

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

SHIRO HOUSE, *et al.*,

Defendants.

Civil Action No.

21-cv-406

(Judge Ranjan)

**DECLARATION OF STANLEY D. FERENCE III IN OPPOSITION TO SET ASIDE
CLERK'S DEFAULT AGAINST DEFENDANTS FTHOME, ASIBEIUL AND
MARRIDON [DOC. NOS. 51, 52 AND 55]**

I, STANLEY D. FERENCE III, hereby declare as follows:

1. I am an attorney with the law firm of Ference & Associates LLC ("the Ference Firm"), located at 409 Broad Street, Pittsburgh, Pennsylvania 15143 and represent Broadway Pine Brands, LLC, (collectively "Plaintiff") in the above-referenced action. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:

2. A true and correct copy of Judge Schwab's decision and order in *Talisman Designs LLC v Dasani*, No. 20-cv-1084 (W.D. Pa., October 13, 2020) is attached hereto as Exhibit 1.

3. A true and correct copy of excerpts of the April 6, 2021, show cause hearing transcript in *Doggie Dental, Inc. v. CDOffice*, No. 20-cv-271 (W.D. Pa.) is attached hereto as Exhibit 2.

4. A true and correct copy of the September 25, 2020, hearing transcript in *Camelbak Products, LLC v Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 20-cv-01544 (N.D. Ill.) is attached hereto as Exhibit 3.

5. Plaintiff served the Temporary Restraining Order upon Amazon.com, and Amazon entities provided certain information in response thereto. This information included the name and address appearing within the business records of Amazon for the identified defendants. The information appearing for these defendants on page 5 of Plaintiff's Opposition to Motion to Set Aside Clerk's Default is information that was provided by Amazon.

6. I have used Google Maps to search the addresses provided by Defendants to Amazon. No results matched the provided addresses; several provided partial matches; however, these were generally to districts or towns. A true and correct copy of the screenshot of each search result is attached hereto in Exhibit 4.

7. I have used a Chinese map service, Baidu.com, to search the addresses provided by Defendants to Amazon. Baidu.com's map service cannot match locations with the addresses provided. A true and correct copy of the screenshot of each search result is attached hereto in Exhibit 4.

8. I have used Google Maps to search the addresses provided by Defendants in their Motions to Set Aside Clerk's Default. No results matched the provided addresses; several provided partial matches, however, these were generally to districts or towns. A true and correct copy of the screenshot of each search result is attached hereto in Exhibit 4.

9. I have used a Chinese map service, Baidu.com, to search the addresses provided by the Defendants in their Motions to Set Aside Clerk's Default and on their Amazon.com

webpages. Baidu.com's map service cannot match locations with the addresses provided. A true and correct copy of the screenshot of each search result is attached hereto in Exhibit 4.

10. Defendants ASIBEIUL, FTHOME, and MARRIDON are all represented by the same counsel and their counsel, Mr. Jesun from the Guangdong Yilong Law Firm, contacted our office on April 14, 2021 to begin settlement negotiations. Neither any Defendant nor Mr. Jesun requested an extension of time to file an answer.

11. After serving the defendants by email, a copy of the notice and link to the lawsuit documents were also sent to Mr. Jesun by email on April 19, 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Pittsburgh, Pennsylvania
June 11, 2021

/Stanley D. Ference III/
Stanley D. Ference III

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC.

Plaintiff,

20cv1084

ELECTRONICALLY FILED

v.

DASANI, ET AL,

Defendants.

Memorandum Order denying Motions to Set Aside Default ([doc. 43](#) and [doc. 51](#))

I. Introduction

This is an action for unfair competition, and trademark infringement under the Lanham Act, initiated on July 20, 2020, against numerous Defendants, who are Chinese corporations who were allegedly engaged in counterfeiting of the “Bacon Bin” kitchen product for storing and disposing of bacon grease, trademarked by Plaintiff, Talisman Designs, LLC. The civil case was filed by Plaintiff, a small business, against numerous Defendants, including AA Fashion, Cemic, Funarrow, LEEaccessry, Light-Ren, Qinai, Sanmubo Trade, Sundlight, and Urmanal (collectively the “AA Fashion Defendants”), and Defendant Lightshh, on the basis that they sold counterfeit products on Amazon in violation of the Lanham Act. Plaintiff also sought a Temporary Restraining Order, which this Court granted, and following a hearing on a subsequent motion for Preliminary Injunction, at which Defendants failed to attend, the Court entered an Order granting said Motion on August 3, 2020. The Court also granted Plaintiff’s Motion for Alternative Service permitting electronic service of process under Fed. R. Civ. P. 4(f)(3) (hereinafter the “Alternative Service Order”). ([Doc. 19](#)). On July 28, 2020, Talisman Designs electronically served all of the defendants listed on Schedule A with the Summons, Complaint, Requests for Admission, and the Temporary Restraining Order (“TRO”), including the AA Fashion Defendants and Defendant

Lightshh, in accordance with the Alternative Service Order. ([Doc. 29](#) and [Doc. 35](#)). The AA Fashion Defendants and Lightshh Defendant do not dispute that the Court authorized electronic service or that they each received the Summons, Complaint, Requests for Admission, and the TRO by email in accordance with the Alternative Service Order. The Clerk of Court entered Default as to all (remaining) Defendants, following alternate service and failure to answer or otherwise plead on August 28, 2020. On September 9, 2020, the AA Fashion Defendants filed the instant Motion to Set Aside Default Judgment ([doc. 43](#)) and Defendant Lightshh also filed a similar Motion ([doc. 51](#)), with Defendants arguing that this Court has no personal jurisdiction over Defendants, that service was improper as to AA Fashion Defendants, and that Defendants have valid defenses to this cause of action. For the following reasons, the Court denies Defendants' Motions because (1) personal jurisdiction exists in this Court, (2) service was proper, and (3) Defendants have wholly failed to set forth a meritorious defense.

II. Discussion

Pursuant to Fed. R. Civ. P. 55(c), a default may be lifted upon a showing of "good cause." There are four (4) factors to determine if good cause has been shown to set aside the entry of Default by the Clerk. These factors are: (1) prejudice to the plaintiff; (2) whether defendant has a prima facie meritorious defense; (3) whether defaulting defendant's conduct is excusable or culpable; and (4) effectiveness of alternative sanctions. *Gross v. Stereo Component Sys., Inc.*, 700 F.2d 120 (3d Cir. 1983). The second factor - - whether the defendant has a meritorious defense - - is considered a threshold question. *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192 (3d Cir. 1984). After all, it would be futile to set aside a default to afford a movant an additional opportunity to present a meritless defense. *Id.* That is the case before the Court in the instant matter.

The Court recognizes that the entry of defaults are generally disfavored. *Farnese v. Bagnaso*, 687 F.2d 761, 764 (3d Cir. 1982). And, while this Court finds that the factors of prejudice to Plaintiff, whether defaulting Defendants' conduct was excusable, and the effectiveness of alternative sanctions are somewhat neutral, there is futility in setting aside a default here because Defendants present meritless defenses.

A meritorious defense is one which, "if established at trial, would completely bar plaintiffs' recovery." *Momah v. Albert Einstein Medical Center*, 161 F.R.D. 304 (E.D. Pa. 1995) (citing *Foy v. Dicks*, 146 F.R.D. 113, 116 (E.D. Pa. 1993)). To satisfy this element, Defendants' answer and pleadings must contain specific facts that would allow them to advance a complete defense. *Id.* (citing *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194–96 (3d Cir.1984)); *Accu-Weather, Inc. v. Reuters, Ltd.*, 779 F.Supp. 801, 803 (M.D.Pa.1991). A court requires the defendant to raise specific facts beyond a general denial so that it has some basis for determining whether the defendant can make out a complete defense. *Id.* citing *\$55,518.05 in U.S. Currency*, 728 F.2d at 195.

As alleged in the Complaint, Defendants are part of a sophisticated group of businesses that intentionally use the nationwide market reach of Amazon and other on-line platforms to sell their Chinese-made counterfeit and knock-off items from China into the United States, including the Commonwealth of Pennsylvania. [Doc. 1 at paragraph 11](#). Contrary to the contentions of Defendants, each product (with exception of product of Defendant CEMIC which has not yet arrived) was received in Pennsylvania and was visually inspected to confirm that is was counterfeit. In other words, Defendants actually shipped product into Pennsylvania and even collected Pennsylvania sales tax on their sales.

The primary defense of Defendants is that this Court lacks personal jurisdiction over them. This defense is without merit. The three-part test to determine personal jurisdiction, as set forth in *Budget Blinds, Inc. v. White*, 536 F.3d 244, 260 (3d Cir. 2008), is as follows: (1) the nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and, (3) exercise of jurisdiction must be reasonable. All three parts of this test have been met in this case as to Defendants.

Commerce just like this over the internet, even specifically through Amazon, has been found to support a finding that a Court can properly exercise personal jurisdiction over a China-based infringer, even if the infringer has no physical presence in the United States. *Curry v. Revolution Labs, LLC*, 949 F.3d 385, 399 (7th Cir. 2020). The Court finds instructive the decisions of colleagues in the Western District of Pennsylvania, and its own prior decision, finding that sellers on Amazon, Aliexpress, and Ebay may not avoid personal jurisdiction by this Court on the basis that the Great Wall of China renders a district court without jurisdiction to protect brand owners from counterfeit products just like this. *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa. 2020)(Schwab, J.); *Doggie Dental Inc. v. Ahui*, No. 19-cv-1462 (W. D. Pa 2019)(Hornak, C.J.); *Gorge Designs v. Accessmail, et. al*, No. 19-cv-1454 (W. D. Pa. Stickman, J.); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W. D. Pa. October 11, 2019)(Hornak, C.J.).

Moreover, Defendants are also subject to personal jurisdiction pursuant Fed. R. Civ. P. 4(k)(2), which provides for personal jurisdiction through nationwide service of process over any

defendant provided that: (1) Plaintiff's claim are based upon federal law; (2) no state court could exercise jurisdiction over defendants; (3) the exercise of jurisdiction is consistent with the law of the United States; and (4) the exercise of jurisdiction is consistent with the Constitution. *Cent. States Southeast and Sw. Area Pension Fund v. Reimer Express World Cor.*, 230 F.3d 934, 940 (7th Cir. 2000).¹ Here, because Defendant purposefully and knowingly offered for sale, sold and ultimately shipped product to United States residents, including Pennsylvania residents, Rule 4(k)(2) dictates that personal jurisdiction is proper. *Plixer Int'l v. Scrutinizer GmbH*, 905 F.3d 1, 5 (1st Cir. 2018).

Very recently, Defendant's counsel raised these defenses unsuccessfully in the United States District Court for the Southern District of New York in *Mattel, Inc. v. 2012SHININGROOM2012, et al.*, Civil Action No. 18-11648 (S.D.N.Y. Sept 25, 2020) (Doc. 100) (rejecting all defenses of China-based sellers and awarding damages and attorney fees). *See also Camelbak Products, LLC v Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 20-cv-01544 (N.D. Ill. Sept. 25, 2020) (Doc. 75) (Court denied Chinese defendants' pro se motions to dismiss based upon lack of personal jurisdiction, forum non conveniens and zero sales into jurisdiction). In the *Camelbak* case, which is pending in Illinois

¹ AA Fashion Defendants contend that service was improper. However, alternative service was permitted by this Court, and additionally, Plaintiff by affidavit set forth evidence that AA Fashion Defendants provided Amazon with United States addresses, which were fictitious. Also, the original contact by the AA Fashion Defendants supposed legal counsel led counsel to a law firm called "TIANYU Law Group PLLC" which lead to a generic website which stated that it was not a business entity registered in New York, contrary to what alleged defense counsel had represented. When Plaintiff's counsel sent by email on July 30, 2020, a link to the litigation website, after several failed attempts to connect, Plaintiff's counsel emailed Robin Cheng to determine what state he was licensed to practice law, and 11 days later, after default was entered, a response was delivered by Attorney Tianyu Ju of Glacier Law PLLC. The response was "We are licensed to practice in multiple jurisdictions." Importantly, no requests for extension were made by any defense counsel during that time.

(however, the standard for personal jurisdiction is the same as Pennsylvania), the docket sheet merely reflects the motion was denied for the reasons stated from the bench, but the transcript provides:

With regard to personal jurisdiction, the record reflects that each of these two defendants operates an interactive website through which it offered products for sale that consumers in Illinois who have selected an address for shipping including to Illinois is an option. It's less significant that any products were actually sold to Illinois than products were offered for sale in Illinois which the record reflects they were. So for this reason and the language of certain Supreme Court cases, the defendants purposely availed themselves of the privilege of doing business in Illinois. It's also sufficient under Illinois law which allows the exercise of personal jurisdiction up to the limits of due process. Transcript, p. 3, lines 13-25 (Declaration of Stanley D. Ference III ("Ference Dec."), Ex. 1).

Finally, as for Defendants contentions that they are entitled to assert the defense of the "First Sale Doctrine," this Court finds this defense is totally without merit. The "First Sale Doctrine" defense may be applicable where it is probable that the alleged infringing products might be genuine, instead of counterfeit. *Polymer Technology v. Mimran*, 975 F.2d 58, 61 (2d. Cir. 1992). Plaintiff has handily established, however, the unavailability of this defense in its Motion for TRO, because this doctrine is only applicable where Defendant buys and resells an authentic product. The products in this case are not even made in the same color as the genuine Bacon Bin product.

For all of these reasons, Defendants have failed to show that good cause exists to lift or set aside the Clerk's entry of Default in this case. Accordingly, the Motions to Set Aside Default ([doc. 43](#) and [doc. 51](#)) are DENIED.

SO ORDERED this 13th day of October, 2020.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ecf-registered counsel of record

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOGGIE DENTAL, INC.,
Plaintiff

vs.

CDOFFICE, et al.,
Defendants.

Civil Action No.
21-271

- - -

Transcript of Zoom video proceedings on April 6, 2021
United States District Court, Pittsburgh, PA,
before Judge Mark R. Hornak.

APPEARANCES:

For the Plaintiff: Ference & Associates
Stanley D. Ference, III, Esquire
Brian Samuel Malkin, Esquire
409 Broad Street
Pittsburgh, Pennsylvania 15143

For the Defendants YeePee and kanhap: Glacier Law, PLLC
He Cheng, Esquire
745 Fifth Avenue
Suite 500
New York, New York 10151

Court Reporter: Barbara Metz Leo, RMR, CRR
700 Grant Street
Suite 6260
Pittsburgh, Pennsylvania 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 and the original TRO went up on the website and were then
2 electronically served on the defendants based upon the
3 information that we got from our third party service
4 providers, including, in this case, Amazon, AliExpress and
5 ContextLogic doing business as wish.com.

6 We used that information to serve the defendants. As
7 per usual, some of them bounced. We went back and checked to
8 what we had done. We voluntarily dismissed defendants who we
9 could not serve and re-served the ones we could, and by March
10 26, 2021, confirmed everybody had been served according to the
11 alternative service order that Your Honor issued and we filed
12 our certificate of service indicating as such.

13 The next thing that happened, Your Honor, on the
14 docket was of course the rescheduling of the show cause
15 hearing. We received Your Honor's order indicating that the
16 show cause hearing had been rescheduled. That was posted on
17 the website. Again, following the exact same procedures. We
18 served each of the defendants using the alternative service
19 methods described. There were no bounces this time, and
20 again, April 1st, 2021, we filed our certificate of service
21 indicating that all defendants that were remaining in the case
22 had been served in accordance with the alternative service
23 order. That's what brings us to today, Your Honor.

24 THE COURT: Appreciate that, Mr. Malkin. Attorney
25 Cheng, did your client receive, your clients, and I don't mean

1 to diminish them by referring to them by number, but it
2 probably brings clarity to the transcript that's being made
3 and appreciated your reference to them in that way, so when I
4 refer to them by number, I don't mean to demean them or
5 diminish them. I'm just doing it for clarity, sir.

6 Do you have any dispute that your clients, defendants
7 38 and 105, did receive those communications as Mr. Malkin has
8 described them?

9 MR. CHENG: Your Honor, they did receive notice,
10 notification from the online platform, so in this case Amazon.
11 Amazon sent out message to those two defendants and links were
12 provided so that they can review the complaints and all
13 relevant documents.

14 Defendants do want to raise one issue here --

15 THE COURT: Sure.

16 MR. CHENG: -- is about serving, serving individuals
17 located outside of the United States. While the address for
18 the defendants is available, defendants do think that this
19 matter should proceed under the Hague service convention
20 instead of electronic service, electronic service on each
21 individual located outside of the United States.

22 THE COURT: Are your clients resident or situated or
23 domiciled in a foreign state that is a signatory to the Hague
24 Convention with the United States?

25 MR. CHENG: They are both located in China, and China

1 is a signatory to the Hague service convention.

2 THE COURT: Appreciate that, sir. Mr. Malkin,
3 Mr. Ference, do you have any thoughts on that point that
4 Attorney Cheng has raised?

5 MR. FERENCE: Sorry, Your Honor. We briefed this in
6 our initial paperwork. We don't believe that service by
7 e-mail is improper under the Hague Convention. I believe
8 Attorney Cheng's firm has also raised this in other cases, and
9 it has been rejected by those Courts in which it has been
10 raised.

11 As you see, it does provide notice. We don't know if
12 the e-mail addresses -- or, I'm sorry, if the street addresses
13 that are provided are in fact accurate, and we believe, given
14 the circumstances, that e-mail service is the most expeditious
15 way of serving the defendants outside of the United States,
16 particularly those in China, and that e-mail service is
17 appropriate under the Hague Convention.

18 The Chinese government has not objected to e-mail
19 service under the Hague Convention.

20 THE COURT: Let me ask you this, Mr. Ference: When
21 you say that last part that the government of China, do they
22 know about this case? I don't want to sound like a
23 smart-aleck, but are you saying that the Chinese government
24 knows about this, or are you saying more as a broader brush
25 policy matter that, as a general principle, the government of

1 China does not object to e-mail service in situations like we
2 have here?

3 MR. FERENCE: That is -- I'm referring in a broad
4 policy perspective, Your Honor. I have no idea as to whether
5 the Chinese government knows about this particular case.

6 THE COURT: Okay. Let me ask you this, Mr. Ference:
7 Going back to Mr. Cheng's observation, let's assume just for
8 purposes of my question the appropriate official of the
9 government of China said, wrote it down, publicly declared it,
10 that it is the official state policy of China that service in
11 a case just like this by electronic mail means is perfectly
12 acceptable and agreeable.

13 Does that resolve the matter in terms of Mr. Cheng's
14 two clients, or do they have the authority to say that's
15 interesting but not conclusive because we have the ability to
16 raise an objection also?

17 MR. FERENCE: Well, I think my understanding is
18 Mr. Cheng's point, and he's welcome to elaborate on this since
19 we are doing this orally and no paperwork has been filed on
20 it, is that the Chinese government, when they acceded to the
21 Hague Convention, not object to e-mail service, so in a broad
22 policy perspective, e-mail service is authorized.

23 Moreover, we don't know in fact whether or not any
24 address information that has been provided to the marketplace
25 is in fact accurate, so for courts that have considered this

1 have found that essentially any information regarding
2 addresses is unknown. You may recall --

3 THE COURT: Is your point, at least in the
4 circumstances of this case, e-mail service is actually better
5 in the sense of comporting with due process? That is, notice
6 and the opportunity to be heard because the e-mail address, as
7 a general matter and as a specific matter in this case, is
8 actually more accurate in realtime than an historic brick and
9 mortar street address?

10 MR. FERENCE: That's correct, Your Honor. The online
11 platforms and Amazon in particular require that all
12 communication be done by e-mail and that the party -- and that
13 a seller have a valid e-mail address on file with Amazon, so
14 that e-mail address is the method of communication for all
15 things related to the Amazon store, and in this case, using
16 that e-mail address for this lawsuit ensures that the
17 defendants do get timely notice.

18 As Mr. Malkin said, service was initially made on
19 March 25 and we heard from Mr. Cheng's firm on March 26, the
20 following day, and Mr. Cheng also said, in addition to the
21 notice that his defendants received from us, they also
22 received a communication directly from Amazon as well, so we
23 know in this situation that the defendants received timely
24 notification and service of the documents related to this
25 case.

1 THE COURT: I've pulled up the document that is on
2 the docket at ECF 11 which is the motion originally filed for
3 authorization of electronic service pursuant to Federal Rule
4 4(f)(3), and the core of the argument, as I understand it, is
5 the method of service that the Court has authorized here is
6 not barred or prohibited by an international agreement, and
7 for the reasons you've just summarized, you believe it
8 actually comports and comports more effectively with
9 constitutional notions of due process.

10 So your position is that the Hague Convention --
11 neither the Hague Convention nor any other international
12 agreement prohibits the method of service which has been
13 authorized here, and as a matter of actuality, among the
14 choices for effective service, that is, to meaningfully
15 provide a timely notice and opportunity to be heard, this is
16 among the better ways to go. Is that the guts of your
17 argument, sir?

18 MR. FERENCE: Yes, Your Honor, it is.

19 THE COURT: Mr. Cheng, sir, what do you think about
20 that?

21 MR. CHENG: Your Honor, first, as the Hague Service
22 Convention was signed in the '60s, e-mail service wasn't a
23 prevailing method at that time, so the analogy is --

24 THE COURT: We were still using carbon paper back
25 then.

1 MR. CHENG: First, I'll actually clarify that. Some
2 courts, some federal courts actually took a position that
3 Hague Service Convention is not needed, and some other courts
4 supported service to proceed under the Hague Service
5 Convention to individuals or entities located outside the
6 United States, so this issue is still currently being debated
7 in different courts.

8 This is also analogous to mail service. The common
9 understanding is if service by mail is not prohibited -- is
10 not allowed in a signatory country, then service by e-mail
11 shouldn't be allowed, because that's the closest analogy that
12 you have within the frame of the Hague Service Convention, and
13 the Chinese government, while signing the Hague Service
14 Convention, clearly declared that service by mail is not
15 permitted under -- like to the Chinese authority, that all
16 service of process from a foreign judicial system has to go
17 through the central authority which is the Department of
18 Justice in China and that would be distributed into like local
19 courts and be served to individuals or the entities.

20 So the argument --

21 THE COURT: Let me ask you this, Mr. Cheng. You
22 raise an interesting point. I'm not saying any of the other
23 ones any counsel has raised are not interesting, but that's
24 the most recent interesting point. I suspect, truth be told,
25 many people, perhaps even some on this call, do not know what

1 is in their physical mailbox on any given day, and in fact,
2 based on the stack of stuff I've seen in lobbies of apartment
3 buildings that I visited, it appears there's a lot of people
4 that don't know what's in their mailbox or next to it, but we
5 all, I suspect, have experiences in our lives where we have
6 been in the middle of a conversation with somebody, perhaps
7 being at a theater with them, sharing a meal, whether it's at
8 a restaurant or in the home and we all know what happens. We
9 hear a vibration somewhere and somebody picks their phone up
10 and looks at it.

11 Isn't, in the year 2021, if the law said to me,
12 Judge Hornak, draw an analogy. Isn't electronic service in
13 the hyper-connected world in which we live far more akin to
14 personal physical service than it is to postal mail? There
15 are people that don't even have a mailbox at their residence.
16 They have it at the post office. They maybe go down once a
17 week. They travel. They have the luxury of not being on the
18 road a lot. They like to be on the road. They don't have
19 their physical mail forwarded. It sits in a box.

20 But in their back pocket, in their -- I'm an old
21 person -- belt holster, somewhere else, they have their phone.
22 I happen to have an iPhone 8. Others have different things.
23 I see that in realtime, much like a person walking in and
24 handing me what I'm seeing on the phone.

25 I'm not being critical by saying we shouldn't draw an

1 analogy. That's often what lawyers use their great education
2 to do, to draw an analogy from past experience to a current
3 situation. Isn't in our world as it is today, particularly
4 with defendants who have, it's alleged and backed up by the
5 affidavits, that have as the core of their interaction with
6 the globe the use of this instantaneous electronic
7 communication?

8 If an analogy has to be had, why isn't the analogy
9 much closer to personal physical realtime service?

10 MR. CHENG: Because personal realtime service cannot
11 be done in this instance. If defendants are located in a
12 foreign country, that service of process by hand delivery is
13 just impossible, and I do agree with you that people use
14 e-mail service more and more often in the marketing world, and
15 that is one issue that's not covered by the current
16 international legal frame.

17 The judicial cooperation that the countries agreed
18 more than 50 years ago may not apply to the modern world, and
19 that's exactly why this needs to be addressed.

20 THE COURT: Are you saying, Mr. Cheng, if I went with
21 my analogy, the e-mails would be sent to the central authority
22 in China. I know you are not conceding that my analogy is the
23 better one, but if it was the better one, your point is it
24 still wouldn't go directly to defendants. It would go to the
25 central authority under the Hague Convention, because somebody

1 from the United States can't fly to Beijing or somewhere else,
2 get off the airplane, go to somebody's house in China and hand
3 them the papers and have it be good service?

4 MR. CHENG: That would cost a lot more than sending
5 through the central authority, I assume.

6 THE COURT: Okay. Let me ask you this: I'm not
7 cutting off the position that you've made the observation on a
8 few minutes ago about the Hague Convention, but do your
9 clients in this case, defendants 38 and 105, do they have an
10 objection, if the Court concludes that the entry of a
11 preliminary injunction is appropriate, do they object to that
12 injunction covering defendants 38 and 105?

13 MR. CHENG: Sorry, Your Honor. Can you repeat your
14 question?

15 THE COURT: Absolutely. Happy to. We'll keep the
16 service question open for the moment, but to sort of move
17 closer to the end and we can work backwards, if Mr. Malkin and
18 Mr. Ference convince the Court that I should convert the
19 temporary restraining order into a preliminary injunction, do
20 defendants 38 and 105 object to the preliminary injunction at
21 this time covering them?

22 MR. CHENG: Yes, Your Honor. Defendants do not think
23 they should be -- the temporary restraining order should be
24 converted into a preliminary injunction against them,
25 especially for defendant YeePee. If you want me to elaborate

1 would have an opportunity to respond with whatever additional
2 backup they believe is appropriate and, Mr. Cheng, if you are
3 the moving party, you of course would have automatically a
4 seven day period to file a reply in support of any motion you
5 file.

6 Ms. Cahill, that will be the second parallel order
7 we'll enter, if you want to work that up. I'll work on the
8 preliminary injunction order. It may issue this afternoon.
9 It may not issue until tomorrow morning.

10 Mr. Cheng, to the extent you interposed objections,
11 they are duly noted. No further exception is necessary. They
12 are on the record. I do believe that at this point at least,
13 but I think generally speaking, the service that's been
14 authorized by an order of this Court is not inconsistent with
15 the Hague Convention in these circumstances and is otherwise
16 fully authorized by the Federal Rules of Civil Procedure, and
17 I do believe in the face of a valid patent as to which there's
18 no record evidence of it being canceled or invalidated, the
19 issue of invalidity would not, in the Court's judgment, serve
20 to impair or limit the entry of the preliminary injunctive
21 relief the Court has just stated.

22 Mr. Malkin and Mr. Ference, are there any further
23 findings or any inaccuracy in the Court's findings and
24 conclusions that you believe otherwise need to be set forth on
25 the record?

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAMELBAK PRODUCTS, LLC,)	Docket No. 20 C 1544
Plaintiff,)	
vs.)	
The Partnerships and Unincorporated)	Chicago, Illinois
Associations Identified on Schedule)	September 25, 2020
"A", et al.,)	8:50 o'clock a.m.
Defendants.)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff: JIANGIP LLC
BY: MS. YANLING JIANG
111 West Jackson Boulevard, Suite 1700
Chicago, IL 60604
(312) 675-6297

KEITH VOGT, LTD.
BY: MR. KEITH A. VOGT
111 West Jackson Boulevard, Suite 1700
Chicago, IL 60604
(312) 675-6079

For the Defendant: MR. LI JI

Court Reporter: MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR
Official Court Reporter
219 S. Dearborn Street, Suite 2102
Chicago, Illinois 60604
(312) 435-5639

1 (The following proceedings were had telephonically:)

2 THE CLERK: Case 20 C 1544, CamelBak Products v. The
3 Partnerships.

4 THE COURT: Can the lawyer for the plaintiff please
5 give your name.

6 MS. JIANG: Your Honor, good morning. Yanling Jiang,
7 J-a-i-n-g, on behalf of the plaintiff.

8 THE COURT: Is anybody on the phone -- go ahead.

9 MR. VOGT: Your Honor, Keith Vogt on behalf of
10 plaintiff as well.

11 THE COURT: V-o-g-t, right?

12 MR. VOGT: Yes, your Honor.

13 THE COURT: Is anybody on the phone for either of the
14 defendants who are still in the case, Mr. Hat and the one with
15 the very long name?

16 MR. JI: Yes.

17 THE COURT: Just give your name, please, and which
18 defendant you're on behalf of.

19 Hello.

20 MR. JI: Li Ji.

21 THE COURT: L-i, J-i, right, on behalf of Mr. Hat?

22 MR. JI: Yes.

23 THE COURT: Okay. So I have before me the motions to
24 dismiss or what I've construed as the motions to dismiss by
25 Mr. Hat and the defendant with an extremely long name to

1 dismiss for lack of personal jurisdiction, for lack of venue
2 and for improper service of process. I am going to make an
3 oral ruling on these motions now.

4 Melissa, these are motions number 66 and 73 on the
5 docket.

6 Under the venue statute, specifically, 28 United
7 States Code, Section 1391(e)(3), if a defendant is not a U.S.
8 resident, a lawsuit against that defendant may be brought in
9 any U.S. district. Both of the defendants have said at
10 various points in time they reside in China, and for that
11 reason, venue is proper in this district under Section
12 1391(e)(3).

13 With regard to personal jurisdiction, the record
14 reflects that each of these two defendants operates an
15 interactive website through which it offered products for sale
16 that consumers in Illinois who have selected an address for
17 shipping including to Illinois is an option. It's less
18 significant that any products were actually sold to Illinois
19 than products were offered for sale in Illinois which the
20 record reflects they were. So for this reason and the
21 language of certain Supreme Court cases, the defendants
22 purposely availed themselves of the privilege of doing
23 business in Illinois. It's also sufficient under Illinois law
24 which allows the exercise of personal jurisdiction up to the
25 limits of due process.

1 The last question has to do with email service. I
2 concluded that the Hague Convention, H-a-g-u-e, does not apply
3 here because the defendants' addresses were effectively
4 unknown. The record reflects that they provided different and
5 shifting addresses and contact information.

6 The defendants also did receive actual notice of the
7 lawsuit from the plaintiff as shown by the record. Under
8 Federal Rule of Civil Procedure 4(f)(3), service on a non-U.S.
9 defendant, which is what these two defendants are, may be
10 effectuated by any means that's not prohibited by
11 international agreement. In this situation, there is no
12 international agreement that prohibited email service given
13 the fact that the Hague Convention is not applicable.

14 I authorized email service in the case based on the
15 motion describing what Judge Durkin, another judge in our
16 court, has described as a, quote, unquote, swarm of attacks on
17 the plaintiff's trademark and authorizing email service was
18 proper in this situation. Email service is also a reliable
19 means of effectuating service in the event the defendants
20 receive it.

21 I'm relying for on this on Judge Durkin's decision in
22 a case called Strabala, S-t-r-a-b-a-l-a, v. Vhang, V-h-a-n-g,
23 which is reported 318 Federal Rules Decisions 81 at pages 114
24 to 118 and also on my own decision in a case called Mori Lee,
25 M-o-r-i, Lee, v. -- I am going mispronounce it, so I'll just

1 spell it -- G-o-u-w-u-c-r-a-z-e, which is case number 19 C
2 7555, a decision that I made on May the 14th of this year. So
3 for this reason, the defendants' motion to dismiss are denied
4 and they're directed to answer the complaint.

5 We should put in the order, Melissa, the defendants
6 are directed to answer the complaint within three weeks, three
7 weeks being the 16th of October.

8 I will say this. You know, it looks like from the
9 papers that were filed here that the amount of sales, actual
10 sales by these two defendants was extremely tiny, and it seems
11 to me that you ought to be able to resolve the case by
12 agreement on your own without, you know, continuing to
13 litigate it, but that's obviously up to you. It's not a huge
14 dollar amount I suspect that's involved for either one of
15 them.

16 MR. VOGT: Sorry to interrupt. I agree with you. My
17 co-counsel is fluent in Chinese. We will reach out to both
18 defendants and try to resolve the case.

19 THE COURT: Thanks. All right. I am going to set
20 this for another telephone status hearing in about a month.
21 Let's say the 30th of October at 9:00 o'clock. And I'd like
22 to get a status report from the plaintiff by September the --
23 by October the 23rd.

24 MS. JIANG: Thank you, your Honor.

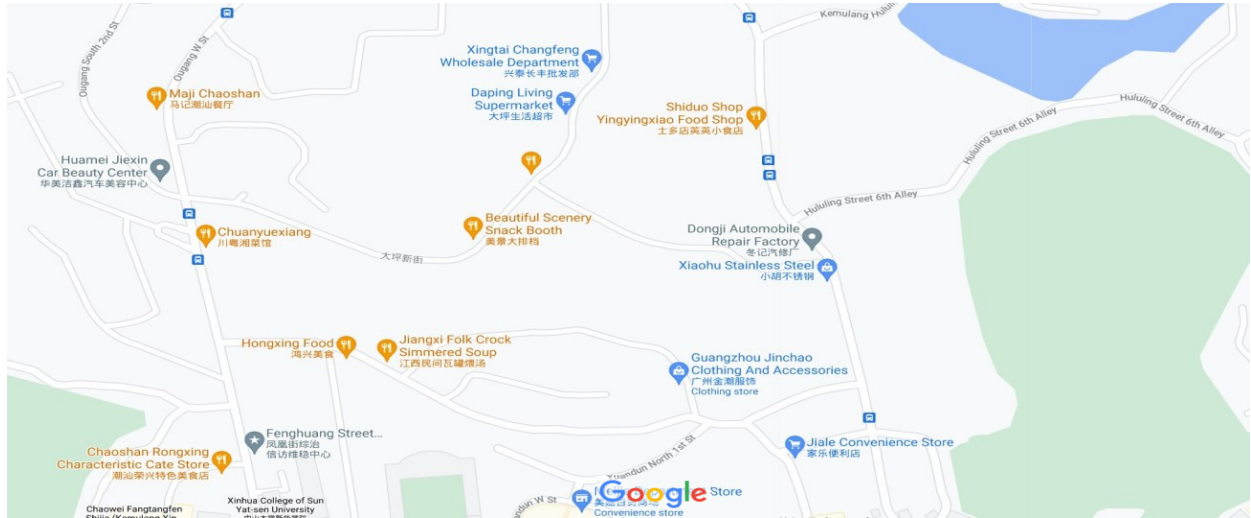
25 THE COURT: All right. Thanks a lot.

EXHIBIT 4

ASIBEIUL



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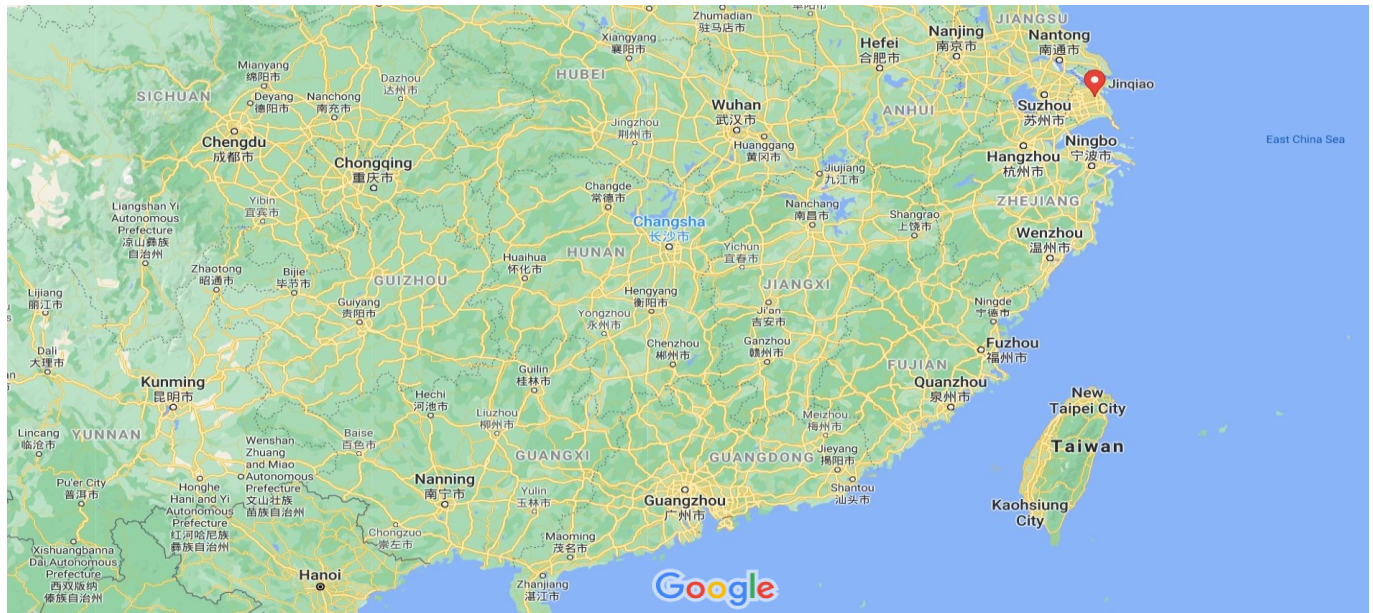
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5/27/2021

301, Jinqiao Garden, Donghuan 1st Road, Longhua District, Shenzhen, China. - Google Maps

301, Jinqiao Garden, Donghuan 1st Road, Longhua District, Shenzhen, China.

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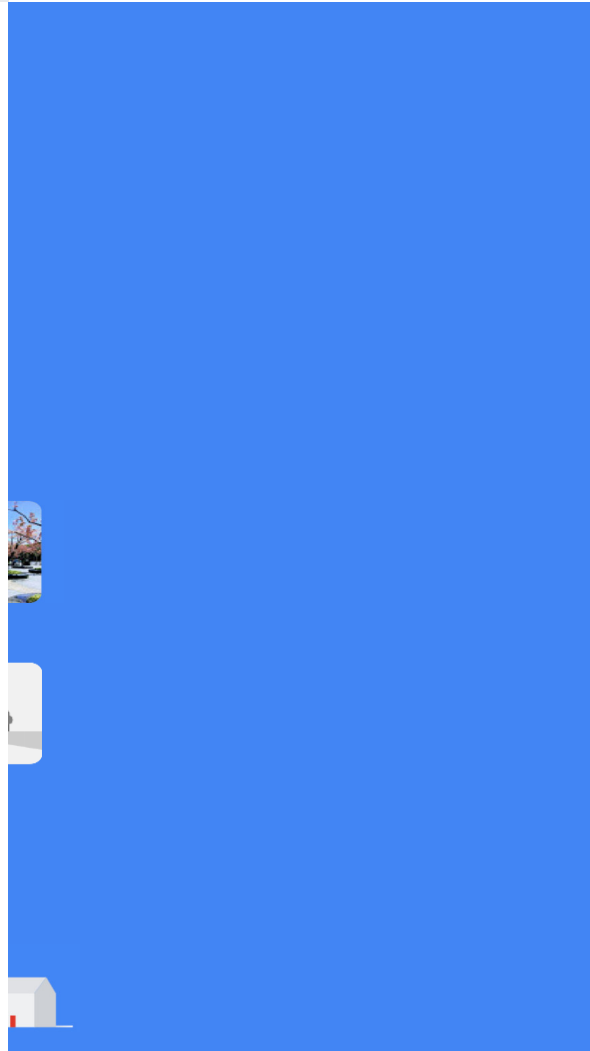
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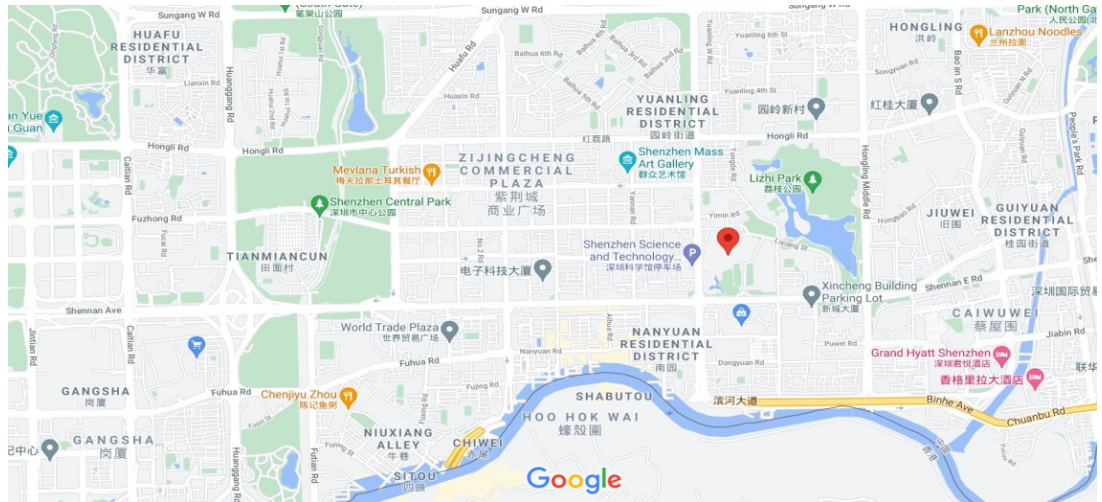
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ETHOME

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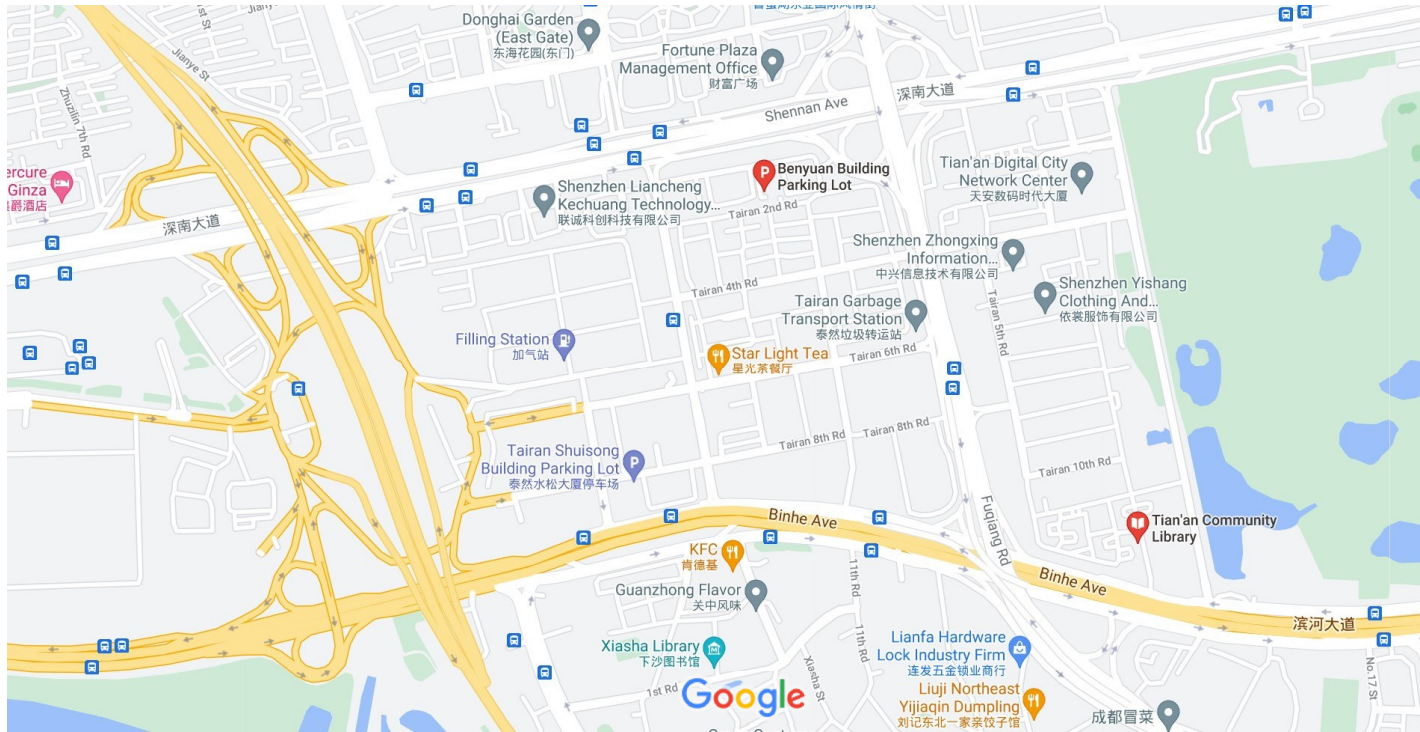




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Address: 4A, Benyuan building, Tian'an community, Futian District, Shenzhen,China



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Benyuan Building Parking Lot

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Tian'an Community Library

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6/1/2021

4a, benyuan building, tian'an community, futian district, shenzhen,china - 百度地图

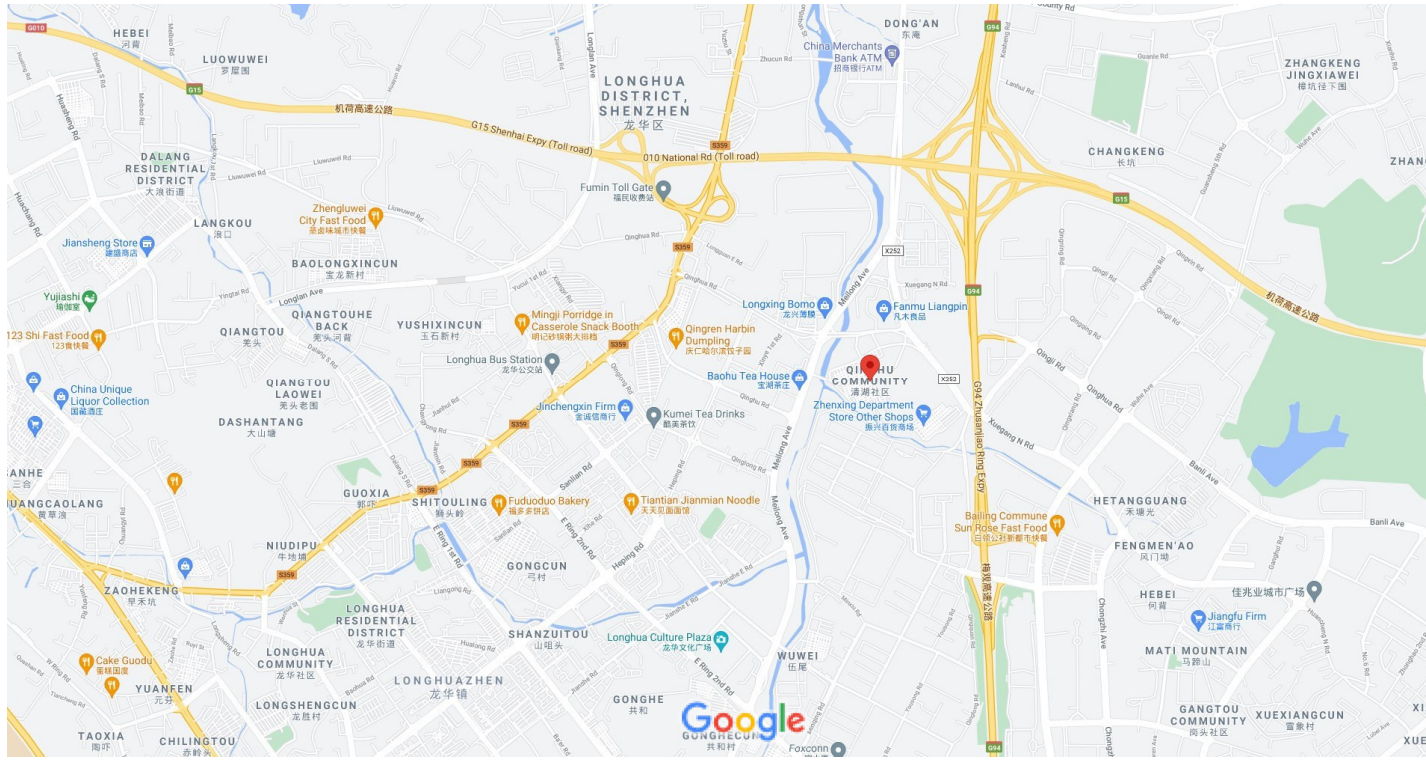


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MARRIDON



(101, building A, Shengli Industrial Park, Qinghu community, Longhua District, Shenzhen, China)

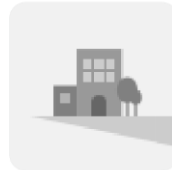


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6/3/2021 (101, building a, shengli industrial park, qinghu community, longhua district, shenzhen,china) -

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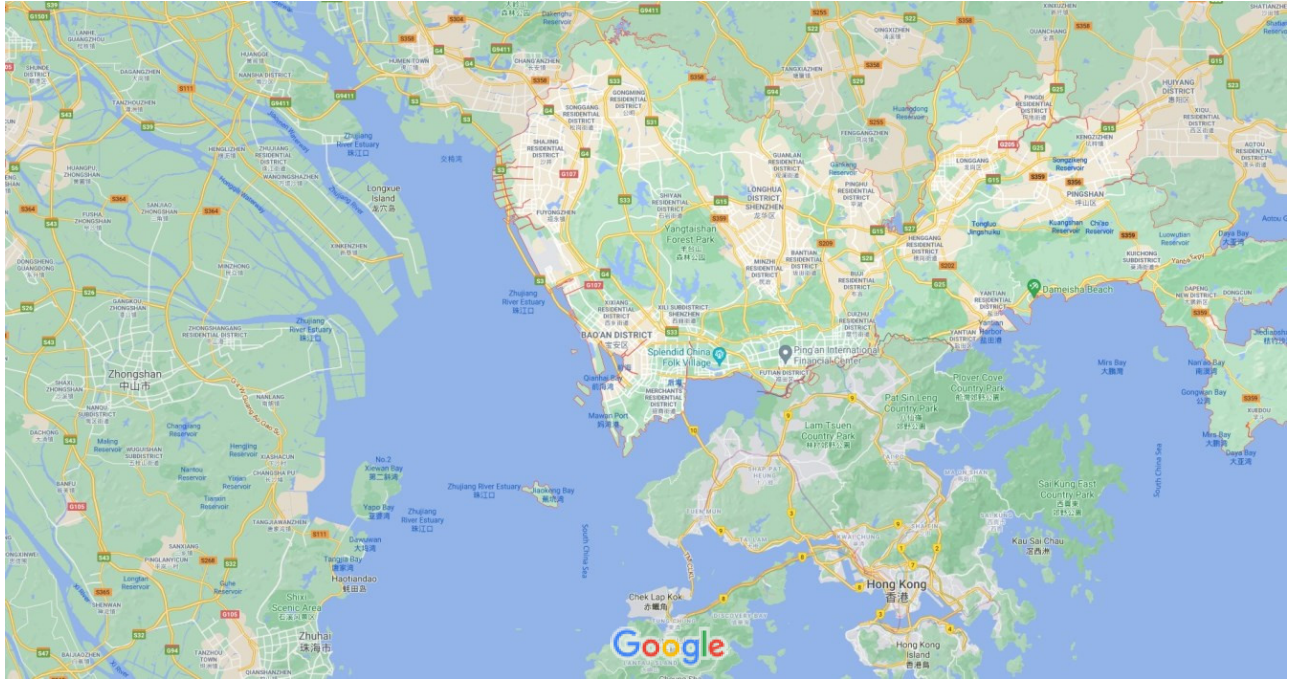


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