

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IRON MOUNTAIN INCORPORATED,

Plaintiff,

v.

INTER MOUNTAIN MORTGAGE d/b/a
IRON MOUNTAIN HOSTING

Defendant.

CIVIL ACTION NO.

COMPLAINT AND JURY DEMAND

Iron Mountain Incorporated (“Iron Mountain”) brings this civil action against Inter Mountain Mortgage, which is doing business as Iron Mountain Hosting and/or Iron Mountain Group (“Hosting”).

THE PARTIES

1. Plaintiff, Iron Mountain, is a Delaware corporation with a principal place of business at 745 Atlantic Avenue, Boston, MA 02111.
2. On information and belief, Defendant, Hosting, is a California corporation having an address at 1740 Gillette Rd., Pomona, CA 91768.

JURISDICTION AND VENUE

3. This is an action for trademark infringement and unfair competition arising under the laws of the United States, namely the Lanham Act, 15 U.S.C. § 1051, *et seq.* Therefore, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. Jurisdiction over the state and common law claims is proper under 28 U.S.C. § 1367.

4. On information and belief, Hosting sells services under and in connection with the infringing marks IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING and/or IRON MOUNTAIN SOLAR POWER HOSTING to customers all over, including in Massachusetts. On information and belief, Hosting maintains a website, accessible in Massachusetts, which provides information on Iron Mountain Hosting's service packages and allows parties to click on a link to select service packages under the infringing trademark. The website also allows users in any location, including Massachusetts to submit comments or questions to Hosting's sales or service staff. Therefore, this Court has personal jurisdiction over Hosting.

5. Venue is appropriate in this District under 28 U.S.C. § 1391(b).

BACKGROUND

6. Iron Mountain is a well-respected provider of goods and services relating to all forms of record and document management, both physical and electronic. For more than fifty-five years, Iron Mountain and/or its predecessors-in-interest have provided document management goods and services to businesses for all purposes, including legal compliance and reducing legal exposure, dealing with privacy and security concerns, providing document and data disaster recovery services, providing customers with access to stored information, relieving client space limitations, and providing cost control to clients. Many of these services are performed over the internet.

7. Iron Mountain performs many activities for its clients to help them with their record and document management needs. These activities include, without limitation:

- Collection of documents and records from clients;

- Retention and storage of all types of records and documents off-site;
- Retrieval of records and documents;
- Delivery of documents and records back to clients;
- Destruction of documents and records;
- Searching of records and documents;
- Conversion of documents and records from one format to another;
- Physical data backup and recovery;
- Electronic data backup and recovery;
- Escrow services, where particularly sensitive items are kept under control and unchanged unless a particular protocol is followed; and
- Data encryption.

8. In many instances Iron Mountain's services, such as collection, retrieval, delivery, searching, conversion, backup, recovery, escrow, and encryption are conducted via an internet connection as opposed to solely via transfer of hard copies and things. As a result, consumers are accustomed to dealing with Iron Mountain in an internet context.

9. At least since 1951, Iron Mountain and/or its predecessors-in-interest have been using marks incorporating the words IRON MOUNTAIN, for record and document management.

10. As technology has changed over the past fifty-five years, the types of records and documents that Iron Mountain manages has broadened. In the 1950s, for example, businesses primarily maintained their records and documents on paper. Much of Iron Mountain's business therefore involved the pickup, retention, organization, and delivery back to the client of boxes of paper documents. Over time, however, Iron Mountain's clients began recording their documents and information onto magnetic

tapes. In response, Iron Mountain expanded its business to include the management of records and documents stored on those tapes as well. Iron Mountain similarly began managing records and documents in the forms of film, x-rays, audiovisual works, and various other formats including electronic and internet based services as they became more common.

11. Over the years, electronic storage of documents became more common, and a larger proportion of Iron Mountain's business involved management of documents in electronic, rather than physical, format and transfer of such documents and data electronically over the internet, as opposed to physical pick-up and return. Like its long-standing activities in managing physical documents, Iron Mountain has for many years provided management of electronic documents such as the retrieval, retention, organization, and delivery to clients of records stored on computers. Further, with the advent of the internet, many of Iron Mountain's electronic document management services expanded to be performed on-line. These activities include electronic vaulting and digital archiving services, virus scanning, and electronic data management.

12. Iron Mountain has naturally expanded its document management services to cover new types of electronic documents and data services over time. For example, Iron Mountain has acquired, gathered, retrieved, organized, processed, recovered, and reported electronic data for businesses in the electronic litigation support context, just as it has provided such document management services to businesses for electronic and physical documents for over fifty-five years.

13. Billions of dollars of goods and services have been sold under the IRON MOUNTAIN Marks stretching back over five decades, to many thousands of customers, including 98% of Fortune 1000 companies.

14. By virtue of the longstanding popularity of the IRON MOUNTAIN Marks and their continuous use, Iron Mountain owns national trademark rights in the IRON MOUNTAIN Marks at common law for all types of record and document management, including electronic document services and services that allow the transfer of data over the internet.

