

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION**

CELINE SA.,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”,

Defendants.

Case No. 24-cv-09199

District Judge Lindsay C. Jenkins

Magistrate Judge Jeannice W. Appenteng

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR
ELECTRONIC SERVICE OF PROCESS PURSUANT TO FED. R. CIV. P. 4(f)(3)**

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff Celine SA (“Celine”) requests this Court’s authorization to serve process by electronically publishing a link to the Complaint, the Temporary Restraining Order, and other relevant documents on a website and by sending an e-mail to the email addresses provided for Defendants by third party e-commerce platform providers that includes a link to said website. Celine submits that providing notice via electronic publication and/or e-mail, along with any notice that Defendants receive from third party e-commerce platform providers and/or payment processors, is reasonably calculated under all circumstances to apprise Defendants of the pendency of this action and afford them the opportunity to appear and present their objections.

Electronic service is appropriate and necessary in this case because off-shore e-commerce store operators such as Defendants offering for sale products using counterfeit trademarks typically: (1) provide false, misleading and/or incomplete names and physical address information in order to conceal their locations and avoid liability for their unlawful conduct; and (2) rely

primarily on electronic communications to communicate with their third-party service providers and customers, demonstrating the reliability of this method of communication by which Defendants may be apprised of the pendency of this action. (Declaration of John Haarlow, Jr. ¶ 2). Authorizing service of process solely via e-mail and/or electronic publication will benefit all parties and the Court by ensuring that Defendants receive prompt notice of this action, thus allowing it to move forward expeditiously. Absent the ability to serve Defendants in this manner, Celine will almost certainly be left without the ability to pursue a final judgment.

In most instances, Defendants must provide an e-mail address and physical address to third-party online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com, and DHgate when registering their account. (*Id.* ¶3.) However, unlike an e-mail address, which is typically verified by the third-party online marketplace platforms, no verification typically occurs for physical addresses. *Id.* Since an e-commerce store operator can input any physical address, such addresses are usually false and/or are not where the e-commerce store operator is located. *Id.* As such, even if a physical address is available, it is not a reliable means for identifying and locating Defendants. *Id.*

In addition, e-commerce store operators must provide a valid e-mail address to customers for completing payment and/or managing their e-commerce stores. Moreover, it is necessary for merchants who operate entirely online, such as Defendants, to visit their e-commerce store to ensure it is functioning and to communicate with customers electronically. As such, it is far more likely that Defendants can be served electronically than through traditional service of process methods.

Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. *Gianni Versace, S.P.A.*

v. Yong Peng, et al., No. 18-cv-5385 (N.D. Ill. Feb. 27, 2019) (citing *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002)).¹ The Ninth Circuit in *Rio Properties* held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Celine has good cause to suspect that the Defendants are all residents of China and/or Hong Kong. The People’s Republic of China is a signatory to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the “Hague Convention”). (Haarlow Declaration ¶ 4.) According to Article 1 of the Hague Convention, the “convention shall not apply where the address of the person to be served with the document is not known.” *Id.* United States District Courts, including Courts in this District, routinely permit alternative service of process notwithstanding the Hague Convention. *See e.g., Gianni Versace*, No. 18-cv-5385 (“Nor must Versace attempt service by contacting the Chinese Ministry of Justice, as suggested by [defendant]. The plain language of Rule 4 requires only that service be made as directed by the court and not prohibited by international agreement.”); *In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) (“plaintiffs are not required to first attempt service through the Hague Convention.”); *see also, Strabala v. Zhang*, 318 F.R.D. 81, 114 (N.D. Ill. 2016) (authorizing alternative service pursuant to Fed. R. Civ. P. 4(f)(3)); *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 331-32 (S.D.N.Y. 2015) (same); *Levi Strauss & Co., v. Zhejiang Weidu Garment Co., Ltd. et al.*, No. 16-cv-7824 (N.D. Ill. Nov. 17, 2016) (same). The Hague Convention also does not preclude service by e-mail. (Haarlow Dec. ¶ 4.) *See also e.g.,*

¹ Copies of cited unpublished Orders are attached to the Haarlow Declaration as Exhibit 2.

Lexmark Int'l, Inc. v. Ink Techs. Printer Supplies, LLC, 295 F.R.D. 259, 261 (S.D. Ohio 2013) (“[v]arious courts have agreed that service by email is not prohibited by the Hague Convention”); *Facebook, Inc. v. Banana Ads, LLC*, 2012 U.S. Dist. LEXIS 42160, at *6–7 (N.D. Cal. Mar. 27, 2012) (citing cases where the court held that service by e-mail did not violate the Hague Convention as to foreign defendants, including in China).

Furthermore, Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). *Rio Props.*, 284 F.3d at 1014-15 (9th Cir. 2002). As the *Rio Properties* Court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international defendant may be served. *Id.* Likewise, Courts have confirmed that the Hague Convention does not displace Rule 4(f)(3). *See Gianni Versace*, No. 18-cv-5385 (N.D. Ill. Feb. 27, 2019) *citing Nagravisio SA v. Gotech Int'l Tech. Ltd.*, 882 F.3d 494, 498 (5th Cir. 2018) (“Overlooking Rule 4(f)(3) entirely, Gotech argues that the service did not comply with the Hague Convention and Rule 4(f)(1). This argument misses the mark because service was not effected pursuant to the Hague Convention, and that agreement does not displace Rule 4(f)(3).”). Finally, Court-directed electronic service pursuant to Rule 4(f)(3) is particularly appropriate in this case where “there is a need for speed that cannot be met by following the Hague Convention methods” because of the injunctive relief sought by Celine. *Strabala*, 318 F.R.D. at 114 *citing* 4B FED. PRAC. & PROC. CIV. § 1134 (4th ed.). As such, this Court may allow Celine to serve the Defendants via electronic publication and/or e-mail.

Finally, Celine requests that the Court enter an Order directing the Clerk of Court to issue a single summons in the name of “The Partnerships and all other Defendants identified in the Complaint” rather than separate summons to each Defendant. This request complies with Federal Rule of Civil Procedure 4(b). The Advisory Committee Notes to the 1993 Amendment to that Rule state that “[i]f there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.” The single original summons here is logical to reduce the burden on the Clerk to issue, and Celine to serve, dozens of summonses – one for each Defendant.

For the reasons set forth herein, Celine respectfully requests this Court’s permission to serve Defendants via e-mail and/or electronic publication using a single summons.

Dated October 11, 2024.

Respectfully submitted,

/s/ John Haarlow, Jr.

Counsel for Plaintiff Celine SA

John Haarlow, Jr. (ARDC #6283018)
MERCER OAK LLC
29 North Ada Street
Chicago, IL 60607
(872) 248-0601
john@merceroaklaw.com