

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

STARFALL EDUCATION FOUNDATION

Plaintiff

v.

LEVEL INFINITE Pte Ltd and PROXIMA BETA Pte
Ltd

Defendants.

COMPLAINT

Plaintiff Starfall Education Foundation (“Starfall”), by and through its attorneys, Hutchinson Black and Cook, LLC, and Melkonian & Co., for its Complaint against Level Infinite Pte Ltd and Proxima Beta Pte Ltd (collectively “Level Infinite”), alleges as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. Guns, shooters and violence are common in computer games that children play. Unfortunately, violence in games and media has been proven to be a major factor contributing to aggressive behavior. Running against this tide, Starfall, a nonprofit corporation based in Boulder, Colorado, has built an e-learning curriculum featuring non-violent, fun, and educational computer games and activities that are enjoyed by millions of children in the United States.

Starfall is well-known to children, young adults, parents, and educators, and it has registered and common law trademarks in the United States (collectively, the “STARFALL Mark”).¹ The STARFALL Mark stands for educational entertainment with consistent themes of equality, respect, and anti-bullying.

2. Now Level Infinite, a foreign company whose parent company is currently listed by the United States Department of Defense as a Chinese military business, has started using the STARFALL Mark to promote violent computer games with people using assault rifles to blast and kill other people. By doing so, Level Infinite hijacks the good will and name recognition that has taken Starfall a quarter century and many millions of dollars of investment to achieve. Furthermore, Level Infinite collects personal data from children and places it under the control of a foreign entity. For purely monetary gain, and if left unchecked, Level Infinite will undermine Starfall’s highly esteemed name and reputation and overwhelm the market with goods and services over which Starfall has no control. Parents and children have come to rely on Starfall as a safe place and Level Infinite’s use of the STARFALL Mark to promote violent games and its failure to adequately protect children’s privacy are objectionable to many parents. To prevent permanent injury, this action for trademark infringement and unfair competition has been initiated.

3. For more than 20 years, Starfall’s website, apps, and other products have been used in schools, homes, and other learning environments throughout the United States. Key to its success has been Starfall’s commitment to publish entertaining games and other content that not only engages children but promotes prosocial behaviors, as such behaviors make educators’ jobs easier and help children learn better.

¹ While, as noted above, Starfall has numerous registered and United States common law marks incorporating STARFALL, for simplicity, it will refer to all of its marks as the STARFALL Mark in its Complaint.

4. Starfall's focus on a true positive learning environment has earned it widespread praise and recognition: Starfall has received numerous awards and been recognized by well-known and respected publications, including *Parents* magazine, *Time Magazine*, *Disney's Family Fun*, *homeschool.com*, and more. Starfall's Starfall® apps have been downloaded tens of millions of times. And Starfall's Starfall® educational activities are played many hundreds of millions of times each year. Starfall has thus built a successful brand and reputation for providing safe environment that parents and educators can confidently give to children, knowing that they will be safe without exposure to the violence that permeates modern computer games and other entertainment.

5. Level Infinite is a massive, international gaming organization that is based in Singapore but operates all over the world. Instead of developing or licensing its own trademark, on or before January 13, 2025, Level Infinite started using the STARFALL Mark to promote its services, including LEVEL INFINITE PASS, a one-stop system to allow players to log into multiple games across multiple platforms and unify Level Infinite games' accounts. Level Infinite subsequently released a game that featured the STARFALL Mark. Level Infinite did so, despite, on information and belief, knowing of Starfall and its well-known children's brand. In doing so, Level Infinite has misappropriated Starfall's very popular brand to target and attract children in the United States, including in Colorado. This will benefit Level Infinite. Relevant consumers, particularly children, will believe that there is a relationship of source, sponsorship, and/or affiliation between Starfall (on the one hand) and Level Infinite and the products and services it markets (on the other hand).

6. Level Infinite's actions will grievously harm the reputation of Starfall as a provider of child-safe products and services. And, given Level Infinite's resources and size, it is

likely to swamp the market and drastically reduce the ability of Starfall's distinctive STARFALL Mark to act as a unique source identifier. In adopting and using the STARFALL Mark to promote its services, Level Infinite is misleading consumers in violation of Starfall's trademark rights under United States federal and state law. And, by knowingly or recklessly interfering with the ability of children to identify the safe and positive Starfall® brand, Level Infinite is violating the Colorado Consumer Protection Act.

7. On February 5, 2025, Starfall's counsel wrote to Level Infinite to express Starfall's concerns about Level Infinite's use of the STARFALL Mark, to invite dialogue, and to request that it immediately cease and desist use of the STARFALL Mark.

8. Starfall files this lawsuit seeking legal as well as equitable relief for the harm it has suffered and will increasingly suffer as a result of Level Infinite's activities unless redressed by this Court. Starfall therefore asserts claims against Level Infinite for infringement of a federally registered trademark in violation of 15 U.S.C. § 1114 (Count I); unfair competition in violation of 15 U.S.C. § 1125(a) (Count II); deceptive trade practices in the course of business that have a significant impact on the public in violation of the Colorado Consumer Protection Act ("CCPA"), C.R.S. §§ 6-1-101, 105 (Count III); and American common law trademark infringement (Count IV).

PARTIES

9. Plaintiff Starfall is a Colorado nonprofit corporation with its principal place of business in Boulder, Colorado. Starfall is the owner of the STARFALL Mark and the maker of numerous computer games, and other products for children. Its predecessor in interest was Pencil, LLC.

10. Defendants Level Infinite Pte Ltd and Proxima Beta Pte Ltd are Singaporean registered entities with their principal office located at the same address in the Republic of

Singapore.

11. Defendants are presently using the STARFALL Mark in commerce, including in Colorado.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. § 1331 in that this case arises under the trademark laws of the United States, 15 U.S.C. §§ 1051 *et seq.* This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Starfall's related state and U.S. common law claims.

13. This Court has personal jurisdiction over Level Infinite and venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because, *inter alia*, Level Infinite markets its services using the STARFALL Mark in this District and thus a significant part of the events giving rise to Starfall's claims occurred in this District.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

A. Starfall's Award-Winning, Child-Friendly Computer Games and Content

14. Starfall was founded by Dr. Stephen Schutz. As a child with dyslexia, Dr. Schutz had trouble learning to read and, in fact, could not read until well into grade school. While he overcame his difficulties and went on to earn a doctorate degree in theoretical physics from Princeton University, Dr. Schutz never forgot his childhood struggle.

15. Dr. Schutz was motivated as an adult to create a fun learning platform to help children of all ages, including those with special needs or learning difficulties, to learn how to read. Dr. Schutz envisioned untimed, multisensory interactive games that allowed children to see, hear, and touch as they learn. Hence, Starfall was born.

16. To craft its learning activities in the most effective way possible, the Starfall team spent two years researching and working with teachers and in classrooms to develop

activities and content that “feel like play” and that most effectively engage children in the learning process while still aligning with state learning objectives. In 2002, Starfall launched its starfall.com website—an environment “Where Children Have Fun Learning to Read™.” At significant cost to itself, Starfall offered its website to the public for free, at www.starfall.com. The Starfall website opened with 15 interactive books, 14 games, and 5 movies and prominently displayed the STARFALL Mark. Starfall also offered free children’s writing journals, which bore the STARFALL Mark.

17. While Starfall began as a service to teach children to read, it has expanded greatly. It has added more games, movies, and other activities and covers language arts and mathematics for preschool through fifth grade and beyond. Starfall also expanded its product offerings to include apps for both Apple and Android devices. Starfall continues to offer a great deal of its content for free for children and educators.

18. For this reason and as explained in more detail below, Starfall has proudly and consistently developed engaging, entertaining, educational, and interactive content that is not only free from violence and aggression but promotes kindness and antibullying, where parents can be assured that children are learning in a safe learning environment. As a result of its efforts, Starfall has become a well-known resource used by many schools, homeschools, and parents throughout the United States.

