

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANTEC DYNAMICS, INC.,

Plaintiff,

v.

LAVISION INC.,

Defendant.

Civil Action No. __

COMPLAINT AND JURY DEMAND

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INTRODUCTION

1. After the termination of his employment as a salesperson at Dantec Dynamics, Inc. (“Dantec”), former Dantec employee Michael Kotas (“Kotas”) began working for Dantec’s direct competitor, LaVision Inc. (“LaVision”). Acting at all times on behalf of LaVision, Kotas illegally accessed Dantec’s computer systems, took trade secrets contained therein without authorization,

deleted electronic information in an effort to cover his tracks, and used the misappropriated trade secrets to solicit Dantec's existing and prospective customers, specifically, several hot prospects, to move their business from Dantec to LaVision. Kotas also made disparaging comments about Dantec's products as a part of his solicitation efforts on behalf of LaVision. Upon information and belief, LaVision was aware at all times that Kotas was performing these acts on its behalf, conspired with Kotas to take Dantec's trade secrets from Dantec's computer systems without authorization, encouraged Kotas' efforts, received the misappropriated information, and used it to solicit Dantec's existing and prospective customers, including its hot prospects. LaVision's acts are not only improper on their face, they are also unlawful: Defendant LaVision has unlawfully misappropriated Dantec's trade secrets, violated the Computer Fraud and Abuse Act, tortiously interfered with Dantec's business expectancies, converted Dantec's customer information, disparaged Dantec's products, and unfairly competed with Dantec. Dantec is therefore seeking equitable relief and damages.

PARTIES

2. Dantec is a New Jersey corporation, with its principal and usual place of business in Holtsville, New York. Dantec develops and sells wholesale scientific apparatus and instruments, including high-tech measurements systems.

3. Dantec is a wholly owned subsidiary of Dantec Dynamics A/S, a Danish corporation.

4. Upon information and belief, LaVision is a Texas corporation, with its principal and usual place of business in Ypsilanti, Michigan. Like Dantec, LaVision also develops and sells wholesale scientific apparatus and instruments, including high-tech measurements systems.

5. Upon information and belief, LaVision is a wholly owned subsidiary of LaVision

GmbH, a German corporation.

NATURE OF THE CASE

6. This is an action for (a) misappropriation of trade secrets pursuant to the Michigan Uniform Trade Secrets Act (“MUTSA”), Mich. Comp. Laws § 445.1901 et seq.; (b) violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq.; (c) statutory conversion pursuant to Michigan Compiled Laws § 600.2919a; and (d) tortious interference with business expectancies, conversion, disparagement, conspiracy, and unfair competition pursuant to the common law of the state of Michigan.

JURISDICTION AND VENUE

7. This Court has subject matter over the federal Computer Fraud and Abuse Act claim pursuant to 28 U.S.C. § 1331 and the state law claims pursuant to 28 U.S.C. § 1367.

8. This Court also has subject matter jurisdiction over Dantec’s claims pursuant to 28 U.S.C. § 1332 because the case is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. This Court has general personal jurisdiction over LaVision because LaVision carries on a continuous and systematic part of its general business within the state, and also has specific personal jurisdiction over LaVision because LaVision’s acts in Michigan resulted in this action for tort.

10. Venue in this court is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Michigan.

FACTUAL BACKGROUND

Dantec's Business and Trade Secrets

11. Dantec is a highly successful provider of measurements solutions for diagnostics and research in a variety of industries. It services sophisticated customers throughout North America – typically universities and large corporations with substantial research and development operations – developing and selling high-tech laser optical measurement systems and sensors tailored to its customers' specifications. Dantec's only direct competitors in the United States are LaVision and TSI Inc.

12. As a direct provider of customer measurements solutions, one of Dantec's principal assets, which enables it to compete successfully in the measurement solutions marketplace, is its confidential, trade secret information concerning its existing and prospective customers ("Trade Secrets"), which it stores in its computer databases and systems.

13. The Trade Secrets in Dantec's computer databases and systems include valuable information about each customer. The Trade Secrets include not only customer names but also key personnel contacts, including private contact information such as cellular phone numbers and e-mail addresses, customer purchase history, customer sales data, pricing practices, details regarding existing and prospective customer contracts, details regarding strategic plans and marketing plans, and other information not publicly available. The Trade Secrets were assembled over many years at significant cost to Dantec.

14. Dantec derives actual and potential economic value from its Trade Secrets not being generally known to the public or known to others, including competitors, who can obtain economic value from use of the Trade Secrets.

15. Because of the significant value of Dantec's Trade Secrets, Dantec takes a

number of steps to protect the Trade Secrets from loss and maintain their secrecy, including all steps reasonable under the circumstances.

16. Prior to July 30, 2010, Dantec's Trade Secrets were not known outside of Dantec and were not ascertainable absent improper means. Although Dantec gives its employees access to its Trade Secrets via the company's computer systems, employees are required to maintain the Trade Secrets in confidence and their authority to access the Trade Secrets is revoked upon termination of employment.

17. The Trade Secrets have been used by Dantec to sell its products to more than 2500 customers in North America.

Dantec Authorized Kotas to Access Its Trade Secrets While Employed by Dantec

18. From in or around 1982 until in or around 1992 and then again from 2006 through July 30, 2010, Kotas was employed as a salesperson for Dantec. In that position, Kotas was responsible for marketing Dantec's products to existing and prospective customers, responding to technical questions asked by customers, preparing pricing quotes for presentation to customers, maintaining Dantec's sales and marketing support tools, and participating in exhibitions on behalf of Dantec.

19. Kotas was required to access certain Trade Secrets to perform his duties as a Dantec salesperson, including but not limited to Trade Secrets with respect to customer history and preferences as well as confidential pricing information.

20. Because Kotas resided in Tucson, Arizona during his employment, and worked from his home, he was given remote access to Dantec's computer systems.

21. Dantec gave Kotas remote access to its computer systems for the sole purpose of performing his duties as a salesperson.

22. At all times relevant to this litigation, Kotas understood that he had a duty to

protect the confidence of Dantec's Trade Secrets and not divulge them to anyone outside of Dantec without authorization. He also understood that he had an obligation to return all of Dantec's property upon his termination.

Kotas Is Terminated and His Authorization to Access Dantec's Trade Secrets and Computer Systems Is Revoked

23. On July 30, 2010, Dantec terminated Kotas' employment. Dantec instructed Kotas to immediately return all Dantec property, including the laptop computer that had been provided to him by Dantec for use during his employment.

24. Kotas' authorization to access Dantec's Trade Secrets and computer systems was revoked as of the date of his termination.

25. Kotas understood that his authorization to access Dantec's Trade Secrets and computer systems was revoked as of the date of his termination.

Kotas Enters into a Relationship with Competitor LaVision

26. Within two weeks of his July 30 termination, Kotas entered into a relationship with LaVision pursuant to which he was responsible for selling LaVision products that were directly competitive to the products that he had sold on Dantec's behalf.

27. In this new position, Kotas, acting on behalf of LaVision, had an interest in trying to solicit Dantec's existing and prospective customers to buy LaVision's products.

28. LaVision gave Kotas an email address within its domain – mk@lavisoinc.com – and held Kotas out as an employee of LaVision.

In an Effort to Obtain Sales on Behalf of LaVision, Kotas Illegally Accesses Dantec's Computer Systems, Takes Trade Secrets, and Shares that Information with LaVision, all with LaVision's Knowledge and Sanction

29. On several occasions after his July 30 termination, Kotas, acting on behalf of LaVision, accessed Dantec's computer systems, located in New Jersey, New York, and/or

Denmark, without authorization for the purpose of obtaining Trade Secrets regarding Dantec's customers and potential customers.

30. Kotas accessed Dantec's computer systems from a remote, out-of-state location using the login credentials associated with his former salesperson position.

31. Upon information and belief, LaVision knew about Kotas' plan to access Dantec's Trade Secrets without authorization before the access occurred, and encouraged Kotas to engage in such unauthorized access and take such Trade Secrets for the purpose of soliciting Dantec's customers and potential customers.

32. Kotas shared the Trade Secrets obtained from Dantec's computer systems with LaVision, including by sending e-mails containing the Trade Secrets to LaVision in Michigan.

Kotas Deletes Electronic Information from Dantec's Computer Systems

33. On or around August 16, 2010, Kotas sent e-mails to and/or received e-mails from LaVision in which he and LaVision discussed Dantec's Trade Secrets.

34. These e-mails were inadvertently sent to and/or from Kotas' former e-mail address at Dantec, where they were discovered by Dantec employees.

35. Upon realizing his error, Kotas, acting on behalf of LaVision, entered into the Dantec computer systems and deleted the e-mails in an effort to protect LaVision and prevent Dantec from detecting the illegal activities conducted on behalf of LaVision.

