

**GAMES INDUSTRY
LAW SUMMIT**

LEGAL CHALLENGE IX

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

Novac Hrenovac Inc.

vs

Das Spiel Kebab Ltd.

Team 952290

Submission of the Defendant

Word Count of Legal Pleadings (excl. Footnotes): 4,969 words

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C. Summary of the Main Arguments

The Defendant respectfully submits that:

- I. **Das Spiel Kebab Ltd. (“Defendant” or “DSK” in following) has not violated any contractual rights of Novac Hrenovac Inc. (“Claimant” or “NHI” in following) by entering into a publishing agreement for *Top Slop: Lou Fo Tong* with a third party.**
 - i. **There is no contractual right of first offer between NHI and DSK.**
 - a) DSK’s lack of incorporation is a fatal flaw that renders the First Agreement invalid.
 - b) DSK did not adopt the First Agreement expressly or implicitly.
 - ii. **NHI’s right of first offer is inapplicable, as *Top Slop: Lou Fo Tong* is not a sequel to *Top Slop: My Ramen Shop*.**
 - a) *LFT* is not a “sequel” under an ordinary reading of the term.
 - b) *LFT* is not a “sequel” according to the Agreement.
 - c) *LFT* is a spin-off under industry standards.
 - iii. **DSK provided NHI with a pitch for *Top Slop: Lou Fo Tong*, which NHI declined.**
 - a) NHI declined DSK’s pitch.
 - b) The ROFO requirements were met in substance and effect.
 - c) Equitable principles prevent NHI from revoking its rejection.
 - d) As an unfair contract term, the ROFO cannot be enforced.
 - iv. **The court should deny specific performance and limit damages to any actual losses suffered.**
 - a) Specific performance is grossly unreasonable.
 - b) Any damages awarded should be limited to actual losses suffered.

II. DSK did not abuse its access to Steam Hub, but acted within its contractual rights.

- i. DSK exercised its contractually granted rights by posting the announcement.**
- ii. DSK did not breach any implied duty of care.**
- iii. The court should not grant any damages for breach of contract.**
 - a) NHI has not established a compensable loss.
 - b) Even under assumption of compensable loss, NHI has overstated its value.

III. DSK is not liable for trademark infringement.

- i. NHI has failed to identify the allegedly infringing act, or the territory in which it took place.**
- ii. NHI is barred from bringing a claim for trademark infringement against DSK.**
- iii. There was no trademark infringement by third parties.**
 - a) NHI's submission could be interpreted to refer to Demeter's presentation in Singapore.
 - b) "Top Slop" is not a registered trademark in Singapore.
 - c) NHI does not own any unregistered trademark rights in Singapore.
 - d) Demeter's conduct does not create a likelihood of confusion.
- iv. DSK is not legally responsible for Demeter's actions.**
- v. The court should not grant injunctive relief.**

D. Legal Pleadings

1. This case is representative of the often tumultuous relationships between small video game developers and the publishers they are forced to rely on to realise their creative goals. Defendant, DSK, was founded by two friends eager to make video games. When the pair were approached by Claimant, NHI, after demonstrating a successful prototype and winning the first prize at a game jam, they leapt at the opportunity to receive marketing and distribution assistance, market expertise, and funding for their games.

2. The relationship between the parties soon turned sour. NHI dictated the terms of their publishing agreement, relying on DSK's lack of industry knowledge to unilaterally impose exploitative terms such as cost deductions to developer royalties, a perpetual term and one-sided termination rights, all while boasting that the deal was "as fair as such deals could be".² Further, NHI withheld revenue share payments to DSK to cross-fund other business ventures and stalled in transferring trademark ownership.

3. NHI's bad faith actions do not stop there. At the heart of the current dispute, NHI seeks to punish DSK for seeking out a fairer agreement with another party. It alleges that DSK breached the terms of the parties' publishing agreement by seeking out this new publisher, when in fact NHI itself rejected DSK's pitch to publish the game at issue. It further alleges that DSK abused the Steam Hub access that NHI itself granted, and that DSK should be held liable for a fabricated infringement of its own trademarks. This lawsuit is not intended to enforce NHI's rights in good faith, but is instead a tactic to intimidate DSK into remaining a golden goose for NHI's otherwise failing business endeavours.³

4. DSK requests that the Court uphold commercial reality by denying redress for a pitch denied, an access right duly exercised, and trademarks owned by their purported infringer.

I. **DSK has not violated any contractual rights by entering into a publishing agreement for *Top Slop: Lou Fo Tong* with a third party.**

5. Despite DSK not being legally bound by the Development and Publishing Agreement ("**First Agreement**") signed on 20 July 2016 and *Top Slop: Lou Fo Tong* ("**LFT**") being a

² See Agreement signed by the parties in July 2016 (p.10 of facts) (LC9_contract.pdf), p.6, 7.

See Facts of the case (LC9_facts.pdf), p.6.

³ On NHI's otherwise struggling business, see Facts of the case (LC9_facts.pdf), p.7.

spin-off not subject to NHI’s contractual right of first offer (“**ROFO**”), *LFT* was duly pitched in good faith to Claimant, thereby affording NHI the opportunity to exercise its ROFO under the First Agreement. Claimant now requests a reversal of its own rejection.

i. There is no contractual right of first offer between NHI and DSK.

a) DSK’s lack of incorporation is a fatal flaw that renders the First Agreement invalid.

