

**UNITED STATES DISTRICT COURTS
SOUTHERN DISTRICT OF NEW YORK**

KD ENTERTAINMENT LLC

Plaintiff,

v.

STEEM MONSTERS CORP.

Defendant.

ANSWER

ECF CASE

Case No. 23-cv-2569

**DEFENDANT'S ANSWER WITH AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

Defendant, Steem Monsters Corp. d/b/a Splinterlands, by and through its undersigned counsel, Bull Blockchain Law LLP, respectfully submits its Answer with Affirmative Defenses to Plaintiff's Complaint, and in support thereof avers as follows:

GENERAL DENIAL

To the extent not expressly admitted herein, Defendant denies each allegation, express or implied, contained in Plaintiff's Complaint.

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore they are deemed DENIED.

2. The allegations of Paragraph 2 of the Complaint are DENIED.

3. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore they are deemed DENIED.

4. The allegations of Paragraph 4 of the Complaint are DENIED.

5. Paragraph 5 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

6. The allegations of Paragraph 6 of the Complaint are DENIED IN PART and ADMITTED IN PART. Defendant admits that, as of April 22, 2022, it duly executed the Agreement” for the primary purpose of licensing the name, image, and likeness of Floyd Mayweather, Jr. (“Mayweather”) in connection with marketing its digital playing card game. Defendant denies Plaintiff duly executed the Agreement because Plaintiff is an entity formed as of October 26, 2022, more than 6 months after the effective date of the Agreement.

7. The allegations of Paragraph 7 of the Complaint are ADMITTED.

8. The allegations of Paragraph 8 of the Complaint are DENIED.

9. The allegations of Paragraph 9 of the Complaint are DENIED.

10. The allegations of Paragraph 10 of the Complaint are ADMITTED. By way of further response, Plaintiff is not entitled to any payment under the Agreement.

FIRST CAUSE OF ACTION
(Specific Performance)

11. Defendant incorporates by reference the preceding responses to Plaintiff’s averments as if fully set forth herein.

12. Paragraph 12 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

13. Paragraph 13 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

14. Paragraph 14 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

15. Paragraph 15 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

16. Paragraph 16 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

WHEREFORE, Defendant respectfully requests that this Court enter Judgment in their favor and against Plaintiff and dismiss the First Cause of Action of the Complaint, and grant Defendant its reasonable costs and fees, including attorney fees, and any additional relief the Court finds appropriate.

SECOND CAUSE OF ACTION
(Breach of Contract)

17. Defendant incorporates by reference the preceding responses to Plaintiff's averments as if fully set forth herein.

18. Paragraph 18 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

19. Paragraph 19 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

20. Paragraph 20 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

21. Paragraph 21 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

22. Paragraph 22 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

23. Paragraph 23 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

WHEREFORE, Defendant respectfully requests that this Court enter Judgment in their favor and against Plaintiff and dismiss the Second Cause of Action of the Complaint, and grant Defendant its reasonable costs and fees, including attorney fees, and any additional relief the Court finds appropriate.

THIRD CAUSE OF ACTION
(Breach of Contract)

24. Defendant incorporates by reference the preceding responses to Plaintiff's averments as if fully set forth herein.

25. Paragraph 25 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

26. Paragraph 26 of the Complaint states conclusions of law for which strict proof will be demanded at trial. To the extent a response is required, these allegations are DENIED.

WHEREFORE, Defendant respectfully requests that this Court enter Judgment in their favor and against Plaintiff and dismiss the Third Cause of Action of the Complaint, and grant Defendant its reasonable costs and fees, including attorney fees, and any additional relief the Court finds appropriate.

**DEFENDANT'S FACTUAL ALLEGATIONS RELATED TO
DEFENDANT'S AFFIRMATIVE DEFENSES**

Defendant, Steem Monsters Corp. d/b/a Splinterlands, by and through its undersigned counsel, Bull Blockchain Law LLP, in support of its affirmative defenses to Plaintiff's complaint alleges the following:

27. Defendant is a corporation organized and existing under the laws of the state of Delaware. Defendant has its place of business at 24 Veterans Square, Media, Pennsylvania

19063.

28. Plaintiff is a limited liability company formed under the laws of the State of New Jersey on October 26, 2022, less than a week prior to filing the Complaint and more than 6 months after the effective date of the Agreement under which Plaintiff now seeks relief.

29. As of April 22, 2022, Defendant duly executed an agreement titled “License and Promotion Agreement” (the “Agreement”) for the primary purpose of licensing the name, image, and likeness of Floyd Mayweather, Jr. (the “Licensor”) in connection with marketing its digital playing card game offered under the name “Splinterlands.”

30. Specifically, the Defendant entered into the agreement with the expressed purpose of using Mr. Mayweather’s name, image and likeness in connection with the launch of a series of non-fungible tokens (“NFTs”) to be developed and sold by Defendant to promote the Splinterlands game.

31. Neither Plaintiff nor Defendant was ever bound under the Agreement because, unbeknownst to Defendant, Plaintiff was not a duly formed entity as of the date of the Agreement.

32. Shortly after the effective date of the Agreement, Defendant became aware of previously undisclosed material adverse information regarding Mr. Mayweather’s involvement in and promotion of a number of other failed NFT-related projects. This previously undisclosed information indicated that Mr. Mayweather had, among other things, potentially defrauded purchasers of NFTs with which he was associated, abandoned NFT projects after receiving payment without performing his obligations, and/or making damaging statements negatively impacting the value of NFTs with which he had been associated.

33. Indeed, after Defendant executed the Agreement and before either party

performed any work under the Agreement, Defendant learned that Mr. Mayweather had earned a severely negative reputation within the NFT community as celebrity engaged in “cash grabs” and “rug pulls” – scams in which the project founders hype the NFTs for a short period through certain promises and/or celebrity endorsement, sell the NFTs at a high price, and abandon the project without further development leaving the purchasers holding a near-worthless NFT.

34. Defendant learned of allegations that Plaintiff and/or Mayweather promoted several of such projects, including:

- a. Ethereum Max
- b. @RealFloydNFT
- c. Floyd NFT Mayweather
- d. Bored Bunny
- e. Metaskeltons

35. After executing the Agreement, Defendant also learned Floyd Mayweather settled charges with the SEC in connection with his receipt of \$300,000 to promote sales of CTR Tokens, a fraudulent “initial coin offering” or “ICO” in which Centra Tech Inc. offered and sold unregistered investment contracts.

36. Upon information and belief, Plaintiff and/or Mr. Mayweather has also authorized or permitted the use of Mayweather’s name, image, and/or likeness to promote one or more such projects during the term of the Agreement and in violation of the exclusivity provision of the Agreement that restricts Plaintiff from using, licensing, authorizing or permitting the use of Mr. Mayweather’s “name, likeness, and biographical materials in connection with the endorsement of any NFT sales in conjunction with a video game.”

37. Mr. Mayweather's misconduct has irreparably tarnished his reputation within the NFT community and rendered less than worthless the value of his name, likeness and image for promoting NFT projects.

38. Indeed, any association with Mr. Mayweather would cause irreparable harm to the stellar reputation and goodwill that Defendant has spent years earning from its users.

39. Plaintiff knew of these allegations of misconduct regarding Mr. Mayweather and their negative impact on Mr. Mayweather's reputation at the time it entered the Agreement and knew that the intellectual property rights it was purporting to license were tainted and of no to negative value to Defendants.

40. Plaintiff nonetheless intentionally failed to disclose this material information that went to the very essence of the parties' agreement – the value of Mr. Mayweather's name, image, and likeness to promote NFTs.

41. Defendant was fraudulently induced to enter in the Agreement based on Plaintiff's misrepresentations regarding the value of the license offered.

