

**FILED**

DEC 17 2019

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,

Civil Action No. 19-1627

v.

AHUI, *et al.*,

Defendants.

**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"), 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.)

## 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 Amazon.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>2</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'

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<sup>2</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.

Website”), such that anyone accessing Plaintiffs’ Website will find copies of documents filed in this action. (See *Ference Dec.*, ¶¶ 5 - 6.)

Amazon.com, Inc., which operates the Amazon.com marketplace maintains contact e-mail addresses for sellers operating via their marketplaces, and based upon past actions, Amazon.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 Amazon.com have provided an electronic form of contact in the form of Amazon’s messaging system. (*Id.*) Amazon’s messaging system facilitates communication between customers and merchants in the Amazon.com marketplace. (*Id.*)

Furthermore, sellers operating via Amazon.com use money transfer and retention services with Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”), as a method to receive monies generated through the sale of Infringing Products. Defendants have provided at least one accurate contact email address to Amazon Pay in order to conduct business via their respective Seller IDs. (See *Ference Dec.*, ¶ 4.) Defendants’ Amazon Pay account e-mail addresses must necessarily be valid, working e-mail addresses; otherwise, Defendants would not be able to process payments through their Amazon Pay accounts.<sup>3</sup> (See *Id.*) Moreover, pursuant to Amazon Payments, Inc.’s Customer Agreement, Amazon Pay account holders consent to receive all communication electronically, including via e-mail, and are required to maintain a valid e-mail address. If Amazon Pay discovers an e-mail address has become invalid such that

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<sup>3</sup> See Amazon Payments, Inc. Customer Agreement, available at <https://pay.amazon.com/us/help/201212430> (last visited May 21, 2019).

electronic communications sent to the e-mail address by Amazon Pay are returned, Amazon Pay may deem the account to be inactive and disable transaction activity until a valid, working e-mail address is provided. Based upon past actions, Amazon Pay identifies these contact e-mail address for all Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiffs are requesting in the instant case.

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 Amazon and/or Amazon Pay, or through Amazon'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 Amy Cline in Support of Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets [*Cline 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>4</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 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

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<sup>4</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).



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 Telemedia 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>5</sup>

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<sup>5</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. 1&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*

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 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>6</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*

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*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 Airbrushpainting 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).

<sup>6</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.

*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 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: December 17, 2019

/s/ Stanley D. Ference III

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Attorneys for Plaintiffs



**Schedule “A”**  
**Defendants With Store Name and Seller ID**

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
1	Ahui	A3U2CPCPJ050N8	B07TX92ZNQ
2	Ailivehome	A2Q37ZZMRPWEUV	B07JH3TYV8
3	All Prime LLC	A1NRBK5OKTLIFR	B07XLP62VR
4	Allmall888	A25OCV4VBOQUKF	B07RJWXCLF
5	ANVS Tech	A8LT6FXIOGDFT	B07ML5G2WQ
6	AogeUS	A3MWRF119YSYCT	B07VWVJZZT
7	Artker	A1LTF055JILCQ2	B07XMLYNKX
8	Atta Boy	A2WOOIJCDNZIVD	B07QKQ6P6T
9	Augama	A2A5F1J2BTE5O5	B07S4D657W
10	Auter USA	A16DKW394FVK2S	B07X7RHPMJ
11	Autozity	ATVDEQ3O2D7PY	B07ZHDXT5K
12	Axiaoxiao	A3SRZL3PDSSGPU	B07V4273FX
13	Aya Chic	AV58HO4Y4YG5	B07LCJJGG9
14	Ayebeau	A2GOBGX3PC0YNJ	B07TS4GTND
15	Babaer	A2X8047YTWB3QG	B07XX9KQ86
16	Bettersounds	ARCWMCB8R9G28	B07RNP5Q64
17	Bibolin	A1596LJ1S5W3TG	B07LH5JDX4
18	Big Desert	A2CQ3M4XU1WT8J	B07PDL8267
19	Boafig	A33GCS1BVSIGL2	B07PXR9TH4

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
20	Botaniqueessentials	A1HG09WM1GIS7A	B07QK33ZZN
21	BRHHO	A1PBBFMFMOEZ72	B07S4FY7HM
22	BringerPet	A2R8LQFQXAS02Q	B07WK75VB8
23	Broshooo	A3DZSMYMI1CGXN	B07PVKB6SQ
24	BUOCEANS-SKY	A1ON3DR30UNJHY	B07XNYDDC1
25	BUYBST	A1ZLNBDINT4IZU	B07Q5G1WZ2
26	Bzonsmart Direct	AHONMT16XCO00	B07PLQK56B
27	Chaomike	A1MUD9GV35XJN5	B07QYGMGZ5
28	CheerMaker	A1FJAUSPRZ91OI	B07QGS8GZQ
29	Cyprapid	A2H9A2I79SE359	B07QPLPMV6
30	Cypropid Direct	A2L3N86K9OOJ00	B07Q2S72S1
31	Dawginme	A6MFQINS9TKP3	B07TNF9D8N
32	DIFFLIFE Inc	A14AEQBL1VFTWB	B07P4199GW
33	Doubletrain	A2BZJ01X7OFC	B07QY73XV3
34	DR Bucks	A331COZNMVERF	B07V5PYY7R
35	Dreamvasion	A28KT5WWRGE7GR	B07QLQS6GF
36	Dubybloom	A2ZULWH0LC4SA6	B07TP56PM9
37	DXH2019	A3M8MU0XHHRI3U	B07YXS75QK
38	Earthly Hand	A3HKUNZ7QQ4AD8	B07PN324L3
39	Elyvate	A1IPX60SQL9IEQ	B07M76PXTD
40	Emgoods	A2LPDVL9EG7Y8D	B07SKG3D13
41	EMITEC	A285W476ZH7S3L	B07MKGZCDS
42	Engerwall	A13Z6ZJ65GO471	B07QLRYY61
43	EVENTS	A3NPMCN3ASH8M4	B07V7B7LGR

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
44	Everyday Joy	A32042ABW1EBA8	B07NWNFYFVM
45	Fairwin-Direct	A1GBD5L13AYNED	B081JFX4C6
46	Fanslong	A34N1Y0D6522AJ	B07P66FHST
47	FFHPET	A2L3DPHTO3K7G0	B07M633DGX
48	FG [FamilyGroup]	AH6POBJ04HF6W	B07L2GNRNT
49	FlyingStork	A2EJVGYMF7UK0J	B07V4GHY2P
50	FULNEW	A2VVK3XIPF7PLU	B07MRJ2RCR
51	FunCo	AECMRGNZ74088	B07MF1TNSW
52	Gardencolo	A24TIWOB6Y52IL	B07QBLRLSC
53	Geluck&Mohary Global US Online	A12SEMS6M015RN	B07L8X9F6T
54	Grasp It	A2IO9PWGSATNPH	B07YYZ8JYD B07RN4QCR9
55	Hanheng	A2UPRT91JV93PY	B07R5LLFH2
56	HAO MA LTD	A3EF4QA3MVKSFL	B07PJGZMGM
57	HAPPY MARIE	A20ZIABWRFKMA9	B07QRGJXGW
58	Heacra	AGVE3N6Y5CYPB	B07NBDLMM2
59	HETOO	A3SCDVBQWCDYIU	B07QYDVFXL B07TCGJSSP
60	Hinrylife	A1KLHJR9WIMQXT	B07PPD7D7P
61	Holdoor	A1BQ1S3TWD05A7	B07TVSNSNG
62	Honestptner Direct	A3740H0TCLDQY9	B07SJZ2YDT
63	Hongsound	A3PTAN2I58BT4Z	B07QYKJ8VZ
64	HULUN	A2XBW8WTZGI7TK	B07M78ZKTV
65	I-pure items	A2IKTKEPMEW9NQ	B07S9YBB4S
66	Itemsandgoods323	A113GJ49XJ0SIC	B07X2D5RHB

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
67	JALLAB	A3FQ5H4F6HMW2Y	B07MJQ2T34
68	JerJen Business Solutions	A2PQ2V6AX51B8D	B07MQJHPPL
69	JiaJiaLove	AGDDEEE9Q9FWQ	B07HHYVJZJ
70	Jiasber	A15C2T7YZ8QIDS	B07ZYHJ3M9
71	JINGSHENG TEC	AB11VYRIO8TE	B07TXNKXTL
72	Jpettie	A2YGY78UR8AVK6	B07MF2TKR2
73	Juhang	A2TY3CN5B4MKGE	B07M8PMY4V
74	Ka June	A6FLM7VSPKANY	B07RC71CRL
75	KAMNIA	A34XEIJ0FYM5OX	B07ZG2G5WV
76	KELAD	A2MZV8VHYSK1OY	B07XWP28FF
77	KEWANG	A74N1N376UNJB	B07QL71MGN
78	Kimcon	AO9O9WLJQ0VVO	B07SPKJZP4
79	KJ-bunny-US	ALB5NY1WH6KJV	B07QNZNC4N
80	KNNSRE	AAA6O4A42RACT	B07W3BK77P
81	Kutrer	A2FT22UGQSDG3	B07QB3SSBT
82	LAVYU SHOP	A1HKBCWJ4EX7YI	B07YTS1BVR
83	LEOHOME Direct	ASM1G21RKWQVG	B07TDPTLD8
84	LEVETT STORE	A1YQCLYW752GQI	B07JM387ZJ
85	Lingweida2018	A1BED976EGRA99	B07Y5ZXTRF
86	Linktor	A1ZVD45MDQVSMM	B07RHSZJSV
87	LISTOS'	A6HG3VO4UEWN9	B07TzM7B34
88	LIZFZLI	A236T2XB36SL7	B07TQSWJ31
89	LMP-PRO	A1IO52YR61IZR9	B07QKFXQ7T
90	LOMEVE	A352GYI24QCF3Z	B07STV2VTS

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
91	Lou Yan	A2YRJYJTFTGKUM	B07X41WNT9
92	Lovac	A3KWOYXC59CG8P	B07MH4N7WG
93	Magnoloran	A2TJM3J6VRTRAR	B07PN2MQKD
94	Manfore	A3U8N0MA47KIZ7	B07QWR6VDM
95	Mansgoods	A3LGEKSF23N94S	B07VJ5JDMY
96	Marcek	AWDL348ZQ8N4Q	B07RB6R8Y5
97	Mini US	A274PS7EH4STWC	B07R8BSLXH
98	MIRYUM	A2D0P7B0LUIPOK	B07M66D9D9
99	Mofei	A2PQ8GKZWMX6XO	B07M888BGT
100	Moonia No.1 Store	A1NT1LLAH3SCVB	B07QR1V93V
101	Mosbug-Store	AFVD5UBZ7I22I	B07HH3N3L6
102	MOZOOSON DIRECT	A24C9RK7XFZ5LV	B07PQRWYPG
103	MS hong	A1MQ17GQ2699WZ	B07QQBSKZJ
104	Mulan&PH Factory	A2SU0GAVJ9OA9J	B07Y8GN6FZ
105	NEWA TRADING	A10I7J9V9M8UOX	B07R1JDQ7Q
106	NiceKrud	A14NSFVD7ZKOLB	B07SZH3KL3
107	Niuworld	A3DOF2HOZYWW1W	B07QYGC471
108	OKA Direct	A1ZRM0A1AY8AC2	B07XC7QZSL
109	Okistore	A2FKVCM8E90CN7	B07S8QV59T
110	Olrom	AYYYCQXUD1A4U	B07QPCHLJB
111	OUTUNG	AS7QBW9ESCL9F	B07P14HWQR
112	PAHOO LLC	A1PBK72SX0L8IP	B07QXQHMLF
113	PauliaTT	A3K8K2UU71WIT9	B07QX1XL8R
114	PG.Kinwang	A2AJ6IHT4WO3W7	B07MMBHGW1

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
115	Pihappy	A1PV795YHMBJGI	B07Q25CLY9
116	PINAOL	A1JK4GXUMS499Q	B07RWM1SD8
117	Popiy	A1Q9OSIFTKPHWR	B07WMNVQHQ
118	Positive Vibes Express	AGEUY7G2B7SJ8	B07MW7HLNB
119	Pounce n Play Shop	A2ZULWH0LC4SA6	B07SD1T9C5
120	PrestigeWD	A1IWUYFQ8VPBJA	B07QMC1D5Z
121	Price-Pop	A2W7S7E1K9VJ4Q	B07QCJS7B
122	PTREWOD	ABNG47SIUQFAZ	B07QLJX436
123	Rikounan	A2VDQPJKSUWURR	B07T2468K2
124	Roce Today	A2HDQ4UQ1J0OF5	B07N76GPHQ
125	Rolkstone	A3QQ5K8GTSXFUD	B07QD5BPW7
126	Shaks goods	A27ZPTUC3E5HSF	B07QZX6C1T
127	Shandongxiaogouchongwuyongpinyouxiangongsi	A1G9JETKBXHNNN	B07TLTB8C5
128	SHINCO	A7BAKTUTEHM2O	B07R1HSP9F
129	SIRAY US	A3FKKDXF1C4S2J	B07ZWVZPWH
130	SmileToSell	AZ132CXWZM3HD	B07X2D5RHB
131	ST-Transfer	A2N3YB5UINFLFN	B07QDXK6PJ
132	Tainni	A2E59C3851JHM0	B07P6M37JT
133	Telvo Zan	A2RC7Q07GD3RH	B07V9L79TM
134	TEVOLT	A299ZWGKWWZRGV	B07Q8FK62L
135	Timall	A3KI1U01FJ1NRZ	B07PM1W9YR
136	Timeless Ecommerce LLC	A3DJS3V27B8IVH	B07MNB9WXV
137	Turuistore	A27R4FX0T9XSJO	B07TG2BMR1
138	Typscoldt	A1MCEOOSW27MAR	B07X3ZRDHC

<b>Def. No.</b>	<b>Defendant/ Amazon Store Name</b>	<b>Amazon Seller ID</b>	<b>Amazon ASIN</b>
139	UKSIDE	A10KV9KRQ12CA7	B07R24KYG7
140	USDev	AUXBS4D5MP7HI	B07Q4C52MB
141	Vndaxau	A29LGGMEB2YK CZ	B07PHFM5XK
142	WiseDare	A333C8NL57A6TA	B07PPHP8GK
143	Wisedom	A2PWVG57ETOCZH	B07JKSV17D B07JKLFMZ X
144	Wittystore	A26GPK5EBKIN24	B07TMB297H
145	Xuanbon	A35P6T4SL4VZQE	B07QSBWMF1
146	Yaloon	AHSAI3V6SYIB3	B07VWS6VBJ
147	Yiruichepin	A2A5VAZIS1BIUO	B07P9TFV4X
148	Yiwu Lanjie Trading Co., Ltd	A6LZWYNZ7QGCD	B07RJTXGJ3
149	Yocolostrap	A2GL7JZEGNR5TQ	B07WSMJTG9
150	YouZeus	A1CMENCU6TZLEC	B07R28DTJD
151	3rdchanceinc	A388QZ7SQ71TRM	B074MR6GX5