

**Charles Eastwood dba Locksmith Charley**

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[Charley@LocksmithCharley.com](mailto:Charley@LocksmithCharley.com)

Wednesday, March 14, 2012

ACXIOM Corporation Attn: Jordan Abbott  
601 E. 3<sup>rd</sup> Street  
Little Rock Arkansas 72201

Dear Mr. Abbott:

Thank you for your reply to my certified letter. I would like to address two issues specifically, one which you failed to address.

1. In your 3/5/12 letter you stated in the third paragraph: “The Utah Supreme court, in that case, held that Dex’s practice of permitting corporations to advertise MEL phone numbers without listing addresses did not violate state law.” (EMPHASIS ADDED)

In response I would like to point out that this case is clearly off point given the fact that nearly, if not all of the 9,000+ **(NINE THOUSAND PLUS) BOGUS LISTINGS** (in Arizona alone – not to mention countless THOUSANDS to MILLIONS across the nation) that ACXIOM is (a) selling to list consumers and (b) providing to companies including but not limited to LOCAL.COM, GOOGLE.COM, YAHOO!, 411 directory assistance providers, and other directory publishers, **DO CONTAIN ADDRESSES**.

The MEL numbers without listing addresses is a completely different factual set than ACXIOM, after having been repeatedly placed on notice that many of the addresses contained in the **BOGUS LISTINGS** do not actually exist and that the addresses contained in the **BOGUS LISTINGS** that actually do exist belong to other companies and that no locksmiths exist at those locations. Acxiom is therefore, (perhaps unwittingly) at least at a minimum facilitating the criminals in the saturation of the internet with their **BOGUS LISTINGS** or culpably either negligently ignoring, or intentionally conspiring with, the criminal scammers within Arizona to violate **A.R.S. §44-1221** in its entirety, including the directly stated **CRIMINAL OFFENSES** as well as the referenced consumer fraud violations.

IF y'all feel that you want to spend a lot of time and money litigating a completely different factual set of circumstances (**Dex publishing MEL #s w/o addresses VS ACXIOM SATURATING all media with known false information to the detriment of consumers, people in the affected tradeS, and persons / companies purchasing your lists composed of ~80%+ false information**) I guess we can do that.

2. As I stated in my previous letter of 2/25/2012: ‘ I note that in some of the “Terms and Conditions” on your website, mention is made of some undisclosed “**owners of information**”. I am guessing that some of these “**information owners**” are telephone companies and telephone directory publishing companies. In order to identify the original source(s) of all of the BOGUS LISTINGS I need to know what companies are involved and a means of contacting them directly and immediately. I am therefore reiterating the language of my 2/25/12 e-mail and subsequent certified letter:

**DEMAND IS HEREBY MADE THAT ACXIOM DISCLOSE THE COMPANY NAME, ADDRESS, TELEPHONE NUMBER, FAX NUMBER, CONTACT PERSON'S NAME AND E-MAIL ADDRESS FOR EACH AND EVERY COMPANY THAT IS AN "OWNER" OF LOCKSMITH DIRECTORY LISTING INFORMATION DISSEMINATED BY ACXIOM. I REQUIRE THIS INFORMATION WITHIN THE NEXT 10 DAYS.**

Failure to comply with this demand will surely expedite the filing of a suit against your company by myself and I can think of probably 6-10 other locksmith company owners in the Phoenix market as well as several others scattered around the nation that would immediately sign on as co-plaintiffs. If I do a little social network solicitation I think it is likely that I can find many persons / companies that are angry with your company about CHARGING THEM \$\$\$ for lists of mostly bogus listings.

Please note that these very same scammer companies are using the same business model in carpet cleaning, garage door repair, moving & storage, towing, and most lately PLUMBING!

