

E-filed 09/10/2010

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 CHANEL, INC.,

No. C 10-2180 RS

11 Plaintiff,

12 v.

**ORDER GRANTING APPLICATION
FOR AUTHORIZATION TO SERVE
PROCESS BY EMAIL**

13
14 ZHANG SAN, et al.,15 Defendants.
16 _____/

17 Plaintiff filed this action alleging that defendants, based in the People's Republic of China,
18 have engaged in the sales of counterfeit copies of plaintiff's products through a large number of
19 internet websites. Despite extensive efforts, plaintiff has been unable to locate any legitimate
20 physical address at which defendants can be found for purposes of serving the summons and
21 complaint. Plaintiff has therefore filed an "*ex parte* application"¹ seeking Court authorization to
22 effect service by email, pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure, which
23 allows for service "by other means not prohibited by international agreement, as the court orders."

24 ¹ Civil Local Rule 7-10 defines an "*ex parte*" motion as one "filed without notice to opposing
25 party," and permits such motions only where authorized by "statute, Federal Rule, local rule or
26 Standing Order" under the circumstances. While plaintiff asserts that it may proceed *ex parte* under
27 the provisions of California Rules of Court Rule 3.1204(b), that rule has no applicability in this
28 forum. Nevertheless, because plaintiff has shown that it in fact gave notice to defendants of its
application through the only available means of email, the motion will be deemed as having been
properly brought under Local Rule 7-11.

1 This Court has previously held that service by email on defendants located in a foreign
2 country is not permissible where the country exercised its rights under Article 10 of the Hague
3 Convention to object to service through “postal channels.” See *Agha v. Jacobs*, 2008 WL 2051061
4 (N.D.Cal. 2008). China apparently has so objected.²

5 In *Agha*, however, there was no dispute that plaintiff had a valid physical address and could
6 accomplish service through compliance with the ordinary procedures of the Hague Convention.
7 Here plaintiff lacks a similar option, with the result that a different “balance” must be struck
8 between the benefits and limitations of email service. See *Rio Properties, Inc. v. Rio International*
9 *Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (“[W]e leave it to the discretion of the district court
10 to balance the limitations of email service against its benefits in any particular case.”); *Agha*, 2008
11 WL 2051061, * 1 (distinguishing *Rio* on the basis, among other things, that the *Rio* plaintiffs lacked
12 a physical address for the defendant). More importantly, the Article 1 of the Convention states that
13 it does not apply where, “the address of the person to be served with the document is not known.”
14 20 U.S.T. 361 (U.S.T. 1969); see *BP Products North America, Inc. v. Dagra*, 236 F.R.D. 270, 271
15 (E.D.Va. 2006).

16 Accordingly, plaintiff has shown good cause to permit it to serve the summons and
17 complaint by email, at the addresses specified in its motion. The motion is therefore granted.

18
19 Dated: 09/10/2010


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

20
21
22
23
24
25
26
27
28 ² See the website of the Hague Conference on Private International Law at
http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn