

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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ROLEX WATCH U.S.A., INC.,	)	
	)	
Plaintiff,	)	Case No. 06-0799
	)	(PGS)
v.	)	
	)	
ALEXANDER ROZENFELD, et al.,	)	
	)	
Defendants.	)	

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MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUBSTITUTED SERVICE AND  
FOR A PRE-JUDGMENT WRIT OF ATTACHMENT

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**PRELIMINARY STATEMENT**

Plaintiff Rolex Watch U.S.A., Inc. ("Rolex") submits this memorandum of law in support of its motion for: (1) an order directing substituted service of the Summons and Complaint in this matter on all defendants, and (2) a writ of attachment on certain real property jointly owned by two of the principal named defendants, property which those defendants used in furtherance of the counterfeiting and other illegal activities complained of herein. The defendants are believed to be Russian nationals, who are engaged in an extensive Internet trademark counterfeiting enterprise involving counterfeit Rolex watches and who have evidently left the country.

Rolex requests an order directing substituted service by standard and registered mail to defendants' New Jersey and Moscow addresses, by publication and by email, and for a writ of attachment on certain real property jointly owned by defendants Alexander and Victoria Rozenfeld located at 56 Westbury Drive, Sparta, New Jersey, which is both the only known asset of defendants in this District and from which, upon information and belief, defendants have conducted their counterfeiting and other illicit

operations, including the running of a counterfeiting operation under the name RV Venture Capital, Inc..

### **FACTS**<sup>1</sup>

Rolex is the exclusive distributor and warrantor in the United States of Rolex watches, all of which bear one or more of Rolex's Trademarks as defined in the Complaint. Rolex watches are identified by the trade name and trademark ROLEX and one or more of Rolex's trademarks. Rolex is responsible for assembling, finishing, marketing and selling in interstate commerce high quality Rolex watches, watch bracelets and related products for men and women.

Innumerable courts have determined that the Rolex Trademarks are arbitrary and fanciful marks that are entitled to the highest level of protection afforded by law. The Rolex Trademarks are associated with Rolex in the minds of consumers, the public and the trade. Rolex and its predecessors have used the Rolex Trademarks for many years on and in connection with Rolex watches and related products. The Rolex Trademarks identify high quality products originating with Rolex.

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<sup>1</sup> All the facts set forth herein are based on the Certification of Ronald D. Coleman, Esq., filed herewith ("Coleman Cert.").

Based upon Rolex's extensive advertising, sales and the wide popularity of Rolex's products, the Rolex Trademarks have acquired secondary meaning so that any product and advertisement bearing such marks is immediately associated by consumers, the public and the trade as being a product and affiliate of Rolex. Rolex has gone to great lengths to protect its name and enforce the Rolex Trademarks. The Rolex Trademarks are in full force and effect and, with the exception of DAY-DATE, have become incontestable pursuant to 15 U.S.C. § 1065.

On some unknown date, but evidently within the last few years, defendants began selling, offering for sale, distributing, promoting and advertising non-Rolex watches in interstate commerce bearing counterfeits and infringements of the Rolex Trademarks. The spurious marks or designations used by defendants in interstate commerce are identical with, or substantially indistinguishable from, the Rolex Trademarks on goods covered by the Rolex Trademarks. Their websites [www.replicamaker.com](http://www.replicamaker.com) and [www.replicaexpert.us](http://www.replicaexpert.us) (the "Websites") have been used to advertise, distribute, promote, offer for sale, and sell watches bearing counterfeits of one or more of the Rolex Trademarks.

As set out in the First Amended Complaint filed July 27, 2006, on or about July 25, 2005, Rolex's counsel discovered that the Registrant information for the Website listed Michael Kavtaskin in Russia and the e-mail address [kavtaskin@mail.ru](mailto:kavtaskin@mail.ru). On August 2, 2005, Rolex's counsel wrote to the web host for [www.replicamaker.com](http://www.replicamaker.com), Add2Net, Inc. - Lunarpages Division, 100 East La Habra Blvd., La Habra, California, concerning the Website, which was offering for sale counterfeit Rolex watches. Plaintiff's counsel did not receive a response to its August 2, 2005 letter.

On August 3, 2005, Rolex's counsel wrote Kavtaskin via e-mail to [kavtaskin@mail.ru](mailto:kavtaskin@mail.ru), informing him of the illegality and potential penalties for the sale of counterfeit Rolex merchandise from the Website. Plaintiff's counsel did not receive a response to its August 3, 2005 e-mail.

On November 7, 2005, Rolex's investigator placed an order for a Rolex Daytona watch on [www.replicamaker.com](http://www.replicamaker.com). He received a confirmation email from [orders@replicamaker.com](mailto:orders@replicamaker.com) indicating that his MasterCard would be charged \$195.00. Significantly, for purposes of this motion, the confirmation email included the address:

RV Venture Capital, 56 Westbury Drive, Sparta, Sussex, New Jersey, United States, 07871-2500, Phone: 530-690-8301, Fax: 530-869-7983, Email: [support@replicamaker.com](mailto:support@replicamaker.com). The Website also displayed as a point of contact the address RV Venture Capital, Inc. 56 Westbury Drive, Sparta, New Jersey, Phone: 530-690-8301, Fax: 530-869-7983, Email: [support@replicamaker.com](mailto:support@replicamaker.com).

On November 8, 2005, Rolex's investigator received a PayPal confirmation that his \$195.00 had been received by RV Venture Capital, Inc. at email address [rvcapital@yahoo.com](mailto:rvcapital@yahoo.com), with a contact email of [ruclub@yahoo.com](mailto:ruclub@yahoo.com). On November 15, 2005, Rolex's investigator received an email from [orders@replicamaker.com](mailto:orders@replicamaker.com) confirming his order and payment. The email was signed Victoria Rozenfeld and included the Sparta, New Jersey address, which public records indicate is jointly owned by Victoria and Alexander Rozenfeld.

On November 27, 2005, Rolex's investigator received a package from Russia. The return address on this package was Prok Alexander, St. Acad. Anohina, 38-1-64, Moscow, 119602, Russia, the same address listed under the name Michael Kavtaskin in the WHOIS information for

[www.replicamaker.com](http://www.replicamaker.com). Inside the package was a counterfeit Rolex Daytona Cosmograph.

On or about November 30, 2005, Rolex's counsel followed an email string on an Internet message board and determined that an individual posted a message indicating that he or she was operating a website called [www.wisecampaign.com](http://www.wisecampaign.com) in connection with another website, [www.replicamaker.com](http://www.replicamaker.com).

Rolex's counsel further discovered that the WHOIS information for the website [www.wisecampaign.com](http://www.wisecampaign.com) listed Viktoriya Rozenfeld as the administrative contact and a location of Sparta, New Jersey along with the telephone number 973-726-3535. Public records link this telephone number to the address "56 Westbury Drive, Sparta, New Jersey 07871-2500, Alexandre Rozenfeld," the same address listed on the Website.

Additionally, Rolex's counsel also discovered that the WHOIS information for the website [www.wisecampaign.com](http://www.wisecampaign.com) listed the email address [rvcapital@yahoo.com](mailto:rvcapital@yahoo.com) under the name Viktoriya Rozenfeld. On December 7, 2005, [eBay.com](http://eBay.com) seller "rvcapital" posted an auction for a counterfeit Rolex Cosmograph Daytona under the title "Roleks Daytona". [eBay.com](http://eBay.com) responded to a Personal Information Request for

the seller "rvcapital" with the following account information: Viktoriya Rozenfeld, 56 Westbury Drive, Sparta, New Jersey 07871, Telephone: 973-726-3535, Email: [rvcapital@yahoo.com](mailto:rvcapital@yahoo.com).

On December 19, 2005, Rolex's counsel wrote to Defendants via e-mail and first class mail to [rvcapital@yahoo.com](mailto:rvcapital@yahoo.com) and RV Venture Capital, Inc., 56 Westbury Drive, Sparta, New Jersey 07871, informing them of the illegality and potential penalties for the sale of counterfeit Rolex merchandise from the Website. Plaintiff's counsel did not receive a response to its December 19, 2005 letter.

On March 21, 2006, Rolex's investigator discovered that [www.replicamaker.com](http://www.replicamaker.com) was directing users to [www.replicaexpert.us](http://www.replicaexpert.us). Like [www.replicamaker.com](http://www.replicamaker.com), this website is being used to advertise, distribute, promote, offer for sale and sell watches bearing counterfeits of one or more of the Rolex Trademarks.

Rolex's investigator promptly contacted Lunarpages, the web host for [www.replicaexpert.us](http://www.replicaexpert.us). The web host provided the following contact information for the account: Victoria Rozenfeld, 56 Westbury Drive, Sparta New Jersey. The e-mail address for the account is [rvcapital@yahoo.com](mailto:rvcapital@yahoo.com).



On April 9, 2006, Rolex's investigator placed an order for a Rolex GM Master II watch ("Counterfeit Watch 2") from [www.replicaexpert.us](http://www.replicaexpert.us). A confirmation e-mail was sent to the investigator's e-mail account from [orders@replicaexpert.us](mailto:orders@replicaexpert.us). The e-mail included the telephone number 530-690-8301 and the fax number 530-869-7983. Counterfeit Watch 2 was delivered on April 24, 2006. The return address on the package was listed as Arutjan, 87 Phadeera, 4-14, Moscow, Russia 125047. The investigator's Paypal account was charged \$429.00 by RV Venture Capital for the purchase.

Rolex filed the Complaint in this matter on February 28, 2006, and filed the First Amended Complaint on July 27, 2006, seeking equitable and monetary relief because of the harm caused by defendants' sale, distribution, promotion and advertisement of counterfeit watches and infringing on Rolex's federally registered Rolex trademarks.

Rolex thereafter retained Guaranteed Subpoena Service, Inc. ("Guaranteed"), a process serving company, to serve defendants at their last known residential and business address, 56 Westbury Drive, Sparta, New Jersey. . Guaranted attempted to personally serve the Defendants on March 16, 2006, but was unsuccessful. Guaranted's initial

notice to Rolex's counsel indicating its inability to make service is set forth as Exhibit E to the Coleman Cert.

Guaranteed then investigated, at this office's request, whether defendants had left forwarding information before moving, and subsequently reported back that this, too, was unsuccessful. Guaranteed ultimately prepared Affidavits of Diligence for each of the suspects, which are attached as Exhibit E to the Coleman Cert. Further investigation indicates that defendants Alexander Rozenfeld and Victoria Rozenfeld fled to Russia and have no plans to return to the United States, although the Rozenfelds' former residence is still owned by defendants Alexander and Victoria Rozenfeld and is presently being utilized by someone believed to be related to those defendants.

#### LEGAL ARGUMENT

##### I. THE COURT SHOULD GRANT ROLEX' MOTION FOR SUBSTITUTED SERVICE UNDER THE STANDARDS SET OUT IN Fed.R.4(f)(3)

Federal Rule of Civil Procedure 4(f)(3) permits service on an individual or corporation in a foreign country "by . . . means not prohibited by international agreement as may be directed by the court." Fed. R. Civ. P. 4(f)(3). It is not necessary for a party to attempt service pursuant to Rules 4(f)(1) or 4(f)(2) before seeking a court order under Rule 4(f)(3). *Rio Properties, Inc. v.*

*Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002) (“[N]o language in Rules 4(f)(1) or 4(f)(2) indicates their primacy, and certainly Rule 4(f)(3) includes no qualifiers or limitations which indicate its availability only after attempting service...by other means.”) Russia is not a signatory to the Hague Convention. Therefore, Rolex is not required to serve defendants pursuant to Fed. R. Civ. P. 4(f)(1). *Forum Financial Group, LLC v. President and Fellows of Harvard College*, 199 F.R.D. 22, 23 n.1 (D.Me. 2001).

To satisfy due process, the method of service directed by the Court must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652 (1950). Under Rule 4(f)(3), courts have authorized a wide variety of substitute means of service, including standard and registered mail, publication, facsimile and email. See *SEC v. Tome*, 833 F.3d 1086, 1094 (2d Cir. 1987) (service by publication); *Smith v. Islamic Emirate*, 2001 WL 1658211 at \*2-3 (S.D.N.Y. 2001); (service on fugitive terrorist Osama bin Laden by publication for six weeks in Afghani and

Pakastani newspapers and on international television stations); *Levin v. Ruby Trading Corp.*, 248 F.Supp 537, 541044 (S.D.N.Y. 1965) (service by ordinary mail); *Broadfoot v. Diaz*, 245 B.R. 713, 719-20 (Bankr.N.D.Ga. 2000) (service by e-mail).

Service on defendants here by standard and registered mail to both the New Jersey and Moscow addresses along with publication is proper because these methods are reasonably calculated to notify the Defendants of this action and afford them the opportunity present their objections. The house in Sparta, New Jersey remains the property of defendant Alexander Rozenfeld, and the current resident, who according to Rolex's information is a relative of defendant, can be expected to relay any mail received by them. Furthermore, Rolex has a good faith basis for believing that mail delivered to Prok Alexander, St. Acad. Anohina, 38-1-64, Moscow, 119602, Russia, will reach some or all of defendants, because this was the return address previously used in connection with one of the deliveries of counterfeit watches.

Rolex also seeks to effect service by email. In recent years, courts have not hesitated allow service via e-mail where, as here, a plaintiff has been unable to serve

process on the defendant using the standard methods and plaintiff demonstrates that the email is likely to reach the defendant. See *Rio Properties*, 284 F.3d at 1018 (email service to defendants in Costa Rica is proper); *Tishman v. Associated Press*, 2006 WL 288369 at \*3 (S.D.N.Y. Feb. 6, 2006) (motion for substituted service by email granted); *Williams v. Advertising Sex LLC*, 231 F.R.D. 483, 488 (N.D.W.Va. 2005) (holding "a direction to serve process by e-mail in addition to international registered mail and international standard mail" to defendants in Australia is proper); *D.R.I. v. Dennis*, 2004 WL 1237511 at \*2 (S.D.N.Y. June 3, 2004) (plaintiff ordered to attempt service of process by registered mail, publication and email); *Popular Enter. LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (service upon defendant in Portugal via email "is the method of service most likely to reach defendant."); *Ryan v. Brunswick Corp.*, 2002 WL 1628933 at \*2 (S.D.N.Y. May 31, 2002) (service by email to defendants in Taiwan is appropriate).

In *Rio Properties*, the plaintiff attempted to serve the defendant, a Costa Rican corporation, at an address in Miami, Florida that the defendant used as a business address. The address actually belonged to the defendant's

international courier, which refused to accept service on the defendant's behalf. 284 F.3d at 1016. The plaintiff also attempted to serve the defendant's attorney in the United States, who refused to accept service on the defendant's behalf. The plaintiff's private investigator was unable to obtain a business address for the defendant in Costa Rica, so the plaintiff made an emergency motion to effectuate alternative service of process. *Id.* The District Court granted the plaintiff's motion and permitted the plaintiff to serve the defendant by mailing a copy of the summons and complaint to the defendant's international courier, mailing a copy to the defendant's counsel and emailing a copy to the defendant, using an e-mail address that was listed on the defendant's website and print media. *Id.* at 1017-18.

The Ninth Circuit affirmed the District Court's order and stated that if any "method of communication is reasonably calculated to provide [defendant] with notice, surely it is e-mail - the method of communication which [defendant] utilizes and prefers." *Rio Properties*, 284 F.3d at 1018; see also *Williams*, 231 F.R.D. at 487 (e-mail service proper because defendants are "'sophisticated participants in e-commerce.'"); *Popular Enterprises*, 225

F.R.D. at 562 (e-mail service is appropriate since such communication has been "zealously embraced within the business community."); *Ryan*, 2002 WL 1628933 at \*2 (service by e-mail and facsimile is proper because defendant conducts its business through these means of communication).

The rationale used in *Rio* applies to this case. Defendants transact their counterfeiting business over the Internet and their main form of communication with their customers is through e-mail. Indeed, Rolex has communicated with defendants on several occasions via e-mail, and there is ample evidence that the emails sent by Rolex or its representatives were received by defendants. Rolex has several different e-mail addresses for defendants, enhancing the high probability that every method of contacting the Defendants will be utilized. Accordingly, service via e-mail is reasonably calculated to apprise defendants of the present action and to effect this Court's jurisdiction over them.

**II. A WRIT OF ATTACHMENT ON THE ROZENFELDS' PROPERTY IS  
PROPER**

A motion for a writ of attachment should be granted if the court finds that (1) there is a probability that final judgment will be rendered in favor of the plaintiff; (2) there are statutory grounds for issuance of the writ; and (3) the defendant has real or personal property at a specific location within New Jersey which is subject to attachment. N.J. Ct. R. 4:60-5(a); *Sentry Insur. v. Sky Management Inc.*, 34 F.Supp.2d 900, 903 (D.N.J. 1999) (a writ of attachment is obtained for two purposes: (1) to acquire jurisdiction over an out-of-state defendant's in-state property and (2) to gain security for a claim pending at the time of attachment).

On the present record, it can hardly be disputed that the defendants were involved in the sale, offer for sale, distribution, promotion and advertisement of watches bearing counterfeits and infringements of Rolex's federally registered Rolex trademarks. Defendants operated and controlled the websites [www.replicamaker.com](http://www.replicamaker.com) and [www.replicaexpert.us](http://www.replicaexpert.us) which advertised, distributed and sold watches bearing counterfeits of one or more of the Rolex Trademarks. A Rolex investigator purchased a counterfeit Rolex watches through [www.replicamaker.com](http://www.replicamaker.com) and



[www.replicaexpert.us](http://www.replicaexpert.us) and has documented all correspondence between the parties. Based on these facts, there is a high probability that a final judgment will be rendered in favor of Rolex. See *Fravega v. Security Sav. & Loan Ass'n*, 192 N.J. Super 213, 469 A.2d 531 (Ch.Div. 1983) (a result is probable if it "can reasonably and fairly convincingly be accepted as true, factual, or possible without being undeniably so.")

Secondly, pursuant to N.J.S.A. 2A:26-2(b) and Federal Rule of Civil Procedure 64, there is a statutory ground for issuing a writ of attachment. Rule 64 provides that at the commencement of and during an action "all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered . . . are available . . . in the manner provided by the law of the state in which the district court is held . . . ." Fed. R. Civ. P. 64. Writs of attachment are included among the remedies listed in Rule 64. Under section 2A:26-2(b), an attachment may issue against the real or personal property of any defendant where the defendant absconds or is a nonresident of the state and a summons cannot be served on him within the state. N.J.S.A. 2A:26-2(b).

Defendants Alexander and Victoria Rozenfeld, previously residents of New Jersey, have returned to Russia and no longer reside in New Jersey. Due to their relocation, personal service on defendants within the state cannot be effected. See *Behring Int'l, Inc. v. Imperial Iranian Air Force*, 475 F.Supp. 396, 404 (D.N.J. 1979) (stating that the statute requires "no more than an inability to serve a defendant within the state; it does not require that personal jurisdiction over the defendant not be obtainable.") The Rozenfelds' property, located within the state, is still registered to Alexander Rozenfeld and may be the only means for Rolex to satisfy a judgment against the Defendants. Accordingly, a writ of attachment against the Rozenfeld residence is proper, and, if Rolex is to have any chance of recovery against these defendants, Rolex's best hope at achieving some measure of justice.

Finally, the 56 Westbury Drive address is real property that belongs to two of the principle defendants in this case, and, because it is located in Sparta, New Jersey, it is subject to the jurisdiction of the Court. Therefore, all the requirements under N.J. Ct. R. 4:60-5(a), N.J.S.A.

2A:26-2(b) and the Federal Rules of Civil Procedure for the issuance of a writ of attachment have been satisfied.

**CONCLUSION**

For the foregoing reasons, Rolex's motion for substituted service and for a writ of attachment against the 56 Westbury Drive, Sparta, New Jersey property owned by defendants Victoria and Alexander Rozenfeld should be granted in its entirety.

Dated: August 17, 2006

BRAGAR WEXLER & EAGEL, PC

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