

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

DSC'S MOTION TO COMPEL INTERROGATORY RESPONSES

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Motion to Compel Interrogatory Responses and would respectfully show the following:

I.

Factual Background

1. DSC filed this lawsuit against Brown on April 24, 1997, in which it sought to enforce an Employee Patent, Copyright, and Confidential Information Agreement (the "Employment Agreement") that it entered into with Brown at the onset of his employment relationship with DSC. Specifically, Brown advised DSC that he had "developed a method of converting machine executable binary code into a high level source code form using logic and data abstractions (the "Solution")," but in violation of the Employment Agreement, he refused to assign ownership of the Solution to DSC or assist DSC to protect the Solution.

2. On June 19, 1997, DSC served Defendant Brown with its First Set of Interrogatories to Defendant. In Interrogatories No. 7, DSC asked Brown to "identify and describe in detail" the Solution.

3. On or about June 16, 1997, Brown served his Responses to Plaintiff's First Set of Interrogatories. A true and correct copy of that Response is attached hereto as Exhibit "A." Brown refused to provide any substantive response to Interrogatory No. 7.

4. Based on Brown's failure to provide any description of the Solution, as requested in Interrogatory No. 7, DSC files the instant Motion to Compel.

II.

Discussion

Allowing full discovery is favored by Texas courts. As the Supreme Court of Texas stated:

Affording parties full discovery promotes the fair resolution of disputes by the judiciary. This court has vigorously sought to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. Discovery is thus the linchpin of the search for truth, and it makes a trial less of a game of blind man's bluff and more a fair contest with the issues and facts disclosed to the fullest practicable extent. In recent years, we have sought to secure this objective through . . . our opinions discouraging gamesmanship and secrecy.

State v. Lowry, 802 S.W.2d 669, 671 (Tex. 1991) (Citations omitted).

In Interrogatory No. 7, DSC sought for Brown to provide a complete description of the Solution. This description is critical for several reasons. First, Brown has argued in this lawsuit that the Solution is not within the scope of his Employment Agreement. In order to properly litigate this case, and to fully respond to this contention, DSC needs a full and complete description of the Solution. Notwithstanding its need to obtain a full and complete description of the Solution in order to properly litigate this case, Brown has refused to disclose the Solution in response to the Court's June 30, 1997 Temporary Injunction Order; in response to deposition questions seeking this disclosure; and in response to Interrogatory No. 7.

Second, DSC needs a complete description of the Solution in order to evaluate and defend against claims by third parties who assert an ownership interest in the Solution. On Monday, July 21, 1997, Mr. Lance Flores filed a Petition for Intervention in this matter claiming that he disclosed the Solution to Brown and that he is therefore the owner of the Solution. In order to defend against this claim (and potentially others), DSC needs a complete description of the Solution so that it may compare the Solution to the technology purportedly owned by Mr. Flores.

Finally, DSC requires a complete disclosure of the Solution in order to evaluate whether the Solution was obtained through other lawful means. As DSC demonstrated at the Temporary Injunction hearing, it has investigated the acquisition of technology similar to the Solution for a number of years. In addition, DSC employees have undertaken independent research and development in an effort to develop this type of technology. In order to evaluate whether Brown's Solution is actually different than the technology that was the subject of these other investigations and independent developments, DSC needs a complete disclosure of the Solution.

In refusing to describe the Solution, Brown relies on a series of ill-founded objections. First, Brown argues that the information is confidential and proprietary. As a preliminary matter, trade secrets and confidential information are not necessarily "privileged" matters. *Automatic Drilling Machines, Inc. v. Miller*, 515 S.W.2d 256, 259 (Tex.1974). As such, when faced with a request for discovery of trade secrets and confidential information, courts will weigh the need for discovery against the desirability of preserving the secrecy of the material in question. *Id.* Typically, courts preserve the secrecy of the information through the issuance of an appropriate confidentiality order.

While no such stand alone order has been entered in this case,^{1/} DSC consents to the entry of a reasonable protective order in connection with the disclosure of the Solution.

Second, Brown objects to Interrogatory No. 7 "as vague, ambiguous, over broad, unduly burdensome and harassing." These boilerplate objections are unfounded and should be overruled.

Finally, Brown objects to this Interrogatory on the grounds that "its inclusion within Plaintiff's First Set of Interrogatories cause such interrogatories to require more than 30 answers." Contrary to this objection, DSC's First Set of Interrogatories included only fourteen (14) interrogatories, with few if any subparts. As such, this set of interrogatories was well within the permissible limit established by Texas Rule of Civil Procedure 168(5). This is perhaps best evidenced by the fact that Interrogatory No. 7 is the *only* interrogatory to which Brown made this objection, and he purported to provide a substantive answer to each of the *following* seven (7) interrogatories.

For all these reasons, Brown's objections to Interrogatory No. 7 should be overruled, and Brown should be required to immediately provide a full substantive response to this Interrogatory.

WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court enter an order compelling Brown to fully answer Interrogatory No. 7 by identifying and describing the Solution in detail, and for such other and further relief to which DSC may show itself to be justly entitled.

