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10 *Attorneys for Defendants and Counterclaim Plaintiffs Netflix US, LLC; Netflix Studios,*  
11 *LLC; Netflix CPX, LLC; and Netflix CPX International B.V.*

12  
13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 Evil Genius Games, Inc.,

16 Plaintiff,

17 v.

18 Netflix CPX, LLC; Netflix CPX  
19 International B.V.,

20 Defendants.

21 Netflix CPX, LLC; Netflix CPX  
22 International B.V.; Netflix US, LLC; Netflix  
23 Studios, LLC,

24 Counterclaim Plaintiffs,

25 v.

26 Evil Genius Games, Inc.,

27 Counterclaim Defendant.  
28

Case No.: 2:23-cv-08117-MCS-RAO

**ANSWER OF NETFLIX CPX, LLC  
AND NETFLIX CPX  
INTERNATIONAL B.V. TO EVIL  
GENIUS'S COMPLAINT**

**JURY TRIAL DEMANDED**

*[Counterclaims Filed Concurrently  
Herewith]*

1 Defendants Netflix CPX, LLC and Netflix CPX International B.V. (together,  
2 “Defendants” or “Netflix”) hereby provide their answer (“Answer”) to the complaint  
3 (“Complaint”) of Plaintiff Evil Genius, Inc. (“Plaintiff” or “Evil Genius”). Netflix denies  
4 all allegations and characterizations in Evil Genius’s Complaint unless expressly admitted  
5 in the following paragraphs.

6 **INTRODUCTION<sup>1</sup>**

7 1. Netflix admits that it contends Evil Genius breached the parties’ Overall  
8 Merchandising License Agreement (“Agreement”). Netflix admits Evil Genius has filed  
9 this action. Netflix denies the remaining allegations and characterizations in paragraph 1.

10 **PARTIES AND VENUE**

11 2. Netflix admits Evil Genius is a Delaware corporation with its principal place  
12 of business in San Mateo, California. Netflix is without knowledge or information  
13 sufficient to form a belief as to the truth of the remaining allegations and characterizations  
14 in paragraph 2, and therefore denies them.

15 3. Netflix admits Netflix CPX, LLC is a Delaware limited liability company with  
16 its principal place of business located at 5808 West Sunset Boulevard, Los Angeles,  
17 California 90028.

18 4. Netflix admits Netflix CPX International B.V. is an entity organized under the  
19 laws of the Netherlands with its principal place of business located at Karperstraat 10, 1075  
20 KZ Amsterdam, the Netherlands.

21 5. Netflix is without knowledge or information sufficient to form a belief as to  
22 the truth of the allegations in paragraph 5, and therefore denies them.

23 6. Netflix denies the allegations in paragraph 6.

24 \_\_\_\_\_  
25 <sup>1</sup> Each paragraph of this Answer corresponds to the same numbered paragraph in Plaintiff’s  
26 Complaint. The headings in this Answer also mirror the headings used in Plaintiff’s  
27 Complaint and are reproduced for convenience, but do not constitute an admission of any  
28 kind by Netflix.

**JURISDICTION AND VENUE**

1  
2 7. Netflix denies this Court has subject-matter jurisdiction over Evil Genius’s  
3 claims as pled in the Complaint under 28 U.S.C. §§ 1331, 1332, and/or 1338, but admits  
4 that this Court does have jurisdiction over those claims to the extent they are construed as  
5 counterclaims to Netflix’s counterclaims, filed contemporaneously herewith.<sup>2</sup>

6 8. Netflix admits that venue is proper in this Court.

**GENERAL ALLEGATIONS**

***Rebel Moon***

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8  
9 9. Netflix admits Zack Snyder is a successful filmmaker, who has directed or  
10 produced the films listed in paragraph 9. Netflix is without knowledge or information  
11 sufficient to form a belief as to the truth of the remainder of the allegations and  
12 characterizations in paragraph 9, and Netflix therefore denies them.

13 10. Netflix is without knowledge or information sufficient to form a belief as to  
14 the truth of the allegations in paragraph 10, and Netflix therefore denies them.

15 11. Netflix is without knowledge or information sufficient to form a belief as to  
16 the truth of the allegations in paragraph 11, and Netflix therefore denies them.

