

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**AUDIO VISUAL PRESERVATION
SOLUTIONS, INC.,**

Plaintiff,

v.

**XOHO TECH INC., XOHO TECH
PRIVATE LIMITED, AND ADEEL
AHMAD,**

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff Audio Visual Preservation Solutions, Inc. (“Plaintiff”) sues Defendants Xoho Tech Inc., Xoho Tech Private Limited, and Adeel Ahmad (collectively “Defendants”), and alleges the following:

JURISDICTION

1. This is an action for copyright infringement pursuant to 17 U.S.C. § 101 *et seq*, misappropriation of trade secrets pursuant to 18 U.S.C. § 1832, Federal unfair competition pursuant to 15 U.S.C. § 1125(b), removal or alteration of copyright management information pursuant to 17 U.S.C. § 1202, tortious interference with actual or prospective business relations in violation of the New York common laws,

breach of contract, and for declaratory judgment pursuant to 28 U.S.C. §§ 2201-02 and Fed. R. Civ. P. 57.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1338 (copyrights), and 2201 (declaratory judgments); 18 U.S.C. § 1836 (trade secrets); 15 U.S.C. § 1121 (Federal unfair competition); and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 1400 because the Defendants are subject to personal jurisdiction in this judicial district.

THE PARTIES

4. Plaintiff is a New York corporation with a principal place of business at 253 36th Street, Suite C309, #22, Brooklyn, New York 11232.

5. Upon information and belief, Defendant Xoho Tech Inc. is a Delaware corporation with a principal place of business at 575 5th Ave., New York, New York 10017.

6. Upon information and belief, Defendant Xoho Tech Private Limited is a corporation organized under the laws of Pakistan with a registered office at 1 GC Lower Ground, Lahore, Pujab, Pakistan.

7. Upon information and belief, Defendant Adeel Ahmad is a resident of Pakistan with an address at 18, Block J2 Johar Town, Lahore, Pakistan.

RELEVANT FACTS

8. In or around July 2016, Plaintiff hired Defendant Ahmad to develop a number of software applications and related documentation (“Software”).

9. On information and belief, Defendant Ahmad incorporated Xoho Tech, Inc. under the laws of the state of Delaware on or around August 10, 2016.

10. Plaintiff and Defendant Xoho Tech, Inc. entered into a contract memorializing their software development agreement on November 6, 2017 (the “Contract”). A true and correct copy of the Contract is attached as Exhibit A.

11. Defendant Adeel signed the Contract as Chief Executive Officer of Defendant Xoho Tech, Inc.

12. Pursuant to the terms of the Contract, Defendant Xoho Tech, Inc. assigned to Plaintiff all copyrights, patents, and inventions in all materials developed by Defendant, either alone or in conjunction with others.

13. Pursuant to the terms of the Contract, Defendant Xoho Tech, Inc. agreed to execute any instrument of specific assignment requested by Plaintiff to perfect Plaintiff’s ownership of the Software.

14. Pursuant to the terms of the Contract, Defendant Xoho Tech, Inc. acknowledged that the Software contained or constituted Plaintiff's confidential information and/or trade secrets, acknowledged that it would not disclose the Software to any third parties, and agreed to return or destroy all copies of the Software on termination of the Contract.

15. On information and belief, the Software was written by developers who were employees of Defendants ("Individual Developers").

16. When the Software was initially published, there were copyright notices in the source code and documentation indicating that Plaintiff owned all copyrights to the Software.

17. Plaintiff offered and licensed its Software to customers in interstate and/or foreign commerce.

18. On or around March 16, 2020, Plaintiff terminated the Contract and reminded Defendants that they were prohibited from disclosing, and required to return or destroy, all Confidential Information in their possession, including all copies of the Software.

19. On April 3, 2020, Defendant informed Plaintiff that they had destroyed all copies of the Software and related files and documentation.

20. Following termination of the Contract, Defendants informed Plaintiff that Plaintiff could continue to use the Individual Developers to develop the Software.

21. In reliance on this promise, Plaintiff continued to retain the Individual Developers to develop the Software after terminating the contract with Defendant.

22. On July 8, 2020, Defendants' legal representative sent a demand letter to Plaintiff by email (the "Demand Letter"). A true and correct copy of the Demand Letter is attached as Exhibit B.

23. In the Demand Letter, Defendants stated that it had terminated the Individual Developers and that they were no longer employees of Defendant.

