

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
DIGITAL CONTENT PROTECTION LLC :
A Delaware limited liability company, :

and :

WARNER BROS. ENTERTAINMENT, INC., :
A Delaware corporation, :

Plaintiffs, :

-- against -- :

LEGENDSKY TECH COMPANY LTD. :

Defendant. :
-----X

FILED ELECTRONICALLY

CIVIL ACTION NO.
1:15-CV-10169

**AMENDED ANSWER
AND COUNTERCLAIMS**

DEFENDANT’S AMENDED ANSWER AND COUNTERCLAIMS

COMES NOW Defendant Legendsky Tech Company LTD. (hereinafter “Defendant”) who hereby files its Amended Answer and Counterclaims (“Answer”) to the claims of Plaintiffs set forth in their Complaint (“Complaint”) dated December 31, 2015, as follows:

I. NATURE OF THE ACTION

1. Defendant admits that Plaintiffs have filed their action alleging that Defendant has violated the statutes set forth in paragraph 1 of the Complaint, but denies that it violated such statutes.

2. Defendant admits that High-Bandwidth Digital Content Protection (“HDCP”) is a technological measure but denies that it “effectively controls access to copyrighted works and protects the rights of copyright owners.” Defendant is without sufficient information to admit or deny the remaining part of paragraph 2, and thus denies the remaining allegations found therein.

3. Defendant is without sufficient information to admit or deny the allegations in paragraph 3, and thus denies the allegations found therein.

4. Defendant is without sufficient information to admit or deny the allegations in paragraph 4, and thus denies the allegations found therein.

5. Defendant admits the allegations in paragraph 5.

6. Defendant is without sufficient information to admit or deny the allegations in paragraph 6, and thus denies the allegations found therein.

7. Defendant admits the allegations in paragraph 7.

8. Defendant admits the allegations in paragraph 8.

9. Defendant admits the first sentence in paragraph 9. Defendant is without sufficient information to admit or deny the remaining allegations in paragraph 9, and thus denies the allegations found therein.

10. Defendant admits the first sentence of paragraph 10 but denies the part of the sentence which alleges such devices “are designed to circumvent HDCP and to eliminate HDCP’s access controls and specifications.” Defendant is without sufficient information to admit or deny the allegations the last sentence of paragraph 10, and thus denies the allegations found therein.

11. Defendant denies the allegations in paragraph 11.

12. Defendant denies the allegations in paragraph 12.

13. Defendant denies the allegations in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant denies the allegations in paragraph 15.

16. Defendant denies the allegations in paragraph 16.

17. Defendant is without sufficient information to admit or deny the allegations in paragraph 17, and thus denies the allegations found therein.

18. Defendant denies the allegations in paragraph 18.

19. Defendant denies the allegations in paragraph 19.

II. THE PARTIES

20. Defendant is without sufficient information to admit or deny the allegations in paragraph 20, and thus denies the allegations found therein.

21. Defendant is without sufficient information to admit or deny the allegations in paragraph 21, and thus denies the allegations found therein.

22. Defendant admits the allegations in paragraph 22.

23. Defendant admits the allegations in paragraph 23.

III. JURISDICTION AND VENUE

24. Defendant is without sufficient information to admit or deny the allegations in paragraph 24, and thus denies the allegations found therein.

25. Defendant is without sufficient information to admit or deny the allegations in paragraph 25, and thus denies the allegations found therein.

26. Defendant is without sufficient information to admit or deny the allegations in paragraph 26, and thus denies the allegations found therein.

27. Defendant is without sufficient information to admit or deny the allegations in paragraph 27, and thus denies the allegations found therein.

28. Defendant is without sufficient information to admit or deny the allegations in paragraph 28, and thus denies the allegations found therein.

IV. FACTS

A. The HDCP Specification

29. Defendant is without sufficient information to admit or deny the allegations in paragraph 29, and thus denies the allegations found therein.

30. Defendant is without sufficient information to admit or deny the allegations in paragraph 30, and thus denies the allegations found therein.

31. Defendant is without sufficient information to admit or deny the allegations in paragraph 31, and thus denies the allegations found therein.

32. Defendant denies the allegations in paragraph 32. HDCP does not “effectively control access to copyrighted Digital Content” within the meaning of 17 U.S.C. §1201(a)(3)(B) because it does not, in the ordinary course of its operation, require the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work in question.

B. HDCP-Protected Systems

33. Defendant is without sufficient information to admit or deny the allegations in paragraph 33, and thus denies the allegations found therein.

34. Defendant admits the allegations in paragraph 34.

35. Defendant is without sufficient information to admit or deny the allegations in paragraph 35, and thus denies the allegations found therein.

C. The HDCP Authentication, Encryption, and Decryption Process

36. Defendant is without sufficient information to admit or deny the allegations in paragraph 36, including its subparagraphs a - c, and thus denies the allegations found therein.

D. DCP and Its Licensing of the HDCP Specification

37. Defendant admits the allegations in paragraph 37.

38. Defendant is without sufficient information to admit or deny the allegations in paragraph 38, and thus denies the allegations found therein.

39. Defendant admits the allegations in paragraph 39.

E. Warner Bros. and Its Digital Content

40. Defendant admits the first sentence of paragraph 40. Defendant is without sufficient information to admit or deny the remaining allegations in paragraph 40, and thus denies the allegations found therein.

41. Defendant is without sufficient information to admit or deny the allegations in paragraph 41, and thus denies the allegations found therein.

42. Defendant is without sufficient information to admit or deny the allegations in paragraph 42, and thus denies the allegations found therein.

43. Defendant is without sufficient information to admit or deny the allegations in paragraph 43, and thus denies the allegations found therein.

44. Defendant is without sufficient information to admit or deny the allegations in paragraph 44, and thus denies the allegations found therein.

45. Defendant is without sufficient information to admit or deny the allegations in paragraph 45, and thus denies the allegations found therein.

46. Defendant is without sufficient information to admit or deny the allegations in paragraph 46, and thus denies the allegations found therein.

F. Legensky's Unlawful Activities

47. Defendant admits the allegation in paragraph 47.

48. Defendant denies the allegations in paragraph 48.

49. Defendant denies the allegations in paragraph 49.

50. Defendant denies the allegations in paragraph 50.

51. Defendant is without sufficient information to admit or deny the allegations in paragraph 51, and thus denies the allegations found therein.

52. Defendant admits the allegation in paragraph 52 to the extent that HDFury devices are sold through www.hdfury.com. However, Defendant is without sufficient information to admit or deny the remaining allegations in paragraph 52, and thus denies the allegations found therein.

53. Defendant denies the allegations in paragraph 53.

54. Defendant is without sufficient information to admit or deny the allegations in paragraph 54, and thus denies the allegations found therein.

55. Defendant is without sufficient information to admit or deny the allegations in paragraph 55, and thus denies the allegations found therein.

56. Defendant is without sufficient information to admit or deny the allegations in paragraph 56, and thus denies the allegations found therein.

57. Defendant is without sufficient information to admit or deny the allegations in paragraph 57, and thus denies the allegations found therein.

58. Defendant is without sufficient information to admit or deny the allegations in paragraph 58, and thus denies the allegations found therein.

59. Defendant is without sufficient information to admit or deny the allegations in paragraph 59, and thus denies the allegations found therein.

60. Defendant is without sufficient information to admit or deny the allegations in paragraph 60, and thus denies the allegations found therein.

61. Defendant is without sufficient information to admit or deny the allegations in paragraph 61, and thus denies the allegations found therein.

62. Defendant denies the allegations in paragraph 62.

63. Defendant is without sufficient information to admit or deny the allegations in paragraph 63, and thus denies the allegations found therein.

64. Defendant is without sufficient information to admit or deny the allegations in paragraph 64, and thus denies the allegations found therein.

65. Defendant is without sufficient information to admit or deny the allegations in paragraph 65, and thus denies the allegations found therein.

66. Defendant is without sufficient information to admit or deny the allegations in paragraph 66, and thus denies the allegations found therein.

67. Defendant is without sufficient information to admit or deny the allegations in paragraph 67, and thus denies the allegations found therein.

G. The Harm Caused by LegendSky

68. Defendant is without sufficient information to admit or deny the allegations in paragraph 68, and thus denies the allegations found therein.

69. Defendant is without sufficient information to admit or deny the allegations in paragraph 69, and thus denies the allegations found therein.

70. Defendant is without sufficient information to admit or deny the allegations in paragraph 70, and thus denies the allegations found therein.

71. Defendant is without sufficient information to admit or deny the allegations in paragraph 71, and thus denies the allegations found therein.

72. Defendant is without sufficient information to admit or deny the allegations in paragraph 72, and thus denies the allegations found therein.

73. Defendant is without sufficient information to admit or deny the allegations in paragraph 73, and thus denies the allegations found therein.

V. CAUSES OF ACTION

COUNT ONE

Violation of the Digital Millennium Copyright Act, 17 U.S.C. §1201(a)(2) and §1201(b)(1)

74. Defendant is without sufficient information to admit or deny the allegations in paragraph 74, and thus denies the allegations found therein.

75. Defendant admits the allegation in paragraph 75.

76. Defendant admits the allegation in paragraph 76.

77. Defendant denies the allegations in paragraph 77.

78. Defendant denies the allegations in paragraph 78.

79. Defendant is without sufficient information to admit or deny the allegations in paragraph 79, and thus denies the allegations found therein.

80. Defendant denies the allegations in paragraph 80.

81. Defendant admits the first sentence of paragraph 81, but otherwise denies the remaining allegations the paragraph.

82. Defendant is without sufficient information to admit or deny the allegations in paragraph 82, and thus denies the allegations found therein.

83. Defendant denies the allegations in paragraph 83.

84. Defendant denies the allegations in paragraph 84.

85. Defendant denies the allegations in paragraph 85.

COUNT TWO

Violation of the Lanham Act, 15 U.S.C. 1125(a)(1)

86. Defendant is without sufficient information to admit or deny the allegations in paragraph 86, and thus denies the allegations found therein.

87. Defendant admits the allegations in paragraph 87.

88. Defendant is without sufficient information to admit or deny the allegations in paragraph 88, and thus denies the allegations found therein.

89. Defendant is without sufficient information to admit or deny the allegations in paragraph 89, and thus denies the allegations found therein.

90. Defendant is without sufficient information to admit or deny the allegations in paragraph 90, and thus denies the allegations found therein.

91. Defendant is without sufficient information to admit or deny the allegations in paragraph 91, and thus denies the allegations found therein.

92. Defendant is without sufficient information to admit or deny the allegations in paragraph 92, and thus denies the allegations found therein.

93. Defendant is without sufficient information to admit or deny the allegations in paragraph 93, and thus denies the allegations found therein.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST DEFENSE

1. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against Defendant and should be dismissed. In particular, the Plaintiffs fail to allege, and will not

be able to prove even if they do allege, either direct or contributory copyright infringement by Defendant. What is more, Defendants' HDFury conversion technology is explicitly authorized and consented to by Plaintiff Digital Content Protection LLC.

SECOND DEFENSE

2. Plaintiffs' claims are barred, in whole or in part, because of copyright abuse. Plaintiffs' action against Defendant is an intentionally unlawful attempt to extend the scope of Plaintiffs' copyright monopolies beyond their legal scope to prohibit and enjoin Defendant's conduct, which Plaintiffs know, or should know, does not constitute an infringement of Plaintiffs' copyrights, is not a violation of the DMCA, or otherwise is a fair use under the Copyright Act.

THIRD DEFENSE

3. Plaintiffs' claims are barred by the doctrine of fair use. In particular, to the extent that Defendants' products circumvent within the meaning of the DMCA, such circumvention is lawful because it enables interoperability between independently created computer programs with other programs, as more fully set forth in 17 U.S.C. §1201(f)(2).

FOURTH DEFENSE

4. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, and/or unclean hands. Upon information and belief, numerous other manufacturers, including Sony, have sold and otherwise marketed their own "stripping" devices for some time now, and yet, Plaintiffs have not sought legal recourse under the DMCA against such companies. What is more, several manufacturers, including Samsung, have sold devices that have an HDCP free mode via remote control. And yet Plaintiffs have not sought legal recourse against such companies under the DMCA either.

FIFTH DEFENSE

5. Plaintiffs' claims are barred, in whole or in part, because this court lacks subject matter jurisdiction.

SIXTH DEFENSE

6. Plaintiffs' claims are barred, in whole or in part, because this court lacks personal jurisdiction over the Defendant.

