

We Work, #4-158  
240 Richmond Street West,  
Toronto ON M5V 1V6  
416-348-0313  
caravellaw.com



Ellen V. Swan  
Practising in Association  
416-628-1048  
eswan@caravellaw.com

May 14, 2018

**DELIVERED VIA EMAIL** ([danielmicay@gmail.com](mailto:danielmicay@gmail.com))

Daniel Micay  
Chief Technology Officer  
Copperhead Limited

Dear Mr. Micay:

**Re: Copperhead Limited Shareholders' Dispute**

As you know, we are counsel to Copperhead Limited (the "**Company**"). We have been attempting to discuss with you your ongoing dispute with your business partner, Mr. James Donaldson, about the future of the Company. We have appreciated the feedback you have provided in your emails of last week regarding your views on the dispute. While it seems there are a number of outstanding issues, we set out below a proposal for next steps.

**The Current Framework**

We understand you are both a fifty percent shareholder and the Chief Technology Officer of the Company. You are paid a salary of \$50,000, which is appropriate given the start-up nature of the Company's operations, as well as for a person who is also holding a substantial equity interest.

Mr. Donaldson is the sole director of the Corporation and the Chief Executive Officer. He is the other fifty percent shareholder. There is no written shareholders' agreement in place, nor any written employment agreements or job descriptions for either of you.

Because of the deficiency in documentation detailing the respective delegation of duties and responsibilities between you and Mr. Donaldson, the Company has suffered from a lack of coherent direction and delineation of responsibility and decision-making authority.



## **The Future Framework**

The Company has no wish to proceed unilaterally, and is seeking your engagement on moving forward to allow the Company to grow and flourish. However, as the status quo appears unsustainable, the Company immediately requires the following.

1. A CTO that executes on all the typical duties and responsibilities of that role.

A fully functioning CTO does far more than execute a software engineering role. We propose the Company develop a comprehensive CTO job description that outlines not only the core responsibilities of the role but also the objectives the CTO is tasked with the move the Company forward. Once that task is completed, the Company can determine who is best to staff that role.

If you and Mr. Donaldson agree that you are the appropriate person to take on that newly defined CTO role, then we would recommend the Company enter into a comprehensive employment agreement with you to detail the terms of that employment.

However, your recent correspondence suggests you may not wish to have that role. If that is the case, there are a few options for next steps.

One option would that you take on a lead software engineering role, with fewer management obligations than a CTO role. If that is the case, we would again recommend the Company create a comprehensive employment agreement with you to detail the terms of that employment.

Another option is that you determine you wish to cease employment with the Company. In such circumstances, the Company will require a comprehensive disengagement plan to manage the transition to a new CTO/lead engineer, which we anticipate would include at least:

- Comprehensive documentation of current development status, research on future Android/cyber-security related events (ie: Fuschia's impact on core product) and the existing CopperheadOS roadmap;
- Full support for existing hardware and software until end-of-life
- Transfer of Company assets from your custody to the custody of the Company, including signing keys, build server, updated source code, Company account passwords; and
- An exit plan for transferring your equity post-cessation of employment. As any new CTO would expect an equity position on coming into the Company, some dilution of your position would be required upon cessation of your employment.

2. Access to all Company assets which are currently limited to you personally.

We understand this includes the Subreddit, Twitter account of @CopperheadOS, all IT infrastructure and IT related assets, and marketing channels.

3. A commitment on your part to refrain from any communications that are derogatory or detrimental to the business or reputation of the Company.

This would include both internal and external communications that complain about or criticize the Company. This would also include distributing job postings for competitors and criticizing known partnership technologies.

4. Conducting of all Company business on Company-controlled communication platforms.

It is inappropriate to conduct Company business from a third-party controlled platform such as Gmail. Customer support will be processed through the Company's support desk infrastructure and not through Subreddit or Twitter.

5. Negotiation and execution of appropriate company documents.

It is in the parties' best interests to execute a comprehensive shareholders' agreements and employment agreements as set out above (for both you and Mr. Donaldson as appropriate).

6. Immediate third party auditing of all encryption keys, build servers, etc.

Such auditing should also be undertaken on an annual basis going forward to ensure appropriate security measures for the clients of the Company.

More broadly, the Company is hopeful that through this negotiation process to achieve the above immediate needs, the Company can also establish other policies and procedures for the benefit of both you and Mr. Donaldson, as well as its other employees. For example, ensuring that all employees, including you, have the opportunity to take personal time and vacation time.

The Company proposes that both shareholders meet together with the Company's counsel and any legal advisors to the shareholders to discuss the above at your earliest convenience. We would also recommend the use of an independent third party mediator should you prefer to facilitate negotiation in that manner. Please let us know as soon as possible when you would be available for such a meeting. Again, the Company has no wish to proceed unilaterally with respect to the above, but will take the necessary steps to protect its client and its business should those steps be necessary.



We look forward to your response in a timely manner and in any event on or before 5:00 p.m. on Friday, May 18, 2018.

Yours truly,

A handwritten signature in blue ink, appearing to be "E. Swan", written over a faint, light blue circular stamp or watermark.

Ellen V. Swan

Barrister & Solicitor,

Ellen V. Swan Professional Corporation practicing in Association with Caravel Law