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*Low Tech Toy Club, LLC d/b/a The Woobles*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LOW TECH TOY CLUB, LLC d/b/a THE WOOBLES,

*Plaintiff*

v.

1688 3C ELECTRONICS DIRECT STORE, 3 SEE  
ZONE STORE, 999 ODESSA ELECTRONICS STORE,  
ABCDIYEA STORE, BLUE GROTTA STORE,  
CONVENIENT DEPARTMENT STORE STORE,  
HOME FURNISHING SHOP STORE, HOMEDÉCOR  
STORE, HOMEY HOMEY STORE, HOSPORT CLUB  
STORE, INDEPENDENT-DESIGN STORE, NEW  
TRENDY CLOTHES CO.,LTD. STORE, NINGBO  
SHINEGIFTS IMPORT & EXPORT CO., LTD., OFFICE  
DIGITAL STORE, PINKY HOUSE, PRETTYOK  
STORE, PROFESSIONAL SPORTING STORE,  
SHANGHAI YONGJIU TEXTILE TECHNOLOGY  
CO., LTD., SHENZHEN JIUMAI E-COMMERCE CO.,  
LTD., SHOP1102928665 STORE, SHOP1102978789  
STORE, SHOP1103287323 STORE, SHOP1103295299  
STORE, SHOP1103299290 STORE, SHOP1103333011  
STORE, SHOP1103349094 STORE, SHOP1103349099  
STORE, SHOP1103357069 STORE, SHOP1103358063

**CIVIL ACTION NO.**

**DECLARATION OF MELISSA J.  
LEVINE AND ACCOMPANYING  
EXHIBITS IN SUPPORT OF  
PLAINTIFF'S *EX PARTE*  
APPLICATION FOR: 1)  
TEMPORARY RESTRAINING  
ORDER; 2) AN ORDER  
RESTRAINING DEFENDANTS'  
MERCHANT STOREFRONTS  
AND DEFENDANTS' ASSETS  
WITH THE FINANCIAL  
INSTITUTIONS; 3) AN ORDER TO  
SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE; 4) ORDER  
AUTHORIZING BIFURCATED  
AND ALTERNATIVE SERVICE  
AND 5) ORDER AUTHORIZING  
EXPEDITED DISCOVERY**

**FILED UNDER SEAL**

STORE, SHOP1103391407 STORE, SHOP1103391478  
STORE, SHOP1103393406 STORE, SHOP1103411029  
STORE, SHOP1103413022 STORE, SHOP1103774241  
STORE, SHOP1103842411 STORE, SHOP1103875903  
STORE, SHOP1103996318 STORE, SHOP1104002584  
STORE, SHOP1104026321 STORE, SHOP1104098123  
STORE, SHOP1104106565 STORE, SHOP1104194743  
STORE, SHOP1104273961 STORE, SHOP1104301514  
STORE, SHOP1104336521 STORE, SHOP1104405394  
STORE, SHUNMAII CAMPING SPECIALTY STORE,  
SSS-DIGITAL STORE, SSWEET1128 STORE, SU  
CHENG ZI STORE, SWQ STORE, TAIZHOU QILIN  
AUTO PARTS CO., LTD., THE-FUN-TOY STORE,  
TOP AUTO TECH MALL, TWINKLE-FASHION  
STORE, WINHOLDER-TOP-RATED STORE, XINYI  
HONGYUAN (TIANJIN) TECHNOLOGY  
DEVELOPMENT CO., LTD., YOUME LIFE STORE,  
YUYAO DN SCIENTIFIC & EDUCATIONAL  
INSTRUMENT CO., LTD. and ZHENGZHOU JING  
YUAN INTERNATIONAL TRADE CO., LTD.,

*Defendants*

**CONFIDENTIAL/FILED UNDER SEAL  
NOT TO BE OPENED EXCEPT BY ORDER OF THE COURT**

**DECLARATION OF MELISSA J. LEVINE<sup>1</sup>**

I, Melissa J. Levine, hereby declare as follows:

1. I am an attorney with the law firm of Epstein Drangel LLP, located at 60 East 42<sup>nd</sup> Street, Suite 1250, New York, New York 10165 and represent Plaintiff Low Tech Toy Club, LLC d/b/a The Woobles (“Plaintiff” or “The Woobles”) in the above-referenced action. I make and submit this declaration in connection with Plaintiff’s *ex parte* application for the following: 1) a temporary restraining order; 2) an order restraining Defendants’ Merchant Storefronts and Defendants’ Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery against the above-named Defendants in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products.
2. Epstein Drangel represents Plaintiff in intellectual property matters and has been trained by Plaintiff on how to identify Counterfeit Products.
3. Based on my research, Alibaba and AliExpress are online marketplace and e-commerce platforms that allow manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their wholesale and retail products originating from China directly to consumers worldwide and specifically to consumers residing in the U.S., including New York.
4. As leaders in China’s e-commerce and digital retail market, Alibaba and AliExpress have

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<sup>1</sup> Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Glossary in the Complaint or Memorandum of Law.

generated hundreds of billions in sales worldwide, and in the recent fiscal year ending March 31, 2024, generated \$130.35 billion.<sup>2</sup> International markets, including the U.S., make up a significant percentage of sales made on Alibaba and AliExpress. For example, in 2016, revenue from international retail sales grew by 25% on AliExpress to \$342 million and 15% on Alibaba to \$841 million.<sup>3</sup>

5. In the fiscal year ending on March 31, 2024, the Alibaba Group's revenue was approximately \$130.35 billion.<sup>4</sup>
6. The press reported that the growth in sales on AliExpress resulted from an increase in the number of buyers, particularly from the U.S., as well as other large countries like Russia and Brazil.<sup>5</sup>
7. Additionally, according to Business Insider, excluding China, the U.S. was among the top five countries with packages coming from Alibaba's marketplaces on the company's "Singles' Day" (often compared to the U.S.'s Cyber Monday) in 2015, which resulted in over \$14 billion in sales in one day.<sup>6</sup> In 2021, Alibaba set a new Singles Day record with \$84.5 billion in sales across the eleven (11) day event.<sup>7</sup>
8. Alibaba and AliExpress declined to share their total sales for Singles Day 2023; however,

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<sup>2</sup> See Xin Ou, *Annual revenue of Alibaba Group from financial year 2014 to 2024*, STATISTA (Jun. 14, 2024), <https://www.statista.com/statistics/225614/net-revenue-of-alibaba/>; Kenneth Rapoza, *Jack Ma's Alibaba Promises Huge Sales Boom, \$910 Billion In Merchandise Volume By 2020*, FORBES (Jun. 15, 2016), <http://www.forbes.com/sites/kenrapoza/2016/06/15/jack-ma-foretells-huge-sales-boom-for-chinese-e-commerce-giant-alibaba/#78d364486b52>.

