

NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION,	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
EVAN BROWN,	§	
	§	
Defendant,	§	199TH JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S  
MOTION TO FIX AMOUNT OF SUPERSEDEAS BOND  
AND SUSPEND TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this its Response in Opposition to Defendant's Motion to Fix Amount of Supersedeas Bond and Suspend Temporary Injunction Pending Appeal and would respectfully show the following:

**I. INTRODUCTION**

On June 30, 1997, the Court entered a Temporary Injunction in favor of DSC. This order, *inter alia*, requires Brown to fully and completely disclose the "Solution" to DSC. One of the bases underlying the Order was the Court's recognition of the fact that "any delay to DSC's ability to exploit the Solution or to take action to protect its rights in the Solution, such as patent applications on the Solution, will irreparably harm DSC."

Through his Motion to Fix Amount of Supersedeas Bond and Suspend Temporary Injunction Pending Appeal, Defendant now attempts to avoid the disclosure mandated by the Order. Granting

Defendant's Motion would be contrary to the Court's findings as set forth in the Order, and contrary to the common practice of Texas Courts in connection with temporary injunctions.

## II. DISCUSSION

At the conclusion of the Temporary Injunction hearing on June 30, 1997, the Court entered the June 30, 1997 Temporary Injunction Order, which requires Brown to disclose his "Solution" to DSC beginning July 1, 1997. In making that Order, the Court explicitly recognized that "any delay to DSC's ability to exploit the Solution or to take action to protect its rights in the Solution, such as patent applications on the Solution, will irreparably harm DSC." Order, p. 2. This finding by the Court underscores why Defendant's Motion should be rejected: if the Temporary Injunction Order is not given immediate implementation and effect, Plaintiff's rights will be permanently impaired.

The trial court has absolute discretion concerning whether to suspend or supersede an interlocutory order pending appeal. "The court need not grant superseas from an order issuing a temporary injunction. Such a matter is discretionary." *Caldwell v. Kingsberry*, 451 S.W.2d 247, 252 (Tex.App.--Austin 1970, writ ref'd n.r.e.).

Texas cases have historically recognized a distinction between temporary and permanent injunctions for the purpose of determining whether or not a superseas bond is appropriate. Permanent injunctions are likened to final judgments and, in these instances, Courts will generally fix the amount of a requested superseas bond. In contrast to permanent injunctions, which leave nothing to be decided, a temporary injunction is ordered when some issues remain to be heard by the court. "Whether an injunction is temporary or permanent is determinative of the extent of a party's right to suspend the court's order during appeal." *Elizondo v. Williams*, 643 S.W.2d 765, 767 (Tex.App.--San Antonio 1982, n.w.h.). As DSC demonstrated in its Trial Brief Concerning


Mandatory Injunctions, the Temporary Injunction Order preserved intact and did *not* decide the ultimate issue in this case -- ownership of the Solution. It is therefore correct to treat the Order as a *temporary* injunction.

Texas courts have expressed a clear presumption *against* permitting a party to supercede a temporary injunction. “[I]t is the policy of the law not to grant supersedeas from an order issuing temporary injunction.” *Owens v. Coker*, 368 S.W.2d 959 (Tex.App.--Beaumont 1963, n.w.h.). A temporary injunction protects the rights of litigants pending final judgment on the merits. In the present case, the injunction will serve little, if any, purpose if it is not executed immediately. Realizing the irreparable harm DSC will sustain if Defendant is permitted to suspend the Temporary Injunction through posting a supersedeas bond, the Court should deny Evan Brown’s Motion to Fix Amount of Supersedeas and Suspend Temporary Injunction pending appeal.

Respectfully submitted,

**LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.**

By: \_\_\_\_\_

  
Michael P. Lynn, P.C.  
Texas Bar No. 12738500  
Eric W. Pinker  
Texas Bar No. 16016550  
John T. Cox III  
Georgia Bar No. 192530

750 North St. Paul Street  
Suite 1400  
Dallas, Texas 75201  
(214) 981-3800 - Telephone  
(214) 981-3839 - Telecopy

and

**BOYD VEIGEL, P.C.**

John R. Stooksberry  
State Bar No. 19311000  
218 East Louisiana  
Post Office Box 1179  
McKinney, Texas 75070  
(972) 542-0191 - Telephone  
(972) 542-4532 - Telecopy

**ATTORNEYS FOR PLAINTIFF  
DSC COMMUNICATIONS CORPORATION**

**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 First Class U.S. Mail, upon all counsel of record, as identified below, on this the 8th day of July, 1997:

**Via Telecopy: (214) 939-8787**  
**and First Class U.S. Mail**

Richard A. Sayles, Esq.  
Eric D. Pearson, Esq.  
Sayles & Lidji, P.C.  
1201 Elm Street, Suite 4400  
Dallas, Texas 75270

**Via Telecopy: (972) 548-8046**  
**and First Class U.S. Mail**

Dale Drake, Esq.  
110 East Davis, Suite 200  
Post Office Box 1662  
McKinney, Texas 75070-1662

  
\_\_\_\_\_  
Eric W. Pinker