15. Iron Mountain also owns a number of United States trademark registrations, including Registration Nos.: 2,548,868 for IRON MOUNTAIN in classes 16, 35, 39, 40, and 42 for various kinds of archiving and inventory services (Exhibit 1); 2,746,344 for IRON MOUNTAIN in classes 39 and 42 for electronic vaulting and digital archiving services (Exhibit 2); 2,970,575 for IRON MOUNTAIN in class 6 for metal storage containers for documents (Exhibit 3); and 2,970,577 for IRON MOUNTAIN in classes 9, 20, and 42 for containers, virus scanning and consulting relating to electronic data management (Exhibit 4). These registrations were either registered by Iron Mountain itself, or assigned to Iron Mountain by its predecessors-in-interest.

16. Iron Mountain has also filed the following service mark applications for registration of IRON MOUNTAIN Marks used in relation to its online services: Serial No. 78/778,291 (allowed for registration) for POWERED BY IRON MOUNTAIN plus design, in classes 35, 38-40, and 42 for services including, online services, document delivery, and computer services (Exhibit 5); and Serial No. 77/210,545 for IRON MOUNTAIN DIGITAL plus design, in classes 38-40, 42, and 45 for services including,

online transmission, retention, and destruction services, and electronic litigation and legal discovery services (Exhibit 6).

17. Iron Mountain's adoption of its IRON MOUNTAIN Marks for electronic services related to the transfer of data over the internet, such as webhosting or e-commerce solutions as provided by Hosting, would be a natural extension of its substantial and continuous use of the IRON MOUNTAIN marks over the past five decades for physical, electronic and internet based document management services. In fact, Iron Mountain's services have been discussed on webhostingtalk.com, a site that has also included reviews of Hosting's services.

18. Through extensive sales and advertising, Iron Mountain's IRON MOUNTAIN Marks have become well known, and the products and services sold under the Marks have acquired significant good will and a reputation for quality.

19. On information and belief, Hosting was formed in 1986 as a provider of mortgage services under the name Inter Mountain Mortgage. On information and belief, in or around 1996, Inter Mountain Mortgage began operating the website imountain.com, for use in the sale of its mortgage services under the mark INTER MOUNTAIN MORTGAGE. At some point after 2005, Hosting changed its business focus and began using imountain.com and the name and mark IRON MOUNTAIN SOLAR HOSTING IRON MOUNTAIN SOLAR POWER HOSTING and/or IMOUNTAIN in connection with services related to webhosting and other internet data services. Even later in time, Hosting began using IRON MOUNTAIN HOSTING, removing the word SOLAR, in connection with webhosting and other internet data services.

20. On information and belief, well after Iron Mountain and/or its predecessors established rights in the IRON MOUNTAIN Marks, Hosting adopted its IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING, IRON MOUNTAIN SOLAR POWER HOSTING, IMOUNTAIN and imountain.com marks. On information and belief, Hosting's use of these marks commenced with the full knowledge of the prior use and substantial celebrity of the IRON MOUNTAIN Marks owned by Iron Mountain, and with the intent to trade on the good will previously established by Iron Mountain and/or its predecessors.

21. On information and belief, Hostings has sold and advertised for sale services such as webhosting and other internet data services attempting to capitalize on the goodwill in the IRON MOUNTAIN Marks that was established by Iron Mountain (and/or its predecessors) through extensive sales under those Marks well prior to Hosting's adoption of IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING, IRON MOUNTAIN SOLAR POWER HOSTING, IMOUNTAIN or imountain.com.

22. Iron Mountain's and/or its predecessors' common law and registered rights in the IRON MOUNTAIN Marks long pre-date Hosting's uses of IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING or IRON MOUNTAIN SOLAR POWER HOSTING.

23. Hosting's use of the words IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING, IRON MOUNTAIN SOLAR POWER HOSTING or IMOUNTAIN in plain or stylized form, is likely, when used in association with its

services, to cause confusion or mistake or to deceive consumers, who are likely to think that such goods or services originate with or are associated with Iron Mountain.

COUNT I

(Trademark Infringement Under 15 U.S.C. § 1114 And Common Law)

24. The allegations of Paragraphs 1-23 above are incorporated by reference.

25. Iron Mountain owns United States Registrations numbered 2,548,868, 2,746,344, 2,970,575, and 2,970,577 for IRON MOUNTAIN and has common law rights in the IRON MOUNTAIN Marks.

26. Hosting uses colorable imitations of Iron Mountain's IRON MOUNTAIN Marks in commerce as its trademark, and in association with its sale and advertisement of services identical to, or in the natural zone of expansion of, those goods and services sold by Iron Mountain under its IRON MOUNTAIN Marks.

27. Hosting's use of the imitations is without permission of Iron Mountain and is likely to cause confusion or mistake or to deceive. Hosting is therefore liable to Iron Mountain for trademark infringement under 15 U.S.C. § 1114 and at common law.

28. Upon information and belief, such use by Hosting is knowing and willful and with the intent to trade off the good will established by Iron Mountain in its relation to the IRON MOUNTAIN Marks.

29. Iron Mountain has been damaged by such conduct in an amount to be determined at trial.

30. Unless stopped by an injunction, Hosting's behavior will continue and will cause Iron Mountain to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Iron Mountain is entitled to injunctive relief. It is also entitled to damages for the infringement and enhanced damages.

COUNT II
(False Designation Of Origin Under 15 U.S.C.§ 1125(a))

31. The allegations of Paragraphs 1-30 above are incorporated by reference.

32. Iron Mountain's IRON MOUNTAIN Marks are recognized by consumers to represent the source of highly trustworthy and reliable service in the physical and electronic records and document management field, including the use of the internet to manage data.

33. Hosting promotes and provides its goods and services to a similar class of consumers as Iron Mountain does.

34. On information and belief, Hosting's use of a trademark confusingly similar to Iron Mountain's IRON MOUNTAIN Marks has the effect of associating Hosting or its goods and services with Iron Mountain's IRON MOUNTAIN Marks in the minds of the purchasing public, thereby trading off the good will acquired by Iron Mountain.

35. Hosting's actions are likely to cause confusion or mistake, or to deceive as to the affiliation, connection or association of Hosting with Iron Mountain as to the origin, sponsorship or approval of Hosting's goods and services by Iron Mountain, entitling Iron Mountain to relief under 15 U.S.C.§ 1125(a).

36. Iron Mountain has been damaged by such conduct in an amount to be determined at trial.

37. Unless stopped by an injunction, Hosting's behavior will continue and will cause Iron Mountain to suffer irreparable harm for which there is no adequate remedy at

law. Therefore, Iron Mountain is entitled to injunctive relief. It is also entitled to damages and enhanced damages for such false designation of origin.

COUNT III
(Common Law Unfair Competition)

38. The allegations of Paragraphs 1-37 above are incorporated by reference.

39. By the above-described conduct, Hosting has engaged in unfair competition under common law.

40. Iron Mountain has been damaged by such conduct in an amount to be determined at trial.

41. Unless stopped by an injunction, Hosting's behavior will continue and will cause Iron Mountain to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Iron Mountain is entitled to injunctive relief. It is also entitled to damages for such conduct.

RELIEF REQUESTED

For the above reasons, Iron Mountain prays that the Court declare and a judgment be entered that:

A. The Court has jurisdiction over the parties and subject matter of this action;

B. Iron Mountain's asserted trademark registrations above are valid and subsisting and are infringed by Hosting, and further that Hosting has committed false designation of origin and unfair competition;

C. Hosting, as well as all its agents, representatives, employees, assigns and all persons acting in concert or privity with them, is permanently enjoined from maintaining, using, disseminating, reproducing, promoting, distributing or otherwise

using the mark, trade name, domain name and/or other identifier IRON MOUNTAIN or any mark confusingly similar thereto (including IRON MOUNTAIN HOSTING, IRON MOUNTAIN SOLAR HOSTING, IRON MOUNTAIN SOLAR POWER HOSTING, IMOUNTAIN and IMOUNTAIN.COM), and are permanently enjoined from using MOUNTAIN as all or part of any mark, trade name, domain name, source identifier product configuration, or design;

D. Hosting's infringement, false designation of origin and unfair competition have been willful;

E. Hosting shall deliver to Iron Mountain or to the Court for destruction all materials bearing the infringing marks or colorable copies of the IRON MOUNTAIN Marks;

F. Hosting shall file and serve a report in writing, and under oath, setting forth the manner and form in which it has complied with the Court's order and injunction;

G. Hosting shall pay to Iron Mountain any damages attributable to Hosting's infringement of Iron Mountain's marks and its acts of unfair competition and shall account for all gains, profits, and advantages derived through those actions, and pay such damages authorized by law, including 15 U.S.C. § 1117;

H. Hosting shall pay damages, and such multiple damages up to three times actual damages as may be awarded by the Court pursuant 15 U.S.C. § 1117(b), or other law;

I. Hosting shall pay Iron Mountain its reasonable costs and attorneys fees under 15 U.S.C. § 1117, or other law;

J. Iron Mountain shall have such other and further relief as this Court may award.

JURY DEMAND

Iron Mountain demands a trial by jury of all issues so triable.

IRON MOUNTAIN INCORPORATED,

By its attorneys,

Dated: March 24, 2008

/s/ Michael A. Albert

Michael Albert, BBO # 558566

malbert@wolfgreenfield.com

Edward F. Perlman, BBO # 394900

eperlman@wolfgreenfield.com

Laura Topper, BBO # 652364

ltopper@wolfgreenfield.com

WOLF, GREENFIELD & SACKS, P.C.

600 Atlantic Avenue

Boston, Massachusetts 02210

Tel. 617 646.8000

Fax 617 646.8646