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FEDERAL COURT

B E T W E E N:

THINKLIP CANADA INC.

Plaintiff

- and -

ADMIRALBRIDGE SOFTWARE INC. and MATTHEW VANDERMEER

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [Federal Courts Rules](#), serve it on the Plaintiff's solicitor or, where the Plaintiff's do not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: July 19, 2024

Issued By: _____

Address of 180 Queen Street West,
local office: Suite 200
Toronto, Ontario
M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court
180 Queen St. West, Suite 200
Toronto, ON
M5V 3L6

**AND TO: ADMIRALBRIDGE SOFTWARE INC. and
MATTHEW VANDERMEER**

27 Menno Street
Breslau, Ontario
N0B 1M0

CLAIM

1. The Plaintiff (“**ThinkLP**”) claims:

(a) a declaration that the Defendants have, jointly and severally:

(i) infringed ThinkLP’s copyright in the ThinkLP Software (as described herein) contrary to sections 3, 27(1) and 27(2) of the *Copyright Act*, RSC 1985, c C-42 (“*Copyright Act*”); and

(ii) engaged in prohibited circumvention of one or more technological protection measures that had controlled access to and restricted copying of the ThinkLP Software, contrary to and within the meaning of sections 41 and 41.1 of the *Copyright Act*;

(b) an *interim*, interlocutory, and permanent injunction restraining the Defendants, by themselves, their directors, officers, employees, servants, agents, licensees, successors, assigns, related or affiliated companies, or otherwise, and all those in privity with or under the control of the Defendants from, directly or indirectly, doing any of the acts described in paragraphs 1(a)(i) and (ii) above, or any other acts in relation to the ThinkLP Software that violate these paragraphs of the *Copyright Act*;

- (c) a further “wide injunction” pursuant to section 39.1 of the *Copyright Act* enjoining the same parties noted in paragraph 1(b) above from infringing the Plaintiff’s copyright in any other works that the Defendant is likely to infringe, as may be evidenced to the Court’s satisfaction;
- (d) an interlocutory and final Order requiring the Defendants to deliver to the Plaintiff all infringing copies of the ThinkLP Software (including all copies of the Defendants’ noted Admiral AP software and underlying source and object code) as if those copies were the Plaintiff’s property, pursuant to section 38(1) of the *Copyright Act*;
- (e) an award of damages suffered by the Plaintiff for the Defendants’ noted infringements and circumventions and, in addition, such part of the Defendants’ profits that they have made from the infringements and circumventions that were not taken into account in the calculating of damages, as the Court considers just, pursuant to sections 34 and 35 of the *Copyright Act*;
- (f) in the alternative to paragraph 1(e) above, and only if elected by the Plaintiff at any time before final judgment is rendered, for recovery instead of damages and profits an award of statutory damages for which the Defendants’ are jointly or severally liable for said infringements and circumventions, in any amount the Court considers just, pursuant to section 38.1 of the *Copyright Act*;

- (g) punitive and exemplary damages in the sum of \$5,000,000 or such other sum that the Court considers just for the Defendants' willful infringement and circumvention of the Plaintiff's copyright as described herein;
- (h) pre-judgment and post-judgment interest in accordance with the *Federal Courts Act*, RSC 1985, c F-7;
- (i) the Plaintiff's costs of the Action at the highest possible scale;
- (j) all applicable taxes, including the harmonized sales tax; and
- (k) such further and other relief as the Plaintiff may request and this Honourable Court may deem just.

The Parties

The Plaintiff ThinkLP

2. The Plaintiff ThinkLP is a leading provider of loss prevention and risk management software used by businesses and other organizations around the world.
3. In terms of incorporation, ThinkLP is an Ontario Business Corporation having its registered or head office address located at 333 Bay Street, 2400, Toronto, Ontario, M5H 2T6.

4. Prior to December 2022, ThinkLP was used as a business name by the Plaintiff's predecessor in title, Anderson Oxford Inc. By amalgamation with another numbered company, Anderson Oxford Inc. became the Plaintiff ThinkLP.

