair use as it served a new purpose).

<sup>83</sup> *DaVinci Editrice S.R.L. v. ZiKo Games, LLC*, 183 F. Supp. 3d 820, 830 (S.D. Tex. 2016), *judgment entered*, No. CV H-13-3415, 2016 WL 1718825 (S.D. Tex. Apr. 27, 2016) (quoting *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 404 (D.N.J. 2012)) (“[G]ame mechanics . . . are not entitled to protection . . .”).

<sup>84</sup> *Tetris Holding, LLC v. Xio Interactive, Inc.*, 863 F. Supp. 2d 394, 404 (2012) (“[R]ules are not entitled to protection . . .”).

<sup>85</sup> *Capcom U.S.A., Inc. v. Data East Corp.*, No. 93-3259, 1994 WL 1751482, at \*8 (N.D. Cal. Mar. 16, 1994) (holding that gameplay principles, such as having a health bar, are not protectible).

<sup>86</sup> See *Sony Comput. Entm’t, Inc. v. Connectix Corp.*, 203 F.3d 596, 603 (9th Cir. 2000) (holding that intermediate copying necessary for reverse engineering a competing software product constituted fair use).

<sup>87</sup> Gas\_Gamer\_extract1024.

<sup>88</sup> *Id.*

systems. Courts have consistently recognized that functional elements receive less copyright protection than purely expressive works.<sup>89</sup>

38. Third, with respect to amount and substantiality, courts have held that intermediate copying for the purpose of analysis and innovation may constitute fair use.<sup>90</sup> Courts have recognized that intermediate copying for the purpose of analysis, research, or innovation is a key component of fair use.<sup>91</sup> Large-scale scanning of books, for example, has been deemed fair use when the output served a transformative purpose.<sup>92</sup> There is no basis to stray from that line of reasoning here.

39. Fourth and finally, there is no evidence of market harm caused by Twin Hearts. Courts do not assume market harm without concrete evidence.<sup>93</sup> Here, the Games are not substitutes —differing in gameplay structure, audience appeal, and pricing.<sup>94</sup> They target different

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<sup>89</sup> Mark A. Lemley & Pamela Samuelson, *Interfaces and Interoperability After Google v. Oracle*, 100 Tex. L. Rev. 1, 38 (2021) (discussing how it is well established that copyright protection excludes ideas and functional aspects of computer programs); *see Baker v. Selden*, 101 U.S. 99, 102-03 (1879) (holding that functional aspects of a work are not protected by copyright); *see also Atari Games Corp. v. Nintendo of Am. Inc.*, 975 F.2d 832, 840-41 (Fed. Cir. 1992) (finding that reverse engineering for the purpose of understanding game mechanics did not infringe copyright).

<sup>90</sup> *See Sony Comput. Entm't, Inc. v. Connectix Corp.*, 203 F.3d 596, 606 (9th Cir. 2000) (finding fair use where intermediate copying was necessary to create a compatible product).

<sup>91</sup> *See, e.g., Thomson Reuters Enter. Ctr. GMBH v. Ross Intel. Inc.*, No. 1:20-CV-613-SB, 2025 WL 458520, at \*9 (D. Del. Feb. 11, 2025) (finding that the third fair use factor favored an AI-driven legal research competitor accused of copying a platform's copyrighted headnotes and taxonomy system, as the output provided to users consisted of judicial opinions without the platform's annotations); *Am. Soc'y for Testing & Materials v. UpCodes, Inc.*, No. CV 24-1895, 2024 WL 4374117, at \*13 (E.D. Pa. Oct. 2, 2024) (holding that copying the entirety of ten technical standards was reasonable under the third fair use factor, as some jurisdictions had incorporated them into law, and the use educated the public about legal obligations).

<sup>92</sup> *Authors Guild, Inc. v. Google, Inc.*, 804 F.3d 202, 221-22 (2d Cir. 2015) (holding that the third fair use factor favored an internet search engine that copied entire copyrighted books to enable keyword searches, as the copies were not publicly available, full-text access was necessary for the search function, and protections prevented the results from serving as substitutes for the books).

<sup>93</sup> *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 451 (1984); *see Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994) (holding that market harm must be demonstrated with specific evidence).

<sup>94</sup> *See Gas\_Gamer\_extract1024* (Contrasting Twin Hearts and Twin Blades by highlighting the stark differences: Twin Blades features a setting similar to Prince of Persia 3D, while Twin Hearts offers a Cyberpunk 2077-inspired Dubai backdrop; Twin Blades follows a traditional “save the world” narrative, whereas Twin Hearts presents a unique “love story”; Twin Hearts supports co-op play and gamepad functionality, unlike Twin Blades; and with Twin Hearts priced at 29.99 euros, it is notably more affordable than Twin Blades, which costs 39.99 euros.)

audiences and are designed for different gameplay experiences, with distinct features such as co-op play, an open-world setting, and a different narrative focus.

## **II. Quantum Did Not Commit Unfair Competition**

### **A. The Use of AI in Game Development Is Lawful and Industry-Standard**

40. Quantum's use of GenAI does not constitute unfair competition because it aligns with industry standards,<sup>95</sup> promotes market competition,<sup>96</sup> and does not involve deception or unlawful conduct. Indeed, technological advancement is a key part of what drives the gaming industry. Developers have long utilized automation to streamline development<sup>97</sup> and have done so in games like *Minecraft*<sup>98</sup> and *No Man's Sky*.<sup>99</sup>
41. GenAI is a new step in a decades-old, accepted industry practice of deploying emerging technology to realize greater efficiency and expanded creative opportunities. GenAI is

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<sup>95</sup> Sylvain Duranton, *Are Coders' Jobs at Risk? AI's Impact on the Future of Programming*, Forbes, <https://www.forbes.com/sites/sylvainduranton/2024/04/15/are-coders-jobs-at-risk-ais-impact-on-the-future-of-programming/?sh=118c6bca73e5> (“A recent Github survey of 500 U.S.-based developers found that 92% are already using AI coding tools.”)

<sup>96</sup> Kevuru Games, *How AI Is Disrupting the Video Game Industry*, Kevuru Games Blog, <https://kevurugames.com/blog/how-ai-is-disrupting-the-video-game-industry/#:~:text=Procedural%20Content%20Generation,-AI%2Ddriven%20procedural&text=Developers%20can%20use%20AI%20algorithms,fresh%20experiences%20with%20each%20playthrough> (“By utilizing AI technologies, smaller studios can compete with larger companies and create more innovative gaming experiences. . . . By leveraging AI-generated graphics, smaller studios can decrease game production costs and vie with larger companies.”).

<sup>97</sup> Storage Blog, *From Arcades to Metaverse: The Past, Present, and Future of Gaming*, Pure Storage, <https://blog.purestorage.com/perspectives/from-arcades-to-metaverse-the-past-present-and-future-of-gaming/> (“Video games have always been a testing ground for computer technology since a physicist invented the first game in 1958.”).

<sup>98</sup> Minecraft, *World generation*, Minecraft Wiki, [https://minecraft.wiki/w/World\\_generation](https://minecraft.wiki/w/World_generation).

<sup>99</sup> *Procedural Generation*, No Man's Sky Wiki, [https://nomanssky.fandom.com/wiki/Procedural\\_generation#:~:text=No%20Man's%20Sky%20is%20a,diversity%20through%20each%20item%20created](https://nomanssky.fandom.com/wiki/Procedural_generation#:~:text=No%20Man's%20Sky%20is%20a,diversity%20through%20each%20item%20created) (emphasis added) (“No Man's Sky is a game built on procedural generation; that is, each planet, creature, ship, multi-tool and other items are created procedurally using algorithms in the game itself, rendering diversity through each item created.”)

now used in the industry to fuel dialogue creation, create realistic virtual worlds, generate maps, and develop gameplay mechanics.<sup>100</sup>

42. Many consumers recognize GenAI as an enhancement to games, and surveys show they are willing to spend more on games incorporating AI-driven elements.<sup>101</sup> Both Nvidia and Ubisoft use GenAI to improve NPC dialogue and behavior.<sup>102</sup> Recently, Jam & Tea Studios implemented AI-generated mechanics in its game *Retail Mage*.<sup>103</sup>

43. The vocal minority of fans who have criticized Quantum's use of AI art in Twin Blades do not speak for the millions of consumers who have purchased and enjoyed the game. Twin Hearts earned \$100M in its first month of sales alone and earned "Very Positive" reviews across 32,050 consumers.<sup>104</sup> Similarly, although some Call of Duty fans criticized

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<sup>100</sup> Incredibuild Blog, *Generative AI in Gaming: Crafting Dreams and Dodging Shadows*, Incredibuild, <https://www.incredibuild.com/blog/generative-ai-in-gaming-crafting-dreams-and-dodging-shadows> (discussing GenAI's potential to improve content generation, game development, and NPC behavior in video games); Katja Hofmann, *Introducing Muse: Our First Generative AI Model Designed for Gameplay Ideation*, Microsoft Research (Feb. 19, 2025), <https://www.microsoft.com/en-us/research/blog/introducing-muse-our-first-generative-ai-model-designed-for-gameplay-ideation/> (highlighting AI's potential in enhancing game development, including its applications in game testing and automating repetitive tasks).

<sup>101</sup> Inworld AI, *The Future of NPCs: Report*, Inworld AI Blog, <https://inworld.ai/blog/future-of-npcs-report> (99% of gamers believe including Advanced AI NPCs would positively impact gameplay. 78% of gamers would spend more time playing, and 79% would be more likely to buy a game with intelligent NPCs. More importantly, 81% of gamers would be willing to pay more for a game with advanced AI NPCs.”).

<sup>102</sup> Fast Company, *How This Studio Is Using AI to Make Video Games More Immersive*, Fast Company, <https://www.fastcompany.com/91197149/how-studio-using-ai-make-video-games-more-immersive> (discussing Ubisoft and Nvidia).

<sup>103</sup> *Id.*

<sup>104</sup> Gas\_Store\_Page\_TH.

Activision-Blizzard for using GenAI to create art for Black Ops 6,<sup>105</sup> Black Ops 6 still was the best-selling game in the U.S. for 2024.<sup>106</sup>

44. Courts consistently hold that technological advancements that increase efficiency and market access do not constitute unfair competition without deceptive or coercive conduct.<sup>107</sup> Because Quantum was open about its use of GenAI—positioning Twin Hearts as “a revolution in AI-supported production”<sup>108</sup> created “at a fraction of the earlier cost”<sup>109</sup>—there cannot be any deception here. There is also no coercive conduct: Quantum did nothing to “rob Twin Blades and Red Dawn of a proper release spotlight on Gas,” and Claimant cites no evidence to the contrary.<sup>110</sup>

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<sup>105</sup> 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>; u/mayoryoel, *Call of Duty: Black Ops 6 Challenges Steam’s Stance Against Undisclosed AI Art, and Steam Won’t Do Anything About It*, Reddit (Feb. 21, 2025), [https://www.reddit.com/r/Steam/comments/1h8d6e7/call\\_of\\_duty\\_black\\_ops\\_6\\_challenges\\_stems\\_stance/](https://www.reddit.com/r/Steam/comments/1h8d6e7/call_of_duty_black_ops_6_challenges_stems_stance/) (“What’s even more frustrating is that there is ZERO disclaimer on the Black Ops 6 store page indicating the use of AI Art.”); u/drappeldrappel\_, *It’s Genuinely Pathetic How Much Activision Uses AI*, Reddit (Feb. 21, 2025), [https://www.reddit.com/r/CODZombies/comments/1h8qbd0/its\\_genuinely\\_pathetic\\_how\\_much\\_activision\\_uses\\_ai/](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”).

<sup>106</sup> IGN, *Call of Duty: Black Ops 6 Is the Best-Selling Game of 2024 in the U.S.*, IGN (Jan. 23, 2025), <https://www.ign.com/articles/call-of-duty-black-ops-6-is-the-best-selling-game-of-2024-in-the-us>.

<sup>107</sup> See, e.g., *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 103 (2d Cir. 2010) (holding that the mere facilitation of market access through technological advancements, like e-commerce, does not constitute unfair competition unless accompanied by deceptive practices or intentional infringement); *Am. Online, Inc. v. GreatDeals.Net*, 49 F. Supp. 2d 851, 858 (E.D. Va. 1999) (holding that technological advancements, such as automated tools to access or scrape data, do not constitute unfair competition unless accompanied by unlawful conduct, like unauthorized access or disruption of proprietary services); *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342, 1354 (2003) (holding that technological advancements, such as sending unsolicited emails to employees of a specific company, do not constitute unfair competition unless they are accompanied by unlawful or deceptive conduct, such as disruption of business operations or interference with proprietary systems); *EchoMail, Inc. v. Am. Express Co.*, 529 F. Supp. 2d 140, 146 (D. Mass. 2007) (holding that technological advancements, such as automated email processing, do not by themselves constitute unfair competition unless they involve unlawful conduct, such as misappropriation of trade secrets or the improper use of confidential information).

<sup>108</sup> Facts of the Case, Ch. 12.

<sup>109</sup> Q&A\_Singapore\_Fintech\_excerpt.

<sup>110</sup> Claimant Memorandum at ¶ 17.

## **B. Quantum Did Not Engage in Fraudulent Business Practices, Misleading Advertising or Deceptive Conduct**

45. The GBR proscribes “any unlawful, unfair, or fraudulent business act or practice and unfair deceptive, untrue or misleading advertising.”<sup>111</sup> The language and intent of the GBR resemble U.S. state laws prohibiting unfair competition.<sup>112</sup> Thus, GBR claims are “substantially similar” to Lanham Act claims.<sup>113</sup>
46. GBR claims alleging fraudulent business practices or deceptive advertising are evaluated under the same test, which asks whether a significant portion of targeted consumers, acting reasonably under the circumstances, is likely to be deceived.<sup>114</sup> Lanham Act violations require showing a likelihood of consumer confusion from the defendant’s use of a similar or identical trademark.<sup>115</sup>
  - (i) *Quantum did not advertise misleadingly: Anton Li’s statements were non-actionable puffery*
47. Anton Li’s statement that his mission was to make “the spiritual successor” to Twin Blades and “Twin Blades x100” constitutes non-actionable puffery.<sup>116</sup> Reasonable consumers may not rely on mere puffery, which is characterized by vague, highly subjective claims or meaningless superlatives, as opposed to specific, factual assertions.<sup>117</sup> Courts recognize

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<sup>111</sup> GBR § 5200.

<sup>112</sup> 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.”).

<sup>113</sup> *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.*

<sup>114</sup> *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).

<sup>115</sup> 4 McCarthy on Trademarks and Unfair Competition § 30:1 (5th ed.) (“A Permanent Injunction is the Customary Remedy.”).

<sup>116</sup> Q&A\_Singapore\_Fintech\_excerpt.

<sup>117</sup> *See Cook, Perkiss & Liehe v. Northern Cal. Collection Serv., Inc.*, 911 F.2d 242, 246 (9th Cir. 1990); *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1399 (E.D. Cal. 1994); *In re Rust-Oleum Restore Mktg., Sales Pracs. & Prods. Liab. Litig.*, 155 F. Supp. 3d 772, 817 (N.D. Ill. 2016).

that general statements of superiority are non-actionable,<sup>118</sup> and “claims that a product is ‘The’ something-or-other is commonly viewed as puffery.”<sup>119</sup>

48. Li’s characterization of Twin Hearts as “the spiritual successor” and “Twin Blades x100” reflects his personal enthusiasm rather than an objective assertion that the Games are related. Li’s comments are subjective opinions, not factual claims, and there is no evidence consumers knew, relied on, or were influenced by them when purchasing Twin Hearts.

(ii) *Quantum independently created the name “Twin Hearts” and did not intend to trade off Red’s goodwill*

49. Zanele chose “Twin Hearts” to honor her late husband, who had given her a painting with the same name before his death.<sup>120</sup> She did not name the game “Twin Hearts” so that consumers would associate it with Twin Blades.

50. Furthermore, Quantum did not mimic Twin Blades with “a female character with a name flipped backwards from Elenaz to Zanele.”<sup>121</sup> Rather, Quantum, through Zanele, created a new game, based on Zanele’s and Ricardo’s personal relationship, which is the bedrock of Twin Hearts’ story and its aptly named characters.<sup>122</sup> In naming the protagonist Zanele, Quantum underscored the intimate and semi-autobiographical nature of the work. Contrary

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<sup>118</sup> *Pizza Hut, Inc. v. Papa John’s Int’l, Inc.*, 227 F.3d 489, 495-96 (5th Cir. 2000).

<sup>119</sup> *Stokely-Van Camp, Inc. v. Coca-Cola Co.*, 646 F. Supp. 2d 510, 526 (S.D.N.Y. 2009) (“The addition of ‘The’ to Complete Sports Drink” is non-actionable puffery”). *See also Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990) (holding that the claim “We’re the low cost commercial collection experts” is puffery); *Cytac Corp. v. Neuromedical Sys., Inc.*, 12 F. Supp. 2d 296, 300-01 (S.D.N.Y. 1998) (finding statement describing pap smear test as “the new ‘Gold Standard’ for cytology laboratories” to be puffery); *Castaneda v. Amazon.com, Inc.*, 679 F. Supp. 3d 739, 750 (N.D. Ill. 2023) (Amazon’s claim that gamer could “discover a deeper gaming experience” with “breathtaking immersion” and experience “lightning speed” was not objectively verifiable and therefore not false and not actionable).

<sup>120</sup> Facts of the Case, Ch. 11.

<sup>121</sup> Claimant Memorandum at ¶ 22.

<sup>122</sup> Facts of the Case, Ch. 11.

to Claimant’s assertion, Zanele’s decision to leave Red was not timed to harm Red in any way.<sup>123</sup>

### C. Twin Hearts Is Not A “Re-Skin” of Twin Blades

51. Claimant repeatedly and erroneously asserts that Twin Hearts is a “re-skin” of Twin Blades.<sup>124</sup> This argument misunderstands the concept and overlooks the myriad differences between the Games.
52. “Re-skinning” is a pejorative industry term for making aesthetic alterations to an existing game and releasing the modified version as though it were a new title.<sup>125</sup> Gamers frequently criticize major studios for this practice, protesting EA annually for “re-skinning” its *Madden* franchise.<sup>126</sup> Here, Claimant’s criticism is misplaced. Twin Hearts employs a new storyline, characters, and setting; it is “a love story,” available in co-op, that embraces a unique “time travel” mechanism.<sup>127</sup> These elements are imperative to Twin Hearts’ gameplay and are not present in Twin Blades.<sup>128</sup>

### D. The Weakness of the Twin Blades Mark Further Undermines Red’s Claims

53. The mark “Twin Blades” is weak in the gaming industry, bordering on descriptive, with limited protection despite its registration status.<sup>129</sup> Red released Twin Blades into a

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<sup>123</sup> Claimant Memorandum at ¶¶ 12-13.

<sup>124</sup> See Claimant Memorandum at ¶¶ 22-23.

<sup>125</sup> Inlingo Games, *What Is a Reskin or How Do You Change a Game and Make It Completely Unrecognizable?*, Inlingo Games, <https://inlingogames.com/blog/what-is-a-reskin-or-how-do-you-change-a-game-and-make-it-completely-unrecognizable/#:~:text=Reskinning%20is%20creating%20a%20project,mechanics%20and%20structure%20are%20retained>.

<sup>126</sup> [Deleted User], *Madden 25 is a Madden 24 2.0 Reskin*, Reddit, [https://www.reddit.com/r/Madden/comments/1ers0uc/madden\\_25\\_is\\_a\\_madden\\_24\\_20\\_reskin/](https://www.reddit.com/r/Madden/comments/1ers0uc/madden_25_is_a_madden_24_20_reskin/).

<sup>127</sup> Gas\_Gamer\_extract1024.

<sup>128</sup> *Id.* See *supra* at paragraphs 11, 36, 39.

<sup>129</sup> Clarifications at pg. 2.

crowded market of similarly named games, such as *Bushido Blade* (1997),<sup>130</sup> *Double Dragon* (1987),<sup>131</sup> *Twin Mirror* (2020),<sup>132</sup> *Blades of Steel* (1987),<sup>133</sup> *Soul Blade* (1999),<sup>134</sup> *Blade Symphony* (2013),<sup>135</sup> *Twin Cobra* (1987),<sup>136</sup> and *Twin Cobra II* (1995).<sup>137</sup>

54. Courts have found that suggestive marks in crowded fields receive limited protection.<sup>138</sup> In one case, the Second Circuit held that a suggestive “RISE” mark used for caffeinated morning beverages was “decidedly weak” because it suggested an “important part of the perceived virtue of coffee.”<sup>139</sup>
55. The Second Circuit’s analysis is equally applicable here. The “strong logical associations between [Twin Blades] and [a co-led adventure RPG] represent weakness and place the mark at the low end of the spectrum of suggestive marks.”<sup>140</sup> Furthermore, “to the extent that [Quantum’s] use of its [Twin Hearts] mark[] caused any likelihood of confusion, this was because [Red] chose a weak mark in a crowded field.”<sup>141</sup> Quantum is not liable for

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<sup>130</sup> Square, *Bushido Blade* (Square 1997) (A 3D fighting game where players engage in one-hit kill duels using various samurai characters).

<sup>131</sup> Technōs Japan, *Double Dragon* (Technōs Japan 1987) (A side-scrolling fighting game where players fight through levels to rescue a kidnapped girl and defeat various street gangs).

<sup>132</sup> Dontnod Entertainment, *Twin Mirror* (Dontnod Entertainment 2020) (A psychological thriller where players control Sam Higgs, a journalist with memory loss, to uncover a mystery in his hometown).

<sup>133</sup> Konami, *Blades of Steel* (Konami 1987) (A sports arcade game featuring ice hockey with exaggerated action and fighting mechanics).

<sup>134</sup> Namco, *Soul Blade* (Namco 1999) (A weapon-based 3D fighting game with a focus on character customization and different fighting styles).

<sup>135</sup> Pax West, *Blade Symphony* (Pax West 2013) (A multiplayer sword fighting game with a unique combat system focused on strategy and player skill).

<sup>136</sup> Taito, *Twin Cobra* (Taito 1987) (A vertical scrolling shoot ‘em up game where players control a helicopter to fight off waves of enemies).

<sup>137</sup> Taito, *Twin Cobra II* (Taito 1995) (A vertical scrolling shoot ‘em up game where players control a helicopter to fight off waves of enemies, released as an arcade version and later ported to various home consoles).

<sup>138</sup> See, e.g., *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112 (2d Cir. 2022).

<sup>139</sup> *Id.* at 122.

<sup>140</sup> *Id.* at 121.

<sup>141</sup> *Id.* at 125.

Red’s decision to release Twin Blades under a title similar to many others in the industry and highly suggestive of its gameplay mechanics.

#### **E. Red Cannot Prove a Likelihood of Confusion**

56. No *Polaroid* factor favors Red. The Twin Blades mark is weak, the Games and marks are not substantially similar, and there is no evidence of actual confusion beyond a few inquiries about the relationship between the Games—an insufficient basis to establish consumer confusion.
57. Courts evaluate “likelihood of confusion” using the *Polaroid* factors: (1) strength of plaintiff’s mark; (2) similarity between plaintiff’s and defendant’s marks; (3) proximity of products; (4) likelihood that plaintiff will bridge the gap; (5) evidence of actual confusion; (6) defendant’s intent, particularly whether it acted in good faith in adopting its mark; (7) quality of defendant’s product; and (8) sophistication of plaintiff’s customers.<sup>142</sup>
58. *Strength.* As set forth *supra*, Red’s Twin Blades mark is weak and receives limited protection.<sup>143</sup>
59. *Degree of Similarity.* The Twin Blades and Twin Hearts marks are not similar. Both share only one common word, which they also share with other, earlier games.<sup>144</sup> The fonts, which are critical in comparing marks,<sup>145</sup> are distinct.<sup>146</sup> The Gas Games Store further

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<sup>142</sup> *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961); *LVL XIII Brands, Inc. v. Louis Vuitton Malletier S.A.*, 209 F. Supp. 3d 612, 666-88 (S.D.N.Y. 2016), *aff’d sub nom. LVL XIII Brands, Inc. v. Louis Vuitton Malletier SA*, 720 F. App’x 24 (2d Cir. 2017) (applying the *Polaroid* factors).

<sup>143</sup> See *supra* at paragraphs 53-55 (discussing Twin Blades’ lack of inherent distinctiveness and strength).

<sup>144</sup> See *supra* at paragraph 55.

<sup>145</sup> *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112, 125 (2d Cir. 2022) (“Even the word “RISE” is presented in very different manners. On Plaintiff’s can, it appears in a simple sans-serif font—its “R” and “S” evenly curved. Defendant’s can, in contrast, uses an angular and jagged font.”).

<sup>146</sup> See Gas\_Game\_extract1024 (showing titles next to each other).

shows the Games are offered by different studios.<sup>147</sup> Because marks must be evaluated “as encountered in the marketplace,”<sup>148</sup> this factor favors Quantum.

60. *Proximity of Products.* The Games are distinct, first offered through different channels of trade and geared towards different audiences. Twin Blades released only on Mega, whereas Twin Hearts released on all platforms immediately.<sup>149</sup> Players view Twin Blades as an “Action RPG” and Twin Hearts as a “Heartwarming” “Time Travel” “Tactical RPG.”<sup>150</sup> Twin Blades is neither “co-op” nor “open world”; Twin Hearts is both. Finally, Twin Blades has a “save the world” focus, whereas Twin Hearts is “a love story.”<sup>151</sup>
61. *Evidence of Actual Confusion.* Claimant has zero evidence of actual consumer confusion—only inquiries about the Games’ relationship.<sup>152</sup> Such inquiries often indicate a *lack* of confusion.<sup>153</sup> Critically, Claimant cites no evidence that consumers *purchased* Twin Hearts believing it was a sequel to Twin Blades or made by Red. Among Claimant’s proffered evidence is a user review expressly recognizing that “[t]he best way to think about these games is as if two different devs were given the same brief, and they came up with *totally different games* on that basis.”<sup>154</sup> The reality is contrary to Claimant’s assertion that the release of Twin Hearts “confus[ed] journalists and players, who respectively noted the similarities between the two games and assumed Twin Hearts was the ‘spiritual successor,’ or even the approved, official ‘sequel,’ to Twin Blades.”<sup>155</sup>

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<sup>147</sup> Compare Gas\_Store\_Page\_TB with Gas\_Store\_Page\_TH.

<sup>148</sup> *M2 Software, Inc. v. Madacy Ent.*, 421 F.3d 1073, 1082 (9th Cir. 2005).

<sup>149</sup> Facts of the Case, Ch. 12.

<sup>150</sup> Compare Gas\_Store\_Page\_TB with Gas\_Store\_Page\_TH.

<sup>151</sup> Gas\_Game\_extract1024.

<sup>152</sup> See, e.g., Reddit\_extract1422; Gas\_Forum\_ TH9210.

<sup>153</sup> See *Nora Beverages, Inc. v. Perrier Grp. of Am., Inc.*, 269 F.3d 114, 124 (2d Cir. 2001) (“Inquiries about the relationship between an owner of a mark and an alleged infringer do not amount to actual confusion. Indeed, such inquiries are arguably premised upon a lack of confusion between the products such as to inspire the inquiry itself.”).

<sup>154</sup> Reddit\_extract1422 (post of u/elenax) (emphasis added).

<sup>155</sup> Claimant Memorandum at ¶ 16 (quoting Facts at 15, Reddit\_extract1422, Gas\_Forum\_ TH9210).

62. *Bad Faith.* As set forth *supra* and *infra*,<sup>156</sup> Quantum created the title and characters independently solely based on Zanele’s relationship with her husband and the painting he purchased for her; Quantum did not develop and name its game Twin Hearts in bad faith. Before any developer began working on Twin Hearts, Zanele unequivocally declared that “[Quantum does] not set out to make a copy of Twin Blades” and seeks instead to “pursue [Zanele’s] own creative vision.”<sup>157</sup>

63. *Quality.* Disparate quality of product—which Claimant alleges—weighs *against* confusion, because Twin Blades’ consumers are unlikely to be confused by a purportedly inferior game.<sup>158</sup>

64. *Sophistication of Consumers.* The more sophisticated the purchaser, the less likelihood of confusion.<sup>159</sup> Gamers are especially savvy, engaged consumers who know a lot about the games they purchase.<sup>160</sup> Under relevant law, the Games’ consumers are “a very sophisticated group.”<sup>161</sup> Furthermore, the Games’ consumers understand developers like Zanele often leave one studio and start another to fulfill their creative visions, and so would not be confused to see auteurs bring their unique styles to new companies.<sup>162</sup>

65. *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.<sup>163</sup> The strength of

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<sup>156</sup> See *supra* at paragraphs 11, 49, and *infra* at paragraph 80.

<sup>157</sup> Slack\_extract88305.

<sup>158</sup> *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).

<sup>159</sup> *Tiffany & Co. v. Costco Wholesale Corp.*, 971 F.3d 74, 91 (2d Cir. 2020).

<sup>160</sup> Brand Storytelling, *How Hyperquake’s Innovative Experiential Design Is Driving the Future of Immersive Brand Experiences*, Forbes (Feb. 14, 2025), <https://www.forbes.com/sites/brandstorytelling/2025/02/14/how-hyperquakes-innovative-experiential-design-is-driving-the-future-of-immersive-brand-experiences/>.

<sup>161</sup> *FASA Corp. v. Playmates Toys, Inc.*, 912 F. Supp. 1124, 1150 (N.D. Ill. 1996), *vacated in part*, 108 F.3d 140 (7<sup>th</sup> Cir. 1997) (finding consumers of fantasy RPG world and computer game to be “a very sophisticated group”). *See also AM Gen. LLC v. Activision Blizzard, Inc.*, 450 F. Supp. 3d 467, 484 (S.D.N.Y. 2020) (“There is no reason to believe that video game players are any less astute [than moviegoers].”).

<sup>162</sup> Gas\_Forum\_TH9210.

<sup>163</sup> *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).

the mark is “often the most important factor,”<sup>164</sup> and actual confusion is “often the best evidence of likelihood of confusion.”<sup>165</sup>

66. Because Red’s Twin Blades mark is weak, the Games and marks are not similar, gamers are sophisticated, and there is no evidence that any consumer purchased Twin Hearts thinking it was a sequel released by Red, the weight of the *Polaroid* factors favors Quantum and this Tribunal should not find Quantum liable under the GBR.

### **III. The Arbitrators Should Neither Enjoin The Sale Of Twin Hearts Nor Award Red Damages**

#### **A. The Arbitrators May Not Enjoin Quantum’s Sale of Twin Hearts Because Quantum Did Not Engage in Copyright Infringement or Unfair Competition**

67. As set forth *supra*, Quantum did not engage in copyright infringement or unfair competition.<sup>166</sup>
68. Furthermore, Red has not suffered any harm—let alone irreparable harm—caused by any wrongful conduct by Quantum. Red’s investment deal with DQJ fell through after *Red* ceased negotiations because it did not want to integrate GenAI into its development process.<sup>167</sup>
69. On this record, enjoining the sale of Twin Hearts and ordering its removal from all game platforms is a draconian remedy that would inhibit fair competition and original authorship, not promote them. Quantum is permitted to reproduce and distribute works it independently created.

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<sup>164</sup> *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4<sup>th</sup> 112, 119 (2d Cir. 2022).

<sup>165</sup> *King of the Mountain Sports, Inc. v. Chrysler Corp.*, 185 F.3d 1084, 1092 (10<sup>th</sup> Cir. 1999).

<sup>166</sup> See generally paragraphs 1-39 (copyright infringement) and 40-66 (unfair competition), *supra*.

<sup>167</sup> Facts of the Case, Ch. 13.

## B. Red Cannot Recover Damages Under the CCB

(i) *Red cannot recover statutory damages because Quantum did not engage in willful copying*

70. Red cannot show that Quantum had reason to believe its acts constituted infringement to recover statutory damages.<sup>168</sup> Zanele never set out to make a copy of Twin Blades—she was simply exercising her right to prepare derivative works based on *her* prototype. Querying the AI model with style prompts was also not infringement because style is not copyrightable and the output did not include any of Twin Blades’ protected expression.<sup>169</sup>

(ii) *Quantum’s Twin Hearts revenue should not be disgorged*

71. Red cannot recover actual damages and profits from Quantum because it has not shown a nexus between the alleged infringement and Twin Hearts’ commercial success<sup>170</sup> let alone any evidence of unauthorized copying. Twin Hearts’ success is directly attributable to Quantum’s ambitious game design—features that were missing in Twin Blades.<sup>171</sup> Consumers were drawn to Twin Hearts’ unique “time travel” gameplay mechanics, love story, aggressive marketing strategy, fair pricing, and, most of all, to Zanele’s creative vision.<sup>172</sup> Red’s deal with DQJ collapsed because Red refused to implement GenAI in its production<sup>173</sup>—not because of Twin Hearts.

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<sup>168</sup> CCB § 504(c).

<sup>169</sup> See *supra* at paragraphs 31-39.

<sup>170</sup> CCB § 504(b).

<sup>171</sup> See *supra* at paragraph 11.

<sup>172</sup> Facts of the Case, Ch. 12.

<sup>173</sup> Facts of the Case, Ch. 13.

### C. Red Cannot Recover Damages Under the GBR

72. Even if Quantum engaged in unfair competition, Red may not recover statutory damages under Chapter 5 of the Business and Professions Code of Baharosa.

(i) *Red cannot recover statutory damages*

73. The GBR provides that civil penalties can only “be recovered in a civil action brought in the name of the people of Baharosa.”<sup>174</sup> This is similar to unfair competition claims in the U.S., which, while they may be brought by private parties, such private parties are limited in terms of their available relief to an injunction and restitution, whereas prosecutors may obtain civil penalties under the statute.<sup>175</sup>

74. Here, it is undisputed that “Red filed a lawsuit against Quantum” seeking its own award of statutory damages.<sup>176</sup> Therefore, no statutory penalties may be assessed against Quantum under the GBR.

(ii) *Even if Red could seek statutory damages, Red’s GBR damages would be severely limited*

75. GBR 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.<sup>177</sup>

76. Claimant does not spell out what damages the Arbitrators should award Claimant based on Respondent’s alleged unfair competition.<sup>178</sup> Even so, based on the GBR factors, any

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<sup>174</sup> GBR § 5206.

<sup>175</sup> Compare Cal. Bus. & Prof. Code § 17203 (private parties can seek injunctive relief and restitution) with Cal. Bus. & Prof. Code § 17206 (for UCL actions brought by the attorney general, district attorneys, county counsel, city attorneys, and city prosecutors, businesses may be subject to a civil penalty of up to \$2,500 per violation).

<sup>176</sup> Facts of the Case, Ch. 15.

<sup>177</sup> GBR § 5206(b).

<sup>178</sup> Claimant Memorandum at ¶ 18.

statutory damages are minimal because Quantum did not commit serious, willful, or extensive misconduct in bad faith.

*(a) Quantum did not commit serious, willful, or extensive misconduct*

77. Quantum has not interfered with Red's business. It was Red that terminated the investment deal with DQJ.<sup>179</sup>
78. As detailed *supra*,<sup>180</sup> Li's statements were non-actionable puffery. There is no evidence consumers relied on Li's remarks or were confused about Twin Hearts' origin. Li was simply empowering Zanele to tell her story.
79. Quantum's alleged misconduct is short-lived because it was released on July 4, 2024.<sup>181</sup>

*(b) Quantum's creation of Twin Hearts was in good faith*

80. As explained *supra*,<sup>182</sup> Zanele independently created the name "Twin Hearts" based on a gift from her late husband, not because it resembled Twin Blades. Zanele also made clear to her colleagues that "[Quantum does] not set out to make a copy of Twin Blades" and seeks instead to "pursue [Zanele's] own creative vision."<sup>183</sup>

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<sup>179</sup> Facts of the Case, Ch. 13. *See also supra* at paragraph 71.

<sup>180</sup> *See supra* at paragraphs 47-48.

<sup>181</sup> Gas\_Store\_Page\_TH.

<sup>182</sup> *See supra* at paragraphs 11, 49, 62.

<sup>183</sup> Slack\_extract88305.

## **REQUEST FOR FINDINGS**

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

1. Denial of a permanent injunction against Quantum and any individuals or entities acting in concert or participation with Quantum, as Red Dawn has failed to establish any infringement of its intellectual property rights or any unlawful, unfair, and/or fraudulent business conduct;
2. Denial of Red Dawn's request to remove Twin Hearts and any other alleged infringing games from distribution, as Twin Hearts was independently developed and does not contain protectable elements of Twin Blades;
3. Denial of Red Dawn's request for statutory damages for copyright infringement, including because there is no evidence of willful infringement, and in the alternative, if any infringement were found, any damages should be nominal and limited under the Copyright Code of Baharosa;
4. Denial of Red Dawn's request for statutory damages under the Business & Professions Code of Baharosa, as the statute does not provide a private right of action for civil penalties, and Red Dawn has failed to demonstrate any actual harm resulting from Quantum's conduct;
5. A declaration that Quantum has not infringed Red Dawn's copyright under the Copyright Code of Baharosa and that Twin Hearts is an independently developed work that does not contain protectable elements of Twin Blades; and
6. A declaration that Quantum has not engaged in unlawful, unfair, or fraudulent business conduct under the Business & Professions Code of Baharosa, as the development and sale of Twin Hearts is lawful competition that does not mislead consumers or harm Red Dawn's market position.