17  
18 <sup>2</sup> The Court typically would not have subject-matter jurisdiction over Evil Genius’s claims  
19 as pleaded in the Complaint—because (1) they do not seek a remedy expressly granted by  
20 the Copyright Act or require an interpretation of the Copyright Act, *see Scholastic Ent.,*  
21 *Inc. v. Fox Ent. Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003), *Amaru Ent., Inc. v. Heritage*  
22 *Cap. Corp.*, 2022 U.S. Dist. LEXIS 132046, at \*3 (C.D. Cal. June 22, 2022) (Scarsi, J.),  
23 (2) they do not otherwise assert a claim arising under federal law, and (3) they are not  
24 among completely diverse parties. However, the Court does have jurisdiction over Evil  
25 Genius’s claims to the extent they are construed as counterclaims to Netflix’s  
26 counterclaims filed contemporaneously herewith, which arise under the Court’s federal  
27 question and supplemental jurisdiction. *See Great Lakes Rubber Corp. v. Herbert Cooper*  
28 *Co.*, 286 F.2d 631, 634 (3d Cir. 1961) (where the court lacks subject-matter jurisdiction  
over plaintiff’s claims as pleaded in the complaint, the district court may exercise subject-  
matter jurisdiction over defendant’s counterclaims with independent jurisdictional basis  
and further exercise supplemental jurisdiction over plaintiff’s claims as counterclaims to  
defendant’s counterclaims); *Wong v. Bacon*, 445 F. Supp. 1177, 1184, 1188-89 & n.8 (N.D.  
Cal. 1977) (same); *see also* First Defense, ¶ 63, *infra*.



1 completed or substantially completed filming for those films. Netflix denies the remainder  
2 of the allegations and characterizations in paragraph 19.

3 20. Netflix denies the allegations in paragraph 20.

4 21. To the extent paragraph 21 purports to quote from a podcast episode, Netflix  
5 responds that the podcast speaks for itself and denies Plaintiff’s characterizations thereof.  
6 Netflix is without knowledge or information sufficient to form a belief as to the truth of the  
7 remainder of the allegations and characterizations in paragraph 21, and Netflix therefore  
8 denies them.

9 22. Netflix is without knowledge or information sufficient to form a belief as to  
10 the truth of the allegations in paragraph 22, and Netflix therefore denies them.

11 23. Netflix admits the Agreement’s Schedule A states: “Licensee shall ensure  
12 that Licensed Article(s) are available for initial sale to the general public (or end  
13 consumers) throughout the Licensed Territory no earlier than December 1, 2023 and no  
14 later than January 31, 2024, or according to such other schedule as pre-approved by  
15 Licensor in writing.” Otherwise, Netflix is without knowledge or information sufficient to  
16 form a belief as to the truth of the remainder of the allegations and characterizations in  
17 paragraph 23, and Netflix therefore denies them.

18 24. Netflix admits Evil Genius paid Netflix \$7,500.00 in advances pursuant to the  
19 Agreement. Netflix is without knowledge or information sufficient to form a belief as to  
20 the truth of the remainder of the allegations and characterizations in paragraph 24, and  
21 Netflix therefore denies them.

22 ***The Alleged Breach***

23 25. Netflix admits it terminated the Agreement by notice dated May 25, 2023.  
24 Netflix admits it terminated the Agreement for reasons that include Evil Genius’s breach  
25 of the Agreement’s confidentiality provisions. Netflix denies the remainder of the  
26 allegations and characterizations in paragraph 25.

27 26. Netflix admits that on February 13, 2023, it discussed with Evil Genius  
28 representatives a potential presentation concerning the *Rebel Moon*-themed tabletop

1 roleplaying game at the Game Manufacturers Association (“GAMA”) Expo in Reno,  
2 Nevada. Netflix denies the remainder of the allegations and characterizations in  
3 paragraph 26.

4 27. To the extent paragraph 27 implicates legal conclusions regarding Evil  
5 Genius’s purported “compliance with the Agreement,” no response is required; to the  
6 extent a response is required, Netflix responds that the Agreement speaks for itself, and  
7 denies Plaintiff’s characterizations thereof. Netflix further denies it agreed to disclose the  
8 artwork referenced in paragraph 27. Otherwise, Netflix is without knowledge or  
9 information sufficient to form a belief as to the truth of the remainder of the allegations  
10 and characterizations in paragraph 27, and Netflix therefore denies them.

11 28. Netflix denies any implication in paragraph 28 that it approved of the  
12 distribution and/or dissemination of artwork that had not been approved in the manner  
13 required by the Agreement, or that it had approved of any game pre-sales being offered at  
14 the GAMA Expo. Otherwise, Netflix is without knowledge or information sufficient to  
15 form a belief as to the truth of the remainder of the allegations and characterizations in  
16 paragraph 28—in part because the allegations and terms used therein are vague and  
17 ambiguous—and Netflix therefore denies them.

18 29. To the extent paragraph 29 refers to a podcast appearance by Mr. Snyder dated  
19 March 19, 2023, the podcast speaks for itself, and Netflix denies Plaintiff’s  
20 characterizations thereof. Netflix denies the remainder of the allegations in paragraph 29.

21 30. Netflix admits that it terminated the parties’ Agreement by notice dated May  
22 25, 2023 for Evil Genius’s “multiple material breaches of the Agreement,” including  
23 breach of the confidentiality provisions. To the extent paragraph 30 purports to refer to the  
24 contents of a letter sent by Netflix dated May 25, 2023, Netflix responds that the letter  
25 speaks for itself and denies Plaintiff’s characterizations thereof.

26 31. To the extent paragraph 31 purports to refer to the contents of a letter sent by  
27 Netflix dated June 9, 2023, Netflix responds that the letter speaks for itself and denies  
28

1 Plaintiff's characterizations thereof. Netflix denies the remainder of the allegations and  
2 characterizations in paragraph 31.

3 32. To the extent paragraph 32 purports to refer to the contents of a written  
4 communication by Netflix, Netflix responds that the communication speaks for itself and  
5 denies Plaintiff's characterizations thereof. Netflix denies the remainder of the allegations  
6 and characterizations in paragraph 32.

7 33. Netflix admits that in confidential and inadmissible settlement negotiations, it  
8 in good faith offered Evil Genius a sum in the amount of \$50,000.00. Netflix denies the  
9 remainder of the allegations and characterizations in paragraph 33.

10 34. Netflix admits that it attempted to resolve this dispute before commencement  
11 of any litigation, but denies that Evil Genius tried to resolve the dispute "amicably" in light  
12 of its failure to engage in meaningful discussions. To the extent paragraph 34 implicates  
13 legal conclusions, no response is required; to the extent a response is required, Netflix is  
14 without knowledge or information sufficient to form a belief as to the truth of the remainder  
15 of the allegations and characterizations in paragraph 34, and Netflix therefore denies them.

16 **FIRST CAUSE OF ACTION**

17 **Breach of Contract**

18 **(Plaintiff against All Defendants)**

19 35. The foregoing paragraphs of Netflix's Answer are incorporated by reference  
20 as if set forth in full herein; Netflix repeats and incorporates its Answer to the foregoing  
21 paragraphs.

22 36. Netflix admits the allegations in paragraph 36.

23 37. Netflix admits the allegations in paragraph 37.

24 38. Netflix denies the allegations in paragraph 38.

25 39. Netflix denies the allegations in paragraph 39.

26 40. Netflix admits that *Rebel Moon* is a new franchise. Netflix denies the  
27 remainder of the allegations and characterizations in paragraph 40.

28 41. Netflix denies the allegations in paragraph 41.

1 42. Netflix denies the allegations in paragraph 42.

2 **SECOND CAUSE OF ACTION**

3 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

4 **(Plaintiff against All Defendants)**

5 43. The foregoing paragraphs of Netflix’s Answer are incorporated by reference  
6 as if set forth in full herein; Netflix repeats and incorporates its Answer to the foregoing  
7 paragraphs.

8 44. To the extent paragraph 44 implicates purely legal conclusions, no response  
9 is required.

10 45. Netflix admits the allegations in paragraph 45.

11 46. Netflix denies the allegations in paragraph 46.

12 47. Netflix denies the allegations in paragraph 47.

13 48. Netflix denies the allegations in paragraph 48.

14 **THIRD CAUSE OF ACTION**

15 **Quantum Meruit**

16 **(Plaintiff against All Defendants)**

17 49. The foregoing paragraphs of Netflix’s Answer are incorporated by reference  
18 as if set forth in full herein; Netflix repeats and incorporates its Answer to the foregoing  
19 paragraphs.

20 50. Netflix denies the allegations in paragraph 50.

21 51. Netflix denies that it requested the referenced “services.” Otherwise, Netflix  
22 is without knowledge or information sufficient to form a belief as to the truth of the  
23 remainder of the allegations and characterizations in paragraph 51, and Netflix therefore  
24 denies them.

25 52. Netflix admits it terminated the Agreement in part on the basis of Evil  
26 Genius’s breach of the Agreement’s confidentiality provisions. Netflix denies the  
27 remainder of the allegations and characterizations in paragraph 52.

28 53. Netflix denies the allegations in paragraph 53.

**FOURTH CAUSE OF ACTION**

**Unjust Enrichment**

**(Plaintiff against All Defendants)**

54. The foregoing paragraphs of Netflix’s Answer are incorporated by reference as if set forth in full herein; Netflix repeats and incorporates its Answer to the foregoing paragraphs.

55. Netflix admits the allegations in paragraph 55.

56. Netflix denies that it “intended that Plaintiff would benefit from the Agreement” other than as set forth in the Agreement, which speaks for itself. Otherwise, Netflix is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations and characterizations in paragraph 56, and Netflix therefore denies them.

57. Netflix denies the allegations in paragraph 57.

58. Netflix denies the allegations in paragraph 58.

59. Netflix denies the allegations in paragraph 59.

**FIFTH CAUSE OF ACTION**

**Declaratory Relief**

**(Plaintiff against All Defendants)**

60. The foregoing paragraphs of Netflix’s Answer are incorporated by reference as if set forth in full herein; Netflix repeats and incorporates its Answer to the foregoing paragraphs.

