

**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

REPLY AND DEFENCE TO COUNTERCLAIM

1. Except as expressly admitted herein, Taylan-McRae-Yu (“Taylan”, “Plaintiff” and “Defendant by Counterclaim”), denies each and every allegation contained the Statement of Defence and Counterclaim (“Defence and Counterclaim”).
2. The Plaintiff specifically denies that Profitly Incorporated, DMCB Holdings Inc., Ivan Avramenko, Alexandra Stinson, and John Doe (collectively, the “Boneheads team”, “Defendants” and “Plaintiffs by Counterclaim”), are entitled to the relief sought in paragraphs 49 and 64 of the Defence and Counterclaim.
3. The Plaintiff denies the allegation contained in paragraph 4 of the Defence and Counterclaim as paragraph 6-21 of the Statement of Claim are directly material to the issues in this matter. The Bored Ape Yacht Club (“BAYC”) is directly pleaded in paragraphs 13 and 42 of the Defence and Counterclaim. The term “roadmap” is directly pleaded in paragraphs 31, 33, and 49 of the Defence and Counterclaim.

REPLY***The Parties***

4. With respect to paragraph 5 of the Defence and Counterclaim, the Plaintiff admits that Profitly Incorporated is a corporation but denies that it is incorporated pursuant to the laws of Ontario. Profitly Incorporated is incorporated pursuant to the laws of Canada. Profitly Incorporated is presently pending dissolution for non-compliance.
5. With respect to paragraph 6 of the Defence and Counterclaim, the Plaintiff admits that DMCB Holdings Inc. is a corporation but denies that it is incorporated pursuant to the laws of Ontario. DMCB Holdings Inc. is incorporated pursuant to the laws of Canada.
6. With respect to paragraph 7 of the Defence and Counterclaim, the Plaintiff admits that Ivan Avramenko (“Ivan”) is an individual residing in the Province of Ontario.
7. The Plaintiff has no knowledge of whether Ivan has experience in technology start up companies but admits that Ivan represented himself as having experience and expertise in technology start up companies. In addition to being a Director for Profitly Incorporated and DMCB Holdings Inc., Ivan Avramenko was a Director for the following companies:
 - i. “Midnight In Miami Inc.” – a Canadian corporation which was incorporated on June 24, 2015 and dissolved on May 19, 2016 under s. 210 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44. Ivan was one of two Directors of this corporation;
 - ii. “Dreams Money Can Buy Inc.” – a Canadian corporation which was incorporated October 2, 2015 and dissolved July 29, 2018 for non-compliance. Ivan was the sole Director of this corporation;
 - iii. “Stradella Inc.” – a Canadian corporation which was incorporated March 15, 2016 and dissolved January 18, 2019 for non-compliance. Ivan was one of two Directors for this corporation;

- iv. “Tech-Sessories Online Inc.” – a Canadian corporation incorporated April 21, 2016 and dissolved July 11, 2016 under s. 210 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44. Ivan was one of two Directors for this corporation; and
 - v. “Fixx International Inc.” – a Canadian corporation incorporated February 15, 2018 and dissolved February 28, 2021 under s. 210 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44. Ivan was one of three Directors for this corporation.
8. With respect to paragraphs 8 of the Defence and Counterclaim, the Plaintiff admits that Alexandra Stinson (“Alexandra”) is an individual who resides in the city of Belleville, Ontario but denies that Alexandra is not a co-founder of the Boneheads NFT.

Non-Fungible Tokens

9. With respect to paragraph 9 of the Defence and Counterclaim, the Plaintiff admits that NFTs are created in a process called minting and each NFT contains a unique identification number making NFTs distinguishable from one another. The Plaintiff denies that ownership details are stored on an NFT because ownership details are stored on a blockchain, not the NFT itself. The Plaintiff further denies that NFTs contain the details of the individual or company that designed it because smart contracts can be launched anonymously.
10. With respect to paragraph 10 of the Defence and Counterclaim, the Plaintiff admits that a floor price is not necessarily indicative of the value of any individual NFT but denies that the floor price is not indicative of the value for an entire NFT collection.

The Boneheads NFT

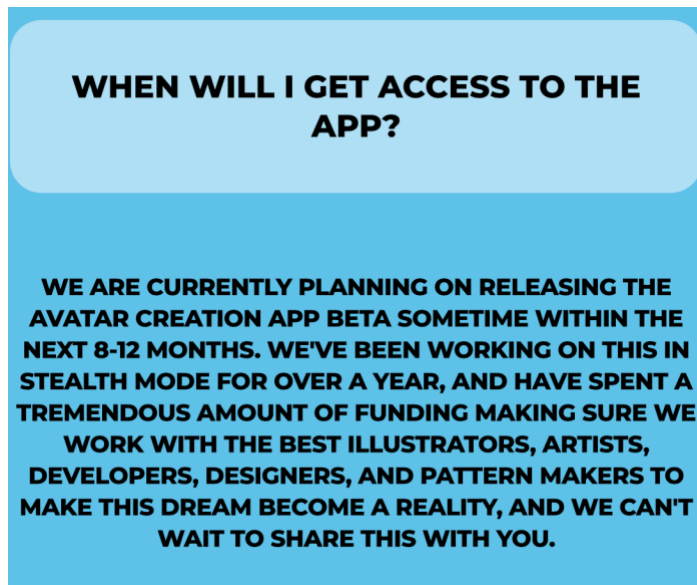
11. The Plaintiff admits (in part) and denies (in part) the allegations contained in paragraph 13 of the Defence and Counterclaim as follows:
- i. Each Boneheads NFT did represent a specific piece of art but it further also represented a membership comprising extensive utility, the subject of which is outlined in the Statement of Claim;

- ii. The Plaintiff admits that the surprise aspect of NFT minting is one part of the appeal for customers but denies that this was the reason he purchased 36 Boneheads NFTs for the reasons outlined in the Statement of Claim; and
 - iii. The Plaintiff denies that “some” individuals who purchased a BAYC NFT were lucky that the NFT ended up being worth upwards of \$500,000 as the BAYC collection exceeded a floor price of \$500,000 in or around March 2022.
12. With respect to paragraph 14 of the Defence and Counterclaim, the Plaintiff admits that the Boneheads NFT was marketed through Discord and that Discord allowed the Boneheads community to communicate via instant messaging, video calls, and voice calls. The Plaintiff denies that this was the primary or sole mode of marketing for the reasons outlined in the Statement of Claim.

Boneheads’ Benefits

13. With respect to paragraphs 16-29 of the Defence and Counterclaim, the Plaintiff admits that the Boneheads marketed benefits. The Plaintiff denies, for the reasons outlined in the Statement of Claim, that:
 - i. The number of benefits were limited to six benefits;
 - ii. That the description of each benefit encompasses the totality of benefit/utility which would flow to the consumer from each benefit;
 - iii. Consumers did not rely on the description of benefits in deciding whether or not to purchase the Boneheads NFT(s); and
 - iv. That the marketing of these benefits did not constitute an official offer to consumers.
14. With respect to paragraph 16 of the Defence and Counterclaim, the Plaintiff specifically denies that descriptions were general in nature. Rather, the descriptions were incredibly detailed and often included specific dates for their delivery, as outlined in the Statement of Claim.

15. With respect to paragraph 25 of the Defence and Counterclaim, the Plaintiff specifically denies that there was no publicly stated release date for the application (“App”) in question as the Boneheads website specifically stated, in advance of the mint, that the Beta version of the App would be released in the “next 8-12 months”, corresponding to the period between April – August 2022, as follows:



16. With respect to paragraph 30 of the Defence and Counterclaim, the Plaintiff denies that giveaways must be included in the smart contract to constitute a binding offer to consumers.
17. The Plaintiff denies the allegations contained in paragraph 34 of the Defence and Counterclaim. Specifically, the Plaintiff denies that he relied on representations outside the scope of his knowledge. Taylan has been involved in the blockchain and cryptocurrency ecosystem for nearly a decade and had purchased dozens of NFTs in advance of the Boneheads mint, including a BAYC NFT. Taylan currently works in the blockchain space. Taylan is a proper representative Plaintiff and had spoken to a number of other consumers who purchased the Boneheads NFT in advance of launching this class action.
18. The Plaintiff specifically denies the allegation contained in paragraph 37 of the Defence and Counterclaim. There is a distinction between “dissipation of funds” and “smart contract programming”. Smart contracts can be pre-programmed to “move” funds to

cryptocurrency addresses at a pre-determined interval, such as following mint. Smart contract funds that are moved to these addresses can subsequently be dissipated, which is what the Boneheads team did, as outlined in the Statement of Claim.

19. The Plaintiff denies the allegations in Paragraph 38 of the Defence and Counterclaim. There is no distinction between “moved” and “disbursed” and puts the Defendants to the strictest proof thereof.

Causes of Action

20. The Plaintiff specifically denies the allegations contained paragraphs 41-48 of the Defence and Counterclaim and puts the Defendants to the strictest proof thereof.

DEFENCE TO COUNTERCLAIM

The Alleged Defamatory Statements

21. Twitter (“X”) user @zachxbt (“ZachXBT”) is a respected blockchain investigator dedicated to uncovering and reporting on fraud within the blockchain space.
22. In July 2022, Taylan reached out to ZachXBT to provide information related to the Boneheads NFT sale.
23. Unbeknownst to Taylan, ZachXBT had already been investigating the Boneheads NFT sale, including reaching out to the Boneheads NFT launch partners and consumers who had purchased the Boneheads NFT.
24. After exchanging messages and information regarding the Boneheads NFT, ZachXBT released a set of Tweets on July 14, 2022 (“First Post”), reproduced below:



ZachXBT @zachxbt · Jul 14, 2022

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

ZachXBT @zachxbt · Jul 14, 2022

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

ZachXBT @zachxbt · Jul 14, 2022

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.



ZachXBT  @zachxبت · Jul 14, 2022



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.

BONEHEADS

About BONEHEADS

Unsubscribe

or

Update Profile

You were subscribed to this list because:

You are receiving this email because you opted in via our website.

BONEHEADS
1034 County Rd 3
Belleville, ON K8N 4Z1
Canada



ZachXBT  @zachxبت · Jul 14, 2022



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 (08-26-2021) after Boneheads minted out.

Profitly:

ic.gc.ca/app/scr/cc/Cor...

DMCB Holdings:

ic.gc.ca/app/scr/cc/Cor...

Corporate History

Corporate Name History

2021-08-26 to Present	DMCB HOLD
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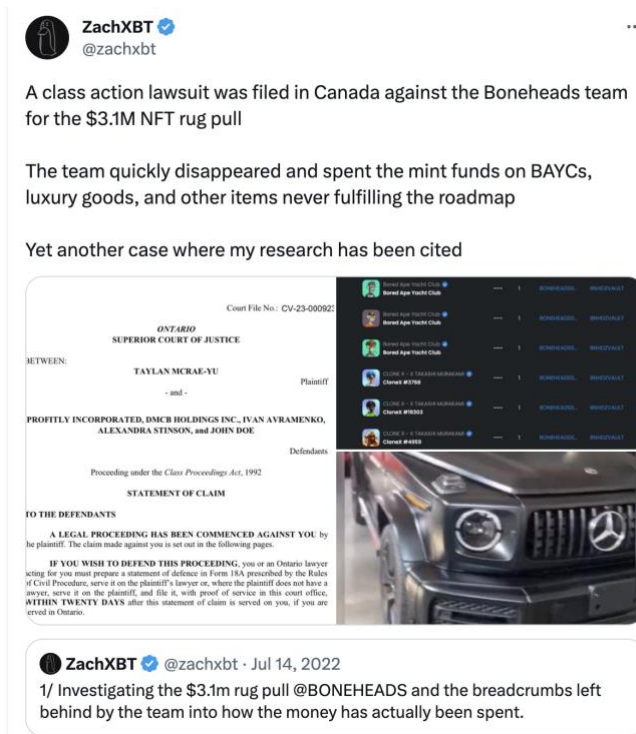
Certificates and Filings

Certificate of Incorporation

2021-08-26



25. On July 7, 2023, following the filing of this action, ZachXBT released another Tweet (“Second Post”) as follows:



Standing

26. The Defendant by Counterclaim specifically denies the allegation contained in paragraph 51 of the Defence and Counterclaim and puts the Plaintiffs by Counterclaim to the strictest proof thereof.
27. The Plaintiffs by Counterclaim have no standing to sue Taylan based on postings on the @zachxbt Twitter account.
28. ZachXBT is an independent blockchain investigator who controls the @zachxbt Twitter account.
29. ZachXBT had already been investigating the Boneheads NFT sale in advance of being contacted by Taylan.
30. Taylan is not ZachXBT and has no control, directly or indirectly, over the @zachxbt Twitter account or what is posted there. There is no agency relationship between ZachXBT and Taylan.
31. Taylan did not author any of content that was posted on the ZachXBT Twitter account nor did he review it in advance of its publication. Taylan is not a publisher of any of the content posted by the @zachxbt Twitter account.
32. Taylan collaborated with ZachXBT to the extent that he provided information regarding his own investigation into the Boneheads NFT sale to ZachXBT.
33. The Defendant by Counterclaim requests that the counterclaim be dismissed for lack of standing.

Alexandra Stinson

34. The Defendant by Counterclaim denies the allegation contained in paragraphs 52 and 53 of the Defence and Counterclaim and puts the Plaintiffs by Counterclaim to the strictest proof thereof.

35. ZachXBT's posts, shown in paragraphs 24-25 of the Reply and Defence to Counterclaim, do not contain any images of Alexandra.
36. The Defendant by Counterclaim did not post any images of Alexandra on Twitter.

Content

37. With respect to paragraph 54 of the Defence and Counterclaim, the Defendant by Counterclaim admits the contents of the Second Post as reproduced but denies that the content was posted by the Defendant by Counterclaim or his agents. The Defendant by Counterclaim further denies the postings were defamatory, false, misleading, or that they caused significant damage to the Plaintiffs by Counterclaim and puts the Plaintiffs by Counterclaim to the strictest proof thereof.
38. With respect to paragraph 55 of the Defence and Counterclaim, the Defendant by Counterclaim admits the contents of the First Post as reproduced but denies that the content was posted by the Defendant by Counterclaim or his agents.
39. The Defendant by Counterclaim specifically denies the allegations contained in paragraphs 56, 57, 58, 59, and 60 of the Defence and Counterclaim, and puts the Plaintiffs by Counterclaim to the strictest proof thereof.

Damages

40. The Defendant by Counterclaim specifically denies the allegations contained in paragraphs 61, 62, and 63 of the Defence and Counterclaim pertaining to damages suffered by the Plaintiffs by Counterclaim.
41. ZachXBT's Twitter thread is not the first instance where the Boneheads team was publicly accused of being a rug pull.
42. On October 2, 2021, in response to numerous allegations of being a rug pull, the Boneheads team posted the following on Twitter:



43. The Plaintiffs by Counterclaim wore the allegations of rug pull as a badge of honour and used them to market Boneheads and further induce consumers into purchasing the Boneheads NFT.
44. Any lowering of the reputation of the Boneheads team, which is specifically denied, if it did occur, was self-inflicted and not the product of ZachXBT's Twitter posts.
45. The Plaintiffs by Counterclaim responded on July 14, 2022 to the First Post as follows:



46. The Plaintiffs by Counterclaim also posted the following Tweet on their account on July 15, 2022 admitting the “free publicity” they had received from ZachXBT's Twitter thread:



47. On July 15, 2022, the Plaintiffs by Counterclaim joked about rug pull allegations and stated they would be releasing some “insaneeee rugs” as follows:



48. The Defendant by Counterclaim specifically denies any business damages flowing from ZachXBT's Twitter post.
49. The Boneheads NFT has garnered approximately 416 ETH in secondary volume since its launch. Approximately 367.0749 ETH of this secondary volume took place prior to October 31, 2021 which is when delivery of the "3D Convergence Event", and other deliverables in the fall of 2021 were promised by the Boneheads teams to consumers.
50. The main cause of the considerable reduction in sales volume in the months proceeding October 31, 2021 is due to the Plaintiffs by Counterclaims' own actions, including due to non-delivery of deliverables to consumers as detailed in the Statement of Claim.

