

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

**PLAINTIFF'S TRIAL BRIEF CONCERNING
MANDATORY INJUNCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Trial Brief Concerning Mandatory Injunctions and would respectfully show the following:

I. Introduction

A trial court has the power to grant a mandatory injunction at a temporary injunction hearing. A mandatory injunction is appropriate in circumstances of necessity and hardship. Because DSC is fighting an ownership battle on two fronts -- first, in this litigation against Evan Brown and, second, through the patent process against the world -- a mandatory disclosure injunction is necessary. Unless DSC receives a full disclosure of the Solution and is permitted to pursue a patent application, DSC cannot protect its intellectual property rights in the Solution vis-a-vis the rest of the world. Disclosure and the ability to pursue a patent are necessary to protect DSC's rights to the Solution and to prevent irreparable harm.

II. Discussion

Brown offers two reasons why the Court should not enter a mandatory injunction: (1) he contends that a mandatory injunction would alter the status quo and (2) he maintains that a mandatory

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injunction would decide the ultimate issue and provide DSC full relief. For the reasons set forth below, neither argument provides a basis for declining to enter a mandatory injunction in favor of DSC.

A. Mandatory Injunction is Permissible

A trial court has the power to grant a mandatory injunction at a temporary injunction hearing; this decision is within the sound discretion of the trial court. *LeFaucher v. Williams*, 807 S.W.2d 20, 22 (Tex. App.--Austin 1991, no writ)(“The trial court has broad discretion to determine whether to issue a mandatory temporary injunction, and we may reverse the decision only if the court clearly abused its discretion.”).

A mandatory injunction will be granted in circumstances of necessity or hardship. *Boatman v. Lites*, 888 S.W.2d 90, 92 (Tex.App.--Tyler 1994, no writ). While the preservation of the status quo can often be accomplished by a prohibitory injunction, the courts have recognized that the entry of a mandatory injunction is appropriate when the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury on complainant. *LeFaucher*, 807 S.W.2d at 22; *Lawyer’s Surety Corp. v. Rankin*, 500 S.W.2d 181 (Tex.App.--Houston [14th Dist.] 1973, writ ref’d n.r.e.); *Rhodia, Inc. v. Harris County*, 470 S.W.2d 415, 420 (Tex.App.--Houston[1st Dist.] 1971, no writ); *McMurrey Refining Co. v. State*, 149 S.W.2d 276, 279 (Tex.Civ.App.1941, writ ref’d). In such a case, courts issue mandatory writs before the case is heard on its merits. *See, e.g., Boatman*, 888 S.W.2d at 92 (upholding a mandatory injunction requiring removal of dirt berm); *Rhodia*, 470 S.W.2d at 420 (upholding a mandatory injunction against producer of chemical products requiring producer to contain discharge of excessive arsenic into public waters); *Crow v. Batchelor*, 456 S.W.2d 241 (Tex.App.--Texarkana 1970, no writ)(upholding

a mandatory injunction requiring party to remove fence which had changed status quo by preventing plaintiff from using yard).

B. The Status Quo is a Condition of Action: Disclosure And Pursuit of A Patent

In this case, the disclosure requirements contained in the Agreement and the race to the patent office make the status quo a condition of action. DSC is fighting to protect the Solution on two levels. First, it must establish its rights to the Solution with respect to Brown. Second, it must, through the patent process, establish its rights to the Solution vis-a-vis the rest of the world. If DSC secures its rights against Brown, but loses the race to the patent office, its victory against Brown will be ineffectual in allowing DSC to use and exercise ownership rights over the Solution. In order to protect its rights in the Solution, DSC must receive a full disclosure of the Solution and be permitted to pursue the patent process during the pendency of this litigation.

Moreover, given the condition of action that exists in this case, the last peaceable moment in this case was *before* Brown refused to disclose the Solution. At that time, Brown was required by the Employee Patent, Copyright and Propriety Information Agreement to disclose the Solution and to assist DSC in obtaining a patent for the Solution. By refusing to disclose the Solution as required by his Agreement, Brown has disrupted the status quo, obstructed the patent process, and imposed a state of *inaction*. The only way to maintain the status quo is to require Brown to disclose the Solution and permit DSC to take the steps needed to protect the Solution. Such conduct will not prejudice either parties' ultimate rights to the Solution, but will instead protect both parties' rights to the Solution against the rest of the world, until this litigation resolves the dispute between these two parties.

C. A Mandatory Disclosure Injunction Does Not Decide The Ultimate Issue Or Grant Full Relief.

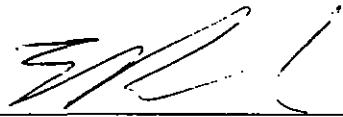
Disclosure will not decide an ultimate issue or grant full relief in this case. The ultimate issue in this litigation is whether, pursuant to Brown's Employee Patent, Copyright and Proprietary Information Agreement, DSC own the Solution. Full relief will entail *a declaration of ownership rights* in the Solution.

This case is no different than any other trade secret litigation. In order to determine ownership, both sides must know and understand the intellectual property in dispute. Currently, DSC is at a severe disadvantage because it does not know or understand the Solution. The Solution must be disclosed, subject to a protective order, to facilitate litigation over ownership. Disclosure will not affect, foreclose, or preterm a decision on the ultimate issue of who owns the Solution. Simply put, disclosure does not constitute ownership.

Respectfully submitted,

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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 29th day of June, 1997:

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