

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TAYLAN MCRAE-YU

Plaintiff

- and -

**PROFITLY INCORPORATED, DMCB HOLDINGS INC., IVAN AVRAMENKO,
ALEXANDRA STINSON, and JOHN DOE**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF’S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff’s claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commences unless otherwise ordered by the court.

Date: Issued by:
Local registrar

Address of
Court office: Ottawa Courthouse
161 Elgin St., 2nd Fl.
Ottawa, Ontario, K2P 2K1

TO: Profitly Incorporated
12 Amber Place
Belleville, ON, K8P 0B5

AND TO: DMCB HOLDINGS INC.
12 Amber Place
Belleville, ON, K8P 0B5

AND TO: Ivan Avramenko
12 Amber Place
Belleville, ON, K8P 0B5

AND TO: Alexandra Stinson
1034 County Road 3
Belleville, ON, K8N 4Z1

AND TO: John Doe (a.k.a. “@nikkibonee”)

CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the below terms have the following meanings:
 - i. **“Airdrop”** means tokens that are sent to cryptocurrency wallets for free that meet certain pre-determined eligibility criteria;
 - ii. **“Blockchain”** means a ledger, usually viewable by the public, that is distributed among the nodes of a peer-to-peer network;
 - iii. **“Cryptocurrency”** means a digital or virtual currency that is secured by cryptography on a blockchain;
 - iv. **“Cryptocurrency mixer”** means a blockchain-based application which severs the link between a sending and receiving address, and functions to obfuscate or conceal the source of cryptocurrency funds;
 - v. **“Decentralization”** means lacking a central, trusted entity. Highly decentralized blockchains networks are those where nodes of the network are numerous and widely dispersed;
 - vi. **“Discord”** is a live chat application with voice, video, and text functionality. Projects launching on blockchains often have a Discord channel for members of the public to interact with founders, to receive updates regarding the project, and to connect with community members. Discord groups can generally be joined by any member of the public by using a publicly available invite link;
 - vii. **“Ethereum”** means a decentralized blockchain supporting smart contract functionality first launched in 2015;
 - viii. **“ETH”** or **“ETHER”** means the native cryptocurrency token for the Ethereum network;

- ix. **“Explorer”** means a blockchain viewer where transactions associated with a particular cryptocurrency wallet may be viewed and traced;
- x. **“Floor price”** means the cheapest token in a collection;
- xi. **“KYC”** or **“Know Your Client”** means the entity behind a cryptocurrency wallet or address is known. Centralized exchanges, for example, are required to “KYC” users before allowing them to deposit and sell cryptocurrency in exchange for fiat;
- xii. **“Minting”** means the interaction between a purchaser and a smart contract in the context of NFTs. In exchange for paying a requisite “minting” fee, the smart contract assigns ownership and manages transferability of an NFT to the purchaser. Minting is the initial point of sale of an NFT;
- xiii. **“NFT”** or **“Non-Fungible Token”** means blockchain-based digital assets with unique metadata/identifiers making them distinguishable from one another. NFTs are often compared with fungible tokens (FTs), which are cryptocurrencies that are indistinguishable from one another. NFTs have become increasingly popular as a medium to showcase art;
- xiv. **“Roadmap”** means a list of future considerations that are tied to a purchase of an NFT. Roadmaps describe an NFT project’s future goals, towards which money generated from an NFT mint and royalties from secondary market sales will be used. A roadmap may be simple, such as a single future NFT collection that is airdropped to current NFT holders, or extensive, including building an entire ecosystem around an NFT purchase (physical merchandise, tokens, metaverse gaming, etc.);
- xv. **“Rug Pull”** means blockchain fraud that is relatively quick following a mint. In these cases, an NFT project’s founders/developers immediately “disappear” with funds from a mint without delivering on the roadmap or utility promised to holders. In some cases, not even an NFT is delivered;

- xvi. **“Slow Rug”** means blockchain fraud that occurs slowly;
- xvii. **“Smart Contract”** means a self-executing agreement between two or more parties on the blockchain, usually made possible through decentralized applications;
- xviii. **“Utility”** means the benefit or future use of an NFT. Utility is based on promises of future considerations, deliverables, and roadmaps that a team has promised to purchasers of their NFT; and
- xix. **“Wallet”** or **“Wallet Address”** means a cryptocurrency address that is in the control of a given entity, which is used to access tokens, such as cryptocurrencies and NFTs. Most blockchain explorers allow for all the activity of any given wallet to be seen by inputting the address into the explorer search bar.

RELIEF SOUGHT

- 2. The Plaintiff claims on its own behalf and on behalf of the other Class Members:
 - i. an Order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 and appointing the Plaintiff as the representative plaintiff for the Class (as defined below);
 - ii. an Order piercing the corporate veil for the Defendant corporations, Profitly Incorporated and DMCB Holdings Inc., and holding the Defendants, Ivan Avramenko and Alexandra Stinson personally liable for the Defendants’ actions as described herein;
 - iii. a declaration that the Defendants are liable to the Plaintiff and Class Members for breach of contract;
 - iv. a declaration that the Defendants are liable to the Plaintiff and Class Members for fraudulent misrepresentation, or, in the alternative, negligent misrepresentation;

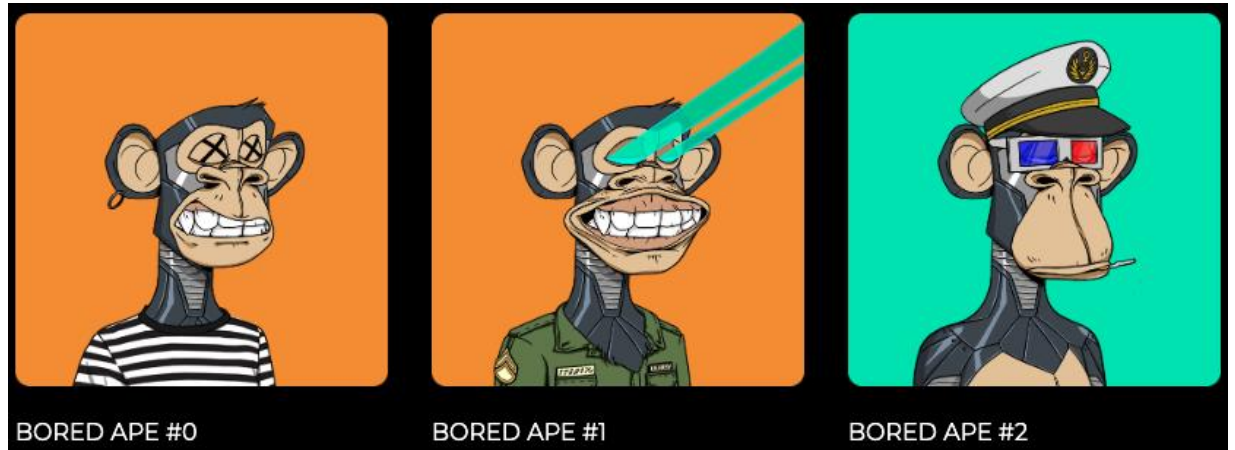
- v. a declaration that the Defendants are liable to the Plaintiff and Class Members for false, misleading, deceptive and/or unconscionable representations under the *Consumer Protection Act*, 2002, S.O. 2002, c. 30;
- vi. a declaration that the Defendants engaged in deceptive marketing practices under the *Competition Act*, R.S.C., 1985, c. C-34;
- vii. a declaration that the Defendants were unjustly enriched by the acts and omissions pleaded herein;
- viii. a declaration that the Defendants misappropriated the funds of the Plaintiff and Class Members;
- ix. special damages in the amount of \$4,118,385.43 CAD per the causes of action referenced herein;
- x. punitive damages in the amount of \$1,000,000.00 CAD;
- xi. injunctive relief prohibiting the Defendants from continuing the promotion of the Boneheads NFT;
- xii. an Order for specific performance requiring the Defendants to modify the royalties on the Boneheads NFT to 0%;
- xiii. pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O., c. C.43, as amended;
- xiv. the costs of this action, including GST;
- xv. the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act*; and
- xvi. such further and other relief as this Honourable Court may deem just.

OVERVIEW

Non-Fungible Tokens (NFTs)

3. Non-Fungible Tokens (NFTs) are blockchain-based digital assets that have grown in popularity as a medium to showcase art. Artists and teams are able to launch NFT collections using smart contracts on blockchains that support smart contract functionality.
4. Ethereum is the largest smart contract blockchain for NFTs. Most of the NFT collections launched on Ethereum can be minted by paying a minting fee in Ether (ETH), the native cryptocurrency token for the Ethereum network. In exchange for paying the requisite fee, the purchaser is transferred an NFT, which displays art from the NFT collection tied to the smart contract.
5. Smart contracts generally house a limited number of NFTs. Once fully minted, the NFT collection is considered “sold out”, with tokens being tradeable on NFT marketplaces.
6. Historically, purchasers of NFTs received only a digital token showcasing art from a particular collection and nothing more.
7. In 2021, the “Bored Ape Yacht Club” (“BAYC”) NFT collection was launched on the Ethereum blockchain. BAYC is widely credited with being the first generative art collection on the Ethereum network to successfully execute on the idea of tying utility or a “membership benefit” with an NFT.
8. In the utility model, purchasers of an NFT not only receive a digital asset that displays art from the collection in question, they also receive some utility or benefit, usually outlined in a roadmap, for the duration of time they hold an NFT in their wallet. Once an NFT is sold or transferred to another cryptocurrency wallet, the new purchaser/holder of the NFT receives the associated membership benefit.

9. BAYC NFTs, some of which are depicted below, were available to the public to mint as of April 23, 2021 for a price of 0.08 ETH (approximately \$210 USD or \$261.99 CAD at the time) and limited to 10,000 NFTs.



10. Prior to its launch, the BAYC website stated the following:
- i. “Your Bored Ape doubles as your Yacht Club membership card, and grants access to members-only benefits...”; and
 - ii. “When you buy a Bored Ape, you’re not simply buying an avatar or provably-rare piece of art. You are gaining membership access to a club whose benefits and offerings will increase over time.”
11. The BAYC website included a list of roadmap items which included: “Member-Exclusive BAYC Merch Stores”; “The Bored Ape liquidity pool...”; and “Mutant Ape (NFT Breeding)...”.
12. In addition to the initial funding that NFT projects receive by selling mints directly to consumers, NFT projects generally also charge a royalty on any secondary market sale of their NFT that takes place. Royalties in this context are seen by the development team as ongoing revenue and an implicit promise to continue to provide ongoing utility for a project.
13. In the case of BAYC, a royalty of 2.5% is charged on every secondary marketplace sale.

14. Since its launch, the BAYC team has delivered a number of membership benefits to BAYC NFT holders including:
 - i. In July 2021, NFT holders were told that for each BAYC NFT they held in their cryptocurrency wallet, they could mint a free NFT from a new collection called the “Bored Ape Kennel Club”;
 - ii. In August 2021, NFT holders were airdropped a free “mutant serum” for each NFT they held in their cryptocurrency wallet. The mutant serum could be used to “mutate” a BAYC into a new NFT collection known as the “Mutant Ape Yacht Club”;
 - iii. In March 2022, the BAYC team released a cryptocurrency token, “ApeCoin” which was given for free to NFT holders;
 - iv. In April 2022, NFT holders were given free “land” in the form of NFT in a blockchain metaverse the BAYC is developing; and
 - v. The BAYC team has provided NFT holders with ongoing access to exclusive members-only events and limited-edition BAYC merchandise.
15. BAYC is one of the most successful NFT collections to date, with a brand that is worth in excess of one billion dollars. On any given day, a single BAYC NFT can trade for upwards of \$100,000 USD with certain more desirable pieces having been sold for millions of dollars.
16. In the summer of 2021, the NFT market experienced a large influx of consumer capital.
17. Given BAYC’s tremendous success, hundreds of NFT collections launching on the Ethereum in the summer of 2021 touted an extensive roadmap, utility and/or membership benefit associated with the purchase of their NFT. Teams realized that in an extremely competitive environment, they had to offer consumers even more utility in order to ensure that their project “sold out” and garnered extensive secondary marketplace sales (and thus royalties).

18. Given that anyone could launch an NFT collection while remaining completely anonymous, as the BAYC team had, a number of individuals began to sell NFTs to defraud the public.
19. Within the NFT community, a rug pull became a popular term used to describe an NFT project which induced members of the public to purchase their NFT by promising extensive roadmaps, utility, and membership perks, only to disappear thereafter with the full proceeds of the mint and secondary market sales.
20. A slow rug became a popular term to describe a project where the development team dissipated of all funds from the sale of an NFT collection but continued to keep social media pages running with sporadic announcements. In these cases, little or no development work or utility is actually provided to NFT holders, but development team members maintain minimal communication in order to continue to collect royalties from secondary market sales and/or in an attempt to escape civil or criminal liability.
21. On March 24, 2022, the United States Department of Justice charged two individuals who launched the “Frosties” NFT collection with fraud and money laundering, specifically citing the rug pull perpetuated by the individuals on consumers. The individuals in question were stated to have defrauded \$1 million USD from the sale of the Frosties NFT.
22. The United States Department of the Treasury’s Office of Foreign Assets Control (OFAC) subsequently sanctioned the virtual cryptocurrency mixers Tornado Cash and Blender in 2022, citing their role in assisting to launder billions of dollars in cryptocurrency. The individuals charged in the Frosties mint sent cryptocurrency funds through Tornado Cash in an attempt to obfuscate the source of funds they had received from the mint.
23. The Canadian Anti-Fraud Centre states that 2021 was a historic year for reported fraud, with losses totalling an over 2.5-fold increase as compared 2020. Investment scams were the highest reported scams based on dollar loss.

PARTIES

The Defendants

24. The Defendant, Profitly Incorporated (Business Number: 731550711), is a Canadian corporation with an incorporation date of October 1, 2018. Profitly Incorporated has a registered business address at 12 Amber Place, Belleville, ON, K8P 0B5.
25. The Defendant, DMCB Holdings Inc. (Business Number: 780717302), is a Canadian corporation incorporated on August 26, 2021. DMCB Holdings Inc. has a registered business address at 12 Amber Place, Belleville, ON, K8P 0B5.
26. The Defendant, Ivan Avramenko, is a listed director of Profitly Incorporated and DMCB Holdings Inc. and has a listed personal address at 12 Amber Place, Belleville, ON, K8P 0B5. Ivan Avramenko operated the Twitter profile for “@ivybonee” where he listed himself as a co-founder of the Boneheads NFT project.
27. The Defendant, Alexandra Stinson, is a listed director of Profitly Incorporated and has a listed personal address of 1034 County Road 3, Belleville, ON, K8N 4Z1. Alexandra Stinson operates the Twitter profile for “@lexiibone” and lists herself as a co-founder of the Boneheads NFT project.
28. The Defendant, John Doe, operates the Twitter profile for “@nikkibonee” and is as a co-founder of the Boneheads NFT project.
29. The Defendants are collectively referred to as the “Boneheads team”.

The Plaintiff and Class

30. The Plaintiff, Taylan McRae-Yu (“Taylan”), resides in Ottawa, Ontario. He is a 29-year-old entrepreneur, most recently having worked as a Director of Strategy for the Canadian Federation of Students, Canada’s largest student union.

31. In August 2021, Taylan became aware of the Boneheads NFT collection through promotions he came across on Twitter.
32. Boneheads featured 10,000 unique NFTs, an example of which is depicted below, which were available to mint on the Ethereum blockchain on August 20, 2021, at a mint price of 0.1 ETH (approximately \$320 USD or \$410.27 CAD at the time) per NFT.



33. Taylan minted the Boneheads NFT in response to the extensive promises of utility, roadmaps, and members-only benefits made by the Boneheads team, as detailed below.
34. The Boneheads team made these promises using an official Boneheads website (“Boneheads.io”), Twitter, and Discord.
35. In advance of the mint, Taylan reviewed the roadmap on the Boneheads website and followed social media announcements that the Boneheads team released. Taylan also joined the Boneheads Discord community.
36. Taylan understood that the act of minting a Boneheads NFT, purchasing a Boneheads NFT on the secondary market, and holding it, would provide him with both the NFT in question and extensive and innovative utility, as well as exclusive membership perks, as outlined in the roadmap prepared by the Boneheads team.

37. Taylan, relying on extensive representations made by the Boneheads team, purchased a total of 36 Boneheads NFTs at a combined price of 3.6 ETH (approximately \$11,831.40 USD or \$15,169.03 CAD) during the minting stage on August 20, 2021.
38. Taylan continues to hold all 36 NFTs in his Ethereum wallet.
39. As of June 2023, not a single roadmap item, benefit, utility, NFT airdrop, token, event access, physical merchandise, voting right, or any of the dozens of roadmap items promised to Taylan, as detailed below, have been delivered by the Boneheads team.
40. The Plaintiff is seeking certification of the following class (collectively referred to as the “Class” or “Class Members”):

Every individual resident in or outside of Canada who minted a Boneheads NFT or purchased a Boneheads NFT on any secondary NFT marketplace since August 20, 2021.

FACTUAL BACKGROUND

Extensive Roadmap Promises to Boneheads NFT Holders

41. The Boneheads team began marketing and promotional activity for the Boneheads NFT in or around the start of July 2021 through social media platforms including Twitter. Public “invite” links to the Boneheads community Discord were also provided. The Boneheads website was launched in or around August 2021 in advance of the mint.
42. In addition to receiving a Boneheads NFT featuring Boneheads art, prospective buyers were told that they would receive extensive and innovative utility, focused on their NFT specifically and around the Boneheads brand more broadly.
43. The Boneheads team promised the following giveaways:

- i. On July 17, 2021, in advance of the mint, the Boneheads team told Discord members that everyone who purchased a Boneheads NFT would get the opportunity to win \$1 million; and
 - ii. On July 19, 2021, the Boneheads team tweeted that following the mint, one purchaser of the Boneheads NFT would receive a “monetary mystery box valued at a quarter million dollars, **revealed instantly at the end of the mint**” [emphasis added].
44. The Boneheads website included extensive roadmap descriptions comprising “code-based digitals”, “NFT post-sale physicals”, and “physical collectibles”.
45. The Boneheads roadmap stated that purchasers of the Boneheads NFT would receive the following “code-based digitals”:
 - i. “5% Community Wallet” to signify that a portion that 5% of mint and secondary market proceeds would be put towards a community wallet;
 - ii. “3D Boneheads” to signify that “3D” versions of Boneheads NFTs would be provided to NFT holders;
 - iii. “Dynamic Landscapes”;
 - iv. A form of gallery called “BoMA” (Bunker of Modern Art);
 - v. “Claimables”;
 - vi. “Baby Bones” to refer to “baby” versions of Boneheads NFTs that would be provided to NFT holders;
 - vii. “Spaceheads (Alien Invasion)” referring to a blockchain game that the team would be launching;
 - viii. A form of NFT breeding similar to the Mutant Ape Yacht Club referred to as “Boning”;

- ix. A liquidity pool called “The Spa”;
 - x. “Consumer-Facing Avatar Application” which Boneheads NFT holders would have first access to and which would allow users to create a personal avatar of themselves using “an expansive catalog of clothing and accessories to suit their unique style”. The Boneheads website stated that purchasers would have access to this application “within the next 8-12 months”; and
 - xi. A partner “SDK” or software development kit.
46. The Boneheads roadmap stated that purchasers of the Boneheads NFT would receive the following “NFT post-sale physicals”:
- i. 50 randomly selected members of the Boneheads community would receive a mouse pad matching the exact facial expression of their Boneheads NFT;
 - ii. 25 randomly selected members of the Boneheads community would receive a free numbered hoodie;
 - iii. 10 randomly selected members of the Boneheads community would receive a free 4 feet area rug matching the exact facial expression of their Boneheads NFT;
 - iv. 5 randomly selected members of the Boneheads community would receive a free painting (40” x 60” (“gallery depth”)) of their Boneheads NFT; and
 - v. Each item would be individually numbered, in a beautifully crafted and branded magnetic box, with a QR code or tag, to verify the authenticity of the product on the blockchain.
47. The Boneheads roadmap stated that Boneheads NFT purchasers would receive the following “physical collectibles”:
- i. 5 foot life size sculptures;