61. Netflix admits that a dispute has arisen between the parties as to the ownership of the *Rebel Moon* Bible, Player’s Handbook, and Game Master’s Guide.<sup>3</sup> Netflix admits that it contends that Netflix or certain Netflix affiliates own these works for all of the reasons stated in its concurrently-filed counterclaims. Netflix admits that Evil Genius has

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<sup>3</sup> To the extent Evil Genius uses “Player’s Guide” to refer to a document other than the “Player’s Handbook,” Netflix also admits that a dispute has arisen as to the Player’s Guide.

1 made the contentions identified in paragraph 61. Otherwise, Netflix is without knowledge  
2 or information sufficient to form a belief as to the truth of the remainder of the allegations  
3 and characterizations in paragraph 61, and Netflix therefore denies them.

4 62. Netflix admits that a judicial declaration is necessary and appropriate at this  
5 time, for the reasons explained in its concurrently-filed counterclaims. Netflix denies the  
6 remainder of the allegations in paragraph 62, including that Evil Genius is entitled to “a  
7 declaration that it owns all right, title, and interest to any original works of authorship  
8 created by Plaintiff in connection with the Licensed Property.”

9 **EVIL GENIUS’S PRAYER FOR RELIEF**

10 The section of the Complaint titled “Prayer for Relief” sets forth the statement of  
11 relief requested by Evil Genius to which no response is required. Netflix denies that Evil  
12 Genius is entitled to any relief sought in its Prayer for Relief or otherwise.

13 **DEFENSES**

14 Pursuant to Federal Rule of Civil Procedure 12(b), Netflix, without waiver,  
15 limitation, or prejudice, hereby asserts the following defenses:

16 **FIRST DEFENSE**

17 **Lack of Subject-Matter Jurisdiction**

18 63. The Court lacks subject-matter jurisdiction over Evil Genius’s claims as  
19 pleaded in the Complaint, unless for jurisdictional purposes only Evil Genius’s claims are  
20 construed as counterclaims to Netflix’s counterclaims filed concurrently herewith. To the  
21 extent Evil Genius’s claims are construed as counterclaims to Netflix’s counterclaims,  
22 Netflix concedes the Court has supplemental jurisdiction over Evil Genius’s claims under  
23 28 U.S.C. § 1367.

24 **SECOND DEFENSE**

25 **Failure to State a Claim**

26 64. Evil Genius’s Complaint fails to state a claim upon which relief may be  
27 granted.

**AFFIRMATIVE DEFENSES**

Pursuant to Federal Rule of Civil Procedure 8(c), Netflix, without waiver, limitation, or prejudice, hereby asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**Breach of Contract by Evil Genius (Failure of Consideration)**

65. The Agreement is a contract between Netflix and Evil Genius.

66. Netflix has complied fully with the terms and conditions of the Agreement and fulfilled each obligation on its part to be performed, except for those obligations that have been excused or waived.

67. Evil Genius materially breached the Agreement in a number of respects, as described more fully in Netflix’s concurrently-filed counterclaims.

68. Evil Genius’s breaches, individually and/or collectively, constituted a failure of consideration sufficient to excuse Netflix’s purported nonperformance of obligations under the Agreement.

**SECOND AFFIRMATIVE DEFENSE**

**Waiver**

69. Evil Genius waived its right to claim Netflix breached the Agreement, including any purported breaches premised on the allegation that Netflix “fail[ed] to deliver the Licensed Property pursuant to Section 1 and Schedule A of the Agreement,” as alleged in the Complaint.

**THIRD AFFIRMATIVE DEFENSE**

**Unjust Enrichment**

70. Evil Genius’s claims for relief are barred under the doctrine of unjust enrichment.

**FOURTH AFFIRMATIVE DEFENSE**

**Unclean Hands**

71. Evil Genius’s claims for relief are barred under the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

**Laches**

72. Evil Genius’s claims for relief are barred under the doctrine of laches.

**RESERVATION OF AFFIRMATIVE DEFENSES**

73. Netflix hereby gives notice that it intends to rely upon any other matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Federal Rules of Civil Procedure, and that it reserves the right to seek leave to amend this Answer to add to, amend, withdraw, or modify these defenses as its investigation continues and as discovery may require.

**NETFLIX’S PRAYER FOR RELIEF**

WHEREFORE, Netflix prays as follows:

- A. That Evil Genius take nothing by reason of its Complaint, and that judgment be rendered in favor of Netflix;
- B. That Netflix be awarded its costs of suit incurred in defense of this action; and
- C. For such other relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Netflix hereby demands a jury trial for all issues so triable.

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1 Dated: November 1, 2023

Respectfully submitted,

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