B Starfall’s Distinctive STARFALL Mark

19. Since its launch in 2002, Starfall has continuously used the STARFALL Mark and STARFALL-formative word and design marks in connection with its computer games, products, and services. Starfall has used starfall.com as its domain and has prominently displayed the STARFALL Mark on its products and services.

20. And it continues to do so through today. For example, the images below show the STARFALL Mark at the top of webpages on the starfall.com website, as they are presently and as they have been for many years:



21. The STARFALL Mark is strong—both inherently and commercially. And, as a result of Starfall’s consistent, longstanding, and widespread use, the STARFALL Mark has gained recognition among relevant audiences who understand this mark to denote safe, non-violent, non-aggressive content suitable for showing to children both in and out of the classroom.

22. In addition to common law rights that it obtained in the United States via its widespread and continuous use of the STARFALL Mark, Starfall owns multiple federal trademark registrations for STARFALL alone or in connection with other words or symbols. These include United States Trademark Registration Nos. 3,135,747; 2,850,793; 5,323,690; 3,222,651; 3,183,399; 2,883,345; 3,211,484; 3,173,857; 3,218,017; 2,771,770; 7,443,180; 7,443,182; and 7,563,958. Copies of these registrations are attached as **Exhibits 1 to 13**.

23. Starfall also owns six pending U.S. federal trademark applications for STARFALL, copies of which are attached as **Exhibits 14 to 19**.

24. The STARFALL Marks are valid and enforceable, and certain of them have attained incontestable status. These registrations constitute *prima facie* evidence of Starfall's ownership of and exclusive rights to use the STARFALL Mark in connection with the goods and services recited in the registrations, including games, movies, books, and music.

25. Starfall is the only owner of a live registered trademark that includes the word "starfall" on the principal register of trademarks at the United States Patent and Trademark Office ("PTO").

C. Starfall's Strong Reputation and Goodwill Among Parents, Educators, and Children

26. The STARFALL Mark has become well known and strongly associated with Starfall's products and services. For many years, Starfall has stated on its website that "Starfall® and Starfall.com® are registered trademarks in the U.S."

27. From 2016 to February 29, 2024, Starfall apps have been downloaded more than 52 million times in the United States from app stores. In the calendar year 2023 alone, Starfall recorded counts of over 1.2 billion activities accessed in the United States with over 45% completed. These activities include Starfall games, movies, and other interactive content. Further,

this substantially undercounts the total consumer activity because this number does not include activities accessed through Starfall standalone apps. Standalone apps do not connect to Starfall's servers, and consequently counts are not recorded.

28. Not only are the Starfall-branded products widely used, but Starfall has also received numerous awards and recognition from notable sources. For example, in 2004, Starfall's website was the first website to be rated "highest" in the Early Elementary category by *Children's Software & New Media Revue*. And in 2005, Starfall was named one of *The Reading Teacher's* "Five Internet Sites Too Good to Miss."

29. In 2010, Disney's *Family Fun* magazine, now part of the *Parents* magazine group, listed Starfall as a "well-loved" favorite website alongside PBS. That same year, *The Wall Street Journal* also recognized Starfall's website.

30. In 2011, *Time* Magazine listed Starfall among its "50 Websites that Make the Web Great."

31. In 2014, Starfall was listed in *Parents* Magazine's "70 Best Apps for Families."

32. In 2023, *Android Police* named the Starfall app among the 20 best games for children, which *Android Police* touted by saying that "[n]ot only will your kids have fun with these games, but you'll also get some quiet time." Also in 2023, Starfall earned the *Secular Homeschool* Award for Best Preschool Curriculum.

33. Starfall is also referenced in countless research studies, articles, blogs, and other unsolicited media.

D Level Infinite's Computer Games

34. On information and belief, Level Infinite is a game publishing brand that publishes a variety of games, including violent games with multiplayer gameplay.

35. Level Infinite has a history of featuring aggressive activities in its computer games. For example, many of Level Infinite's computer games involve shooting, wounding, and killing, sometimes directed against individuals.

36. A trademark search conducted prior to Level Infinite's infringing uses of the STARFALL Mark would have listed Starfall's registrations.

37. On information and belief, Level Infinite uses the STARFALL Mark to promote LEVEL INFINITE PASS, a universal, one-stop system to allow players to log into multiple games across multiple platforms and unify Level Infinite games' accounts.

38. On information and belief, on or before January 13, 2025, Level Infinite started using the STARFALL Mark to entice individuals, including children, to register for the LEVEL INFINITE PASS, thereby collecting private information, including email addresses, and assigning a personal ID to these individuals.

39. On information and belief, on January 18, 2025, Level Infinite publicly released the Delta Force game which included the STARFALL Mark.

40. On information and belief, Level Infinite conducted market research on the popularity of the STARFALL Mark prior to using it.

41. There are numerous computer games offered by Level Infinite. The games are individualized through separate trademarks and Level Infinite has registered or applied to register some of these trademarks in the United States Patent and Trademark Office ("USPTO"). Significantly, on Jan. 30, 2024, Proxima Beta applied to the USPTO for registration of DELTA FORCE HAWK OPS for a long list of goods and services including downloadable computer and video games. On information and belief, Level Infinite has not attempted to register any mark containing the word "starfall" because it knew that such use would be viewed as an infringing

use of a registered mark for the same goods and services.

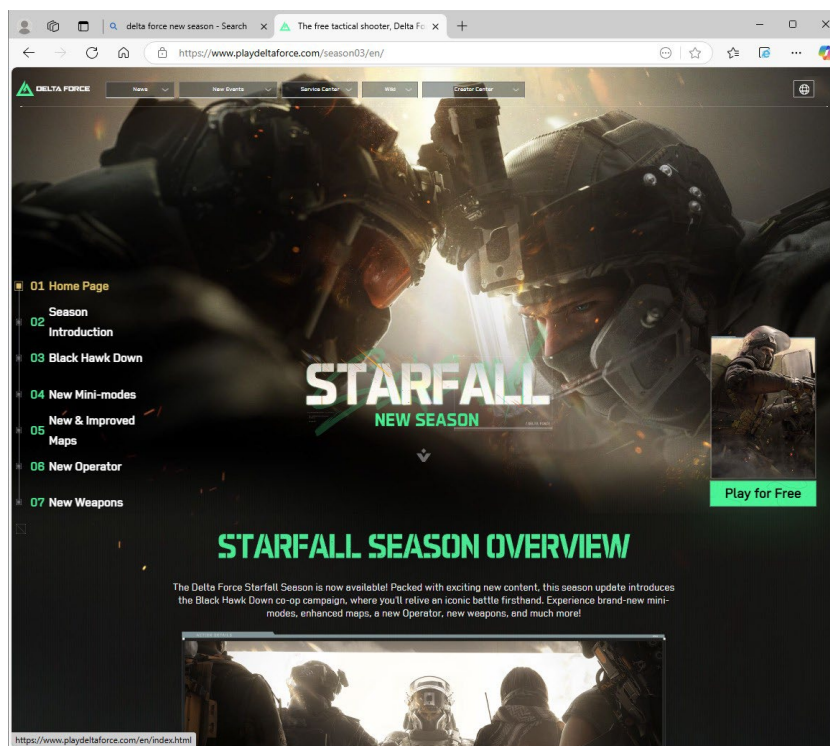
42. On information and belief, Level Infinite has a relationship with or is associated with playdeltaforce.com which includes a website and social media channels that promotes Level Infinite's LEVEL INFINITE PASS as well as the Delta Force game.

43. On information and belief, Level Infinite, a foreign entity, is the data controller for personal information they collect from individuals, including children, in the United States using the STARFALL Mark.

44. On information and belief, on January 7, 2025, Level Infinite's parent company was listed by the Pentagon as a Chinese military business.