- ii. 2.4 foot sculptures;
 - iii. 4 foot area rugs;
 - iv. playing cards;
 - v. boxing gloves;
 - vi. trucker hats;
 - vii. mini backpacks;
 - viii. puffer jackets;
 - ix. biker jackets;
 - x. bomber jackets;
 - xi. t-shirts hoodies;
 - xii. slides; and
 - xiii. socks.
48. The Boneheads team further promised that the team would develop “physical + digital products [...] like life-size 5ft bonehead sculptures, toys, fuzzy zebra mini backpacks, alligator puffer vests, studded boxing gloves, and more”.
49. The Boneheads team further stated that:
- Only token holders will be able to participate that they release...every single item will come with a numbered verifiable scannable qr code/nfc tag that will be verified on-chain. Every single item will be considered carefully and will be created in scarce supply in order to maximize secondary market sales potential.

50. The Boneheads team initially charged a 10% royalty on secondary market sales which would go “towards establishing a community-powered creator fund”.
51. Ownership of the Boneheads NFT would grant “holders a lifetime membership (as long as they hold it in their wallet) to the cabana, the forging hq, where holders will be able to forge physical and digital collectibles”.
52. This “exclusive forging” was described in considerable detail on both the Boneheads website and encouraged consumers to purchase more than a single NFT:

Only users holding a #bonehead in their wallet will be able to mint/forge an "x" (tbd) amount of items from each collection drop - this number will fluctuate depending on the quantity that is produced. **The more #bonehead that you own, the more items you will be able to forge.** There will be contingencies attached to the items that are allowed to be forged by users. If your specific #bonehead lacks an attribute (such as a zebra-patterned bucket hat), you will not be able to forge the physical item associated with this attribute. You will have to acquire a #bonehead that has this particular attribute/trait/item through the secondary market in order to forge this physical collectible - this will drive speculation and produce a new element to their #boneheads rarity, thus create a more dynamic asset class. Physical collectibles (commodities) will have a qr code that will verify their authenticity on-chain, forever [emphasis added].

53. Prospective NFT purchasers were further told they would get “exclusive behind-the-scenes access through the entire manufacturing process for all items” including sculptures, area rugs, and accessories such as playing cards, ashtrays, boxing gloves, garments, and other collectibles.
54. NFT holders would also have “voting rights” to “vote and provide feedback through the sampling process while they test the fabrics, textiles, and patterns that will eventually be placed into productions”.

55. On August 12, 2021, the Boneheads team tweeted that “The Cabana (Store)”, an interactive marketplace where holders would be able to “forge” their “drip” would be opening in Fall 2021.
56. In addition to these extensive promises, the Boneheads team represented themselves in a manner to lead consumers to believe the Boneheads team had the requisite skillset and expertise to execute and deliver on such an extensive and ambitious roadmap.
57. The following statements were made regarding the Boneheads team:
 - i. “Boneheads were created by seven brilliant collaborators who spent over 1,500+ hours developing over 500+ attributes across 8 categories...;
 - ii. “This is a real business, with experienced investors, and a clearly defined objective. Boneheads are priced in accordance to the level of effort, quality, funding spent to date, and to the funding that is required for the boneheads collaborators to deliver on their vision and roadmap”;
 - iii. “Their core team has spent the better part of their adult lives building startups and helping others achieve their goals in a collaborative way”; and
 - iv. “Together, they have cultivated over 40+ years of experience in design, product management, manufacturing, and marketing, to bring users the brainchild – boneheads”.

Minting and Movement of Smart Contract Funds

58. The smart contract for the Boneheads NFT was opened for the public to mint a Boneheads NFT on August 20, 2021 at approximately 7:58 PM + UTC.
59. The first mint of the Boneheads NFT took place on August 20, 2021 at 7:58:23 PM + UTC.

60. All 10,000 Boneheads NFTs sold out on August 20, 2021 at 8:34:52 PM + UTC, within 40 minutes of the mint being opened to the public.
61. On August 20, 2021, at 8:47:36 PM + UTC, less than 15 minutes after the entire Boneheads NFT collection had sold out, and within less than 1 hour of its release, the Boneheads NFT team removed 950.5 ETH (approximately \$3,123,818.25 USD or \$4,005,047.38 CAD) from the smart contract in question.
62. Immediately thereafter, the Boneheads team stopped all promotion of the Boneheads project, put the Discord chat on “slow mode”, and disappeared from their Discord server after posting an announcement stating that they would be returning on August 23, 2021.
63. Taylan and other consumers voiced their concern about this behaviour including the sudden change in communication from the Boneheads NFT team who had previously been very active on social media platforms and Discord. Taylan and other consumers were concerned that the project was about to “rug” and that the Boneheads founders were going to take off with the proceeds from the mint.
64. In response to these concerns, Taylan and others consumers were banned from the Discord server. Taylan and others were also eventually blocked on Twitter.

