

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELEV3N, LLC,

Plaintiff,

v.

VANBEX GROUP, INC.

Defendant.

:
:
:
:
:
:
:
:
:
:

Civil Action No. 2:17-cv-04350- AB

**DEFENDANT’S RESPONSE IN OPPOSITION TO
PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER**

Defendant, Vanbex Group, Inc. (“Vanbex”) by and through their undersigned attorneys submit this Brief in Opposition to Plaintiff’s Motion for Temporary Restraining Order.

I. PRELIMINARY STATEMENT

In “Plaintiff’s Motion for a Temporary Restraining Order,” Plaintiff Elev3n, LLC (“Elev3n”) has grossly overreached.

There is no emergency. Vanbex provided consulting and strategy services to help Elev3n develop a compelling case to use a cryptocurrency token for a product or application/ Elev3n, months after filing suit in Vancouver in May 2017 over the identical contractual dispute raised her, now seeks a TRO based on alleged copying or misappropriation of completely dissimilar documents that have been publicly available on Etherparty’s website for many weeks.

There is no showing of harm. The speculative harm from an SEC prosecution is both speculative and remote. Plaintiff has made no showing as to how it could be exposed to an enforcement proceeding by the SEC so as to warrant injunctive relief. Elev3n is not making a securities offering and there is no harm to them and no risk of an enforcement action by the SEC. The specific emergency relief sought is unclear from this TRO, as no proposed order was

attached, in violation of local rule, may prevent Etherparty, a different company with an entirely different business model, from raising funds. Elev3n's claimed and the injunction could be deemed a "disqualifying event" under the SEC regulation which could cause Vanbex and its officers to be prevented from supporting initial offerings in the United States for five years. The proposed injunction could drastically impair Vanbex from working in its core business. Vanbex will suffer substantial harm if am not permitted to continue its core business, which will prevent its owners and employees from earning a livelihood.

Elev3n spends much of its memorandum discussing several garden variety contract issues, and without showing the harm that would warrant the drastic relief of an emergency injunction.

Elev3n has made no showing of copying, no showing of substantial similarity of the works. The works at issue are entirely and substantively dissimilar. Elev3n cannot make out a claim for copyright infringement as it has no copyright registrations.

Elev3n cannot show a violation of the Computer Fraud and Abuse Act as there has been no sabotage of its computer system. The documents that Vanbex created for Elev3n were stored on a cloud based google drive that were shared and were later moved to a larger parent archived folder. Elev3n has the ability to see who the larger archived client folder was shared with, but none of the Elev3n documents were accessed or copied or used in relation to the ICO for Etherparty that Elev3n seeks to enjoin.

The other garden variety claims in the complaint do not indicate the need for emergency relief.

Plaintiff has not established personal jurisdiction over Vanbex to seek relief in a Pennsylvania federal court.

Factual Background

See declarations of Lisa Cheng and Brandon Kostinuk, attached as Exhibits 1 and 2. Vanbex is in Vancouver, Canada. Elev3n approached Elev3n initially sued over the contract dispute in court in Canada, seeking both a full refund and apparent .

Vanbex has been in the consulting business of developing blockchain and cryptocurrency businesses since 2013. As such, Vanbex has garnered business insight and a well-developed understanding of how blockchain technology can impact existing business infrastructure and operations. Vanbex has become highly specialized in building out the elements of a successful client strategy relating to blockchain and cryptocurrency businesses.

A blockchain is a digitized, decentralized, public ledger of all cryptocurrency transactions. The public ledger of transactions is constantly growing as “completed” blocks (the most recent transactions) are recorded and added to it in chronological order, the technology allows market participants to keep track of digital currency transactions without central recordkeeping. Blockchain employs open source coding as technology, meaning publically available coding, but many users of blockchain technology modify the open source coding to customize the coding to a particular software application.

A cryptocurrency is a digital or virtual currency that uses cryptography for security, such as Bitcoin or Ethereum.

Vanbex provides communication and marketing services and has a team of blockchain, smart contract, and cryptocurrency experts, to work with clients to take the client brand’s vision and showcase it to various audiences. For example, Vanbex assists clients in preparing white papers and documentation to illustrate blockchain and cryptocurrency value for clients who intend to use blockchain, Bitcoin and Ethereum technology.

Vanbex provides consulting and strategy services to help clients develop a compelling case to use a cryptocurrency token for a product or application and works with clients to develop a clear demonstration of the technology for clients.

While Vanbex's services are tailored to each client, the presentation and strategy of the business will very often be derived from other works and contain similar or common elements, given our niche market of developing blockchain and cryptocurrency businesses.

Vanbex provides investment marketing services surrounding Initial Coin Offering ("ICO") fundraising. An ICO is a crowd sourcing event, when a company releases its own cryptocurrency with a purpose of funding. An ICO typically involves a release of a certain number of crypto-tokens to be sold to an intended audience, most commonly in exchange for Bitcoins, or other forms of currency. Vanbex's ICO-related services include communicating the unique value and use case for a client's token or project. These services include, for example, preparing and drafting ICO announcement, prospectus, and other ICO materials. Documents prepared in connection with ICO's are tailored to each client's token or project, but such documents will necessarily contain similar or common elements, since all ICO's necessarily involve blockchain and cryptocurrency as a key component of the project.

Typically, Vanbex works on projects that have a clear need for a cryptocurrency tokens that support the business model.

In this case, Elev3n approached Vanbex in October 2016 to fit a cryptocurrency token concept into a shifting business model because an ICO is what Elev3n decided to use as a vehicle to raise money.

As of December 6, 2016, the Elev3n project was held out as a health marketplace for complementary health and alternative medicine with a patient records database digitally secured

by blockchain technology. Elev3n understood that the ICO documents prepared by Vanbex for the Elev3n project were based, in part, and modified from, other ICO documents that Vanbex had previously prepared for other ICO's. Elev3n understood and expected that Vanbex would use its prior experience in preparing ICO documents for other clients to prepare the Elev3n ICO documents.

In May 2017, Elev3n subsequently filed a contract action against Vanbex in Vancouver, BC, seeking the full amount paid for services rendered, \$39,000 USD and also seeking to keep the materials prepared by Vanbex, and also demanding that Vanbex remove and delete materials prepared by Vanbex for Elev3n.

The Elev3n concept has changed since the engagement with Vanbex ended in December 2016. Elev3n has subsequently applied to register ELEV3N as a trademark for several concepts, none of which include patient medical records databased digitally secured by blockchain technology. Since ELEV3N no longer intends to use blockchain technology, it would have no use for crypto-tokens or to raise funds by ICO. Vanbex was not asked, and did not, perform blockchain coding services for Elev3n's project.

Vanbex has not used the ICO materials specifically tailored for Elev3n for the Etherparty ICO, which is scheduled to begin October 1, 2017. The Etherparty ICO has been promoted in the relevant media for many months and the ICO materials are found on the Etherparty website, <https://etherparty.io/>.

At the time Elev3n first approached Vanbex for services in October 2016, the Etherparty project was at significantly more mature stage than the Elev3n project.

For example, the Etherparty project was announced to the public in June 2016 and the project was in beta (live user) testing as of end of summer 2016, meaning the software

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.