UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

SKYBROOK E-COMMERCE, LLC
a North Carolina Limited Liability Company,

Plaintiff,

v.

<EVER-DRY.COM> and THE INDIVIDUALS AND ENTITIES OPERATING <EVER-DRY.COM>

Defendants..

Case No.: 1:25-cv-10649

Hon. Sunil R. Harjani

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR ELECTRONIC SERVICE OF PROCESS PURSUANT TO FED. R. CIV. P. 4(f)(3)

Plaintiff Skybrook E-Commerce, LLC ("Plaintiff") seeks this Court's authorization to effectuate service of process by email and/or electronic publication in an action arising out of the Lanham Act, 15 U.S.C. § 1051, *et seq*., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.

Plaintiff's form of electronic service will be completed by publishing a link to the Amended Complaint and other relevant documents on a website, a link to which will be emailed to Defendants consistent with email addresses listed on the relevant Online Marketplace or as otherwise obtained through discovery. Plaintiff submits that providing notice via such electronic publication and/or email, along with any notice that Defendants receive from third-party service providers, is reasonably calculated under the circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

This form of service is proper in this case because Defendants are committing acts of infringement through their interactive online stores. As these stores operate primarily online only, online forms of communication are highly likely to provide actual notice of this action to the

Defendants. Further, without this requested relief, Plaintiff will be left hamstrung to pursue these foreign bad actors.

In addition, e-commerce store operators must provide a valid e-mail address to customers for completing payment and/or managing their e-commerce stores. Moreover, it is necessary for merchants, such as Defendants, who operate entirely online, to visit their e-commerce store to ensure it is functioning and to communicate with customers electronically. As such, it is far more likely that Defendants can be served electronically than through traditional service of process methods.

Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in *Rio Properties* held, "without hesitation," that e-mail service of an online business defendant "was constitutionally acceptable." *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Furthermore, Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). *Rio Props.,* 284 F.3d at 1014-15 (9th Cir. 2002). As the *Rio Properties* Court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a "last resort" nor "extraordinary relief," but is rather one means among several by which an international defendant may be served. *Id.* Likewise,

Courts have confirmed that the Hague Convention does not displace Rule 4(f)(3). *See Gianni Versace, S.P.A. v. Yong Peng, et al*., No. 18-cv-5385 (N.D. Ill. Feb. 27, 2019) *citing Nagravision SA v. Gotech Int'l Tech. Ltd*., 2018 U.S. App. LEXIS 2976 (5th Cir. 2018) ("Overlooking Rule 4(f)(3) entirely, Gotech argues that the service did not comply with the Hague Convention and Rule 4(f)(1). This argument misses the mark because service was not effected pursuant to the Hague Convention, and that agreement does not displace Rule 4(f)(3)."). Finally, Court-directed electronic service pursuant to Rule 4(f)(3) is particularly appropriate in this case where "there is a need for speed that cannot be met by following the Hague Convention methods…." because of the injunctive relief sought by Plaintiff. *Strabala v. Zhang*, 318 F.R.D. 81, 114 (N.D. Ill. 2016) *citing* 4B FED. PRAC. & PROC. CIV. § 1134 (4th ed.). As such, this Court may allow Plaintiff to serve the Defendants via electronic publication and/or e-mail.

For the reasons set forth herein, Plaintiff respectfully requests this Court's permission to serve Defendants via e-mail and/or electronic publication. In accordance with this request, the proposed Temporary Restraining Order includes authorization to serve Defendants electronically and provides for issuance of a single original summons[1] in the name of "ever-dry.com and all other Defendants and seller aliases identified in the amended Schedule A to the Complaint" that shall apply to all Defendants in accordance with Federal Rule of Civil Procedure 4(b).

Respectfully submitted,

Date: October 3, 2025

/s/ Eric Misterovich
Eric Misterovich (P73422)
Revision Legal, PLLC

[1] The Advisory Committee Notes to the 1993 Amendment to Rule 4(b) states, "If there are multiple defendants, the plaintiff may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified." Fed. R. Civ. P. 4(b) advisory committee notes (1993) (emphasis added).

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date below the foregoing was served on counsel of record via the Court's ECF system.

Date: October 3, 2025

/s/ Eric Misterovich
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