Regarding the last paragraph of your letter, "**Sharing my concern**" seems little more than "lip service". Your suggestion of the use of "**The proper state agencies**" is a great idea – IF there were some. In Arizona there is no state licensing for locksmiths. You stated that "**It is my understanding that the Arizona Attorney General has taken significant steps in this regard...**" I am particularly interested in your last sentence above. As far as I am aware, over the past 4 years the AZ AG has been involved in precisely **ONE** action against precisely **ONE** company and finally managed to get a default judgment against **DEPENDABLE**, (to the exclusion of ATLAS, MILLER, MILLENNIUM, COMPLETE, TRUST, EXPERT, & GLOBAL, to name a few) but only AFTER the FEDS, in the persons of the U.S. POSTAL INSPECTION SERVICE, arrested the principals of Dependable in Florida and one worker bee in Missouri on charges ranging from structuring purchases of money orders to avoid reporting requirements – to – MONEY LAUNDERING – to – conspiring to use foreign nationals not authorized to work in this country to facilitate their criminal enterprise.

If you have more and further information of some OTHER "**significant steps**" supposedly being undertaken by the AZ-AG's office I and other ALOA LOCKSMITH TASK FORCE members would like to know all about it.

As I stated in my 12/3/11 e-mail, my 2/25/2012 e-mail, and subsequent certified letter, I (and I'm assuming if not the entire ALOA LOCKSMITH TASK FORCE at least some TASK FORCE members) would rather work with y'all than against y'all.

Please note that I will be forwarding a copy of this letter, as well as your unresponsive 5/12/2012 letter to my counsel, counsel in California that I am seeking to retain for a nationwide effort, and that ALOA LOCKSMITH TASK FORCE.

Mr. Abbott, I would ask you to call me immediately to jointly work toward a positive cooperative resolution to this issue.

Thank you for your anticipated IMMEDIATE ATTENTION and COOPERATION with this matter.

Charles "**Locksmith Charley**" Eastwood, CRL  
Member of [Associated Locksmiths of America](#)

**Locksmith Charley**  
**PO Box 832**  
**Tolleson, AZ 85353**

**602-717-5397 – Voice**  
**888-717-5397 -- Toll Free -- 800-313-5397**  
**509-278-1751 – Fax ([www.efax.com](http://www.efax.com))**

PS: placing **x1054k** in the subject line triggers a "**positive - NOT SPAM**" filter and ensures that the message gets to my inbox and is highlighted in **RED**

<http://www.TheLocksmithPolice.com> and make your donation now!

March 5, 2012

Charles Eastwood  
doing business as Locksmith Charley  
P.O. Box 832  
Tolleson, AZ 85353

Re: Letter of February 25, 2012

Dear Mr. Eastwood:

Acxiom Corporation has received your certified letter of February 25, 2012, and your emails of December 3, 2011 and February 25, 2012.

Simply stated, Acxiom disputes that it has engaged in conduct for which a cause of action exists. I would again caution you regarding suing Acxiom. As I have indicated previously, you have not shown where Acxiom has a duty to you or other locksmiths under Arizona law.

Upon receipt of your letter, I performed legal research regarding a data compiler's duty to verify the information it obtains from phone book directories. As I believe you are aware, no such case law exists. However, I did find an interesting case from Utah in which a company sued a telephone directory company for unfair and deceptive practices under the Utah Truth in Advertising statute for publishing "market extension lines" ("MELs") of the type you complain of in your letter. DeBry v. Qwest Dex, Inc., 144 P.3d 1079 (2006). The Utah Supreme Court, in that case, held that "Dex's practice of permitting corporations to advertise MEL phone numbers without listing addresses did not violate state law. Among other things, the Court stated:


We conclude that Dex makes no 'representation or designation of geographic origin,' much less a deceptive one. Contrary to DeBry's assertions, Dex does not purport to list only those businesses with offices physically located in the calling area; rather Dex merely lists the contact information for businesses offering products and services to customers in the calling area, regardless of the businesses' geographic locations... Absent a representation as to geographic location, Dex could not have violated Utah Code section 13-11a-3(1)(d).

*Id.*, p. 1082. For your convenience, I have enclosed a copy of the DeBry case.  
601 E Third Street, Little Rock, AR 72201

The same situation applies here. Acxiom does not make representations regarding the source, sponsorship, approval or certification of the goods or services of locksmiths. Similarly, Acxiom does not make representations or statements regarding the geographic origin or location of the locksmiths. If Acxiom's "source" of the information is not liable for deceptive and unfair representations regarding contact information, neither is Acxiom.

While Acxiom shares your concern about the harm caused by fraudulent and illegitimate and unlicensed locksmiths, we believe the proper state agencies or Attorney General should take enforcement action against the offending companies. It is my understanding the Arizona Attorney General has taken significant steps in this regard and we stand ready to help the Attorney General in his efforts upon his request.

Sincerely,



Jordan Abbott  
Compliance Counsel

Westlaw

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**H**

Only the Westlaw citation is currently available.

United States District Court,

D. Utah,

Northern Division.

ROBERT J. DeBRY AND ASSOCIATES, P.C., a  
 Utah Corporation, Plaintiff,

v.

QWEST DEX, INC., a Colorado Corporation, and  
 Dex Media West LLC, a Delaware Limited Liability  
 Company, Defendants.

No. 1:03CV0099.

March 5, 2004.

Lynn P. Heward, Robert J. DeBry & Associates,  
 Salt Lake City, UT, for Plaintiff.

Paul J. Lopach, Perkins Coie LLP, Denver, CO,  
 Bobbee J. Musgrave, James D. Franckowiak,  
 Strong & Hanni, Salt Lake City, UT, for Defend-  
 ants.

#### ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

PAUL G. CASSELL, United States District Judge.

\*1 Before the court are Defendants Qwest Dex, Inc.'s and Dex Media West LLC's (collectively "Dex") Motion to Dismiss All Claims (# 37-1), Plaintiff Robert J. DeBry and Associates, P.C.'s ("DeBry") Motion for Partial Summary Judgment (# 44-1), and DeBry's Motion for Leave to File Surreply Memorandum (# 61-1). The court has carefully considered the supporting and opposing memoranda filed in conjunction with each motion. Because the court agrees with Dex that DeBry has failed to state a claim upon which relief can be granted, the court GRANTS Dex's motion. Accordingly, the court DENIES DeBry's motion for partial summary judgment as MOOT and DENIES DeBry's motion to file a surreply memorandum.

### I. BACKGROUND

This case stems from advertisements Dex published in its 2003-2004 Ogden, Utah telephone directory. DeBry contends Dex intentionally interfered with DeBry's potential economic relations and violated the Utah Truth in Advertising Act <sup>FN1</sup> (TIAA) by publishing yellow page ads that contained a business's market expansion line (MEL) phone number but no address. A MEL number allows customers to dial a local phone number to connect with an out-of-area business without paying long distance charges. For example, telephone calls from Ogden, Utah, to Salt Lake City, Utah, are usually long-distance. A Salt Lake City business, however, could secure a MEL number with an Ogden prefix. Should an Ogden customer dial the Salt Lake City business's Ogden MEL number, the call is automatically routed to the Salt Lake City office, thereby saving the Ogden customer long distance costs.

FN1. Utah Code Ann. §§ 13-11a-1 to -5 (2001).

DeBry claims the ads in Dex's phone book are deceptive trade practices under the TIAA because the ads contain Ogden-area prefixes even though the businesses are not located in Ogden; as such, DeBry claims, Ogden consumers are likely confused "as to the source, sponsorship, approval, or certification of goods or services." <sup>FN2</sup> In addition, DeBry claims the ads constitute intentional interference with DeBry's potential economic relations. According to DeBry, the ads with MEL numbers but no addresses led DeBry's potential clients to hire out-of-Ogden attorneys rather than attorneys from DeBry's now-closed Ogden office because the potential clients were unable to discern the actual physical location of DeBry's competitors.

FN2. Utah Code Ann. § 13-11 a-3(1)(b).

### II. ANALYSIS

#### A. Procedural Posture

Under Rule 12(b)(6) of the Federal Rules of

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Civil Procedure, a complaint may be dismissed for failure to state a claim upon which relief can be granted "if it appears that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief." <sup>FN3</sup> A plaintiff has "the burden of alleging sufficient facts on which a recognized legal claim could be based." <sup>FN4</sup> A plaintiff need not describe every fact in "specific detail," but "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." <sup>FN5</sup> This court must assume "[a]ll well-pleaded facts, as distinguished from conclusory allegations," as true; "view all reasonable inferences in favor of the plaintiff;" and liberally construe the pleadings.<sup>FN6</sup> The court will examine Dex's motion under this framework.

FN3. *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence*, 927 F.2d 1111, 1115 (10th Cir.1991).

FN4. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991).

FN5. *Id.*

FN6. *Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir.2002) (quoting *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir.1984)).

#### A. DeBry's TIAA Claim

\*2 DeBry seeks relief under three subsections of Utah's TIAA. First, under § 13-11a-3(1)(b), DeBry alleges Dex caused a "likelihood of confusion or of misunderstanding as to the source ... of goods or services" by including Ogden MEL numbers in phone book ads for non-Ogden businesses but excluding the business's address.<sup>FN7</sup> Next, under § 13-11a-3(1)(d), DeBry alleges Dex's phone book ads are deceptive trade practices because they make "deceptive representations or designations of geographic origin in connection with goods or services." <sup>FN8</sup> Finally, under § 13-11 a-3(1)(t), DeBry alleges Dex violated TIAA's catch-all provision because publishing the ads with MEL numbers

but without addresses was other "conduct which ... creates a likelihood of confusion or of misunderstanding." <sup>FN9</sup>

FN7. Utah Code Ann. § 13-11a-3(1)(b).

FN8. *Id.* § 13-11a-3(1)(d).

FN9. *Id.* § 13-11a-3(1)(t).

DeBry's first claim under § 13-11a-3(1)(b) fails because of the language of § 13-11a-3(1)(d). The Supreme Court recently stated "[i]t is 'a cardinal principal of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" <sup>FN10</sup> In this case, subsection 3(1)(b) of the TIAA prohibits trade practices that are likely to cause confusion or misunderstanding as to the "source" of goods or services; subsection 3(1)(d) bans trade practices that deceptively misrepresent "designations of geographic origin in connection with goods or services." <sup>FN11</sup> If subsection 3(1)(b)'s "source" is identical to 3(1)(d)'s "geographic origin," the latter subsection would add nothing to the TIAA's overall statutory scheme. As a result, this court will construe the TIAA's subsection 3(1)(b)'s reference to "source" as referring to a product's *manufacturer* or a service's *provider* rather than the *geographic location* in which the product or service originates. This interpretation gives full effect to subsection 3(1)(d), wherein the Utah Legislature specifically provided a remedy for geographically misdescriptive trade practices.

FN10. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

FN11. *Id.* § 13-11a-3(1)(d) (emphasis added).

Viewed in this light, DeBry has not stated a claim under subsection 3(1)(b). DeBry's pleadings contain no factual allegations that the MELs in Dex's phone book ads caused potential Ogden cli-

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ents to contact a firm *other than* DeBry when the potential client *actually* intended to call DeBry. Because DeBry does not claim the MEL ads caused confusion about *the provider* of legal services, it fails to state a claim under § 13-11a-3(1)(b).

DeBry also fails to state a claim under § 13-11a-3(1)(d). DeBry's claim that Dex "has used deceptive representations or designations of geographic origin in connection with legal services it advertised on behalf of some of DeBry's competitors" stems from a table Dex printed in the front of its 2003-2004 Ogden, Utah directory.<sup>FN12</sup> Under the title "Ogden & Vicinity Local Calling Region," the table states "[t]he prefix(es) listed beside your community and those communities listed below it, represent your local calling area.... For Qwest Customers, this is a complete list of your calling area."<sup>FN13</sup> The table then lists all Ogden-area phone prefixes. DeBry claims the MELs in the phone book ads are geographic misrepresentations because a potential Ogden client could compare the MEL prefix in a phone book ad against the table and thereby assume the phone number was for an Ogden-based law firm.

FN12. Amended Complaint (# 26-1) ¶ 32.

FN13. *Id.* ¶ 12.

\*3 This claim seems quite dubious on its face. In any event, DeBry's claim fails because the table does not state the Ogden-area prefixes are assigned *solely* to Ogden-based business. Dex's table states the "prefix(es) listed beside your community and those communities listed below it, represent your *local calling area* .... For Qwest Customers, this is a complete list of your *calling area*." <sup>FN12</sup> The table, then, conveys to phone book users the prefixes they may dial from an Ogden telephone without incurring long distance charges. Neither the ads nor the table in Dex's phone book state that, by dialing an Ogden-area prefix, customers will secure legal work that will *originate from an Ogden attorney*. Instead, the ads simply provide a local number Ogden-area residents may call when seeking legal rep-

resentation. Thus, the ads in Dex's phone book are not "deceptive representations or designations of geographic origin in connection with legal services." <sup>FN15</sup> Accordingly, DeBry has failed to state a claim under § 13-11 a-3(1)(d).

FN14. *Id.* (emphasis added).

FN15. *Id.* ¶ 31.

Finally, DeBry fails to state a claim under § 13-11 a-3(1)(t). This subsection prohibits "any other conduct which similarly creates a likelihood of confusion or of misunderstanding." <sup>FN16</sup> DeBry has not pled facts that, if true, would show the ads created "a likelihood of confusion or of misunderstanding" in a manner other than that covered by subsection 3(1)(d). As such, DeBry's amended complaint fails to state a claim under § 13-11a-3(1)(t).

FN16. Utah Code Ann. § 13-11a-3(1)(t).

As alternative grounds for dismissal, Dex argues DeBry's claims must fail because Dex's conduct is exempt under the TIAA. Utah Code Ann. § 13-11a-5(1) states the TIAA "does not apply to conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local government agency." <sup>FN17</sup> In this case, Dex argues the phone book ads comply with a tariff governing MELs that Dex filed with the Utah Public Service Commission (PSC) pursuant to Utah Code Ann. § 54-3-3. Dex correctly states that "tariffs have the force of law." <sup>FN18</sup> The tariff at issue states that upon purchasing a MEL number, Dex will provide the purchaser with "one free listing in the White and Yellow Page directories covering the exchange in which the MEL CO is located; however, at the customer's request, the listing may be omitted at no charge." <sup>FN19</sup> Significantly, the tariff does not require that the ads displaying the MEL number also display an address. Thus, Dex argues, it is immune under TIAA because it complied with the "order or rule" (the tariff) administered by the "state ... government agency" (PSC) when it printed the ads. This argument likely is correct;

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however, in light of the court's decision regarding DeBry's claims under the TIAA, it need not decide whether the tariff indeed immunizes Dex from liability under the TIAA.

FN17. *Id.* § 13-11a-5(1).

FN18. *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered*, 681 P.2d 1258, 1263 (Utah 1984) (citing *Shehi v. Southwestern Bell Tel. Co.*, 382 F.2d 627 (10th Cir.1967)).

FN19. See Dex's Motion Ex. A.

*B. DeBry's Intentional Interference With Prospective Economic Relations Claim*

\*4 DeBry also alleges that Dex intentionally interfered with DeBry's prospective economic relations by publishing competitors' ads that contained a MEL number but no address. Under Utah tort law, however, DeBry has failed to state a claim upon which relief can be granted.

The Utah Supreme Court first recognized the common-law tort of intentional interference with prospective economic relations in *Leigh Furniture & Carpet Co. v. Isom*.<sup>FN20</sup> *Leigh Furniture* held that plaintiffs alleging this tort "must prove (1) that the defendant intentionally interfered with the plaintiffs existing or potential economic relations, (2) for an improper purpose or by improper means, (3) causing injury to the plaintiff."<sup>FN21</sup>

FN20. 675 P.2d 293 (1982).

FN21. *Id.* at 304.

In *Leigh Furniture*, the Utah Supreme Court noted that "[d]riving away an individual's existing or potential customers is the archetypical injury this cause of action was devised to remedy."<sup>FN22</sup> Thus, the first element requires a plaintiff to show a defendant has "intentionally interfered with and caused a termination of some of [the plaintiffs] relationships (actual or potential)."<sup>FN23</sup> This element was satisfied in *Leigh Furniture* because the

defendant "imposed heavy demands on [plaintiffs] time and financial resources to the detriment of his ability to attract and retain customers and conduct the other activities of his business" by writing numerous letters of complaint, demanding an inventory and financial audit during the busy holiday season, threatening to cancel contracts, refusing to satisfy contractual obligations, and preventing the consummation of potentially profitable business alliances.<sup>FN24</sup>

FN22. *Id.* at 306.

FN23. *Id.*

FN24. See *id.*

*Leigh Furniture's* second element is stated in the alternative: a plaintiff must show the defendant intentionally interfered with potential economic relations either "for an improper purpose" or "by improper means."<sup>FN25</sup> "Improper purpose is established by a showing that the actor's predominant purpose was to injure the plaintiff."<sup>FN26</sup> "Improper means are present 'where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations, or recognized common-law rules.'" <sup>FN27</sup> "Improper means include 'violence, threats, or other intimidation, deceit or misrepresentation, bribery, unfounded litigation, defamation, or disparaging falsehood.'" <sup>FN28</sup> Moreover, "[m]eans may also be improper or wrongful because they violate an established standard of a trade or profession."<sup>FN29</sup>

FN25. *Id.* at 304.

FN26. *St. Benedict's Development Co. v. St. Benedict's Hospital*, 811 P.2d 194, 201 (Utah 1991) (citing *Leigh Furniture*, 657 P.2d at 307)).

FN27. *Id.* (citing *Leigh Furniture*, 657 P.2d at 308).

FN28. *Id.*



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FN29. *Id.* (internal quotation marks omitted).

Finally, *Leigh Furniture's* third element requires a plaintiff to show that a defendant's intentional interference, by improper means or an improper purpose, was causally related to the plaintiff's losses.

Applying these rules to the present case, it becomes clear that DeBry has not stated a claim for intentional interference with prospective economic relations. First, DeBry has not alleged the kind of facts necessary to support a finding that Dex *intentionally* interfered with DeBry's potential economic relations. Even assuming DeBry's allegations are true, there are no facts showing Dex has committed the "archetypical injury" of "driving away" DeBry's potential or current clients. Unlike the liable party in *Leigh Furniture*, Dex has not imposed heavy demands on DeBry's time and financial resources to the detriment of DeBry's ability to attract and retain customers, refused to satisfy any contractual obligations, or prevented DeBry from consummating any business alliance. DeBry's complaint is simply void of any facts supporting the allegation that Dex's intent in publishing the MEL ads was to interfere with DeBry's ability to acquire potential Ogden clients. Thus, DeBry fails to satisfy *Leigh Furniture's* first element.

\*5 In addition, DeBry's complaint fails to satisfy *Leigh Furniture's* second element. DeBry has conceded Dex did not act for an improper purpose. FN30 DeBry's ability to prove the second element, therefore, hinges on whether Dex intentionally interfered with DeBry's potential economic relations through improper means. The court has determined that DeBry's complaint does not allege facts that show Dex employed "improper means" as explained in *Leigh Furniture* or its progeny. Because DeBry's complaint does not recite facts that, if accepted as true, would establish Dex violated the TIAA, DeBry cannot allege Dex's improper means was a statutory violation.<sup>FN31</sup> Moreover, DeBry has not stated facts that demonstrate Dex interfered

with DeBry or DeBry's potential clients in a violent, threatening, intimidating, or defamatory manner.<sup>FN32</sup>

FN30. Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss (# 43-1) at 6-7.

FN31. See *St. Benedict's Development Co.*, 811 P.2d at 201.

FN32. See *id.*

Because DeBry's complaint does not allege facts that satisfy *Leigh Furniture's* first or second elements, it fails to state a claim of intentional interference with prospective economic relations for which this court may grant relief. Accordingly, DeBry's second cause of action must be dismissed.

### III. CONCLUSION

DeBry's complaint is replete with conclusory statements and legal assertions but void of facts that, if true, would entitle DeBry to relief from this court, and the few well-pled facts in DeBry's claim do not amount to a cognizable legal wrong. Accordingly, the court GRANTS Dex's motion (# 37-1) and dismisses DeBry's amended complaint with prejudice. The court also DENIES DeBry's partial summary judgment motion (# 44-1) as moot and DENIES DeBry's motion for leave to file a surreply memorandum (# 61-1). The clerk's office is directed to close the case.

SO ORDERED.

D.Utah,2004.  
Robert J. DeBry & Associates, P.C. v. QWest Dex, Inc.  
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