

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

RPOST HOLDINGS, INC., RPOST
INTERNATIONAL LIMITED, and RMAIL
LIMITED,

Plaintiffs,

v.

PRIVASPHERE AG,

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs RPost Holdings, Inc., RPost International Limited, and RMail Limited for their
Complaint against Privasphere AG allege as follows:

NATURE OF THE ACTION

1. This action for willful patent infringement arises under the Patent Laws of the United States, namely, 35 U.S.C. §§ 1 et seq. This is also a civil action for willful infringement of a federally registered trademark under the United States Trademark Act, 15 U.S.C. §1051 et seq., for willful use of false designations of origin, and false descriptions and representations in violation of Section 43(a) of the United States Trademark Act, 15 U.S.C. §1125(a), for trademark dilution in violation of Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c), and for related claims of common law trademark infringement and dilution, unfair competition, and damage to business reputation in violation of the laws of the State of Texas.

PARTIES

2. Plaintiff RMail Limited ("RMail") is a corporation organized under the laws of the Nation of Bermuda. It is the owner of United States Patent No. 6,182,219 ("the '219

patent”). The ’219 patent, entitled “Apparatus and Method for Authenticating the Dispatch and Contents of Documents,” is generally directed to novel apparatuses and methods for authenticating that a sender has electronically transmitted certain information via a dispatcher to a recipient. The ’219 patent was duly and legally issued by the United States Patent and Trademark Office on January 30, 2001 after full and fair examination. The ’219 patent is valid and enforceable. A true and correct copy of the ’219 patent is attached as Exhibit A.

3. RPost International Limited (“RPI”) is a corporation organized under the laws of the Nation of Bermuda. It is a licensee, from RMail, of the ’219 patent. It is also the owner of United States Trademark Registration No. 2,928,365 for the mark REGISTERED E-MAIL® for “delivery of messages by electronic transmission to a designated recipient to provide results on a basis equivalent to the results obtained by registered mail,” which registered on February 22, 2005 and is valid and subsisting. It is further the owner of United States Trademark Registration No. 2,867,278 for the mark (R)egistered e-mail® for “delivery of messages by electronic transmission to a designated recipient to provide results on a basis equivalent to the results obtained by registered mail,” which registered on July 27, 2004 and is valid and subsisting.

4. RPost Holdings, Inc. (“RPH”) is a corporation organized under the laws of the State of Delaware having a business office in Plano, Texas. It is a licensee, from RPI, of the ’219 patent and of the right to use the registered trademarks REGISTERED E-MAIL® and (R)egistered e-mail®.

5. Upon information and belief, Defendant Privasphere AG is a Swiss corporation having its principal place of business at Jupiterstrasse 49 CH-8032 Zürich, Switzerland. Privasphere provides secure and authenticated e-mail and internet messaging services. Privasphere has committed acts of infringement and other unlawful acts in this judicial district

and does regular business in this judicial district, including providing the technologies accused of infringement in this judicial district.

6. Upon information and belief, Privasphere is a nonresident of Texas who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process in this state. Upon information and belief, Privasphere resides in this jurisdiction within the meaning of 28 U.S.C. § 1400(b). This proceeding arises, in part, out of business done in this state. Privasphere may be served with process in Switzerland pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under Section 39(a) of the Lanham Act, 15 U.S.C. § 1121(a); 28 U.S.C. §§ 1331 (federal question jurisdiction), 1338(a) (patent and trademark infringement), 1338(b) (unfair competition); and 28 U.S.C. §1367(a) (supplemental jurisdiction over state law claim).

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2), (c), (d) and/or 1400(b). On information and belief, Defendant conducts business in this district, the claims alleged in this Complaint arise in this district, the acts of infringement have taken place and are continuing to take place in this district, and Defendant is an alien who may be sued in any district.

9. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has minimum contacts within the State of Texas and the Eastern District of Texas, including via its website, pursuant to due process and/or the Texas Long Arm Statute, Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant

regularly conducts and solicits business within the State of Texas and within the Eastern District of Texas; and Plaintiffs' causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

10. More specifically, Defendant directly and/or through intermediaries makes, offers for sale, sells, and/or advertises (including the provision of an interactive website) products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has committed acts of infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Upon information and belief, Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use Defendant's products and services in the State of Texas and in the Eastern District of Texas.

COUNT I
PATENT INFRINGEMENT

11. Upon information and belief, Defendant Privasphere has been and now is infringing the '219 patent in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling and/or offering for sell software products and services that authenticate that a sender has electronically transmitted certain information via a dispatcher to a recipient. Privasphere is thus liable for infringement of the '219 patent pursuant to 35 U.S.C. § 271.

12. Upon information and belief, Privasphere's infringement of the '219 patent has been and/or is willful.

13. As a result of Privasphere's infringement of the '219 patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Privasphere's infringing activities are enjoined by this Court.

14. Unless a permanent injunction is issued enjoining Privasphere and its agents, servants, employees, representatives, affiliates, and all others acting on in active concert with Privasphere from infringing the '219 patent, Plaintiffs will be greatly and irreparably harmed.

COUNT II
VIOLATION OF § 32 OF THE LANHAM ACT, 15 U.S.C. §1114

15. Upon information and belief, Defendant advertises and /or has advertised its service as “Registered Email” and “Registered Secure Email.” In doing so, Defendant infringes RPI’s federally registered trademarks REGISTERED E-MAIL® and (R)egistered e-mail®.

16. Defendant’s unauthorized use of the terms “Registered Email” and “Registered Secure Email” in commerce in connection with the sale, offering for sale, or advertising of its services is likely to cause confusion or to deceive others as to the origin of those terms or to cause mistake or to deceive others into believing that Plaintiffs sponsor, are connected, or affiliated with Defendant or that Plaintiffs have approved Defendant’s use of those terms, all to the detriment of RPI.

17. Upon information and belief, Defendant’s unlawful acts have been committed with knowledge of RPI’s prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

18. Defendant’s unlawful acts have caused irreparable injury to RPI for which there is no adequate remedy at law, and will continue to cause irreparable injury to RPI unless enjoined.

19. Upon information and belief, Defendant has profited from their unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant’s unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT III
VIOLATION OF § 43(a) OF THE LANHAM ACT, 15 U.S.C. §1125(a)

20. Defendant's unauthorized use of the terms "Registered Email" and "Registered Secure Email" constitutes a false designation of origin, a false or misleading description of fact, or a false or misleading representation of fact within the meaning of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

21. Defendant's unauthorized use of the terms "Registered Email" and "Registered Secure Email" in commerce in connection with the sale, offering for sale, or advertising of its service is likely to cause confusion or to deceive others as to the origin of those terms or to cause mistake or to deceive others into believing that Plaintiffs sponsor, are connected, or affiliated with Defendant or that Plaintiffs have approved Defendant's use of those terms, all to the detriment of RPI.

22. Upon information and belief, Defendant's unlawful acts have been committed with knowledge of RPI's prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

23. By reason of Defendant's unlawful acts, RPI has suffered, is suffering and, unless Defendant is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

24. Upon information and belief, Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT IV
VIOLATION OF § 43(c) OF THE LANHAM ACT, 15 U.S.C. 1125(c)

25. The REGISTERED E-MAIL® and (R)egistered e-mail® marks are strong, distinctive, and famous within the relevant market.

26. Defendant's unlawful use of the terms "Registered Email" and "Registered Secure Email" is likely to cause dilution of the distinctive quality of RPI's marks and decreasing the capacity of such marks to identify and distinguish RPI's services.

27. Upon information and belief, Defendant's unlawful acts have been committed with knowledge of RPI's prior, registered rights in the REGISTERED E-MAIL® and (R)egistered e-mail® marks.

28. Defendant's unlawful acts have caused irreparable injury to RPI for which there is no adequate remedy at law, and will continue to cause irreparable injury to RPI unless enjoined.

29. Upon information and belief, Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT V
COMMON LAW TRADEMARK INFRINGEMENT

30. RPI owns all rights, title, and interest in and to the REGISTERED E-MAIL® and (R)egistered e-mail® marks, including all common law rights in such marks.

31. Defendant has used and is continuing to use of the terms "Registered Email" and "Registered Secure Email" in a manner that is confusingly similar to the RPI marks.

32. Defendant's unlawful acts constitute trademark infringement in violation of the common law of the State of Texas.

33. By reason of the acts of Defendant alleged herein, RPI has suffered, is suffering and, unless Defendant is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

34. Upon information and belief, Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT VI
COMMON LAW UNFAIR COMPETITION

35. Defendant's use of the terms "Registered Email" and "Registered Secure Email" permit Defendant to use and benefit from the goodwill and reputation earned by RPI to obtain a ready customer's acceptance of Defendant's services, and constitutes unfair competition, palming off, and misappropriation in violation of Texas common law, for which RPI is entitled to recover any and all remedies provided by such common law.

36. By reason of the acts of Defendant alleged herein, RPI has suffered, is suffering and, unless Defendant is restrained, will continue to suffer, irreparable injury for which there is no adequate remedy at law.

37. Upon information and belief, Defendant has profited from its unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT VII
INJURY TO BUSINESS REPUTATION AND TRADEMARK DILUTION, §16.29
T.B.C.C.

38. The REGISTERED E-MAIL® and (R)egistered e-mail® marks are strong, distinctive, and famous within the relevant market.

39. Defendant's unlawful use of the terms "Registered Email" and "Registered Secure Email" has diluted the distinctive quality of RPI's marks and decreased the capacity of such marks to identify and distinguish RPI's services. As such, Defendant's act violate §16.29 of the Texas Business and Commerce Code.

40. Defendant's unlawful use of the terms "Registered Email" and "Registered Secure Email" has also caused harm to RPI's business reputation in violation of §16.29 of the Texas Business and Commerce Code.

41. Defendant's unlawful acts have caused irreparable injury to RPI for which there is no adequate remedy at law, and will continue to cause irreparable injury to RPI unless enjoined.

42. Upon information and belief, Defendant has profited from their unlawful actions and has been unjustly enriched to the detriment of RPI. Defendant's unlawful actions have caused RPI monetary damage in an amount presently unknown, but in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter:

1. A judgment in favor of Plaintiffs that Defendant has infringed the '219 patent, and that such infringement has been and is willful;

2. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert with Defendant from infringing the '219 patent;

3. A judgment and order requiring Defendant to pay Plaintiffs its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '219 patent as provided under 35 U.S.C. § 284;

4. An award to Plaintiffs for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;

5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs its reasonable attorneys' fees;

6. An order enjoining and restraining, during the pendency of this action and permanently, Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert with Defendant from:

- a. using the marks REGISTERED E-MAIL® or (R)egistered e-Mail® and any confusingly similar designation alone or in combination with other words or designs, as a trademark, service mark, trade name component, title, Internet domain name, or otherwise, to market, advertise, distribute, sell or identify any products and services;
- b. doing any other act likely to induce the confusing or mistaken belief that Defendant or its products, services or commercial activities are in any way affiliated, connected, or associated with RPI;
- c. using a name or mark confusingly similar to RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks, incorporating RPI's marks, or otherwise infringing RPI's marks;

- d. unfairly competing with RPI in any manner whatsoever;
- e. causing likelihood of confusion and injury to RPI's business reputation;
- f. diluting RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks;
- g. committing any other act or making any other statement which infringes, dilutes RPI's REGISTERED E-MAIL® and (R)egistered e-Mail® marks, or constitutes an act of infringement, dilution, unfair competition, or damage to RPI's business reputation under federal common law or the common law of the State of Texas;

7. An award of all damages suffered by Plaintiffs resulting from Defendant's acts alleged in this Complaint, including but not an accounting for any and all profits derived by Defendant from its illegal acts alleged in this Complaint, and to which Plaintiffs are entitled under 15 U.S.C. § 1117;

8. An award trebling the amount of damages awarded RPI under 15 U.S.C. §§ 1114 and 1117;

9. A declaration that this is an exceptional case and awarding Plaintiffs their full costs, expert witness fees, and reasonable attorneys' fees incurred in connection with this action under 15 U.S.C. § 1117;

10. An award of any actual and putative damages to which RPI is entitled to under applicable federal and state laws;

11. Any and all other relief that the Court or the jury may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiffs RPost Holdings, Inc., RPost International Limited, and RMail Limited, under Rule 38 of the Federal Rules of Civil Procedure, request a trial by jury of any issues so triable by right.

Respectfully Submitted,

Dated: March 8, 2011

By: /s/ Winston O. Huff

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CERTIFICATE OF FILING

I hereby certify that on March 8, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

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