

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
V OR IN EXAMPLIFY ANSWER SCREEN 13**

Test-x, a Michigan corporation, provides testing services to determine the percentage of cannabidiol (CBD) in various products. Mellow-Glo manufactures CBD-infused skin-care products. The companies executed a valid contract in which Test-x agreed to provide a determination of the percentage of CBD in Mellow-Glo's products "accurate to within 1%." The contract stated that Mellow-Glo intended to use this information on its product labels to differentiate its products in a very competitive market.

After performing its analysis, the president of Test-x called the president of Mellow-Glo to report that Mellow-Glo's products contained 3% CBD. Mellow-Glo immediately began a successful advertising campaign based on the claim that its products contained 3% CBD.

The following week, Mellow-Glo received Test-x's written report. In light of the telephone call, no one at Mellow-Glo read the report, which stated that Test-x's determinations were "accurate to within 5%."

Unfortunately, Test-x's percentages were wrong. Because of a manufacturing flaw, Mellow-Glo's products contained no CBD. Upon learning this, Mellow-Glo removed the "3% CBD" claim on labels for products being currently manufactured but continued selling products already labeled "3% CBD."

After word got out that Mellow-Glo's "3% CBD" claim was inaccurate, Mellow-Glo's sales plummeted. In addition, pursuant to a truth-in-advertising statute, Mellow-Glo was fined for each sale of an inaccurately labeled product. Mellow-Glo was also sued by a new organization, DoRite, bringing lawsuits against select companies that make inaccurate claims about marijuana-derived products (including CBD).

Mellow-Glo sued Test-x for breach of contract, seeking:

- a) lost profits;
- b) the amount of the fines for statutory violations;
- c) the cost of defending the DoRite lawsuit; and
- d) punitive damages.

Test-x claims it did not breach the contract because its estimate was within the promised 5% accuracy rate that it clearly indicated to Mellow-Glo.

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Applying Michigan contract law, answer the following questions:

1. Did Test-x breach the contract? Explain.
2. Assuming Test-x breached the contract, is Mellow-Glo entitled to the claimed damages? Analyze each.

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