

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CHOOSECO LLC,)
)
)
 Plaintiff/)
 Counterdefendant,)
)
 v.) Civil Action No. 2:19-cv-00008-WKS
)
)
 NETFLIX, INC.,)
)
)
 Defendant/)
 Counterclaimant.)
)

**DEFENDANT NETFLIX, INC.'S ANSWER,
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS**

Defendant Netflix, Inc. (“Netflix”), by and through its undersigned counsel, hereby responds to the Amended Complaint (the “Amended Complaint”) of Chooseco LLC (“Chooseco”) with the following Answer corresponding to the paragraphs set out in Chooseco’s Amended Complaint, including the headers used by Chooseco, and pleads the following Affirmative Defenses and Counterclaims:

Introduction

1. In response to Paragraph 1 of the Amended Complaint and the text appearing immediately before Paragraph 1, Netflix admits that (a) Chooseco has asserted claims under the Lanham Act and for unfair competition under the common law of the State of Vermont, (b) Chooseco has obtained a federal trademark registration for the word mark CHOOSE YOUR OWN ADVENTURE (the “Mark”), and (c) Chooseco has not entered into a license or authorization for Netflix to use the Mark. Netflix denies the remaining allegations of Paragraph 1 of the Amended Complaint and the text appearing immediately before Paragraph 1,

including without limitation any suggestion that Netflix would need any license or authorization from Chooseco in connection with the use at issue in this action or that the Mark is entitled to trademark protection.

2. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2 of the Amended Complaint and on that basis denies those allegations.

3. In response to Paragraph 3 and footnote 1 of the Amended Complaint, Netflix admits that (a) it released the film *Black Mirror: Bandersnatch* (“*Bandersnatch*”) on Netflix’s digital streaming platform on December 28, 2018; (b) early in the film, the film’s protagonist uses the words “Choose Your Own Adventure” with reference to a fictitious book he is reading, (c) Chooseco’s Amended Complaint discloses aspects of the plot of *Bandersnatch*; and (d) Chooseco has not entered into a license or authorization for Netflix to use the Mark. Netflix denies the remaining allegations of Paragraph 3 of the Amended Complaint, including without limitation any suggestion that Netflix would need any license or authorization from Chooseco in connection with the use at issue in this action or that the Mark is entitled to trademark protection.

4. Netflix denies the allegations of Paragraph 4 of the Amended Complaint.

5. Netflix admits that Chooseco is seeking damages and injunctive relief in this action, but denies that there is any basis for the award of any damages or the entry of any injunctive relief.

Parties

6. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 of the Amended Complaint and on that basis denies those allegations.

7. Netflix admits the allegations of Paragraph 7 of the Amended Complaint.

Jurisdiction and Venue

8. Paragraph 8 of the Amended Complaint states legal conclusions to which no response is required.

9. The first sentence of Paragraph 9 of the Amended Complaint states legal conclusions to which no response is required. In response to the allegations of the second and third sentences of Paragraph 9 of the Amended Complaint, Netflix admits that Vermont residents subscribe to Netflix's subscription-based digital video streaming service (the "Netflix Service"), which allows subscribers to access its library of movies and television programs (the "Content") upon paying a monthly subscription fee. Netflix denies the remaining allegations of Paragraph 9 of the Amended Complaint, including without limitation that Netflix separately offered or offers *Bandersnatch* other than as part of a subscription to the Netflix Service.

10. Paragraph 10 of the Amended Complaint states legal conclusions to which no response is required.

Facts

11. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11 of the Amended Complaint and on that basis denies those allegations.

12. Netflix denies that the rounded color frame, "whether single or double," described in Paragraph 12 of the Amended Complaint is an element of Chooseco's trade dress; that such rounded color frame is entitled to trademark or trade dress protection; and that any alleged foreign uses of such a rounded color frame, including without limitation as depicted in the images contained in Paragraph 12, would support a claim for infringement in the United States.

Netflix lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 12 of the Amended Complaint and on that basis denies those allegations.

13. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 13 of the Amended Complaint and on that basis denies those allegations.

14. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14 of the Amended Complaint and on that basis denies those allegations.

15. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 15 of the Amended Complaint and on that basis denies those allegations.

16. In response to the allegations of Paragraph 16 of the Amended Complaint, Netflix admits that Chooseco has obtained a federal trademark registration for the Mark in connection with books, movies, and other types of media, but denies that the Mark is entitled to trademark protection. Netflix lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 16 of the Amended Complaint and on that basis denies those allegations.

17. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17 of the Amended Complaint and on that basis denies those allegations.

18. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 of the Amended Complaint and on that basis denies those allegations.

19. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19 of the Amended Complaint and on that basis denies those allegations.

20. Netflix lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of the Amended Complaint and on that basis denies those allegations.

21. In response to the allegations of Paragraph 21 of the Amended Complaint, Netflix admits that, in or around 2016, Netflix engaged in discussions with Chooseco about a potential project that would have (a) used Chooseco's content; (b) included licensing use of the Mark in connection with that project; and (c) involved branding and advertising the completed project with the Mark. Netflix denies the remaining allegations in Paragraph 21 of the Amended Complaint, including without limitation any suggestion that those discussions were in any way associated with *Bandersnatch* or that Netflix would need any license or authorization from Chooseco in connection with the use at issue in this action.

22. Netflix admits the allegations of Paragraph 22 of the Amended Complaint.

23. In response to the allegations of Paragraph 23 of the Amended Complaint, Netflix admits that (a) Netflix operates the Netflix Service; (b) the Netflix Service includes the Content; and (c) subscribers to the Netflix Service can access the Content through personal devices, such as televisions, computers and smartphones. Netflix denies the remaining allegations in Paragraph 23 of the Amended Complaint.

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