

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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 DEFENCE AND COUNTERCLAIM

1. The Defendants, Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson and John Doe, admit none of the allegations contained in any of the paragraphs of the Statement of Claim.
2. The Defendants, Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson, (collectively the “**Defendants**”), have no knowledge of the allegations contained in paragraphs 6-23, 28, 30-31, 35-36 of the Statement of Claim.
3. The Defendants deny all other allegations contained in the Statement of Claim except as otherwise pleaded herein.
4. The Defendants request that paragraphs 6-21 of the Statement of Claim be struck as they are irrelevant to the matters at issue.

Parties

5. Profitly Incorporated (“**Profitly**”) is a corporation incorporated pursuant to the laws of Ontario.

6. DMCB Holdings Inc. (“**DMCB**”) is a corporation incorporated pursuant to the laws of Ontario.

7. Ivan Avramenko (“**Ivan**”) is an individual residing in the Province of Ontario. Ivan is, *inter alia*, an entrepreneur with experience in technology start up companies.

8. Alexandra Stinson (“**Alexandra**”) is an individual who resides in the city of Belleville, Ontario. Contrary to the allegations at paragraph 27 of the Statement of Claim, Alexandra is not a co-founder of the Boneheads NFT project (“**Boneheads**”).

Non-Fungible Tokens

9. Non-fungible tokens (“**NFTs**”) are cryptocurrency-based assets which are created through a process called “minting”. Minting is when the individual information of an NFT gets recorded onto a publicly accessible database, called a blockchain. Once an NFT has been minted, it is given a unique identification number which allows it to be distinguishable from other NFTs. This identification number is what allows an NFT to be sold, exchanged, or traded between owners. The NFT’s ownership details are also stored onto it, which includes the details of the individual or company that designed it.

10. The value of an NFT (after the initial sale) is given to a token on a case by case basis since every token is considered unique, therefore, a single value/price cannot be

applied to an entire collection of tokens, rather only to a specific token or set of tokens – this price is determined by the customer. It is a free market. A floor price does not indicate value for an entire collection of tokens, it simply indicates the lowest available price for a specific individual token.

The Boneheads NFT

11. In or around early 2021, DMCB launched Boneheads.

12. DMCB hired computer developers to assist with the engineering side of Boneheads. The developers built, *inter alia*, art designs, app designs, and website designs. Alexandra was never involved in the development or conceptualization of this project and is in no way involved with Boneheads.

13. Each Bonehead NFT represented a specific piece of art. The sale was a surprise blind mint, which is the standard practice, therefore, none of the purchasers knew which specific piece of art they were getting. The surprise aspect is part of the appeal for customers, since they have an opportunity to have a rare token. The Plaintiff was well aware of this before the sale took place. That is the reason he purchased over 30 tokens with the hope of obtaining a bonehead NFT that is rare compared to the rest. There is an implicit risk in purchasing tokens that is well known to purchasers. Tokens varied in price. Some individuals who purchased a bored ape yacht club NFT, for example, were lucky as that NFT ended up being worth upwards of \$500,000.00.

14. DMCB marketed Boneheads primarily through the social media website Discord (“**Discord**” or the “**Boneheads Discord**”). Discord allowed users to, *inter alia*,

communicate with the Boneheads community through via instant messaging, video calls, and voice calls.

15. Many people share ideas and information through the Boneheads Discord.

Boneheads' Benefits (the "Benefits")

16. Boneheads marketed six benefits that customers could receive with each Boneheads NFT purchase. At the time the Benefits were presented, they were not yet completed. Boneheads made it clear to the public that their Benefits were not yet ready to be launched, by posting a general description for each benefit as a way to inform potential Bonehead purchasers of potential Benefits once the Benefits were finalized. In no way was the marketing of these Benefits an official offer to potential purchasers.

Benefit 1 – Lifetime Membership ("Benefit 1")

17. Benefit 1 would give purchasers lifetime access to the Bonehead cabana (as long as they held the asset in their wallet), digital collectibles, and access to the Bonehead forging headquarters, which is where purchasers could forge their own physical and digital collectibles.

18. Boneheads is currently in the process of designing and finalizing apps for the release of Benefit 1. Further, Boneheads has not yet completed the domain purchase for Benefit 1. Without the domain, it is impossible to launch Benefit 1.

19. The Boneheads Discord community was made aware of the fact that Benefit 1 is not yet complete. As such, it would not be possible to rely on these Benefits when

deciding whether or not to purchase a Boneheads NFT as it was made clear that such Benefits were not yet finalized.

Benefit 2 – Exclusive Forging (“Benefit 2”)

20. Benefit 2 would give Bonehead purchasers exclusive forging rights.

21. Boneheads made it clear that no timeline had been established with respect to when Benefit 2 would be available to the public. Further, as an abundance of caution, Boneheads marked a “to be determined” indicator as to when Benefits 2 would be completed.

Benefit 3 – Claimables (“Benefit 3”)

22. Benefit 3 would allow Bonehead purchasers to claim specific physical Bonehead collectibles for free using their Bonehead NFT. This benefit was designed to give purchasers an unprecedented experience with the purchase of their Bonehead NFT.

23. It was made clear to the Boneheads Discord and Twitter community that there was no official timeline for completion for Benefit 3.

Benefit 4 – App Access (“Benefit 4”)

24. Benefit 4 would allow Bonehead purchasers priority access in testing the upcoming apps before they would be made public.

25. There was no publicly stated release date for Benefit 4.

Benefit 5 – Behind the Scenes (“Benefit 5”)

26. Benefit 5 would allow Bonehead purchasers behind the scenes access to Bonehead products, including but not limited to, sculptures, accessories, playing cards and other Boneheads collectibles.

27. Bonehead Discord users have been given previews of Benefit 5 physical items, although Boneheads has yet to release anything official.

Benefit 6 – Voting Rights (“Benefit 6”)

28. Benefit 6 would allow Bonehead purchasers voting rights with respect to the manufacturing of various Bonehead products.

29. Contrary to paragraph 37 of the Statement of Claim, at no time did Boneheads guarantee the release of any of their benefits, nor did they provide potential purchasers a specific release date. As such, the Plaintiff could not have relied on any alleged representations made by Boneheads, since no representations were made. The Defendants put the Plaintiff to the strict proof thereof.

30. Contrary to paragraph 43 (i) and (ii) of the Statement of Claim, Boneheads did not promise the chance to win \$1,000,000.00. Boneheads had not listed any giveaways on their company webpage. Further, these alleged giveaways were never included in the Boneheads Smart Contract (the “**Smart Contract**”), which is a digital contract that all Boneheads purchasers must agree to before purchasing their Boneheads NFT. The Plaintiff signed the Smart Contract, and as such, was eligible to be a Boneheads NFT

purchaser. Boneheads intends on offering \$250,000.00 worth of digital value for assets that will be available within the App, upon the App's release.

31. Contrary to paragraphs 45-47 of the Statement of Claim, the Boneheads Roadmap (the "**Roadmap**") was by no means a finished product. It was simply a *roadmap* into what Boneheads may create in the future. In no way was the Roadmap to be relied upon by potential Bonehead purchasers. This was made clear via Boneheads' Discord and Twitter pages. In general, NFT purchasers are aware of the risks associated with NFT projects and that roadmaps are not guaranteed. Roadmaps do not constitute promises capable of being accepted.

32. Contrary to paragraphs 51-54 of the Statement of Claim, as previously mentioned, the Benefits were not yet completed. Boneheads informed potential purchasers as to what they could expect to be given.

33. Contrary to paragraph 55 of the Statement of Claim, Boneheads did not guarantee the opening date for the Cabana Store. In fact, the Cabana Store opening was never a part of the sale, Benefits and/or Roadmap. This had no impact on the Plaintiff's tokens. No loss or damage resulted from the allegations in the Statement of Claim, and particularly the allegations at paragraph 55 of the Statement of Claim.

34. The Defendants deny the allegations made in paragraph 56 and 57 of the Statement of Claim. The Plaintiff's allegation that consumers relied on alleged promises and representations made by Boneheads is meritless. The Plaintiff is speaking on behalf of consumers he has no affiliation with, and as such, the Plaintiff's allegations hold no weight. The Plaintiff is not a proper representative plaintiff and will be put to the strict proof

thereof. In the alternative, if the Defendants did make promises and representations about their skillset that consumers relied on, which is denied, the Defendants plead that the Plaintiff does not have enough knowledge and/or expertise in NFTs and as a result, the Plaintiff relied on alleged representations that were outside the scope of his knowledge.

35. Contrary to paragraphs 62 and 64 of the Statement of Claim, the Defendants banned the Plaintiff from the Boneheads Discord server as a result of the Plaintiff engaging in inappropriate and disruptive conduct towards other server users. The Plaintiff would routinely post defamatory and abusive statements towards other users and the Defendants. Further particulars of the Plaintiff's behaviour shall be provided for before trial. As a result of the Plaintiff's disruptive behaviour, the Plaintiff's Discord server was likely "slower" than other users as this is a safety mechanism Discord had put in place to protect other users from disruptive users.

36. Contrary to paragraph 65 of the Statement of Claim, the Plaintiff has mischaracterized potential Bonehead NFT purchasers as "unsuspecting consumers". There was no rug pull by the Defendants. The Defendants put the Plaintiff to the strict proof thereof.

37. Contrary to paragraph 66 of the Statement of Claim, the Defendants have not dissipated any funds from Bonehead sales. The Smart Contract was programmed to automatically disburse funds from the sale contract directly as follows:

- (a) 15% as payment to developers; and

- (b) 85% to a wallet controlled by the Defendant. This wallet is also used to pay for other developments.

38. Contrary to the allegations in the Statement of Claim, the funds were not moved from the Smart Contract. The funds were disbursed in accordance with industry standards and/or contractual terms. The project developers, who are world class developers and who have handled several projects, created the Smart Contract to automatically disburse the funds to the two wallets. This was the most efficient way to conduct the development. If the funds were not moved to a wallet controlled by DCMB, the funds would be inaccessible, which would impede on project development. In addition, as illustrated above, funds were moved in order to pay project developers. The Plaintiff has insufficient knowledge with respect to how NFT deposits work, and as such, the Plaintiff's claims are unfounded.

39. Contrary to paragraph 69 of the Statement of Claim, the alleged opening of the Boneheads Flagship Store in early 2022 was never a set deadline. Boneheads made it clear to potential purchasers that any opening dates were subject to change. In addition, the opening of the Flagship Store is in no way related to any of the Bonehead sale offerings and was never part of the Boneheads Benefits or the Roadmap. This was a new ambition that was never communicated before the sale of the NFTs.

40. With respect to paragraph 74 and 76 of the Statement of Claim, the collections and drops cited by the Plaintiff have not yet been released because they are still in development. The Defendants have not defrauded the Plaintiffs. At all material times the

Defendants have provided updates to the public regarding ongoing developments. This does not constitute a “rug pull” as alleged by the Plaintiff.

41. Contrary to paragraph 78-82 of the Statement of Claim, the Defendants have not breached any contract with the Plaintiff. Boneheads has simply not completed the Roadmap due to the complexity of building an NFT. The Roadmap is not an NFT. The Roadmaps are physical collectibles (physical products that need to be manufactured) and an App. Apps and physical collectibles can take years to develop. In addition to the physical collectibles and Apps, the DCMB have also been developing an app in stealth, which is a collection of 10,000 uniquely drawn characters. This development can easily take years to complete, especially when a single character can take upwards of one to three hours to create. For example, NFT projects that include 3-dimensional assets can take years to develop, and single assets/characters can take four to ten hours to develop, depending on the level of detail. BAYC is an example that development within this space can be lengthy, as BAYC has been working on developing a game for over two and a half years and have received over \$450 million in funding, yet the game has not yet been delivered.

42. Contrary to the allegations contained in paragraphs 83-84 of the Statement of Claim, the Defendants did not make any fraudulent misrepresentations. There was no false or misleading representation made by the Defendants. In the alternative, if the Defendants did make false or misleading representations, which is denied, the Defendants were not aware that those representations were false, nor were the Defendants reckless in making them. Further, the Plaintiff was not induced to act on the alleged false representations made by the Defendants. Further, and in the alternative, if

false representations were made by the Defendants, which is denied, the Defendants plead that:

- (a) The Plaintiff failed to take any reasonable steps to mitigate damages; and
- (b) The Plaintiff did not suffer any damages as a result of the alleged false representations, and, in the alternative, if the Plaintiff did suffer damages, which is denied, the Plaintiff's alleged damages are exaggerated, too remote, and not recoverable in law.