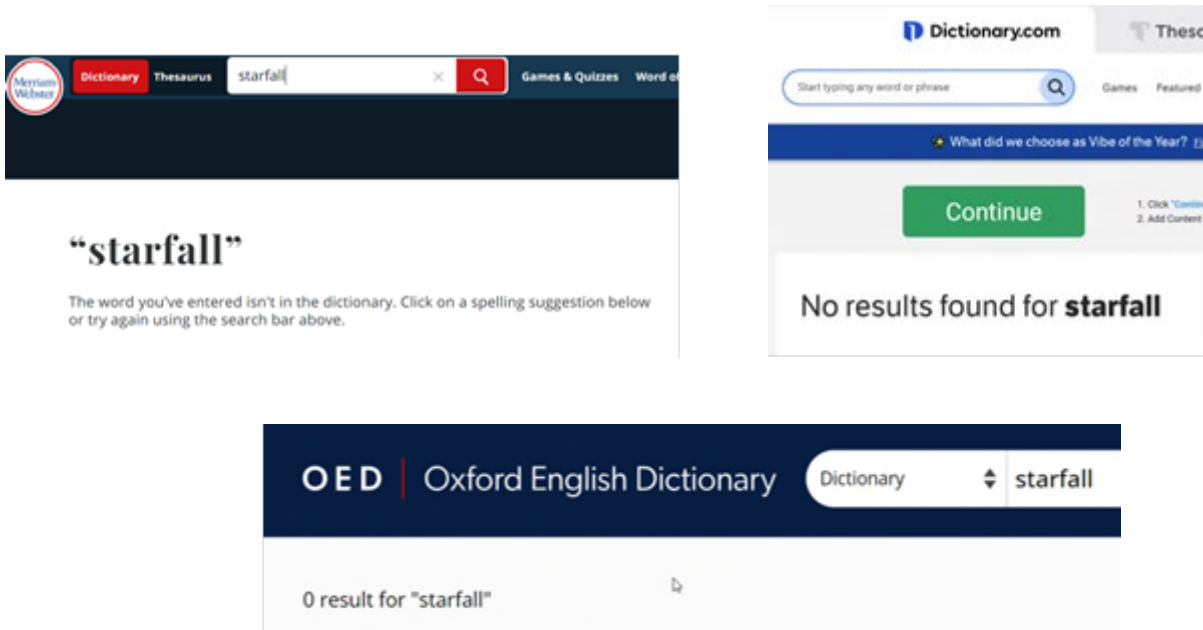
E. Level Infinite's Infringing Uses of the STARFALL Mark Is Likely to Cause Confusion and Damage.

45. Level Infinite's use of the STARFALL Mark is likely to cause relevant consumers to be confused as shown in the screenshot from playdeltaforce.com:



46. The STARFALL Mark is strong—both inherently and commercially.

47. As a coined term, “starfall” is an uncommonly used word (apart from referring to Starfall) and, indeed, does not appear in dictionaries.



48. Additionally, Starfall has long used the STARFALL Mark in connection with computer games.

49. Children are very susceptible to brand marketing and lack the life experiences and critical thinking skills to distinguish among similar brands and are unlikely to exercise care in purchases. Consequently, children, who strongly influence parental purchases, are likely to be misled and confused by similar trademarks used in the manner and under the circumstances at issue here. The significance of branding is also particularly important because consumers in this context do not have time to screen all content and thus turn to trusted brands—like Starfall’s—whose products and services they know will be safe for children and free of unsuitable content.

50. Starfall has never authorized Level Infinite to use the STARFALL Mark and has never consented to its use by Level Infinite.

51. In sum, Level Infinite's use of the STARFALL Mark is likely to cause consumer confusion with the products and services Starfall provides under the STARFALL Mark. Consumers are familiar with Starfall's high quality, child-safe, non-violent, privacy excellence, non-aggressive educational computer games and other interactive content. By using, in the same marketplace, the STARFALL Mark with products and services aimed at children and their families, Level Infinite will imminently and irreparably harm Starfall's goodwill and reputation, particularly because the STARFALL Mark will become associated with foreign entities controlling personal data about children and selling commercialized violent content, which is antithetical to the reputation Starfall has developed. Level Infinite's infringing use of the STARFALL Mark will also weaken the distinctiveness of the STARFALL Mark and harm their ability to denote Starfall as the unique source of its products and services.