42. Defendant has repeatedly attempted to discuss these allegations with Plaintiff's representatives. Plaintiff's representatives have never denied any of Mr. Mayweather's alleged misconduct related to prior or existing NFT projects.

43. Because of the circumstances described above, Defendants are not able to receive any benefit from the agreement into which they were induced by Plaintiff. Defendant has not moved forward with any projects associated with Plaintiff or Mr. Mayweather and neither Plaintiff or Mr. Mayweather has performed any work or supplied any intellectual property pursuant to the agreement.

AFFIRMATIVE DEFENSES

First Affirmative Defense

44. Plaintiff's claims are barred for failure to state a claim upon which relief can be granted.

Second Affirmative Defense

45. Plaintiff's claims are barred by the doctrine of estoppel.

Third Affirmative Defense

46. Plaintiff's claims are barred by their inequitable conduct and unclean hands.

Fourth Affirmative Defense

47. Plaintiff's claims are barred by the statute of frauds.

Fifth Affirmative Defense

48. Plaintiff lacks standing and/or capacity to bring the claims alleged.

Sixth Affirmative Defense

49. Plaintiff's claims are barred or, in the alternative, Plaintiff's damages are the result of its own breach of fiduciary duty, breach of certain agreements, and failure to complete the performance required. Plaintiff materially breached its contractual obligations by violating the exclusivity provision of the agreement, violating the implied covenant of good faith and fair dealing, and fraudulently inducing Defendant to execute to the Agreement as described herein.

Seventh Affirmative Defense

50. Plaintiff's claims are barred for lack of damages, or damages are inconsequential and de minimis.

Eighth Affirmative Defense

51. Plaintiff's claims are barred by the doctrine of waiver.

Ninth Affirmative Defense

52. Plaintiff's claims are barred because Plaintiff failed to comply with its obligations under the agreement.

Tenth Affirmative Defense

53. Plaintiff's claims are barred because Defendant's performance was excused, and defendant would have performed its obligations under the contract but for Plaintiff's breach and interference with Defendant's ability to perform, to the extent that Defendant is found in breach of the contract.

Eleventh Affirmative Defense

54. Plaintiff's claims are barred because Plaintiff lacks capacity to maintain or defend an action in the courts of the State of New York because Plaintiff is unlicensed to do business in the State of New York.

Twelfth Affirmative Defense

55. Plaintiff's claims are barred because the purported contract is a fraud on Defendant.

Thirteenth Affirmative Defense

56. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot demonstrate that any conduct on the part of Defendant caused any of Plaintiff's alleged damages.

Fourteenth Affirmative Defense

57. Plaintiff's claims are barred by illegality in the formation and performance of

the agreement.

Fifteenth Affirmative Defense

58. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to perform one or more conditions precedent required under the contract.

Sixteenth Affirmative Defense

59. Plaintiff's claims are barred, in whole or in part, because Plaintiff acted unethically, unlawfully and/or in bad faith by unlawfully deceiving Defendant in the conduct of its business, trade or commerce.

Seventeenth Affirmative Defense

60. Plaintiff's claims are barred, in whole or in part, because performance of the contract has been rendered impossible and/or impractical and because the purpose of the contract has been frustrated so completely such that the basis of the contract is no longer viable.

Eighteenth Affirmative Defense

61. Plaintiff's claims are barred, in whole or in part, because a lack of consideration has rendered the contract unenforceable.

Nineteenth Affirmative Defense

62. Plaintiff's claims are barred, in whole or in part, because the contract is unenforceable as a result of mutual mistake.

Twentieth Affirmative Defense

63. Plaintiff's claims are barred, in whole or in part, because the contract is unenforceable as grossly unreasonable and/or unconscionable.

WHEREFORE, Defendant respectfully requests that this Court enter Judgment in their

favor and against Plaintiff and dismiss the Complaint, and grant Defendant its reasonable costs and fees, including attorney fees, and any additional relief the Court finds appropriate.

Dated: April 3, 2023

BULL BLOCKCHAIN LAW LLP

By: /s/ James Wines

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