

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

<b>COLLINS INKJET CORPORATION,</b>	)	
	)	<b>Civil Action No. 1:13-cv-00664-MRB</b>
<b>Plaintiff,</b>	)	
	)	<b>(Judge Michael R. Barrett)</b>
<b>v.</b>	)	
	)	<b>(Magistrate Judge Karen L. Litkovitz)</b>
<b>EASTMAN KODAK COMPANY,</b>	)	
	)	<b><u>ANSWER</u></b>
<b>Defendant.</b>	)	
	)	

Defendant Eastman Kodak Company (“Kodak”), by and through its attorneys, Keating Muething & Klekamp PLL and Cooley LLP, as and for its answer to the complaint of Collins Inkjet Corporation (“Collins”), states as follows:

1. Kodak denies the allegations of Paragraph 1.
2. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2, except admits on information and belief that Collins is an Ohio corporation with its principal place of business at 2101 Edison Drive in Cincinnati, Ohio and that Collins’s business includes manufacturing and distributing ink to commercial customers, including Versamark ink.
3. Kodak admits the allegations of Paragraph 3.
4. Paragraph 4 states legal conclusions to which no response is required.
5. Paragraph 5 states legal conclusions to which no response is required.
6. Paragraph 6 states legal conclusions to which no response is required; to the extent a response is required, Kodak states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6.
7. Kodak denies the allegations of Paragraph 7.

8. Kodak denies the allegations of Paragraph 8, except admits that it is the sole manufacturer of Kodak Versamark Printing and Imprinting Systems (“Versamark Printers”), that Versamark Printers are very fast commercial printers which use a continuous inkjet printing technology, that some Versamark Printers cost in excess of \$200,000, that Versamark Printers have been sold for more than 20 years, that Versamark Printers are sometimes attached to presses, and that some of Kodak’s customers own a substantial number of Versamark Printers.

9. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, except admits that R.R. Donnelly and Quad Graphics have a substantial number of Versamark Printers.

10. Kodak denies the allegations of Paragraph 10, except admits that Versamark Printers have been a significant and important part of Kodak’s business at times and Kodak’s relationship with Versamark customers is a significant and important part of Kodak’s commercial printing business.

11. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, except admits that there are hundreds of businesses that have Versamark Printers, and that those businesses are located both in the United States and abroad.

12. Kodak denies the allegations of Paragraph 12, except admits that printheads are a critical component of a Versamark Printer, that ink passes through the printhead, that only Kodak manufactures Versamark printheads, that Versamark printheads must be periodically refurbished, that owners of Versamark Printers may use more than one printhead on their printing presses, and may use a substantial number of printheads.

13. Kodak denies the allegations in the first four sentences of Paragraph 13, except that owners of Versamark Printers are advised by Kodak to have an adequate number of spare

printheads, that Kodak provides refurbishing services for Versamark printheads, and that Kodak does not know of anyone else who provides such services but understands that Collins has represented that it is able to offer refurbishment services for Versamark printheads. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of Paragraph 13.

14. Kodak denies the allegations of Paragraph 14, except admits that the cost of Versamark ink is a cost of running a Versamark Printer, that the ink used in Versamark Printers should be specially formulated for use in Versamark Printers, and that the operator of a Versamark Printer who does not have Versamark ink should wait until Versamark ink is available.

15. Kodak denies the allegations of Paragraph 15.

16. Kodak denies the allegations of Paragraph 16, except admits that Versamark printheads must be refurbished periodically and that, upon information and belief, Collins has represented to customers that it is able to offer refurbishing services for Versamark printheads.

17. Kodak denies the allegations of Paragraph 17.

18. Kodak denies the allegations of the first two sentences of Paragraph 18. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 18.

19. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19.

20. Kodak denies the allegations of Paragraph 20, except admits that both Collins and Scitex Corporation, which was owned by Kodak prior to 1992, and reacquired by Kodak in 2004, sold Versamark ink prior to 2001, that some of Collins's customers were substantial consumers

of Versamark ink, and that there are reasons why a customer might choose to purchase Versamark ink from Collins, including a preference for Collins-brand Versamark ink.

21. Kodak denies the allegations of Paragraph 21, except admits that Scitex Corporation entered into a contract with Collins in or about 2001, that the Supply and Reseller Agreement was one of a series of such contracts (collectively, the “Supply and Reseller Agreements”), and refers the Court to the Supply and Reseller Agreements for their full and accurate terms.

22. Kodak denies the allegations of Paragraph 22, except admits that during the term of the Supply and Reseller Agreements, Collins produced both Collins-branded Versamark ink and Kodak-branded Versamark ink, that the Kodak-branded Versamark ink manufactured by Collins was supposed to be manufactured according to Kodak specifications, that some customers who had previously dealt with Collins continued to order through Collins although Kodak was technically the reseller, that Collins provided customer service, and that Kodak and its predecessor manufactured approximately 12% of the Versamark ink sold pursuant to the Supply and Reseller Agreements.

23. Kodak denies the allegations in Paragraph 23, except admits that Collins purported to terminate then current Supply and Reseller Agreement (the “2008 Supply and Reseller Agreement”) in October 2011, that Collins was not entitled to do so under the terms of the 2008 Supply and Reseller Agreement, that Kodak filed an action against Collins in the United States District Court for the Western District of New York captioned *Eastman Kodak Company vs. Collins Ink Corporation* (Case No. 6:11-cv-06513-DGL) on October 17, 2011 (the “Western District Action”), and that the Court in the Western District Action issued a

preliminary injunction on November 4, 2011 requiring Collins to comply with its obligations under the 2008 Supply and Reseller Agreement.

24. Kodak denies the allegations of Paragraph 24, except admits that it believed that Collins's reasons for purporting to terminate the 2008 Supply and Reseller Agreement were pretextual, and that Kodak filed a voluntary petition for relief under the Bankruptcy Code in January 2012, and refers the Court to its filings in the Western District Action for a true and accurate account of the representations made by Kodak in that proceeding.

25. Kodak denies the allegations of Paragraph 25, except admits that Collins terminated the 2008 Supply and Reseller Agreement effective May 2, 2012, and avers that Collins submitted a prepetition nonpriority unsecured claim in Kodak's bankruptcy proceeding in the amount of \$1,412,902.62 that was transferred to CRT Special Investments LLC on May 8, 2013.

26. Kodak denies the allegations in Paragraph 26, except admits upon information and belief that Collins supplied more colors of Versamark ink when the parties originally entered into the Supply and Reseller Agreements, and that Collins manufactures custom colors and lottery ink.

27. Kodak denies the allegations of Paragraph 27.

28. Kodak denies the allegations of Paragraph 28.

29. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last two sentences of Paragraph 29 concerning an estimate done by Collins, and what Collins's customers told Collins, and otherwise denies the allegations of Paragraph 29, except admits that in or about May 2012 it announced that it had developed a new policy for

charging for refurbishment of Versamark printheads that took into account whether non-Kodak brand ink had been introduced into the printhead.

30. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30.

31. Kodak denies the allegations of Paragraph 31, except admits that Kodak did not immediately implement the policy announced in or about May 2012, and that there were customers who continued to buy Versamark ink from Collins.

32. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 32 concerning Collins's alleged lack of awareness of damage caused to printheads by Collins-branded Versamark ink, and otherwise denies the allegations of Paragraph 32, except admits that in or about July 2013, Kodak announced a revised policy for charging for refurbishment of Versamark printheads and new requirements for processing requests to refurbish Versamark printheads, and refers the Court to the July 24, 2013 letter for its full and accurate contents.

33. Kodak denies the allegations of Paragraph 33, except admits that it has taken steps to implement the policy announced in July 2013.

34. Kodak denies the allegations of Paragraph 34.

35. Kodak denies the allegations of Paragraph 35, and refers the Court to the May 3, 2012 press release for its full and accurate contents.

36. Kodak denies the allegations of Paragraph 36, and refers the Court to the June 11, 2012 slide presentation for its full and accurate contents.

37. Kodak denies the allegations of Paragraph 37, except admits that the quoted language can be found in certain Kodak marketing communications.

38. Kodak denies the allegations of Paragraph 38, except admits that a small percentage of refurbished printheads fail to work after refurbishment or fail shortly after refurbishment.

39. Kodak denies the allegations of Paragraph 39.

40. Kodak denies the suggestion of disingenuousness associated with the word “purportedly” and otherwise states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40.

41. Kodak denies the allegations of Paragraph 41.

42. Kodak denies the allegations of Paragraph 42, except admits that Collins’s counsel wrote a letter to Kodak’s general counsel dated September 7, 2012, and refers the Court to that letter for its contents.

43. Kodak denies the allegations of Paragraph 43, except admits that its general counsel responded to the September 7, 2012 letter by letter dated September 28, 2012, and refers the Court to that letter for its full and accurate contents.

44. Kodak denies the allegations of Paragraph 44, except admits that it sold Versamark ink manufactured by Collins that it had in inventory after the termination of the 2008 Supply and Reseller Agreement.

45. Kodak denies the allegations of Paragraph 45.

45. Kodak denies the allegations in Paragraph 45.<sup>1</sup>

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<sup>1</sup> In the complaint, both this paragraph and the preceding paragraph are numbered “45.”

**CLAIMS FOR RELIEF**

**Cause of Action No. 1:**  
**Sherman Act, Section 1: Unlawful Tying (15 U.S.C. § 1)**

46. Kodak realleges and incorporates by reference its responses to Paragraphs 1 through 45.

47. Kodak denies the allegations of Paragraph 47, except admits that Versamark Printers can cost in excess of \$200,000.

48. Kodak denies the allegations of Paragraph 48.

49. To the extent that Paragraph 49 sets forth factual allegations that require a responsive pleading, Kodak denies the allegations of Paragraph 49.

50. Kodak denies the allegations of Paragraph 50.

51. Kodak denies the allegations of Paragraph 51.

52. Kodak denies the allegations of Paragraph 52, except lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Collins has taken steps to provide refurbishment services for Versamark printheads.

53. Kodak denies the allegations of Paragraph 53.

54. Kodak denies the allegations of Paragraph 54.

55. Kodak denies the allegations of Paragraph 55.

56. Paragraph 56 describes the relief sought by Collins and does not require a responsive pleading.

**Cause of Action No. 2:**  
**Lanham Act, Section 43(a); Unfair Competition (15 U.S.C. § 1125)**

57. Kodak states that it does not need to respond to the allegations of Paragraph 57 because it has moved to dismiss the second cause of action.



58. Kodak states that it does not need to respond to the allegations of Paragraph 58 because it has moved to dismiss the second cause of action.

59. Kodak states that it does not need to respond to the allegations of Paragraph 59 because it has moved to dismiss the second cause of action.

60. Kodak states that it does not need to respond to the allegations of Paragraph 60 because it has moved to dismiss the second cause of action.

**Cause of Action No. 3:**  
**Deceptive Trade Practices (R.C. § 4165.01 *et seq.*)**

61. Kodak states that it does not need to respond to the allegations of Paragraph 61 because it has moved to dismiss the third cause of action.

62. Kodak states that it does not need to respond to the allegations of Paragraph 62 because it has moved to dismiss the third cause of action.

63. Kodak states that it does not need to respond to the allegations of Paragraph 63 because it has moved to dismiss the third cause of action.

64. Kodak states that it does not need to respond to the allegations of Paragraph 64 because it has moved to dismiss the third cause of action.

**Cause of Action No. 4:**  
**Defamation**

65. Kodak states that it does not need to respond to the allegations of Paragraph 65 because it has moved to dismiss the fourth cause of action.

66. Kodak states that it does not need to respond to the allegations of Paragraph 66 because it has moved to dismiss the fourth cause of action.

67. Kodak states that it does not need to respond to the allegations of Paragraph 67 because it has moved to dismiss the fourth cause of action.

**Cause of Action No. 5:**  
**Tortious Interference with Prospective Contractual Relations**

68. Kodak realleges and incorporates by reference its responses to Paragraphs 1 through 67.

69. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69.

70. Kodak denies the allegations of Paragraph 70, except admits that prior to May 2, 2012, it sold Versamark ink manufactured by Collins pursuant to the Supply and Reseller Agreements.

71. Kodak denies the allegations of Paragraph 71.

72. Kodak denies the allegations of Paragraph 72.

73. To the extent Paragraph 73 sets forth factual allegations that require a responsive pleading, Kodak denies the allegations of Paragraph 73.

**DEFENSES AND AFFIRMATIVE DEFENSES**

Assertion by Kodak of any affirmative defense or any other defense shall not be deemed a concession that Kodak has the burden of proof with respect to any of them.

**FIRST DEFENSE**

74. The complaint fails to state a claim against Kodak upon which relief may be granted.

**SECOND DEFENSE**

75. Kodak successfully emerged from chapter 11 bankruptcy protection on September 3, 2013 (the “Emergence Date”). Plaintiff’s claims based on acts, conduct or other activity that occurred prior to the Emergence Date are discharged pursuant to the *Findings of Fact*,

*Conclusions of Law and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, entered by the U.S. Bankruptcy Court for the Southern District of New York on August 23, 2013 (*In re Eastman Kodak Co.*, No. 12-10202 (ALG), Docket No. 4966) (the “Confirmation Order”), and in accordance with 11 U.S.C. § 1141(d)(1).

**THIRD DEFENSE**

76. The claims alleged in the complaint are barred, in whole or in part, by the applicable statutes of limitations.

**FOURTH DEFENSE**

77. The claims alleged in the complaint are barred, in whole or in part, by the doctrine of *in pari delicto*.

**FIFTH DEFENSE**

78. The claims alleged in the complaint are barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH DEFENSE**

79. The claims alleged in the complaint are barred, in whole or in part, by the doctrine of laches.

**SEVENTH DEFENSE**

80. The claims alleged in the complaint are barred, in whole or in part, because Kodak’s conduct has not harmed consumers.

**EIGHTH DEFENSE**

81. The claims alleged in the complaint are barred, in whole or in part, because there has been no antitrust injury because Kodak has not entered into agreements that unreasonably restrained trade.

**NINTH DEFENSE**

82. The claims alleged in the complaint are barred, in whole or in part, because the injuries alleged by the plaintiff were caused in whole or in part by the conduct of third parties through ordinary competition.

**TENTH DEFENSE**

83. The claims alleged in the complaint are barred, in whole or in part, because Kodak's conduct was and is lawful and pro-competitive, constitutes *bona fide* business competition, and was carried out in furtherance of Kodak's legitimate business interests. Moreover, Kodak's conduct was and is reasonably justified in relation to the development and preservation of its business.

**ELEVENTH DEFENSE**

84. The claims alleged in the complaint are barred, in whole or in part, because any action by Kodak resulted from a good-faith effort to meet competition.

**TWELFTH DEFENSE**

85. The claims alleged in the complaint are barred, in whole or in part, because plaintiff fails to allege a proper relevant product market.

**THIRTEENTH DEFENSE**

86. The claims alleged in the complaint are barred, in whole or in part, because plaintiff fails to allege market or monopoly power in a properly defined relevant product market

and because Kodak does not possess market or monopoly power in a properly defined relevant market.

**FOURTEENTH DEFENSE**

87. The claims alleged in the complaint are barred, in whole or in part, because Kodak has no reasonable expectancy of economic gain from the allegedly anticompetitive conduct.

**FIFTEENTH DEFENSE**

88. The claims alleged in the complaint are barred, in whole or in part, because consumers of Versamark printers are sophisticated and able to protect themselves against any alleged anticompetitive behavior.

**SIXTEENTH DEFENSE**

89. The claims alleged in the complaint are barred, in whole or in part, because the injury and damages alleged by plaintiff were caused by plaintiff's own conduct in terminating the 2008 Supply and Reseller Agreement.

**SEVENTEENTH DEFENSE**

90. Plaintiff is barred from asserting any claims against Kodak based on acts, conduct or other activity that occurred prior to the Emergence Date pursuant to the Confirmation Order and 11 U.S.C. § 524(a)(2).

**EIGHTEENTH DEFENSE**

91. Plaintiff's right to seek damages is limited, including without limitation by the Confirmation Order and 11 U.S.C. § 1141(d)(1) as to damages for acts, conduct or other activity that occurred prior to the Emergence Date.

**RESERVATION OF RIGHTS**

Kodak reserves the right to assert additional defenses that may present themselves during

the pre-trial proceedings and hereby reserves the right to amend its answer to assert any such defenses. Kodak further reserves its right to amend its answer to respond to the claims that Kodak has moved to dismiss, including its right to assert defenses to those claims.

WHEREFORE, Kodak respectfully requests that this Court:

- (a) Enter judgment in its favor;
- (b) Award it costs and expenses incurred in defending this action; and
- (c) Grant it such other and further relief as the Court deems just and proper.

DATED: October 21, 2013

Respectfully submitted,

/s/ James E. Burke

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**CERTIFICATE OF SERVICE**

I hereby certify that, on October 21, 2013, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

DATED: October 21, 2013

*/s/ James E. Burke* \_\_\_\_\_

James E. Burke