43. Contrary to paragraph 85 of the Statement of Claim, the Defendants did not make any negligent representations. No duty of care exists between the Defendants and the Plaintiff, nor was any untrue, inaccurate or misleading representation made by the Defendants. Further, if an untrue, inaccurate or misleading representation was made by the Defendants, which is denied, then that alleged representation was not reasonably relied on by the Plaintiff. Further, and in the alternative, if the Defendants did make an untrue, inaccurate or misleading representation, which is denied, then the Defendants plead that the Plaintiff did not suffer damages as a result. The Defendants put the Plaintiff to the strict proof thereof.

44. Contrary to paragraphs 86-89 of the Statement of Claim, the Defendants plead that the *Consumer Protection Act* (the "**CPA**") is not applicable to the facts of this action, and as such, no relief can be sought under that Act. Further, the Defendants put the Plaintiff to the strict proof thereof.

45. Contrary to paragraphs 90-96 of the Statement of Claim, the Defendants plead that the CPA is not applicable to the facts of this action, and as such, no relief can be sought under that Act. Further, the Defendants have not engaged in deceptive marketing tactics, as any alleged representations made by the Defendants were not false and/or misleading. Further, and in the alternative, if any false and/or misleading representations were made by the Defendants, which is denied, the Plaintiff did not suffer damages as a result.

46. Contrary to paragraphs 97-100 of the Statement of Claim, the Defendants have not been unjustly enriched through their alleged actions, nor have they have not received a benefit. Further, the Plaintiff has not suffered a corresponding deprivation due to the Defendant's alleged actions. If it is found that the Defendants have been enriched and the Plaintiff has suffered a deprivation due to the Defendants' alleged actions, which is denied, the Defendants plead that there was a juristic reason for such enrichment.

47. The Plaintiff's allegations contained in paragraphs 101-106 of the Statement of Claim are meritless and ought to be dismissed. Ivan, acting on behalf of DCMB, removed the funds in accordance with the Smart Contract in order to ensure that the funds were not "stuck", as well as to fund development, pay contractors and to fund other company deliverables and initiatives.

48. The Defendants, Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson and John Doe, ask that this action be dismissed with costs.

COUNTERCLAIM

49. The Plaintiffs by Counterclaim, Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, and Alexandra Stinson (the “**Plaintiffs by Counterclaim**”) claim:

- (a) the sum of \$500,000.00;
- (b) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (d) the costs of this proceeding, plus all applicable taxes; and,
- (e) such further and other Relief as to this Honourable Court may seem just.

50. The Plaintiffs by Counterclaim, repeat and rely upon the allegations in the Statement of Defence in support of the Counterclaim.

51. In or around July 2023, Taylan McRae-Yu (the “**Defendant to the Counterclaim**”) and/or his agents, using the Twitter username “ZachXBT” posted various defamatory statements and images in association with the Plaintiffs by Counterclaim.

52. The Defendant to the Counterclaim wrongfully obtained personal and private photographs of Alexandra Stinson (“**Ms. Stinson**”) and posted them on Twitter, without her knowledge and/or consent. This was in direct breach of Ms. Stinson’s right to privacy.

53. In addition to the foregoing, the Plaintiff used Ms. Stinson's likeness without her permission and defamed her character. The photographs depicted Ms. Stinson in a negative light and tarnished her reputation.

54. Further, the Defendant to the Counterclaim and/or his agents posted defamatory, false and misleading posts on Twitter about the Plaintiffs by Counterclaim that have caused significant damage. On July 7, 2023, the Defendant to the Counterclaim and/or his agents posted the following defamatory statements:

"A class action lawsuit was filed in Canada against the Boneheads team for the \$3.1M NFT rug pull. The team quickly disappeared and spent the mint funds on BAYCs, luxury goods, and other items never fulfilling the road map. Yet another case where my research has been cited. If you minted a Boneheads NFT please contact @0xTAY or leave a comment below as they are currently looking for additional victims."

55. Again, on July 14, 2022, the Defendant to the Counterclaim and/or his agents posted the following:

"1/ Investigating the \$3.1m rug pull @BONEHEADS and the breadcrumbs left behind by the team into how the money has actually been spent...

2/ The project was launched by an anon team on August 20th 2021 with a supply of 10k NFTs and mint price of 0.1 ETH per NFT. It advertised various roadmap items such as physical collectibles, future NFT drops, item giveaways, gallery, & more...

3/ As you can guess with most rugs the team quickly became inactive just weeks after minting out This is evidenced by zero posts on the Instagram, zero tweets in almost 6 months, Banned holders in the discord, & Discord verification bot hasn't been functional in almost 6 months...

4/ A decent chunk of proceeds from the mint were sent to @krakenfx @coinbase exchange accounts...

5/ The rest was used to purchase NFTs such as BAYC, Crypto Punks, MAYC, Clone X, and more. 0x8C0fF426dFa77A87Be3729456D1D27fdC8F2DE5F. Meanwhile the team hadn't even paid @NFTLabTeam fully for contract dev work...

6/ Now here's where it gets interesting. A while back before launch the team had an email list you could subscribe to with an address listed for Boneheads...

7/ The address on the site was linked to two entities in Canada with the same address 'Profitly' & 'DMCB Holdings' which had been registered just days after Boneheads minted out...

8/ The corporation 'Profitly' listed two names, Alexandra (LexiBone) & Ivan (IvyBone) as the board of directors. Most damning of all was Alexandra posted about Boneheads on her TikTok before the project had been formally announced on June 18th 2021...

9/ Other TikTok videos exist of her flexing luxury trips, designer clothes shopping, and a Gwagon all after the project had raised \$3.1m...

10/ Earlier this week @0xTay_ reached out to me to share they were looking to potentially start a class action lawsuit against the Bonehead team.

11/ If you are a victim please leave a comment below this thread.

****Disclaimer: advising Chainabuse and invested in Breadcrumbs****

56. The Defendant to the Counterclaim's published statements made on July 7 and 14, 2023 contain false allegations against the Plaintiffs by Counterclaim. The statements portray the Plaintiffs by Counterclaim as having engaged in illegal activity. In addition, the posts plainly and/or by innuendo suggest that the Plaintiffs by Counterclaim improperly used the Defendant to the Counterclaim and other people's funds. The aforementioned posts have been reviewed by thousands of Twitter users.

57. The Plaintiffs by Counterclaim rely on the natural and ordinary meaning of the words which are *prima facie* defamatory and false.

58. In addition, the statements and images published about the Plaintiffs by Counterclaim contain innuendoes that tend to lead the reader to believe that the Plaintiffs by Counterclaim have engaged in illegal conduct and have dissipated and/or squandered funds.

59. The statements published by the Defendant to the Counterclaim about the Plaintiffs by Counterclaim are false and the innuendoes arising from those statements/images were maliciously published by the Defendants to the Counterclaim knowing that they are false or with reckless disregard as to whether they are true or not.

60. The Plaintiffs by Counterclaim state that the statements made by the Defendant to the Counterclaim are defamatory and libellous, and go far beyond fair comment and as such, the statements are malicious and designed specifically to impugn the Plaintiffs by Counterclaim's character.

61. The Plaintiffs by Counterclaim state that the defamatory statements have brought the Plaintiff by Counterclaim into ridicule, and they have suffered damage as a result.

62. As a result of the Defendant to the Counterclaim's statements, many people are reluctant to interact with the Plaintiffs by Counterclaim. In fact, people have contacted the Plaintiffs by Counterclaim regarding the aforementioned defamatory statements.

63. The Defendant to the Counterclaim's statements have negatively affected the Plaintiffs by Counterclaim's business. The words/images expressed by the Defendant to the Counterclaim have lowered the reputation of the Plaintiffs to the Counterclaim and caused and continue to cause damage to the Plaintiffs by Counterclaim and their business.

64. The Defendant to the Counterclaim acted with malice when publishing the defamatory statements and/or images, which entitles the Plaintiff to punitive and aggravated damages. Particulars of the damages shall be provided before trial.

65. The Plaintiffs by Counterclaim request that this counterclaim be heard at the same time as the main action.

August 9, 2023

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

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