

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

CHOOSECO LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:19-cv-00008-wks
	)	
NETFLIX, INC.,	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

Plaintiff Chooseco LLC (“Chooseco”), by and through its attorneys, Dinse P.C., complains against Netflix, Inc. (“Netflix”) as follows:

**Introduction**

This is an action for trademark infringement, unfair competition, false designation of origin, and dilution arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.*, as amended (the “Lanham Act”) and for unfair competition under the common law of the State of Vermont.

1. Chooseco has several federally registered trademarks that include the word mark CHOOSE YOUR OWN ADVENTURE. Netflix has no license or authorization to use any Chooseco trademark.

2. Chooseco’s popular and beloved CHOOSE YOUR OWN ADVENTURE brand began with a series of interactive books for young adults in which the reader acts as the story’s protagonist and makes choices that affect the narrative’s plot and outcome. The brand has expanded over the years to include related products and services, but Chooseco continues to print and sell thousands of CHOOSE YOUR OWN ADVENTURE books each year. Part of Chooseco’s marketing strategy includes appealing to adults now in their twenties, thirties, and

forties who remember the brand with pleasant nostalgia from their youth and then buy CHOOSE YOUR OWN ADVENTURE books for their own children.

3. On December 28, 2018, Netflix released a much-hyped, and—upon information and belief—widely viewed interactive film called *Black Mirror: Bandersnatch* on its digital streaming platform.<sup>1</sup> In the first few minutes of the movie, the protagonist refers to a fictional book in the diegesis as a “Choose Your Own Adventure” book. Netflix has no license or authorization to use Chooseco’s trademark and, upon information and belief, used the mark willfully and intentionally to capitalize on viewers’ nostalgia for the original book series from the 1980s and 1990s. The film’s dark and, at times, disturbing content dilutes the goodwill for and positive associations with Chooseco’s mark and tarnishes its products.

4. Netflix is infringing Chooseco’s valuable trademark. It is causing confusion, tarnishing, denigrating, and diluting the distinct quality of the CHOOSE YOUR OWN ADVENTURE mark.

5. Chooseco seeks damages and injunctive relief in this action.

#### **Parties**

6. Plaintiff Chooseco LLC is a Vermont limited liability company with a principal place of business in Waitsfield, Vermont.

7. Defendant Netflix, Inc. is a publically traded Delaware corporation with a principal place of business in Los Gatos, California.

#### **Jurisdiction and Venue**

8. This Court has subject matter jurisdiction over the claims alleged pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1338(a), 1338(b) and the principles of pendant jurisdiction.

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<sup>1</sup> This Complaint references the plot of the film to some extent and may contain spoilers.

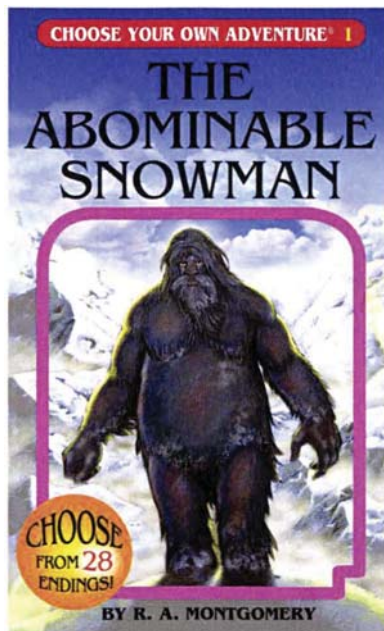
9. This Court has personal jurisdiction over Netflix because Netflix does business in this district. Specifically, Vermont residents subscribe to Netflix's streaming services and stream Netflix's content to their personal devices in this district. Netflix has offered and displayed the film *Bandersnatch: Black Mirror* throughout the district by streaming it to the personal devices of subscribers present in the district.

