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12
 13 THE UNITED STATES DISTRICT COURT
 14 FOR THE DISTRICT OF NEVADA

15	TIFFANY (NJ), LLC,)	Case No. 2:11-cv-00590-LDG-CWH
16)	
17	Plaintiff,)	PLAINTIFF'S MEMORANDUM OF LAW
18	v.)	REGARDING SERVICE OF PROCESS
19	925LY.COM, <i>et al.</i> ,)	
20	Defendants.)	
21)	
22)	

23 Plaintiff Tiffany (NJ), LLC ("Tiffany"), hereby submits its memorandum of law regarding
 24 service of process in this matter in connection with the hearing regarding service set for January 17,
 25 2011 and states as follows:
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I. Introduction

Tiffany initiated this action against Defendants, the Partnerships and Unincorporated Associations identified on Schedule "A" hereto (collectively the "Defendants") through the filing of its Complaint (#1) and subsequent First Amended Complaint (#58) for trademark counterfeiting and infringement, false designation of origin, and cybersquatting. On April 19, 2011, Tiffany filed its *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction (#5). On May 11, 2011, the Court issued an Order Granting Tiffany's *Ex Parte* Application for a Temporary Restraining Order (#12), and subsequently converted the temporary restraining order into a preliminary injunction on May 25, 2011 (# 18). Pursuant to the Court's Order, Tiffany notified each Defendant of the preliminary injunctive relief by delivering copies of the Court's Order, the *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction and supporting papers, and all other pleadings and documents on file in this action to each Defendant via public announcement on the website located at <http://servingnotice.com/off/index.html>, via e-mail to the e-mail address reflected in the domain registration data for the Subject Domain Names, and via e-mail to each Defendant's agent, the registrar of record for each of the Subject Domain Names.

Defendants were each served with their respective Summons and a copy of the Complaint by public announcement via publication on August 9, 2011(# 50), and a copy of Plaintiff's First Amended Complaint by public announcement via publication on October 5, 2011 (# 60). On December 20, 2011, Tiffany filed its application for entry of clerk's default against Defendants (# 77). Thereafter, the Court issued an Order that a hearing shall be conducted on January 17, 2012 to address whether service of process by e-mail in this case comports with procedural and constitutional requirements (# 78).

II. APPLICABLE LAW

Federal Rules of Civil Procedure Rule 4(h) and 4(f) govern service on a foreign partnership or other unincorporated association. Rule 4(h)(2) states that a foreign partnership or other unincorporated association served outside of the United States may be served "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." See

1 Fed. R. Civ. P. 4(h)(2). Rule 4(f) states, in pertinent part, that an individual in a foreign country may
2 be served as follows:

3 (1) by any internationally agreed means of service that is reasonably calculated to
4 give notice, such as those authorized by the Hague Convention on the Service
5 Abroad of Judicial and Extrajudicial Documents;

6 (2) if there is no internationally agreed means, or if an international agreement
7 allows but does not specify other means, by a method that is reasonably
8 calculated to give notice:

9 (A) as prescribed by the foreign country's law for service in that country in
10 an action in its courts of general jurisdiction;

11 ...

12 (3) by other means not prohibited by international agreement, as the court orders.

13 FED. R. CIV. P. 4(f).

14 **A. The Hague Convention Does Not Apply in This Case.**

15 Plaintiff reasonably believed and alleged Defendants were residing in The People's Republic
16 of China ("PRC") at the time this action commenced. Plaintiff researched Defendants and attempted
17 to ascertain a valid physical address for service of process on Defendants. (See Declaration of
18 Stephen M. Gaffigan in Support of Plaintiff's Memorandum of Law Regarding Service of Process
19 ("Gaffigan Decl.") ¶ 2, filed herewith; Declaration of Huang Yu Ting in Support of Plaintiff's
20 Memorandum of Law Regarding Service of Process ("Ting Decl.") ¶¶ 4-5, filed herewith;
21 Declaration of Brandon Tanori in Support of Plaintiff's Memorandum of Law Regarding Service of
22 Process ("Tanori Decl.") ¶ 4, filed herewith.) However, given the fact the Defendants are all
23 engaged in large scale illegal conduct, Plaintiff was not surprised when it could not locate physical
24 addresses for service of process on Defendants. (See Gaffigan Decl. ¶ 2; Ting Decl. ¶ 5.) Thus, as a
25 result of the Defendants' own efforts to conceal their location, Plaintiff is unable to determine their
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1 physical whereabouts for service. Notwithstanding, Plaintiff has good cause to suspect Defendants
2 are residents of the People's Republic of China.¹ (See Gaffigan Decl. ¶ 3.)

3 The United States and the PRC are both signatories to the Hague Convention on the Service
4 Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the "Hague
5 Service Convention"). (Gaffigan Decl. ¶ 4 and Comp. Ex. A attached thereto, Hague Service
6 Convention and list of signatory Members.)² "[C]ompliance with the Convention is mandatory in all
7 cases to which it applies" Volkswagonwerk AG v. Schlunk, 486 U.S. 694, 705, 108 S. Ct.
8 2104, 100 L. Ed. 2d 722 (1988). However, according to Article 1 of the Hague Service Convention,
9 "[t]his convention shall not apply where the address of the person to be served with the document is
10 not known." Chanel, Inc. v. Zhixian, No. 10-CV-60585, 2010 WL 1740695, at *3 (S.D. Fla. April
11 29, 2010) (citing Hague Service Convention, art. 1). See also Philip Morris USA Inc. v. Veles Ltd.,
12 No. 06 Civ. 2988, 2007 WL 725412, at *2 (S.D.N.Y. March 12, 2007) (the Hague Convention did
13 not apply because, despite physical "addresses" having been provided to defendants' registrars, the
14 actual addresses could not be confirmed as valid); BP Products North America, Inc. v. Dagra, 236
15 F.R.D. 270, 271 (E.D. Va. 2006) (Hague Service Convention "shall not apply where the address of
16 the person to be served with the document is not known"); Popular Enters., LLC v. Webcom Media
17 Group, Inc., 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (same). As the addresses of Defendants are
18 unknown, Plaintiff respectfully submits that the Hague Convention does not apply in this case.

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21 ¹ Even if the Defendants were located within the United States, Plaintiff could properly serve
22 Defendants via e-mail and/or publication on its websites pursuant to Federal Rule of Civil Procedure
23 Rule 4(h)(1)(B). Rule 4(h)(1)(B) allows service upon a partnership or unincorporated in a judicial
24 district of the United States by "delivering a copy of the summons and of the complaint to an officer,
25 a managing or general agent, or any other agent authorized by appointment of law to receive service
of process[.]" Fed. R. Civ. P. 4(h)(1)(B). Rule 4(h)(1)(B) differs from Rule 4(e)(2) which governs
service upon an individual in that Rule 4(h)(1)(B) does not require the delivery of the pleadings to be
made personally. Accordingly, Plaintiff could have effected service of process pursuant to Rule
4(h)(1)(B) by delivering a copy of the Summons and Complaint to Defendants via their respective e-
mail addresses and via their respective Internet websites, which redirect to Plaintiff's public
announcement website.

26 ² See also Hague Service Convention, November 15, 1965, 20 U.S.T. 361, available at
27 http://www.hcch.net/index_en.php?act=conventions.text&cid=17 (last visited January 10, 2012) (full
text of the Hague Service Convention);
28 http://www.hcch.net/index_en.php?act=conventions.status&cid=17 (last visited January 10, 2012)
(Status Table: listing the current contracting states).

1 **B. Plaintiff Served Defendants Pursuant to Federal Rule of Civil Procedure Rule**
 2 **4(f)(2)(A).**

3 Under Rule 4(f)(2), if there is no internationally agreed means for service, then service must
 4 be effected “by a method that is reasonably calculated to give notice.” FED.R.CIV.P. 4(f)(2). One
 5 such method of service set forth in Rule 4(f)(2)(A) allows service to be effected “as prescribed by
 6 the foreign country's law for service in that country in an action in its courts of general jurisdiction.”
 7 FED.R.CIV.P. 4(f)(2)(A).

8 To determine the extent of the application of Rule 4(f)(2)(A), the Court should look to
 9 methods of service of process in the PRC.³ The PRC allows service of process in civil actions by
 10 public announcement pursuant to Article 84 of its Civil Procedure Code. (Gaffigan Decl. ¶ 5 and Ex.
 11 B attached thereto, “Civil Procedure Law of the People's Republic of China”.)⁴ Specifically, Article
 12 84 of the Civil Procedure Law of the PRC provides that “[i]f the whereabouts of a recipient ... is
 13 unknown ... the document shall be served by public announcement.” Chanel, Inc. v. Zhixian, No. 10-
 14 CV-60585, 2010 WL 1740695, at *2 n. 2 (S.D. Fla. April 29, 2010). Thus, in a case such as this
 15 where the actual addresses of the Defendants are unknown, and, therefore, the Hague Convention
 16 does not apply, service pursuant to a method permitted by the PRC, i.e., public announcement, is
 17 permissible pursuant to Rule 4(f)(2)(A), Federal Rules of Civil Procedure. (Gaffigan Decl. ¶ 6.)

18 Service of a defendant via publication on a website has been deemed an appropriate means of
 19 service by publication. National Association for Stock Car Auto Racing, Inc. v. Does, 584 F. Supp.
 20 2d 824, 826 W.D.N.C. 2008).⁵ A proposed method of publication need only be “reasonably

21 _____
 22 ³ As stated by Wright and Miller: The general attitude of the federal courts is that the provisions of
 23 Rule 4 should be liberally construed in the interest of doing substantial justice and that the propriety
 24 of service in each case should turn on its own facts within the limits of the flexibility provided by the
 25 rule itself. This is consistent with the modern conception of service of process as primarily a notice-
 26 giving device. Petrie v. C.I.R., 686 F.Supp. 1407, 1411 (D. Nev. 1988) (citing 4A C. Wright & A.
 27 Miller, Federal Practice & Procedure, § 1083, at 10–11 (1987)) (footnotes omitted).

28 ⁴ Under Federal Rule of Civil Procedure 44.1, “[i]n determining foreign law, the court may consider
 any relevant material or source, including testimony, whether or not submitted by a party or
 admissible under the Federal Rules of Evidence. The court's determination must be treated as a
 ruling on a question of law.” Tobar v. U.S., 639 F.3d 1191, 1200 (9th Cir. 2011); see also Pazcoguin
v. Radcliffe, 292 F.3d 1209, 1216 (9th Cir. 2002) (discussing the determination of foreign law under
 Rule 44.1); Universe Sales Co. v. Silver Castle, Ltd., 182 F.3d 1036, 1037–39 (9th Cir.1999) (same).

⁵ See also Chanel, Inc. v. Qi, Case No. 3:11-cv-00362-CRB (N.D. Cal. Jan. 27, 2011) (authorizing

1 calculated under all the circumstances, to apprise interested parties of the pendency of the action and
2 afford them an opportunity to present their objections.” National Association for Stock Car Auto
3 Racing, Inc. v. Does, 584 F. Supp. 2d 824, 826 (W.D. N.C. 2008) (citing Mullane v. Cent. Hanover
4 Bank & Trust Co., 339 U.S. 306, 315-16, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). In National
5 Association for Stock Car Auto Racing, Inc. v. Does, the United States District Court for the
6 Western District of North Carolina determined that Plaintiff could serve “Doe” defendants and
7 apprise those defendants of a pending preliminary injunction hearing via publication on the
8 plaintiff’s website. Id.

9 In the instant matter, Plaintiff effected service of process pursuant to Rule 4(f)(2)(A) and
10 Article 84 of the Civil Procedure Law of the PRC by public announcement via publication by
11 posting a copy of the Summons, Complaint, and First Amended Complaint on the website located at
12 <http://servingnotice.com/off/index.html>. (Gaffigan Decl. ¶ 7.) Plaintiff submits that posting copies
13 of the Summonses and First Amended Complaint on its publication website satisfies the non-specific
14 public announcement requirement of Article 84 of the Civil Procedure Law of the PRC. Publication
15 of a summons and complaint on a defendant’s website has been determined to meet the standard of
16 “public announcement” under Article 84 of the PRC’s Civil Procedure Code. See e.g., Chanel, Inc.
17 v. Qi, Case No. 3:11-cv-00362-CRB (N.D. Cal. Jan. 27, 2011) (order authorizing service of process
18 via website publication pursuant to Article 84 of the PRC’s Civil Procedure Code); Philip Morris
19 Usa Inc, V. Jiang, Case 1:11-cv-24049-KMM (S.D. Fla. Dec. 6, 2011)(same). Moreover, as set forth
20 more fully in Plaintiff’s Memorandum of Points and Authorities in Support of its *Ex Parte*
21 Application for Temporary Restraining Order (#5-1), in order to ensure that Plaintiff’s service by
22 public announcement via publication on <http://servingnotice.com/off/index.html> was effective,
23 Plaintiff requested the Court order the relevant registries for the Subject Domain Names to change
24 the registrar of record for the Subject Domain Names to a holding account with the United States
25 based Registrar, GoDaddy.com, Inc., where they are currently held in trust for the Court during the
26 pendency of this action and set to automatically redirect to <http://servingnotice.com/off/index.html>.

27
28 service of process via e-mail and website publication.)

1 (Gaffigan Decl. ¶ 8.) The Court entered a temporary restraining order (#12) and subsequent
2 preliminary injunction (#18) granting Plaintiff's requested relief. Currently, all of the Defendants
3 have at least one of their Internet websites redirecting to Plaintiff's website
4 <http://servingnotice.com/off/index.html> where copies of the summonses, Complaint and First
5 Amended Complaint and all other documents on file in this action are posted. (*Id.*)

6 Plaintiff submits it is reasonable to conclude that Defendants are highly likely to visit their
7 own websites and, therefore, public announcement via publication on those websites through
8 redirection to <http://servingnotice.com/off/index.html> is highly likely to reach Defendants and any
9 other interested parties. Accordingly, publication of the Summonses, Complaint, First Amended
10 Complaint and all other pleadings, documents and orders issued in this action on Defendants' own
11 websites provides (i) a public announcement sufficient to meet the vague standard of Article 84 of
12 the PRC's Civil Procedure Code and (ii) notice to Defendants sufficient to meet the due process
13 requirements for service of process pursuant to Federal Rules of Civil Procedure 4, and apprise
14 Defendants of the pendency of the action and afford Defendants an opportunity to present their
15 objections.⁶

16 **C. An Order Authorizing Alternate Service of Process Pursuant to 4(f)(3) Is Also**
17 **Appropriate in This Action.**

18 Presently, Plaintiff has only moved to default Defendants whom Plaintiff's research has
19 shown are likely resident in the PRC. Obviously, Article 84 of the Civil Procedure Law of the PRC
20 does not apply to service of foreign Defendants residing in countries other than the PRC. However,
21 any foreign Defendant, whether residing in the PRC or other foreign nation, may be properly served
22 with process pursuant to an order allowing an alternate means of service pursuant to Federal Rule of
23 Civil Procedure 4(f)(3). Both electronic mail ("e-mail") and website publication have been
24 repeatedly authorized as service means pursuant to Rule 4(f)(3) on multiple occasions in District
25

26 ⁶ In the case styled Louis Vuitton Malletier, S.A. v. 1854louisvuitton.com, et al, Case 2:11-cv-
27 00738-PMP-RJJ, filed in this District, the Plaintiff also effected service of process pursuant to Rule
28 4(f)(2)(A) and Article 84 of the Civil Procedure Law of the PRC via public announcement by
posting a copy of the Summons and Complaint on its publication website. On October 25, 2011,
Default was entered against the Defendants. (#58).

1 Courts throughout the country, including the District of Nevada.⁷ Service by e-mail pursuant to Rule
 2 4(f)(3) has also been expressly approved by the Ninth Circuit and determined to meet constitutional
 3 due process standards. Rio Properties Inc., v. Rio International Interlink, 284 F.3d 1007, 1017 (9th
 4 Cir. 2002).

5 E-mail and publication service is appropriate in this case, because Defendants (1) operate
 6 anonymously via the Internet using false physical address information in the registrations for their
 7 Subject Domain Names in order to conceal their location and avoid liability for their unlawful
 8 conduct; and (2) rely solely on electronic communications to operate their business.

