

CAUSE NO. 199-596-97

<p>DSC COMMUNICATIONS CORPORATION,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p>v.</p> <p>EVAN BROWN,</p> <p style="padding-left: 100px;">Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>COLLIN COUNTY, TEXAS</p> <p>199TH JUDICIAL DISTRICT</p>
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PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC"), and files this Brief in Support of Its Motion for Temporary Injunction and would respectfully show the following:

I. INTRODUCTION

Evan Brown, a former employee of DSC Communications, Corp. ("DSC"), violated his employment contract by wrongfully refusing to disclose to DSC an invention that would automatically translate "machine executable binary code" to a "high level source code" ("Solution"). There is an imminent and irreparable threat of harm to DSC in that Brown has threatened to flee to Europe to deprive DSC of the Solution, and market the Solution beyond the reach of United State's laws and courts. Unless the Temporary Injunction is granted, DSC will be deprived of its valuable and proprietary intellectual property.

II. BACKGROUND

On April 23, 1997, DSC filed this suit to protect its intellectual property rights. Through its verified Petition, DSC presented evidence that Brown had: (1) breached his employment contract

by wrongfully refusing to disclose the Solution (a computer program that would automatically translate "machine executable binary code" to a "high level source code"); (2) wrongfully asserted that the Solution was his; and (3) threatened to flee to Europe beyond the jurisdiction of United States courts. Based on this evidence, DSC sought a temporary restraining order prohibiting Brown for selling, assigning, transferring, disclosing, developing, or destroying the Solution, and further sought a mandatory injunction requiring Brown to disclose the Solution to DSC. On April 28, 1997, Judge Roach granted that temporary restraining order ("TRO"), as well as an amended order expediting discovery. On April 30, 1997, in response to Brown's Motion for a Protective Order, Judge Roach withdrew the provision of the amended TRO requiring disclosure of the Solution, and stated that he would revisit all issues at the Temporary Injunction hearing scheduled for Friday, May 2, 1997.

III. ARGUMENT

A. Standard for Temporary Injunction

The principles governing the issuance of temporary injunctions were set forth concisely in *Transport Co. v. Robertson Transports, Inc.*, 152 Tex. 551, 261 S.W.2d 549 (Tex. 1953). An applicant is entitled to a temporary injunction if he pleads a cause of action and shows: (1) a probable right on final trial to the relief he seeks; and (2) a probable injury in the interim. *Id.* at 552; *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968). The probable injury element encompasses the elements of imminent harm, irreparable injury, and no adequate remedy at law. *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.--Houston [1st Dist.] 1992, no writ); *Surko Enters., Inc. v. Borg-Warner Acceptance Corp.*, 782 S.W.2d 223, 225 (Tex. App.--Houston [1st Dist.] 1989, no writ).

1. **DSC Has Shown a Probable Right to Relief.**

DSC has established a probable right to relief by showing that Brown wrongfully breached his employment contract. To show a probable right to relief, an applicant for temporary injunction need only point to some wrongful conduct on the part of defendants. *Surko Enters., Inc.*, 782 S.W.2d at 225. It need not establish that it will finally prevail in the litigation. *Travel Masters, Inc. v. Star Tours, Inc.*, 742 S.W.2d 837, 839 (Tex. App.--Dallas, 1987, writ dismissed w.o.j.).

DSC has demonstrated that Brown wrongfully breached his employment contract with DSC by refusing to disclose and assign to DSC his invention. Upon being hired to work at DSC, Brown and DSC entered into an "Employment, Copyright, and Proprietary Information Agreement" ("Employment Agreement") (*see* Exhibit 1 to the Petition), which provides in pertinent part as follows:

- (A) *I will communicate to an officer of the Company promptly and fully all inventions (including, but not limited to, all matters subject to patent, i.e., processes, machines, computer programs, etc.) made or conceived by me (whether made solely by me or jointly with others) from the time of entering the Company's employ until I leave (1) which are along the lines of the business, work or investigations of the Company or of companies which it owns or controls at the time of such inventions, or (2) which result from or are suggested by any work which I may do for or on behalf of the Company.*

* * *

. . . said inventions to be and remain the sole and exclusive property of the Company or its nominees whether patented or not.

