

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

BLUE SPIKE, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	CASE NO. 6:12-CV-648-LED
BIOLINK SOLUTIONS LTD. AND BIO-	§	(Consolidated with 6:12-CV-499-LED)
METRICA LLC,	§	
	§	
Defendants.	§	
	§	

ORDER DENYING BIOLINK SOLUTIONS LTD.’S MOTION TO QUASH SERVICE

Before the Court is Defendant Biolink Solutions Ltd.’s Motion to Quash Service of Plaintiff Blue Spike, LLC’s Complaint (Dkt. No. 12). Having considered both Biolink Solutions Ltd.’s (“Biolink”) motion and supporting papers and Blue Spike, LLC’s (“Blue Spike”) opposition and supporting papers, the motion is **DENIED**.

Defendant Biolink is a Russian company that has no offices, employees, agents, distributors or related entities in Texas. Plaintiff served Biolink through the Texas Secretary of State. Defendant Biolink asks that Blue Spike’s service of process be quashed because Plaintiff did not serve Biolink pursuant to the procedure set forth in the Hague Convention.

Biolink argues that service of process of entities located in Hague Convention signatory countries, such as Russia, must follow the procedure set forth in the Hague Convention. To comply with the procedure set forth in the Hague convention, Blue Spike is required to serve the Central Authority of the State in which process is to be served. Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, Art. 3. Defendants contend that notwithstanding that the Texas Secretary

of State may be an agent for service of process for a nonresident who engages in business in this state, service must be quashed because there is no indication that the Secretary of State has complied with the requirements to serve Biolink under the Hague Convention.

Blue Spike counters that service is proper because it complied with Federal Rule of Civil Procedure 4(h)(1)(A) and because it is not necessary to comply with the Hague Convention.

Rule 4(h)(1)(A) states that “a domestic or foreign corporation . . . must be served in the manner prescribed by Rule 4(e)(1) for serving an individual” FED. R. CIV. P. 4(h)(1)(A). “[A]n individual . . . may be served in a judicial district of the United States by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located. . . .” *Id.* at 4(e)(1). Under Texas law, “[t]he Secretary of State is an agent for service of process of a nonresident 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 any proceeding that arises out of the business done in this state and to which the nonresident is a party.” TEX. CIV. PRAC. & REM. CODE § 17.044(b). Further, a non-resident does business in Texas if it “commits a tort in whole or in part in [Texas]” *Id.* at § 17.042(2). Since patent infringement is a tort, the use, sale, and marketing of infringing products in Texas constitutes “doing business” under the Texas service statute. *See Trintec Indus., Inc. v. Pedre Promotional Prods., Inc.*, 395 F.3d 1275, 1280 (Fed. Cir. 2005). Thus, the provisions of Federal Rule of Civil Procedure 4(h)(1)(A) are satisfied.

Biolink contends that although the provisions have been met, service of process must be forwarded to Biolink in accordance with the Hague Convention. Although Russia is a signatory to the Hague Convention, the Russian Federation unilaterally suspended all judicial cooperation with the United States in civil and commercial matters in 2003. *Nuance Commc’ns, Inc. v. Abby*

Software House, 626 F.3d 1222, 1237 (Fed. Cir. 2010). Therefore, courts have continually held that service in Russia need not comply with the Hague Convention. *Id.* at 1238; *see also In re Cyphermint, Inc.*, 445 B.R. 11, 14 (D. Mass. 2011); *Arista Records LLC v. Media Services LLC*, No. 06-15319, 2008 WL 563470 (S.D.N.Y. Feb. 25, 2008). Thus, service of process need not be forwarded to Biolink in accordance with the Hague Convention, and service on the Texas Secretary of State was sufficient. Accordingly, Defendant's Motion to Quash Service is **DENIED**.

So ORDERED and SIGNED this 14th day of January, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE