

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 25-cv-23049-BLOOM/Elfenbein

TOHO CO., LTD.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED IN
SCHEDULE "A" HERETO,

Defendants.

_____ /

**SEALED ORDER GRANTING *EX PARTE* MOTION FOR ALTERNATE
SERVICE OF PROCESS BY E-MAIL AND ELECTRONIC PUBLICATION**

THIS CAUSE is before the Court upon Plaintiff Toho Co. Ltd.'s *Ex Parte* Motion for Alternate Service of Process by E-Mail and/or Electronic Publication ("Motion"), ECF No. [10], filed on July 23, 2025. Plaintiff seeks an order authorizing alternate service of process on the Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified in Schedule "A" to the Complaint via electronic mail ("e-mail") and via website posting.

Federal Rule of Civil Procedure 4(f)(3) provides that service on a foreign defendant may be accomplished "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3). "[E]specially in a circumstance where service upon a foreign corporation under Rule 4(f)(1) or 4(f)(2) has been cumbersome, district 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." *Brookshire Bros., LTD. v. Chiquita Brands Int'l*, No. 05-

cv-21962, 2007 WL 1577771, at *2 (S.D. Fla. 2007) (citing *Prewitt Enters. v. OPEC*, 353 F.3d 916, 921, 927 (11th Cir. 2003)).

Plaintiff has presented evidence that Defendants are likely residing in China, which is a signatory to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters (“Hague Convention”). ECF No. [10] at 8. The Hague Convention does not specifically preclude service by e-mail and electronic publication on a website. *See Facebook, Inc. v. Banana Ads, LLC*, No. C–11–3619 YGR, 2012 WL 1038752, at *2 (N.D. Cal. 2012) (citing cases where courts held that service by e-mail did not violate the Hague Convention as to foreign defendants). 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. *Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590, 2015 WL 5320947, at *2-*3 (S.D. Fla. 2015) (noting that an objection to the alternative forms of service set forth in the Hague Convention 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, 219-20 (S.D.N.Y. 2011).

Additionally, “Article 1 of the Hague Convention states that the ‘Convention shall not apply when the address of the person to be served ... is not known.’” *Winston v. Walsh*, 829 F. App’x 448, 450 (11th Cir. 2020) (quoting Hague Service Convention art. 1, Nov. 15, 1965, 20 U.S.T. 361). Plaintiff’s well-pleaded allegations establish that Defendants’ true identities are unknown, Defendants do not provide any physical address information on their Internet Stores, or provide misleading physical address information in order to conceal their locations and avoid

liability for their unlawful conduct. ECF Nos. [1] ¶¶ 5, 21, 22, 25, 33, [10] at 7-8. Accordingly, the requested service methods are not prohibited by international agreement.

Second, Plaintiff has established that Defendants have at least one known and valid form of electronic contact, and Plaintiff has created a website to provide notice of this action to Defendants, which will be provided to Defendants' known e-mail addresses. ECF No. [10] at 6-7. Therefore, service via e-mail and through electronic publication on a website is "reasonably calculated, under all circumstances, to apprise [Defendants] of the pendency of the action and afford them an opportunity to present their objections." *Brookshire Bros., LTD*, 2007 WL 1577771, at *1 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Thus, the Court will exercise its discretion to allow service on Defendants through e-mail and electronic publication on a website.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's *Ex Parte* Motion for Alternate Service of Process by E-Mail and/or Electronic Publication, **ECF No. [10]**, is **GRANTED**.
2. Plaintiff may provide notice of the proceedings in this case to Defendants, including notice of the preliminary injunction hearing, service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website, and by 1) sending an e-mail to the e-mail addresses provided by each Defendant on the Defendant's online store or website or 2) by sending an e-mail to the e-mail addresses provided for each Defendant by third parties in response to the Temporary Restraining Order.
3. The Clerk of the Court is directed to issue a single original summons in the name of "THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES,

PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS IDENTIFIED IN SCHEDULE A HERETO” that shall apply to all Defendants. The combination of providing notice via electronic publication and e-mail, along with any notice that Defendants receive from payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

DONE AND ORDERED in Chambers at Miami, Florida, on July 30, 2025.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record