

FILED

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

MAX\_BUY, *et al.*,

Defendants.

Civil Action No. 19-746

**FILED UNDER SEAL**

**PLAINTIFFS' EX PARTE MOTION FOR AN ORDER  
AUTHORIZING ALTERNATIVE SERVICE ON DEFENDANTS  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

Plaintiffs Doggie Dental Inc. ("Doggie Dental") and Peter Dertsakyan ("Dertsakyan") (collectively, "Plaintiffs"), hereby move this Court on an *ex parte* basis,<sup>1</sup> for an order authorizing alternate service of process on Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Schedule "A"** hereto (collectively "Defendants"),<sup>2</sup> brought pursuant to Federal Rule of Civil Procedure 4(f)(3). In support thereof, Plaintiffs submit the following:

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<sup>1</sup> Plaintiffs are moving for alternate service *ex parte* as Plaintiffs have yet to provide Defendants with notice of this action. Contemporaneously herewith, Plaintiffs have filed their *Ex Parte* Application for Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets ("*Ex Parte* Application for Temporary Restraining Order"), together with the supporting Declarations and Exhibits. The present Motion makes reference to Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, and as such, Plaintiffs seek to prevent premature disclosure of that filing. (See Declaration of Stanley D. Ference III in Support of Plaintiffs' *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants ["*Ference Dec.*"] ¶ 1, n.1, filed herewith.) However, Plaintiffs are filing this Motion so that, in the event Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and the instant Motion are granted, Plaintiffs can effectuate service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure simultaneously with providing notice of the Court's order on Plaintiffs' *Ex Parte* Application for Temporary Restraining Order. (See *id.*)

<sup>2</sup> Plaintiffs are not moving for service pursuant to Fed. R. Civ. P. 4(f)(3) with respect to Defendant Number 10, 17, 21, 23, 39, 43, 52, 57, 59-61, 63, 65, 68, 74, 76, 79, 80, 83, 85, 88, 90, 91, 93, 94, 98, 103, 109, and 111-113 because Plaintiffs will be attempting conventional service of process as to those Defendants.

## I. INTRODUCTION

Plaintiffs are suing Defendants for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; copyright infringement of Plaintiffs' federally registered copyrights in violation of the Copyright Act of 1976; common law unfair competition; and common law trademark infringement pursuant to 15 U.S.C. § 1125(a), 17 U.S.C. §§ 101 *et seq.*, and The All Writs Act, 28 U.S.C. § 1651(a). Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling knock-off versions of Plaintiffs' BRISTLY™ dog toothbrush (the "Infringing Product") which closely mimic the appearance of Plaintiffs' genuine product within this district and throughout the United States by operating e-commerce stores established at least via the Internet marketplace website eBay.com under their Store Names and Seller Names identified on Schedule "A" hereto (the "Seller IDs"). Defendants have infringed upon Plaintiffs' common law trade dress rights; Defendants have infringed upon Plaintiffs' federally registered copyrights; and Defendants have used Plaintiffs' copyrighted photographs and/or common law BRISTLY trademark while marketing their knock-off products in a willful attempt to pass them off as genuine BRISTLY™ products.

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiffs request an order authorizing service of process on Defendants via electronic communication ("e-mail") and via website publication. E-mail and website publication service are appropriate and necessary in this case, because Defendants (1) operate via the Internet, and (2) rely on electronic communications to operate their businesses. As such, Plaintiffs have the ability to contact Defendants directly and provide notice of Plaintiffs' claims against them electronically via e-mail. Additionally, Plaintiffs have created a publication website and will be posting copies of the Complaint, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, this instant Motion, and all

other documents filed in this action. Plaintiffs respectfully submit that an order allowing service of process and future filings<sup>3</sup> via e-mail and by publication on a designated website will benefit all parties and the Court by ensuring Defendants receive immediate notice of the pendency of this action and allowing this action to move forward expeditiously. Absent the ability to serve Defendants by email and/or website publication, Plaintiffs will almost certainly be left without the ability to pursue a remedy.

## II. STATEMENT OF FACTS

### A. Defendants Have Valid and Operational Means of Electronic Contact.

Defendants operate Internet-based businesses and use electronic means of communication such that Plaintiff will be able to provide Defendants with notice of this action via e-mail and website publication. As a practical matter, it is necessary for merchants who operate entirely online, such as Defendants, to provide customers with valid electronic means by which customers may contact the merchants to ask questions about the merchants' products, place orders from the merchants, and receive information from the merchants regarding the shipments of orders. Further, e-commerce defendants generally must maintain accurate e-mail addresses where their marketplace platforms and payment processor may communicate with them regarding issues related to their e-commerce store accounts and transfer of funds for the payment for goods. Plaintiff has also created a webpage on [www.ferencelaw.com](http://www.ferencelaw.com) ("Plaintiffs' Website"), such that anyone accessing Plaintiffs' Website will find copies of documents filed in this action. (See *Ference Dec.*, ¶¶ 5 - 6.)

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<sup>3</sup> Fed. R. Civ. P. 5 governs service of pleadings and other papers once service of process has been made. Service is not required on any party that fails to appear. See Fed. R. Civ. P. 5(a)(2). Nonetheless, Plaintiffs propose to continue to serve pleadings and other papers via e-mail and by posting on a designated website.

eBay.com, Inc., which operates the eBay.com marketplace maintains contact e-mail addresses for sellers operating via their marketplaces, and based upon past actions, eBay.com, Inc. identifies these contact e-mail addresses for Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiffs are requesting in the instant case. (See FERENCE Dec., ¶ 3.) Additionally, Defendants operating their respective e-commerce stores via the Internet marketplace website ebay.com have provided an electronic form of contact in the form of eBay's messaging system. (*Id.*) eBay's messaging system facilitates communication between customers and merchants in the eBay.com marketplace. (*Id.*)

Furthermore, sellers operating via eBay.com use money transfer and retention services with PayPal, Inc. ("PayPal"), as a method to receive monies generated through the sale of Infringing Products. Defendants have provided at least one accurate contact email address to PayPal in order to conduct business via their respective Seller IDs. (See FERENCE Dec., ¶ 4.) Defendants' PayPal account e-mail addresses must necessarily be valid, working e-mail addresses; otherwise, Defendants would not be able to process payments through their PayPal accounts.<sup>4</sup> (See Id.) 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. If PayPal discovers an e-mail address has become invalid such that electronic communications sent to the e-mail 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. (See Id.) Based upon past actions, PayPal identifies these contact e-mail address for all

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<sup>4</sup> See PayPal's Electronic Communications Delivery Policy (E-Sign Disclosure and Consent), available at <https://www.paypal.com/us/webapps/mpp/ua/esign-full> (last visited May 15, 2019).

Defendants at issue upon compliance with a temporary restraining order, such as the temporary order Plaintiffs are requesting in the instant case. (*Id.*)

Accordingly, each Defendant will be provided with notice of this action electronically by providing the address to Plaintiffs' Website (discussed *supra*) to their corresponding e-mail addresses and/or direct messaging or inquiry system that Defendants use to conduct their commercial transactions via the Sellers IDs. (*Ference Dec.*, ¶ 5.) 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.

Finally, Plaintiffs will be able to provide each Defendant notice of this action via public announcement on Plaintiffs' designated website. Plaintiffs have created a publication website that will be appearing on [www.ferencelaw.com](http://www.ferencelaw.com) ("Plaintiffs' Website), whereupon copies of the Complaint, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, this Motion, discovery, and other filings, and orders issued in this action will be posted, such that anyone accessing Plaintiffs' Website will find copies of documents filed in this action similar to the Court's CM/ECF procedures. (*Ference Dec.*, ¶ 6.) The address for Plaintiffs' Website will be provided to Defendants via their e-mail accounts provided by eBay and/or PayPal, or through eBay's direct messaging or inquiry system, and will be included as part of service of process in this matter. (*Id.*)

#### **B. Defendants Rely on Electronic Communications.**

Defendants have structured their e-commerce store businesses so that the sole means for customers to purchase Defendants' goods at issue is by placing an order electronically. Defendants take and confirm orders online and rely on electronic means to receive a payment. (*See Declaration of Mary Laplante in Support of Plaintiffs' Ex Parte Application for Entry of*

Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets [“*Laplante Dec.*”] ¶ 2 and Comp. Ex. 1 thereto.) During the investigation, Plaintiffs were able to view Defendants’ Infringing Products, add products to the online shopping cart, proceed to a point of checkout, add a shipping address in this judicial district and payment information and otherwise actively exchange data with each Merchant Storefront. (*Id.*) Clearly, Defendants rely on electronic means as reliable forms of contact.