The Defendant Admiral Bridge

5. The corporate Defendant (“**Admiral Bridge**”) is a Canadian Business Corporation having its registered office address located at 27 Menno Street, Breslau, Ontario, N0B 1M0.
6. Admiral Bridge is a new entrant into the loss prevention and risk management industry and is a direct competitor to ThinkLP. It operates from the website *admiralbridge.com* and its competing software product and platform is sold and promoted under the name Admiral AP.

The Defendant Vandermeer

7. Admiral Bridge's lone Director is the individual Defendant (“**Vandermeer**”), whose home address also serves as Admiral Bridge's above-noted registered office address.
8. Vandermeer is the founder, director and directing mind of Admiral Bridge. He is also the Plaintiff ThinkLP's former Director of Technology and Development. Ultimately, Vandermeer is the exclusive beneficiary and recipient of all profits enjoyed by the corporate Defendant.

9. As described below, beginning at a time not precisely known to ThinkLP, Vandermeer formulated and later executed a plan to access and copy the ThinkLP Software and use it through his newly incorporated company Admiral Bridge to come to market, almost immediately after his resignation from ThinkLP, with the directly competing Admiral AP software product and platform, which is nearly identical to ThinkLP's renowned and industry leading software platform.

ThinkLP Software

10. Founded in 2013, ThinkLP's confidential and proprietary software platform is an award winning and industry leading loss and safety audit, management and intelligence platform.
11. The computer program and software code behind the platform (the "**ThinkLP Software**") was authored and updated over the course of many years between 2013 and the present by various persons, all of whom were at the time:
 - (a) employees of the Plaintiff or its predecessor-in-title, acting in the course of their employment by the Plaintiff or its predecessor-in-title; and
 - (b) a citizen or subject of or a person ordinarily resident in a treaty country, within the meaning of section 5(1)(a) of the *Copyright Act*.

(Collectively the "**Authors**").

12. The ThinkLP Software was authored by the Authors through their exercise of significant skill and judgment.
13. The ThinkLP Software is an original literary work within the meaning of section 2 “literary work” and section 5 of the *Copyright Act*.
14. Pursuant to section 13(3) of the *Copyright Act*, ThinkLP is the first owner of copyright in the ThinkLP Software. ThinkLP has never assigned its copyright to anyone else, and as such the Plaintiff remains the owner of copyright in Canada in the ThinkLP Software.
15. All of the Authors remain living. Accordingly, pursuant to section 6 of the *Copyright Act*, the term for which copyright shall subsist in the ThinkLP Software has not concluded and will not conclude for at least 70 further years.
16. The Plaintiff relies upon the presumptions set out in section 34.1 of the *Copyright Act*.
17. The ThinkLP Software is confidential and proprietary to the Plaintiff. At all times, the Plaintiff incorporated an effective technology, device or component that, in the ordinary course of its operation, controlled access to the ThinkLP Software so that the Plaintiff could control who could access it, and which restricted the act of reproducing all or any portion of the ThinkLP Software.

The Defendant Vandermeer - ThinkLP's Former Director of Technology and Development

18. From August 2016 to February 2024, the Defendant Vandermeer was employed by the Plaintiff.
19. Initially, Vandermeer was employed in the role of Implementation Consultant.
20. Beginning in January 2020, he was promoted by the Plaintiff to Senior Manager, Technology and Development.
21. By May of 2021 Vandermeer had been promoted by ThinkLP to the role Director, Technology and Development.
22. At all material times since at least January 2020, the Defendant Vandermeer was one of a select few persons who had access to the ThinkLP Software.
23. At all times, Vandermeer was operating under employment agreements that specifically reiterated to him that all of the Plaintiff's software code, which would include the ThinkLP Software, was confidential and proprietary information, and that all intellectual property rights including the copyright in the same was owned by his employer the Plaintiff.

24. Moreover, these agreements made it clear that his obligations of confidence and ThinkLP's ownership over such software continued beyond the end of any employment relationship between the parties.

Vandermeer Learns of the Plaintiff's Revenues, Strategies and Opportunities

25. As discussed above, in approximately December of 2022 the Plaintiff went through an ownership restructuring and a new CEO (Mr. Spencer Marzouk) was put in place by the new ownership group. The Defendant Vandermeer reported directly to the new CEO Marzouk.
26. From December 2022 until he left the Plaintiff at the end of February 2024, Vandermeer was involved in and exposed to many strategic meetings and decisions which helped shape the exceptional growth which the Plaintiff then began to enjoy, with 2023 being its largest growth year in revenue.
27. Among many other things, Vandermeer was exposed to or participated in the formulation of confidential pricing model strategies and plans for innovative software architecture for the ThinkLP software that came to be released before his departure in February 2024.
28. Also starting after December 2022, the Defendant Vandermeer had disclosed to him details of the Plaintiff's very significant revenue streams, which prior ownership had not disclosed to him.

Vandermeer Formulates His Plan to Compete Against ThinkLP

29. Beginning at a time not precisely known to ThinkLP, but which would have been sometime between December 2022 and February 2024, Vandermeer formulated a plan to leave ThinkLP, incorporate his own corporation, and through its operation compete directly against ThinkLP by offering a directly competitive software product in this lucrative market.
30. However, the Defendant Vandermeer lacked the capacity himself to independently author a new software product that could compete in this marketplace. He also would have realized that if he had retained third parties to independently author a wholly original competitive product, that this would require many years and potentially millions of dollars in labour, research, development and expense.
31. As such, the Defendant Vandermeer decided instead to take a short cut. Namely, he would (in violation of his employment contracts and other obligations) surreptitiously download and steal the Plaintiff ThinkLP's Software for himself, take its associated files with him, and reproduce the ThinkLP Software into his own competitive software product and platform (Admiral AP).

32. While unknown to the Plaintiff at the time, Vandermeer personally executed these unauthorized acts of copying and downloading of the ThinkLP Software during the months of January and February 2024, prior to the end of his employment by ThinkLP.

Details of Vandermeer's Unauthorized Acts

33. Regarding Vandermeer's resignation and the timing of his unauthorized downloadings:

- (a) Vandermeer tendered his resignation by email to the Plaintiff dated January 10, 2024, and in that email stated that his last day would be January 31, 2024.
- (b) Soon after, on January 16, 2024 and unknown at the time to the Plaintiff, Vandermeer executed a first stage of secret and unauthorized downloading of files relating to the ThinkLP Software. For reasons known to the Defendants but not known to the Plaintiff, Vandermeer did not at that time manage to secure a complete download of all files relating to the ThinkLP Software.
- (c) That same day (January 16, 2024) having in hand only a partial download of all files relating to the ThinkLP Software, Vandermeer delivered a new email to the Plaintiff changing his final day at ThinkLP from January 16, 2024 to February 7, 2024.

- (d) Following his first stage of unauthorized downloading, Vandermeer allowed two weeks time to pass to test whether his surreptitious downloading of ThinkLP software files would be noticed by the Plaintiff.
- (e) On February 1, 2024, believing that his unauthorized conduct had not been noticed by the Plaintiff, Vandermeer accessed the files relating to the ThinkLP Software for a second time. For reasons known to the Defendants but not known to the Plaintiff, Vandermeer did not at that time yet manage to secure a complete download of all files relating to the ThinkLP Software.
- (f) Vandermeer then had discussions with ThinkLP to confirm that his last day in the office would be February 16, 2024, that he would hand in his laptop and other company materials that day, but would remain available to the Plaintiff to answer transitional questions until March 1, 2024.
- (g) On February 16, 2024, prior to handing in his laptop and other company materials, Vandermeer completed his final stage of unauthorized downloading of the ThinkLP software. At that point, he had a complete copy of all files for ThinkLP Software in hand.

34. Immediately after downloading the complete Think LP Software files, Vandermeer attempted to cover his tracks by removing his user ID from the GitHub software platform on which the ThinkLP files had been stored and managed. GitHub is the software that would allow ThinkLP to track all those who had access to the ThinkLP Software files.
35. The day after Vandermeer ceased to be available to ThinkLP (March 2, 2024) Vandermeer secured the domain name *admiralbridge.com*.
36. The next day, March 3, 2024, Vandermeer incorporated the corporate Defendant Admiral Bridge.
37. Within a few weeks later, the Defendants were advertising online and through social media channels including LinkedIn, Instagram and YouTube that they were coming to market with what came to be their directly competing Admiral AP product, and began directly soliciting customers and former customers of the Plaintiff.
38. When Vandermeer left ThinkLP, he had in hand a complete copy of the files for the ThinkLP Software. He also took with him (also contrary to his employment and fiduciaries owed) other confidential information of ThinkLP including:
 - (a) a list of all new customer opportunities that ThinkLP had in hand (opportunities worth over \$7M), including customer names, the stage at which negotiations were at for each client, the expected close date, and the expected contract price; and

- (b) a list of ThinkLP customers whose contracts were expiring over the next few months, including customer names, unique identifying numbers, point of contact details, and information about the prior license terms.
- 39. Prior to Vandermeer's resignation from ThinkLP, the Plaintiff was the only player of significant size and scale in the market for such software products and platforms.
- 40. Following the Defendants' described activities, the Defendants immediately became the Plaintiff's lone significant competitor.
- 41. The Plaintiff only came to determine that Vandermeer in fact personally downloaded the entirety of the Plaintiff's ThinkLP Software, and made off with the Plaintiff's other confidential information noted above, in the weeks prior to initiation of this action.

Vandermeer's Acts of Circumvention

- 42. To access and reproduce the ThinkLP Software, after having tendered his resignation but before formally leaving the Plaintiff, Vandermeer circumvented the technological protection measures that ThinkLP had in place to control access and restrict copying of the ThinkLP Software, contrary to sections 41 and 41.1 of the *Copyright Act*.

43. In any event, at all times Vendermeer was accessing, downloading and reproducing the ThinkLP Software product in violation of the contractual and fiduciary obligations he owed to the Plaintiff.
44. In those circumstances, to the extent that Vandermeer maintained access to these software files, his acts of accessing and reproducing the confidential and proprietary ThinkLP Software files amounted to acts of circumvention themselves. If Vandermeer had not misled his employer at the time, informed them that he was planning to download and reproduce the Plaintiff's copyright ThinkLP Software in violation of his contractual and fiduciary obligations, ThinkLP would never have allowed any access to be permitted and would have taken additional steps to prevent his access.
45. Vandermeer's acts of deception, access and copying should be also deemed acts of circumvention contrary to sections 41 and 41.1 of the *Copyright Act*.
46. The Plaintiff is entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise, that are or may be conferred by law for the infringement of copyright against the Defendants for these circumventions, pursuant to section 41.1(2) of the *Copyright Act*.

Primary and Secondary Copyright Infringement and Authorization

47. Vandermeer's first known infringement of the Plaintiff's copyright in the ThinkLP Software was by his unauthorized acts of download and reproduction described in paragraph 33 above, which were contrary to sections 3 and 27(1) of the *Copyright Act*.
48. Vandermeer and the corporate Defendant also infringed the Plaintiff's copyright in its ThinkLP Software in the creation of the Defendants' Admiral AP software product and platform (or their authorization of others to do so). Admiral AP is nearly identical to ThinkLP's renowned and leading software platform. In creating Admiral AP, or authorizing its creation by others, the Defendants or their agents have reproduced substantially from the ThinkLP Software. Admiral AP mirrors almost exactly the utilities, functionalities, pricing models, approaches and strategies behind ThinkLP's Software.
49. In short, without any license or permission from the Plaintiff, the Defendants' Admiral AP software reproduces all or a substantial part of the ThinkLP Software, contrary to sections 3 and 27(1) of the *Copyright Act*, or is otherwise a colourable imitation of the same within the meaning of section 2 "infringing" of the *Copyright Act*.
50. The Defendants in the operation of the corporate Defendant also continuously or substantially continuously run and thus reproduce and exploit the infringing Admiral AP software, also contrary to sections 3 and 27(1) of the *Copyright Act*.

51. To the extent that the Defendants are licensing others to use, reproduce or access the infringing Admiral AP software, this conduct is also contrary to sections 3 and 27(1) of the *Copyright Act*, including section 3(1)(h).
52. To the extent that the Defendants are communicating substantial copies of the Admiral AP software to others by telecommunication, this conduct is also contrary to sections 3 and 27(1) of the *Copyright Act*, including section 3(1)(f), and the Plaintiff further relies on section 2.4(1.1) of the *Copyright Act*.
53. Moreover, the Defendants are also engaged in the acts of:
- (a) selling or renting out;
 - (b) distributing to such an extent as to affect prejudicially the Plaintiff;
 - (c) by way of trade distributing, exposing or offering for sale or rental, or exhibiting in public; and
 - (d) possessing for the purpose of doing the acts described in paragraphs 53(a) to (c) above;

copies of the ThinkLP Software (including the Admiral AP software itself) that the Defendants know or should know infringes copyright or would infringe copyright if it had been made in Canada by the person who made it, all contrary to section 27(2) of the *Copyright Act*.

54. The Defendant Vandermeer is responsible for all acts of circumvention and unauthorized acts of infringement in relation to the ThinkLP Software that he has personally committed. In addition, all acts of infringement performed by Admiral Bridge or any of its employees or agents other than Vandermeer, have been authorized by Vandermeer personally within the meaning of section 3 of the *Copyright Act*.
55. All acts of infringement and circumvention by the Defendants have been for commercial purposes.
56. In summary, by all such activities described, the Defendants have:
 - (a) infringed ThinkLP's copyright in the ThinkLP Software contrary to sections 3, 27(1) and 27(2) of the *Copyright Act*; and
 - (b) engaged in prohibited circumvention of one or more technological protection measures that had controlled access to the ThinkLP Software and restricted its copying, contrary to and within the meaning of sections 41 and 41.1 of the *Copyright Act*.

57. The Defendants acts of circumvention and infringement described herein have at all times been willful, deliberate, blatant, intentional, malicious and outrageous.
58. At no time has ThinkLP authorized the Defendants to do any of these acts of circumvention or infringement, including not for the directly competitive purposes described.
59. The Defendants' infringements and circumventions as described have caused the Plaintiff damage, including irreparable damage, and have and will enable the Defendants to enjoy unjust profits.
60. The full scope of the Defendants' infringements and circumventions are not known to the Plaintiff but are known to the Defendants and the Plaintiff pleads fully in respect of same.
61. The Defendants' described acts represent a course of conduct that they knew or ought to have known was likely to constitute copyright infringement or reflected an indifference to such risk. This deliberate, wilful and knowing violation of the Plaintiff's copyright should on its own impose personal liability on the director Vandermeer for the corporate Defendant's infringements. The described conduct also represents a marked departure from the standards of decent commercial behaviour, and the Defendants should be sanctioned through an award of punitive or exemplary damages for which they should be liable jointly and severally.

62. The Defendants' activities will continue unless restrained by this Court. There is also a need to deter the Defendants' other infringements of other copyright works of the Plaintiff.
63. The Defendants should be held responsible jointly and severally for all monetary remedies awarded to the Plaintiff.
64. ThinkLP proposes that this action be tried in Toronto, Canada.
65. This action is not being pursued as a simplified proceeding.

Dated: July 19, 2024

Gowling WLG (Canada) LLP

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