

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SIPCO, LLC and IP CO., LLC <i>d/b/a</i> INTUS IQ,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 16-830-RGA
)	
STREETLINE, INC., KAPSCH TRAFFICCOM HOLDING CORP., and KAPSCH TRAFFICCOM U.S. CORP.)	
)	
Defendants.)	
)	

**REPLY BRIEF IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS IN PART PLAINTIFFS’ SECOND AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

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Dated: August 4, 2017

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I. INTRODUCTION

SIPCO and IPCO (herein, “SIPCO”) allege that their SAC states a claim for direct infringement against the Kapsch Defendants, because it shows they have “sold” and “offered for sale” the accused systems. *See* D.I. 32 at 7-10. However, the only evidence of these alleged “sales” and “offers” is a one-page printout from a purported Kapsch website. *Id.*; *see also* D.I. 25, ¶ 23. As shown in Section II.A *infra*, SIPCO’s citation to this website falls far short of stating a “plausible claim” that the Kapsch Defendants have directly infringed the Patents-in-Suit.

Furthermore, as shown in Section II.B *infra*, the indirect infringement allegations against all Defendants should be dismissed, because: (i) the SAC fails to adequately identify anyone who allegedly committed direct infringement; and (ii) the SAC fails to state a plausible claim that any Defendant had the required state of mind when it committed any act of inducement.

Finally, as shown in Section II.C *infra*, these allegations should be dismissed with prejudice, because SIPCO had ample opportunity to cure its complaint, but failed to do so.

II. ARGUMENT

A. The SAC Fails to State a Claim for Direct Infringement by Kapsch

In its Brief, SIPCO disavows any argument that the Kapsch Defendants are liable under a “piercing the corporate veil” theory. *See* D.I. 32 at 3. Thus, the only way the SAC could state a claim for direct infringement against the Kapsch Defendants is by alleging sufficient facts to show that the Kapsch Defendants themselves have sold/offered the accused systems. It does not.

1. The SAC Fails to State A Claim Against Kapsch for Infringement by Offering to Sell

The only evidence that SIPCO cites to show that the Kapsch Defendants have “offered” the accused systems for sale is the three-word phrase “our offerings include,” which appears in the website screenshot at ¶ 23 of the SAC. Because the website has the word “Kapsch” in its header, SIPCO interprets “our offerings” to mean “Kapsch’s offerings” and treats this three-word

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