6. DSK’s founders signed the First Agreement prior to incorporation. As contractual claims must be limited only to those privy to the agreement, the First Agreement is therefore, prima facie, not binding on DSK. Claimant fails to displace this presumption with proof of an action of sufficient intent to be bound.

7. Claimant incorrectly asserts that DSK is formally bound by virtue of its incorporation after signing the First Agreement.⁴ This is contrary to the broadly accepted principle that privity can only occur through an affirmative act demonstrating intent to be bound.⁵ The authority cited by Claimant does not challenge this legal norm.⁶ The mere promise of creating an incorporated entity does not suffice to bind such entity to an agreement. The lack of legal standing is a fatal flaw.

b) DSK did not adopt the First Agreement through its actions.

8. Defendant interprets Claimant’s allegation that DSK “ratified” the contract through its actions to refer to the legal principle of adoption.⁷ However, DSK has not demonstrated either express or implicit adoption.

(1) DSK has not expressly adopted the agreement.

9. The Additional Agreement signed on 8 July 2023 (the “**Second Agreement**”)⁸ does not cure the First Agreement so as to expressly adopt its terms. Express adoption or novation requires both an entirely new agreement between the parties, forming the legal basis for privity, and an explicit action confirming adoption of obligations.⁹ No such specificity was evident in the Second Agreement, which simply referred to the First Agreement.

⁴ See Claimant’s submission, C483110, p.6 [8].

⁵ See, e.g., Sec. 131(1) Australian Corporations Act 2001; Sec. 14(2) Canada Business Corporations Act 1985; Sec. 41(1) Singapore Companies Act (2006); *Lorillard Tobacco Co. v American Legacy Found.*, 903 A.2d 728 (Del. 2006).

⁶ *Ramona Plaza 2022, LLC v J.L. Ray Co.*, 2025 Cal. Super. LEXIS 9239.

⁷ Ratification is not possible for pre-incorporation contracts. See J. H. Gross, Liability on pre-incorporation contracts, 18 *McGill Law Journal* 4 (1972), 519.

⁸ See Claimant’s submission, C483110, p.6 [8].

⁹ See *supra*, n.5.

10. Therefore, Claimant may only enforce the terms of the Second Agreement against DSK. Consequently, the ROFO clause contained exclusively in the First Agreement is not binding upon DSK, as a party never privy to this contract.

(2) *DSK has not implicitly adopted the First Agreement through its conduct.*

11. Claimant alleges that the acceptance of royalty payments and “not voicing disapproval of enforcement” constitutes adoption.¹⁰ However, these actions fail to demonstrate evidence of DSK’s intent to be bound and therefore cannot be interpreted as implicit adoption. They are unilateral affirmative actions by NHI. But the passive receipt of a benefit by a party, without proof of acceptance of this benefit in exchange for a contractual promise, cannot demonstrate that party’s intent to be bound.¹¹

12. Further, the acceptance of benefits by Marek or Świętopełk does not bind DSK. Since the recipient of any payments is unclear, this is insufficient evidence to allege adoption.

13. Therefore, the Agreement remained legally unenforced until the claim came before this court. Claimant misconstrues the facts by suggesting that its enforcement of the Agreement demonstrates privity.¹² In sum, there is no clear affirmative action by DSK to demonstrate informal adoption of the First Agreement.

ii. NHI’s right of first offer is inapplicable, as *LFT* is not a sequel to *MRS*.

14. Even if this court were to consider the First Agreement binding on DSK, *LFT* is a spin-off. The ROFO obligated DSK to pitch only sequels and ports to NHI.

15. Claimant mistakenly interprets *LFT* as a sequel, relying solely upon the phrasing of DSK’s marketing of *LFT* as “the next chapter” in the ramen shop’s story.¹³ But the ordinary meaning of the term “sequel”, the Agreement itself and commercial practice in the video game industry belie this claim. They make clear that *LFT* is, in fact, a spin-off.

16. The ROFO is a pre-emptive right, and as such should be interpreted narrowly in contemplation of the restriction it places upon the parties’ freedom to contract.¹⁴ Pre-emptive rights are not presumed to apply to every commercial opportunity, but only to those that fall

¹⁰ See Claimant’s submission, C483110, p.6 [8].

¹¹ Doctrine of consideration, requiring a performance “bargained for”, Restatement (Second) of Contracts §§ 17, 71; cf. *TCA Building Co. v Entech, Inc.*, 86 S.W.3d 667 (Tex. App. 2002).

¹² See Claimant’s submission, C483110, p.6 [8].

¹³ See Claimant’s submission, C483110, p.6 [10].

¹⁴ Arthur L. Corbin et al., *Corbin on Contracts*, § 11.3 (Vol. III, rev. ed. 1993).

within their express scope. Thus, even if the applicability of such a clause is ambiguous, the interpretation that least restricts the grantor’s commercial autonomy should be preferred.¹⁵ DSK urges the court to keep these principles of interpretation in mind when assessing whether *LFT* constitutes a sequel subject to ROFO, or an independent spin-off.

a) *LFT* is not a “sequel” under an ordinary reading of the term.

17. The ordinary meaning of the term “sequel” is a subsequent instalment that continues the story themes or core elements of the previous work.¹⁶ A “spin-off”, on the other hand, is a distinct work derived from a successful original, but standing as its own title.¹⁷ Video game spin-offs draw on elements of an existing franchise, such as character, setting or themes, while deliberately diverging from the original product’s core gameplay loop, scope or platform positioning.

18. *LFT* does not continue *MRS* as a sequel. *LFT* is conceived as a distinct instalment within the franchise architecture. It is positioned not for PC and Mac, but Mobile and Roblox as a separate product.

19. This interpretation is not modified through DSK’s Steam announcement that *LFT* is the “next chapter in the story of the ramen shop from Pasa Dena”.¹⁸ While the announcement creates a link between *LFT* and *MRS*, this wording alone cannot determine its nature. To the average consumer, “next chapter” could easily mean the next release in the “Top Slop” franchise instead of a direct sequel. It should be noted, in particular, that *LFT* takes place in the 1970s, prior to the occurrences in modern-day *MRS*, so cannot act as a direct continuation of *MRS*’s story.

b) *LFT* is not a “sequel” according to the Agreement.

20. *LFT* is not sufficiently similar to *MRS* to be the “next full version of a product”, the definition of a sequel under the Agreement.¹⁹ A product is unequivocally linked to its distribution platform, defined as the “product for use on the Platforms as fully described in the

¹⁵ *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] UKHL 28.

¹⁶ Cambridge Online Dictionary, *sequel*, Cambridge University Press, <https://dictionary.cambridge.org/dictionary/english/sequel> (last visited Jan. 30, 2026).

¹⁷ Oxford Learners Dictionaries, *spin-off*, https://www.oxfordlearnersdictionaries.com/definition/american_english/spin-off_1 (last visited February 2, 2026).

¹⁸ See screenshot of Steam Community Hub admin page of Top Slop: My Ramen Shop (LC9 announcement).

¹⁹ See Agreement signed by the parties in July 2016 (p.10 of facts) (LC9_contract.pdf), Definitions p.4.

Specification and Game Appendix“.²⁰ *LFT* must therefore be released on the same platform to be considered the “next version” of *MRS*.

c) *LFT* is a spin-off under industry standards.

21. A distinction based on distribution platform makes commercial sense and is in line with industry expectations. Game distribution platforms have significantly different audiences, gameplay limitations and widely varying quality level expectations.

22. The next full version of any PC game is expected by the gaming community to be released on the same hardware. Indeed, the announcement of a mobile game as the “next full version” of a PC game has caused outrage in the past. At BlizzCon 2018, Blizzard announced a mobile addition to the *Diablo* franchise, *Diablo Immortal*.²¹ The announcement is infamous for its negative community response, with fans who were expecting another PC-based installation likening the announcement to an out-of-season April Fools’ joke.

iii. DSK provided NHI with a pitch for *LFT*, which NHI declined.

23. Despite *LFT* being a spin-off rather than a sequel, DSK has pitched the game to NHI in good faith. In now seeking judicial redress, Claimant omits the fact that it declined this valid pitch.

a) NHI declined DSK’s pitch.

24. The First Agreement requires pitch documents to provide “sufficient information for Publisher to evaluate the future product”. The purpose is to ensure that the publisher is made aware of a future product in sufficient detail to decide whether it wishes to pursue negotiations. It is not intended to impose rigid formalities detached from commercial reality.

25. Defendant began pitching *LFT* to NHI with a high-level overview. Quickly, Claimant decided this information was enough for it to colourfully express its profound lack of interest with three “X” emojis and a yawning emoji. When asked by DSK to confirm if there was “no interest whatsoever?”,²² NHI doubled down, explicitly confirming “No interest” and claiming that DSK’s other game series is more profitable.²³ Defendant notes that there are no contractual formality requirements for NHI’s rejection of its pitch.

²⁰ *Ibid*, p.3.

²¹ Scott-Jones, Richard, “Activision-Blizzard's stock crashes 7% after Diablo: Immortal Reveal” (2018), *PCGamesN*, <https://www.pcgamesn.com/diablo-immortal-stock-crash> (Last visited Feb. 2, 2026)

²² See Extract, WhatsApp chat between Marek and Marko, March 2023 (p. 15 of facts).

²³ “Нема интереса”, Serbian for “no interest”.

26. The choice of WhatsApp as a medium does not devalue the pitch or displace its rejection. Recent authority confirms that WhatsApp communications can convey legally significant contractual positions in commercial contexts and should not be disregarded merely because of their informal medium.²⁴ Courts have emphasised that, outside strict statutory formality regimes, parties may readily create binding obligations or shape how contractual requirements operate in practice through informal digital communications.²⁵

27. The brief exchange in Serbian during the pitch does not, as Claimant alleges, invalidate the pitch. Following English law, contractual communications are interpreted objectively according to how they would be understood by a reasonable recipient with knowledge of the relevant background.²⁶ NHI understood the pitch, responded substantively, and expressly confirmed that it had no interest in pursuing *LFT*. Further, NHI itself initiated the Serbian exchange; despite this, DSK expressed all substantive information in English.

b) The ROFO requirements were met in substance and effect.

28. NHI's action in ending negotiations formed a mutual agreement between parties to waive the additional ROFO form requirements and substitute full performance with DSK's pitch. Conduct demonstrating acceptance of partial performance has been held to modify the agreement to become acceptable under contract terms.²⁷ This action forms an acceptance of DSK's partial performance and a modification of the agreement.

29. DSK's pitch placed NHI in an informed position to assess the offer. The ROFO notice requirement is intended to ensure that the rightsholder receives sufficient information about a future product to decide whether it wishes to enter negotiations.²⁸ NHI did not request further information, materials or meetings, but instead rejected the opportunity. Therefore, the ROFO notice requirements were met in substance and effect.

c) Equitable principles prevent NHI from revoking its rejection.

30. Even where a contract prescribes formal notice or variation requirements, a party may be prevented by waiver or equitable estoppel from insisting upon strict compliance where its own conduct has induced the counterparty to proceed on a different footing.²⁹

²⁴ *Southeastern Maritime Ltd v Trafigura Maritime Logistics Pte Ltd*, (2024) EWHC 255 (Comm).

²⁵ *Ibid.*

²⁶ *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] UKHL 28.

²⁷ United Kingdom: *Munro v Butt* (1858) 8 E & B 738.

New Zealand: *Hardwick v Lincoln* [1946] NZLR 309 (SC).

²⁸ *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] UKHL 28.

²⁹ *Rock Advert Ltd v MWB Business Exchange Centres Ltd* [2018] UKSC 24.

31. The UK Supreme Court confirmed that, although no-oral-modification clauses are generally effective, estoppel may arise where one party has made a clear representation, the other has relied upon it, and it would be inequitable to permit the representor to resile.³⁰

32. DSK was entitled to rely on that refusal established previously and continue development and alternative publishing negotiations. Having induced that reliance, NHI cannot now invoke technical objections to the form or medium of communication in order to revive a right it knowingly declined.³¹

33. Allowing NHI to resurrect the ROFO by invoking technical objections to form, medium, or language would allow NHI to reject first, monitor market traction, and then reassert rights only once the project becomes attractive. It would be inequitable to allow this opportunistic conduct.³²

d) As an unfair contract term, the ROFO cannot be enforced.

34. An imbalance of power in the formation of a contract, combined with the imposition of an unfair term, is unenforceable in many jurisdictions.³³ As a by-product of the unconscionable bargain principle in equity, these regimes protect vulnerable parties whose minimal bargaining power was exploited to impose highly restrictive terms.

35. Marek and Świętopełk held minimal bargaining power as indie developers signing their first publishing agreement, trusting the standard form contract was “standard bullshit” as Marko claimed.³⁴ Exploiting this imbalance, NHI unilaterally decided on highly restrictive terms, imposing a substantial procedural and financial burden upon the developers so as to make it commercially infeasible for DSK to comply with. Since this is not reasonably necessary to protect NHI’s legitimate interests, the ROFO forms an unfair term which consequently cannot be enforced by NHI.

³⁰ *Ibid.*

³¹ *Central London Property Trust Ltd v High Trees House Ltd* (1947) KB 130.

³² *Hughes v Metropolitan Railway Co* (1877) 2 App Cas 439 (HL)

³³ New Zealand Fair Trading Act 1986, s 26B. Kate Tokeley & Victoria Stace, *Consumer Law in New Zealand*, 285 (3d ed. 2022); Australian Consumer Law, ss 23–28, 250 as found in Competition and Consumer Act 2010 (Cth), sch 2.

³⁴ See Facts of the case (LC9_facts.pdf), p.6.

iv. The court should deny specific performance and limit damages to any actual losses suffered.

36. Were the court to find a breach occurred, DSK requests that the Court issue the following relief:

a) Specific performance is grossly unreasonable.

37. Defendant submits that specific performance is an inappropriate remedy. Art. 347[2](1) of the Baharosa Civil Code provides that a breaching party is not obliged to cure by specific performance if doing so is grossly unreasonable.

38. Claimant's request for a "re-offering of "Top Slop" on the same terms as those extended to Demeter" would be grossly unreasonable. DSK began work on *LFT* in December 2023, announcing the game in October 2024. With the financial and strategic support of Demeter, DSK made sufficient progress, culminating in the public announcement of the game. An offer at this mature point would result in NHI receiving permanent royalties in exchange for minimal financial and strategic support of the game.

39. A re-offer on the same terms is also unconscionable to Demeter as a third party. A bona fide purchaser of rights cannot be deprived of these rights without there being actual or constructive knowledge of defects in ownership.³⁵ There is no evidence of such knowledge. Therefore, it would be unconscionable to deprive Demeter of its investment in *LFT*.

40. NHI is unable to fulfil Demeter's contractual obligations. The Chinese production company provides creative supervision to ensure compliance with the Hong Kong setting and Chinese cultural norms. As a company without strong connections to Asia or China, NHI is unable to provide such cultural guidance.

b) Any damages awarded should be limited to actual losses suffered.

41. Even if the Court were to find that the ROFO was breached, any damages must be strictly limited to actual loss suffered. Damages for breach of contract are compensatory, not punitive, and confined to losses that arise naturally from the breach or were within the contemplation of the parties at the time of contracting.³⁶

42. Claimant cannot recover the full benefit of a hypothetical publishing agreement. A ROFO secures, at most, a right to negotiate in good faith. It does not entitle the right holder to

³⁵ United Kingdom: *Pilcher v Rawlins* (1872) LR 7 Ch App 259, Germany: § 932 Civil Code.

³⁶ *Hadley v Baxendale* (1854) 9 Exch 341.

automatic substitution into an agreement on identical terms. At most, a ROFO breach could give rise to a loss of chance. In such cases, damages must reflect the probability that the opportunity would have been pursued and successfully concluded, rather than the value of a hypothetical opportunity itself.³⁷

43. Damages should be limited to actual losses suffered. Any reasonably likely loss would be in lost sales of *MRS*. But Claimant does not allege that any *MRS* sales have been hindered by the announcement. To the contrary, the announcement of a new game typically boosts sales of previous titles: In 2025, the announcement of the new Larian Studios game *Divinity* caused near-unprecedented sales for its previous games.³⁸ Therefore, no damages should be awarded in lieu of compensation for this loss.

44. It is further noted that Claimant seeks 30% of *LFT* sales as compensation for the alleged loss of the ROFO opportunity, while simultaneously advancing additional loss theories tied to the same commercial opportunity. This constitutes impermissible duplication. Any damages must avoid double recovery and remain strictly compensatory.³⁹

II. DSK did not abuse its access to Steam Hub, but acted within its contractual rights.

45. Claimant alleges that “DSK improperly used their [contractual] right to publish app changes on Steam to promote *LFT* in their update post.”⁴⁰ But using its access to the *MRS* Steam Community Hub page to post an announcement for *LFT* was well within DSK’s express and implied contractual rights.

i. DSK exercised its contractually granted rights by posting the announcement.

46. Sec. 3.5. of the Agreement between NHI and DSK states that “joint, equal and full access to App ID on Steam including access to community hub (...)” is given, without any limitation as to the purpose, content or scope of such access. There is no distinction between access for technical updates, community engagement or marketing-related communications.⁴¹ The clause hence confers a broad operational right.

³⁷ *Chaplin v Hicks* (1911) 2 KB 786.

³⁸ Wesley Yin-Poole, “Divinity Announcement Sparks Incredible Baldur’s Gate 3 and Divinity: Original Sin 2 Sales”, *IGN*, <https://www.ign.com/articles/divinity-announcement-sparks-incredible-baldurs-gate-3-and-divinity-original-sin-2-sales-larian-boss-says> (last visited Feb. 23, 2026).

³⁹ *British Westinghouse Elec. & Mfg. Co. v Underground Elec. Railways Co. of London Ltd* (1912) A.C. 673.

⁴⁰ See Claimant’s submission, C483110, p.11 [29].

⁴¹ See Agreement signed by the parties in July 2016 (p.10 of facts) (LC9_contract.pdf), Sec. 3.5.

47. The access permissions NHI granted DSK reflect this interpretation. It includes the ability to edit and view data, and publish app changes to Steam.⁴² This includes the publication of announcements on the Steam Community Hub. NHI seeks to strip away the very contractual permissions it proposed. Claimant fails to argue why the scope of its granted permissions should be limited by the Court.

ii. DSK did not breach any implied duty of care.

48. Interpreting Claimant’s allegation of “improper use” as a breach of an implied duty of care reveals fragile legal standing. In civil jurisdictions, a duty of care obliges each party to a contract to exercise its rights with due regard to the other party’s legitimate contractual and economic interests.⁴³ It cannot extend to consequences resulting from the ordinary exercise of an express contractual right.⁴⁴ The general common-law duty of good faith likewise supports this.⁴⁵

49. Where parties have agreed on shared access to a primary distribution and communication channel, it is reasonable for each party to exercise this right rather than incur additional costs or resort to less effective means. In the video game industry, Steam Community Hubs are a standard vehicle for announcements and franchise-related communications, precisely because they reach the relevant audience directly. Indeed, it is common practice for developers to announce sequels,⁴⁶ remasters⁴⁷ or even entirely new games⁴⁸ in Steam Community updates. A commercially reasonable action cannot breach any duty of care.

50. Finally, Claimant notes that DSK did not obtain permission to post the announcement. But neither is there an explicit obligation to request permission, nor does a duty of care impose a general obligation to seek consent for or provide advance notice of commonplace actions.⁴⁹

⁴² The Developer’s permissions over the Steam App ID included: “Edit App Metadata,” “Edit App Marketing Data,” “View Marketing Traffic Data,” and “Publish App Changes To Steam” (LC9_clarifications.pdf, Question 7, pp. 3–4).

⁴³ See civil law codifications of duty of care, e.g., *German Civil Code*, § 241(2) (vertragliche Rücksichtnahmepflicht); *Japanese Civil Code* Art. 1(2). This is not identical to the common-law concept of duty of care in the absence of contractual relations.

⁴⁴ *Transfield Shipping Inc v Mercator Shipping Inc (The Achilles)* [2008] UKHL 48, paras 12–16; *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191, 212.