9 **1. The Court may Authorize Service via Electronic Mail and Publication**
 10 **Pursuant to Federal Rule of Civil Procedure 4(f)(3)**

11 Federal Rule of Civil Procedure 4(f)(3) allows alternative methods for service of process, so
 12 long as those methods are not prohibited by international agreement and are directed by the Court.
 13 Rio Properties, 284 F.3d at 1014. The plain language of Rule 4(f)(3) reflects that the decision to
 14 issue an order allowing an alternate means of service lies within the sole discretion of the District
 15 Court: Id. at 1116. Rule 4 does not require that a party attempt service of process by those methods
 16 enumerated under subsections (f)(1) and (f)(2), including by diplomatic channels and letters
 17 rogatory, before petitioning the court for alternative relief under Rule 4(f)(3). Id. at 1114-15.
 18 Indeed, alternative service under 4(f)(3) is available “without first attempting service by other
 19 means.” Id. at 1115. As the Ninth Circuit explained in Rio Properties:

20 By all indications, court-directed service under Rule 4(f)(3) is as favored as
 21 service available under Rule 4(f)(1) or Rule 4(f)(2). Indeed, Rule 4(f)(3) is one of
 22

23 ⁷ See e.g. Chanel, Inc. v. Sero, Case 2:10-cv-00758-KJD-PAL (D. Nev. Sept. 2, 2010) (authorizing
 24 e-mail service); Chanel, Inc. v. Aziz, Case 2:10-cv-00568-KJD-RJJ (D. Nev. Aug. 19, 2010)(same);
 25 Chanel, Inc. v. Felum, Case 2:10-cv-00304-HDM-LRL (D. Nev. May 7, 2010)(same); Philip Morris
 26 Usa Inc. V. Jiang, Case 1:11-cv-24049-KMM (S.D. Fla. Dec. 6, 2011) (authorizing service by
 27 publication via plaintiff’s serving notice website); Louis Vuitton Malletier, S.A. v. 3abag.com, Case
 28 No. 11-cv-61008-WJZ (S.D. Fla. June 30, 2011) (same); Abercrombie & Fitch Trading Co v. Lin,
 Case 2:11-cv-00346-AWA -FBS (E.D. Va. June 28, 2011)(same); Marc Jacobs Trademarks, L.L.C.
v. Lin, Case No. 11-cv-60854-UU (S.D. Fla. April 29, 2011) (same); Chanel, Inc. v. Qi, Case No.
 3:11-cv-00362-CRB (N.D. Cal. Jan. 27, 2011); Tiffany (NJ) LLC v. Wang, Case No. 2:10-cv-
 00624-RBS-FBS (E.D. Va. Jan. 4, 2011) (same); Chanel, Inc. v. Cai, Case 10-cv-02639-BBD-dkv
 (W.D. Tenn. September 4, 2010)(same).

1 three separately numbered subsections in Rule 4(f), and each subsection is
2 separated from the one previous merely by the simple conjunction “or.” Rule
3 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f) 's other
4 subsections; it stands independently, on equal footing. Moreover, no language in
5 Rules 4(f)(1) or 4(f)(2) indicates their primacy, and certainly Rule 4(f)(3) includes
6 no qualifiers or limitations which indicate its availability only after attempting
7 service of process by other means.

8 * * *

9 Thus, examining the language and structure of Rule 4(f) and the accompanying
10 advisory committee notes, we are left with the inevitable conclusion that service
11 of process under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief.” It
12 is merely one means among several which enables service of process on an
13 international defendant.

14 Rio Properties, 284 F.3d at 1114.

15 Additionally, the Constitution itself does not mandate that service be effected in any
16 particular way. Id. at 1016. Rather, Constitutional due process considerations require only that the
17 method of service selected be “reasonably calculated, under all the circumstances, to apprise
18 interested parties of the pendency of the action and afford them an opportunity to present their
19 objections.” Id. (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950))
20 Accordingly, federal courts have allowed a variety of alternative service methods, including service
21 by e-mail and publication, where a plaintiff demonstrates the likelihood that the proposed alternative
22 method of service will notify a defendant of the pendency of the action. See, e.g., Rio Props., 284
23 F.3d at 1017 (holding, “without hesitation,” that e-mail service of an online business defendant “was
24 constitutionally acceptable”); In re Int’l Telemedia Assocs., 245 B.R. at 721 (“If any methods of
25 communication can be reasonable calculated to provide a defendant with real notice, surely those
26 communication channels utilized and preferred by the defendant himself must be included among
27 them.”); National Association for Stock Car Auto Racing, Inc. v. Does, 584 F. Supp. 2d 824, 826
28 (W.D.N.C. 2008) (in “acknowledging the realities of the twenty-first century and the information

1 age, the Court determined that the most appropriate place for publication was [Plaintiff's
2 Website].”).

3 Here, service on Defendants by e-mail and publication will satisfy due process by apprising
4 them of the action and giving them the opportunity to answer Plaintiff's claims. As set forth in the
5 Declarations of Huang Yu Ting and Brandon Tanori, Defendants have secreted their physical
6 locations in a manner that violates the terms of their ICANN domain registration agreement and
7 prohibits Plaintiff from physically serving process on them. (See Ting Decl. ¶ 4; Tanori Decl. ¶ 4;
8 see also Gaffigan Decl. ¶ 9 and Exhibit C attached thereto.)

9 E-mail service on an online business defendant is appropriate and constitutionally acceptable
10 in a case such as this when the plaintiff is unable to personally serve the defendant at a physical
11 address and has proven that e-mail is the most effective means of providing the defendant notice of
12 the action. See Rio Properties, 284 F.3d at 1017 (concluding “not only that service of process by e-
13 mail was proper—that is, reasonably calculated to apprise [the defendant] of the pendency of the
14 action and afford it an opportunity to respond—but in this case, it was the method of service most
15 likely to reach [the defendant].”). See also Popular Enters., LLC, 225 F.R.D. at 562 (“Under the facts
16 and circumstances presented here, Rule 4(f)(3) clearly authorizes the court to direct service upon
17 defendant by e-mail. The rule is expressly designed to provide courts with broad flexibility in
18 tailoring methods of service to meet the needs of particularly difficult cases. Such flexibility
19 necessarily includes the utilization of modern communication technologies to effect service when
20 warranted by the facts) (citation omitted). The Rio Properties and Popular Enters., LLC courts each
21 determined e-mail service to be appropriate in part because, as in this case, the defendants conducted
22 their business over the Internet, used e-mail regularly in their business, and encouraged parties to
23 contact them via e-mail. See id.

24 Likewise, in cases that are factually similar to this one, a number of Courts have held that
25 alternate forms of service pursuant to Rule 4(f)(3), such as e-mail service, are appropriate and may
26 be the only means of effecting service of process “when faced with an international e-business
27 scofflaw.” See Popular Enters., LLC, 225 F.R.D. at 563 (finding that service of process by e-mail
28 was reasonably calculated to apprise defendant of the action and give it an opportunity to respond);

1 Williams-Sonoma, Inc. v. Friendfinder, Inc., No. C 06-6572, 2007 WL 4973848 (N.D. Cal. Dec. 6,
2 2007) (allowing e-mail service); Chanel, Inc. v. Zhixian, Case No. 10-cv-60585-JIC, 2010 WL
3 1740695 (S.D. Fla. April 29, 2010) (e-mail service “reasonably calculated to notify Defendants of
4 the pendency of this action and provide him with an opportunity to present objections.”); In re Int’l
5 Telemedia Associates, 245 B.R. at 722 (“A defendant should not be allowed to evade service by
6 confining himself to modern technological methods of communication not specifically mentioned in
7 the Federal Rules. Rule 4(f)(3) appears to be designed to prevent such gamesmanship by a party.”
8 (concluding e-mail and facsimile service to be appropriate)); Chanel, Inc. v. Zhibing, Case No. 09-
9 cv-02835, 2010 WL 1009981, at *4 (W.D. Tenn. March 17, 2010) (stating that e-mail service has the
10 “greatest likelihood” of reaching e-commerce merchants and noting, “The federal judiciary’s own
11 CM/ECF system alerts parties . . . by e-mail messages.” Alternate service via e-mail granted).
12 Plaintiff submits that allowing e-mail and publication service in the present case is appropriate and
13 comports with constitutional notions of due process, particularly given Defendants’ decision to
14 conduct their illegal Internet-based businesses anonymously.

15 2. E-mail and Publication Service Are Not Prohibited by International 16 Agreement.

17 As discussed above, Plaintiff has good cause to suspect Defendants are all residents of the
18 PRC or other foreign countries with lax trademark enforcement systems. (Gaffigan Decl. ¶ 3.)
19 Furthermore, as a result of the Defendants’ own efforts to conceal their location, Plaintiff is unable
20 to determine the Defendants’ exact physical whereabouts. (Ting Decl. ¶ 5.) Accordingly, although
21 the United States and the PRC are both signatories to the Hague Convention, the Hague Convention
22 does not apply in this case. See Philip Morris USA Inc. v. Veles Ltd., No. 06 Civ. 2988, 2007 WL
23 725412, at *2 (S.D.N.Y. March 12, 2007) (e-mail service authorized and the Hague Convention did
24 not apply because, despite physical “addresses” having been provided to defendants’ registrars, the
25 actual addresses could not be confirmed as valid).

26 Moreover, though it does not expressly authorize e-mail service, the Hague Convention does
27 not preclude e-mail service, and thus, is no bar to court-directed e-mail service under Rule 4(f)(3).
28 In fact, U.S. Courts have routinely authorized international mail and e-mail service notwithstanding

1 the applicability of the Hague Convention. See, e.g., Brockmeyer v. May, 383 F.3d 798, 800 (9th
2 Cir. 2004) (“We join the Second Circuit in concluding that the Convention ... does not prohibit
3 service of process by international mail”); MPS IP Services Corp. v. Modis Communications, Inc.,
4 2007 WL 723841 (Hague Convention, which Canada is a signatory, did not prohibit e-mail service
5 upon Canadian defendants).

6 3. E-mail and Publication Service Are Not Prohibited by International Law.

7 The Ninth Circuit has stated that "as long as court-directed and not prohibited by an
8 international agreement, service of process ordered under Rule 4(f)(3) may be accomplished in
9 contravention of the laws of the foreign country." Rio Props., 284 F.3d at 1014. In this case,
10 however, the issuance of the requested service order pursuant to Rule 4(f)(3) is not contrary to or
11 likely to offend the law of the PRC. The law of the PRC does not appear to prohibit the service of
12 process by e-mail and allows for alternate service means, including publication, in certain
13 circumstances. (Gaffigan Decl. ¶ 5 and Exhibit B attached thereto, “Civil Procedure Law of the
14 People's Republic of China”.) For example, Article 80 of the law specifically provides that “[i]f
15 direct service of a litigation document proves difficult . . . it may be served by post . . .” (Id.)
16 Additionally, as discussed above, Article 84 of the Civil Procedure Law of the People's Republic of
17 China provides that “[i]f the whereabouts of a recipient ... is unknown ... the document shall be
18 served by public announcement.”. Chanel, Inc. v. Zhixian, No. 10-CV-60585, 2010 WL 1740695, at
19 *2 n. 2 (S.D. Fla. April 29, 2010). Hence, Plaintiff submits that allowing service of process upon
20 PRC based Defendants in this case via e-mail would be consistent with and not prohibited by the
21 Civil Procedure Law of the People’s Republic of China. See Chanel, Inc. v. Zhixian, No. 10-CV-
22 60585, 2010 WL 1740695, at *2 n. 2 (S.D. Fla. April 29, 2010) (“Service by e-mail would not
23 appear to conflict with [Article 84 of the Civil Procedure Law of the People's Republic of China],
24 and it is questionable whether service effected under Rule 4(f)(3) must always align with the
25 methods authorized in the foreign country where service will take place”) citing Rio Props., 284 F.3d
26 at 1015 n. 5 (noting that the rule prohibiting a service method that would violate the foreign state's
27 laws applies only to service effected under Rule 4(f)(2)).) Plaintiff further submits that posting
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1 copies of the Summonses and Complaint on its publication website will satisfy the non-specific
2 publication requirement of Article 84 of the Civil Procedure Law of the People's Republic of China.

3 **III. Conclusion**

4 For the foregoing reasons, Plaintiff respectfully requests this Court enter an Order that the
5 Defendants identified on Schedule "A" hereto were properly served pursuant to Federal Rule of
6 Civil Procedure Rule 4(f)(2)(A) and instruct the clerk to enter default as to those Defendants.
7 Additionally, Plaintiff respectfully requests the Court enter a Standing Order that (1) Defendants
8 whom Plaintiff's has shown by affidavit are likely resident in the PRC and whose addresses are
9 unknown may be properly served with process pursuant to Federal Rule of Civil Procedure Rule
10 4(f)(2)(A) by public announcement via publication by posting a copy of the Summons, Complaint,
11 and First Amended Complaint on the website located at <http://servingnotice.com/off/index.html>; and
12 (2) Defendants whom Plaintiff has shown by affidavit are likely foreign Defendants whose addresses
13 are unknown may be properly served with process pursuant to Federal Rule of Civil Procedure
14 4(f)(3) via e-mail to the e-mail address provided by Defendants as part of the domain registration
15 data for each of their respective domain names or on their websites and via e-mail to the registrar of
16 record for each of their respective domain names, and that the Court's previous Order (#12)
17 permitting all documents in this action to be delivered to the Defendants via email be construed as
18 having authorized e-mail as an appropriate alternate means of service pursuant to Federal Rule of
19 Civil Procedure 4(f)(3).

20 Dated: January 12, 2012

Respectfully submitted,

21 By: /s/ David S. Kahn
22 David S. Kahn
23 J. Scott Burris
24 WILSON, ELSER, MOSKOWITZ,
25 300 South Fourth Street, 11th Floor
26 Las Vegas, NV 89101
27 (702) 727-1400; FAX (702) 727-1401
28 David.Kahn@wilsonelser.com
J.Scott.Burris@wilsonelser.com

Of Counsel:

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stephen@smgpa.net

Attorneys for Plaintiff TIFFANY (NJ), LLC

SCHEDULE A
DEFENDANTS BY SUBJECT DOMAIN NAME AND DEFENDANT NUMBER

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- Defendant 1: 925ly.com
- Defendant 3: 925silvershop.com
- Defendant 4: 925tiffany.com
- Defendant 5: 925tiffany.net
- Defendant 6: 925wholesaler.com
- Defendant 7: aliexpressuk.com
- Defendant 9: atjewelry.com
- Defendant 10: atopsilver.com
- Defendant 11: australiatiffanystore.com
- Defendant 12: autiffany4sale.com
- Defendant 13: b2bvogue.com
- Defendant 14: bestbuytiffany.com
- Defendant 15: better-tiffany.com a/k/a fashiontf.com a/k/a hottiffanyjewelry.com
- Defendant 16: beyeshop.com
- Defendant 17: brandtiffany.com
- Defendant 18: buy-tiffanyjewelry.com a/k/a newsclothes.com a/k/a
tiffanyjewelrycanada.com
- Defendant 19: bybybuy.com
- Defendant 20: canadatiffanystore.com
- Defendant 21: cartiereshop.com
- Defendant 22: casualtiffany.com
- Defendant 24: cheapdesignerwholesale.com
- Defendant 25: cheaptiffanyjewelry.com a/k/a 925silversale.com
- Defendant 26: cheaptiffanys.com
- Defendant 27: chinafamousproducts.com
- Defendant 28: chinawholesalejewelry.com

1 Defendant 29: cityjewels.net a/k/a journ-mo.com
2 Defendant 30: coachjewelry.com
3 Defendant 31: coboen.com
4 Defendant 33: cooltiffany.com
5 Defendant 34: crowntco925.com
6 Defendant 36: alltiffanyjewelry.com a/k/a besttiffanyjewelry.cn a/k/a
7 cheapjewelryshops.com a/k/a usjewelry.net
8 Defendant 37: diorgirl.com a/k/a tiffanyandcostore.com
9 Defendant 38: discounttiffany.com
10 Defendant 39: discounttiffanyjewelry.us
11 Defendant 40: doreplica.com
12 Defendant 41: eshopping-replica.com
13 Defendant 42: etiffanybag.com
14 Defendant 43: europeantiffany.com
15 Defendant 45: faketiffanyjewelry.org
16 Defendant 46: fashionjewelryzone.com
17 Defendant 47: fashion-wigs.com a/k/a tiffanybraceletscheap.com
18 Defendant 48: forsaletiffany.com
19 Defendant 49: globeffashion.com
20 Defendant 50: goecshop.com a/k/a goecshop.org
21 Defendant 51: goldtiffanyjewelry.com
22 Defendant 52: goolcool.com
23 Defendant 53: greatgolden.com
24 Defendant 54: handbagsforcheap.com
25 Defendant 55: hot-tiffany.com
26 Defendant 56: hotwholesaleonline.com a/k/a jewelrymall1837.com
27 Defendant 57: idolbags.com a/k/a rwholesalejewelry.com
28 Defendant 58: ilikejewellery.com a/k/a tiffany1.org

1 Defendant 59: ilovetiffany.net
2 Defendant 60: istiffany.com
3 Defendant 61: ixreplicajewelry.com
4 Defendant 62: jewellery888.com
5 Defendant 63: jewellerybi.com
6 Defendant 64: jewelleryhotsale.com
7 Defendant 66: jewelry-925.com
8 Defendant 67: jewelrycheapbuy.com a/k/a jewelryussale.com
9 Defendant 68: jewelrykt.com a/k/a tiffanyjewelrynet.com a/k/a tiffanyjewelrysale.us.com
10 a/k/a wholesalejewelrysale.net
11 Defendant 69: jewelryorwatches.com a/k/a alltiffanyjewelry.com
12 Defendant 70: jewelryover.com
13 Defendant 71: jewelryrain.com
14 Defendant 72: jewelrysale925.com
15 Defendant 73: jwely.com
16 Defendant 74: kfjewelry.com
17 Defendant 76: linkworldco.com
18 Defendant 77: lipwu.com
19 Defendant 78: lovetiffanyjewelry.com
20 Defendant 79: luckyjewelryshop.com
21 Defendant 80: luxurysandals2u.com
22 Defendant 82: mirrorjewelry.com
23 Defendant 83: msmrapparel.com a/k/a tiffanyjewelrynet.com
24 Defendant 84: myfaketiffany.com
25 Defendant 85: mytiffanycity.com
26 Defendant 86: mytiffanyonline.com a/k/a myjewelrylife.com
27 Defendant 87: mytiffanysjewelry.com
28 Defendant 88: mytiffanysonline.com a/k/a cheaptfonline.com

1 Defendant 90: newtiffany.com
2 Defendant 91: newtiffanys.com a/k/a alltiffanyjewelry.com
3 Defendant 92: ojewelry.com
4 Defendant 93: onlytobuy.com
5 Defendant 95: pocvt.com
6 Defendant 96: populartiffany.com
7 Defendant 97: pradashoeschina.com a/k/a pradashoechina.com a/k/a lookoutclothes.com
8 Defendant 98: pursestrade.com a/k/a pursestrade.net
9 Defendant 100: replicasilverjewelry.com
10 Defendant 101: replicasky.com
11 Defendant 102: replicatiffany.net
12 Defendant 103: saarcaa.com
13 Defendant 104: saletiffanyjewelry.org a/k/a tiffanysalejewelry.com a/k/a 925silversale.com
14 Defendant 106: sheloves925silver.com
15 Defendant 107: shoes51.com
16 Defendant 108: silver-bulk.com
17 Defendant 109: silverjewelryblog.net a/k/a silvertiffanyshop.com
18 Defendant 110: silverjewelryworld.com
19 Defendant 112: silvertiffanyshop.com
20 Defendant 115: sterlingtiffany.com
21 Defendant 116: super925.com
22 Defendant 117: taltoo.com a/k/a jewever.com
23 Defendant 118: tco1837.com
24 Defendant 119: tcogift.com
25 Defendant 121: tiffany4ever.com
26 Defendant 120: thesalesky.com
27 Defendant 122: tiffany4girls.com
28 Defendant 123: tiffany4u.us

1 Defendant 124: tiffany7.com a/k/a handbagstalent.com
2 Defendant 125: tiffanya.com
3 Defendant 126: tiffanyamerica.com
4 Defendant 127: tiffanyandcojewelry.com
5 Defendant 128: tiffany-and-co-jewelry.com a/k/a discount-tiffany-co-jewelry.com a/k/a
6 tiffany-on-sale.com
7 Defendant 129: tiffanyandcooutlet.com
8 Defendant 130: tiffanyandco-outlet.com
9 Defendant 132: tiffanyandcosale.com
10 Defendant 133: tiffanyandcostore.com
11 Defendant 134: tiffanyboss.com
12 Defendant 135: tiffanybraceletscheap.com
13 Defendant 136: tiffanybuying.com
14 Defendant 137: tiffanyco1837.com
15 Defendant 138: tiffanyco-mall.com a/k/a tiffanyco-mall.net a/k/a tiffanyonlinejewelry.com
16 a/k/a tiffanyscheapjewellery.com
17 Defendant 139: tiffanycouk.com
18 Defendant 142: tiffany-fashion.com
19 Defendant 143: tiffanyforsale.com
20 Defendant 144: tiffanyforu.com
21 Defendant 145: tiffany-guide.com
22 Defendant 146: tiffanyhere.com
23 Defendant 147: tiffanyhotsale.com
24 Defendant 148: tiffanyinfo.com
25 Defendant 149: tiffanyinlove.com
26 Defendant 150: tiffanyjewelersuk.com
27 Defendant 151: tiffany-jewellery-shop.com
28 Defendant 153: tiffanyjewelry1837.com

1 Defendant 155: tiffanyjewelry2u.com
2 Defendant 156: tiffanyjewelry4sale.com a/k/a alltiffanys.com a/k/a buytiffanyonline.com
3 a/k/a cheapdiscounttiffanystore.com a/k/a discountswatcheshop.com a/k/a
4 discounttiffanystore.com a/k/a jewellery4love.com a/k/a jewelleryonline-
5 store.com a/k/a jewelrytiffansale.com a/k/a shoptiffanysilver.com a/k/a
6 shoptiffanysilver.net a/k/a tffanyjewelry-store.com a/k/a
7 tiffany1837jewellerys.com a/k/a tiffanyandconline.com a/k/a tiffany-au.org
8 a/k/a tiffanybrandmall.com a/k/a tiffany-classic.com a/k/a
9 tiffanyclassicmall.com a/k/a tiffanyco-us.org a/k/a tiffanyesale.com a/k/a
10 tiffany-jewellery.net a/k/a tiffanyjewelleryoutlet.com a/k/a
11 tiffanyjewellerypalace.com a/k/a tiffanyjewellerypalace.net a/k/a
12 tiffanyjewellerysales.com a/k/a tiffany-jewelleryuk.com a/k/a
13 tiffanyjewellery-uk.net a/k/a tiffanyjewelrycheap.net a/k/a tiffany-mall.com
14 a/k/a tiffanymall-uk.com a/k/a tiffanyonlinejewellerys.com a/k/a
15 tiffanyonlinejewelry.net a/k/a tiffanysaleonline.com a/k/a tiffany-sales.net
16 a/k/a tiffany-saleuk.com a/k/a tiffanys-au.com a/k/a tiffanyscharms.com a/k/a
17 tiffanyscheapjewellery.com a/k/a tiffanyshopuk.com a/k/a
18 tiffanysingapore.com a/k/a tiffanys-jewellery.com a/k/a
19 tiffanysjewelleryau.com a/k/a tiffanysjewelleryonline.com a/k/a
20 tiffanysjewellerypalace.com a/k/a tiffanysjewellerysale.com a/k/a
21 tiffanysjewellery-us.com a/k/a tiffanysjewellery-us.net a/k/a tiffanystore-
22 jewellery.com a/k/a tiffanyuk-jewellery.com a/k/a tiffanyukjewellery.net a/k/a
23 tiffanyukonlinejewelry.com a/k/a tiffanyukonlinejewelry.net a/k/a
24 tiffukjewellery.co.uk a/k/a tiffukjewellery.com a/k/a ukjewellerytiffany.com
25 a/k/a ukjewellerytiffany.net a/k/a ukonlinejewelry.net a/k/a
26 ukonlinejewelry.org
27 Defendant 158: tiffanyjewelryforsale.com
28 Defendant 159: tiffanyjewelrygift.com

1 Defendant 160: tiffanyjewelrynet.com
2 Defendant 161: tiffany-jewelry-on-sale.com
3 Defendant 163: tiffanyjewelryoutlet.com
4 Defendant 164: tiffanyjewelry-outlet.com
5 Defendant 166: tiffanyjewelrysales.com
6 Defendant 167: tiffanyjewelryshops.com a/k/a tiffanyjewelrynet.com
7 Defendant 168: tiffanyjewelrystores.com
8 Defendant 170: tiffanyknockoffs.com
9 Defendant 171: tiffany-mine.com a/k/a minesale.com
10 Defendant 172: tiffanynew.com
11 Defendant 173: tiffanyo.com
12 Defendant 174: tiffanyonlinestoreus.com
13 Defendant 175: tiffanyonsale.net a/k/a ustiffany4sale.com
14 Defendant 176: tiffanyoutlet.com
15 Defendant 178: tiffanyoutletcheap.com
16 Defendant 179: tiffanyoverstock.com
17 Defendant 180: tiffanys1837jewelry.com
18 Defendant 181: tiffanysalesstore.com
19 Defendant 182: tiffanysave.com
20 Defendant 183: tiffanyselected.com
21 Defendant 184: tiffany-seller.com
22 Defendant 185: tiffanysforever.com
23 Defendant 187: tiffanysjewelryonline.com a/k/a brandjewelryonline.com
24 Defendant 188: tiffanysjewelryshop.com a/k/a jewelrysonlineshop.com
25 Defendant 189: tiffanysjewelryworld.com a/k/a myjewelrysworld.com
26 Defendant 190: tiffanysky.com
27 Defendant 191: tiffanysocool.com
28 Defendant 192: tiffanysonly.com

1 Defendant 193: tiffany-sterling-silvers.com a/k/a bvlgari2.com
2 Defendant 194: tiffanystock.com
3 Defendant 196: tiffanysupplier.com
4 Defendant 197: tiffanytopsale.com
5 Defendant 198: tiffanyuksale.com
6 Defendant 199: tiffanyusonsale.com
7 Defendant 200: tiffanywto.com a/k/a loveiseverying.com a/k/a tiffanyceo.com
8 Defendant 201: toopgood.com
9 Defendant 202: top1tiffany.com a/k/a tiffanysalesonline.com
10 Defendant 203: towholesalejewelry.com
11 Defendant 204: uktiffanyonsale.com
12 Defendant 205: upoun.com
13 Defendant 206: urbanclothingchina.com a/k/a coogiwarehouse.com
14 Defendant 208: ustiffany4sale.com
15 Defendant 209: utiffany.com a/k/a vtiffany.com
16 Defendant 210: vogueonsale.com
17 Defendant 211: watches-trade.com a/k/a hongwron.com a/k/a lvvuittonkorea.com
18 Defendant 212: wholesale1837.com
19 Defendant 213: wholesaleabc.net
20 Defendant 214: wholesaleanywhere.com
21 Defendant 216: wholesale-tiffany-jewellery.com
22 Defendant 217: wholesaletiffanyjewelry.net a/k/a tiffanyonlineus.com a/k/a
23 silvertiffanyonline.com
24 Defendant 218: whslecn.com
25 Defendant 220: wowyahoo.com
26 Defendant 221: x-jewelrybox.com
27 Defendant 222: yahoowholesaler.com a/k/a shop4tiffany.com
28 Defendant 223: yasajewelry.com a/k/a tiffanyjewelrynet.com

- 1 Defendant 216: wholesale-tiffany-jewellery.com
- 2 Defendant 217: wholesaletiffanyjewelry.net a/k/a tiffanyonlineus.com a/k/a
- 3 silvertiffanyonline.com
- 4 Defendant 218: whslecn.com
- 5 Defendant 220: wowyahoo.com
- 6 Defendant 221: x-jewelrybox.com
- 7 Defendant 222: yahoowholesaler.com a/k/a shop4tiffany.com
- 8 Defendant 223: yasajewelry.com a/k/a tiffanyjewelrynet.com

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