IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Civil Action No. 1:22-cv-22706-RNS

BELL NORTHERN RESEARCH, LLC,

Plaintiff,

v.

HMD AMERICA, INC., HMD GLOBAL OY, SHENZHEN CHINO-E COMMUNICATION CO. LTD., HON HAI PRECISION INDUSTRY CO., LTD, TINNO MOBILE TECHNOLOGY CORP., SHENZHEN TINNO MOBILE CO., LTD., TINNO USA, INC., UNISOC TECHNOLOGIES CO. LTD., SPREADTRUM COMMUNICATIONS USA, INC., WINGTECH TECHNOLOGY CO. LTD., WINGTECH INTERNATIONAL, INC., HUAQIN CO. LTD., BEST BUY CO., INC., BEST BUY STORES L.P., TARGET CORP., WALMART INC.,

Defendants.

JURY TRIAL DEMANDED

PLAINTIFF BELL NORTHERN RESEARCH LLC'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO EFFECT ALTERNATIVE SERVICE UNDER RULE 4(f)(3)

Plaintiff Bell Northern Research, LLC ("Plaintiff" or "BNR"), through undersigned counsel, hereby submits its Reply to Defendant Huaqin Co. Ltd.'s ("Defendant" or "Huaqin") opposition to Plaintiff's Motion for Leave to Effect Alternative Service Under Rule 4(f)(3).

I. INTRODUCTION

Huaqin's opposition brief seeks to delay its participation in this litigation, ignoring this Court's precedent and failing to distinguish the arguments or cases cited by BNR in support of its request for alternate service of process. Huaqin openly acknowledges that it has actual notice of this litigation, but insists that, contrary to the requirements of due process, further time-consuming Hague procedures must be pursued before it is obligated to answer or otherwise respond to Plaintiff's claims. The cherry-picked case law offered by Huaqin in support of this assertion is unavailing. Accordingly, this Court should reject Huaqin's arguments and grant BNR's motion for alternative service.

II. LEGAL STANDARDS

Rule 4(f)(3) permits service on a foreign defendant "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3). Service pursuant to Rule 4(f)(3) is "merely one means among several which enables service of process on an international defendant." *Rio Props. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). "All that is required is that the proposed service is not prohibited by international agreement and such service comports with Constitutional due process, meaning that it is 'reasonably calculated' to provide the defendants notice and an opportunity to defend." *Todd Benjamin Int'l, Ltd. v. Tca Fund Mgmt. Gp. Corp.*, No. 20-21808-Civ-Scola, 2022 U.S. Dist. LEXIS 194645, at *4 (S.D. Fla. Oct. 25, 2022).

III. ARGUMENT

A. Service on Huaqin Under Rule 4(f)(3) Is Proper

Huaqin incorrectly asserts that BNR's request for alternative service "runs contrary to Supreme Court precedent and international law. (Dkt. 74 at 2.) This argument is wrong and

ignores the decisions by this Court exercising its discretion to grant motions for alternative service under Rule 4(f)(3). *Todd Benjamin Int'l, Ltd.*, 2022 U.S. Dist. LEXIS 194645, at *4 (holding that service by mail under Rule 4(f)(3) was appropriate on foreign defendants located in Hague signatory countries); *Abercrombie & Fitch Trading Co. v. Hcoaustraliasale*, No. 21-61967-Civ-Scola, 2021 U.S. Dist. LEXIS 248722, at *3–5 (S.D. Fla. Sept. 29, 2021) (authorizing service by email and website posting under Rule 4(f)(3) on defendants located in Hague signatory countries, including China); *Barclay-Ross v. Ippolito*, No. 22-21348-Civ-Scola, 2022 U.S. Dist. LEXIS 192534, at *4–5 (S.D. Fla. Oct. 21, 2022) (authorizing email service under Rule 4(f)(3) on defendants located in Hague signatory countries). Indeed, Huaqin even ignores this Court's decision last month to grant BNR's motion for alternative service on defendant Chino-E who is also based in China. *See Bell Northern Research, LLC v. HMD Am., Inc.*, No. 22-22706-Civ-Scola, 2022 U.S. Dist. LEXIS 192527, at *4–5 (S.D. Fla. Oct. 21, 2022) (authorizing email service under Rule 4(f)(3) on Chino-E).

Instead of addressing the merits of this Court's prior decisions, and BNR's present motion, Huaqin incorrectly relies on *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988) for the premise that the Hague Convention is "mandatory" in this case and that there is "no exception" to its requirements. (Dkt. 74 at 4–5.) Huaqin's reliance is misplaced because *Schlunk* expressly held that the Hague Convention did "not apply, and service was proper" on the defendant by serving its domestic subsidiary. 486 U.S. at 708.

The Hague Convention did not apply in *Schlunk* because that defendant could be served via other means, such as service on its domestic subsidiary, even though that domestic subsidiary might be required to send the summons and complaint (i.e. judicial documents) abroad to the foreign corporation. *Id.* at 707–708. Huaqin may be served by other means as well.

Even Huaqin's cited cases from this District recognize that even where the Hague Convention is found to apply, "this does not prohibit the Court from granting alternate service under Rule 4(f)(3) ***if appropriate***." *Int'l Designs Corp., LLC v. Qingdao Seaforest Hair Prods. Co., Ltd.*, No. 17-60431-CIV-MORE, 2018 U.S. Dist. LEXIS 3038, at *6–7 (S.D. Fla. Jan. 4, 2018) (emphasis in original); *Gr Opco, LLC v. Limited*, No. 20-23623-Civ-WILLIAMS/TORRES, 2021 U.S. Dist. LEXIS 256251, at *8 (S.D. Fla. Jan. 27, 2021) ("Having summarized the parties' positions, service via the Hague Convention is *not* an absolute prerequisite."). Huaqin fails to cite a single case from this Court in support of its proposition that service via email is violative of the Hague Convention, and instead relies on a cherry-picked assortment of non-binding cases to argue BNR's request is "not permitted by the Hague Convention." (*See* Dkt. 74 at 5–6). As this Court's precedent demonstrates, this argument is incorrect. Accordingly, Huaqin's argument that the Hague Convention is mandatory in this case as the only means to effect service on Huaqin (Dkt. 74 at 4–6) should be rejected.

B. The Court Should Exercise Its Discretion and Permit Service on Huaqin Under Rule 4(f)(3)

Huaqin incorrectly argues that this Court should not exercise its discretion under Rule 4(f)(3) because

> "Plaintiff clearly knows Huaqin's location in China. There is no showing that Huaqin is evading service . . . [a]nd there is no evidence that serving Huaqin under the Hague Convention would be particularly difficult or result in an abnormally long delay."

(Dkt. 74 at 7–8.)

Courts have clearly stated that Rule 4(f)(3) is not merely a "last resort" to be used only after other methods of service, including those under the Hague have failed; rather, Rule 4(f)(3) stands on equal footing with the other service methods enumerated in Rule 4(f). *Brookshire Bros., Ltd. v. Chiquita Brands Int'l, Inc.*, No. 05-21962, 2007 U.S. Dist. LEXIS

39495, at *2 (S.D. Fla. May 31, 2007) (quoting *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002)); *accord AngioDynamics, Inc. v. Biolitec AG*, 780 F.3d 420, 429 (1st Cir. 2015) ("By its plain terms, Rule 4(f)(3) does not require exhaustion of all possible methods of service before a court may authorize service by 'other means.'"). Thus, "[s]ervice may be accomplished under Rule 4(f)(3) as long as it is (i) ordered by the court, and (ii) not prohibited by an international agreement." *U.S. Commodity Futures Trading Comm'n v. Aliaga*, 272 F.R.D. 617, 619 (S.D. Fla. 2011). "No other limitations are evident from the text." *Id.* "In fact, as long as court-directed and not prohibited by an international agreement, service of process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country." *Fru Veg Mktg., Inc. v. Vegfruitworld Corp.*, 896 F. Supp. 2d 1175, 1182 (S.D. Fla. 2012).

Here, alternative service by email, as proposed by BNR, is appropriate in this case where Huaqin concedes it has notice of the lawsuit and the allegations against it, the Court has already granted a motion for alternative service on Chino-E to which Huaqin has not identified a single error, and "all Defendants" in this case have been ordered to respond to BNR's complaint on December 19, 2022. (Dkt. 64.) Contrary to Huaqin's arguments, BNR has sufficiently shown that the Hague Convention procedures will result in unnecessary delay because of the requirements for document translation and the indefinite amount of time it may take for these translated documents to be sent out for service by China's Ministry of Justice. (Dkt. 73 at 8.)

Huaqin is also wrong to argue that "over the past several months Plaintiff has not made any efforts or exercised any diligence in effectuating proper service on Huaqin." (Dkt. 74 at 10.) Pursuant to Rule 4 of the Federal Rules of Civil Procedure, BNR sent Huaqin waiver forms after filing the Complaint and engaged in a dialogue with Huaqin's U.S. counsel about these forms.

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