

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RETINA-X STUDIOS, LLC, a Florida
limited liability company,

Case No. 3:13-cv-897-J-99mmH-TEM

Plaintiff,

vs.

ADVAA, LLC, a California limited
liability company, MTECHNOLOGY LTD,
a United Kingdom private limited company,
and BITEX GROUP, LTD, a Seychelles
private limited company, and
PAVEL DALETSKI, an individual.

Defendants.

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CLERK US DISTRICT COURT
MIDDLE DISTRICT OF FL
JACKSONVILLE FLORIDA

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**COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR
COMPETITION; INJUNCTIVE RELIEF; JURY TRIAL REQUESTED**

Plaintiff Retina-X Studios, LLC, (“Retina-X Studios”) a Florida limited liability company, hereby sues Defendants ADVAA, LLC (“ADVAA”), MTECHNOLOGY LTD (“MTECHNOLOGY”), BITEX GROUP, LTD (“BITEX”) and PAVEL DALETSKI, an individual, and alleges:

1. This is an action for damages, injunctive relief, and attorneys’ fees pursuant to the Lanham Act, 15 U.S.C. §§ 1052 *et seq.*, for Defendants’ willful

infringement of Retina-X Studios registered United States trademark **MOBILE SPY**, and unfair competition related thereto.

THE PARTIES

2. Plaintiff Retina-X Studios is a Florida limited liability company with its principal office in Jacksonville, Florida. Among other things, Retina-X Studios is in the business of developing, manufacturing, marketing, promoting, distributing and selling computer software for monitoring the usage of smart phones and computers. Retina-X Studios is the owner of the trademark **MOBILE SPY** for computer software for monitoring the usage of mobile phones, and the U.S. Trademark Registration No. 3,988,970.

3. On information and belief, Defendant MTECHNOLOGY LTD is a United Kingdom private limited company, with a place of business at 800 West El Camino Real, Mountain View, California 94040.

4. On information and belief, Defendant ADVAA is a California limited liability company with a principal place of business at 1262 E. Hamilton Avenue, Suite E, Campbell, California 95008.

5. On information and belief, Defendant BITEX GROUP LTD is a Seychelles private limited company with a principal place of business at 306 Victoria House, Victoria, Seychelles.

6. On information and belief, Defendant PAVEL DALETSKI, is a citizen of the United Kingdom with a residential address at San Francisco, California, USA PAVEL DALETSKI was the CEO and a director of Defendant MTECHNOLOGY from February 4, 2011 through August 29, 2011 and then again January 8, 2012 through February 15, 2013. PAVEL DALETSKI is also a director and/or managing member of Defendant, BITEX GROUP, LTD.

7. On information and belief, Defendant ADVAA is a subsidiary of Defendant MTECHNOLOGY LTD which is responsible for the marketing and sale of MTECHNOLOGY software products to residents of the United States and in the Middle District of Florida. Defendant BITEX GROUP LTD is an agent of Defendant MTECHNOLOGY LTD which processes payments from customers in the United States and in the Middle District of Florida. Defendants are in the business of marketing and selling software for monitoring smart phones and computers and specifically direct their activities into the United States and in the Middle District of Florida. In connection with this business, Defendants operate the website www.mspy.com.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1338. Personal jurisdiction and venue are proper in this district, since the Defendants are actively conducting business throughout the United States and in the Middle District of Florida, Plaintiff has suffered harm in the Middle District of Florida, and the claims arise out of Defendants' purposeful business activity directed to the residents of the United States and the Middle District of Florida.

FACTS COMMON TO ALL COUNTS

9. On or about April 21, 2007, the mark **MOBILE SPY** was first used in interstate commerce by Retina-X Studios to advertise, promote, market and sell computer software for monitoring the usage of smart phones, and the mark has been in use continuously by Retina-X Studios itself since that time. Retina-X Studios is the owner of the trademark **MOBILE SPY**, as well as all the goodwill associated therewith.

10. On July 5, 2011, the United States Patent and Trademark Office issued Trademark Registration No. 3,988,970 for the mark **MOBILE SPY** in International Class 009 for computer software for monitoring the usage of mobile phones. A copy of U.S. Trademark Registration No. 3,988,970 for the

MOBILE SPY mark is attached at **Exhibit A**. Retina-X Studios, LLC is the registrant of all rights and interest in this registration and the goodwill associated therewith and all causes of action related thereto.

11. The **MOBILE SPY** mark connotes the goodwill and reputation associated with Retina-X Studios brand of software and indicates the source of that software.

12. Retina-X Studios currently markets and sells its **MOBILE SPY** software at its website www.mobile-spy.com. Retina-X Studios uses Avangate an e-Commerce merchant service provider for its online ordering system as shown at www.avangate.com.

13. Retina-X Studios has expended extensive time, energy, and funds in promoting, marketing, and advertising the **MOBILE SPY** line of software. As a result, the **MOBILE SPY** mark has become distinctive and well-known in the marketplace, and connotes Retina-X Studios goodwill and reputation to relevant consumers and in the industry.

14. On information and belief, Defendants jointly own and operate the www.mspy.com website.

15. Defendants offer a software package through their www.mspy.com website which provides almost identical features and functionality to the

MOBILE SPY software products sold by Retina-X Studios. In fact, Defendants recently switched their payment processing system to the Avangate system found at www.avangate.com which is the same e-Commerce merchant service provider used by Plaintiff Retina-X Studios.

16. Defendants have appropriated Plaintiff's **MOBILE SPY** mark, and the confusingly similar **MSPY** mark, to promote and sell a line of software products that competes directly with Retina-X Studios' products. Defendants are using both the **MOBILE SPY** and **MSPY** marks, *inter alia*, on their website, in communications with prospective and actual software purchasers, through social media sites such as Facebook and Twitter, as well as in connection with paid advertising, including advertising on Internet search engines linking to www.mspy.com.

17. Defendants' use of the **MOBILE SPY** and **MSPY** trademarks has caused and is continuing to cause actual confusion among consumers as to the source or sponsorship of Defendants' products.

18. Upon information and belief, Defendants continue to sell their line of software products to consumers within this jurisdiction and in interstate commerce by appropriating Retina-X Studios' **MOBILE SPY** mark and the confusingly similar **MSPY** mark.

19. Retina-X Studios has never authorized Defendants to use the **MOBILE SPY** and **MSPY** marks for any purpose. Defendants' use of the **MOBILE SPY** and **MSPY** marks is likely to cause confusion and mistake as to the origin of Defendants' software, and the relationship between Retina-X Studios and the Defendants.

20. Retina-X Studios has been and continues to be irreparably damaged by Defendants' unauthorized use of the **MOBILE SPY** and **MSPY** marks.

COUNT I
INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK
15 U.S.C. §§1114

21. This is a count for trademark infringement against all Defendants.

22. Retina-X Studios re-alleges and incorporates by reference herein the allegations contained in paragraphs 1 through 20 of the Complaint.

23. The U.S. Patent and Trademark Office has issued Retina-X Studios a federal registration on the Principal Register for the **MOBILE SPY** mark.

24. Retina-X Studios' federal registration of its **MOBILE SPY** mark on the Principal Register is evidence of the validity of the mark and of Retina-X Studios exclusive ownership of and right to use its **MOBILE SPY** mark for software.

25. Defendants' wrongful use of the **MOBILE SPY** and **MSPY** marks in conjunction with the sale of their products is likely to cause consumer confusion as to source, sponsorship, affiliation, or authorization by Retina-X Studios, or alternatively, to destroy the origin-identifying function of Retina-X Studios' **MOBILE SPY** mark. As such, Defendants' actions constitute trademark infringement in violation of §32(a) of the Lanham Act, 15 U.S.C. §1114.

26. As a proximate result of Defendants' actions, Retina-X Studios has suffered and will continue to suffer damage to its business, goodwill, reputation, profits, and the strength of its **MOBILE SPY** mark. This injury to Retina-X Studios is and continues to be ongoing and irreparable. An award of monetary damages cannot fully compensate Retina-X Studios for its injuries, and Retina-X Studios lacks an adequate remedy at law.

27. The foregoing acts of infringement by Defendants in appropriating the **MOBILE SPY** and **MSPY** marks have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C. §1117.

28. Retina-X Studios is entitled to preliminary and permanent injunctions against Defendants, as well as all monetary remedies available

under the Lanham Act, including but not limited to compensatory damages, treble damages, disgorgement of profits, costs and attorneys' fees.

COUNT II
FEDERAL UNFAIR COMPETITION
15 U.S.C. §1125(a)

29. This is a count for unfair competition against all Defendants.

30. Retina-X Studios re-alleges the allegations contained in paragraphs 1 through 20 above, incorporated herein by reference.

31. This claim arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

32. Defendants have knowingly used Retina-X Studios' **MOBILE SPY** mark and the confusingly similar **MSPY** mark in connection with the sale of Defendants' goods in interstate commerce.

33. Defendants' use of the **MOBILE SPY** mark and the confusingly similar **MSPY** mark is likely to cause, has caused, and will continue to cause confusion among consumers as to the origin, sponsorship or approval of Defendants' software products.

34. Defendants' acts are in violation of 15 U.S.C. §1125(a) in that Defendants have used and are using, in connection with the sale of goods, a false designation of origin, or a false or misleading description which is likely

to cause confusion, and to cause mistake, and to deceive, as to the affiliation, connection, or association of Defendants with Retina-X Studios as to the origin, sponsorship or approval of Defendants' products and commercial activities.

35. Retina-X Studios has suffered, and will continue to suffer, irreparable damage resulting from the acts of unfair competition by Defendants, and because these acts are continuing, Retina-X Studios will suffer additional irreparable damage unless Defendants are enjoined by the Court from continuing those acts.

36. Defendants' acts of unfair competition are willful, and this is an exceptional case within the meaning of 15 U.S.C. §1117(a).

COUNT III
COMMON LAW UNFAIR COMPETITION

37. This is a count for common law unfair competition against all Defendants.

38. Retina-X Studios realleges the allegations contained in paragraphs 1 through 19 above, incorporated herein by reference.

39. This Count is a claim against Defendants for unfair competition under the common law of the State of Florida.

40. Continuously since on or about April 21, 2007, Retina-X Studios has used the mark **MOBILE SPY** to distinguish its software from those made

and sold by others, among other things, prominently displaying the mark on its product, product packaging, letterhead, bills, advertising, and website pages distributed throughout the United States, including the Middle District of Florida.

41. Retina-X Studios **MOBILE SPY** mark is inherently distinctive, or by virtue of its lengthy and continuous use has acquired secondary meaning to purchasers in the trade area in which the parties compete.

42. Defendants are using the **MOBILE SPY** mark and confusingly similar **MSPY** marks to promote their competing software via the same channels of commerce as Retina-X Studios.

43. The acts and conduct of Defendants as alleged herein constitute unfair competition pursuant to the common law of the State of Florida, and Defendants have engaged in these acts of unfair competition as alleged above in a willful, wanton and malicious manner.

44. By reason of Defendants' acts alleged herein, Retina-X Studios has suffered and will continue to suffer damage to its business, reputation, and goodwill, and is entitled to recover damages for this injury, including the profits Retina-X Studios would have made but for the acts of Defendants, together with the ill-gotten gains of Defendants, and damages for their willfulness.

45. The conduct of Defendants will continue, to the irreparable prejudice of Retina-X Studios, unless Defendants are restrained and enjoined from further unlawful conduct. It would be difficult to ascertain the amount of compensation necessary to adequately remedy such continuing acts. Retina-X Studios remedy at law is therefore inadequate to compensate it for the injuries it will suffer in the future from the continued acts of infringement and unfair competition alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Retina-X Studios respectfully prays that this Court enter such preliminary and final orders and judgments as are necessary to provide Retina-X Studios with the following relief:

A. A preliminary and then permanent injunction enjoining Defendants, together with their officers, agents, employees, attorneys, heirs, successors and assigns, and all those in privity, from infringing Retina-X Studios **MOBILE SPY** mark or utilizing the confusingly similar **MSPY** mark;

B. An injunction enjoining Defendants from continuing acts of unfair competition against Retina-X Studios;

C. Entry of a final money judgment awarding Retina-X Studios its actual damages, and Defendants' profits;

D. An award of punitive damages because of Defendants' willful conduct;

E. An award of Retina-X Studios taxable costs, as well as and attorneys' fees since this is an exceptional case within 15 U.S.C. §1117; and

F. Such other relief as this Court deems just and appropriate.

REQUEST FOR JURY TRIAL

Retina-X Studios requests a trial by jury for all claims so triable.

Dated: July ^{4th}24 2013.

Respectfully submitted,



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United States of America

United States Patent and Trademark Office

MOBILE SPY

Reg. No. 3,988,970

Registered July 5, 2011

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

RETINA-X STUDIOS, LLC (FLORIDA LIMITED LIABILITY COMPANY)
13453 N. MAIN STREET
SUITE 201
JACKSONVILLE, FL 32218

FOR: COMPUTER SOFTWARE FOR MONITORING THE USAGE OF MOBILE PHONES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 4-21-2007; IN COMMERCE 4-21-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MOBILE", APART FROM THE MARK AS SHOWN.

SER. NO. 85-155,479, FILED 10-18-2010.

BRIAN CALLAGHAN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT A