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CLERK U.S. DISTRICT COURT
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FILED

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7 HOLDINGS, INC., RPOST
8 INTERNATIONAL LIMITED, and
9 RMAIL LIMITED

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 RPOST HOLDINGS, INC., RPOST
13 INTERNATIONAL LIMITED, and
14 RMAIL LIMITED

15 Plaintiffs,

16 vs.

17 SWISS POST,

18 Defendant.

19) CASE NO. CV 09-08616 RSWL
20) (CTx)

21) **FIRST AMENDED COMPLAINT**
22) **FOR PATENT INFRINGEMENT,**
23) **TRADEMARK INFRINGEMENT,**
24) **VIOLATION OF LANHAM ACT,**
25) **UNFAIR COMPETITION AND**
26) **FALSE ADVERTISING ;**
27) **DEMAND FOR JURY TRIAL**
28)

1 Plaintiffs RPost Holdings, Inc., RPost International Limited, and RMail
2 Limited, for their complaint against Defendants Swiss Post and Swiss Post
3 Solutions, Inc., allege as follows:
4

5 **NATURE OF THE ACTION**

6 1. Swiss Post and Swiss Post Solutions, Inc. advertise, and provide, a
7 message authentication service they call IncaMail. This service infringes several
8 patents owned by, or licensed to, Plaintiffs. In addition, Swiss Post and Swiss
9 Post Solutions, Inc. advertise their IncaMail service as providing “registered e-
10 mails.” In so doing, they infringe on Plaintiffs’ registered trade marks “Registered
11 e-Mail®” and “(R)egistered e-Mail ®,” and also commit Lanham Act violations,
12 false advertising, and unfair competition. Plaintiffs seek injunctive relief to
13 prevent Swiss Post and Swiss Post Solutions, Inc. from continuing to infringe their
14 patent and trademark rights. Plaintiffs also seek monetary damages for
15 Defendants’ past infringement and other wrongful acts.
16

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
19 1330, 1331, 1338(a), and 1367.

20 3. Venue is proper in this district pursuant to 28 U.S.C §§1391 (c), (d)
21 and 1400(b).
22

23 **THE PARTIES**

24 4. Plaintiff RMail Limited (“RMail”) is a corporation organized under
25 the laws of the Nation of Bermuda. It is the owner of United States Patent Nos.
26 6,182,219 (the “219 Patent”) and 6,571,334 (the “334 Patent”).

27 5. RPost International Limited (“RPI”) is a corporation organized under
28 the laws of the Nation of Bermuda. It is also the exclusive licensee, from RMail,

1 of the '219 and '334 Patents. It is also the owner of the registered trademarks
2 "Registered e-Mail®" and "(R)egistered e-Mail®" issued by the United States
3 Patent and Trademark Office.

4 6. RPost Holdings, Inc. ("RPost") is a corporation organized under the
5 laws of the State of Delaware, having an office in this District. It is the exclusive
6 licensee, from RPI, of the '219 and '334 Patents, and of the right to use the
7 "Registered e-Mail®" and "(R)egistered e-Mail®" marks.

8 7. On information and belief, defendant Swiss Post ("SP") is an
9 autonomous entity believed to be a corporation whose sole owner is the Swiss
10 Confederation, commonly referred to as the Nation of Switzerland. As such, SP is
11 an instrumentality of the Swiss Confederation.

12 8. On information and belief, Swiss Post Solutions, Inc. ("Solutions") is
13 a corporation organized under the laws of the State of New York, doing business
14 in California. On information and belief, Solutions is a subsidiary of SP.

15
16 **FACTS COMMON TO ALL COUNTS**

17 9. SP and Solutions both offer for sale products and services relating to
18 the transmission of electronic messages (commonly referred to as "e-mails").
19 Among the products and services SP and Solutions offer is one they call IncaMail
20 ("IncaMail").

21 10. SP and Solutions both offer IncaMail for sale in the United States.

22 11. SP's IncaMail service constitutes a commercial activity carried out in
23 the United States, comprises acts performed in the United States in connection
24 with Swiss Post's commercial activities generally, or constitutes commercial
25 activity by Swiss Post having a direct effect in the United States.

26 12. SP's and Solutions' IncaMail product is advertised as being a method
27 by which SP's and Solutions' customers can obtain "registered e-mails."
28 \\

COUNT I

(For patent infringement)

13. Plaintiffs reallege and restate paragraphs 1 through 12, inclusive.

14. SP's and Solution's IncaMail product infringes at least one claim of each of the '219 and '334 Patents.

15. Plaintiffs have been damaged by SP's and Solution's infringement of the '219 and '334 Patents.

16. Plaintiffs will suffer irreparable injury if SP's and Solution's continued infringement of the '219 and '334 Patents is not enjoined.

17. On information and belief, SP's and Solution's infringement was willful within the meaning of 35 U.S.C. §284.

COUNT II

(For trademark infringement, 15 U.S.C. §1114)

18. Plaintiffs re-allege and restate paragraphs 1 through 12, inclusive.

19. By virtue of the foregoing, SP and Solutions infringe Plaintiffs' registered trademarks "Registered e-Mail®" and "(R)egistered e-Mail®."

20. Plaintiffs have been damaged by SP's and Solutions' trademark infringement.

21. Plaintiffs will suffer irreparable injury by SP's and Solutions' continued infringement of Plaintiffs' trademark.

COUNT III

(For violation of the Lanham Act, 15 U.S.C. §1125)

22. Plaintiffs re-allege and restate paragraphs 1 through 12, inclusive.

23. SP's and Solutions' use of the term "registered e-mail" constitutes a false designation of origin, a false or misleading description of fact, or a false or

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1 misleading representation of fact within the meaning of the Lanham Act, 15
2 U.S.C. §1125.

3 24. SP's and Solutions' use of the term "registered e-mail" is likely to
4 cause confusion or to deceive others as to the origin of the term "registered e-
5 mail" or to cause mistake or to deceive others into believing that Plaintiffs
6 sponsor, are connected, or affiliated with, SP or Solutions, or that Plaintiffs have
7 approved SP's and Solutions' use of the term.

8 25. Plaintiffs have been damaged by SP's and Solutions' Lanham Act
9 violations.

10
11 **COUNT IV**

12 (For false advertising and unfair competition, Cal. Bus. & Prof. Code §§17200, *et*
13 *seq.* and §§17500, *et seq.*)

14 26. Plaintiffs re-allege and restate paragraphs 1 through 12, inclusive.

15 27. SP's and Solutions' use of the term "registered e-mail" constitutes
16 false advertising within the meaning of Cal. Bus. & Prof. Code §17500.

17 28. SP's and Solutions' use of the term "registered e-mail" constitutes
18 unfair competition within the meaning of Cal. Bus. & Prof. Code §17200.

19 29. Plaintiffs are entitled to restitution as a result of SP's and Solutions'
20 violations of Cal. Bus. & Prof. Code §§17200, *et seq.* and §§17500, *et seq.*)

21 30. Plaintiffs are entitled to injunctive relief for SP's and Solutions'
22 violations of Cal. Bus. & Prof. Code §§17200, *et seq.* and §§17500, *et seq.*)

23
24 Wherefore, Plaintiffs prays that judgment be entered in its favor and against
25 Swiss Post and Swiss Post Solutions, Inc. as follows:

26 1. For an order provisionally, and permanently, enjoining Swiss Post,
27 and its agents, attorneys, successors, assigns, and all persons acting in concert with
28 it, from making, using, selling, offering to sell products or services that infringe

1 the '219 or the '334 Patents, and from otherwise infringing the '219 and '334
2 Patents.

3 2. For an order provisionally, and permanently, enjoining Swiss Post
4 Solutions, Inc., and its agents, attorneys, successors, assigns, and all persons
5 acting in concert with it, from making, using, selling, offering to sell products or
6 services that infringe the '219 or the '334 Patents, and from otherwise infringing
7 the '219 and '334 Patents.

8 3. For an order provisionally, and permanently, enjoining Swiss Post
9 and its agents, attorneys, successors, assigns, and all persons acting in concert with
10 it, from using the marks "Registered e-Mail®," "(R)egistered e-Mail®," or any
11 similar mark in any marketing, advertising, or other materials.

12 4. For an order provisionally, and permanently, enjoining Swiss Post
13 Solutions, Inc., and its agents, attorneys, successors, assigns, and all persons
14 acting in concert with it, from using the marks "Registered e-Mail®,"
15 "(R)egistered e-Mail®," or any similar mark in any marketing, advertising, or
16 other materials.

17 5. For damages in an amount to be proven at trial.

18 6. For restitution.

19 7. For costs, interest, and attorneys' fees as permitted by law.

20 8. For such other relief as the Court may deem just.

21
22 Dated: January 28, 2010

Respectfully submitted,

BEN-ZVI & ASSOCIATES

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24
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26 By: 

HENRY BEN-ZVI
Attorneys for Plaintiffs RPOST
HOLDINGS, INC., RPOST
INTERNATIONAL LIMITED, and RMAIL
LIMITED


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DEMAND FOR JURY TRIAL

Plaintiffs RPost Holdings, Inc., RPost International Limited, and RMail Limited hereby demand trial by jury on all issues for which a jury trial may be had.

Dated: January 28, 2010

Respectfully submitted,
BEN-ZVI & ASSOCIATES

By: 
HENRY BEN-ZVI
Attorneys for Plaintiffs RPOST
HOLDINGS, INC./RPOST
INTERNATIONAL LIMITED, and RMAIL
LIMITED