

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

<b>TECHNOLOGY STRATEGIES, INC.</b>	)	<b>CASE NUMBER CV 99 04 1559</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JAMES WILLIAMS</b>
	)	
<b>vs.</b>	)	
	)	
<b>DENNIS R. SUTTON, dba</b>	)	<b><u>PLAINTIFF'S PROPOSED</u></b>
<b>STUDIO EAST PHOTOGRAPHY</b>	)	<b><u>JURY INSTRUCTIONS</u></b>
	)	
<b>Defendant.</b>	)	

Plaintiff respectfully submits the proposed jury instructions set forth below.

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**PROPOSED JURY INSTRUCTION NO. \_\_\_\_**

**INTRODUCTION**

The Plaintiff in this action is Technology Strategies, Inc. Throughout my instruction of law, I will refer to the Plaintiff as TSI, as it has been called throughout this case.

The Defendant in this action is Dennis Sutton, doing business as Studio East Photography.

Plaintiff has brought two claims against the Defendant. I will instruct you regarding the law as it applies to each claim.

Plaintiff alleges that Defendant has violated the Ohio statute known as the Deceptive Trade Practices Act. Plaintiff has also alleged that the Defendant has tortiously interfered in its business relations. To prevail, Plaintiff must prove one or both of these claims by the greater weight of the evidence. If you find for the Plaintiff on either claim, then you shall enter judgment for the Plaintiff and award damages to the Plaintiff as I will instruct you.

If you find for the Defendant on both claims, then you shall enter judgment for the Defendant.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

**OHIO REVISED CODE SECTION 4165.03**

Plaintiff, TSI, claims that Defendant, Dennis Sutton, has disparaged TSI by making false representations of fact, in violation of the Ohio Deceptive Trade Practices Act. Under that law, a company which is damaged by a person who commits a deceptive trade practice may recover damages from the person who commits the deceptive trade practice.

A person commits a deceptive trade practice when, in the course of the person's business, vocation or occupation, the person disparages the goods, services, or business of another by false representations of fact. If you find that the Defendant made one or more false representations of fact which disparaged TSI, then you shall find for the Plaintiff.

See, R.C. §§4165.01-4165.03; *Akron-Canton Waste Oil, Inc. v. Safety-Kleen Oil Service, Inc.* (Summit Cty. 1992), 81 Ohio App.3d 591, juris. motion overruled at (1992), 65 Ohio St.3d 1458.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

**COPYRIGHT – WORK FOR HIRE**

TSI claims that the Defendant, Dennis Sutton, never owned the copyright to the work he performed for TSI. Specifically, TSI claims that Dennis Sutton performed what is known under the law of copyright as “work for hire,” and that it was understood by the parties that Compaq would thereafter own the work.

The copyright law allows a corporation to claim a copyright ownership of a work that was made by an employee or independent contractor in a for-hire relationship. If Dennis Sutton performed a work for hire, then I instruct you as a matter of law that he never owned the rights to the work he created at TSI’s direction, but rather ownership of the work belonged to TSI and was purchased by Compaq.

A work made for hire is a work prepared by an employee or independent contractor working within the scope of his employment. What that means is, a person acting under the direction and supervision of the hiring employer, at the hiring employer’s instance and expense. The law also allows parties to contractually agree that the work was created in a for-hire relationship.

TSI claims that Mr. Sutton’s declaration to Compaq, that he owned the work, constitutes a false representation of fact which disparaged TSI.

See, 17 U.S.C.A. §§101, 201; Hon. E. J. Devitt *et al.*, Federal Jury Practice and Instructions, Civil, Fourth Edition (1987) §99.05, Authorship–Work for Hire.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

**DAMAGES**

**(OHIO REVISED CODE SECTION 4165.03)**

If you find that the Defendant, Dennis Sutton, made one or more false representations of fact that disparaged the goods, services or business of TSI, then you shall find for the Plaintiff, TSI, and award damages in the amount that you find fully compensates TSI for any and all loss sustained by TSI as a direct and proximate result of Defendant's conduct.

See, R.C. §§4165.01-4165.03; *Akron-Canton Waste Oil, Inc. v. Safety-Kleen Oil Service, Inc.* (Summit Cty. 1992), 81 Ohio App.3d 591, juris. motion overruled at (1992), 65 Ohio St.3d 1458.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**  
**INTERFERENCE WITH BUSINESS RELATIONS**

Plaintiff, TSI, also claims that Defendant, Dennis Sutton, improperly interfered with its contractual and prospective contractual relations with its customers.

One who intentionally and improperly interferes with another's prospective contractual relations is subject to liability to the other for the financial loss resulting from the interference, whether it consists of:

- a. Inducing or otherwise causing a third person not to enter into or continue the prospective relation, or;
- b. Preventing the other from acquiring or continuing the prospective relation.

In determining whether the Defendant intentionally interfered with a contract or a prospective contractual relation of TSI, you should consider the following factors:

- a. The nature of the Defendant's conduct;
- b. The Defendant's motive;
- c. The interests of Compaq;
- d. The interests sought to be advanced by the Defendant;
- e. The social interests in protecting the freedom of the Defendant's action and Compaq's contractual interests;
- f. The proximity or remoteness of Defendant's conduct to the interference, and
- g. The relationship between the Plaintiff and the Defendant.

See, Restatement of Torts, 2d, §767; *Walter v. Murphy* (1998), 61 Ohio App.3d 553, *Gray-Jones v. Jones* (2000), 137 Ohio App.3d 93, juris. motions overruled at (2000), 89 Ohio St.3d 1466.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

**DAMAGES**

**(INTERFERENCE WITH BUSINESS RELATIONS)**

If you find that the Defendant, Dennis Sutton, tortiously interfered with TSI's business relations then you shall award those damages to TSI which you find, by the greater weight of the evidence, were caused by the Defendant's conduct. You shall determine the amount of damages which fully compensate TSI for:

- a. The pecuniary loss of the benefits of the contract or the prospective relation;
- b. Consequential losses for which the interference is a legal cause; and
- c. Actual harm to reputation, if they are reasonably to be expected to result from the interference.

See, Restatement of Torts, 2d, §774A(1); *Walter v. Murphy* (1998), 61 Ohio App.3d 553, *Gray-Jones v. Jones* (2000), 137 Ohio App.3d 93, juris. motions overruled at (2000), 89 Ohio St.3d 1466.

**PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

**PUNITIVE DAMAGES**

If you find for the Plaintiff, and award actual damages, you may also consider whether you will separately award punitive damages. If you do not find actual damage, you cannot consider punitive damages.

Punitive damages may be awarded against the Defendant as a punishment to discourage others from committing similar wrongful acts. You are not required to award punitive damages to the plaintiff, and you may not do so unless you find by the greater weight of the evidence that the defendant acted with insult or actual malice.

Insult means any act or remark that is consciously, deliberately or intentionally scornful or humiliating.

Actual malice is a conscious disregard for the rights of other persons that has a great probability of causing substantial harm. "Substantial" means major, of real importance, of great significance, and not trifling or small.

If you award punitive damages, the amount should be fair and reasonable under all of the facts and circumstances. It should not be excessive, nor influenced by passion, sympathy or prejudice.

If you decide that the defendant is liable for punitive damages, you must also decide whether or not the defendant is liable for the attorney fees of counsel employed by the plaintiff in the prosecution of this action.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Plaintiff's Proposed Jury Instructions was hand delivered to the following on this \_\_\_\_\_ day of May 2001:

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