⁴⁵ *Bhasin v Hrynew*, 2014 SCC 71, [2014] 3 SCR 494.

⁴⁶ “Frostpunk 2 Date Reveal | Pre-order available now!”, posted on *Frostpunk* Steam news hub, <https://store.steampowered.com/news/app/323190/view/4141694364909197660> (last visited Feb. 17, 2026).

⁴⁷ “Overcooked! All You Can Eat Is Coming To Steam!”, posted on *Overcooked! 2* Steam news hub, <https://store.steampowered.com/news/app/728880/view/5266367003267441930> (last visited Feb. 17, 2026).

⁴⁸ “A New Era for Castlevania?!”, posted on *Dead Cells* Steam news hub, <https://store.steampowered.com/news/app/588650/view/698756599936712729> (last visited Feb. 17, 2026).

⁴⁹ *Bhasin v Hrynew*, 2014 SCC 71, at 87, [2014] 3 SCR 494.

iii. The court should not grant any damages for breach of contract.

51. In posting its announcement of *LFT* to the *MRS* Steam hub, DSK breached neither express contractual duties, nor implied duties of care. Requiring DSK to refrain from using a marketing channel it was contractually granted access to would undermine the agreed allocation of rights and mutual benefits expected from shared platform access. NHI is grasping at straws by manufacturing an infringement of rights it itself has granted.

a) NHI has not established a compensable loss.

52. Even if the Court were to accept that the announcement breached NHI's contractual rights, such a finding would not, by itself, justify an award of damages. Compensatory damages are intended to compensate specific economic losses; they require an actual loss causally linked to the alleged conduct. Hence, damages may not be based on abstract or speculative valuation methods.⁵⁰

53. Claimant's allegation of lost sales is particularly unsubstantiated considering that announcements of new or related titles generate renewed visibility and engagement for earlier entries in a franchise, often significantly increasing traffic and sales rather than diminishing them.⁵¹ Claimant has produced no evidence of lost sales or reduced revenue attributable to the Steam post.

54. In the absence of concrete evidence of harm, monetary relief cannot be granted.

b) Even under assumption of compensable loss, NHI has overstated its value.

55. Accepting that a loss occurred, Claimant seeks to calculate this by relying on "views" of the post. However, Steam does not report a metric called "views". Claimant actually refers to "impressions" which merely reflect the number of times content was displayed on a user's screen. A more accurate metric to calculate loss is by "reads", which indicate that a user actively opened and engaged with the announcement.⁵²

56. This distinction is critical. While the announcement generated approximately 3 million impressions, it resulted only in roughly 100,000 reads, meaning that actual engagement

⁵⁰ *Restatement (Second) of Contracts* § 352 (Am. Law Inst. 1981).

⁵¹ See the increase of sales after Larian Studios' 2025 announcement of "Divinity" *supra*, n.38.

⁵² Valve, Store and Platform Traffic Reporting, *Steam Partner Documentation*, https://partner.steamgames.com/doc/marketing/traffic_reporting (last visited Feb. 18, 2026) (providing guidance on how traffic breakdown reports show where a game is surfaced to customers and how impressions and visits are measured on the Steam platform).

amounted to about 3% of impressions. Accordingly, even if any compensable value were to be attributed to the announcement, such value should be based on reads rather than impressions.

III. DSK is not liable for trademark infringement.

57. Claimant alleges that Defendant is liable for trademark infringement on the basis that NHI owns trademark rights in “Top Slop” and that the use of the mark in connection with *LFT* is likely to cause confusion.⁵³ Neither is true, nor does Claimant specify what the allegedly infringing action is, where it has taken place, or why it has standing to bring a suit for trademark infringement against DSK.

i. NHI has failed to identify the allegedly infringing act, or the territory in which it took place.

58. A trademark infringement claim requires identification of a concrete infringing use in a jurisdiction where the claimant holds enforceable rights. Claimant fails to establish either.

59. First, Claimant does not clarify which conduct it considers infringing. It asserts that “DSK infringed on NHI’s trademark by using NHI’s mark on the same kind of good without obtaining licensing”.⁵⁴ This indicates that DSK’s use of “Top Slop” in naming *LFT* is the action NHI seeks to prohibit.

60. Second, Claimant does not specify where the alleged infringement took place. According to the principle of territoriality, an action can infringe only in a territory in which one owns trademark rights.⁵⁵ Although Claimant acknowledges that “NHI was the trademark registered owner [*sic*] in China and US,”⁵⁶ it does not specify which jurisdiction the allegedly infringing act occurred in, and whether it owns rights within it.

ii. NHI is barred from bringing a claim for trademark infringement against DSK.

61. Insofar as NHI’s claim can be interpreted to allege a trademark infringement by DSK, it must fail. NHI is obligated to transfer all Developer Trademarks associated with *MRS*,

⁵³ See Claimant’s submission, C483110, p. 11 [30].

⁵⁴ *Ibid*, p. 12 [33].

