

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CV-61332-RAR

CHANEL, INC.,

Plaintiff,

v.

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

Defendants.

**SEALED ORDER GRANTING PLAINTIFF’S *EX PARTE* MOTION FOR ORDER
AUTHORIZING ALTERNATE SERVICE OF PROCESS ON DEFENDANTS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

THIS CAUSE comes before the Court on Plaintiff’s *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) [ECF No. 7] (“Motion”). The Court has carefully reviewed the Motion, the record, and is otherwise fully advised in the premises. For the reasons set forth below, it is

ORDERED AND ADJUDGED that Plaintiff’s Motion is **GRANTED**.

BACKGROUND

On June 28, 2021, Plaintiff, Chanel, Inc., filed a Complaint for Damages and Injunctive Relief [ECF No. 1], alleging Defendants, the Individuals, Business Entities, and Unincorporated Associations identified on Schedule “A” attached to the Complaint, are infringing Plaintiff’s trademarks and promoting, advertising, distributing, offering for sale, and selling counterfeits and confusingly similar imitations of Plaintiff’s branded products within the Southern District of Florida through the operation of e-commerce stores and photo albums under the seller identification names and/or interactive, commercial websites operating under their domain

names (“Seller IDs and Subject Domain Names”), as identified on Schedule “A” to Plaintiff’s Motion.¹

Plaintiff contends that Defendants operate via the Internet and utilize electronic means as reliable forms of contact. *See* Declaration of Stephen M. Gaffigan [ECF No. 7-1] ¶¶ 3-11. According to Plaintiff, it has good cause to believe that Defendants are residents of China, Philippines, Spain, United Arab Emirates, UK, Vietnam, or other foreign jurisdictions. *See id.* at ¶ 12. Plaintiff further contends that Defendants have at least one operational form of electronic contact, including e-mail, providing a reliable means of communicating with them. *See id.* at ¶¶ 3-9.

Plaintiff has also created a designated serving notice website located at <http://servingnotice.com/cp05e/index.html>, where copies of the Complaint and all other documents on file in this action will be displayed. *See id.* at ¶ 10.

LEGAL STANDARD

Federal Rule of Civil Procedure 4(f)(3) allows a district court to order an alternate method of service to be effectuated upon foreign defendants, provided that it 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., Ltd.*, No. 05-CV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (citing *Prewitt Enters., Inc. 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).

¹ The complete list of e-commerce stores, photo albums, and websites includes 372 seller identification names and domain names.

ANALYSIS

Service by e-mail and via posting on a designated website is not prohibited under international agreement in this case. Although the United States, China, Philippines, Spain, UK, and Vietnam are signatories² to the Hague Convention on the Service Abroad of Extra-Judicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361 (“Hague Convention”), the Hague Convention does not specifically preclude service of process via e-mail or by posting on a designated website.

Where a signatory nation has objected to the alternative means of service provided by the Hague Convention, 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.³ *Cf. Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, No. 15-20590-CIV, 2015 WL 5320947, at *3 (S.D. Fla. Sept. 14, 2015) (noting that an objection to the alternative forms of service set forth in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 658 U.N.T.S. 16, is limited to the specific forms of service objected to). 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 internet communication does not violate an international agreement.

Further, e-mail and posting on a designated website are reasonably calculated to give notice to Defendants. Plaintiff cites a catalog of cases where courts have granted leave for a plaintiff to serve by e-mail (*see* Mot. 13 n.9; 16 n.13) and where courts have granted leave for a

² United Arab Emirates is not a signatory to the Hague Convention. *See* Gaffigan Decl. ¶ 13, n.9.

³ China, Philippines, Spain, UK, and Vietnam have not expressly objected to service via e-mail or website posting. *See* Gaffigan Decl. ¶ 13, nn.10-11.

plaintiff to serve by website posting (*see* Mot. 13-14 n.10; 16 n.13) where, as here: (1) the defendants conducted their businesses over the Internet; (2) the defendants used e-mail regularly in their businesses; and (3) the plaintiff shows e-mail is likely to reach defendants. *See Rio Props. Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017–18 (9th Cir. 2002).

Plaintiff has shown good cause why leave should be granted to allow service of the summonses, the Complaint, and all filings and discovery in this matter on Defendants via e-mail or posting on Plaintiff's designated website. Thus, for the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion [ECF No. 7] is **GRANTED** as follows:

1. Plaintiff may serve the summonses, Complaint, and all filings and discovery in this matter upon Defendants via e-mail by providing the address to Plaintiff's designated serving notice website to Defendants via the e-mail accounts provided by each Defendant (i) as part of the data related to its e-commerce store, photo album, or domain name, including customer service e-mail addresses and onsite contact forms, or (ii) via the e-commerce marketplace, social media, or image hosting website e-mail for each of the e-commerce stores and photo albums, including private messaging applications and/or services, or (iii) via the registrar of record for each of the domain names; or

2. Plaintiff may serve the Summonses, Complaint, and all filings and discovery in this matter upon Defendants via website posting by posting a copy of the same on Plaintiff's designated serving notice website appearing at the following URL:

<http://servingnotice.com/cp05e/index.html>.

DONE AND ORDERED in Fort Lauderdale, Florida, this ___ day of _____, 2021.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE