

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

TEOCO Corporation,)
)
)
 Plaintiff,)
)
)
 v.)
)
 Razorsight Corporation, Sundeep)
 Sanghavi and Shital Sanghavi,)
)
 Defendants.)
 -----)
 Razorsight Corporation,)
)
 Counterclaimant,)
)
 v.)
)
 TEOCO Corporation and)
 Atul Jain,)
)
 Counterclaim-)
 Defendants.)

Case No.: 1:07cv887 CMH/BRP

**PLAINTIFF TEOCO CORPORATION’S MEMORANDUM
IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT**

Plaintiff TEOCO Corporation, by counsel, submits this Memorandum in Support of its Motion for Leave to Amend its Complaint. TEOCO’s proposed amendment merely incorporates additional critical facts that were recently revealed in interrogatory responses by Defendants Sundeep Sanghavi and Shital Sanghavi. Based on these responses, TEOCO has discovered that the Sanghavis and Razorsight Corporation misappropriated and infringed far more of TEOCO’s proprietary information than previously known. These newly-discovered facts support TEOCO’s existing claims and four additional copyright infringement claims.

I. OVERVIEW

This case is about a business conspiracy between two former TEOCO employees – Mr. and Mrs. Sanghavi – and Razorsight to injure TEOCO’s business. The Sanghavis’ relationships with TEOCO gave them access to a great deal of TEOCO’s proprietary information, first by virtue of their employment and later by Mr. Sanghavi’s service as a marketing representative. Mr. Sanghavi created Razorsight and its predecessors to compete with TEOCO. Thereafter, the Sanghavis and Razorsight conspired to injure TEOCO by misappropriating TEOCO’s proprietary information for commercial advantage and to compete unfairly. TEOCO has brought claims for injunctive relief, copyright infringement, violation of the Federal Computer Fraud & Abuse Act, misappropriation of trade secrets, breach of contract, breach of the duty of loyalty, and civil conspiracy.

When TEOCO filed this lawsuit, it was aware that the Sanghavis and Razorsight had misappropriated and infringed upon certain TEOCO proprietary information. In discovery, the Sanghavis have now disclosed that they and Razorsight have made use of far more TEOCO proprietary information. While the proposed amendment would constitute a “Third Amended Complaint,” there is no unfair surprise and no prejudice to Defendants. The First Amended Complaint was filed before Defendants answered. The Second Amended Complaint was filed in light of this Court’s Order following Defendants’ Motion to Dismiss the civil conspiracy claim. This Third Amended Complaint merely adds critical facts that TEOCO could not have discovered earlier and that have now been revealed by the Sanghavis in discovery. These facts are already in this case. The Third Amended Complaint just adds them to the pleadings.

II. ARGUMENT

Rule 15(a) provides that a party may amend its pleadings by leave of court and that “leave shall be freely given when justice so requires.” Fed.R.Civ.P. 15(a). As the U.S. Supreme Court has emphasized, “this mandate is to be heeded.” Foman v. Davis, 371 U.S. 178, 182 (1962). Thus, “[t]he standard for granting leave to amend a civil complaint is very liberal.” Foxworth v. United States, No. 3:05CV643-JRS, 2006 U.S. Dist. LEXIS 48235, at *3-4 (E.D.Va. July 17, 2006). The Fourth Circuit has explained that leave to amend should only be denied where there is: (1) prejudice to the nonmoving party; (2) bad faith of the moving party; or (3) futility of the proposed amendment. Edell & Associates, P.C. v. Law Offices of Peter G. Gangelos, 264 F.3d 424, 446 (4th Cir. 2001). None of those factors is present here.

The proposed amendment simply concerns additional conduct by the Sanghavis and Razorsight that supports the existing claims and gives rise to four additional copyright infringement claims. When filing the Second Amended Complaint, TEOCO had information that Defendants had misappropriated TEOCO’s STIGMA software, and various components of BillTrak Pro™ software (“BillTrak Pro™”), including the EDI811 module of the BillTrak Pro™ Data Loader, the graphical representation of the BillTrak Pro™ Data Model and various BillTrak Pro Manuals. Based on the responses received to TEOCO’s Interrogatories and Requests for Admissions issued to Shital Sanghavi, Sundeep Sanghavi and Razorsight, it has been confirmed that Defendants did misappropriate and/or use all of these items.

TEOCO learned much more, however, from the Sanghavis’ responses. Specifically, TEOCO learned that Razorsight and the Sanghavis have also misappropriated and/or used additional TEOCO software, including TEOCO’s BillTrak Pro™ Data Model Scripts, additional modules of the BillTrak Pro™ Data Loader, BillTrak Pro™ Sequences Procedure, TEOCO’s

Java Coding Standard, and TEOCO's Database Coding Standard. This conduct is more egregious than what TEOCO originally knew or believed. For instance, Mrs. Sanghavi has admitted that in her work for Razorsight she has used not only the graphical depiction of TEOCO's BillTrak Pro™ Data Model, but also the underlying BillTrak Pro™ Data Model scripts, which are the software code that actually creates the BillTrak Pro™ data base structure. See Ex. 1, Def. Shital Sanghavi's Objs. & Resps. to Pl. TEOCO's First Set of Interrogs. at 2-5, 7-8. Those scripts were taken directly from TEOCO's source code repository. Along with those scripts, Mrs. Sanghavi has admitted using in her work for Razorsight an additional script, called the BillTrak Pro™ Sequences Procedure. Id. at 5. This Sequences Procedure was also taken directly from TEOCO's source code repository.

In addition to the EDI811 module of the TEOCO BillTrak Pro™ Data Loader, Mrs. Sanghavi also now acknowledges that Razorsight has used the other modules of the TEOCO BillTrak Pro™ Data Loader, including the SECAB modules and CABS modules. Id. at 2-4, 7-8. Again, these materials came directly from TEOCO's source code repository and their misappropriation is even more egregious than what was initially thought to have occurred. Mrs. Sanghavi also admitted receiving two documents produced by the TEOCO development team, after she had left TEOCO, that contain coding standards and guidelines for java and database development, titled the Java Coding Standard and Database Coding Standard. Id. This conduct also bears directly on TEOCO's damages. As Mr. Sanghavi has described, TEOCO's software and materials have been used for Razorsight work in connection with contracts for Verizon and AT&T. See Ex. 2, Def. Sundeep Sanghavi's Objs. & Resps. to Pl. TEOCO's First Set of Interrogs. at 12-14. All of the materials described above are proprietary and copyrighted materials owned by TEOCO.

TEOCO knew about the “tip of the iceberg.” It has now seen what exists below the water line. The new evidence of the Sanghavis’ and Razorsight’s misappropriation further supports TEOCO’s claims for injunctive relief, violation of the Federal Computer Fraud & Abuse Act, misappropriation of trade secrets, breach of contract, breach of the duty of loyalty, and civil conspiracy. Because TEOCO’s BillTrak Pro™ Data Model Scripts, BillTrak Pro™ DataLoader, BillTrak Pro™ Sequences Procedure, Java Coding Standard, and Database Coding Standard are also original copyrightable works and have been registered in accordance with 17 U.S.C. § 101, et seq., the new evidence also supports four additional claims of copyright infringement in violation of the United States Copyright Act, 17 U.S.C. § 106, et seq.

This amendment is not in bad faith. It simply seeks to conform the pleadings to the critical evidence revealed in discovery. There is also no prejudice to the Defendants from the amendment. The additional factual allegations and claims are based on their conduct and their discovery responses. While the parties have been hard at work in discovery (to date, TEOCO has produced nearly one million pages of documents and Defendants have produced over two million pages of documents), depositions have also not begun and expert disclosures have not been served. The amendment is also not futile. Defendants did not previously move to dismiss TEOCO’s other copyright infringement claims or its misappropriation of trade secrets claims. The new evidence establishes additional copyright infringement claims and only provides additional support to TEOCO’s well-pled misappropriation of trade secrets and other existing claims.

For the Court’s convenience, a red-lined copy of the Third Amended Complaint is attached as Exhibit 4 and a clean copy is attached as Exhibit 5.

