

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

DANTEC DYNAMICS, INC.,

Plaintiff,

v.

Civil Action No.: 10-cv-14772-AJT-MJH
Hon. Arthur J. Tarnow
Magistrate Judge: Michael J. Hluchaniuk

LAVISION INC.,

Defendant.

**ANSWER TO COMPLAINT, RELIANCE UPON JURY DEMAND, AND
AFFIRMATIVE DEFENSES AND OBJECTIONS**

NOW COMES Defendant, by and through counsel HOOPER HATHAWAY, P.C. and hereby submits its Answer to Plaintiff's Complaint and states as follows:

INTRODUCTION

1. Defendant admits that Dantec is apparently seeking equitable relief and damages, but denies as untrue any allegation or suggestion that Dantec is entitled to any relief or damages. The remaining allegations set forth in Paragraph 1 are denied as untrue.

PARTIES

2. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

3. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

4. Admitted.

5. Admitted.

NATURE OF THE CASE

6. Defendant admits that Plaintiff has asserted and pled allegations in this Complaint which would tend to characterize its allegations into the four categories depicted in Paragraph 6; however, Defendant denies that it is liable to Plaintiff under any of these claims, theories or categories, because the same is untrue.

JURISDICTION AND VENUE

7. Admitted.

8. It is admitted that the parties are citizens of different states. The amount in controversy is neither admitted nor denied, because Defendant lacks sufficient information upon which to form an opinion as to the truth or falsity of this particular allegation. The remaining allegations in Paragraph 8 set forth a legal conclusion to which no response is required.

9. Defendant admits that this Court has general personal jurisdiction over it. Defendant denies as untrue the allegation that it committed any tortious acts. The remaining allegations set forth in Paragraph 9 of the Complaint are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

10. Defendant does not contest venue, but neither admits nor denies the factual allegations set forth in Paragraph 10, as it is without sufficient information upon which to base a belief as to their truth or falsity.

FACTUAL BACKGROUND

11. It is admitted that Defendant and TSI Inc. are competitors of Dantec. The remaining allegations set forth in Paragraph 11 are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

12. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

13. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph. Plaintiff is left to its proofs on this issue. Defendant does affirmatively state, upon information and belief, that Plaintiff failed to take adequate steps to deny computer access to Dantec's former employee, Michael Kotas, after its termination of his employment.

14. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

15. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

16. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

17. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

Note: The bold faced topic headings contained in Plaintiff's Complaint do not appear to be allegations corresponding to individual paragraph numbers, and therefore do not appear to require responsive pleading; therefore, Defendant supplies no answer to these topic headings, other than to deny their characterization in toto as untrue or to neither admit nor deny them for lack of information, consistent with the answers which are pled in response to the individual paragraph numbers that surround them.

18. It is admitted, upon information and belief, that Michael Kotas was at one time employed by Dantec, ending in the Summer of 2010. The remaining allegations set forth in Paragraph 18 are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

19. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

20. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

21. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

22. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

23. It is admitted, upon information and belief, that Dantec terminated Kotas's employment, although Defendant lacks sufficient information as to the exact date of the termination. The remaining allegations contained in Paragraph 23 are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity. Defendant affirmatively states, upon information and belief, that the laptop computer referred to in this paragraph was purchased by and the property of Michael Kotas.

24. The allegation that Kotas' authorization to access Dantec's trade secrets was revoked as of the date of his termination is neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of this allegation. The allegation that Kotas' authorization to access Dantec's computer system was revoked as of the date of his termination is denied as untrue, upon information and belief.

25. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

26. Denied as untrue.

27. Denied as untrue.

28. Defendant admits the allegation that it temporarily gave Kotas an e-mail address within its domain – mk@lavisioninc.com. The remaining allegations set forth in Paragraph 28 are denied as untrue.

29. The allegation in Paragraph 29 that Kotas was “acting on behalf of LaVision” in allegedly accessing Dantec’s computer systems is denied as untrue. The remaining allegations set forth in Paragraph 29, including but not limited to the allegation that Kotas “accessed Dantec’s computer systems,” are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

30. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

31. Denied as untrue.

32. Denied as untrue.

33. Denied as untrue.

34. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

35. The allegations set forth in Paragraph 35, which claim that Kotas was “acting on behalf of LaVision” and which claim that Kotas conducted illegal activities “on behalf of LaVision,” are denied as untrue. The remaining allegations set forth in Paragraph 35, are neither

admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

36. Denied as untrue.

37. Any allegation or implication that Kotas performed any unlawful or unethical acts on LaVision's behalf, at LaVision's directions or with LaVision's knowledge, or that LaVision has gained any measurable benefit from anything done by Kotas is denied as untrue. Any allegations contained in Paragraph 37 which are not otherwise addressed by the previous sentence are neither admitted nor denied, because the allegations are ambiguous and Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

38. Denied as untrue.

39. Denied as untrue.

FIRST CAUSE OF ACTION

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

40. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-39 above as though fully restated herein.

41. Denied as untrue, upon information and belief.

42. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph. Defendant affirmatively states, upon information and belief, that Dantec did not take reasonable efforts under the circumstances to protect the integrity of its computer system from access by its former employees.

43. Denied as untrue.

44. Denied as untrue.

45. Denied as untrue.

46. Denied as untrue.

47. Denied as untrue.

SECOND CAUSE OF ACTION

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

48. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-47 above as though fully restated herein.

49. Denied as untrue, upon information and belief.

50. Denied as untrue.

51. Denied as untrue.

52. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations contained in this paragraph.

53. The allegation that Kotas acted in the manner described in Paragraph 53 “on behalf of LaVision” is denied as untrue. The remaining allegations set forth in Paragraph 53 are neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to their truth or falsity.

54. Denied as untrue.

THIRD CAUSE OF ACTION

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

55. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-54 above as though fully restated herein.

56. Denied as untrue.

57. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

FOURTH CAUSE OF ACTION

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

58. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-57 above as though fully restated herein.

59. Denied as untrue.

60. Denied as untrue.

61. Denied as untrue.

FIFTH CAUSE OF ACTION

Alleged Tortious Interference with a Business Expectancy

62. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-61 above as though fully restated herein.

63. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

64. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

65. Denied as untrue.

66. Denied as untrue.

SIXTH CAUSE OF ACTION

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

67. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-66 above as though fully restated herein.

68. Neither admitted nor denied, because Defendant lacks sufficient information upon which to base a belief as to the truth or falsity of the allegations set forth in this paragraph.

69. Denied as untrue.

70. Denied as untrue.

71. Denied as untrue.

72. Denied as untrue.

SEVENTH CAUSE OF ACTION

Alleged Disparagement

73. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-72 above as though fully restated herein.

74. Denied as untrue.

75. Denied as untrue.

76. Denied as untrue.

77. Denied as untrue.

EIGHTH CAUSE OF ACTION

Alleged Unfair Competition

78. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-77 above as though fully restated herein.

79. Denied as untrue.

80. Denied as untrue.

NINTH CAUSE OF ACTION

Alleged Civil Conspiracy

81. Defendant hereby realleges and reasserts the answers and averments of paragraphs 1-80 above as though fully restated herein.

82. Denied as untrue.

83. Denied as untrue.

84. Denied as untrue.

PRAYER FOR RELIEF

85. The relief requested in Paragraph 85 should be denied as a matter of law and any factual allegations contained therein are denied as untrue.

86. The relief requested in Paragraph 86 should be denied as a matter of law and any factual allegations contained therein are denied as untrue.

87. The relief requested in Paragraph 87 is factually and legally unsupportable and unwarranted and should be denied as a matter of law. Defendant affirmatively states that a judgment of no cause of action should be entered in favor of Defendant, and this case should be dismissed with prejudice, with costs, attorney fees and other appropriate relief being awarded by the Court in Defendant's favor.

88. The relief requested in Paragraph 88 should be denied as a matter of law and any factual allegations contained therein are denied as untrue.

89. The request for relief contained in Paragraph 89 should be denied as legally and factually unsupportable and unwarranted. Defendant denies having committed conversion and denies the allegation that it violated MCL 600.2919(a) because these allegations are untrue.

90. The request for relief in Paragraph 90 should be denied, because it is unwarranted and supported by neither law nor fact. Defendant affirmatively states that the Court should award reasonable attorneys' fees to Defendant under the Michigan Uniform Trade Secrets Act, pursuant to Federal Rule of Civil Procedure 11, and under any other rule or statute under which such an award is justified.

91. Defendant denies the allegation that Plaintiff is entitled to any relief from this Court, and affirmatively states that a judgment of no cause of action should be entered in Defendant's favor, with the case being dismissed with prejudice in its entirety and with an award of costs, statutory and/or sanction-based attorney fees and such other relief as the Court deems appropriate in Defendant's favor.

Respectfully submitted,

HOOPER HATHAWAY, P.C.

Date: February 4, 2011

By: /s/ Anthony P. Patti
Anthony P. Patti (P43729)
William J. Stapleton (P38339)
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Attorneys for LaVision, Inc.

RELIANCE UPON PREVIOUSLY FILED JURY DEMAND

Defendant hereby relies upon Plaintiff's previously filed demand for trial by jury of all issues so triable herein as though fully restated herein.

Respectfully submitted,

HOOPER HATHAWAY, P.C.

Date: February 4, 2011

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Attorneys for LaVision, Inc.

AFFIRMATIVE DEFENSES AND OBJECTIONS

NOW COMES Defendant and for its Affirmative Defenses and Objections to the Complaint states as follows:

1. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted as to some or all of the counts pled.
2. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.
3. Plaintiff has not suffered any damages.
4. Alternatively, to the extent that Plaintiff has suffered any damages, it has failed to mitigate its damages.
5. Plaintiff's claims are grounded in anti-competitive motives and seek to stifle rightful, healthy, lawful competition.

6. Plaintiff's own actions and/or inactions contributed to the events which are the subject matter of this lawsuit.

7. Plaintiff's claims are vexatious and made in bad-faith.

8. Plaintiff's claims are motivated by its own inability to compete in the marketplace.

9. Defendant is not the cause, factually or proximately, of any damages that Plaintiff claims to have suffered.

10. There is nothing confidential or proprietary about the information which was allegedly misappropriated.

11. Plaintiff failed to take adequate steps to guard the alleged secrecy, confidentiality and proprietary nature of its business information, and/or the same is general knowledge within the marketplace.

12. Plaintiff is not entitled to any remedy, or alternatively, to the extent that Plaintiff is entitled to any remedy at all, Plaintiff has an adequate remedy at law.

13. Plaintiff has failed to join a necessary and indispensable party, namely Michael Kotas, and Defendant accordingly objects.

14. The relief sought by Plaintiff would violate the public interest.

15. Plaintiff's claims seek to prevent non-party customers or prospective customers of both parties from doing business with the supplier of their choice.

16. Plaintiff's alleged "Trade Secrets" are too broadly or ambiguously described and too amorphously defined for the Court to award any relief or for any enforcement action to ensue.

17. There is nothing tortious or unethical about Defendant's conduct so as to give rise to a claim for tortious interference with a business expectancy.

18. Plaintiff's alleged "business relationships and/or expectancies" are too ill-defined, ambiguous or amorphous to be the subject of a claim for relief.

19. Plaintiff's "business relationships and/or expectancies" are too vague, non-committed and/or speculative to support any claims for damages or injunctive relief.

20. Plaintiff's damage claims are too speculative to be enforceable.

21. Plaintiff's conversion claim fails because the property which is alleged to have been converted is too indefinite to identify.

22. Plaintiff's conversion claim fails because the property allegedly converted is not tangible.

23. Plaintiff's fourth cause of action pleads a criminal statute under which no civil relief is available.

24. Michael Kotas was not Defendant's employee or agent.

25. Alternatively, if Michael Kotas is found or construed to have been Defendant's employee or agent; (a) his alleged actions went beyond the scope of the agency or employment and the intentional nature of his alleged conduct would relieve Defendant from any liability; (b) his alleged actions would constitute intentional torts for which a principal or employer could not be held vicariously liable under principles of respondeat superior.

26. Some or all of Plaintiff's alleged "Trade Secrets" and/or proprietary information is publicly available or was previously known to Defendant prior to the events alleged in this lawsuit.

27. Plaintiff's claims are barred by accord and satisfaction in that Defendant fully cooperated with Plaintiff's "cease and desist" demand prior to the institution of this lawsuit.

28. Upon information and belief, Plaintiff assumed the risk of the damages which it alleges by failing to take adequate measures and precautions to protect its alleged trade secrets and proprietary information and by failing to take adequate security measures to prevent ongoing computer access by Michael Kotas after the termination of his employment. Plaintiff's computer or computer system, therefore, may not be a "protected computer," as required for relief under the Computer Fraud and Abuse Statute.

29. With respect to Plaintiff's claim for disparagement:

- a. Plaintiff has failed to adequately plead special damages;
- b. Plaintiff's claims are barred because of the alleged communication was true;
- c. Plaintiff's claims are barred because the alleged communications were a mere opinion, sales puffing, or rhetorical hyperbole;
- d. The alleged conduct is protected by the First Amendment as commercial speech;
- e. The alleged communications are privileged, as competitors are free to comment on, criticize, compare or question the quality of another company's products or services;
- f. Plaintiff's claim for disparagement is not specifically pled and the alleged disparaging statements are not adequately identified, and Defendant accordingly objects.

30. Upon information and belief, there is no impairment to the integrity of Plaintiff's computer system or damage thereto.

31. Some or all of Plaintiff's claims have been displaced, subsumed or pre-empted by the Michigan Uniform Trade Secrets Act.

32. Plaintiff's claim for conversion fails and must be dismissed because Defendant lacked the requisite actual knowledge of the alleged conversion, did not know that the material in question was converted or stolen, if in fact that was the case.

33. Defendant hereby reserves the right to add or amend these Affirmative Defenses as the course of discovery progresses.

Respectfully submitted,

HOOPER HATHAWAY, P.C.

Date: February 4, 2011

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Attorneys for LaVision, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Brian Martinuzzi
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Attorney for Plaintiff

And I hereby certify that I have mailed by United States Postal Service, postage pre-paid, the documents to the following non-ECF participants:

Heidi Goldstein Shepherd (BBO# 567147)
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Of Counsel for Plaintiff

DOCUMENTS FILED:

- 1) Answer to Complaint, Reliance Upon Jury Demand, and Affirmative Defenses and Objections; and
- 2) this Certificate of Service

Respectfully submitted,

HOOPER HATHAWAY, P.C.

Date: February 4, 2011

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