(emphasis added). DSC entered into the Employment Agreement with Brown, and with its other technical employees, to protect its intellectual property. The terms are explicit and unambiguous: "[Brown must] communicate to an officer of [DSC] promptly and fully all inventions" and those inventions are "the sole and exclusive property of [DSC] or its nominees whether patented or not."

Patent, Trademark, and Invention Agreements, such as the Employment Agreement in this case, are enforceable. For example, in *Cubic Corporation v. Marty*, 185 Cal. App.3d 438, 229 Cal.Rptr. 828 (Cal. Ct. App. 4th 1986), the court enforced an employment contract with language remarkably similar to Brown's Employment Agreement. In *Cubic*, the employee signed an invention and secrecy agreement which provided in pertinent part that the employee agreed:

To promptly disclose to Company all ideas, processes, inventions, improvements, developments and discoveries coming within the scope of Company's business or related to Company's products or to any research, design experimental or production work carried on by Company, or to any problems specifically assigned to Employee, conceived alone or with others during this employment, and whether or not conceived during regular working hours. All such ideas, processes, trademarks, inventions, improvements, developments and discoveries shall be the sole and exclusive property of Company, and Employee assigns and hereby agrees to assign his entire right, title and interest in and to the same to Company.

Id. at 443. The court rejected all of the employee's arguments on appeal and upheld a declaratory judgment of patent ownership in favor of the Company and breach of the employment agreement by the employee. *Id.*, see also, *Goldwasser v. Smith Corona Corp.*, 817 F.Supp. 263 (D.Conn. 1993)(holding that employee breached confidential information and invention agreement by failing to assign employer ideas embodied in computer software patent); *Syntex Ophthalmics, Inc. v. Novicky*, 795 F.2d 983 (Fed. Cir. 1986) (upholding judgment that employee had made two inventions embodied in patents while employed by corporation and applied for patents, in violation of employment agreement).

Under the Employment Agreement, Brown must disclose and assign to DSC any inventions developed during his employment with DSC and relating to DSC's business to DSC. Brown has done neither. Brown's refusal is wrongful and establishes DSC's probable right to relief.

2. DSC Has Shown Probable Injury

Brown's violations of the Employment Agreement and his threats to steal DSC's intellectual property constitutes probable injury. The probable injury element encompasses the elements of imminent harm, irreparable injury, and no adequate remedy at law. *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.--Houston [1st Dist.] 1992, no writ); *Surko Enters., Inc. v. Borg-Warner Acceptance Corp.*, 782 S.W.2d 223, 225 (Tex. App.--Houston [1st Dist.] 1989, no writ).

Brown has not only refused to disclose the Solution to DSC, but also attempted to market the Solution in Europe. Indeed, he has threatened to flee to Europe to avoid the jurisdiction of not only this Court, but every property law and court in the United States. Brown's actions and threats require an injunction.

The harm that will result from Brown's refusal to disclose the Solution is perhaps most keenly demonstrated in how it affects DSC's right to apply for and receive patent protection for the Solution. As DSC's intellectual property, DSC has the right to apply for a patent to protect this valuable invention. However, DSC cannot begin the process until the Solution has been disclosed to it. With every passing day, DSC's ability to protect the Solution through a patent application becomes more limited as other parties (who may have learned the Solution from Brown, or who might even have developed it on their own after Brown) have the potential to initiate a patent application for this same invention. Only through prompt disclosure of the Solution can DSC protect its valuable property rights against not only Brown, but also against any other persons who might wrongfully seek to patent this same invention.


III. CONCLUSION

DSC has demonstrated a probable right to recovery and probable injury, and has demonstrated imminent harm, irreparable injury, and the absence of an adequate remedy at law. Furthermore, DSC has shown that the scope of the requested injunction is necessary in order to protect DSC's interest in its confidential information. For these reasons, DSC respectfully requests this Court to enter a Temporary Injunction requiring Brown to disclose the Solution and produce all documents and things in his possession related to the Solution (as more specifically set forth in the Duces Tecum attached as Exhibit "A" to the Motion for Expedited Discovery). Without these provisions, DSC cannot identify its intellectual property, cannot protect its intellectual property, and will likely lose its intellectual property to European financiers.

Respectfully submitted,

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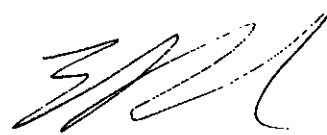
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via telecopy and hand delivery, on all counsel of record, as identified below, on this the 2nd day of May, 1997:

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