Respectfully submitted,

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

By: 

^{1/} The Court did include a number of confidentiality features within the June 30, 1997 Temporary Injunction Order, but these features are presumably limited to a disclosure of the Solution under that Order.

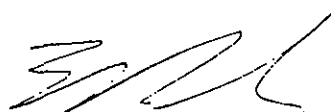
Michael P. Lynn, P.C.
State Bar No. 12738500
Eric W. Pinker
Texas Bar No. 16016550
John T. Cox III
Georgia Bar No. 192530

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

**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF CONFERENCE

I hereby certify that on July 22, 1997, I attempted to resolve the subject matter of this motion with counsel for Defendant, but that no agreement could be reached. This motion is, therefore, submitted to the Court for disposition.



Eric W. Pinker

FIAT

The above Motion to Compel Interrogatory Responses is set for hearing in the 219 Judicial District Court on the ___ day of July, 1997 at _____ o'clock ____ .m.

JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served upon counsel for Defendant Evan Brown, as identified below, on this the 23rd day of July, 1997:

Via Hand Delivery

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

Via Regular Mail

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



Eric W. Pinker

CAUSE NO. 199-596-97

DSC COMMUNICATIONS
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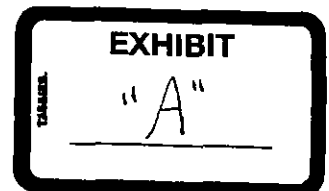
**DEFENDANT'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: Plaintiff DSC Communications Corporation, by and through its attorney of record, Michael P. Lynn, Lynn Stodghill Melsheimer & Tillotson, L.L.P., 750 North St. Paul Street, Suite 1400, Dallas, Texas 75201.

Pursuant to Rule 168 of the Texas Rules of Civil Procedure, Defendant Evan Brown submits the following answers to Plaintiff DSC Communication Corporation's First Set of Interrogatories.

GENERAL OBJECTIONS

Defendant objects to the instructions and definitions contained in Plaintiff DSC Communication Corporation's First Set of Interrogatories because, as applied to specific discovery requests, they cause the requests to be overly broad and global, vague and ambiguous, unduly burdensome, and to seek information, in part, protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Subject to and without waiving these general objections, Defendant responds to the specific interrogatories as follows:



RESPONSES

Interrogatory No. 1:

Please identify the individual(s) answering these interrogatories.

Answer:

Evan Brown

Interrogatory No. 2:

Please identify each person who has any knowledge of any facts relevant to the claims made in the Petition, as defined in the Texas Rules of Civil Procedure, describing the substance of each person's knowledge.

Answer:

Defendant objects to this Interrogatory insofar as it purports to require Defendant to describe the substance of each person's knowledge for the reason that such a requirement seeks to impose burdens on Defendant beyond those permitted by the Texas Rules of Civil Procedure, calls for Defendant to speculate, is overly broad and unduly burdensome and seeks information protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Subject to and without waiving the foregoing objections, Defendant responds as follows:

Alan Adams
DSC Communications Corporation

Dan Allman
DSC Communications Corporation

Jack Barreneaux
DSC Communications Corporation

Wylie Basham
DSC Communications Corporation

Dick Belote
DSC Communications Corporation

Matt Bilbo
DSC Communications Corporation

Rick Billings
DSC Communications Corporation

Gary Brown
DSC Communications Corporation

George Brundt
DSC Communications Corporation

Chris Cole
DSC Communications Corporation

Gamini Desoyza
DSC Communications Corporation

Jim Donald
DSC Communications Corporation

Dan Finch
DSC Communications Corporation

Marvin Harbin
DSC Communications Corporation

Dave Hinshaw
DSC Communications Corporation

Wayne Jones
DSC Communications Corporation

Chuck Lane
DSC Communications Corporation

Mike McCarty
DSC Communications Corporation

Dan McMurray
DSC Communications Corporation

Claude Owen
DSC Communications Corporation

Raymond Percival
DSC Communications Corporation

Rick Ross
DSC Communications Corporation

Cheryl Sanders
DSC Communications Corporation

Brian Scudder
DSC Communications Corporation

Larry Sewell
DSC Communications Corporation

Jinx Smith
DSC Communications Corporation

Jianbai Wang
DSC Communications Corporation

Ron Ward
DSC Communications Corporation

Scott Yegal
DSC Communications Corporation

All members of DSC Communications Corporation's Tools Group

Evan Brown
2705 Chadborne Drive
Plano, Texas 75023

Steve Levine

Tina Young

Billy Gonzales

Jack Coates
College Station, Texas

Sam Horowitz
Palo Alto, California

Lance Flores
Dallas, Texas

Interrogatory No. 3:

Please identify any experts engaged by you or your attorney who may be called to testify at trial.

Answer:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 4:

Please identify any expert that you have consulted in this case, if such experts opinion, impressions or work product have been reviewed by any testifying witness, including any expert witness identified in Interrogatory No. 3 above, in this case.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 5:

For each expert named in your answer to Interrogatory No. 3 or No. 4 above, please state the date on which he/she was first consulted by you or your attorney(s), the subject matter on which he/she is expected to testify, the mental impressions and opinions held by each expert, and a summary of the grounds for each opinion.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege and because it seeks to impose burdens on Defendant beyond those permitted by the Texas Rules of Civil Procedure. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 6:

For each expert named in your answer to Interrogatory No. 3 or No. 4 above, please state the facts known to the expert which relate to or form the basis of the mental impressions and opinions held by the expert.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 7:

Please identify and describe in detail the "method of converting machine executable binary code into high level source code form using logic and data abstractions" (hereinafter "Solution"), that is described in your April 19, 1996 memorandum to Larry Sewell.

Answer:

Defendant objects to this Interrogatory because it seeks information which is confidential and proprietary. Defendant further objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome and harassing. Finally, Defendant objects to this Interrogatory because its inclusion within Plaintiff's First Set of Interrogatories causes such interrogatories to require more than 30 answers in violation of Rule 168(5) of the Texas Rules of Civil Procedure.

Interrogatory No. 8:

Please identify all documents related to the Solution.

Answer:

Defendant objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Defendant states as follows:

Pursuant to Rule 168(2) of the Texas Rules of Civil Procedure, Defendant has produced documents from which the answer to this Interrogatory may be ascertained.

Interrogatory No. 9:

Please identify all efforts by you to protect or preserve the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has protected and preserved the Solution by maintaining its confidential status and by refusing to disclose the Solution to any third parties, including DSC.

Interrogatory No. 10:

Please identify each and every person to whom you have disclosed any part of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Wylie Basham
DSC Communications Corporation

Dick Belote
DSC Communications Corporation

Rick Billings
DSC Communications Corporation

Gary Brown
DSC Communications Corporation

Gamini Desoyza
DSC Communications Corporation

Jim Donald
DSC Communications Corporation

Dan Finch
DSC Communications Corporation

Dave Hinshaw
DSC Communications Corporation

Wayne Jones
DSC Communications Corporation

Chuck Lane
DSC Communications Corporation

Mike McCarty
DSC Communications Corporation

Dan McMurray
DSC Communications Corporation

Cheryl Sanders
DSC Communications Corporation

Larry Sewell
DSC Communications Corporation

Jianbai Wang
DSC Communications Corporation

Ron Ward
DSC Communications Corporation

Steve Levine

Tina Young

Billy Gonzales

Lance Flores
Dallas, Texas

Interrogatory No. 11:

Please identify each and every person with whom you have discussed the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant refers to his Answer to Interrogatory No. 10 set forth above.

Interrogatory No. 12:

Please identify each and every person to whom you have marketed any part of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has not marketed his Idea to anyone.

Interrogatory No. 13:

Please identify each and every person you have contacted in an effort to seek backing or financing for the development of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has not contacted anyone in an effort to seek backing or financing for the development of the Idea.

Interrogatory No. 14:

Please identify the facts underlying your contention, in paragraph IV of Defendant's Original Answer, that "Defendant specifically denies that conditions precedent to recovery have been performed or have occurred."

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the attorney-client and work product privileges and because it seeks to compel Defendant to provide a legal opinion which he is unqualified to render.

Respectfully submitted,



RICHARD A. SAYLES

State Bar No. 17697500

ERIC D. PEARSON

State Bar No. 15690472

SAYLES & LIDJI, P.C.

A Professional Corporation

4400 Renaissance Tower

1201 Elm Street

Dallas, Texas 75270

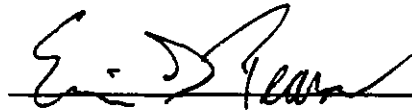
(214) 939-8700

(214) 939-8787 (fax)

Attorneys for Defendant

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this 16th day of July, 1997, pursuant to rule 21a of the Texas Rules of Civil Procedure.



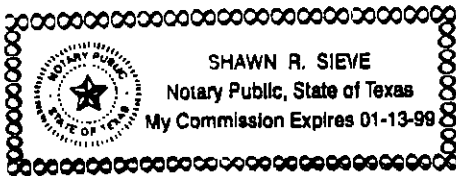
STATE OF TEXAS §
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COUNTY OF DALLAS §

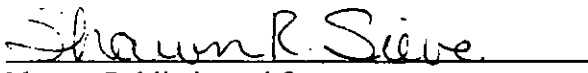
BEFORE ME, the undersigned authority, on this day personally appeared Evan Brown, who being duly sworn by me, upon his oath stated as follows:

1. My name is Evan Brown. I am above the age of 21 and am competent to make this affidavit.
2. I have read the foregoing answers to interrogatories. The answers are true and correct to the best of my knowledge.


Evan Brown

SUBSCRIBED AND SWORN TO BEFORE ME on this the 15th day of July, 1997, to certify which witness my hand and official seal of office.




Notary Public in and for
the State of Texas

My Commission Expires:
1/13/99

Defendant's Responses to Plaintiff's First Set of Interrogatories: