

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

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

DEFENDANT’S ANSWER TO PLAINTIFF’S FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT

Defendant Eastman Kodak Company (“Kodak”), by and through its attorneys, Keating Muething & Klekamp PLL and Cooley LLP, as and for its answer to the First Amended and Supplemental 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 and that Collins has supplied ink to R.R. Donnelley and Quad Graphics.

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 admits 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, that refurbishment can involve the replacement of key components of a printhead, and that Kodak does not know of anyone else who provides such services but understands that Collins has represented to Versamark customers that it is offering 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 admits that both Collins and Kodak manufacture Versamark ink, and otherwise denies the allegations of Paragraph 15.

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

17. Kodak denies the allegations of Paragraph 17.

18. Kodak denies the allegations of the first, second and fourth sentences of Paragraph 18. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 18, except admits that Collins has represented to Versamark customers that it is offering refurbishment services for Versamark printheads.

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 the customers to whom Collins sold Versamark ink are among the largest printing companies in the world, 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, except admits that some customers have a preference for Collins ink and customer service, and others have a preference for Kodak ink and customer service.

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. Denies the implication of Paragraph 30 that Customer US1 switched from Collins ink to Kodak ink on or about the date of the email, and refers the Court to the email for its contents.

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

32. Kodak 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, and refers the Court to the PowerPoint presentation for its full and accurate contents (except for its date, which is the product of auto-dating, and is not correct).

34. Kodak denies the allegations of Paragraph 34, and refers the Court to the PowerPoint presentation for its full and accurate contents (except for its date, which is the product of auto-dating and is not correct).

35. Kodak denies the allegations of Paragraph 35, except admits that prior to the Court's Order dated March 6, 2014, it took some limited steps to attempt to implement the policy announced in July 2013.

36. Kodak denies the allegations of Paragraph 36.

37. Kodak denies the allegations of Paragraph 37, except admits that a small percentage of refurbished printheads fail to work after refurbishment or fail shortly after refurbishment and refers the Court to its marketing communications for their full and accurate contents.

38. 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 38.

39. Kodak denies the allegations of Paragraph 39.

40. Kodak denies the allegations of Paragraph 40, 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.

41. Kodak denies the allegations of Paragraph 41, 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.

42. Kodak denies the allegations of Paragraph 42, 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.

43. Kodak denies the allegations of Paragraph 43.

44. Kodak denies the allegations of Paragraph 44.

CLAIMS FOR RELIEF

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

45. Kodak realleges and incorporates by reference its responses to Paragraphs 1 through 44.

46. Kodak denies the allegations of Paragraph 46, except admits that new Versamark Printers can cost in excess of \$200,000.

47. Kodak denies the allegations of Paragraph 47.

48. To the extent that Paragraph 48 sets forth factual allegations that require a responsive pleading, Kodak denies the allegations of Paragraph 48.

49. 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 admits that Collins has taken steps to provide refurbishment services to Versamark customers.

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. Kodak denies the allegations of Paragraph 56.

Cause of Action No. 2:
Sherman Act, Section 2: Attempted Monopolization (15 U.S.C. § 2)

57. Kodak realleges and incorporates by reference its responses to Paragraphs 1 through 56.

58. Kodak denies the allegations of Paragraph 58.

59. Kodak denies the allegations of Paragraph 59.

60. Kodak denies the allegations of Paragraph 60.

61. Kodak denies the allegations of Paragraph 61.

Cause of Action No. 3:
Lanham Act, Section 43(a); Unfair Competition (15 U.S.C. § 1125)

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.

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

Cause of Action No. 4:
Deceptive Trade Practices (R.C. § 4165.01 et seq.)

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.

68. Kodak states that it does not need to respond to the allegations of Paragraph 68 because it has moved to dismiss the fourth cause of action.

69. Kodak states that it does not need to respond to the allegations of Paragraph 69 because it has moved to dismiss the fourth cause of action.

Cause of Action No. 5:
Defamation

70. Kodak states that it does not need to respond to the allegations of Paragraph 70 because it has moved to dismiss the fifth cause of action.

71. Kodak states that it does not need to respond to the allegations of Paragraph 71 because it has moved to dismiss the fifth cause of action.

72. Kodak states that it does not need to respond to the allegations of Paragraph 72 because it has moved to dismiss the fifth cause of action.

Cause of Action No. 6:
Tortious Interference with Prospective Contractual Relations

73. Kodak realleges and incorporates by reference its responses to Paragraphs 1 through 72.

74. Kodak lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74.

75. Kodak denies the allegations of Paragraph 75, except admits that prior to May 2, 2012, it sold Versamark ink manufactured by Collins pursuant to the Supply and Reseller Agreements.

76. Kodak denies the allegations of Paragraph 76.

77. Kodak denies the allegations of Paragraph 77.

78. Kodak denies the allegations of Paragraph 78.

79. Kodak denies the allegations of Paragraph 79.

Cause of Action No. 7:
Declaratory Judgment Regarding Proprietary Rights

80. Kodak states that it does not need to respond to the allegations of Paragraph 80 because it has moved to dismiss the seventh cause of action.

81. Kodak states that it does not need to respond to the allegations of Paragraph 81 because it has moved to dismiss the seventh cause of action.

82. Kodak states that it does not need to respond to the allegations of Paragraph 82 because it has moved to dismiss the seventh cause of action.

83. Kodak states that it does not need to respond to the allegations of Paragraph 83 because it has moved to dismiss the seventh cause of action.

84. Kodak states that it does not need to respond to the allegations of Paragraph 84 because it has moved to dismiss the seventh cause of action.

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

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

SECOND DEFENSE

86. 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

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

FOURTH DEFENSE

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

FIFTH DEFENSE

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

SIXTH DEFENSE

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

SEVENTH DEFENSE

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

EIGHTH DEFENSE

92. The claims alleged in the complaint are barred, in whole or in part, because there has been no antitrust injury.

NINTH DEFENSE

93. 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 Collins and third parties through ordinary competition or the absence thereof.

TENTH DEFENSE

94. 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 objectives. Moreover, Kodak's conduct was and is reasonably justified in relation to the development and preservation of its business and not driven by a desire to eliminate competition.

ELEVENTH DEFENSE

95. 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 the competition or beat the competition.

TWELFTH DEFENSE

96. The claims alleged in the complaint are barred, in whole or in part, because plaintiff fails to allege proper relevant antitrust markets.

THIRTEENTH DEFENSE

97. The claims alleged in the complaint are barred, in whole or in part, because plaintiff fails to allege market or monopoly power in properly defined relevant antitrust markets and because Kodak does not possess market or monopoly power and there is no dangerous

probably that Kodak will obtain market or monopoly power in properly defined relevant antitrust markets.

FOURTEENTH DEFENSE

98. 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

99. 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

100. 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

101. 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

102. 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.

NINETEENTH DEFENSE

103. The claims alleged in the complaint are barred, in whole or in part, because Kodak's pricing conduct did not require Collins to price below its cost or the cost of an equally efficient firm in order to retain some or all of its customers.

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: April 9, 2014

Respectfully submitted,

/s/ James E. Burke
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CERTIFICATE OF SERVICE

I hereby certify that, on April 9, 2014, 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: April 9, 2014

/s/ James E. Burke

James E. Burke