⁵⁵ Art. 6(3) of the *Paris Convention for the Protection of Industrial Property* (1979); M. S. Ilenda, *The Concept of Territoriality as a Principle of the International Trademark Law and Its Reflection in the Law of the United States*, 10 Rev. Comp. L. 155 (2006); Case clarifications (LC9_clarifications.pdf, Question 18, pp. 6–7).

⁵⁶ See Claimant’s submission, C483110, p. 12 [32].

including “Top Slop”, to DSK.⁵⁷ The exercise of legal claims despite ownership in name only is frivolous.

62. The transfer obligation in Sec. 2 of the Additional Agreement leaves no room for Claimant to retain or assert trademark rights beyond a transitional period, which has expired. Claimant cites Art. 20 EU Trade Mark Regulation (2017/1001) (“EU TMR”) to allege that DSK cannot invoke its rights until the transfer has been entered into the trademark register.⁵⁸ This argument fails not only because Claimant itself points out that it no longer owns EU trademarks, but also because the Article is intended to prevent trademark successors from enforcing their rights against third parties, thereby protecting the authenticity of the register in commercial dealings.⁵⁹ Where the dispute concerns the relationship between previous and future owners, there is no necessity for either party to rely on the register, and therefore, no restriction.

63. A party cannot, in good faith, assert rights whose very existence it has agreed to extinguish in favour of the counterparty. Such conduct defeats the objective of their agreement.⁶⁰ Claimant’s attempted enforcement of trademark rights against Defendant serves no protective function, but instead serves solely to obstruct Defendant from pursuing its business endeavours independently from NHI.

iii. There was no trademark infringement by third parties.

- a) NHI’s submission could be interpreted to refer to Demeter’s presentation in Singapore.

64. Although Claimant does not identify any third-party infringing act in its submission, its request to prohibit use of the “Top Slop” mark by “any third party, including (...) Demeter”⁶¹ suggests some allegation of third-party infringement. To this extent, Claimant’s submission could be read as alluding to Demeter’s presentation of *LFT* at Gamescom Asia in Singapore.

⁵⁷ “Developer Trademarks” are defined in the Agreement as “Developer’s name, Title and logos associated with the Product”. On the transfer obligation, see Additional Agreement (LC9_contract_extra.pdf), Sec. 2.

⁵⁸ See Claimant’s submission, C483110, p. 12 [32].

⁵⁹ EUIPO, *Trade mark and Design Guidelines*, E.3.1.2 Legal effects of the transfer, available online: <https://guidelines.euipo.europa.eu/2302857/2231918/trade-mark-guidelines/1-2-legal-effects-of-the-transfer> (last accessed 17 Feb. 2026).

⁶⁰ As Roman legal doctrine states: *dolo agit qui petit, quod statim redditurus est*, he who demands that which he must return acts by deceit. This principle is recognized, e.g., in § 242 of the German Civil Code. See Reinhard Zimmermann, *Good Faith in European Contract Law*, in *The Cambridge Companion to Roman Law*, §21, 454 (David Johnston ed., 2015). Baharosa contract law also contains an implied duty to interpret actions and contracts in good faith.

⁶¹ See Claimant’s submission, C483110, p. 12 [32].

b) “Top Slop” is not a registered trademark in Singapore.

65. “Top Slop” is not a registered trademark in Singapore. Accordingly, Claimant cannot allege registered mark infringement there.

c) NHI does not own any unregistered trademark rights in Singapore.

66. Trademark protection, if it exists at all, could arise under the common-law tort of passing off.⁶²

67. To establish passing off, Claimant would have to prove that it possesses goodwill in the relevant territory, that a misrepresentation occurred, and that damage resulted or is likely to result.⁶³ Claimant has failed to argue satisfaction of any of these requirements. In the absence of such proof, Claimant does not hold unregistered trademark rights in “Top Slop” in Singapore.

d) Demeter’s conduct does not create a likelihood of confusion.

68. Even if the court were to find trademark protection exists in Singapore, Demeter’s actions would not create consumer confusion. The burden of proof to establish such confusion rests on Claimant.⁶⁴

69. Likelihood of confusion is assessed through a cumulative evaluation of factors. These include the similarity between marks, product proximity, evidence of actual confusion, and buyer sophistication.⁶⁵

70. While there is, as Claimant argues, a similarity in name between *MRS* and *LFT*, this fact alone does not establish confusion. The games are not proximate, as they do not compete in the same market. *MRS* is a PC title distributed via Steam, *LFT* was announced for mobile platforms and Roblox. These platforms operate within fundamentally different hardware ecosystems, rely on distinct app-store or platform-based distribution infrastructures and target different consumer usage patterns. The European Commission has recognised that multiple

⁶² M. S. Ilenda, *The Concept of Territoriality as a Principle of the International Trademark Law and Its Reflection in the Law of the United States*, 10 Rev. Comp. L. 155 (2006); Sec. 55(1)(a) of the Singapore Trade Marks Act; *Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 (SGCA).

⁶³ *Reckitt & Colman Prods. Ltd. v Borden Inc.* [1990] 1 W.L.R. 491 (H.L.).

⁶⁴ EUIPO, *Trade mark guidelines*, D.2.3.1.1 *Burden of proof* (confirming that the party alleging infringement or opposition bears the burden of proving all facts relied upon), citing Art. 95(1) EUTMR; for US see: *Nabisco, Inc v Warner-Lambert Co.*, 32 F Supp 2d 690 (SDNY 1999).

⁶⁵ *Polaroid Corp. v Polarad Elecs. Corp.*, 287 F.2d 492 (2d Cir. 1961).

plausible product markets may exist in gaming, including (i) PC games, (ii) console games, and (iii) mobile games.⁶⁶

71. “A showing of actual confusion [is] highly probative, if not conclusive, of a high likelihood of confusion.”⁶⁷ Both DSK’s Steam announcement (generating approximately three million impressions) and Demeter’s announcement at Gamescom Asia (over 40,000 visitors in 2024)⁶⁸ were highly public. Despite a combined exposure of about 3.5 million people, Claimant fails to provide evidence of even one instance of actual confusion.

72. Finally, a comparatively higher amount of buyer sophistication lessens an abstract likelihood of confusion.⁶⁹ In determining the degree of sophistication, the US Third Circuit considers “the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase.”⁷⁰ An online purchase is not by itself indicative of low buyer sophistication.⁷¹ In the case at hand, consumers of paid games such as *MRS* are, at least, more sophisticated than consumers of free-to-play titles.

73. In summary, Demeter’s announcement of *LFT* in Singapore did not confuse consumers. Hence, even assuming a protected trademark exists, it was not infringed.

iv. DSK is not legally responsible for Demeter’s actions.

74. Even if this court were to be convinced of the existence and the infringement of trademark rights in “Top Slop” in Singapore, DSK cannot be held responsible for Demeter’s actions. Contributory trademark liability arises where a defendant (i) intentionally induces a third party to infringe a mark, or (ii) continues to supply its product or services to a third party while knowing or having reason to know that the third party is engaging in trademark infringement.⁷²

75. Neither is satisfied here. There is no evidence that DSK intentionally induced Demeter to infringe any trademark rights, or indeed had knowledge of any presumed infringement in

⁶⁶ Commission Decision No. M.7866, *Activision Blizzard/King* (Regulation (EC) No 139/2004 Merger Procedure) (2016).

⁶⁷ *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003).

⁶⁸ Gamescom Global, “gamescom asia 2024 Wraps with Record Attendance and Major Milestones for Southeast Asian Games Industry”, *Gamescom Global* (2024), <https://www.gamescom.global/de/gamescom-asia-2024-wraps-with-record-attendance> (last visited Feb. 23, 2026).

⁶⁹ Case C-342/97, *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 1999 E.C.R. I-3819.

⁷⁰ *Interpace Corporation v Lapp, Inc.*, 721 F.2d 460 (3d Cir. 1983). On price as indication of buyer sophistication generally, see Ann Bartow, *Likelihood of Confusion*, 41 San Diego L Rev (2004), 721, 771.

⁷¹ *Network Automation, Inc. v Advanced Systems Concepts, Inc.*, 638 F.3d 1137, 1152 (9th Cir. 2011).

⁷² *Inwood Labs, Inc v Ives Labs, Inc.*, 456 US 844 (1982)

Singapore. NHI holds no registered trademark rights in Singapore, nor has it established the existence of enforceable unregistered protection there.

76. Further, DSK had no reason to believe that the marketing of *LFT* by Demeter would be considered trademark infringement. As demonstrated above, NHI has passed on its ROFO, expressing no interest in the game. As far as DSK could know, it had fully satisfied its contractual requirements and resolved any outstanding obligations to NHI. At no point did NHI intimate that it would consider ordinary publishing activities related to *LFT* an infringement of its rights. Accordingly, the legal threshold for contributory trademark liability is not met.

v. The court should not grant injunctive relief.

77. Claimant has failed at every step of its trademark infringement claim. It has not clearly established an infringing action, or its perpetrator. It has not established any infringement by DSK. It has not established the existence of trademark rights in Singapore, nor their infringement by Demeter. It has not satisfied the requirements to attribute any alleged third-party conduct to DSK.

78. What remains is not a substantiated trademark violation, but an attempt to leverage trademark law to restrict DSK's legitimate commercial activity. Trademark protection exists to prevent deception in the marketplace, not to bind a party indefinitely to a former collaborator by casting a perpetual shadow over its future business endeavours. DSK urges the Court to deny any injunction preventing DSK from continuing its lawful business operations with Demeter.

E. Request for Findings

For the foregoing reasons, DSK requests that the Court issue the following relief:

- a) Denial of specific performance of the ROFO by DSK, as, alternatively: i) there is no contractual ROFO, ii) the ROFO is inapplicable, iii) the ROFO has been satisfied, or iv) specific performance would be grossly unreasonable;
- b) Denial of damages for breach of the ROFO for reasons set out under a), or alternatively, limitation of damages to actual loss suffered;
- c) Denial of damages for abuse of the Steam hub, as there was no breach of express or implied contractual duties and no loss suffered; or alternatively, limitation of damages to actual losses suffered;
- d) Denial of an injunction against third parties for trademark infringement, as: i) there is no specification of the allegedly infringing action or protected territory, ii) NHI has no standing to bring a trademark infringement claim against DSK, iii) there is no trademark infringement by third parties, and iv) DSK is not legally responsible for third parties' actions.