### III. ARGUMENT

Pursuant to Federal Rule of Civil Procedure 4(h)(2), a foreign partnership or other unincorporated association may be served with process in any manner prescribed by Rule 4(f) for serving foreign individuals. Federal Rule of Civil Procedure 4(f)(3), allows a district court to authorize an alternate method for service to be effected upon a foreign defendant, provided that it is not prohibited by international agreement and is reasonably calculated to give notice to the defendant. In the present matter, alternate service of process via e-mail and website publication are appropriate given that Defendants have established Internet-based businesses by which they rely on electronic communications for their operation. Accordingly, this Court should permit service on Defendants by e-mail and website publication.

#### **A. The Court May Authorize Service via Electronic Mail and Website Publication Pursuant to Federal Rule of Civil Procedure 4(f)(3).**

Fed. R. Civ. P. 4(f)(3) enables a foreign business entity to be served with process using an alternative method of service so long as the alternative method: (1) “is not prohibited by international agreement” and (2) “comports with constitutional notions of due process”. *Henry F. Teichmann, Inc. v. Caspian Flat Glass OJSC*, No. 13-cv-458, 2013 WL 1644808 at \*1, \*2 (W.D. Pa. April 16, 2013) (Hornak, J.). Notably, “[s]ervice under subsection [4(f)] (3) is neither

a last resort nor extraordinary relief. It is merely one means among several which enables service of process on an international defendant.” *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 330 (S.D.N.Y. 2015) (quoting *Advanced Aerofoil Techs., AG v. Todaro*, 2012 U.S. Dist. LEXIS 12383, at \*1 (S.D.N.Y. Jan. 31, 2012) (internal citations omitted)). Since third-party merchants on Internet marketplaces, like Defendants, have been known to use aliases, false addresses and other incomplete identification information to shield their true identities and there are, in fact, no physical addresses whatsoever associated with the majority of Defendants’ User Accounts, this is exactly the circumstance where the courts should exercise, as they previously have exercised, the authority to grant alternative methods of service. *See Id.* (quoting *Madu, Edozie & Madu, P.C. v. SocketWorks Ltd. Nigeria*, 265 F.R.D. 106, 115 (S.D.N.Y. 2010) (“The decision whether to allow alternative methods of serving process under Rule 4(f)(3) is committed to the sound discretion of the district court.”) (internal quotation marks omitted)); *see also Ference Dec.*, ¶¶ 3 - 6.

Fed. R. Civ. P. 4(f)(3) permits service in a place not within any judicial district of the United States<sup>5</sup> “by any internationally agreed means of service that is reasonably calculated to give notice”. *See Rio Props. v. Rio Intern. Interlink*, 284 F. 3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in *Rio Props.* held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in

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<sup>5</sup> In the unlikely event a defendant for whom Plaintiff does not have an address was located in the United States, service would be governed by Fed. R. Civ. P. 4(e)(1), which provides for “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located”. Pa. R. Civ. Pro. 430 provides “[i]f service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service.” Thus, service by electronic means would also be sufficient in the event any Defendant is located in the United States. *See Power Corp. of Canada v. Power Financial*, No. 4:09-cv-0510, 2009 WL 982750 (M.D. Pa., April 13, 2009) (service by email is permitted under Rule 430 when defendant uses online service that shields owner’s identity).

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.*

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. 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.* As such, this Court may allow Plaintiff to serve the defendants via electronic publication and/or e-mail.

Additionally, the Constitution itself does not mandate that service be effectuated in any particular way. Rather, Constitutional due process considerations require only that the method of service selected be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Brookshire Bros., Ltd. v. Chiquita Brands Int’l*, Case No. 05-CIV-21962, 2007 WL 1577771, at \*1 (S.D. Fla. May 31, 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust 10 Co.*, 339 U.S. 306, 314 (1950)); *see also TracFone Wireless, Inc. v. Bitton*, 278 F.R.D. 687, 692 (S.D. Fla. Jan. 11, 2012); *Rio Props., Inc.*, 284 F.3d at 1016. Accordingly, federal courts have allowed a variety of alternative service methods, including service by e-mail and publication on a designated website, where a plaintiff demonstrates the likelihood that the proposed alternative method of service will notify a defendant of the pendency of the action. *See, e.g., Rio Props., Inc.*, 284 F.3d at 1017 (holding, “without hesitation,” that e-mail service of an online business defendant “was

constitutionally acceptable”); *In re Int’l Telemedia Assocs.*, 245 B.R. 713, 721 (N.D. Ga. 2000) (“If any methods of communication can be reasonably calculated to provide a defendant with real notice, surely those communication channels utilized and preferred by the defendant himself must be included among them.”); *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (in “acknowledging the realities of the twenty-first century and the information age, the Court determined that the most appropriate place for publication was [Plaintiff’s Website].”).

Here, service on Defendants by e-mail and/or by publication on Plaintiffs’ Website will satisfy due process by apprising them of the action and giving them the opportunity to answer Plaintiffs’ claims. Based upon Plaintiffs’ investigation, each Defendant has at least one form of electronic means of contact, demonstrating that this means of contact is not just effective, but the most reliable means of communicating with that Defendant, and consequently, the most reliable means of providing Defendants with notice of this action. (*Ference Dec.*, ¶¶ 5 - 6.) Moreover, service by publication on Plaintiffs’ Website will be an additional source of reliability as Defendants will be able to see copies of the Complaint and all other documents in this matter electronically via their Internet browser. (*Id.*)

E-mail service on an online business defendant is appropriate and constitutionally acceptable in a case such as this when the plaintiff has proven that e-mail is the most effective means of providing the defendant notice of the action. *See Rio Props., Inc.*, 284 F.3d at 1017 (concluding “not only that service of process by e-mail was proper—that is, reasonably calculated to apprise [the defendant] of the pendency of the action and afford it an opportunity to respond— but in this case, it was the method of service most likely to reach [the defendant].”). *See also Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn.

2004) (“Under the facts and circumstances presented here, Rule 4(f)(3) clearly authorizes the court to direct service upon defendant by e-mail. The rule is expressly designed to provide courts with broad flexibility in tailoring methods of service to meet the needs of particularly difficult cases. Such flexibility necessarily includes the utilization of modern communication technologies to effect service when warranted by the facts”) (citation omitted). The *Rio Properties, Inc.* and *Popular Enters., LLC* courts each determined e-mail service to be appropriate in part because, as in this case, the defendants conducted their businesses online, used e-mail regularly in their businesses, and encouraged parties to contact them via e-mail. *See Id.*

In cases that are factually similar to this one, a number of Courts have held that alternate forms of service pursuant to Rule 4(f)(3), such as e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” *Rio Properties, Inc.*, 284 F.3d at 1018; *see also Chanel, Inc. v. Zhixian*, Case No. 09-cv-02835, 2010 WL 1740695, at \*3 (W.D. Tenn. March 17, 2010) (e-mail service “reasonably calculated to notify Defendants of the pendency of this action and provide him with an opportunity to present objections.”); *TracFone Wireless, Inc.*, 278 F.R.D. at 693 (finding that service of process by e-mail was reasonably calculated to apprise the defendants of the action and give it an opportunity to respond); *Popular Enters., LLC*, 225 F.R.D. at 563 12 (same); *In re Int’l Telemidia Associates*, 245 B.R. at 722 (“A defendant should not be allowed to evade service by confining himself to modern technological methods of communication not specifically mentioned in the Federal Rules. Rule 4(f)(3) appears to be designed to prevent such gamesmanship by a party” (concluding e-mail and facsimile service to be appropriate)); *Chanel, Inc. v. Zhibing*, 2010 WL 1009981, at \*4 (stating that e-mail service has the “greatest likelihood”

of reaching e-commerce merchants and noting, “The federal judiciary’s own CM/ECF system alerts parties . . . by e-mail messages.” Alternate service via e-mail granted).<sup>6</sup>

This Court has also authorized electronic service of process on merchants on Internet marketplaces in cases that are factually similar to the present case. *See, e.g., Rapid Slicer v. Buyspry*, No. 19-cv-249 (Order Authorizing Alternative Service entered on March 11, 2019) (Horan, J.); *Airigan Solutions, LLC v. Babymove*, No. 19-cv-166 (Order Authorizing Alternative

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<sup>6</sup> Courts in the Southern District of New York are also very experienced in handling cases against merchants on Internet marketplaces and have consistently permitted alternate electronic service. *See, e.g. Intenze Products, Inc. v. 1586, et al.*, No. 18-cv-4611-RWS (S.D.N.Y. May 24, 2018); *Allstar Marketing Group, LLC v. 158, et al.*, No. 18-cv-4101-GHW, Dkt. 22 (S.D.N.Y. May 17, 2018); *William Mark Corporation v. I&cc, et al.*, No. 18-cv-3889-RA, Dkt. 18 (S.D.N.Y. May 2, 2018); *WOW Virtual Reality, Inc. v. Bienbest, et al.*, No. 18-cv-3305-VEC, Dkt. 9 (S.D.N.Y. April 16, 2018); *Ideavillage Products Corp. v. abc789456, et al.*, No. 18-cv-2962-NRB, Dkt. 11 (S.D.N.Y. April 11, 2018); *Ideavillage Products Corp. v. Aarhus, et al.*, No. 18-cv-2739-JGK, Dkt. 22 (S.D.N.Y. March 28, 2018); *Moose Toys Pty Ltd. et al., v. 963, et al.*, No. 18-cv-2187-VEC, Dkt. 16 (S.D.N.Y. April 2, 2018); *Off-White, LLC v. A445995685, et al.*, No. 18-cv-2009-LGS, Dkt. 5 (S.D.N.Y. March 27, 2018); *Spin Master Ltd. and Spin Master, Inc. v. 158, et al.*, No. 18-cv-1774-PAE, Dkt. 18 (Feb. 27, 2018); *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565-JMF, Dkt. 18 (S.D.N.Y. Feb. 21, 2018); *Spin Master Ltd. and Spin Master, Inc. v. Alisy, et al.*, No. 18-cv-543-PGG, Dkt. 16 (S.D.N.Y. Jan. 22, 2018); *WowWee Group Limited, et al. v. Meirly, et al.*, No. 18-cv-706-AJN, Dkt. 11 (S.D.N.Y. Jan. 26, 2018); *Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory, et al.*, No. 18-cv-901-PGG, Dkt. 20 (S.D.N.Y. Feb. 1, 2018); *WowWee Group Limited, et al. v. A249345157, et al.*, No. 17-cv-9358-VEC, Dkt. 18 (S.D.N.Y. Dec. 11, 2017); *HICKIES, Inc. v. Shop1668638 Store, et al.*, No. 17-cv-9101-ER, Dkt. 14 (S.D.N.Y. Dec. 6, 2017); *Ideavillage Products Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., Ltd., et al.*, No. 17-cv-9099-JMF, Dkt. 19 (S.D.N.Y. Nov. 27, 2017); *Ideavillage Products Corp. v. Shenzhen City Poly Hui Foreign Trade Co., Ltd., et al.*, No. 17-cv-8704-JGK. (S.D.N.Y. May 24, 2017); *Moose Toys Pty LTD et al. v. Guangzhou Junwei Trading Company d/b/a Backgroundshop et al.*, No. 17-cv-2561-LAK, Dkt. 12 (S.D.N.Y. May 11, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbabyfactory et al.*, No. 17-cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017); *Ontel Products Corporation v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017); *Ideavillage Products Corp. v. Bling Boutique Store, et al.*, No. 16-cv-09039-KMW, Dkt. 9 (S.D.N.Y. Nov. 21, 2016); *Gucci America, Inc., et al v. Alibaba Group Holding LTD, et al*, No. 1:15-cv-03784-PKC (S.D.N.Y. June 23, 2015) (unpublished); *Chanel, Inc. v. Conklin Fashions, Inc.*, No. 3:15-cv-893-MAD/DEP, 2015 U.S. Dist. LEXIS 109886, at \*10-13 (N.D.N.Y. Aug. 14, 2015); *Belstaff Grp. SA v. Doe*, No. 15-cv-2242-PKC/MHD, 2015 U.S. Dist. LEXIS 178124, at \*2 (S.D.N.Y. June 18, 2015); *AW Licensing, LLC v. Bao*, No. 15-cv-1373, 2015 U.S. Dist. LEXIS 177101, at \*2-3 (S.D.N.Y. Apr. 1, 2015); *Klipsch Grp., Inc. v. Big Box Store Ltd.*, No. 1:12-cv-06283-VSB, 2012 U.S. Dist. LEXIS 153137, at \*3-4 (S.D.N.Y. Oct. 24, 2012); *True Religion Apparel, Inc. et al. v. Xiaokang Lee et al.*, No. 1:11-cv-08242-HB (S.D.N.Y. Nov. 15, 2011) (unpublished); *N. Face Apparel Corp. v. Fujian Sharing Imp. & Exp. Ltd. Co.*, No. 1:10-cv-1630-AKH, 2011 U.S. Dist. LEXIS 158807 (S.D.N.Y. June 24, 2011).

Service entered on February 14, 2019) (Fischer, J.); and *Airigan Solutions, LLC v. Artifacts\_Selling*, No. 18-cv-1462 (Order Authorizing Alternative Service entered on November 2, 2018) (Fischer, J.). Plaintiffs submit that allowing e-mail service in the present case is appropriate and comports with constitutional notions of due process, particularly given Defendants’ decision to conduct their illegal businesses using the Internet and utilizing e-mail as a primary means of communication.

Additionally, service of a defendant by publication on a designated website,<sup>7</sup> such as Plaintiffs’ Website, has been deemed appropriate service “so long as the proposed publication is ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315-16 (1950)). In *National Association for Stock Car Auto Racing, Inc. v. Does*, the United States District Court for the Western District of North Carolina determined that the plaintiff could serve “Doe” defendants and apprise those defendants of a pending preliminary injunction hearing by publishing on the plaintiff’s website. *Id.*

Accordingly, Plaintiffs have created a publication website on [www.ferencelaw.com](http://www.ferencelaw.com) whereon copies of the Complaint, Plaintiffs’ *Ex Parte* Application for Temporary Restraining Order, this instant Motion, discovery, and other documents filed in this action will be posted. (*Ference Dec.*, ¶¶ 5 - 6). The address for Plaintiffs’ Website will be included as part of service

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<sup>7</sup> The Ference firm is prepared to provide notice via website publication if permitted by the Court. Through the email addresses received from the Third Party Service Providers and Financial Institutions, Ference would provide the named Defendants with a link to a web page accessible at [www.ferencelaw.com](http://www.ferencelaw.com) that includes all of the relevant filings for the lawsuit. *See Ference Dec.*, ¶¶ 5 - 6.

of process in this matter. (*Id.*) Posting the Summonses, Complaint, and Plaintiffs' *Ex Parte* Application for Temporary Restraining Order on Plaintiffs' Website will provide notice sufficient to meet the due process requirements for service of process and notice pursuant to Federal Rule of Civil Procedure 4, apprise Defendants of the pendency of this action, and afford Defendants and any other interest parties an opportunity to present their answers and objection.

**B. E-mail and Publication Service Are Not Prohibited by International Agreement.**

Service via e-mail and website publication is not prohibited by international agreement. Based upon the information contained on Defendants' actual e-commerce marketplace stores, such as shipping information, and the data provided thereunder, Plaintiff has good cause to suspect some Defendants may be residing in the People's Republic of China ("China"), or other foreign jurisdictions, and/or redistribute products from sources in those locations. (*Ference Dec.* ¶ 7.) Both China and the United States are signatories to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the "Hague Service Convention"). (*See Ference Dec.* ¶ 8 and Comp. Ex. 1 thereto, Hague Service Convention and list of signatory Members.) However, the Hague Service Convention does not preclude the Court from authorizing service of process via e-mail or website publication.

Alternative means of service, such as e-mail and website publication, are not prohibited by the Hague Service Convention where a signatory nation has not expressly objected to those means. *See Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590-FAM, 2015 U.S. Dist. LEXIS 122000 (S.D. Fla. Sept. 14, 2015) (noting that an objection to the alternative forms of service set forth in the Hague Convention is limited to the forms of service expressly objected to). Article 10 to the Hague Service Convention allows service of process through means other than a signatory's Central Authority, such as "postal channels" and "judicial officers," provided

the State of destination does not object to those means. *See* Hague Convention, Art. 10, 20 U.S.T. 361 (1969). China has objected to the alternative means of service outlined in Article 10 of the Convention. (*Ference Dec.*, ¶ 8.) However, that objection is specifically limited to the means of service enumerated in Article 10, and China has not expressly objected to service via e-mail or website publication. (*See id.* and Comp. Ex. 1 thereto, which includes a true and correct printout of China’s Declaration/Reservation/Notification in regards to the Hague Convention.) Because the declaration to the Hague Convention filed by China does not object to e-mail and website publication service, “a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article [10].” *Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011); *see also WhosHere, Inc. v. Orun*, Case No. 13-cv-00526-AJT, 2014 U.S. Dist. LEXIS 22084, at \*9 (E.D. Va. Feb. 20, 2014) (authorizing e-mail service, noting objection to means of service listed in Article 10 “is specifically limited to the enumerated means of service in Article 10.”). Moreover, an objection to the alternative means of service provided in Article 10 does not represent a per se objection to other forms of service, such e-mail or website publication. *See In re S. African Apartheid Litig.*, 643 F. Supp. 2d 423, 434, 437 (S.D.N.Y. 2009) (requiring express objection to alternative method of service by signatory nation to preclude that particular means of service). Consequently, China’s objections to the means of alternative service provided in Article 10 are no bar to court-directed service and do not prevent this Court from authorizing alternative service of process via e-mail or website publication. *See, e.g., Gurung*, 279 F.R.D. at 220 (approving service of process on foreign defendants via e-mail despite India’s objection to Article 10, stating that an “objection to service through postal channels does not amount to an express rejection of service via electronic mail.”); *Stat Med. Devices, Inc.*, 2015 U.S. Dist. LEXIS 122000, at \*8-9 (permitting service of process on foreign

defendants via e-mail and substituted service on domestic counsel despite Poland's objection to Article 10, noting "This Court and many other federal courts have permitted service by electronic mail and determined that an objection to Article 10 of the Hague Convention . . . does not equate to an express objection to service via electronic mail."); *FTC v. PCCare247 Inc.*, Case No. 12-cv-7189-PAE, 2013 U.S. Dist. LEXIS 31969, at \*10 (S.D.N.Y. March 7, 2013) (authorizing service of process via e-mail and Facebook, explaining that "Numerous courts have held that service by email does not violate any international agreement where the objections of the recipient nation are limited to those means enumerated in Article 10."); *WhosHere, Inc.*, 2014 U.S. Dist. LEXIS 22084 (authorizing service of process on foreign defendants via e-mail despite Turkey's objection to Article 10); *Richmond 17 Techs., Inc. v. Aumtech Bus. Solutions*, Case No. 11-CV-02460-LHK, 2011 U.S. Dist. LEXIS 71269 (N.D. Cal. July 1, 2011) ("[N]umerous courts have authorized alternative service under Rule 4(f)(3) even where the Hague Convention applies. This is true even in cases involving countries that, like India, have objected to the alternative forms of service permitted under Article 10 of the Hague Convention.").

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant the present motion and authorize service of the Summonses, the Complaint, discovery, and future filings in this matter upon each Defendant in this action:

(1) via e-mail by providing the address to Plaintiffs' Website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) via the e-commerce marketplace for each of the e-commerce stores; or

(2) via website publication by posting a copy of the Summonses, Complaint, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, discovery, and all filings in this matter on Plaintiffs' Website appearing on [www.ferencelaw.com](http://www.ferencelaw.com).

A Proposed Order granting this motion is submitted herewith.

Respectfully submitted,

Dated: June 24, 2019

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Attorneys for Plaintiffs

**Schedule “A”**  
**Defendants With Item Number**

<b>Defendant No.</b>	<b>Defendant/ eBay Seller Name</b>	<b>eBay Item No.</b>
1	max_buy	283260359301 273784204706 283250774663
2	adamchahir91	173621663654
3	airaka	283314176449
4	chmysm2018	312582286181
5	chinacostco_com	401640749164
6	cute-little-bear	283429929853
7	dc_bigshop1	332871800517 233023661242
8	deals4you9	142946752219
9	dedicatedsalesman	113291620121
10	good.deals411	401727604162
11	hantetech	153460905493
12	malifa168	254193025258
13	parts_online_2015	333134236938
14	shengxinyide2019new	163661202341
15	shopiline	143070043285
16	songyupengl	372520429328 401631019715 401648408725 372520031376
17	4dice_international	113719563861
18	15oceaneshop	133016438995
19	a281768443	123728836755
20	adore-mart	273771923418
21	aldopets	173859442414

<b>Defendant No.</b>	<b>Defendant/ eBay Seller Name</b>	<b>eBay Item No.</b>
22	awesome*deals*today	264257214090
23	bigsqurreliland	223443866206
24	boris11184	123406003014
25	cashow002	264238330272 263996819056
26	chawtabsu0	333152522862 333152558517
27	crab-store	132917299708
28	dd2004720	163648416417
29	electronic_accessory_sales15	113383727885 113383725017
30	etrackonline	382631376693
31	global-onlineshop	192875156977
32	good_gol	173853506737
33	hanguang2018	183570344990 183594630051
34	happy2shopping2014	254014031904
35	happy-shop09	223457967046
36	homca2018	333151368645
37	home-store01	192877988183
38	ilovehome2018	153397186403
39	jaman38	192880268711
40	jostegen0	303047473519
41	lagacreye	264247037577 264247044239
42	letsboomboom	202496064579
43	ludas_mb	223461320615
44	mai202	392262076927
45	makdeep_0	123656394706
46	miggie77392012	183524497018 183568259837

<b>Defendant No.</b>	<b>Defendant/ eBay Seller Name</b>	<b>eBay Item No.</b>
47	nununy3090	233100866536
48	nutrasil	173831912125
49	oxwelle	253908289202
50	oz-sweetdeals	132987937936
51	paradisestore12	123689950279
52	parmesan_cliche	254136633195 254137985242 254137941237 254136632680 254137510050
53	parsayt0	323760244487
54	pha_6296	401732550025
55	plussale2017	183741229962
56	poramatse	143137777670
57	pricenter-ksdy	352642114979
58	qich97	273692053753
59	ralliart401	264281748175
60	rchcommerce1	163648213563
61	rebel1964	183749655490
62	redflower88	192864978584
63	ricji-45	312460809336
64	roberttaylor1589	352653064435
65	savvy-variety-shop	303119683035
66	sellingdaily90	293068665207
67	shopmallclub14	292868640649
68	slayway	372601630606 372601629978
69	sunfurax1	303022558695
70	tabletassembliesales1	254010266311 253990923200 253992995969

<b>Defendant No.</b>	<b>Defendant/ eBay Seller Name</b>	<b>eBay Item No.</b>
71	thph_5710	133021409411
72	timetree88	352625751236
73	towardfor	333126679945
74	truthedge.tech	173861733853
75	uleader666	362581659545
76	us2014.runzh	254095575455
77	usa.best.buying.experience	183681120066 183680993414
78	usa_ezra	273779162823
79	vejusshop17	192818928575
80	warehousedeals365	233119934769 382765057237
81	wewell888	223445427573
82	yair_uza	254181832584
83	yambaystore	123688194538
84	yvsg7734	163479765919
85	allcommerce27	173873059719
86	bruceshark-003	254206435700
87	chuanhu-store	382868561129
88	daos_34	372655989805
89	elshm_23	382855286796
90	excelsellerusa	233202722712
91	gohastings	382909773600
92	japanmarketplace	153397624294
93	ljsuperiorchew	163605701520
94	lucid-dreams	233203320927
95	lxlspets	192877443124 92877442677
96	maexus2018	303114565917
97	oobest_shop	123690828930
98	pege-318	202660041223

<b>Defendant No.</b>	<b>Defendant/ eBay Seller Name</b>	<b>eBay Item No.</b>
99	peninsulahome	223452646909
100	power-option	254033147886
101	presst_55	392187927096
102	ramah76m9	382911102525
103	raysal_64	143224397484
104	rm_best_4u	163549164611
105	saveyourbuy	333122249547
106	sedra-mb	264272772825
107	shimi_di	254207244054
108	simshop2018	323499684952
109	smartshopper2018	192877281447
110	soonhua2010	392267370872
111	thebusybunny	303134296865
112	uniquely_dg	233145027936
113	vestut-56	143222917427
114	violetrosech	323644254194