

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

NIFTY HOME PRODUCTS INC,
Plaintiff,

v.

LADYNANA US, *et al.*,
Defendants.

Civil Action No. 22-cv-994

(Judge Schwab)

**PLAINTIFF'S MOTION TO
(1) AMEND THE ORDER AUTHORIZING ALTERNATIVE SERVICE AND
(2) DEEM SERVICE ACCOMPLISHED UPON DEFENDANTS**

Plaintiff hereby moves to (1) amend the Court's July 7, 2022, Order authorizing alternate service of process (ECF No. 15) and (2) deem service accomplished upon BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, PEYSAITR, MAFANIKIO, and RYKWURDE. In support thereof, Plaintiff submits the following:

FACTUAL BACKGROUND

On July 13, 2022, the Court entered an Order granting Plaintiff's Motion for Alternative Service, authorizing Plaintiff to serve the Summons and Complaint and all future filings upon Defendants via electronic mail and publication. (ECF No. 15) Plaintiff, however, excluded BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, PEYSAITR, MAFANIKIO, and RYKWURDE in its Motion for Alternative Service because defendants indicated to the respective Third-Party Service Provider that they were shipping the accused product from within the United States. *See Malkin Dec.*¹, ¶ 3, and Motion for Alternative

¹ Refers to September 27, 2022, Declaration of Brian Samuel Malkin filed herewith.

Service (ECF No. 11 at p. 1, n. 2) (“Alternative Service Motion”).

Plaintiff requested from the Third-Party Service Providers, through the usual information request, the physical addresses of the Defendants BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR, and RYKWURDE and attempted to serve the Defendants with conventional U.S. certified mail. *Id.* at ¶ 4. The mail came back as undeliverable at the addresses provided for BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR. *Id.* at ¶ 5.

The mail for BRANDSLC and RYKWURDE was delivered but investigation revealed that the addresses provided by these two defendants to Walmart matched US businesses that did not own the Walmart storefronts that were named as defendants in the case. *Id.* at ¶ 6.

Thus, despite Plaintiff’s efforts, it has not accomplished conventional service upon BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR, and RYKWURDE. *Id.* at ¶ 7.

However, the Defendants BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR, and RYKWURDE received notice of this action electronically via electronic mail via their customer service e-mail address provided to Plaintiff or through direct messaging through their storefront in accordance with this Court’s Order. See Order Granting, *inter alia*, Motion for TRO (ECF. No. 16) (providing that each Third-Party Service Provider provide to Plaintiff’s counsel the email addresses for the Defendants). *Id.* at ¶ 8.

As of July 26, 2022, all the Defendants with Amazon storefronts were served by email and no bounce backs or errors were reported from the email server for the emails sent out. *Id.* at ¶ 9. As of August 1, 2022, all the Defendants operating Aliexpress storefronts were served by

email and no bounce backs or errors were reported from the email server for the emails sent out. *Id.* at ¶ 10.

As of August 23, 2022, all the Defendant Nos. 25-64, were electronically served using the direct electronic email system provided by the online platform for each of their respective stores, *inter alia*, a copy of the Summons and Complaint by e-mail to the e-mail address provided for the Third-Party Service Providers. *See* Certificate of Service for Temporary Restraining Order, (2) Extended Temporary Restraining Order, and (3) Notice of Show Cause Hearing (ECF No. 31). *Id.* at ¶ 11.

The e-mails to these Defendants did not bounce back nor were they returned and/or marked as “undeliverable,” thereby demonstrating the e-mails were delivered and the e-mails are valid and operational. *Id.* at ¶ 12. Plaintiff has also notified these Defendants of this action via website publication. Specifically, Plaintiff has created a website appearing on www.ferencelawsuit.com where all copies of the Summons, Complaint, and all other pleadings, documents, and orders issued in this action are posted, such that anyone accessing the website will find copies of all documents filed in this action. The address and a link to the publication website has been provided to these Defendants via their known e-mail accounts and/or direct messaging provided by the Third-Party Platform. *Id.* at ¶ 13.

**THE COURT MAY AUTHORIZE SERVICE VIA E-MAIL
PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE**

The unregistered business names under which these Defendants including BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR, and

RYKWURDE operate their electronic stores make it difficult to identify the defendants. This sales arrangement between sellers and Third-Party service providers is like that discussed by the Third Circuit in the context of a Shopify seller's anonymity:

“This enables third-party vendors to conceal themselves from the customer, leaving customers injured by defective products with no direct recourse to the third-party vendor. There are numerous cases in which neither Shopify [the third party service provider] nor the party injured by a defective product, sold by Shopify were able to locate the product's third-party vendor or manufacturer.”

Overdorf v Shopify.com, Inc., (No. 18-1041, 3d Cir. July 3, 2019) (*rehearing granted* August, 23, 2019). Under these circumstances, the Court should permit electronic service through the email, regardless of whether the Defendants are located within the United States or in a foreign country.

E-mail is the primary means by which sellers of this nature communicate with the payment processing company and the public. Service in this manner, to a virtual storefront via e-mail, is the modern equivalent of delivering the complaint and summons to a party's business address. In addition, electronic service is the most expeditious manner because online sellers generally check these message inboxes frequently.

If any of the Defendants are located in the United States, under Fed. R. Civ. P. 4(e)(1), service in a federal district court action can be accomplished “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Under Pennsylvania law, service on an out of state defendant may be accomplished, *inter alia*, “by any mail in a manner provided by Rule 403. Pa. R. Civ. P. 404. Rule 403 provides that original process may be mailed to the defendant by any form of mail requiring a receipt.” If the mail is returned noting that the defendant “refused to accept the mail”, the plaintiff may serve at the same address by ordinary mail. If the mail is

returned as “unclaimed”, the plaintiff “shall make service by another means pursuant to the rules.” Pa R. Civ. P. 403. Rule 430 provides that “if service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service.” Pa. R. Civ. P. 430.

Service by electronic messaging (including e-mail) under Fed. R. Civ. P. 4(e)(1) has been approved by various courts in numerous cases where conventional service was not able to have been made. *General Nutrition Investment Co. v. Zhang*, No. 19-cv-486, Doc. No. 11 (W.D. Pa. May 29, 2019) (Hornak, J.) (applying New York law and authorizing service by email and Amazon messaging where defendants provided incorrect address); *Doggie Dental, Inc. v Max_Buy*, No. 19-746, Doc. No. 60 (W.D. Pa. October 17, 2019) (Hornak, J)(granting motion to amend order authorizing alternative service and deeming service accomplished on certain defendants served electronically).

CONCLUSION

Given Plaintiff has already served Defendants BRANDSLC, BROTTFOR, CREATIVE ARROWY INC, INETICIAM, MAFANIKIO, PEYSAITR, and RYKWURDE electronically, Plaintiff respectfully requests that the Court issue an order (1) amending the Court’s July 7, 2022, Order authorizing alternate service (Doc. No. 15) and (2) deem service accomplished upon these Defendants.

Respectfully submitted,

/s/ Brian Samuel Malkin
Stanley D. Ference III
Pa. ID No. 59899
courts@ferencelaw.com

Brian Samuel Malkin
Pa. ID No. 70448
bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 – Telephone
(412) 741-9292 – Facsimile

Attorneys for Plaintiff