

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E2W, LLC, A DELAWARE LIMITED  
LIABILITY  
COMPANY,

Plaintiff,

-against-

KIDZANIA OPERATIONS, S.A.R.L., a  
Luxembourg corporation,

Defendant

1:20-cv-02866-ALC

**ANSWER TO COMPLAINT**

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**ANSWER**

Defendant KidZania Operations, S.A.R.L. (“KidZania”), by and through its undersigned counsel, hereby answers the Complaint of Plaintiff E2W, LLC (“E2W”). KidZania answers this Complaint upon Order of the Court, notwithstanding that E2W has separately filed an arbitration demand in the International Chamber of Commerce (“ICC”). KidZania does not intend by providing an Answer to waive its right to defend against E2W’s claims, including those set forth in this Complaint, in the arbitral forum that the parties selected and specifically includes affirmative defenses regarding arbitration to preserve its rights in this regard:

1. As to Paragraph 1, KidZania lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 1 and on that basis denies each and every allegation.

2. As to Paragraph 2, KidZania admits that it is a Luxembourg corporation with a principal place of business located in Mexico City, Mexico.

3. As to Paragraph 3, KidZania does not contest this Court’s jurisdiction to award preliminary relief, but now that preliminary relief has been granted, the dispute must be determined by the ICC. The remaining allegations of Paragraph 3 contain conclusions of law as to which no response is required.

**GENERAL ALLEGATIONS**

4. As to Paragraph 4, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement. The remaining allegations of Paragraph 4 contain conclusions of law as to which no response is required.

5. Admit.

6. As to Paragraph 6, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement. The remaining allegations of Paragraph 6 contain conclusions of law as to which no response is required.

7. As to Paragraph 7, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement. The remaining allegations of Paragraph 7 contain conclusions of law as to which no response is required.

8. As to Paragraph 8, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement. The remaining allegations of Paragraph 8 contain conclusions of law as to which no response is required.

9. As to Paragraph 9, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement. The remaining allegations of Paragraph 9 contain conclusions of law as to which no response is required.

10. As to Paragraph 10, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of

the Franchise Agreement. The remaining allegations of Paragraph 10 contain conclusions of law as to which no response is required.

11. As to Paragraph 11, KidZania admits that the Frisco Facility had a soft opening on November 18, 2019. As to the remaining allegations in Paragraph 11, KidZania denies the allegations.

12. As to Paragraph 12, KidZania admits that the parties entered into a Second *Addendum* (not Amendment) dated February 19, 2019, and that document speaks for itself. KidZania denies the allegations in this Paragraph to the extent they are contrary to the terms of the Second Addendum. The remaining allegations of Paragraph 12 contain conclusions of law as to which no response is required.

13. KidZania lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13 and on that basis denies each and every allegation.

14. As to Paragraph 14, KidZania admits that Educuity Park Frisco, LLC entered into a lease with Stonebriar Mall and that KidZania performed its obligations under the Franchise Agreement with regard to that lease. As to the remaining allegations in Paragraph 14, KidZania denies the allegations.

15. As to Paragraph 15, KidZania admits that KidZania performed its obligations under the Franchise Agreement with regard to designs and contractors. As to the remaining allegations in Paragraph 15, KidZania denies the allegations.

16. As to Paragraph 16, KidZania admits that construction began in or around November 2018 and that the Frisco Facility opened for business in November 2019. KidZania denies that the Frisco Facility was “completed” in October 2019. As to the remaining allegations

in Paragraph 16, KidZania lacks sufficient knowledge or information to admit or deny and on that basis denies each and every allegation.

17. KidZania denies the allegations in Paragraph 17.

18. KidZania denies the allegations in Paragraph 18.

19. KidZania lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 19 and on that basis denies each and every allegation.

20. Paragraph 20 contains conclusions of law to which no response is required. As to the remaining allegations in Paragraph 20, KidZania denies the allegations except that it admits that Xavier Lopez Ancona and Gevork Sarkisyan are friends.

21. KidZania denies the allegations in Paragraph 21.

22. As to Paragraph 22, KidZania admits that in the fall of 2019, E2W provided additional updates to KidZania regarding E2W's financial position. As to the remaining allegations in Paragraph 22, KidZania denies the allegations.

23. As to Paragraph 23, KidZania admits that there was an in-person meeting in Dallas in October 2019, that included Gevork Sarkisyan, Xavier Lopez Ancona, Alexey Bashkirov, Keith Rubenstein, and Greg Stevens. As to the remaining allegations in Paragraph 23, KidZania denies the allegations.

24. As to Paragraph 24, KidZania admits that on December 18, 2019, Alexey Bashkirov flew to Mexico City to meet with representatives of KidZania. As to the remaining allegations in Paragraph 24, KidZania denies the allegations.

25. KidZania denies the allegations in Paragraph 25.

26. KidZania denies the allegations in Paragraph 26.

27. As to Paragraph 27, KidZania admits that it sent a letter dated December 9, 2019 to E2W, and that document speaks for itself. KidZania denies the allegations in Paragraph 27 to the extent they are contrary to the terms of the December 9, 2019 letter. The remaining allegations of Paragraph 27 contain conclusions of law as to which no response is required.

28. KidZania denies the allegations in Paragraph 28.

29. As to Paragraph 29, KidZania admits that E2W was seeking financing from USAA and Brookfield Properties. KidZania denies the remaining allegations in Paragraph 29.

30. KidZania lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 30 and on that basis denies each and every allegation.

31. As to Paragraph 31, KidZania admits that E2W was negotiating the terms of a potential financing transaction in March 2020. KidZania denies the remaining allegations in Paragraph 31.

- a. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.
- b. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation
- c. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.

- d. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.
- e. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.
- f. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.
- g. KidZania lacks sufficient knowledge or information to admit or deny the allegations in this subparagraph and on that basis denies each and every allegation.

32. KidZania lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 32 and on that basis denies each and every allegation.

33. As to Paragraph 33, KidZania admits that KidZania sent a letter dated February 6, 2020 to E2W, and that document speaks for itself. KidZania denies the allegations in Paragraph 33 to the extent they are contrary to the terms of the February 6, 2020 letter. The remaining allegations of Paragraph 33 contain conclusions of law as to which no response is required.

34. KidZania denies the allegations in Paragraph 34.

35. KidZania denies the allegations in Paragraph 35.

36. KidZania lacks sufficient information or knowledge to admit or deny the allegations in Paragraph 36 and on that basis denies each and every allegation.

37. KidZania denies the allegations in Paragraph 37.

38. KidZania denies the allegations in Paragraph 38.

39. KidZania denies the allegations in Paragraph 39.

40. KidZania denies the allegations in Paragraph 40.

41. KidZania denies the allegations in Paragraph 41.

42. As to Paragraph 42, KidZania admits that it sent a letter on March 30, 2020 to E2W, and that document speaks for itself. KidZania otherwise denies the allegations in Paragraph 42.

43. As to Paragraph 43, KidZania admits that E2W sent a letter dated April 3, 2020 to KidZania, and that document speaks for itself. KidZania denies the allegations in Paragraph 43 to the extent they are contrary to the terms of the April 3, 2020 letter.

44. KidZania denies the allegations in Paragraph 44.

45. As to Paragraph 45, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself. KidZania denies the remaining allegations in this Paragraph to the extent they are contrary to the terms of the Franchise Agreement.

46. KidZania admits that E2W has commenced an arbitration proceeding against KidZania with the ICC. The remaining allegations of Paragraph 46 contain conclusions of law as to which no response is required.

**FIRST CAUSE OF ACTION**

**(Preliminary Injunctive Relief)**

47. KidZania incorporates by reference the responses to the preceding paragraphs of the Complaint as though fully set forth herein.



48. As to Paragraph 48, KidZania admits that the parties will be proceeding to an ICC arbitration to resolve disputes between them. As to the remaining allegations in Paragraph 48, KidZania denies the allegations.

49. KidZania denies the allegations in Paragraph 49.

50. Paragraph 50 contains conclusions of law as to which no response is required.

## **SECOND CAUSE OF ACTION**

### **(Breach of Contract)**

51. KidZania incorporates by reference the responses to the preceding paragraphs of the Complaint as though fully set forth herein.

52. As to Paragraph 52, KidZania admits that E2W entered into a Franchise Agreement dated December 21, 2015, as amended, and that document speaks for itself.

53. KidZania denies the allegations in Paragraph 53.

54. KidZania denies the allegations in Paragraph 54.

55. KidZania denies the allegations in Paragraph 55.

56. KidZania denies the allegations in Paragraph 56.

57. KidZania denies the allegations in Paragraph 57.

58. KidZania denies the allegations in Paragraph 58.

59. KidZania denies the allegations in Paragraph 59.

## **PRAYER FOR RELIEF**

WHEREFORE, KidZania denies that E2W is entitled to any of the relief requested in the unnumbered “WHEREFORE” clause following Paragraph 59, including subparts (i) through (iv), and respectfully requests that the Court dismiss the Complaint in its entirety and enter judgment in its favor and against E2W.

## **DEFENSES**

Without assuming the burden of proof where it otherwise rests with Plaintiff, KidZania pleads the following defenses to the Complaint. KidZania also expressly reserves the right to assert additional affirmative defenses in the ICC arbitration.

### **First Defense**

Plaintiff's claims against KidZania are subject to a mandatory arbitration clause that provides that its claims must be brought in arbitration before the International Chamber of Commerce (the "ICC"). Pursuant to Section 19.6(a) of the Franchise Agreement, the parties agreed to arbitrate "[a]ny dispute arising out of or in connection with this Franchise Agreement or the interpretation hereof, including with respect to its existence, validity or termination" before the ICC, in accordance with the ICC Rules of Arbitration in effect at the time of arbitration.

### **Second Defense**

Pursuant to Section 19.6(a) of the Franchise Agreement, Plaintiff filed a Request for Arbitration on April 17, 2020 before the ICC in which it is pursuing its claims against KidZania. Plaintiff may not pursue the same claims in litigation in this Court.

### **Third Defense**

Plaintiff has failed to perform its obligations under the contract, including conditions precedent to KidZania's performance obligations. In particular, Plaintiff failed to timely pay its Minimum Guaranteed Royalties in the amount of \$750,000 after having been given notice and an opportunity to cure.

**Fourth Defense**

Plaintiff has breached the duty of good faith and fair dealing. In particular, Plaintiff agreed it would timely pay the Minimum Guaranteed Royalties in the amount of \$750,000, and KidZania relied to its detriment on Plaintiff's representations. Plaintiff then failed to timely pay its Minimum Guaranteed Royalties after having been given notice and an opportunity to cure.

**Fifth Defense**

Plaintiff's claims are barred by the doctrines of estoppel and waiver. Plaintiff agreed it would timely pay the Minimum Guaranteed Royalties in the amount of \$750,000, and KidZania relied to its detriment on Plaintiff's representations. Plaintiff then failed to timely pay its Minimum Guaranteed Royalties after having been given notice and an opportunity to cure.

**Sixth Defense**

Plaintiff's claim is barred by the statute of frauds. Under New York General Obligations Law section 5-701, "every agreement, promise, or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent" where the contract "by its terms is not to be performed within one year from the making thereof . . . ." Plaintiff claims that KidZania orally agreed that Plaintiff would not be required to pay \$750,000 in Minimum Guaranteed Royalties until when (and if) it secured funding and assessed its obligations due to COVID. This contract, by its terms, was not to be performed within one year from the making thereof and therefore, even assuming there was such an agreement—which there was not—it is void under the statute of frauds.

KidZania reserves the right to have additional defenses that it learns through the course of discovery and, as noted above, reserves the right to assert additional affirmative defenses in the ICC arbitration.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered or otherwise responded to the allegations in E2W's Complaint, KidZania prays that:

- (1) E2W's Complaint be dismissed in its entirety and with prejudice, with all fees and costs taxed against E2W;
- (2) Judgment be entered in KidZania's favor and against E2W;
- (3) KidZania recover such other and additional relief as the Court deems just and appropriate.

DATED: May 22, 2020

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