CLAIMS FOR RELIEF

COUNT I
Trademark Infringement Under Section 32(A)
Of The Lanham Act
(15 U.S.C. § 1114)

52. Starfall repeats and re-alleges the allegations set forth in all other Paragraphs contained in this Complaint as if fully set forth herein.

53. Level Infinite's use of the STARFALL Mark is likely to cause confusion amongst relevant consumers and constitutes trademark infringement in violation of 15 U.S.C. § 1114.

54. As a direct and proximate result of Level Infinite's wrongful acts, Starfall has suffered, is suffering, and will continue to suffer or is likely to suffer damages to its trademarks, business reputation, and goodwill. Unless restrained, Level Infinite will continue to use the STARFALL Mark or other marks confusingly similar to the STARFALL Mark and will cause

irreparable damage to Starfall.

55. Starfall has no adequate remedy at law and is entitled to injunctive relief restraining Level Infinite, its officers, agents, and employees, and all persons acting in concert with Level Infinite, from engaging in any further infringing uses of the STARFALL Mark or any confusingly similar variations of Starfall's valuable STARFALL Mark.

56. Level Infinite has engaged and will continue to engage in these activities knowingly and willfully.

57. Starfall is entitled to all available and applicable remedies provided for in 15 U.S.C. §§ 1114, 1117, and 1118, including preliminary and permanent injunctive relief, disgorgement of Defendants' profits, damages, treble damages, and reasonable attorney fees and costs.

COUNT II

Trademark Infringement, False Designation Of Origin, and Unfair Competition **Under Section 43(A)(1)(A) Of The Lanham Act** **(15 U.S.C. § 1125(a)(1)(A))**

58. Starfall repeats and re-alleges the allegations set forth in all other Paragraphs contained in this Complaint as if fully set forth herein.

59. Level Infinite's actions constitute a false designation of origin, affiliation, or sponsorship in violation of 15 U.S.C. § 1125(a).

60. Level Infinite's infringing use of the STARFALL Mark is likely to cause confusion among relevant consumers and constitutes a false designation or representation that wrongfully leads consumers to believe that Level Infinite's products and those of Starfall originate from the same source and falsely suggests that the two companies are associated, affiliated, or connected with one another or that one is sponsored by the other.

61. As a direct and proximate result of Level Infinite's wrongful acts, Starfall has suffered, is suffering, and will continue to suffer and/or is likely to suffer damage to its trademarks,

business reputation, and goodwill. Unless restrained, Level Infinite will continue to use the STARFALL Mark or other marks confusingly similar to the STARFALL Mark and will cause irreparable harm to Starfall.

62. Starfall has no adequate remedy at law and is entitled to injunctive relief restraining Level Infinite, its officers, agents, and employees, and all persons acting in concert with Level Infinite, from engaging in further uses of the STARFALL Mark or any confusingly similar variations of Starfall's valuable STARFALL Mark.

63. Level Infinite has engaged and continue to engage in these activities knowingly and willfully.

64. Starfall is entitled to all available and applicable remedies provided for in 15 U.S.C. §§ 1117, 1118, and 1125, including preliminary and permanent injunctive relief, disgorgement of Level Infinite's profits, damages, treble damages, and reasonable attorney fees and costs.

COUNT III
Violation Of The Colorado Consumer Protection Act
(C.R.S. § 6-1-101 *et. seq.*)

65. Starfall repeats and re-alleges the allegations set forth in all other Paragraphs contained in this Complaint as if fully set forth herein.

66. Level Infinite's activities described herein, including its actions since at least January 13, 2025, were committed knowingly or recklessly and constitute deceptive acts and trade practices in the conduct of its trade and business in violation of C.R.S. § 6-1-101 *et. seq.*, including but not limited to § 105(a), (b), and (c).

67. Level Infinite's deceptive trade practices significantly impact the public as actual or potential consumers of Level Infinite's goods and services. These deceptive trade practices

that are advertised, promoted, and sold to Colorado consumers, currently include LEVEL INFINITE PASS which enables users to log-in to numerous Level Infinite's games.

68. Level Infinite's use of the STARFALL Mark injures and will continue to injure the public by confusing or misleading consumers into believing that Level Infinite's activities described herein share a common source, sponsorship or affiliation with Starfall's safe and non-violent STARFALL products. This will harm consumers in Colorado.

69. Upon information and belief, Starfall has been, is being, and will be injured in the course of its business as a result of the deceptive trade practices in the form of consumer confusion between the services offered by Level Infinite and those offered by Starfall.

70. Level Infinite's wrongful and deceptive activities, including but not limited to its infringing use of the STARFALL Mark for goods and services identical or highly related to those of Starfall have caused and, unless enjoined by this Court, will continue to cause irreparable injury and other damage to Starfall's business, reputation, and goodwill in the STARFALL Mark for which Starfall has no adequate remedy at law.

71. Pursuant to C.R.S. § 6-1-113, Starfall is entitled to an award of damages, treble damages, and attorneys' fees and costs.

COUNT IV

Common Law Trademark Infringement Under Colorado Law

72. Starfall repeats and re-alleges the allegations set forth in all other Paragraphs contained in this Complaint as if fully set forth herein.

73. Level Infinite's use of the STARFALL Mark is likely to cause consumer confusion as to whether Level Infinite's products originate from Starfall or are associated, affiliated, or connected with, or approved or sponsored by Starfall or vice versa, and whether Level Infinite and Starfall are associated, affiliated, or connected with one another. Level

Infinite's use of the STARFALL Mark thereby infringes Starfall's trademark rights in the STARFALL Mark in violation of Colorado common law.

74. As a direct and proximate result of Level Infinite's wrongful acts, Starfall has suffered and continues to suffer and/or is likely to suffer damages to its business reputation and goodwill. Unless restrained, Level Infinite will continue its infringing use of the STARFALL Mark and will cause irreparable damage to Starfall.

75. Starfall has no adequate remedy at law and is entitled to injunctive relief restraining Level Infinite, its officers, agents, and employees, and all persons acting in concert with Level Infinite, from engaging in further infringing uses of the STARFALL Mark or any confusingly similar variations of Starfall's valuable STARFALL Mark.

76. Starfall will also suffer monetary damage if Level Infinite's infringing uses of the STARFALL Mark continue and is entitled to damages in an amount to be determined at trial.

PRAYER FOR RELIEF

77. WHEREFORE, Starfall demands trial by jury, and respectfully prays that the Court enter judgment in its favor on each and every claim set forth above and award relief including, but not limited to, the following:

- A. An injunction barring Level Infinite, its officers, agents, and employees, and all persons acting in concert with Level Infinite, from trademark infringement and unfair competition as described herein;
- B. Damages in an amount to be determined at trial;
- C. Disgorgement of Level Infinite's profits;
- D. Trebling of damages for willful infringement and unfair competition;

- E. Exemplary and punitive damages;
- F. A declaration that Level Infinite's use of the STARFALL Mark infringes Starfall's rights;
- G. Pre-judgment interest at the legally allowable rate on all amounts awarded;
- H. Costs and expenses;
- I. Attorneys' fees and other fees under, among others, 15 U.S.C. § 1117(a) *et seq.*, as an exceptional case; and
- J. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Starfall demands trial by jury in this action of all issues triable by jury in this matter.

DATED: February 12, 2025

Respectfully submitted,

HUTCHINSON BLACK AND COOK, LLC

By: s/ Kimberly M. Hult

Kimberly M. Hult, No. 31764
921 Walnut Street, Suite 200
Boulder, CO 80302
Phone: (303) 442-6514
Fax: (303) 442-6593
Kimberly.hult@hbcboulder.com

Harry Melkonian
Melkonian & Co
20 Bond Street, Lvl 5
Sydney NSW 2000 Australia
Phone: 612 9777 1555
Fax: 612 8088 6364
harry@melkonianlegal.com

Attorneys for Plaintiff Starfall Education
Foundation