

SEALED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 25-cv-21495-WILLIAMS/GOODMAN

ADIDAS AG, *et al.*,

Plaintiffs,

v.

THE INDIVIDUALS, BUSINESS ENTITIES,
AND UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A,"

Defendants.

SEALED ORDER AUTHORIZING ALTERNATIVE SERVICE OF PROCESS

adidas AG, adidas International Marketing B.V., and adidas America, Inc. (collectively, "Plaintiffs" or "adidas") filed an *Ex Parte* Motion for an Order Authorizing Alternative Service of Process ("Motion") on the Individuals, Business Entities, and Unincorporated Associations identified on Schedule "A" ("Defendants"). [ECF No. 7]. United States District Judge Kathleen M. Williams referred "all discovery disputes and non-dispositive pretrial motions" to the Undersigned. [ECF No. 8].

For the reasons set forth below, the Undersigned **grants** this Motion.

This is a trademark infringement case in which Plaintiffs allege that Defendants, through their individual online-based seller stores, are advertising, promoting, offering for sale, or selling goods using or bearing what Plaintiffs have determined to be infringements

of their registered trademarks. Plaintiffs' Complaint includes four counts: (1) trademark counterfeiting and infringement pursuant to § 32 of the Lanham Act (15 U.S.C. § 1114); (2) false designation of origin pursuant to § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); (3) common law unfair competition; and (4) common law trademark infringement. [ECF No. 1].

Plaintiffs filed a declaration from their legal counsel, Virgilio Gigante, in support of this motion. [ECF No. 7-1]. In it, Mr. Gigante states that:

3. Prior to filing this action, my firm accessed the commercial Internet websites operating under the domain names identified on Schedule "A" attached to Plaintiffs' Complaint ([ECF No.] 1) (the "Subject Domain Names"). The websites advertise, offer for sale, and/or promote products using counterfeits and infringements of one or more of Plaintiffs' trademarks at issue. Defendants have structured their website businesses so that the primary means for customers to purchase Defendants' counterfeit goods at issue is by placing an order electronically. Defendants purport to take and confirm orders online as well via e-mail and/or private messaging services such as WhatsApp, and they communicate with customers via electronic means, including e-mail and onsite contact forms. True and correct copies of the relevant web pages captured and downloaded by my firm reflecting samples of the Internet websites operating under the Subject Domain Names displaying Plaintiffs' branded items offered for sale are attached as Composite Exhibit "1" to my Declaration in Support of Plaintiff's Application for Temporary Restraining Order ([ECF Nos.] 6-3 through 6-5).

4. My firm obtained the publicly available domain name registration data ("WHOIS" records) for each of the Subject Domain Names identifying the contact information Defendants provided their registrars. My firm also obtained the available e-mail addresses and onsite contact forms identified in connection with the websites operating under Defendants' respective Subject Domain Names. Additionally, Defendants can receive notice of this action by e-mail via the designated domain name Registrar's e-mail address or domain contact form for the Subject Domain Names. The e-mail addresses for Defendants are provided on Schedule "A" to Plaintiffs' Motion for Alternate Service.

5. Plaintiffs will also notify Defendants of this action via website posting. Plaintiffs have created a serving notice website and will be posting copies of the Complaint, the Application for Temporary Restraining Order, this Motion, and all other pleadings, orders, and documents on file in this action on their designated website located at <http://servingnotice.com/Ds42a1m/index.html> ("Plaintiffs' Serving Notice Website"), such that anyone accessing Plaintiffs' Serving Notice Website will find copies of all documents filed in this action. The address for Plaintiffs' Serving Notice Website will be provided to Defendants via their known e-mail addresses, onsite contact forms, and/or private message accounts, and will be included as part of service of process in this matter.

6. Accordingly, each Defendant will be provided with notice of this action electronically via e-mail by providing the address to Plaintiffs' Serving Notice Website to their corresponding e-mail addresses, onsite contact forms, corresponding private messaging applications and/or services, or via the designated domain name registrar that Defendants use to conduct their commercial transactions via the Subject Domain Names. In this manner, Defendants will receive a web address at which they can access all electronic filings to view, print, or download any document filed in the case similar to the court's CM/ECF procedures.

7. Plaintiffs have investigated Defendants and have reasonable cause to suspect Defendants may reside and/or operate in China, the Islamic Republic of Pakistan [], or other foreign countries, and/or redistribute products from sources in those locations. Plaintiffs' investigation looked at multiple connection data points, such as data Defendants identified in the WHOIS records for each of their respective Subject Domain Names, as well as information contained on Defendants' websites operating thereunder. While Plaintiffs have not been able to identify a valid physical address for service of process on Defendants, Plaintiffs have good cause to believe Defendants are not residents of the United States.

Id. at ¶¶ 3–7.

Because of the difficulties associated with serving these types of defendants, Plaintiffs request this Court to authorize alternative service by e-mail and website posting. They state

that all parties would benefit from this requested ruling because it is “the most reliable means of providing Defendants with notice of this action.” [ECF No. 7, p. 8].

For service on a foreign defendant, Federal Rule of Civil Procedure 4(f)(3) provides a district court with broad authority to order an alternate method of service to be effectuated, requiring only that the service method is not prohibited by international agreement and is reasonably calculated to give notice to the defendants. *See* Fed. R. Civ. P. 4(f)(3); *see also Brookshire Bros., Ltd. v. Chiquita Brands Int’l, Inc.*, No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (citing *Prewitt Enters. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921, 927 (11th Cir. 2003)) (“[D]istrict courts have broad discretion under Rule 4(f)(3) to authorize other methods of service that are consistent with due process and are not prohibited by international agreements.” (alteration added)).

“[T]he decision to issue an order allowing service by alternate means lies solely within the discretion of the district court.” *Chanel, Inc. v. Lin*, No. 08-23490-CIV, 2009 WL 1034627, at *1 (S.D. Fla. Apr. 16, 2009) (citing *Prewitt Enters., Inc.*, 353 F.3d at 921 (holding that a “district court ‘may’ direct alternate means of service [under Rule 4(f)(3)]”)); *see also Rio Props., Inc.*, 284 F.3d 1007, 1018 (9th Cir. 2002) (“[W]e leave it to the discretion of the district court to balance the limitations of email service against its benefits in any particular case.”).

China is a signatory to the Hague Convention. The Hague Convention does not specifically preclude service of process via e-mail, social media, return-receipt mail, or by posting on a designated website. China is one of the signatory nations that has objected to

certain alternative means of service under the Hague Convention. However, that objection is “expressly limited to those means and does not represent an objection to other forms of service, such as e-mail or website posting.” *Fed’n of the Swiss Watch Indus. FH v. Bestintimes.me*, No. 22-CV-62000-RAR, 2022 WL 17987245, at *2 (S.D. Fla. Nov. 3, 2022).

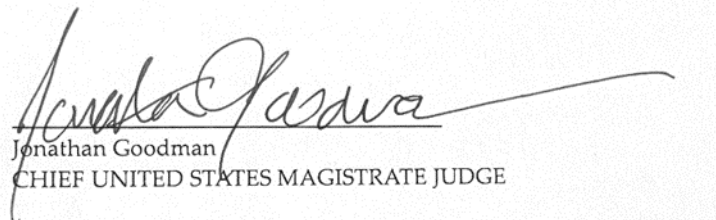
A court acting under Rule 4(f)(3), therefore, remains free to order alternative means of service where a signatory nation has not expressly objected to those means. *See Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011). Accordingly, service by e-mail or website posting does not violate international agreements. *C.N. LLC v. Individuals, P’ships*, No. 24-21061-CIV, 2024 WL 4472021, at *2 (S.D. Fla. Apr. 2, 2024) (“While China has declared that it opposes the service of documents in its territory by the alternative means of service outlined in Article 10 of the Convention, including the service of process by postal channels, it has not expressly objected to service via e-mail or publication.”). Additionally, service by e-mail and website posting are reasonably calculated to give notice to Defendants.

Here, Plaintiffs have provided good cause and sufficient evidence to indicate that alternative service through the requested means is “reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Accordingly, the Court **grants** Plaintiff’s Motion [ECF No. 7] and authorizes alternate service of process on Defendants via e-mail and publication on Plaintiff’s designated website to serve notice (<http://servingnotice.com/Ds42a1m/index.html>). Plaintiffs’ e-mails and website shall effect service of the Summons, Complaint, and all future filings and

discovery in this matter, together with their respective translations. Once completed, Plaintiffs **shall file** a copy of delivery confirmation (or a substantially equivalent document) as proof that service has been carried out upon Defendants, as required by Federal Rule of Civil Procedure 4(1)(2)(B).

DONE AND ORDERED in Chambers, in Miami, Florida, on April 4, 2025.



Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies Furnished to:

The Honorable Kathleen M. Williams
All Counsel of Record