

**GAMES INDUSTRY
LAW SUMMIT**

LEGAL CHALLENGE IX

**“AN OFFER (NOT) MADE,
AN OFFER (NOT) REFUSED”**

Novac Hrenovac Inc.

vs

Das Spiel Kebab Ltd.

Team: 779701

Submission of the Claimant

Word Count of Legal Pleadings (excl. Footnotes): 4731 words

TABLE OF CONTENTS

LIST OF REFERENCES

SUMMARY OF THE MAIN ARGUMENTS

LEGAL PLEADINGS

- I. DSK Breached the Agreement by Failing to Comply with the Right of First Offer
 - A. TS:LFT Is a “Future Product” Under the Agreement, Triggering the ROFO
 - i. TS:LFT Falls Within the Contractual Definitions of a Sequel and a Port
 - ii. The ROFO Applies by Contractual Definition, Not Post Hoc Labels
 - B. DSK Failed to Comply with the Contractually Mandated ROFO Procedure
- II. Specific Performance Is an Appropriate Remedy for the DSK’s Breach of ROFO
 - A. Specific Performance Is Appropriate to Enforce the Parties’ Bargained-for ROFO
 - B. Monetary Damages Are Inadequate
 - C. Specific Performance Does Not Impermissibly Prejudice Third Parties
- III. Damages I: NHI is Entitled to Damages For Loss of Opportunity and Hindered Sales
 - A. DSK’s Breach Deprived NHI of the Opportunity to Publish and Exploit TS:LFT
 - i. The Market Has Established the Value of the Diverted Opportunity
 - ii. Loss of Long-Term Ecosystem and Franchise Value Are Reasonably Certain and Foreseeable
 - iii. Alleged Financial Incapacity Does Not Bar Recovery
 - B. DSK’s Breach Adversely Affected Sales of TS:MRS
 - i. Release of TS:LFT Diluted the Franchise and Cannibalized Demand
 - ii. DSK Preempted and Destroyed NHI’s Contractual Port Opportunity
- IV. Damage II: DSK’s Abuse of the Steam Community Hub Gave Rise to Separate Compensable Damages
 - A. DSK Used Licensed Steam Infrastructure for Purposes Beyond the Scope of the License in Bad Faith
 - i. Access to the Steam App ID and Community Hub Was Limited to the Licensed Product
 - ii. DSK’s Use of Steam’s Update and Marketing Functions Forced Third-Party Promotional Exposure.

- B. DSK's Misconduct Misappropriated Marketing Value and Gives Rise to Compensable Damages.
- V. Trademark: DSK's Facilitation of Unauthorized Third-Party Use of the "Top Slop" Mark Constitutes Actionable Trademark Infringement and Warrants Injunctive Relief
 - A. NHI Has Standing and Protectable Interests as the Trademark Registrant
 - B. DSK's Authorization and Facilitation of Third-Party Use Constituted Contributory and Vicarious Trademark Infringement

REQUEST FOR FINDINGS

LIST OF REFERENCES

CASES

1. Achter Land & Cattle Ltd. v. South West Terminal Ltd., 2023 SKKB 116, aff'd 2024 SKCA 115
2. Air Sols., Inc. v. Spivey, 529 P.3d 644 (Utah 2023)
3. America Online, Inc. v. National Health Care Discount, Inc.
4. Awards.com, LLC v. Kinko's, Inc., 42 A.D.3d 178, 184–85 (N.Y. App. Div. 2007)
5. Bundesgerichtshof [BGH] Mar. 13, 2009, V ZR 157/08 (Ger.)
6. Campbell v. Alger, 83 Cal.Rptr.2d 696 (Cal. Ct. App. 1999)
7. Cannon v. Huhndorf, 67 Wash. 2d 778, 782–83 (1966)
8. Carabetta Enters., Inc. v. United States, 68 Fed. Cl. 410, 418 (2005)
9. Compliance Source, Inc. v. GreenPoint Mortg. Funding, Inc., 624 F.3d 252, 257–58 (5th Cir. 2010)
10. Deutsche Bank Nat'l Tr. Co. as Tr. for First Franklin Mortg. Loan Tr. 2005-FF8 v. Roongseang, 147 N.E.3d 864, 873 (Ill. App. Ct., 2019)
11. Dialist Co. v. Pulford, 42 Md. App. 173, 181–82 (1979)
12. Eko Brands, LLC v. Adrian Rivera Maynez Enters., Inc., No. 18-cv-2054, 2020 WL 4569060 (N.D. Ill. Aug. 7, 2020)
13. Fordoche, Inc. v. Texaco, Inc., 463 F.3d 388, 396–97 (5th Cir. 2006)
14. Gemini Investors Inc. v. AmeriPark, Inc., 643 F.3d 43, 49–50 (1st Cir. 2011)
15. George F. Mueller & Sons, Inc. v. Morales, 323 N.E.2d 518 (Ill. App. Ct. 1974)
16. Glick v. Chocorua Forestlands Ltd. P'ship, 949 A.2d 693 (N.J. 2008)
17. Gordon Rests., Inc. v. W.S. Carlile & Sons Co., 204 N.E.3d 177, 187–88 (Ohio 2022)
18. Gorenstein Enters., Inc. v. Quality Care-USA, Inc., 874 F.2d 431, 435–36 (7th Cir. 1989)
19. Gyrkey v. Babler, 651 P.2d 928 (Idaho 1982)
20. Hahn v. Int'l Mgmt. Servs., Inc., 207 Neb. 229, 233–34 (1980)
21. Hard Rock Cafe Licensing Corp. v. Concession Servs., Inc., 955 F.2d 1143, 1148–49 (7th Cir. 1992)
22. Homeland Energy Sols., LLC v. Retterath, 938 N.W.2d 664 (Iowa 2020)
23. Ice Corp. v. Hamilton Sundstrand Corp., 615 F. Supp. 2d 1256, 1273–74 (D. Kan. 2009)

24. Inwood Lab'ys Inc. v. Ives Lab'ys, Inc., 456 U.S. 844, 852 (1982)
25. James Constr. Grp., LLC v. Westlake Chem. Corp., 650 S.W.3d 392, 408 (Tex. 2022)
26. Joyce Beverages of N.Y., Inc. v. Royal Crown Cola Co., 555 F. Supp. 271, 279–80 (S.D.N.Y. 1983)
27. Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC, 183 So. 3d 374, 382–83 (Fla. Dist. Ct. App. 2013)
28. Koch Indus., Inc. v. Sun Co., Inc., 918 F.2d 1203, 1213–14 (5th Cir. 1990).
29. Ledo Pizza Sys., Inc. v. Singh, 983 F. Supp. 2d 632, 647–48 (D. Md. 2013).
30. Lumley v. Wagner, (1852) 42 Eng. Rep. 687 (Ch.)
31. Maeda Corporation v. Bauer Hong Kong Ltd (HKCA 2020)
32. Miller v. Alexander, 13 Kan. App. 2d 543, 549 (1989)
33. Miller v. LeSea Broad., Inc., 87 F.3d 224, 230 (7th Cir. 1996)
34. MXL Indus., Inc. v. Mulder, 623 N.E.2d 369, 375 (Ill. App. Ct. 1993)
35. Phhphoto Inc. v. Meta Platforms, Inc., 123 F.4th 592, 607–09 (2d Cir. 2024)
36. Proview Tech. (Shenzhen) Co. v. Apple Inc., Guangdong High People's Court (2011–12)
37. Ramada Inns, Inc. v. Gadsden Motel Co., 804 F.2d 1562, 1565–66 (11th Cir. 1986)
38. Riley v. Campeau Homes (Texas), Inc., 808 S.W.2d 184 (Tex. App. 1991)
39. Riverside Apartments of Cocoa, LLC v. Landmark Am. Ins. Co., 505 F. Supp. 3d 1293, 1312 (M.D. Fla. 2020)
40. Ross v. Garvey, 2025 BCSC 705
41. Royal Oldsmobile Co. v. Heisler Props, L.L.C., 119 So.3d 84 (La. Ct. App. 2013)
42. Sandstone Springs, LLC v. Virag Distrib., LLC, 617 F. Supp. 3d 159 (D. Mass. 2022)
43. Schindler Elevator Corp. v. Tully Const. Co., Inc., 30 N.Y.S.3d 707, 709 (N.Y. App. Div., 2016)
44. Shields Ltd. P'ship v. Bradberry, 526 S.W.3d 471, 481 (Tex. 2017)
45. Siga Techs., Inc. v. PharmAthene, Inc., 132 A.3d 1108, 1131 (Del. 2015)
46. Stork Tech. Serv. Asia Pte Ltd. v First Cap. Ins. Ltd., [2006] SGHC 101 (Sing. H.C. July 3, 2006)
47. Thompson St. Cap. Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC, 340 A.3d 1151, 1178 (Del. 2025)
48. Trademotion, LLC v. Marketcliq, Inc., 857 F. Supp. 2d 1285, 1291–92 (M.D. Fla. 2012)

49. Trans-Western Petroleum, Inc. v. United States Gypsum Co., 379 P.3d 1200, 1211 (Okla. 2016)
50. United States v. Google LLC, 778 F. Supp. 3d 797, 854–55 (D.D.C. 2025)
51. USA Cable v. World Wrestling Fed’n Ent., Inc., 766 A.2d 462, 474 (Del. 2000)

STATUTES

52. 15 U.S.C. § 1116
53. 15 U.S.C. § 1114
54. Baharosa Civ. Code
55. Bürgerliches Gesetzbuch [BGB]
56. Trademark Law of the People’s Republic of China

FACTUAL DOCUMENTS

57. Additional Agreement.
58. Announcement
59. Chat Extract (hereinafter, “Chat”)
60. Clarification
61. Development and Publishing Agreement (hereinafter, “Agreement”)
62. Ener-G Holdings Plc v. Hormell, [2012] EWCA (Civ) 1059 (Eng.)
63. Facts

SUMMARY OF THE MAIN ARGUMENTS

1. The Agreement grants NHI a Right of First Offer over all defined “Future Products,” including Sequels and Ports. Top Slop: Lou Fo Tong falls squarely within those definitions under the Agreement’s plain language. Once that is established, DSK’s decision to contract with a third party without first honoring the ROFO constitutes a breach as a matter of law.
2. The breach of a ROFO is not merely a failure to pay money; it is the destruction of a bargained-for priority position. Because the value of that priority depends on timing, strategic leverage, and future negotiations, monetary damages cannot replicate the position NHI was contractually promised. Specific performance is therefore the presumptive and appropriate remedy.
3. Independently, DSK’s breach deprived NHI of a concrete and market-valued opportunity to publish and exploit Top Slop: Lou Fo Tong. That lost opportunity is neither speculative nor abstract: its value is established by the third-party transaction DSK consummated in violation of the ROFO and by the fifteen-year revenue framework the parties expressly negotiated.
4. DSK also caused separate compensable harm by misusing licensed Steam infrastructure to promote a third-party product. The Steam Community Hub was licensed solely for the marketing of the parties’ Product. DSK’s deliberate use of backend controls to force third-party promotional exposure exceeded that license, diverted partnership goodwill, and misappropriated valuable marketing inventory.
5. Finally, NHI is entitled to injunctive relief to prevent DSK from authorizing or facilitating unauthorized third-party use of the “Top Slop” trademark. As the registrant, NHI has a protectable interest in preventing confusion and erosion of goodwill. Enjoining DSK’s conduct does not adjudicate third-party rights; it enforces DSK’s own obligations and prevents ongoing harm that damages cannot adequately cure.

LEGAL PLEADINGS

I. DSK Breached the Agreement by Failing to Comply with the Right of First Offer

A. TS:LFT Is a “Future Product” Under the Agreement, Triggering the ROFO

6. DSK’s breach is established by the substantive scope of the Agreement. Section 8.2 grants NHI the Right of First Offer (hereinafter, “ROFO”) over all “Future Products,” defined exhaustively as Sequels and Ports that the Developer intends to develop.¹ Top Slop: Lou Fo Tong (hereinafter, “TS:LFT”) satisfies both definitions. Once that coverage is established, DSK’s decision to contract with a third party without first honoring the ROFO constitutes breach as a matter of law.

i. TS:LFT Falls Within the Contractual Definitions of a Sequel and a Port

7. The Agreement adopts a functional, franchise-based definition of future works. A “Sequel” is defined as “the next full version of the Product.”² The “Product” expressly includes its “Content,” encompassing the storyline, plot, and narrative universe.³ Sequel status therefore turns on continuity of franchise identity, not on platform, mechanics, or format.

8. Measured against that definition, TS:LFT qualifies. In its official announcement to the existing Top Slop community, DSK described TS:LFT as “the next chapter in the story of the ramen shop” and released it under the same Top Slop trademark, branding, and narrative universe. Where a contract defines the Product by reference to its Content and universe, the deliberate use of the same franchise identity is legally probative of sequel status.⁴ Here, DSK’s branding efforts operate as a market-facing signal of continuity,

1. _____

¹ Development and Publishing Agreement (hereinafter, “Agreement”), § 8.2.

² Agreement, at 4.

³ *Id.*, at 3.

⁴ *Gorenstein Enters., Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 435–36 (7th Cir. 1989).

conveying that the new title remains part of the same enterprise.⁵ That understanding accords with ordinary industry usage: titles such as *The Last of Us Part II* or *Horizon Forbidden West* are understood as sequels because they advance the same narrative world, even while introducing new mechanics or platforms. TS:LFT is therefore a Sequel within the meaning of the Agreement.⁶

9. Independently, TS:LFT also qualifies as a Port. The Agreement defines “Ports” as “a new product resulting from porting the Product for use with other Platforms.”⁷ The original Product was developed for PC and Mac.⁸ TS:LFT is being developed for mobile platforms and Roblox.⁹ Nothing in the Agreement confines Ports to mechanical code conversion. To the contrary, the definition captures new products that adapt the Product’s Content and IP for deployment on additional Platforms.
10. That structure reflects commercial reality. In media and entertainment markets, parties cannot anticipate future platform evolution at the time of contracting.¹⁰ Priority rights therefore attach to the subject matter of the agreement—the Product and its Content—not to the legacy format in which it first appeared.¹¹ Adapting the Top Slop universe for mobile devices and Roblox expands distribution, but it does not transform the Product into something outside the Agreement’s scope. It triggers the ROFO.

ii. The ROFO Applies by Contractual Definition, Not Post Hoc Labels

11. Because TS:LFT satisfies the Agreement’s definitions of a Sequel and a Port, it is a “Future Product” as a matter of contract. Coverage turns on the parties’ negotiated definitions, not on post hoc characterizations. The Agreement does not recognize “spin-offs” as a separate category or exclusion. Courts will not imply carve-outs that

1. _____

⁵ See *Ledo Pizza Sys., Inc. v. Singh*, 983 F. Supp. 2d 632, 647–48 (D. Md. 2013).

⁶ Agreement, § 8.2.

⁷ *Id.*, at 4.

⁸ *Id.*, Game Appendix.

⁹ Facts, § 18.

¹⁰ *Id.*

¹¹ *USA Cable v. World Wrestling Fed’n Ent., Inc.*, 766 A.2d 462, 474 (Del. 2000).

sophisticated parties did not bargain for, nor permit a contracting party to evade a preemptive right through relabeling.¹²

12. Accordingly, once TS:LFT fell within the ROFO's scope, DSK was contractually barred from proceeding with Demeter without first making a compliant offer to NHI. Its failure to do so constitutes breach as a matter of law.

B. DSK Failed to Comply with the Contractually Mandated ROFO Procedure

13. The Respondent breached ROFO by contracting with a third party, Demeter, in relation to the Sequel game without first making a procedurally valid offer to the Claimant. The only communication in which TS:LFT was mentioned, a casual WhatsApp exchange, failed to satisfy the Agreement's express requirements of either a "Pitch" or "Formal Notice," which are both mandatory prerequisites to the formation of a valid Future Product offer.¹³ Because no valid offer was ever made, the Respondent had no contractual basis to proceed with a third-party publishing agreement.
14. Section 8.2 requires DSK to provide NHI with "Formal Notice of each Future Product" together with a "Pitch," after which NHI is afforded a 45-day period of exclusive negotiation.¹⁴ The Agreement further defines a "Pitch" as "documents and meetings that provide sufficient information for the Publisher to evaluate the Future Product," expressly requiring a concept submission form, a pitch meeting, and art samples.¹⁵ Section 12.1 likewise defines "Formal Notice," requiring that any notice under the Agreement "must be in English and sent to the other Party's registered office and/or by email."¹⁶ DSK complied with none of these requirements.

1. _____

¹² *Fordoche, Inc. v. Texaco, Inc.*, 463 F.3d 388, 396–97 (5th Cir. 2006); *Gordon Rests., Inc. v. W.S. Carlile & Sons Co.*, 204 N.E.3d 177, 187–88 (Ohio 2022).

¹³ See Agreement, §§ 8.2, 12.1; Chat Extract (hereinafter, "Chat").

¹⁴ Agreement, § 8.2.

¹⁵ *Id.*

¹⁶ *Id.*, §12.1.

15. As a matter of contract law, requirements expressly designated as prerequisites to the exercise of contractual rights constitute express conditions precedent.¹⁷ Such conditions demand strict, instead of substantial, compliance, particularly where the contract prescribes an exclusive procedural mechanism.¹⁸ The UK courts draw a settled distinction between permissive and exclusive contractual prescriptions.¹⁹ Where a contract provides that notice “may” be given in a particular manner, deviation may be tolerated.²⁰ But where, as here, the contract employs mandatory language, it identifies the sole acceptable means of compliance and renders non-conforming communications legally ineffective.²¹
16. This heightened standard reflects a foundational principle of contract law: express conditions embody the parties’ deliberate allocation of risk and benefit.²² An express condition precedent “define[s] the satisfaction of a necessary antecedent to a party’s performance,”²³ and courts therefore distinguish such conditions from ordinary performance obligations. While substantial performance may suffice for the latter, strict compliance governs the former, protecting the party that “has taken the precaution of making its duty expressly conditional.”²⁴ This doctrine, in turn, implements the broader

1. _____

¹⁷ See *Schindler Elevator Corp. v. Tully Const. Co., Inc.*, 30 N.Y.S.3d 707, 709 (N.Y. App. Div., 2016); *Deutsche Bank Nat'l Tr. Co. as Tr. for First Franklin Mortg. Loan Tr. 2005-FF8 v. Roongseang*, 147 N.E.3d 864, 873 (Ill. App. Ct., 2019).

¹⁸ 147 N.E.3d at 873.

¹⁹ *Ener-G Holdings Plc v. Hormell*, [2012] EWCA (Civ) 1059 (Eng.) (service that was a few days late was upheld because the contractual language and structure did not make timely service an exclusive precondition to validity.)

²⁰ *Id.*, at para. 61–67.

²¹ *Maeda Corporation v. Bauer Hong Kong Ltd* (HKCA 2020).

²² *Thompson St. Cap. Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1178 (Del. 2025); *Stork Tech. Serv. Asia Pte Ltd. v First Cap. Ins. Ltd.*, [2006] SGHC 101 (Sing. H.C. July 3, 2006).

²³ *MXL Indus., Inc. v. Mulder*, 623 N.E.2d 369, 375 (Ill. App. Ct. 1993).

²⁴ *Id.*

rule that courts must enforce the contract the parties made, absent compelling reason to do otherwise.²⁵

17. Here, the Agreement unambiguously conditions the operation of the ROFO on satisfaction of specific procedural prerequisites. The ROFO is triggered only upon delivery of both “Formal Notice” and a qualifying “Pitch.”²⁶ The mandatory phrasings, “will provide” and “must be in English and sent to the other Party’s registered office and/or by email,” confirm that these requirements are exclusive, not illustrative, and represent the parties’ agreed-upon mechanism for invoking preemptive rights.²⁷ Strict compliance was therefore required.
18. The WhatsApp exchange satisfied none of these express conditions. As to form, the messages were exchanged on personal accounts instead of by email, in multiple languages and emojis rather than in English, and were unaccompanied by any documents, submission forms, meetings, or art samples.²⁸ The exchange between Marko Marković and Marek Adamcik referenced, among unrelated topics, the existence of “je nova igra” (“a new game” in Serbian) in the Ramen Shop series, without any effort to invoke contractual procedures.²⁹
19. As to function, the messages failed to serve a Pitch’s purpose: to supply the materials necessary for NHI to evaluate the future product.³⁰ DSK’s mere reference to the game’s existence, unaccompanied by any evaluative documents or introduction, clearly failed to enable NHI’s assessment.³¹ Without opportunity to assess, “negotiation” cannot be said to have happened.
20. The informal context of the exchange compounds the deficiencies. Contractual notice provisions exist to invoke legal consequences and create an objective record, as distinct from casual or embedded communications, enforcing notice clauses to promote

1. _____

²⁵ *Shields Ltd. P’ship v. Bradberry*, 526 S.W.3d 471, 481 (Tex. 2017).

²⁶ Agreement, §§ 8.2, 12.1.

²⁷ *Id.*

²⁸ See Chat.

²⁹ *Id.*

³⁰ Agreement, § 8.2.

³¹ *Id.*

procedural certainty and to avoid post hoc disputes over intent.³² Courts recognize that mixed language instant messages, emojis and other informal digital signals are highly contextual and fact-dependent, with uncertain force of law that depends on prior course of dealing and surrounding circumstances.³³ Such legal understandings further confirm that DSK’s WhatsApp messages cannot substitute for the Formal Notice required to invoke the ROFO.

21. Because DSK never made a contractually valid offer to trigger ROFO, the 45-day negotiation period granted by ROFO never began, and NHI had no valid rejection to make. Therefore, Marko’s casual responses on WhatsApp, including the three “cross-mark” emojis and the Serbian phrase “Нема интереса” (“no interest”), were conversational remarks during the discussions about royalties, developer’s plan, and cash flow, not a legally operative rejection that enables DSK to proceed with others.³⁴

II. Specific Performance Is an Appropriate Remedy for DSK’s Breach of ROFO

22. DSK’s breach of the ROFO gives NHI a clear legal basis to seek specific performance as a remedy. Under Article 347 of the Baharosa Civil Code, where a party has breached a contractual obligation, the non-breaching party may require a cure of the breach by specific performance of the breached obligation, and such a right is expressly enforceable in litigation and arbitration.³⁵

23. This statutory approach aligns with legal principles across jurisdictions, which grants specific performance where the breach concerns a preemptive right that shall not be strategically bypassed, where damages are inadequate because the subject matter is

1. _____

³² *James Constr. Grp., LLC v. Westlake Chem. Corp.*, 650 S.W.3d 392, 408 (Tex. 2022) (explaining that the contractual notice provisions are enforced not merely to ensure awareness but to avoid “after-the-fact disputes” over whether informal communications reflected contractual intent).

³³ *Compare Ross v. Garvey*, 2025 BCSC 705 with *Achter Land & Cattle Ltd. v. South West Terminal Ltd.*, 2023 SKKB 116, aff’d 2024 SKCA 115 (the divergent decisions on whether an emoji may signify legal assent illustrate the highly contextual and unpredictable nature of emojis in legal analysis).

³⁴ *See Chat.*

³⁵ *See Baharosa Civ. Code, Art. 347.*

unique and the resulting harm cannot be precisely quantified, and where equitable considerations show that enforcing performance would not impose unjustifiable harm on third parties.

A. Specific Performance Is Appropriate to Enforce the Parties' Bargained-for ROFO

24. ROFO is a “preemptive right” that specific performance is the well-recognized and appropriate remedy for the breach of it. US courts recognize that the breach of a preemptive right deprives the holder not merely of an economic outcome, but of a bargained-for priority position in a future transaction—opportunity to transact on a specified term.³⁶
25. Reflecting the same remedial logic, Civil law systems are generally performance-oriented, enforcing priority mechanisms that allocate future opportunities through performance-based remedies rather than monetary compensation. German law provides an illustration that once a transaction subject to a preemptive right worked out with a third party, the right-holder may exercise the pre-emption right, and a contract is deemed concluded between the obligor and the right-holder on the same terms, displacing the third party as a matter of law.³⁷
26. Since preemptive rights depend entirely on procedural compliance and good-faith sequencing, specific performance is also deemed the appropriate remedy to preserve the integrity of the priority mechanism.³⁸ Limiting the holder of a preemptive right to monetary damages would invite strategic circumvention, as an obligor could deliberately bypass the priority mechanism and treat damages as a predictable cost of doing

1. _____

³⁶ *Riley v. Campeau Homes (Texas), Inc.*, 808 S.W.2d 184 (Tex. App. 1991); *Royal Oldsmobile Co. v. Heisler Props, L.L.C.*, 119 So.3d 84 (La. Ct. App. 2013); *Campbell v. Alger*, 83 Cal.Rptr.2d 696 (Cal. Ct. App. 1999).

³⁷ Bürgerliches Gesetzbuch [BGB] §§ 463–64 (Ger.); Bundesgerichtshof [BGH] Mar. 13, 2009, V ZR 157/08 (Ger.).

³⁸ *Gyurkey v. Babler*, 651 P.2d 928 (Idaho 1982); *Glick v. Chocorua Forestlands Ltd. P’ship*, 949 A.2d 693 (N.J. 2008).

business.³⁹ This approach would render the preemptive right illusory and defeat the contractual allocation of priority the parties bargained for.

27. Here, the ROFO imposed on DSK an obligation to afford NHI priority by extending an offer and a negotiation period to NHI before approaching any third party.⁴⁰ That obligation preempted DSK's ability to solicit or conclude third-party transactions in advance of compliance.⁴¹ As discussed above, this sequencing reflected the parties' deliberate allocation of rights, risks, and benefits.⁴² The value of NHI's priority position inhered in that structure, even if not reducible to a fixed monetary figure at the time of contracting.
28. DSK's conduct underscores why specific performance is necessary. By concealing its commercial plans with Demeter, DSK distorted NHI's ability to assess the anticipated profitability and strategic direction of the Top Slop franchise—information NHI was contractually entitled to receive through good-faith disclosure. Permitting DSK to bypass the ROFO, secure a more profitable third-party deal, and later discharge its obligation through damages would sanction profit derived from bad-faith breach. Equity does not permit a party to take advantage of its own wrong, nor to strip plainly written contractual rights of meaningful effect.

B. Monetary Damages Are Inadequate

29. Specific performance is also warranted where the monetary damage cannot be measured with precision and reasonable certainty, where the subject matter is unique, or where cash awards cannot replicate the bargained-for position.
30. First, courts recognize that equitable relief is appropriate where there is difficulty in quantifying the injury with reasonable certainty.⁴³ That principle applies with particular

1. _____

³⁹ *Id.*, at [pincite]

⁴⁰ Agreement, § 8.2.

⁴¹ *Id.*

⁴² *Supra*, I.B.

⁴³ *Miller v. LeSea Broad., Inc.*, 87 F.3d 224, 230 (7th Cir. 1996).

force to priority and exclusivity interests whose value turns on uncertain future negotiations, timing, and strategic choice.

31. Second, specific performance is favored where the subject matter is not readily substitutable. Courts hold that monetary damages are inadequate when the subject matter “cannot easily be duplicated” or when obtaining a substantial equivalent would involve difficulty, delay, or speculation.⁴⁴ Contracts involving unusual or non-fungible commercial assets—such as distinctive IP, creative works, or project rights—are all within this category.⁴⁵
32. Third, courts emphasize that damages are inadequate where the contract protects an expectation interest in a unique deal structure, not merely a financial return. Longstanding equity doctrine recognizes that exclusivity over unique services or creative assets warrants injunctive relief because money cannot substitute for the lost opportunity itself.⁴⁶
33. This case falls squarely in all these categories. NHI’s injury is not the loss of a calculable royalty or purchase price, but the loss of its bargained-for priority right to evaluate, negotiate, and decide whether to pursue a unique IP project before any third party. The value of that opportunity depends on variables like creative direction, market timing, and future platform alignment that cannot be reconstructed after the fact with money damages. Because the breach extinguished a unique contractual position whose value cannot be measured with reasonable certainty or replaced by a market substitute, monetary damages are inadequate.

C. Specific Performance Does Not Impermissibly Prejudice Third Parties

1. _____

⁴⁴ *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664 (Iowa 2020); *Air Sols., Inc. v. Spivey*, 529 P.3d 644 (Utah 2023).

⁴⁵ *See Sandstone Springs, LLC v. Virag Distrib., LLC*, 617 F. Supp. 3d 159 (D. Mass. 2022).

⁴⁶ *Lumley v. Wagner*, (1852) 42 Eng. Rep. 687 (Ch.). (enforcing exclusivity through negative injunction); *see also George F. Mueller & Sons, Inc. v. Morales*, 323 N.E.2d 518 (Ill. App. Ct. 1974) (finding that specific performance was appropriate where damages were uncertain and the subject matter had special value to the complainant).

34. DSK may argue that specific performance would impermissibly prejudice Demeter, invoking the principle that a contract binds only those in privity and may not be enforced to the detriment of an unrepresented third party.⁴⁷ That contention misapplies the doctrine and improperly shifts responsibility away from DSK’s breach.
35. Properly understood, the principle describes the DSK–Demeter agreement—not the Agreement between DSK and NHI. NHI was not a party to the Demeter transaction, yet held a pre-existing ROFO interest that DSK was contractually bound to honor. By contrast, the Agreement between NHI and DSK was validly executed in 2016, established the ROFO before any third-party rights arose, and allocated priority rights as part of the parties’ bargain.⁴⁸
36. Nor can enforcement of a pre-existing ROFO become impermissible merely because a third party later entered a conflicting arrangement. DSK expressly represented that it had “full power and authority to enter into the Agreement and perform its obligations.” Any detriment suffered by Demeter flows from DSK’s decision to contract in disregard of those obligations—not from the remedy NHI seeks.⁴⁹ A breaching party cannot immunize itself from performance by creating third-party reliance through its own noncompliance.
37. Even viewed from Demeter’s perspective, specific performance remains appropriate and practicable. NHI asserted its claim promptly upon learning of TS:LFT, before the project launched. At this stage, Demeter’s expenditures—whether for development or publicity—are quantifiable and capable of monetary adjustment. By contrast, the harm to NHI from the loss of its ROFO priority is not susceptible to comparable valuation.⁵⁰ DSK therefore remains able to honor its original obligation and, if necessary, compensate Demeter for reliance interests arising from an agreement that could not validly be performed.

1. _____

⁴⁷ Baharosa Civ. Code, Universal Principles.

⁴⁸ Agreement.

⁴⁹ *Id.*, at § 10.1.2.

⁵⁰ *Supra*, II.B.

38. NHI has neither sought to exploit this situation nor delayed its assertion of rights. To the contrary, it acted without delay, seeking to minimize the total harm caused by DSK.

III. Damages I: NHI is Entitled to Damages For Loss of Opportunity and Hindered Sales

39. DSK's breach caused two independent and compensable forms of harm. First, it deprived NHI of the opportunity to publish and exploit TS:LFT, a Future Product squarely within the Agreement's scope. Second, it impaired the commercial performance of Top Slop: My Ramen Shop ("TS:MRS") by fragmenting the franchise audience and foreclosing NHI's contractual expansion rights. Both categories of damages flow directly from the breach and are recoverable under settled expectation-damages principles.⁵¹

A. DSK's Breach Deprived NHI of the Opportunity to Publish and Exploit TS:LFT

40. By contracting with Demeter without first honoring the ROFO, DSK eliminated NHI's contractual opportunity to negotiate for and exploit TS:LFT as publisher. That lost opportunity had concrete, ascertainable value.

iii. The Market Has Established the Value of the Diverted Opportunity

41. The value of the lost publishing opportunity is established by objective market evidence. DSK consummated an arm's-length publishing agreement with Demeter under which Demeter agreed to fund the full development budget and commercially release TS:LFT.

42. Where a breaching party completes a third-party transaction for the same opportunity that was contractually owed to the non-breaching party, that transaction provides the most reliable benchmark for valuation.⁵² Here, the market has already priced TS:LFT through a negotiated deal with a sophisticated publisher. The opportunity is therefore neither hypothetical nor speculative.

1. _____

⁵¹ *Koch Indus., Inc. v. Sun Co., Inc.*, 918 F.2d 1203, 1213–14 (5th Cir. 1990).

⁵² *Ice Corp. v. Hamilton Sundstrand Corp.*, 615 F. Supp. 2d 1256, 1273–74 (D. Kan. 2009).

43. Under the Agreement’s undisputed economic structure, revenues are split 70% to the Developer and 30% to the Publisher after recoupment.⁵³ Had DSK honored the ROFO, NHI would have occupied the publisher role for TS:LFT. NHI therefore seeks the publisher’s 30% share of the projected lifetime net receipts that Demeter now stands to earn.

iv. Loss of Long-Term Ecosystem and Franchise Value Are Reasonably Certain and Foreseeable

44. DSK’s breach did not merely divert a single game release. It deprived NHI of a long-term strategic asset whose value was central to the parties’ bargain.

45. In May 2023, the parties executed an Additional Agreement extending the partnership term to 15 years per Product.⁵⁴ That extension confirms that each Product was intended as an entry point into a durable revenue stream and evolving franchise ecosystem—not a one-off transaction. Courts recognize that expectation damages may include profits that would have accrued on an ongoing basis over the life of the contract.⁵⁵

46. TS:LFT was precisely the opportunity the Amendment was designed to protect. It marked the franchise’s first expansion into mobile platforms and Roblox—channels DSK itself identified as the future of the business. By diverting that expansion to Demeter, DSK permanently deprived NHI of a fifteen-year publishing revenue stream, a strategic foothold in mobile and Roblox distribution, and the downstream benefits of cross-promotion, user data, brand reinforcement, and follow-on products.

47. Where sophisticated parties negotiate extended terms and define the duration and structure of future earnings, the magnitude of loss is foreseeable and measurable by the

1. _____

⁵³ Agreement, Game Appendix.

⁵⁴ Additional Agreement.

⁵⁵ *Trans-Western Petroleum, Inc. v. United States Gypsum Co.*, 379 P.3d 1200, 1211 (Okla. 2016); *see also Riverside Apartments of Cocoa, LLC v. Landmark Am. Ins. Co.*, 505 F. Supp. 3d 1293, 1312 (M.D. Fla. 2020).

contract itself.⁵⁶ Here, the loss is bounded by the fifteen-year term and economic framework the parties expressly agreed upon.

48. Courts further recognize that when a breach destroys an ongoing business relationship or forecloses a strategic market position, lost profits over the life of that relationship may be the only remedy that restores the non-breaching party to its expected position.⁵⁷ The diversion of TS:LFT foreclosed NHI's participation in the franchise's next evolutionary stage, rendering the promised long-term benefits illusory. Baharosa law follows the same principle: expectation damages compensate the foreseeable long-term value of the promised performance.

v. Alleged Financial Incapacity Does Not Bar Recovery

49. Expectation damages protect the benefit of the bargain, not hindsight speculation.⁵⁸ A ROFO protects the opportunity to negotiate and pursue a transaction—not certainty of consummation.

50. By withholding the contractually required Pitch, DSK extinguished NHI's option at the threshold. The law does not require a ROFO holder to prove it would inevitably have closed the deal, nor may a breaching party avoid liability by speculating about hypothetical inability to perform.⁵⁹ Where, as here, the breach itself foreclosed the

1. _____

⁵⁶ See *Awards.com, LLC v. Kinko's, Inc.*, 42 A.D.3d 178, 184–85 (N.Y. App. Div. 2007).

⁵⁷ See *Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC*, 183 So. 3d 374, 382–83 (Fla. Dist. Ct. App. 2013).

⁵⁸ *Carabetta Enters., Inc. v. United States*, 68 Fed. Cl. 410, 418 (2005); *Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1131 (Del. 2015).

⁵⁹ Courts consistently reject such conjecture. See *Hahn v. Int'l Mgmt. Servs., Inc.*, 207 Neb. 229, 233–34 (1980) (inability to obtain financing does not bar damages where performance was not a contractual condition); *Cannon v. Huhndorf*, 67 Wash. 2d 778, 782–83 (1966) (Inability to perform is not legal impossibility and does not excuse breach).

opportunity to arrange project-specific financing, the resulting uncertainty is borne by the breaching party.⁶⁰

B. DSK's Breach Adversely Affected Sales of TS:MRS

51. DSK's conduct also impaired the value of the existing Product by fragmenting the franchise audience and destroying NHI's contractual expansion path.

vi. Release of TS:LFT Diluted the Franchise and Cannibalized Demand

52. By releasing TS:LFT under the same Top Slop trademark and narrative universe, DSK positioned the new game as a continuation of the franchise. The Steam announcement explicitly targeted players of TS:MRS and invited them into the new experience.

53. The foreseeable result was market dilution and cannibalization.⁶¹ Players diverted to the mobile and Roblox title are players not purchasing DLCs, engaging with monetization, or generating Net Receipts for TS:MRS. Courts recognize such diversion—when caused by the release of a competing product under the same brand identity—as a concrete and compensable source of lost sales.⁶²

vii. DSK Preempted and Destroyed NHI's Contractual Port Opportunity

54. As discussed supra, the Agreement granted NHI the contractual right to port TS:MRS to additional platforms. DSK preempted that right by launching a mobile-first Top Slop title

1. _____

⁶⁰ *Cruise Connections Charter Mgmt. 1, LP v. Att'y Gen. of Canada*, 967 F. Supp. 2d 115, 149–50 (D.D.C. 2013).

⁶¹ See *Ramada Inns, Inc. v. Gadsden Motel Co.*, 804 F.2d 1562, 1565–66 (11th Cir. 1986) (awarding damages where unauthorized use of marks diverted customers and harmed the franchise system); *Joyce Beverages of N.Y., Inc. v. Royal Crown Cola Co.*, 555 F. Supp. 271, 279–80 (S.D.N.Y. 1983) (breach found where acceptance of competing product foreseeably undermined franchise sales).

⁶² See *Eko Brands, LLC v. Adrian Rivera Maynez Enters., Inc.*, No. 18-cv-2054, 2020 WL 4569060, at *8–9 (N.D. Ill. Aug. 7, 2020) (recognizing cannibalization as a significant factor in declining sales where competing products shared brand identity).

with a third party, thereby saturating the very market to which NHI's porting opportunity attached.

55. Courts recognize that the destruction or preemption of a contractual opportunity constitutes compensable expectation harm, even when the right was never exercised. Expectation damages include the value of a lost contractual chance—the net losses caused and gains prevented by the breach.⁶³ Here, NHI's porting right functioned as an option: a present economic asset whose value lay in the protected opportunity to enter the mobile market.⁶⁴ DSK's launch of a competing mobile title extinguished that option and shifted the burden of uncertainty to the breaching party.⁶⁵ The resulting loss is therefore directly attributable to DSK's breach and properly measured by the value of the porting opportunity at the time it was preempted.

IV. Damage II: DSK's Abuse of the Steam Community Hub Gave Rise to Separate Compensable Damages

A. DSK Used Licensed Steam Infrastructure for Purposes Beyond the Scope of the License in Bad Faith

viii. Access to the Steam App ID and Community Hub Was Limited to the Licensed Product

56. Courts consistently hold that a licensee breaches when it uses licensed access or infrastructure to benefit unauthorized third parties, regardless of how the conduct is labeled.⁶⁶ Here, section 3.5 grants the parties "joint, equal and full access to [the] App ID on Steam including access to [the] community hub." That access was a license—not

1. _____

⁶³ *Gemini Investors Inc. v. AmeriPark, Inc.*, 643 F.3d 43, 49–50 (1st Cir. 2011).

⁶⁴ See *Miller v. Alexander*, 13 Kan. App. 2d 543, 549 (1989) (preemptive rights operate as options once conditions are met).

⁶⁵ See *Dialist Co. v. Pulford*, 42 Md. App. 173, 181–82 (1979).

⁶⁶ See *Compliance Source, Inc. v. GreenPoint Mortg. Funding, Inc.*, 624 F.3d 252, 257–58 (5th Cir. 2010) (no implied right to extend licensed access to third parties; substance controls).

an ownership right—and its scope was limited to exploitation and marketing of the licensed Product—TS:MRS. Using that access to promote a third-party product (TS:LFT) exceeds the license’s scope and constitutes misappropriation of partnership assets.

ix. DSK’s Use of Steam’s Update and Marketing Functions Forced Third-Party Promotional Exposure.

57. The misconduct went further than an improper announcement. DSK deliberately exploited licensed technical privileges to force exposure. DSK had authority to “Publish App Changes to Steam” and “Edit App Marketing Data.”⁶⁷ It used those privileges to link the TS:LFT promotion to Build 18791649 and flag it as a “MAJOR UPDATE.” That designation was consequential. By tying the announcement to a build and classifying it as a major update, DSK triggered Steam’s automated distribution systems, causing the content to surface in users’ Downloads and Activity feeds.
58. Courts recognize that manipulating backend controls or algorithms to divert users, traffic, or attention constitutes actionable misconduct when it exceeds authorized use and is undertaken to gain unfair advantage.⁶⁸ Recent authority confirms that algorithmic manipulation designed to redirect attention is inherently deceptive and supports findings of intentional misconduct.⁶⁹ This was not passive marketing. It was forced delivery of third-party advertising to an audience cultivated and paid for by NHI, using technical controls DSK was authorized to access only for the licensed Product.
59. By exceeding authorized use and manipulating Steam’s distribution mechanics to divert attention, DSK misappropriated NHI’s marketing channel and goodwill. Courts recognize damages for such diversion measured by the value of the attention or business opportunities wrongfully redirected. The abuse of the Steam Community Hub therefore

1. _____

⁶⁷ Clarification, § 7.

⁶⁸ See *Trademotion, LLC v. Marketliq, Inc.*, 857 F. Supp. 2d 1285, 1291–92 (M.D. Fla. 2012) (allegations of scripts diverting customers sufficient to plead technical diversion.

⁶⁹ See *Phhphoto Inc. v. Meta Platforms, Inc.*, 123 F.4th 592, 607–09 (2d Cir. 2024).

breached both the license and the implied covenant of good faith, giving rise to compensable damages.

B. DSK's Misconduct Misappropriated Marketing Value and Gives Rise to Compensable Damages.

60. DSK's misuse of the Steam Hub transferred valuable marketing inventory to Demeter at no cost. That transfer is compensable. The announcement generated over three million impressions and more than 100,000 reads.⁷⁰ That audience was not DSK's to give away. Under the Game Appendix, NHI bore the costs of marketing copy, community management, and operation of the Steam store page.⁷¹ The impressions generated through the Steam Community Hub therefore constitute a monetizable partnership asset.
61. Courts recognize that when a defendant misappropriates advertising inventory or audience access, damages may be measured by the fair market cost of purchasing equivalent impressions. CPM is the industry-standard metric for valuing digital advertising impressions, and courts routinely rely on it as a proxy for fair market value.⁷² Where advertising space or audience access is wrongfully exploited, damages are measured by the value of comparable inventory in the relevant market.⁷³
62. Accordingly, NHI seeks the cash equivalent of purchasing approximately three million targeted impressions on a major gaming platform at prevailing CPM rates. This measure reflects the fair market value of the marketing inventory DSK misappropriated and delivered to Demeter for free. It restores to NHI the value of the audience access DSK wrongfully diverted and places the parties in the position the Agreement contemplated.

1. _____

⁷⁰ Announcement.

⁷¹ Facts.

⁷² See *United States v. Google LLC*, 778 F. Supp. 3d 797, 854–55 (D.D.C. 2025).

⁷³ In *America Online, Inc. v. National Health Care Discount, Inc.*, the court valued unauthorized access to AOL users using CPM rates, treating each unauthorized contact as an “impression” and awarding damages based on a market-derived cost per thousand. 174 F. Supp. 2d 890, 899–900 (E.D. Va. 2001).

V. Trademark: DSK’s Facilitation of Unauthorized Third-Party Use of the “Top Slop” Mark Constitutes Actionable Trademark Infringement and Warrants Injunctive Relief

63. As the legal registrant, NHI is entitled under applicable trademark law to prevent unauthorized third-party uses of the mark that create market confusion or erode trademark goodwill. Where such use arises from a contracting party’s authorization, facilitation, or control, that party bears secondary liability under well-established doctrines of contributory and vicarious trademark infringement. Injunctive relief properly runs against DSK to restrain conduct that enables and perpetuates the infringement.
64. This claim does not require the Tribunal to adjudicate ultimate ownership of the “Top Slop” mark, nor does it seek relief directly against unrepresented third parties. NHI seeks only to restrain DSK from authorizing, enabling, or facilitating third-party use of the mark in a manner that creates a likelihood of consumer confusion or unauthorized exploitation of trademark goodwill.

A. NHI Has Standing and Protectable Interests as the Trademark Registrant

65. Under U.S. trademark law, actions for trademark infringement may be brought by the “registrant” of the mark,⁷⁴ and an injunctive relief to prevent violation of trademark rights is warranted when the claimant has a likelihood of success on the merits.⁷⁵ Similarly, in China, the registered trademark owner is entitled to initiate civil actions for infringement of its registered trademark rights.⁷⁶ Where infringement is ongoing or imminent and failure to stop the conduct promptly would cause irreparable harm, the trademark registrant may apply to the people’s court for injunctive relief.⁷⁷ Contractual

1. _____

⁷⁴ 15 U.S.C. § 1114.

⁷⁵ *Id.*, § 1116(a).

⁷⁶ Trademark Law of the People’s Republic of China, Art. 40 (promulgated Aug. 23, 1982, amended Apr. 23, 2019).

⁷⁷ *Id.*, Art. 65.

commitments regarding trademark transfers do not divest the registrant of trademark rights or authorize third-party use until statutory transfer formalities are completed.⁷⁸

66. As the registered trademark holder in both jurisdictions, NHI has a legally protected interest in controlling the mark's commercial use and presentation. That interest is directly implicated where ongoing conduct risks distorting source identification and eroding goodwill.
67. Injunctive relief is particularly warranted where unauthorized use targets the same consumer market and trades on continuity of an established franchise. TS:LFT has been marketed under the identical "Top Slop" mark and repeatedly presented as a continuation of the same game series, including through Steam announcements directed at existing Top Slop: My Ramen Shop players.⁷⁹ Allowing such use to persist would undermine NHI's ability to control the reputation and goodwill associated with the "Top Slop" mark—harm that is inherently difficult to remedy through post-hoc damages. Prospective injunctive relief is therefore appropriate.

B. DSK's Authorization and Facilitation of Third-Party Use Constituted Contributory and Vicarious Trademark Infringement

68. Contributory and vicarious infringement doctrines, the two types of secondary liability, originate from common law tort principles and apply where a defendant facilitates, controls, or profits from trademark infringement committed by third parties.
69. Contributory infringement exists where a defendant intentionally induces another to infringe or materially contributes to infringing conduct.⁸⁰ Courts also examine whether the defendant exercised direct control or monitoring over the instrumentality of

1. _____

⁷⁸ See *id.*, Art. 39, 42; *Proview Tech. (Shenzhen) Co. v. Apple Inc.*, Guangdong High People's Court (2011–12) (Apple was held not to have acquired Chinese trademark rights over "iPad" despite a global assignment agreement, because the statutory transfer procedures had not been completed, leaving enforcement authority with the registered owner).

⁷⁹ Announcement; Chat; Facts, 18–19; *Supra*, I.A.i.

⁸⁰ *Id.*

infringement.⁸¹ Here, the use of the “Top Slop” mark in TS:LFT was not incidental or independent. The title, branding, and franchise positioning were determined and advanced by DSK, which entered into commercial arrangements enabling Demeter to deploy the mark in commerce.⁸² DSK thus affirmatively facilitated and induced the infringing use.

70. Vicarious liability further applies where the defendant and the infringer operate as partners or exercise joint control over the infringing product.⁸⁴ DSK, as the developer and commercial partner, retained authority over the mark’s use and participated directly in marketing TS:LFT, including through Steam announcements.⁸³ That conduct establishes at least joint control over the infringing use.
71. Because DSK’s conduct satisfies the requirements for both contributory and vicarious trademark infringement, prospective injunctive relief is necessary to prevent continued authorization and facilitation of unauthorized use of the “Top Slop” trademark. Absent injunctive relief, NHI’s statutory rights as registrant—and its ability to control source identification and goodwill—would be irreparably impaired.

REQUEST FOR FINDINGS

In light of the submissions, the Claimant respectfully requests the Honorable Tribunal to find that:

1. **The Respondent breached Section 8.2** by entering into a publishing agreement with Demeter without first providing the Claimant with Formal Notice and a Pitch (including documents, art samples, and prototypes).
2. **No valid offer was made or rejected.** The informal WhatsApp exchange of March 2023 did not satisfy the contractual requirements of a Pitch, and the Claimant’s response did not constitute a waiver of rights regarding TS:LFT.

1. _____

⁸¹ *Id.*, at 854–56.

⁸² Facts, §18.

⁸³ Announcement.

3. **Specific Performance is the appropriate remedy.** Pursuant to Article 347(1) and (3) of the Baharosa Civil Code, the Claimant is entitled to a cure of the breach. The Respondent must effectively unwind the agreement with Demeter and re-offer TS:LFT to the Claimant on the same material terms.
4. **Damages for Loss of Opportunity (Alternative).** In the event Specific Performance is deemed impossible, the Claimant is entitled to expectation damages representing the full value of the lost publishing opportunity (calculated based on the Claimant's revenue share of the Demeter deal's projected lifetime value).
5. **Damages for Hindered Sales.** The Respondent must compensate the Claimant for the diminished value and hindered sales of Top Slop: My Ramen Shop caused by the market dilution and preemption of the mobile market resulting from the breach.
6. **The Respondent acted in Bad Faith.** The Respondent abused its specific technical privileges ("Publish App Changes") to misappropriate the Claimant's Steam Community Hub for the promotion of a third-party product.
7. **Restitution of Marketing Value.** The Respondent is liable to pay damages equivalent to the fair market value (CPM) of the 3 million advertising impressions and 100,000 reads wrongfully diverted to Demeter.
8. **The Claimant is the legal owner.** As the administrative "separate transfer act" required by law was never executed for the US and Asian territories, the Claimant remains the sole legal registrant of the "Top Slop" trademark.
9. **Injunction.** The Respondent is liable for contributory and vicarious infringement by authorizing Demeter to use the mark. The Tribunal shall issue an immediate injunction prohibiting the Respondent and its partners from using the "Top Slop" trademark in the US and Asia until the dispute is resolved.

Respectfully submitted on January 30, 2026.

On behalf of Claimant,
Counsels of Team 779701