

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 24-cv-24766-WILLIAMS/GOODMAN

OMEGA SA,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS
AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON
SCHEDULE "A",

Defendants.

SEALED ORDER AUTHORIZING ALTERNATIVE SERVICE OF PROCESS

Omega SA ("Plaintiff" or "Omega") filed an *Ex Parte* Motion for an Order Authorizing Alternate Service of Process ("Motion") on the Individuals, Business Entities, and Unincorporated Associations identified on Schedule "A" ("Defendants"). [ECF No. 9]. United States District Judge Kathleen M. Williams referred this Motion to the Undersigned, "[p]ursuant to 28 U.S.C. § 636, and the Magistrate Rules of the Local Rules for the Southern District of Florida[.]" [ECF No. 6].

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

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

its registered trademarks (“Omega Trademarks”). Plaintiff’s 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].

Plaintiff is a corporation engaged in the business of manufacturing and distributing its luxury goods around the world. [ECF No. 1, ¶ 4]. Plaintiff filed a declaration from its legal counsel, Virgilio Gigante, in support of this Motion. [ECF No. 9-1]. In it, he states that:

3. Each Defendant uses money transfer and retention services with PayPal, Inc. (“PayPal”) as a method to receive monies generated through the sale of counterfeit products. I know from multiple past actions involving the restraint of payment accounts that PayPal accounts are the e-mail addresses used by PayPal to communicate with the account owners. As a practical matter, these PayPal account e-mail addresses must necessarily be working e-mail addresses; otherwise, Defendants would not be able to process payments through their PayPal accounts. Moreover, pursuant to PayPal’s Electronic Communications Delivery Policy (E-Sign Disclosure and Consent), PayPal account holders consent to receive all communication electronically, including via e-mail, and are required to maintain a valid e-mail address. In fact, if PayPal discovers an e-mail address has become invalid such that electronic communications sent to the email address by PayPal are returned, PayPal may deem the account to be inactive and disable transaction activity until a valid, working e-mail address is provided. I know from multiple past actions that PayPal identifies contact e-mail addresses for a defendant at issue upon compliance with a temporary restraining order, such as the temporary restraining order Omega is requesting in the instant case.

4. Defendants can also be contacted via the available e-mail addresses and onsite contact identified in connection with Defendants’ respective e-commerce stores, including private messaging applications and/or services Defendants use in tandem with their E-commerce Store Names. Defendants can further receive notice of this action by e-mail via their designated domain name registrar’s e-mail address or domain contact form. The e-mail addresses

and other means of electronic contact for all Defendants are provided on Schedule "A" to Plaintiff's Motion for Alternate Service.

5. Omega will also notify Defendants of this action via website posting. Omega has created a serving notice website and will be posting copies of the Complaint, the Application for [Temporary Restraining Order "TRO"], the Motion for Alternate Service, and all other pleadings, documents, and orders on file in this action on its designated website located at <http://servingnotice.com/Qa8d6a/index.html> ("Plaintiff's Website"), such that anyone accessing Plaintiff's Website will find copies of all documents filed in this action. The address for Plaintiff's Website will be provided to Defendants via their known e-mail accounts, private message accounts, and/or onsite contact forms, 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 by providing the address to Plaintiff's Website to their corresponding e-mail addresses, customer service e-mail addresses and/or 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 E-commerce Store 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. Omega has investigated Defendants and has reasonable cause to suspect Defendants may reside and/or operate in the People's Republic of China ("China") or other foreign countries, and/or redistribute products from sources in those locations. Omega's investigation looked at multiple connection data points, such as information contained on Defendants' ecommerce stores operating under their respective E-commerce Store Names, payment and shipping information, and the investigative data provided thereunder. While Omega has not been able to verify a valid physical address for service of process on Defendants, Omega has good cause to believe Defendants are not residents of the United States.

Id. at ¶¶ 3–7 (footnotes omitted).

Because of the difficulties associated with serving these types of defendants, Plaintiff requests this Court to authorize alternative service by e-mail and website posting. It states

that all parties would benefit from its requested ruling because it is “the most reliable means of providing Defendants with notice of this action.” [ECF No. 9, p. 9].

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).

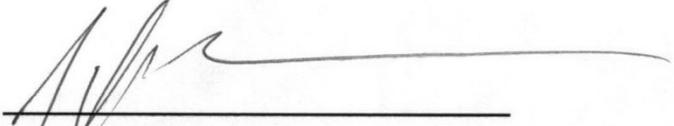
A court acting under Rule 4(f)(3), therefore, remains free to order alternative means of service where a signatory nation has not expressly objected to those means. *See Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011). Accordingly, service by e-mail or website posting does not violate international 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, Plaintiff has provided good cause and sufficient evidence to indicate that alternative service through its requested means are "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. 9] and authorizes alternate service of process on Defendants via e-mail and publication on Plaintiff's designated website to serve notice (<http://servingnotice.com/ca6Ah/index.html>). Plaintiff's 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, Plaintiff **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 December 13, 2024.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies Furnished to:

The Honorable Kathleen M. Williams
All Counsel of Record