Defences

51. If ZachXBT's Twitter posts are found to be defamatory, which is specifically denied, and Taylan is found to be a publisher of the defamatory content, which is also denied, then the Defendant by Counterclaim relies on the following defences, precluding the Plaintiff by Counterclaim to the relief sought in paragraphs 49 and 64 of the Defence and Counterclaim.

ZachXBT's Twitter Posts Were Justified

52. The Defendant by Counterclaim relies on the defence of justification.
53. The statements made on ZachXBT's Twitter account on July 12, 2022 and July 7, 2023 were true or substantially true in substance and in fact.
54. The sale of the Boneheads NFT was a "rug pull" for the reasons outlined in the Statement of Claim.
55. Alexandra posted publicly available images on social media, including TikTok, showing the Boneheads NFT mint. Following the Boneheads mint, Alexandra posted more images showing extravagant luxury purchases, including a Mercedes-Benz G-Wagon SUV and designer clothing. This supports the inference that the funds from the Boneheads NFT sale were used to fund these luxury purchases.

56. In addition to immutable on-chain transactions showing that a minimum of \$1,786,169.95 was used to fund extravagant NFT purchases such as BAYC and Cryptopunk NFTs, a total of approximately \$963,474.80 has been moved by the Boneheads team into centralized exchanges. This supports the inference that the Boneheads team used funds obtained from the NFT mint to fund luxury purchases.

ZachXBT's Twitter Posts Constitute Fair Comment

57. The Defendant by Counterclaim relies on the defence of fair comment.
58. ZachXBT's Twitter posts relating to the Boneheads NFT sale are comments on a matter of public interest, aiming to inform and protect consumers from being further defrauded by the Boneheads team.
59. The Twitter posts in question are comments based on fact or inferences of fact, and are recognizable as such.
60. Objectively, any person would honestly express the same opinions as those on these proved facts. In fact, there were numerous allegations of rug pull levied against the Boneheads team, well in advance of ZachXBT's posts, by consumers who had purchased the Boneheads NFT.

ZachXBT's Posts Constitute Responsible Communication on Matters of Public Interest

61. In addition to the above or in the alternative, ZachXBT's posts should be viewed as journalistic in nature.
62. The communications by ZachXBT were responsible publications on matters of public interest, namely consumer protection.
63. ZachXBT conducted due diligence, including gathering information from sources other than the Defendant by Counterclaim.

64. Having regard to the seriousness of the allegations, ZachXBT conducted their own investigation on the “Breadcrumbs” application, tracing how funds obtained from the Boneheads NFT sale were used.

No Malice

65. The Defendant by Counterclaim denies the allegation contained in paragraph 64 of the Defence and Counterclaim. The Defendant by Counterclaim did not act maliciously and puts the Plaintiffs by Counterclaim to the strictest proof thereof.
66. On the contrary, the conduct of the Boneheads team is reprehensible.
67. In addition to defrauding consumers around the world, including in Canada, Europe, the United Kingdom, the United States, and the Middle East, for which particulars will be provided, the Plaintiff by Counterclaim has sued Taylan, the class representative, who has acted for the purposes of achieving justice for thousands of consumers like himself around the world.
68. The defamation claims levied against Taylan are baseless, completely lack standing, and are intended to silence legitimate criticism against an individual acting for the public interest.
69. The Defendant by Counterclaim specifically denies the allegation in paragraph 65 of the Defence and Counterclaim. The defamation claim against Taylan is frivolous, vexatious, abusive, made in bad faith and intended prolong the proceeds unreasonably while the Plaintiffs by Counterclaim make themselves judgment proof or so that they can half-heartedly deliver utility in the time it takes for the matter to be resolved in an attempt to evade liability for fraud.
70. The Defendant by Counterclaim requests that the Counterclaim be dismissed with full costs and any other relief this Honourable Court deems just.

Dated this 8th of September, 2023.

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Taylan McRae-Yu
Plaintiff

Profitly Incorporated, et. al.,
Defendants

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

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SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

REPLY AND DEFENCE TO COUNTERCLAIM

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