24. Defendants further demanded that Plaintiff terminate its business relationships with the Individual Developers.

25. Defendants further claimed to be the "sole owner/creator of the software" and claimed they had "all rights to use and sell" the Software.

26. Defendants further stated that Plaintiff's clients were "using/selling un-license [sic] software without lawful justification."

27. Defendants further stated that Plaintiff "as well as his client have no right to use /sell the un-license software under Intellectual Property Law. It is noted that Xoho Tech will pursue all the clients of AVP in the concerned forum."

28. Finally, Defendants stated that Plaintiff was “directed to stop illegal act within seven (07) days of receipt of the” Demand Letter, and further stated that “Legal Action may result in you having to pay legal cost, interest, damages, compensation and could impact your credit history.”

29. During the fall and winter of 2000, Plaintiff and Defendants attempted to resolve their dispute regarding ownership of the copyright to the Software but were unable to do so.

30. On July 14, 2021, Defendants sent an email to several of Plaintiff’s customers. (A true and correct copy of the email is attached as Exhibit C.)

31. The email contains the following false or misleading statements or representations of fact:

- a. Defendants, and not Plaintiff, owns all intellectual property rights to the Software;
- b. Plaintiff “bribed authorities in Pakistan.”
- c. Plaintiff “Violated my and my company’s right”;
- d. Plaintiff “Filed a fake laws suite [sic] in NY court which they had to take back since they were the culprit.”
- e. Plaintiff “trying their best since March, 2020 to shutdown my business (with every trick they got).”

f. “Most of [Plaintiff’s] apps including aviary have so many big security issues that any baby can wipe them out.”

32. On or around July 30, 2021, Plaintiff discovered that Defendants had posted a copy of the Software source code to a public GitHub repository, a popular site for publishing and distributing computer source code.

33. The GitHub repository page included a notice that the copyright to the Software was owned by Defendant Xoho Tech Private Limited.

34. On July 30, Plaintiff filed a DMCA notice with GitHub requesting that GitHub remove or disable access to the code.

35. GitHub responded by removing and/or disabling access to the Software source code from the repository page.

36. On September 1, 2021, GitHub informed Plaintiff that Defendants had filed a counter notice. A true and correct copy of the counter notice is attached as Exhibit E. By submitting a counter notice Defendants agreed to accept service of process from Plaintiff or its agents.

37. Defendants advertise their services at the website www.xoho.tech.

38. The website is in English and indicates that the Defendants have a US location at 575 5th Avenue, New York, New York, and a Pakistan location at 18, Block J2 Johar Town, Lahore, Pakistan.

39. Defendants advertise that their New York office can be reached at the phone number (917) 472-1957. Area code 917 is assigned to the five boroughs of New York City.

40. On information and belief, at all relevant times, Defendant Adeel Ahmad was and remains an owner, manager, member, and/or officer of Defendants Xoho Tech Inc. and Xoho Tech Private Limited and has the right and ability to control the foregoing actions of these Defendants.

COUNT I
COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 101 *ET SEQ.*

41. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

42. The Software comprises an original work of authorship.

43. Plaintiff is the sole and exclusive owner of all right, title and interest in and to the copyright to the Software by virtue of the Contract.

44. Plaintiff has registered the copyright to the Software with the U.S. Copyright Office. A true and correct copy of the Certificate of Registration is attached as Exhibit C.

45. Defendants had access to the Software.

46. Defendants uploaded a copy of the Software to a publicly accessible GitHub repository.

47. In doing so, Defendants reproduced and distributed copies of the Software, and authorized GitHub to reproduce and distribute copies of the Software to others.

48. Plaintiff did not authorize Defendants to reproduce, distribute, or authorize any third parties to reproduce or distribute the Software.

49. Defendants have infringed one or more of Plaintiff's exclusive rights in the copyrighted Software in violation of the Copyright Act, 17 U.S.C. § 101.

50. Defendants committed the acts of infringement alleged herein willfully and in knowing disregard for Plaintiff's rights.

51. As a result of Defendants' acts of infringement as alleged herein, Plaintiff is entitled to recover from Defendants, jointly and severally, any damages it has sustained and will sustain, and any profits obtained by Defendants as a result of or attributable to the infringement, in an amount to be proven at trial.

52. Plaintiff is also entitled to preliminary and permanent injunctive relief to prevent Defendants from continuing to infringe Plaintiff's copyrights pursuant to 17 U.S.C. § 502.

COUNT II
MISAPPROPRIATION OF TRADE SECRETS UNDER 18 U.S.C. § 1836

53. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

54. Portions of the Software source code include or comprise Plaintiff's business, scientific, or technical information.

55. Plaintiff has taken reasonable steps to keep those portions of the Software that contain its business, scientific, or technical information secret.

56. Plaintiff derives economic value from those portions of the Software not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

57. Defendants had a duty to return or destroy the Software following termination of the Contract.

58. Under the terms of the Contract, Defendant was prohibited from disclosing any Confidential Information, including the Software, to any third parties, which duty survived termination of the Contract.

59. By retaining a copy of the Software after termination of the Contract, Defendants have acquired Plaintiff's trade secrets by improper means.

60. By uploading the Software to a public GitHub repository, Defendants have disclosed Plaintiff's trade secrets with knowledge that Defendants acquired the trade secrets under circumstances giving rise to a duty to maintain the secrecy of the trade secrets;

61. Defendants' disclosure of Plaintiff's trade secrets constitutes a violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*

62. Plaintiff is entitled to an immediate and permanent injunction preventing any actual or threatened misappropriation of its trade secrets pursuant to 18 U.S.C. § 1836.

COUNT III
FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C. § 1125

63. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

64. The foregoing statements made by Defendants in their July 14, 2021, email to Plaintiff's customers were false and/or misleading.

65. Defendants made the statements in commercial advertising or promotion.

66. The foregoing statements were made in connection with the Plaintiff's goods or services and constitute false or misleading descriptions or representations of fact in commercial advertising or promotion which misrepresent the nature, characteristics, and/or qualities of Defendants' or Plaintiff's goods, services, or commercial activities in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

67. Plaintiff is likely to suffer irreparable harm if Defendants are not enjoined from continuing to make such false and misleading representations in the

course of any advertising or promotion in commerce, or otherwise directly to Plaintiff's customers.

68. Plaintiff is entitled to judgment in its favor in the form of an order enjoining Defendants from making any additional false and misleading statements in the course of any advertising or promotion.

**COUNT IV
ALTERATION OR REMOVAL OF COPYRIGHT MANAGEMENT
INFORMATION PURSUANT TO 17 U.S.C. §1202**

69. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

70. Plaintiff's Software contained copyright management information identifying Plaintiff as the author of the works and/or owner of the copyrights to the works.

71. On information and belief, Defendants intentionally removed or altered the copyright management information concerning the Software to identify Xoho Tech Private Limited as the owner of the copyright to the Software.

72. On information and belief, Defendants knew or had reason to know that the alteration or removal of the copyright management information would enable, facilitate, or conceal an infringement of Plaintiff's copyright to the Software.

73. Plaintiff is entitled to preliminarily and permanently enjoin Defendants from any further alteration or removal of copyright management information.

74. Plaintiff is entitled to an impounding of any device or product in the custody or control of Defendants that the Court has reasonable cause to believe was involved in the foregoing violation pursuant to 17 U.S.C. § 1202(b)(2).

75. Plaintiff is entitled to an award of its actual damages suffered as a result of the violations, or to elect an award of statutory damages in the sum of not less than \$2,500 or more than \$25,000 for each violation of 17 U.S.C. § 1202.

**COUNT V
BREACH OF CONTRACT**

76. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

77. Plaintiff and Defendant Xoho Tech Inc. entered into a valid and enforceable Contract.

78. Defendant Xoho Tech Inc. materially breached the terms of the Contract by failing to obtain all assignments or other undertakings sufficient to establish Plaintiff's ownership of the copyright to the Software on Plaintiff's request.

79. Defendant Xoho Tech Inc. materially breached the terms of the Contract by retaining copies of and failing to deliver to Plaintiff all copies of the Software following termination of the Contract.

80. Defendant Xoho Tech Inc. materially breached the terms of the Contract by publicly disclosing Plaintiff's Confidential Information without obtaining Plaintiff's written consent.

81. Plaintiff has suffered damages as a result of Defendant Xoho Tech Inc.'s breach in an amount to be determined at trial, including any incidental or consequential damages.

82. Plaintiff is entitled to an order requiring specific performance of the Contract, namely, that Defendant Xoho Tech Inc.:

- a. Assign all right, title and interest in and to the Software to Plaintiff, and take any and all such actions necessary to vest in Plaintiff all right, title and interest in and to the Software;
- b. Destroy all copies of the Software within its possession, custody or control, or within the possession, custody or control of any related individuals, entities or third-parties utilized by Defendant Xoho Tech Inc. to develop the Software;
- c. Immediately remove all copies of the Software from GitHub or any other publicly accessible website.

83. Plaintiff is entitled to an award of its costs and expenses (including attorney's fees) incurred in enforcing the Contract.

COUNT VI
DECLARATION OF OWNERSHIP AND NON-INFRINGEMENT OF
COPYRIGHT

84. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

85. Defendants' allegation that one or more of them owns the copyright to the Software and their demand that Plaintiff and its customers have no right to use or sell the Software amounts to an allegation of copyright infringement in violation of The Copyright Act, 17 U.S.C. § 101 *et seq.*

86. Under the terms of the Contract, Plaintiff owns the copyright and other intellectual property rights to the Software, and Plaintiff denies that its use or distribution of the Software constitutes copyright infringement.

87. Defendants' contention that one or more of Defendants own all intellectual property rights to the Software, in direct contravention of the terms of the Contract, creates a substantial continuing controversy of sufficient immediacy and reality between the parties.

88. Defendants' allegations that Plaintiff is using or distributing "unlicensed" software, that it has no right to use or distribute such "unlicensed" software, and that Plaintiff's clients have no right to use the Software, create a substantial continuing controversy of sufficient immediacy and reality between the parties.

89. As owner of the copyright to the Software, Plaintiff is free to use the Software, to distribute the Software, and to license to its customers the right to use the Software.

90. Plaintiff's use and distribution of the Software, and the authorized use of the Software by Plaintiff's customers, does not infringe any copyrights of Defendants.

91. Plaintiff is therefore entitled to judgment in its favor in the form of a declaration from this Court that Defendants have no ownership interest in the copyright to the Software, that Plaintiff owns all copyrights in and to the Software, and that Plaintiff's use of the Software, its distribution of the Software, and its customers' use of the Software, does not infringe any rights of Defendants.

92. Such declaration is necessary and appropriate so that the parties can ascertain their respective rights and duties in law and equity regarding their respective uses of the Software.

**COUNT VII
TORTIOUS INTERFERENCE WITH ACTUAL AND/OR PROSPECTIVE
BUSINESS RELATIONS**

93. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

94. Defendants have informed third parties, including Plaintiff's customers, that Defendants, and not Plaintiff, owns all intellectual property rights to the Software.

95. Defendants have threatened to "pursue" Plaintiff's customers for using Plaintiff's Software.

96. Defendants have made numerous false statements concerning Plaintiff and/or its goods or services to Plaintiff's customers.

97. These communications to Plaintiff's customers constitute wrongful means and/or would be made for the sole purpose of harming Plaintiff.

98. These communications with Plaintiff's customers constitute tortious interference with business relations in violation of New York common law.

99. The business relationship between Plaintiff and its customers that received Defendants' communication has been or is likely to be damaged by Defendants' wrongful interference.

100. Plaintiff is likely to suffer irreparable harm if Defendants are not enjoined from making these false or misleading representations to Plaintiff's customers or from bringing baseless legal claims against Plaintiff's customers.

101. Plaintiff is entitled to judgment in its favor in the form of an order enjoining Defendants from making any such false and misleading statements to

Plaintiff's actual or prospective customers or from bringing baseless legal claims against Plaintiff's customers.

102. Plaintiff is entitled to recover its actual damages from Defendants' unlawful conduct.

**COUNT VIII
TORTIOUS INTERFERENCE WITH ACTUAL AND/OR PROSPECTIVE
BUSINESS RELATIONS**

103. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

104. Plaintiff has an existing business relationship with the Individual Developers.

105. Defendants agreed that Plaintiff could continue to use the Individual Developers after termination of the Contract between Plaintiff and Defendant Xoho Tech, Inc.

106. Defendants were aware of the business relationship between Plaintiff and the Individual Developers.

107. In the Demand Letter, Defendants told Plaintiff that it could no longer retain the services of the Individual Developers.

108. On information and belief, Defendants have threatened or brought legal action(s) against the Individual Developers for, among other things, continuing to provide software development services to Plaintiff.

109. Defendants are knowingly interfering with the business relationship between Plaintiff and the Individual Developers in violation of New York common law.

110. Defendants are acting with the sole purpose of harming Plaintiff and/or the Individual Developers, and/or is using wrongful means in interfering with the existing business relationship.

111. The business relationship between Plaintiff and the Individual Developers has been or is likely to be damaged by Defendants' wrongful interference.

112. Plaintiff is entitled to judgment in its favor in the form of an order enjoining Defendants from interfering with Plaintiff's contractual or business relationship with the Individual Developers.

COUNT IX
PROMISSORY ESTOPPEL

113. Paragraphs 1 - 40 are re-alleged and incorporated herein by reference.

114. Defendants made a clear and unambiguous promise to Plaintiff when they agreed that Plaintiff could continue to use the Individual Developers to develop Plaintiff's Software.

115. It was reasonable and foreseeable that Plaintiff would rely on Defendants' promise, and Plaintiff did in fact rely on this promise.

116. By reneging on this promise and insisting that Plaintiff stop using the Individual Developers to develop its Software, and by bringing legal action against the Individual Developers for continuing to provide software development services to Plaintiff, Defendant has caused Plaintiff to sustain real injury.

117. By Defendants' failure to maintain its promise, Plaintiff will continue to suffer injury, unless the Court orders that Defendants are estopped from denying that it agreed Plaintiff could continue to use the Individual Developers.

118. Plaintiff is entitled to judgment in its favor in the form of an order estopping Defendants from denying that Plaintiff may continue to use the Individual Developers to develop the Software, and further enjoining Defendants from bringing any legal actions or claims against Plaintiff or the Individual Developers based on the Individual Developers continuing to provide software development services to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff is entitled to and prays for relief as follows:

(i) That Defendants, and all of their officers, agents, servants, employees, and those persons in active concert or participation with the Defendants:

- a. be preliminarily and permanently enjoined and restrained from any future infringement of Plaintiff's Copyright in and to the Software, including an order prohibiting Defendants from reproducing or distributing the Software and an order compelling GitHub and any other third parties to remove all copies of the Software from their servers;
- b. be preliminarily and permanently enjoined and restrained from any future any future disclosure or use of Plaintiff's confidential information and/or trade secrets, including an order requiring Defendants to destroy all copies of Plaintiff's trade secrets in their possession, custody or control;
- c. be preliminarily and permanently enjoined and restrained from sending any false or defamatory communications to Plaintiff's actual or prospective customers concerning Plaintiff's ownership of the Software or its right and ability to license the software to others;
- d. be ordered to obtain and provide to Plaintiff all written assignments or other agreements that may be necessary to effectual ownership of the copyright and other intellectual property rights in the Software to Plaintiff;

(ii) That the Court enter an order declaring that Plaintiff is the owner of the copyrights and all other intellectual property in and to the Software, and that Plaintiff's use and distribution of the Software, and the use of the Software by Plaintiff's customers, does not infringe any copyrights or other intellectual property rights of Defendants;

(iii) That an accounting be conducted and judgment rendered against Defendants, jointly and severally, for

- a. damages for copyright infringement under the Copyright Act, together with any profits obtained by Defendants as a result of or attributable to their copyright infringement;
- b. any actual damages for misappropriation of Plaintiff's trade secrets, together with any unjust enrichment caused by the misappropriation of the trade secrets, or in the alternative, by imposing on Defendants a reasonable royalty for the Defendants' unauthorized disclosure and/or use of Plaintiff's trade secrets pursuant to 18 U.S.C. § 1836;
- c. Federal unfair competition in violation of 15 U.S.C. § 1125(a), including any damages suffered by Plaintiff and any of Defendants' profits;

- d. breach of Contract, including any incidental and/or consequential damages arising out of Defendants' breach;
- e. statutory damages for each violation of 17 U.S.C. § 1202 in the sum of not less than \$2,500 or more than \$25,000;
- (iv) That the Court find Defendants' misappropriation of Plaintiff's trade secrets to be willful and malicious and award exemplary damages in an amount not more than two times the amount of damages awarded;
- (v) That the Court award Plaintiff such actual or special damages as may be proven at trial for Defendant Xoho Tech Inc.'s breach of the Contract;
- (vi) That Plaintiff recover its costs and attorney's fees pursuant to 15 U.S.C. § 1117(a), 17 U.S.C. § 1202(b)(4) and (5), 18 U.S.C. § 1836(b)(3)(D), and pursuant to the Contract;
- (vii) That the Court enter an order estopping Defendants from denying that Plaintiff may continue to use the Individual Developers to develop its software, and further enjoining Defendants from bringing any legal actions or claims against Plaintiff or the Individual Developers based on the Individual Developers continuing to provide software development services to Plaintiff; and
- (viii) That Plaintiff be granted any other and further relief this Court deems just and proper.

Dated: September 9, 2021.

Respectfully submitted,
THE SLADKUS LAW GROUP

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