On Behalf of LaVision, Kotas Sends E-Mails to Dantec's Customers and Prospective Customers, Disclosing Dantec's Trade Secrets and Making Disparaging Remarks About Dantec's Products, in an Effort to Encourage the Customers to Buy LaVision's Products

36. On or around August 16, 2010, Kotas, acting on behalf of LaVision, sent e-mails to several of Dantec's "hot prospects" – customers and potential customers, including Texas A&M University and W.L. Gore & Associates, that had expressed significant interest in purchasing Dantec's products in the short term – disclosing Dantec's Trade Secrets and

disparaging Dantec's products in an effort to encourage those customers to enter into agreements with LaVision, instead of Dantec.

37. Kotas performed these acts for LaVision's benefit.

Kotas Provides Dantec's Trade Secrets to LaVision to Help LaVision Win Sales Opportunities Away from Dantec

38. On or around August 16, 2010, Kotas provided Dantec's Trade Secrets to other employees at LaVision to help them attempt to win specific sales opportunities away from Dantec, including with respect to "hot prospect" Simon Fraser University in Canada.

Dantec Is Damaged by These Acts

39. Using the Trade Secrets taken from Dantec's computer systems without authorization, LaVision targeted at least three Dantec customers in North America. LaVision's unlawful actions have caused and continue to cause Dantec to suffer damages and substantial and irreparable harm.

FIRST CAUSE OF ACTION

**Violation of Michigan Uniform Trade Secrets Act
(Mich. Comp. Laws § 445.1901 et seq.) –
Misappropriation of Trade Secrets**

40. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 39 of this Complaint, as if fully set forth herein.

41. Dantec's Trade Secrets constitute trade secret information.

42. Dantec took efforts that were reasonable under the circumstances to maintain the secrecy of its Trade Secrets.

43. Dantec's Trade Secrets were not known outside of Dantec and were not ascertainable absent improper means, including accessing Dantec's computer systems.

44. On behalf of LaVision, Kotas used improper means to acquire knowledge of the

Trade Secrets and disclosed and used the Trade Secrets without Dantec's consent.

45. LaVision acquired Dantec's Trade Secrets from Kotas, knowing that the Trade Secrets were acquired by improper means.

46. LaVision used Dantec's Trade Secrets without Dantec's consent, and at the time of use, knew or had reason to know that its knowledge of the Trade Secrets was derived from or through Kotas, who utilized improper means to acquire the Trade Secrets and who owed a duty to Dantec to maintain the secrecy of the Trade Secrets.

47. LaVision's conduct has caused and continues to cause Dantec to suffer damages and substantial and irreparable harm.

SECOND CAUSE OF ACTION

Violation of Computer Fraud and Abuse Act Section (a)(2) (18 U.S.C. § 1030(a)(2))

48. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 47 of this Complaint, as if fully set forth herein.

49. When Kotas' employment with Dantec was terminated, his authorization to access Dantec's computer systems was likewise terminated.

50. After his termination, Kotas, acting on behalf of LaVision, intentionally accessed Dantec's computer systems, located in New Jersey, New York, and/or Denmark, from a remote, out-of-state location without authorization.

51. Kotas thereby obtained information from Dantec's computer systems, including Trade Secrets, for the benefit of LaVision.

52. Dantec's computer systems are used in interstate commerce.

53. Kotas' conduct on behalf of LaVision involved interstate communications.

54. Kotas' conduct on behalf of LaVision resulted in loss to Dantec of at least \$5000,

including (a) the cost of responding to the offense, conducting a damage assessment, and attempting to restore the data, program, system, or information to its condition prior to the offense, which cost includes attorneys' fees accrued in responding to the offense, and (b) revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

THIRD CAUSE OF ACTION

**Violation of Computer Fraud and Abuse Act Section (a)(5)(C)
(18 U.S.C. § 1030(a)(5)(C))**

55. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 54 of this Complaint, as if fully set forth herein.

56. Acting on behalf of LaVision, Kotas knowingly caused the transmission of a command to Dantec's computer systems and as a result of such conduct, intentionally caused damage without authorization to the computer systems.

57. The damage to Dantec's computer systems consisted of impairment to the integrity and/or availability of the data and/or information contained therein and resulted in loss to Dantec of at least \$5000, including (a) the cost of responding to the offense, conducting a damage assessment, and attempting to restore the data, program, system, or information to its condition prior to the offense, which cost includes attorneys' fees accrued in responding to the offense, and (b) revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

FOURTH CAUSE OF ACTION

**Violation of Computer Fraud and Abuse Act Section (b)
(18 U.S.C. § 1030(b))**

58. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 57 of this Complaint, as if fully set forth herein.

59. LaVision conspired with Kotas to commit an offense under subsection (a) of 18 U.S.C. § 1030.

60. LaVision and Kotas engaged in overt acts in pursuit of this common purpose, including but not limited to the improper accessing of Trade Secrets by Kotas.

61. LaVision's conduct resulted in loss to Dantec of at least \$5000, including (a) the cost of responding to the offense, conducting a damage assessment, and attempting to restore the data, program, system, or information to its condition prior to the offense, which cost includes attorneys' fees accrued in responding to the offense, and (b) revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

FIFTH CAUSE OF ACTION

Tortious Interference with a Business Expectancy

62. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 61 of this Complaint, as if fully set forth herein.

63. Dantec has significant business relationships and/or expectancies with its existing and prospective customers.

64. LaVision knew about Dantec's business relationships and/or expectancies with its existing and prospective customers.

65. LaVision intentionally and improperly interfered with Dantec's business relationships and/or expectancies with its existing and prospective customers, inducing and/or causing a disruption and/or termination of the business relationships and/or expectancies.

66. LaVision's conduct has caused and continues to cause Dantec to suffer damages and substantial and irreparable harm.

SIXTH CAUSE OF ACTION

**Conversion
(Common Law and Michigan Compiled Laws § 600.2919a)**

67. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 66 of this Complaint, as if fully set forth herein.

68. Dantec created and owned the Trade Secrets at all times relevant to this lawsuit.

69. Kotas, acting on behalf of LaVision, intentionally and wrongfully took Dantec's Trade Secrets without authorization.

70. LaVision received Dantec's Trade Secrets, knowing that they were wrongfully taken from Dantec and intending to put them to its own use.

71. LaVision's conduct has caused and continues to cause Dantec to suffer damages and substantial and irreparable harm.

72. Dantec is entitled to treble damages under Michigan Compiled Laws § 600.2919a.

SEVENTH CAUSE OF ACTION

Disparagement

73. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 72 of this Complaint, as if fully set forth herein.

74. Kotas, acting on behalf of LaVision, communicated to Dantec's existing and/or prospective customers false statements about Dantec's products.

75. Kotas, acting on behalf of LaVision, was aware that the statements about Dantec's products were false when made.

76. Kotas, acting on behalf of LaVision, intended to inflict economic harm by soliciting Dantec's existing and/or prospective customers to buy products from LaVision.

77. LaVision's conduct has caused and continues to cause Dantec to suffer damages

and substantial and irreparable harm.

EIGHTH CAUSE OF ACTION

Unfair Competition

78. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 76 of this Complaint, as if fully set forth herein.

79. LaVision's conduct set forth above constitutes common law unfair competition.

80. LaVision's conduct has caused and continues to cause Dantec to suffer damages and substantial and irreparable harm.

NINTH CAUSE OF ACTION

Civil Conspiracy

81. Dantec incorporates by reference the allegations contained in Paragraphs 1 through 80 of this Complaint, as if fully set forth herein.

82. LaVision illegally, maliciously, and wrongfully conspired with Kotas with the intent to and for the illegal purpose of misappropriating and converting Dantec's Trade Secrets, tortiously interfering with Dantec's business expectancies, disparaging Dantec's products, and unfairly competing with Dantec.

83. This conspiracy resulted in the illegal, unlawful, or tortious activity of misappropriation and conversion of Dantec's Trade Secrets, tortious interference with Dantec's business expectancies, disparagement of Dantec's products, and unfair competition with Dantec.

84. LaVision's conduct has caused and continues to cause Dantec to suffer damages and substantial and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Dantec respectfully requests that the Court order the following relief:

85. Preliminarily and permanently enjoin LaVision from engaging in an employment relationship with Kotas; accessing Dantec's computer systems; using Dantec's Trade Secrets; and engaging in unfair competition, including the misappropriation of Dantec's Trade Secrets;

86. Enter an order directing LaVision to return to Dantec any and all documents and materials, in any form, that constitute or contain Dantec's Trade Secrets;

87. Enter judgment in favor of Dantec and against LaVision on the Counts of this Complaint;

88. Award Dantec all damages, including actual, compensatory, consequential, incidental, special, and punitive damages, to which it may be entitled by reason of LaVision's unlawful conduct;

89. Award Dantec treble the amount of its damages to which it may be entitled by reason of LaVision's conversion in violation of Michigan Compiled Laws § 600.2919a;

90. Award Dantec its reasonable attorneys' fees, interest, and cost of suit; and

91. Award Dantec such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Dantec demands a trial by jury on all of its claims for relief that are so triable.

Respectfully submitted,

DANTEC DYNAMICS

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