Rug Pull Allegations

65. In the months following the public mint, the Boneheads team sporadically made appearances on social media platforms and Discord to continue to attract unsuspecting consumers to purchase the Boneheads NFT on the secondary market and in an attempt to avoid allegations that the project was a rug pull.
66. At the same time, the Boneheads team slowly dissipated the funds from the mint and secondary market sales, into and between various cryptocurrency addresses, and centralized exchanges. A significant portion of the funds were used by the Boneheads team to make extravagant purchases of NFT art.

67. In addition to mint proceedings, the Boneheads team received a total of 27.0958 ETH in royalties (approximately \$87,811.97 USD or \$112,072.43 CAD) from secondary marketplace sales of the Boneheads NFT.
68. On October 14, 2021, Jonathan Schmalfeld, known as “The NFTorney” referenced the Boneheads project in a blog post about class actions, rug pulls, and consumer protection in the NFT context.
69. In response to the blog post, which renewed allegations that the Boneheads projects was a rug pull, the Boneheads team stated that a flagship store for the Boneheads brand would be opening in Los Angeles in Early 2022. No such flagship store was opened.
70. In the first half of 2022, there were almost no updates regarding the Boneheads NFT project including social media posts through any official channel.
71. In the summer of 2022, Taylan contacted a Twitter user by the name of @zachxbt (“ZachXBT”).
72. ZachXBT is an independent blockchain investigator who has amassed a significant social media following (over 375,000 Twitter followers) owing to the investigations he has conducted on exposing instances of blockchain fraud. ZachXBT’s research and detective work has been cited by authorities in jurisdictions like France as having led to the prosecution of a group of NFT scammers.
73. On July 14, 2022, in collaboration with Taylan, ZachXBT released a series of Twitter posts on the Boneheads NFT project. These posts shared the result of investigative work done by ZachXBT on the Boneheads team and alleged that the Boneheads NFT project was a \$3.1 million USD rug pull.
74. Despite months of inactivity on social media, the Boneheads team immediately responded to ZachXBT’s posts via Twitter, stating that Boneheads was not a scam but a “very deliberately slow creative process”. They subsequently announced that

- a “new” collection would be dropping on the anniversary of their project launch, in August 2022. No such collection was ever released.
75. On August 27, 2022, ZachXBT once again shared a Twitter post about the Boneheads NFT project, stating they had failed to deliver the collection they promised in August 2022. The post included screenshots of messages sent from the Boneheads team to ZachXBT stating “brand activations” would be launching on August 24, 2021 and ZachXBT should update his Twitter post at that time.
 76. In response, the Boneheads team stated that as of November 1, 2022, “drops” would be releasing on the first of every month for Boneheads NFT holders to claim. No such drops have ever been released.
 77. As of the date of filing of this claim, the Boneheads NFT team has not delivered on a single roadmap promise they had made to Boneheads NFT purchasers. Consumers have not received a single NFT airdrop, token, physical collectible, marketplace access, forging, avatar application, voting right, giveaway, or the dozens of other promises that were made to consumers in consideration for purchasing or minting a Boneheads NFT.

CAUSES OF ACTION

Breach of Contract

78. The Plaintiff and Class Members who minted or purchased a Boneheads NFT on the secondary market entered into a contract with the Boneheads team.
79. In consideration for the Plaintiff and Class Members purchasing the NFT, they were told they would receive: (1) a Boneheads NFT; (2) a host of benefits comprising utility that would be built around the Boneheads NFT brand generally and holders’ individual NFT’s specifically; and (3) those who purchased multiple NFTs would receive greater utility perks and benefits.

80. The Plaintiff and Class members abided by the terms of their obligations under this contract by paying the requisite fee to mint or purchase a Boneheads NFT on the secondary market.
81. The Boneheads NFT team breached the terms of the contract they entered into with the Plaintiff and Class Members by not fulfilling essential obligations under the contract, namely, to deliver the roadmap and utility promised to owners of the Boneheads NFT in a timely manner or at all.
82. The Plaintiff and Class Members are entitled to special damages for breach of contract.

Fraudulent Misrepresentation

83. In the alternative, the contract is *void ab initio* as a result of fraudulent misrepresentations made by the Boneheads team, entitling the Plaintiff and Class members to special and punitive damages and/or rescission of the contract.
84. The Boneheads team fraudulently misrepresented the contract:
 - i. The Boneheads team falsely represented to the Plaintiff and Class Members that minting or purchasing a Boneheads NFT on the secondary market would be accompanied by extensive utility including member benefits, utility built around the Boneheads brand, and utility tied to holders' individual Boneheads NFT;
 - ii. The roadmap and utility were extensively detailed across the Boneheads website and social media platforms in the weeks and months preceding the public mint for Boneheads NFTs on August 20, 2021. Plaintiffs and Class Members had the opportunity to review the extensive roadmap information provided on the Boneheads website and social media and community platforms prior to making a decision to mint or purchase a Boneheads NFT on the secondary market;

- iii. The Boneheads team held themselves out to be a team with extensive expertise necessary to deliver on their ambitious roadmap;
- iv. These representations were material to the substance of the contract between the Plaintiff and Class Members and the Boneheads team;
- v. The representations of extensive utility accompanying the Boneheads NFT are unequivocally false as the Plaintiff and Class Members have not received a single member benefit or any utility accompanying their Boneheads NFT;
- vi. The Boneheads team, knowingly or recklessly, understood the falsehood of the representations of utility made to the Plaintiff Class Members, including but not limited to promises of a \$250,000 and a \$1 million giveaway, as well as specific roadmap deliverables such as the NFT NYC Pop-Up Shop (Fall 2021), the LA Flagship Store (Early 2022), a second collection (August 2022), and monthly “drops” starting in November 2022. The Boneheads team failed to build any utility or deliver any of the many roadmap promises made to the Boneheads NFT holders;
- vii. The Plaintiff and Class Members acted/relied upon and were induced by the false representations of utility made by the Boneheads team and purchased the NFT in question with the expectation that the NFT would provide member benefits, utility that was built around the Boneheads brand, and utility that was tied to their Boneheads NFT specifically. The Boneheads team knew, or ought to have known, that the Plaintiff and Class Members would rely on their numerous representations and purchase the Boneheads NFT;
- viii. The actions of the Boneheads team have resulted in significant personal loss to the Plaintiff and Class Members. The Plaintiff and Class Members have lost considerable time dedicated to participating in the Boneheads community and awaiting the pending utility. The Plaintiff and Class

Members have incurred significant financial loss as a direct result of the actions of the Boneheads team totalling approximately \$4,118,385.43 CAD; and

- ix. There is continued impropriety, deceit and dishonesty on the part of the Boneheads team who continues to fraudulently misrepresent the utility that will accompany the Boneheads NFT, both to existing Boneheads NFT holders, as well as new unsuspecting consumers.

Negligent Misrepresentation

85. In the alternative, the Plaintiff and Class Members are entitled to special damages, or rescission of the contract, as a result of the negligent misrepresentations made by the Boneheads team.

- i. The Boneheads team, as outlined above, made a number of representations to consumers about the utility and benefit that would flow as a result of purchasing and owning a Boneheads NFT;
- ii. Taylan and Class Members are consumers who paid the Boneheads team, a commercial enterprise, for goods/services, and were owed a duty of care;
- iii. The representations made by the Boneheads team are false as none of the intended utility outlined has been delivered;
- iv. The Boneheads team was negligent in making representations about utility, including, but not limited, promises of giveaways and specific dates for deliverables;
- v. The Plaintiff and Class Members reasonably relied on the representations made by the Boneheads team;
- vi. The Plaintiff and Class Members, as outlined above, have suffered significant financial loss as a result of relying on the false representations made by the Boneheads team.

Consumer Protection Act

86. The Plaintiff and Class Members are “consumers” under the *Consumer Protection Act* who were acting for personal and not business purposes.
87. The Plaintiff and Class Members entered into a “consumer transaction” under the *Consumer Protection Act* whereby the Boneheads team promised delivery of certain goods and services in exchange for payment/purchase of a Boneheads NFT.
88. The Boneheads team acted unfairly when transacting with the Plaintiff and Class Members by making the following false, misleading or deceptive and/or unconscionable representations under Part III of the *Consumer Protection Act* including:
 - i. Representations that the roadmap, benefits, and accompanying utilities were available or would be made available, delivered or performed following the purchase of a Boneheads NFT when the Boneheads team knew or ought to have known that they could not be delivered or performed;
 - ii. Representations of a roadmap, benefits, and accompanying utilities that used exaggeration, innuendo, or ambiguity as to a material fact or a failure to state a material fact that deceived or tended to deceive the Plaintiff and Class Members;
 - iii. Representations that misrepresented the purpose or intent of any solicitation or communication with the Plaintiff and Class Members; and
 - iv. Representations that the purpose of charges, namely the minting or secondary market royalties, were to develop and deliver on the roadmap, benefits, and accompanying utilities that had been promised to Boneheads NFT holders.
89. At all material times, the Boneheads team were located in Ontario where the contract was formed, when transacting online with the Plaintiff and Class Members.

Competition Act

90. The Boneheads team engaged in deceptive marketing practices under Part VII.1 of the *Competition Act*.
91. The Boneheads team directly promoted the Boneheads NFT project for the purpose of promoting their own business interests.
92. The Boneheads team made representations to the public that were both false and misleading. The Boneheads team represented to the public that minting or purchasing a Boneheads NFT on the secondary market guaranteed or promised performance of a roadmap, providing holders of the Boneheads NFT with extensive utility that was clearly laid out on the Boneheads websites and on social media platforms including Twitter and community platforms including Discord.
93. The Boneheads team guaranteed or promised this extensive utility to minters and purchasers of the Boneheads NFT in a manner that was materially misleading or had no reasonable prospect that it would be carried out, such as the promises of entry into a \$250,000 and \$1 million giveaway. It was known to the Boneheads Team that members of the public, namely the Plaintiff and Class Members, would and did indeed rely on this guaranteed or promised roadmap in making a decision to purchase or mint a Boneheads NFT.
94. After the Plaintiff and Class Members minted and/or purchased the Boneheads NFT, the Boneheads team failed to fulfil the guarantees or promises of the roadmap/utility associated with holding a Boneheads NFT.
95. To date, the Boneheads team continues to deceive unsuspecting members of the public into purchasing their NFT with false promises of a roadmap.
96. Plaintiff and Class Members are everyday consumers with limited financial means and time. By purchasing the Boneheads NFT as a result of inducements of the extensive roadmap and utility that would be provided to them, holders of the

Boneheads NFT decided to forego the purchase of other legitimate NFT projects in an extremely competitive environment.

Unjust Enrichment

97. Furthermore, or in the alternative, the Boneheads team was unjustly enriched at the expense of the Plaintiff and Class Members.
98. The Plaintiff and Class Members were deprived of approximately \$4,118,385.43 CAD in value which was unjustly and unfairly passed to the Boneheads team.
99. Given that Plaintiff and Class Members did not receive the benefits that were promised to them by the Boneheads team, there has been a failure of consideration, resulting in significant corresponding deprivation to the Plaintiff and Class Members.
100. There is no juristic reason for the Boneheads team to retain the \$4,006,313 CAD in mint proceeds or \$112,072.43 CAD in royalties received to date, or any continued royalties from the sales of Boneheads NFTs.

Misappropriation of Funds

101. In addition, or in the alternative, the Boneheads team misappropriated funds that were intended to be used to deliver on the roadmap promises that had been made to the Plaintiff and Class Members.
102. Immediately after the Boneheads NFT mint sold out, the Boneheads team drained the smart contract of all of its funds (950.5 ETH ((approximately \$3,122,175 USD or \$4,006,313 CAD)) on August 20, 2021, at 8:47:36 PM + UTC.
103. These funds were not used to develop utility for the project, deliver on the roadmap, or for a community wallet as promised by the Boneheads team.
104. The Boneheads team instead took a number of steps of obfuscate the source of these funds.

105. At least \$555,611.35 CAD was moved between different cryptocurrency wallets and into centralized exchanges, including Kraken, Kucoin, and Coinbase.
106. The Boneheads team also made a total of at least \$1,786,169.95 CAD in extravagant NFT purchases for personal use.

Piercing the Corporate Veil

107. Profitly Incorporated and DMCB Holdings Inc. were incorporated for an illegal, fraudulent or improper purpose.
108. As directors of the corporations in question, Ivan Avramenko and Alexandra Stinson had a duty to act in good faith and in the best interests of the corporation and shareholders.
109. Instead, Ivan Avramenko and Alexandra Stinson acted to defraud the Plaintiff and Class Members.
110. Ivan Avramenko and Alexandra Stinson were the directing minds, who had total control of the Corporations in question, and used the funds from the mint and royalties for personal gain, instead of the promised utility that was to be delivered to consumers.
111. As a result of their actions, Ivan Avramenko and Alexandra Stinson should be held personally liable for the allegations contained herein.

Punitive Damages

112. The Boneheads team engaged in reprehensible conduct which was malicious, oppressive and high-handed, and demonstrated a marked departure from ordinary standards of decent behaviour.
113. In response to both the NFTorney blog and ZachXBT's allegations that the project was a rug pull, the Boneheads team responded by further defrauding the public and

inducing even more consumers to purchase their NFT on the secondary market with promises of utility to be provided by future specific date.

114. The Boneheads team openly responded to criticism by blocking and “trolling” the Plaintiff and Class Members.
115. In October 2021, in response to the NFTorney blog post, the Boneheads team tweeted “so if this wasn’t a rug then...what was it? Best answer wins a BONEHEAD giveaway winner announced...like never?”.
116. In response to ZachXBT’s Twitter posts, the Boneheads team Tweeted the following:



117. In addition to side-stepping and mocking the very serious allegations of fraud, the Boneheads team again induced Plaintiff and Class Members to purchase more Boneheads NFTs by teasing images of a new collection, including future dates where such utility would be delivered.
118. The granting of punitive damages is required to punish the defendant and meet objective standards of retribution, deterrence and denunciation.

119. The Boneheads team defrauded thousands of consumers across the world with a contract that originated in Ontario.
120. The Boneheads team continues to see no issue, moral or otherwise, with their actions, which have directly resulted in the loss of over \$4,118,385.43 CAD in funds from the Plaintiff and Class Members.
121. The Plaintiff proposes that this action be tried at the City of Ottawa, Ontario.

May 25, 2023

**DELAWYER PROFESSIONAL
CORPORATION**

Suites of Somerset
52 Bayswater Ave., Unit 1505
Ottawa, ON, K1Y 4K3

SOHAIB MOHAMMAD

LSO#: 80696K
Tel: (647)-535-8706
Email: sohaib@smhlaw.ca

Lawyer for the Plaintiff

Taylan McRae-Yu
Plaintiff

Profitly Incorporated, et. al.,
Defendants

Court File No.: CV-23-00092340-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

**DELAWYER PROFESSIONAL
CORPORATION**

Suites of Somerset
52 Bayswater Ave., Suite 1505
Ottawa, ON
K1Y 4K3

SOHAIB MOHAMMAD

LSO#: 80696K
Tel: (647)-535-8706
Email: sohaib@delawyer.io

Lawyer for the Plaintiff