10. Venue is proper in this district under 28 U.S.C. § 1391.

### Facts

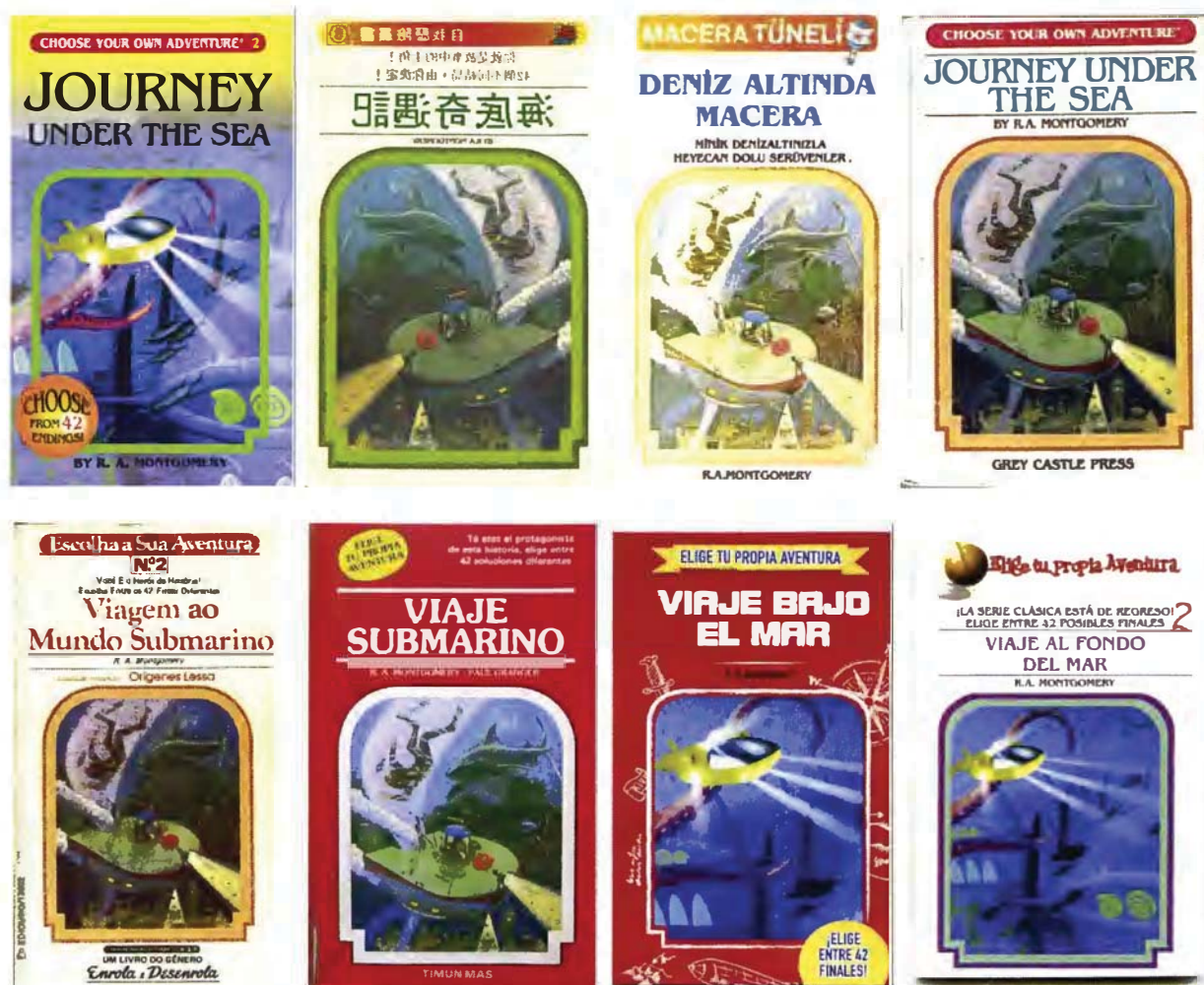
#### **I. Choose Your Own Adventure Books and Trademark**

11. Chooseco is the current publisher of the beloved and well-known series of CHOOSE YOUR OWN ADVENTURE books. Below is a sample image of the front cover of *The Abominable Snowman* by R. A. Montgomery.



12. The majority of the CHOOSE YOUR OWN ADVENTURE books now in print feature an illustration surrounded by a rounded color frame like the one in the sample image above on their covers. Historically, CHOOSE YOUR OWN ADVENTURE books included a

double frame with two separate colors surrounding the illustration. The rounded color frame, whether single or double, is an element of Chooseco's trade dress. Examples of a variety of covers for *Journey Under the Sea* over the years are copied below:



13. Each CHOOSE YOUR OWN ADVENTURE book is written in the second person. The reader acts as the story's protagonist and makes choices to determine the narrative's plot and ending. The reader is directed to a different page in the book depending on the choice he or she has made. There are multiple potential endings at various points that a reader may land on based on the choices he or she makes.

14. The series was widely read in the 1980s and 1990s, and book sales remain strong. Chooseco and its predecessors in interest have sold in excess of 265 million copies of CHOOSE YOUR OWN ADVENTURE books. Within the last year, Chooseco has printed more than 620,000 copies for distribution throughout the United States. In the last ten years, the CHOOSE YOUR OWN ADVENTURE series has also been licensed for translation and distribution in twenty-seven other countries. The target demographic of current readers is primarily children and young adults between seven and fourteen years old with reading levels of second through eighth grade.

15. When the CHOOSE YOUR OWN ADVENTURE books were originally published, the children reading them ranged from approximately seven to fourteen years old. Based on information available to Chooseco, children who read the series during its initial publication are now in their twenties, thirties, and forties. Chooseco has effectively focused on that audience and has used the hook of nostalgia to interest adults who read the books when they were young in buying CHOOSE YOUR OWN ADVENTURE books for their children.

16. Chooseco has registered the trademark CHOOSE YOUR OWN ADVENTURE in connection with books, movies, and other types of media. *See* Exhibit A, Reg. No. 2,913,403. It has numerous other federally registered trademarks and common law rights in its marks, as well as pending applications. Chooseco has assiduously built and developed the CHOOSE YOUR OWN ADVENTURE brand using its famous trademark not only for its books, but also for other entertainment services, including movies.

17. For example, Chooseco has licensed the mark for a tabletop board game that has sold over 150,000 units since its launch in June 2018, seven months ago.



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