DEFENDANT'S COUNTERCLAIMS

I. Preliminary statement

1. Plaintiffs' Complaint is a sham. They know, or should know, that Plaintiff DCP's licensees, including Netflix, use HDFury Devices to convert newer to older versions of HDCP so as to enable interoperability between devices. In reality, then, the Complaint is a bludgeon to use against Defendant so as to unlawfully (1) expand the scope of Plaintiffs' copyright monopolies, and (2) protect Plaintiff DCP's HDCP monopoly licensing rents in the relevant market, in which DCP's market share is, upon information and belief, close to 100%.

2. It would be one thing if Plaintiff alleged, or were able to allege, that Defendant is liable for direct or indirect copyright infringement because of its HDFury Devices. But, as the Court will see, the Complaint is devoid of any such allegation. *See* Plaintiffs' Complaint, *passim*. Instead, Plaintiffs bootstrap liability allegations based on a DMCA digital trespass theory, which was specifically rejected by the Federal Circuit before Plaintiffs' Complaint was filed, and on the trumped up allegation that Defendant's HDFury Devices are "strippers" which enable unfettered pirating by Defendant's criminal clientele.

3. In so doing, Plaintiffs have unlawfully painted Defendant and its customers with the Scarlett letter of criminality.

4. After all, Plaintiffs know that DCP's licensing manual specifically authorizes conversion of different versions of HDCP so as to achieve interoperability. That's why other American companies, such as Key Digital Systems Inc. ("Key Digital"), have conversion devices on the market. Upon information and belief, Plaintiffs have not sued Key Digital. Instead, they have brought this sham action because Defendant is a Chinese company whose innovative HDFury Devices lawfully diminish "DCP's [monopoly] licensing revenues." As a result, Plaintiffs have, upon information and belief, manufactured truth by spreading lies in the press not that they allege that Defendant's HDFury Devices are primarily designed to pirate copyrighted content, but that they unequivocally do. *See* Exhibit "A."

5. For these reasons, Defendant interposes counterclaims against Plaintiffs for violations of the Sherman Act, tortious interference with prospective business relations, and defamation *per se* under New York law.

II. Jurisdiction and venue

6. Defendant's counterclaims arise under the federal antitrust laws. For those claims, jurisdiction is conferred upon this court per 15 U.S.C. §15, and 18 U.S.C. §1331. For Defendant's other New York based counterclaims, this court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

7. Venue is proper in this district pursuant to 15 U.S.C. §§22, 26, and 28 U.S.C. §1391 because Plaintiffs transact business in this district and Defendant has otherwise been harmed here due to Plaintiffs' anticompetitive conduct.

III. Relevant markets

A. Product market

8. The relevant product market is that for Digital Rights Management (“DRM”) encryption technology specifically used in connection with High Definition (“HD”), including the newly developed ultra-high-definition (“UHD”), products.

B. Geographic market

9. The relevant geographic market is the United States.

10. “Relevant market” shall refer to both the relevant product and geographic market.

IV. Plaintiff DCP’s monopoly in the relevant market

11. Plaintiff DCP didn’t develop the HDCP technology – Intel Corporation (“Intel”) did. See http://www.digital-cp.com/about_dcp. And so DCP is, upon information and belief, an assignee of Intel’s patent and other rights in the DCP technology, given that DCP is the “owner of all rights in HDCP, including HDCP 2.2.” Complaint, ¶8. Regardless of the legal relationship between Intel and DCP, it is clear that DCP’s market share in the relevant DRM market is, or is in danger or coming close to, 100%.

12. To understand why this is so, the DRM market as a whole first needs to be understood. DRM stands for digital rights management, which is an umbrella term for all technologies that encrypt or otherwise protect digital copyrighted content. HDCP is a form of DRM that “many copyright owners, including Warner Bros., require that Digital Devices be protected with [] in order to display their copyrighted content, including premium commercial entertainment content that is displayed on Digital Devices such as high-value digital motion pictures, television programs, and video games (“Digital Content”). Complaint, ¶4. Other forms of DRM technology protect products as varied as e-books and compact discs.

13. The HD visual market includes: HD DVD; HD Photo, HDV (format for recording high definition video onto magnetic tape); High-Definition Multimedia Interface (“HDMI”), which is all-digital audio-video interface capable of transmitting uncompressed streams); High-definition television (“HDTV”), which are televised signals and apparatus with higher resolution than their contemporary counterparts; and High-definition video, used in HDTV broadcasting, digital film, computer HD video file formats, and video games.

14. Plaintiff DCP’s HDCP technology occupies “virtually all” of the relevant market. <https://gigaom.com/2010/09/17/drm-fail-five-broken-copy-protection-schemes-2/>. Even according to Plaintiff DCP, “HDCP has broad industry support from the *major*” – majority market share – “players in the digital content chain, including *major* motion picture studios,” Complaint, ¶4. DCP’s new version of HDCP, HDCP 2.2, “is the *only widely* adopted, *industry-approved* technological measure for protecting UHD content transmitted to display devices.” *Id.* at ¶17. The newest version of HDCP – 2.2 – is one of among many that have been released since HDCP 1.0 in 2000 to allegedly “keep pace with technological developments in the digital audiovisual content industry, including . . . the availability of higher resolution Digital Content.” *Id.* at ¶5. As will be shown below in Section VI, however, the real reason behind the numerous releases of HDCP is that it doesn’t serve as an adequate “access control” within the meaning of the DMCA.

15. Regardless of the actual ability of the HDCP technology to act as an effective “access control” under DMCA, “DCP licenses HDCP to over 550 *leading*” – those occupying a majority of the market – “Digital Device manufacturers and Digital Content owners worldwide, including plaintiff Warner Bros., and other *major*” – again, those occupying a majority of the market – “motion picture studios.” Complaint, ¶37. To maintain this virtual monopoly in the

relevant market, Plaintiff DCP has entered into a spider web of restrictive licenses with Digital Device manufacturers via its HDCP License Agreement (“Adopter Agreement”), and with owners of Digital Content providers such as Plaintiff Warner via a HDCP Content Participation Agreement (“Content Participation Agreement”).

16. Even under such agreements, Plaintiff DCP permits licensees to “convert” HDCP, as more fully discussed in the next section. Notwithstanding, Plaintiffs even seek to quash such pro-competitive lawful behavior in an attempt to unlawfully extend the scope of their copyrights.

V. Converting versus stripping HDCP

17. Plaintiffs allege in the Complaint that the “HDFury Devices” are “strippers.” Complaint, ¶48. Technology that “strips” HDCP technology will “remove (or ‘strip’) HDCP encryption from copyrighted Digital Content as it is transmitted from the source device to the sink device. *Id.* In so doing, the “Digital Content is rendered ‘in the clear,’ making it vulnerable to unauthorized access, copying, and redistribution,” which, according to Plaintiffs, enables “HDFury Device users to access, copy, and distribute copyrighted Digital Content without the authority of the copyright owner.” *Id.*

18. However, Plaintiffs know, or should know, their factual allegations about HDFury Devices are false.

19. HDFury Devices convert newer versions of HDCP to older versions, such as HDCP 2.2 to HDCP 1.4. In so doing, Defendant’s conversion technology does not remove, disable, or otherwise inhibit HDCP from the Digital Content. Instead, the HDFury Devices keep the encryption technology on the protected Digital Content at all times, thereby enabling interoperability between home devices that are equipped with newer and older version of HDCP, such as a home computer with HDCP 2.2 and an older television with HDCP 1.4.

20. Thus, when Defendant states “Display HDCP 2.2 Content with Non-compliant Devices” it implies and means “Display HDCP2.2 Content with Non HDCP2.2 compliant Devices” and not “Display HDCP2.2 Content with Non HDCP compliant devices.” Key Digital is an American manufacturer of convertors with the same HDCP2.2 to HDCP1.4 functionality. *See* Exhibit “B.”

21. Plaintiffs know such conversion of HDCP is perfectly lawful.

22. First, Plaintiff DCP’s license agreement specifically permits licensees to convert HDCP. *See* Exhibit “C,” ¶2.2 (“Conversion”). Otherwise, a licensee like Plaintiff Warner who purchased hardware equipped with HDCP 1.0 would have to constantly replace old with new hardware equipped with newer versions of HDCP whenever there is an update. Rather than impose such inefficiencies on their licensees, Plaintiff DCP authorizes conversion of HDCP. *See id.*

23. Second, conversion of HDCP enables interoperability between devices with different versions of HDCP and is therefore permitted under the DMCA. “Interoperability” means “the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.” 17 U.S.C. §1201(f). What is more, “a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure . . . for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.” This implies that, Defendant’s conversion technology embedded in its HDFury Devices is lawful even assuming, for the purpose of discussion, that it circumvents HDCP.

24. The foregoing explains why numerous HDCP licensees have purchased and used HDFury Devices. *See* Exhibit “D.” The foregoing exhibit includes invoices from Defendant to Digital Content creation companies as varied as Intel (the creator of HDCP), Disney, NBC, CBS, and Direct TV, who have purchased Defendant’s HDFury Integral so as to enable interoperability between their hardware devices. And yet Plaintiff alleges that HDFury Devices are nothing more than “strippers.” Complaint, ¶48. If this was true, then the foregoing Digital Content creation companies, some or all of whom are licensees of HDCP, would not be using Defendant’s HDFury Devices at all. Notwithstanding the fact that Plaintiffs know such conversion technology is lawful, they have, upon information and belief, been sending out cease and desist letters to, and filing objectively baseless frivolous lawsuits against, foreign companies like Defendant who sell, market, or otherwise distribute such technology.

25. Even assuming that some or all HDFury Devices used by the foregoing Digital Content creators circumvent HDCP, Plaintiffs would still have no DMCA claim because HDCP is not an effective access control.

VI. HDCP’s failure as an effective access control

26. Because HDCP is doesn’t require the authority of the copyright owner to activate it’s encryption technology, and is otherwise always enabled, it is not an effective access control within the DMCA. Section § 1201(a)(3)(B) of the DMCA states that “a technological measure ‘effectively controls access to a work’ if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.” In other words, a technological measure is not “effective” unless it ordinarily requires two things: 1) the application of some information or process, and 2) “the authority of the copyright owner.”

27. With the exception of HDCP, virtually all technological measures require “the application of information, or a process or a treatment” to gain access to the software. Indeed, it is difficult to imagine the existence of a technological measure that granted access in the absence of such an application. Even the most rudimentary access controls—such as the automatic doors at your local pharmacy—require the application of information (i.e., that you have just broken the plane of its motion detecting radar, or stepped on its pressure-sensitive floor mat) in order to grant access to the user.

28. The majority of technological access controls do not, however, require “the authority of the copyright owner.” If the appropriate information or process is applied, the technological measure will grant access regardless of whether the party applying the required information or process actually had permission to engage the system. Because the information or process applied to engage the access control is identical in both the legitimate and illicit contexts, the technological measure is not, itself, capable of distinguishing between those two applications and so is HDCP. What is more, HDCP doesn’t require the application of such information for it to work precisely because it is always enabled and cannot be turned off once the source is on. As such, HDCP is neither an access control, or an “effective” one at that, within the meaning of DMCA § 1201(a)(3)(B).

VII. HDFury Devices lawfully eat into DCP’s monopoly rents, and otherwise do not jeopardize Warner’s copyrights

29. Given Plaintiff DCP’s market power in the relevant market, is no surprise that the main thrust and motivation for DCP’s lawsuit against Defendant is that the HDFury Devices jeopardize “DCP’s [monopoly] licensing revenues.” Complaint, ¶53. By enabling interoperability between different versions of HDCP, the HDFury Devices render costly upgrades – new DCP licenses -- unnecessary. Because such interoperability enabling conversion

by Defendant's HDFury Devices is authorized by the DMCA, and/or is a fair use under the Copyright Act, any diminishment of DCP's revenues is a lawful and inevitable result of Defendant's innovative technology.

30. What is more, once Plaintiffs' characterization of Defendant's HDFury Devices as being "strippers" is relegated to the dustbin, there is no actual, or threatened, infringement of Warner's copyrights, as is alleged in the Complaint. Rather, the invoices attached as Exhibit "D" illustrate that Defendant's numerous commercial clients use the HDFury Devices not to pirate their own or other parties' copyrighted content, but to convert different versions of HDCP.

COUNT ONE – MONOPOLIZATION

Sherman Act, 15 U.S.C. §2

31. Defendant incorporates the allegations in paragraphs 1 – 30 herein.

32. Plaintiff DCP possesses, or is in danger of possessing, 100% of the relevant market. Indeed, Plaintiff DCP proudly admits in its Complaint that its new version of HDCP, HDCP 2.2, "is the *only widely* adopted, industry-approved technological measure for protecting UHD content transmitted to display devices." Complaint at ¶17.

33. To maintain its possession of monopoly power in the relevant market, Plaintiff DCP has engaged in exclusionary practices including, but not limited to, engaging in objectively baseless sham litigation against the likes of Defendant so as to quash lawful conversion of DCP's HDCP technology because it jeopardizes its pricing hegemony in the relevant market.

34. As a result, Defendant has suffered damages to be determined at trial.

COUNT TWO – ATTEMPTED MONOPOLIZATION

Sherman Act, 15 U.S.C. §2

35. Defendant incorporates the allegations in paragraphs 1 – 34 as though fully stated herein.

36. Defendant DCP has engaged in predatory and anticompetitive conduct by, among other things engaging in sham litigation against the likes of Defendant all the while Plaintiff DCP know, or should have known, that the HDFury Devices are not “strippers.” Plaintiff DCP has also, upon information and belief, made defamatory statements to the press and public so as to injure Defendant’s commercial reputation in the United States.

37. As can be seen from the invoices attached as Exhibit “D,” Plaintiff DCP knew or should have known that some of its own HDCP licensees have been using Defendant’s HDFury Devices to convert different versions of HDCP so as to enable interoperability. What is more, Plaintiff DCP has been on notice for some years about HDCP’s lack of adequate access control under DMCA, which is why DCP has released so many different versions of HDCP. The foregoing allegations, including other pieces that shall be obtained during discovery, evidence Plaintiff DCP’s specific intent to monopolize the relevant market.

38. Given Plaintiff DCP’s own factual allegations, it is apparent that it has achieved, or is dangerously close of achieving, it’s desired goal. Plaintiff admits in its own Complaint that it already has achieved a monopoly in the UHD sub-product market.

39. As a result of Plaintiff DCP’s unlawful conduct, Defendant has suffered damages in an amount that shall be proved at trial.

**COUNT FIVE – TORTIOUS INTERFERENCE WITH PROSPECTIVE
BUSINESS RELATIONSHIPS**

40. Defendant incorporates the allegations in paragraphs 1 – 39 as though fully stated herein.

41. Plaintiffs knew or should have known that Defendant has had business relationships with numerous third parties, including licensees of HDCP, who purchased HDFury Devices for their personal or business needs.

42. Conscious of these relationships, Plaintiffs, upon information and belief, have engaged in a smear campaign in the press to label HDFury Devices as “strippers” which are used to do nothing other than pirate copyrighted content, thus painting Defendant and all of Defendant’s customers with the broad brush of criminality.

43. Plaintiffs knew or should have known that their statements of fact labeling the HDFury Devices as “strippers” are patently false and without basis. Instead of making such statements in good faith, Plaintiffs purposefully have endeavored to drag Defendant’s commercial name through the mud so that they can unlawfully expand their copyright rights, and so that Plaintiff DCP can protect its monopolistic pricing scheme.

44. As a result of the foregoing, Defendant’s business has been injured at an amount to be determined at trial.

COUNT SIX – DEFAMATION *PER SE*

45. Defendant incorporates the allegations in paragraphs 1 – 44 as though fully stated herein.

46. Upon information and belief, Plaintiffs have, either directly or indirectly, made knowing false statements of fact to third parties wherein they have painted Defendant as a

criminal enterprise releasing the HDFury Devices with no other intent than to steal and pirate copyrighted materials, such as Defendant Warner's.

47. These imputations of intentional criminality have injured Defendant's reputation and standing in this District.

48. As a result of the foregoing, Defendant's business has been injured at an amount to be determined at trial.

WHEREFORE, Defendant Legendsky Tech Company LTD prays that the Court declare, adjudge and decrees the following:

1. That Plaintiff DCP's conduct herein constitutes a *per se* violation of Section 2 of the Sherman Act, 15 U.S.C. §2 or, in the alternative, violates the rule of reason;

2. That Defendant is entitled to injunctive relief under the Clayton Act, 15 U.S.C. §26, enjoining Plaintiff DCP from continuing or engaging in the unfair and anti-competitive activities alleged herein;

3. That Defendant is entitled to a trebling of damages, penalties, and other relief provided by the Clayton Act, 15 U.S.C. §15;

4. That Plaintiffs are liable to Defendant for tortious interference with prospective business relations, and defamation *per se*;

5. Dismissing Plaintiffs' claims in their entirety;

6. That Defendant recover its costs of suit, including reasonable attorneys' fees, in addition to pre and post judgment interest.

7. That Defendant is granted such other, further, and different relief as may be deemed just and proper by the Court.

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury

Dated: March 15, 2016
New York, New York

R/E/L

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