<sup>3</sup> See Frank Tong, *Alibaba's annual web sales easily surpass U.S. e-retail sales*, DIGITALCOMMERCE360.COM (May 5, 2016), <https://www.internetretailer.com/2016/05/05/alibabas-annual-web-sales-easily-surpass-us-e-retail-sales>.

<sup>4</sup> Xin Ou, *Annual revenue of Alibaba Group from financial year 2014 to 2024*, STATISTA (June 14, 2022), <https://www.statista.com/statistics/225614/net-revenue-of-alibaba/>.

<sup>5</sup> See Frank Tong, *An Alibaba site sells \$4.5 billion in one year to consumers outside of China*, DIGITALCOMMERCE360.COM (Sept. 11, 2014), <https://www.internetretailer.com/2014/09/11/alibaba-site-sells-45-billion-one-year-consumers-outs>.

<sup>6</sup> See Bob Bryan, *Alibaba just proved it's more than just some Chinese company*, BUSINESS INSIDER (Nov. 15, 2015), <http://www.businessinsider.com/alibaba-international-expansion-2015-11>.

<sup>7</sup> Dan Berthiaume, *Alibaba sets new Singles Day record with \$84.5 billion in sales*, CHAIN STORE AGE (Nov. 11, 2021), <https://chainstoreage.com/alibaba-sets-new-singles-day-record-845-billion-sales>.

indicated 2023 sales had “a recorded year-on year growth” and 2022 sales were “in line” with the \$84.5 billion in sales reported in 2021.<sup>8</sup>

9. As addressed in the Wall Street Journal, Fortune and the New York Times,<sup>9</sup> and as reflected in the federal lawsuits filed against sellers offering for sale and selling infringing and/or counterfeit products on Alibaba.com and AliExpress.com,<sup>10</sup> an astronomical number of counterfeit and infringing products are offered for sale and sold on Alibaba.com and AliExpress.com, as well as other online marketplace platforms, at a rampant rate.
10. Additionally, the Office of the United States Trade Representative (“USTR”) publishes an annual “Notorious Markets List” which highlights specific physical and online markets around the world that are reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting, and which is intended to help the U.S. and foreign governments prioritize intellectual property rights (IPR) enforcement that protects job-supporting innovation and creativity in the U.S. and around the world.<sup>11</sup>

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<sup>8</sup> Casey Hall, *China's Singles Day Festival Wraps Up with E-commerce Giants Reporting Sales Growth*, Reuters (Nov. 12, 2023) <https://www.reuters.com/world/china/chinas-singles-day-sales-festival-wraps-up-with-e-commerce-giants-reporting-2023-11-12/>; Xin Ou, *Alibaba's Gross Merchandise Volume On Singles' Day From 2011 to 2021*, STATISTA (Feb. 27, 2024), <https://www.statista.com/statistics/364543/alibaba-singles-day-1111-gmv/>; Evelyn Cheng, *Alibaba says 15% of China delivery areas were disrupted during Singles Day shopping festival*, CNBC (Nov. 17, 2022) <https://www.cnbc.com/2022/11/18/alibaba-says-15percent-of-china-delivery-areas-disrupted-during-singles-day.html>.

<sup>9</sup> See Kathy Chu, *Alibaba Vows Crackdown on Fakes Amid Trade Group Controversy*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-vows-crackdown-on-fakes-amid-trade-group-controversy-1463127605?>; Scott Cendrowski, *Chinese Regulator Again Calls Out Alibaba for Counterfeit Goods*, FORTUNE (Aug. 10, 2016), <http://fortune.com/2016/08/11/alibaba-counterfeit-goods-regulator/>; see also Kathy Chu, *Alibaba Suspends From Anticounterfeiting Group*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-suspended-from-anticounterfeiting-group-1463170527?tesla=y>; Michael Schuman, *A Small Table Maker Takes On Alibaba's Flood of Fakes*, N.Y. TIMES (Mar. 18, 2017), <https://www.nytimes.com/2017/03/18/business/alibaba-fake-merchandise-e-commerce.html>.

<sup>10</sup> See Kathy Chu, *Luxury brands get tougher with counterfeiters – and Alibaba*, MARKETWATCH (Aug. 16, 2016), <http://www.marketwatch.com/story/luxury-brands-get-tough-with-counterfeiters-2016-08-16-91031611>; Gilian Wong, *Alibaba Sued Over Alleged Counterfeits*, WALL STREET JOURNAL (May 17, 2015), <http://www.wsj.com/articles/alibaba-sued-over-alleged-counterfeits-1431877734>; Scott Cendrowski, *There's no end in sight for Alibaba's counterfeit problem*, FORTUNE (May 18, 2015), <http://fortune.com/2015/05/18/theres-no-end-in-sight-for-alibabas-counterfeit-problem/>.

<sup>11</sup> See Press Release, Office of the United States Trade Representative, USTR Releases 2023 Review of Notorious Markets for Counterfeiting and Piracy (Jan. 2024), available at <https://ustr.gov/about-us/policy-offices/press->

11. In December 2016, the USTR added Alibaba to its “Notorious Markets” list due to its high levels of “reported counterfeiting and piracy.”<sup>12</sup>
12. In February of 2022, the Office of the United States Trade Representative (“USTR”) added AliExpress to its list of 2021 “notorious markets”, which are “markets that reportedly facilitate substantial trademark counterfeiting.”<sup>13</sup>
13. On January 31, 2023, the USTR released its 2022 Review of Notorious Markets for Counterfeiting and Piracy, and AliExpress was again designated a “notorious market.”<sup>14</sup>  
The USTR specifically noted that a “key concern of right holders is that penalties for repeat infringers do not stop counterfeit sellers on AliExpress from remaining on the market, such as by operating multiple accounts.”<sup>15</sup>
14. Despite the fact that Alibaba and AliExpress have systems in place to report intellectual property infringement, sellers of counterfeit and/or infringing products frequently re-post their listings for such products on their respective Merchant Storefronts once taken down or open a new User Account and/or Merchant Storefront on Alibaba and AliExpress under a different seller name and post the same listings for counterfeit and/or infringing products.
15. In our experience, Alibaba and AliExpress generally do not terminate a seller’s account or

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office/press-releases/2024/january/ustr-releases-2023-review-notorious-markets-counterfeiting-and-piracy;; Office of The United States Trade Representative, 2023 Review of Notorious Markets for Counterfeiting and Piracy (2023), *available at* [https://ustr.gov/sites/default/files/2023\\_Review\\_of\\_Notorious\\_Markets\\_for\\_Counterfeiting\\_and\\_Piracy\\_Notorious\\_Markets\\_List\\_final.pdf](https://ustr.gov/sites/default/files/2023_Review_of_Notorious_Markets_for_Counterfeiting_and_Piracy_Notorious_Markets_List_final.pdf).

<sup>12</sup> Laura Stevens, *Alibaba Lands on U.S. Governments’ ‘Notorious Markets’ List for Fakes*, WALL STREET JOURNAL (Dec. 21, 2016), <https://www.wsj.com/articles/alibaba-lands-on-u-s-governments-notorious-markets-list-for-fakes-1482356081>; *see also* *Alibaba Lands on U.S. Notorious Markets List for Lax Counterfeit Policies*, CHINATECHNEWS (Dec. 22, 2016), <https://www.chinatechnews.com/2016/12/22/24615-alibaba-lands-on-u-s-notorious-markets-list-for-lax-counterfeit-policies>.

<sup>13</sup> Michelle Toh, *The US accuses Tencent and Alibaba of letting sellers traffic fake goods*, CNN (Feb. 18, 2022) <https://www.cnn.com/2022/02/17/business/china-tencent-alibaba-notorious-markets-list-intl-hnk/index.html>.

<sup>14</sup> USTR Releases 2022 Review of Notorious Markets for Counterfeiting and Piracy, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (Jan. 31, 2023), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/january/ustr-releases-2022-review-notorious-markets-counterfeiting-and-piracy>.

<sup>15</sup> *Id.*

membership after a single or even a second complaint of infringement against the seller. Pursuant to Alibaba's Posting Rules regarding the Penalty of Intellectual Property Rights Infringement, a seller's account is only terminated when "three strikes are accumulated on the same user."<sup>16</sup> Similarly, under the AliExpress Intellectual Property Rights Protection Policy, a seller's membership with AliExpress is not terminated until at least three complaints of serious infringements have been received.<sup>17</sup>

16. It is our experience that sellers operating Merchant Storefronts on Alibaba.com and AliExpress.com, like Defendants, often use additional evasive tactics, such as incomplete identification information to conceal their identities and avoid detection. Since Alibaba and AliExpress do not require sellers to display their contact name, complete address or any other contact information, sellers use Alibaba.com and AliExpress.com as a means for selling infringing and/or counterfeit products with almost total anonymity.
17. Additionally, our experience has demonstrated that sellers on Alibaba.com and AliExpress.com often use shipping or delivery services that provide minimal tracking and/or use false or incomplete return addresses to further conceal their identities, such as EMS and DHL.
18. The aforementioned elusive tactics, as well as disappearing, destroying evidence of counterfeiting activities and draining of financial accounts, are commonly used by sellers to attempt to circumvent, among other remedies, restraining orders issued with prior notice.
19. It is my experience that discovery will reveal that certain Defendants are related insofar as

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<sup>16</sup> *Enforcement Actions for Intellectual Property Right Infringement Claims*, Section B(2) "Serious Infringement", available at, <http://rule.alibaba.com/rule/detail/2043.htm?spm=a271m.8038972.0.0.fHxRG9>.

<sup>17</sup> See *AliExpress Intellectual Property Rights Protection Policy*, available at, [https://sell.aliexpress.com/en/\\_pc/77Y4QdcvjD.htm#:~:text=Any%20posting%20or%20sale%20of,property%20rights%20owners%20or%20buyers](https://sell.aliexpress.com/en/_pc/77Y4QdcvjD.htm#:~:text=Any%20posting%20or%20sale%20of,property%20rights%20owners%20or%20buyers).

they engage in coordinated operations involving the manufacturing, distributing, offering for sale and sale of Counterfeit Products.<sup>18</sup> Additionally, Defendants' Merchant Storefronts share unique identifiers, such as design elements along with similarities in price, description of the goods offered and of the Counterfeit Products themselves offered for sale.

20. In fact, in conducting the diligence outlined below, Epstein Drangel's Beijing office was able to confirm that, at minimum, three (3) sets of Defendants<sup>19</sup> share a common owner as, in addition to the reasons detailed above, Epstein Drangel's Beijing office's investigation also revealed that these three (3) sets defendants have an identical address.

21. Epstein Drangel investigated and researched manufacturers, wholesalers and/or third-party merchants offering Counterfeit Products for sale through their respective Merchant Storefronts on Alibaba and AliExpress. True and correct screenshots of Defendants' Infringing Listings are included in **Exhibit A** attached hereto and incorporated herein by reference.

22. Through visual inspection of Defendants' Infringing Listings, Epstein Drangel confirmed that the products that each Defendant offers for sale using virtually identical copies of Woobles Marks and/or Woobles Work are, in fact, Counterfeit Products.

23. A representative sample of true and correct images of the Counterfeit Products taken from Defendants' Infringing Listings in comparison to true and correct images of Plaintiff's

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<sup>18</sup> For example, in a similar case involving the sale of counterfeit toys on a similar online marketplace platform, preliminary discovery and a subsequent initial investigation connected thirty of the defendants as related entities. *See WowWee Group Limited, et al. v. HAOQIN, et al.*, No. 17-cv-9893 (WHP) (S.D.N.Y. Jan. 9, 2018).

<sup>19</sup> The following three (3) sets of Defendants share a common owner and address: (1) Independent-Design Store, Shop1103391478 Store, Shop1103393406 Store, Shop1103411029 Store and Shop1103413022 Store; (2) Shop1103295299 Store, Shop1103299290 Store, Shop1103333011 Store, Shop1103349099 Store, Shop1103357069 Store, Shop1103358063 Store, Shop1103842411 Store, Shop1103996318 Store and Shop1104026321 Store; (3) Shop1104405394 Store and Top Auto Tech Mall.



authentic Woobles Products are attached hereto as **Exhibit B** and incorporated herein by reference.

24. Through visual inspection of the Infringing Listings, we also confirmed that each of Defendants' Infringing Listings accept payment in U.S. dollars.
25. Additionally, our visual inspection of the Infringing Listings revealed that Defendants offer the Counterfeit Products through Alibaba and AliExpress at below-market prices.
26. We are able to confirm with certainty that the Counterfeit Products offered for sale by each Defendant in the Infringing Listings are, in fact, counterfeit, through the visual inspection of the Infringing Listings and the low prices at which Defendants are offering the Counterfeit Products.
27. Through our visual inspection of the Infringing Listings, we verified that Defendants offer shipping to the U.S.
28. We specified a shipping address to the New York Address and verified that each Defendant provides shipping to the New York Address. True and correct copies of the checkout pages for the Counterfeit Products being offered for sale by Defendants showing the New York Address as the shipping addresses are included in **Exhibit A**.
29. In light of the multiple Defendants involved in this action, most of whom are shipping the same from China with significant lead times (potentially causing an unnecessary and unreasonable delay in the filing of this action), since we are able to confirm with certainty that the Counterfeit Products offered for sale by each Defendant in the Infringing Listings are, in fact, counterfeit, through the visual inspection of the Infringing Listings, the low prices at which Defendants are offering the Counterfeit Products, Epstein Drangel did not complete purchases for Counterfeit Products from each and every Defendant. Epstein

Drangel did, however, make purchases of Counterfeit Products from a representative sampling of Defendants. True and correct copies of the order confirmations are included in **Exhibit A**.

30. We also reviewed all Defendants' Merchant Storefronts and confirmed that many Defendants use unidentifiable seller names unassociated with a registered business, manufacturing company or trading company.
31. Epstein Drangel sent the list of Defendants' addresses as displayed on Defendants' Merchant Storefronts to Epstein Drangel's Beijing office for further investigation and it performed the steps set forth below to attempt to confirm the accuracy of the addresses displayed on Defendants' Merchant Storefronts.
32. First, Epstein Drangel's Beijing office used baidu.com, which is one of the most popular search engines in China to attempt to locate and/or confirm the accuracy of Defendants' addresses.
33. Next, Epstein Drangel's Beijing office conducted a search with Defendants' Merchant Storefront names on a Chinese company registration website QiChaCha, i.e. qcc.com. Epstein Drangel's Beijing office confirmed that this website is reliable as all of the information displayed on this website is sourced from official websites such as the National Enterprise Credit Information Publicity System, China Copyright Protection Center, China National Intellectual Property Administration, China Judicial Documents Website and other official websites.
34. Finally, Epstein Drangel's Beijing office conducted a further search on the National Enterprise Credit Information Publicity System (<https://www.gsxt.gov.cn/index.html>), which is the most reliable source for providing company registration information. The

organizer of this website is the China National Market Supervision and Administration.

35. Epstein Drangel's Beijing office also attempted to retrieve phone numbers connected to the addresses by calling the public service hotline 114, which provides company telephone number searching services to users for free.
36. Epstein Drangel's Beijing office attempted to gather as much information as is necessary to attempt to test the addresses displayed on Defendants' Merchant Storefronts by sending Defendants' a test mailing sent via Yunda Express.
37. Yunda Express is a courier service in China (similar to FedEx or UPS in the U.S.), which allows a sender to track the shipping status of a package and provides the sender with confirmation when a package has been received by the recipient and/or details about whether the recipient was located at the address.
38. For any Defendants which Epstein Drangel's Beijing office determined it had potentially accurate addresses for, in an effort to test the veracity of such addresses, Epstein Drangel's Beijing office mailed test documents via Yunda Express ("Test Mailings") to the respective Defendants, as discussed below.
39. After completing its investigation, Epstein Drangel's Beijing office made the following findings:
  - a. Seven (7) Defendants<sup>20</sup> display addresses that appear to be accurate, but ultimately do not have enough identifying information to send Test Mailings to these Defendants. Specifically, Epstein Drangel's Beijing office could not locate a phone number associated with the seven (7) Defendants' addresses. Yunda Express, like

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<sup>20</sup> Defendants Professional Sporting Store, Shop1104194743 Store, Shop1104301514 Store, Shop1104405394 Store, Top Auto Tech Mall, Shanghai Yongjiu Textile Technology Co., Ltd. and Xinyi Hongyuan (tianjin) Technology Development Co., Ltd.

other Chinese mailing services, requires a valid phone number connected to the address to send any mail to the address. Therefore, because Epstein Drangel's Beijing office was unable to locate phone numbers (or any further contact information) for such addresses, it was unable to send Test Mailings to these seven (7) Defendants. Epstein Drangel's Beijing office was likewise unable to independently locate alternate addresses and/or other contact information (including phone numbers) for these Defendants;

- b. Fifteen (15) Defendants<sup>21</sup> display addresses that appear to be accurate, had enough additional identifying information to send Test Mailings to the addresses (i.e., a phone number connected to the addresses), but when Epstein Drangel's Beijing office sent Test Mailings to them, the deliveries were unsuccessful. Epstein Drangel's Beijing office has indicated to Plaintiff's counsel that a failure to deliver such a Test Mailing is determined after multiple attempts by Yunda Express to contact such Defendants by phone and deliver the mail. Further, Epstein Drangel's Beijing office was unable locate alternate addresses and/or other contact information (including phone numbers) for these Defendants; and
- c. Thirty-nine (39) Defendants<sup>22</sup> display addresses that appear to be accurate, had

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<sup>21</sup> Defendants 3 See Zone Store, Convenient Department Store Store, Shop1102928665 Store, Shop1103295299 Store, Shop1103299290 Store, Shop1103333011 Store, Shop1103349094 Store, Shop1103349099 Store, Shop1103357069 Store, Shop1103358063 Store, Shop1103842411 Store, Shop1103875903 Store, Shop1103996318 Store, Shop1104026321 Store and SU CHENG ZI Store.

<sup>22</sup> Defendants 1688 3C Electronics Direct Store, 999 Odors Electronics Store, abcDIYea Store, Blue Grotto Store, Home Furnishing Shop Store, Homedecor Store, Homey Homey Store, Hosport Club Store, Independent-Design Store, New Trendy Clothes Co.,Ltd. Store, Office Digital Store, Pinky House, Prettyok Store, Shop1102978789 Store, Shop1103287323 Store, Shop1103391407 Store, Shop1103391478 Store, Shop1103393406 Store, Shop1103411029 Store, Shop1103413022 Store, Shop1103774241 Store, Shop1104002584 Store, Shop1104098123 Store, Shop1104106565 Store, Shop1104273961 Store, Shop1104336521 Store, Shunmaii Camping Specialty Store, SSS-Digital Store, SSweet1128 Store, SWQ Store, The-Fun-Toy Store, Twinkle-fashion store, WinHolder-Top-Rated Store, YOUME LIFE Store, Ningbo Shinegifts Import & Export Co., Ltd., Taizhou Qilin Auto Parts Co., Ltd.,

enough additional identifying information to send Test Mailings to the addresses (i.e., a phone number connected to the addresses) and when Epstein Drangel's Beijing office sent Test Mailings to them, the deliveries were successful.

40. Additionally, Epstein Drangel's Beijing office noted that the Test Mailings do not guarantee with any certainty that the person and/or entity who received the package is the intended Defendant. This is especially so given the motivation and propensity for counterfeiters, like Defendants, to conceal their true identities and whereabouts. Accordingly, because Epstein Drangel was unable to successfully test several of Defendants' addresses, if Plaintiff attempts service via the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague"), it will likely be unsuccessful.

41. Further, Epstein Drangel's Beijing office recently called the Chinese Ministry of Justice to inquire about the current processing time for service under the Hague and were informed that currently, the average service time is approximately six (6) months. However, based on Epstein Drangel's experience, the time to complete service via the Hague has taken significantly longer than six (6) months.

42. Additionally, in Plaintiff's counsel's experience in serving hundreds of defendants across various cases filed in this Court through the Hague, many service attempts are unsuccessful.

43. By way of example, Epstein Drangel was told that instances of Hague service failed for various reasons, including but not limited to that the addresses, which Epstein Drangel's Beijing office, through its diligence, confirmed as accurate and connected to the respective

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Shenzhen Jiumai E-Commerce Co., Ltd., Yuyao DN Scientific & Educational Instrument Co., Ltd. and Zhengzhou Jing Yuan International Trade Co., Ltd.

defendants, were in fact not occupied by or connected to the defendants, but rather, other unrelated persons or entities.

44. Accordingly, based on Epstein Drangel's experience and inability to successfully serve defendants via the Hague at addresses which it was confident were accurate and/or because certain recipients refused to accept the documents underscores that if Epstein Drangel continues to rely on counterfeiters' merchant storefront addresses, Hague service across cases similar to the present action will likely be largely unsuccessful.
45. For this reason and the reasons discussed earlier, the true identities, locations and contact information of Defendants, as well as the locations of the Counterfeit Products that Defendants are offering for sale and/or selling, are unclear and virtually impossible for Plaintiff to obtain independently.
46. Given the uncertainty that remains as to the accuracy of the Defendants' addresses, in our experience, service by email is the most effective way to notify the Defendants of the lawsuit. This is especially the case as Defendants herein are merchants on online platforms and must have good and accurate email accounts in order to operate their businesses. Plainly, it would be virtually impossible for Defendants to operate Merchant Storefronts on Alibaba and AliExpress and not check and utilize their email accounts frequently.
47. It is further worth mentioning that despite Covid-19 restrictions being lifted in China, Epstein Drangel's Beijing office advised that many businesses are still unable to accept physical documents sent by mail or otherwise due to Covid-19. Thus, given that Defendants are located in China, the continuation of interruption to life and businesses renders service by email the most practicable way to serve Defendants.
48. On February 8, 2023, Epstein Drangel filed a similar case in this Court against defendants

on the Amazon.com platform, *Telebrands Corp. v. Adward runbaifan*, et al., Case No. 23-cv-1063 (“*Telebrands*”). In that case, Epstein Drangel performed the exact same due diligence efforts as described in detail above. Despite successfully delivering Test Documents to some of the defendants in that case, on February 23, 2023, Judge Gregory H. Woods ordered alternative service as to each and every defendant. *See Telebrands*, Dkts. 5, 18.

49. Accordingly, as part of Plaintiff’s Application, it seeks alternative service, and upon entry of an order by the Court granting Plaintiff’s requested relief, Plaintiff will serve such order on Alibaba and AliExpress. It is my understanding and expectation that Alibaba and AliExpress will provide Plaintiff’s counsel with true and accurate e-mail addresses for each and every Defendant.
50. Recently, based on our recent experience with Alibaba and AliExpress, it has taken the platform a minimum of three (3) weeks to provide Epstein Drangel with Defendants’ email addresses in cases similar to the instant one.
51. It is my understanding that the e-mail addresses to be provided by Alibaba and AliExpress will be true and accurate as, based on my experience and understanding, Alibaba and AliExpress provide Plaintiff’s counsel with the e-mail addresses Defendants use to log in to their User Accounts on Alibaba and AliExpress, to operate their Merchant Storefronts, communicate with customers, complete transactions and receive funds.
52. Epstein Drangel has used RMail’s online services and can confirm that its services include verifying valid proof of authorship, content and delivery of an email as well as the official time and date an email was sent and received.
53. Epstein Drangel’s Beijing office translated copies of (1) Article 87 of Civil Procedure Law

of the People's Republic of China; (2) the Online Litigation Rules of the People's Court, adopted at the 1838th meeting of the judicial committee of the Supreme People's Court on May 18, 2021 and effective as of August 1, 2021; and (3) an article entitled "The Supreme People's Court judge: how to understand the rules of electronic service in online litigation? From the People's Justice Issue 19 of 2021."<sup>23</sup>

54. It is our experience that sellers of counterfeit and/or infringing products, such as Defendants, are in constant communication with each other and regularly participate in online chatroom discussions involving pending litigation and potential new lawsuits.

55. Moreover, the Chinese Ministry of Commerce published an article regarding Epstein Drangel's involvement in litigation regarding the sale of Chinese counterfeits on e-commerce platforms.<sup>24</sup>

56. In our experience, a small group of attorneys represent defendants in anti-counterfeiting lawsuits similar to the case at hand, and we have been informed by said defense counsel that they closely monitor the PACER docket, looking for potential new cases and clients.

57. Likewise, we recently discovered our law firm was impersonated by various defendants in similar lawsuits who falsified court orders as a way to get their respective frozen accounts released by the platform.

58. A true and correct copy of the transcript from the July 14, 2022, Telephone Conference in *FoxMind Canada Enterprises Ltd. v. Abctec, et al.*, 21-cv-5146 (KPF) (S.D.N.Y. July 14, 2022) is attached hereto as **Exhibit C**.

59. Neither I, nor anyone else at The Woobles to the best of my knowledge, have publicized this

---

<sup>23</sup> Certified translated copies of the aforementioned documents can be provided to the Court upon request.


<sup>24</sup> See Ministry of Commerce of the People's Republic of China, Tips for avoiding the risk of PayPal accounts that are blocked as a result of infringement (Nov. 2017), available at <http://shangwutousu.mofcom.gov.cn/article/resume/af/201711/20171102664964.shtml>.



Application or Plaintiff's intent to seek entry of a temporary restraining order against the Defendants to any third party.

I declare under the penalty of perjury under the laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed on this 21<sup>st</sup> day of May 2025 in New York, New York.

By: \_\_\_\_\_  
Melissa J. Levine

# **EXHIBIT B**





Convenient  
Department Store  
Store



## Hosport Club Store





Prettyok Store



# EXHIBIT C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
FOXMIN D CANADA ENTERPRISES LTD., : Docket #21cv5146  
 : 1:21-cv-05416-KPF  
Plaintiff, :  
- against - :  
ABCTEC, et al., : New York, New York  
 : July 14, 2022  
Defendants. :  
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE KATHERINE POLK FAILLA,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

1

2

THE CLERK: Your Honor, this is in the matter of Foxmind Canada Enterprises Ltd. versus ABCTEC, et al. Counsel, please state your name for the record beginning with plaintiff.

MS. DANIELLE FUTTERMAN: Good morning, Your Honor, this is Danielle Futterman of Epstein Drangel on behalf of the plaintiffs.

HONORABLE KATHERINE POLK FAILLA (THE COURT): Good morning and thank you for appearing. And representing the moving defendants, this afternoon -- this morning, excuse me.

MR. ZHEN PAN: Good morning, Your Honor, Zhen Pan from the law firm Diaz, Reus & Targ, on behalf of the moving defendants.

THE COURT: Thank you very much, I appreciate both of you participating in this conference on somewhat short notice. And as I often do, I'll sort of begin by apologizing for oral decisions. They are a little bit of a pain to sit and listen through, but it is easier for me and it will get your matter resolved more quickly.

So in a moment I'm going to begin to read an oral decision with respect to the motion to dismiss brought by what is not 30 moving defendants, and before

I do so you're welcome to take a moment and mute your phones and I'll try very hard not to be interrupted. With that, I will begin, thank you.

This is an oral decision on a motion to dismiss, and to begin I note that plaintiff, Foxmind Canada Enterprises Ltd. is the owner of a trademark for Pop Its which covers a children's bubble popping toy, and in recent years plaintiff's Pop It toys have spiked in popularity due, in part, to publicity garnered on social medial platforms such as TikTok. In this case, plaintiff has sued over 90 China-based Amazon merchants for selling products that allegedly infringe on the Pop It mark. Plaintiff has also brought six additional related cases levying substantially identical allegations against dozens more online retailers.

Currently, a preliminary injunction is in place that enjoins defendants in all of these actions from engaging in further counterfeiting activity that restrains Amazon and other third parties from providing services to defendants, and that freezes defendants' assets associate with their merchants' storefronts. Thirty of the defendants in this action, and I will refer to them collectively as the moving defendants, have moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process.

And let me just pause for a moment to note that this matter or this motion was initially brought on behalf of 34 defendants, but I'm advised that plaintiff has subsequently voluntarily dismissed the claims against four of the defendants, and with the parties' indulgence I will not read into the record the 30, the names of the 30 moving defendants, the parties know who they are.

Two of these moving defendants, ACBERY, A-C-B-E-R-Y, and ANZIR, A-N-Z-I-R, have separately moved to dismiss under Federal Rule of Civil Procedure 12(b)(2) alleging a lack of personal jurisdiction. And for the reasons that I'm now about to explain, this Court denies the moving defendants' motion to dismiss except with respect to defendant ANZIR over whom the Court concludes it does not possess personal jurisdiction.

So I'll begin with a brief recitation of the relevant procedural history, and on June 10<sup>th</sup> of 2021, plaintiff filed a complaint in this case asserting causes of action for trademark counterfeiting, trademark infringement, false designation of origin in violation of New York's Unfair Competition Law, all of which stem from plaintiff's allegations of widespread counterfeiting and trademark infringement on the Amazon marketplace.

Along with the case initiating documents,

1 plaintiff filed an ex parte application for emergency relief  
2 and for alternate service to permit service of defendants  
3 via email. That same day, this Court granted plaintiff's  
4 application for a temporary restraining order, or TRO,  
5 which, among other things, enjoined defendants from engaging  
6 in further infringing and counterfeiting conduct, froze  
7 defendants' user accounts and merchant storefronts on  
8 websites such as Amazon, and froze defendants' assets  
9 located at any financial institution. The TRO also  
10 authorized plaintiff to serve defendants via deliver of,  
11 number one, PDF copies of this order together with the  
12 summons and complaint or, number two, a link to a secure  
13 website, including Nutstore, a large mail link created  
14 through ourmail.com, and via website publication through a  
15 specific page dedicated to this lawsuit accessible through  
16 IPcounselorslawsuit.com, where each defendant would be able  
17 to download PDF copies of the order together with the  
18 summons and complaint, and all papers filed in support of  
19 plaintiff's applications seeking this order to defendants'  
20 email addresses to be determined after having been  
21 identified by Amazon. I'm quoting from page 9 of the  
22 temporary restraining order.  
23

24 In seeking alternative service, plaintiff  
25 represented that all defendants were located in China, that

1  
2 they are limited to correspondence by email and, further,  
3 that none of the defendants have disclosed their mailing  
4 addresses. I'm quoting here from docket entry number 16 at  
5 pages 19 through 21. And as discussed in more detail below,  
6 the moving defendants strenuously contest the unavailability  
7 of their mailing addresses.

8           Six days later, on June 16<sup>th</sup> of 2021, plaintiff  
9 informed the Court that it had not obtained defendants'  
10 email addresses as necessary to effectuate service by the  
11 means ordered by the Court because Amazon and other third  
12 party service providers have not yet complied with the  
13 Court's expedited discovery order. The Court thus  
14 extended the TRO and adjourned the show cause hearing  
15 to permit plaintiff additional time to serve  
16 defendants. On June 30, 2021, plaintiff effectuated service  
17 of the summons, the complaint, the TRO, the supporting  
18 papers and the June 16, 2021, order on each defendant in  
19 accordance with the alternative method of service authorized  
20 by the TRO.

21           Thereafter, on July 8<sup>th</sup> of 2021, plaintiff and  
22 counsel purporting to represent several defendants, appeared  
23 at the show cause hearing. Counsel for the moving defendants  
24 did not appear at this conference, but the following day on  
25 July 9<sup>th</sup> of 2021, the Court entered a preliminary injunction

1  
2 or a PI, which extended the injunctive relief which had  
3 previously been granted in the TRO through the pendency of  
4 this litigation as to all defendants. Plaintiff served a  
5 copy of the PI order on July 12<sup>th</sup> of 2021 using the  
6 alternative method of service authorized by the TRO and the  
7 PI orders. And more than a month after the entry of the PI  
8 on August 19<sup>th</sup> of 2021, the moving defendants filed a letter  
9 communicating their intention to move to dismiss the  
10 complaint on the grounds of insufficient service of process  
11 and lack of personal jurisdiction.

12 Plaintiff filed a letter opposing the moving  
13 defendants' motion on August 24, 2021, and on September 14<sup>th</sup>  
14 of 2021, the Court held a pre-motion conference to discuss  
15 this contemplated motion after which the Court set a  
16 briefing schedule. The moving defendants filed their motion  
17 to dismiss and supporting papers on November 12<sup>th</sup> of 2021.  
18 Plaintiff filed its opposition papers on December 17<sup>th</sup> of  
19 2021, and briefing on the motion was completed when the  
20 moving defendants filed their reply brief on January 7<sup>th</sup> of  
21 2022.

22 So beginning first with the motion to dismiss for  
23 improper service of process, under Federal Rule of Civil  
24 Procedure 12(b)(5) the Court observes that the moving  
25 defendants have argued for dismissal, claiming that it is

1 appropriate because defendant was obligated -- I'm sorry,  
2 because plaintiff was obligated and yet failed to effectuate  
3 service under the Hague Convention on the Service Abroad of  
4 Judicial and Extrajudicial Documents in Civil or Commercial  
5 Matters. I will call that the Hague Convention for short.  
6 The moving defendants also contend that plaintiff  
7 misrepresented the bases for seeking alternative service in  
8 its ex parte application. And so let me talk about the law  
9 in this area.  
10

11 In Federal Rule of Civil Procedure 12(b)(5)  
12 provides for dismissal of a complaint for insufficient  
13 service of process. In considering such motion, the Court  
14 is directed to look at matters outside the complaint to  
15 determine whether it has jurisdiction. There are many cases  
16 for this proposition, one of them is *George versus*  
17 *Professional Disposables International, Inc.*, 221 F.Supp.3d  
18 428 (S.D.N.Y. 2016).

19 Here, the moving defendants have submitted  
20 declarations representative of each moving defendant and  
21 from Zhen Pan, which include materials supporting the  
22 voracity of their publicly listed addresses on the Amazon  
23 website. The moving defendants have also attached to their  
24 reply submission additional declarations from three moving  
25 defendants. They have also attached to their briefing in



1  
2 this motion publicly available articles about Amazon's  
3 process for verifying sellers' addresses.

4           Plaintiff has submitted the affidavit of Ms.  
5 Futterman outlining plaintiff's efforts to locate defendants  
6 physical addresses in advance of their application for  
7 alternative service, and this Court considers materials just  
8 listed as appropriate in the analysis it's about to  
9 undertake.

10           Once a defendant moves to dismiss under Rule  
11 12(b) (5) the plaintiff bears the burden of establishing that  
12 service was sufficient. I'm quoting here from the Second  
13 Circuit's summary order in *Khan v. Khan*, 360 Fed.Appx. 2  
14 (2010), and "in deciding a 12(b) motion the Court must look  
15 to Rule 4 which governs the content, issuance and service of  
16 a summons." I'm quoting here from *DeLuca v. AccessIT Group,*  
17 *Inc.*, 695 F.Supp.2d 54 (S.D.N.Y. 2010). "In relevant part,  
18 Rule 4(f) from the Federal Rules of Civil Procedure permits  
19 service of process on individuals in foreign countries  
20 through three means, number one, any international agreed  
21 means of service that is reasonably calculated to give  
22 notice such as those authorized by the Hague Convention on  
23 the service abroad of judicial and extrajudicial documents;  
24 number two, a method that is reasonably calculated to give  
25 notice, including as the foreign authority directs in

1  
2 response to a letter rogatory or letter of request or;  
3 number three, by other means not prohibited by international  
4 agreement as the Court orders."

5           In turn, Federal Rule of Civil Procedure 4(h)  
6 provides that services of process on foreign business  
7 entities, such as the moving defendants here, may be made  
8 using the same methods outlined in 4(f)(1) and 4(f)(3) among  
9 other provisions. Despite the Court's authorization of  
10 alternative service in the TRO order and something that was  
11 confirmed in the PI order, the moving defendants argue that  
12 the Hague Convention has mandatory application to this case.  
13 And after careful consideration of those arguments, the  
14 Court determines that the alternative method of service  
15 employed in this case was appropriate.

16           So let me speak for a moment about the Hague  
17 Convention. And, generally speaking, service on a foreign  
18 defendant pursuant to the Hague Convention is mandatory when  
19 the defendant resides in a country known as the signatory to  
20 the Hague Convention. That was identified or noted in the  
21 Supreme Court's 1988 decision in *Volkswagen*  
22 *Aktiengesellschaft*, 486 U.S. 694. And the US State  
23 Department advises that the Peoples Republic of China is,  
24 indeed, a signatory to the Hague Convention. The Hague  
25 Convention, itself, provides for several alternate methods

of service, a service through the central authority of member states, service through consular channels, or service by mail if the receiving state does not object, a then fourth, service pursuant to the internal laws of the state.

And I'm quoting here from *Burda Media, Inc. v. Viertel*, 417 F.3d 292 (2d Cir. 2005). "The Court finds that plaintiff reasonably attempted to locate the moving defendants' addressees. On that point, the Hague Convention, itself, recognizes that it shall not apply where the address of the person to be served with the document is not known."

And so the parties' first disagreement in this case relates to whether the moving defendants' addresses were known. Courts in this circuit have found an address is not known if the plaintiff exercised reasonable diligence in attempting to discover a physical address for service of process and was unsuccessful in doing so. I'm quoting here from *Advanced Access Content Systems Licensing Administrator Ltd. v. Shen*, an unreported decision from my colleague, Judge Broderick, contained at 2018 WL 4757939. "And here the moving defendants argue that plaintiff cannot establish that it exercised reasonable diligence to discover the moving defendants' addresses and that it made affirmative representations in an ex parte application in its ex parte application to the Court for alternative service when it

1 said that all defendants are limited to correspondence by  
2 email and that none have disclosed their mailing addresses."

3 And so to rebut plaintiff's statements in the TRO  
4 application, the moving defendants have submitted  
5 declarations from their representatives affirming that at  
6 the time the suit was filed valid addresses for all moving  
7 defendants were publicly accessible on their Amazon user  
8 accounts. They furthermore explain that the addresses of 18  
9 of the moving defendants were verified by procedures  
10 developed by Amazon. And in defendants' Exhibits B and C  
11 there is discussion of Amazon's address verification  
12 procedures and which, according to the moving defendants,  
13 began at least as early as 2020 and involved address  
14 verification postcards. I won't go into further detail  
15 because I know the parties are aware of it.

16 But in light of this evidence, the moving  
17 defendants argue that plaintiff's failure to specifically  
18 investigate each of the addresses associated with their user  
19 accounts mandates service under the Hague Convention. Now  
20 in response, plaintiff concedes that it incorrectly stated  
21 in its memorandum of law in support of the application for  
22 alternative service that none of the defendants disclosed  
23 their mailing addresses. However, what they meant to, what  
24 I am told they meant to rely on was the sworn statement in  
25

1  
2 Ms. Futterman's declaration which averred that all  
3 defendants failed to disclose an accurate or complete  
4 address or any other contact information on their respective  
5 user accounts or merchant storefronts on Amazon. The Court  
6 is, therefore, satisfied that plaintiff did not make  
7 intentional representations in its papers seeking ex parte  
8 emergency relief though it, of course, cautions plaintiff  
9 and plaintiff's counsel to be more careful in their  
10 submissions to the Court.

11           Plaintiffs respond on the merits of this motion  
12 that it was justified in seeking alternative service because  
13 merchants on Amazon, including moving defendants, have been  
14 known to use aliases, false addresses and other incomplete  
15 identifying information to shield their true identities.  
16 Plaintiff claims that the investigation it conducted prior  
17 to filing its motion for alternative service lends credence  
18 to the unreliability of the addresses affiliated with the  
19 moving defendants' user accounts.

20           Of particular relevance, during this investigation  
21 plaintiff's counsel took screenshots of the addresses  
22 displayed on certain defendants' merchant's storefronts,  
23 several of which were facially incomplete or pointed to  
24 clearly fake addresses in the United States. One moving  
25 defendant had the address Broward, Pompano Beach, Florida,

1  
2 it was incomplete, but it also contradicts the defendants'  
3 current declaration stating that its sole place of business  
4 is in Fujian, China.

5           In addition, this defendant is supposedly one of  
6 the verified defendants who represents that it completed a  
7 postcard to verify the accuracy of its address. Likewise,  
8 plaintiff took screenshots of the user accounts for some of  
9 the other moving defendants who, one of whom has, or both of  
10 whom displayed the same address in Lawrenceville, Georgia,  
11 which conflicts with their current declarations representing  
12 a place of business in China. And also, one of these  
13 entities is another of the verified defendants who  
14 supposedly participated in Amazon's verification process.

15           As part of their reply submission, the moving  
16 defendants submitted declarations from each of these  
17 representatives in which they represented that the addresses  
18 associate with their Amazon merchant accounts were  
19 inadvertently changed by US vendors who were retained so  
20 that these defendants could obtain approval for selling  
21 children's toys in the United States. Even if this Court  
22 were to credit that explanation, it does not change the  
23 fact that plaintiffs encountered incorrect or misleading  
24 information at the time it sought to discover the  
25 moving defendants' addresses.

But so besides reviewing these user accounts, plaintiff was also involved in using its counsel's, it's office in Beijing to review the addresses of those defendants located in China. The Beijing office's review disclosed that several of the China based addresses were incomplete and that's directly relevant to this motion. The Beijing office advised plaintiff that the addresses for at least three of the moving defendants were incomplete for lacking building or unit numbers.

This Court is sympathetic to plaintiff's argument concerning the unreliability of the physical addresses affiliated with the moving defendants' Amazon user accounts. Besides the questionable accuracy of the information that appeared on certain of defendants' user accounts, the publicly available addresses appear to have been a moving target as plaintiffs investigatory findings suggest that the addresses for certain of the moving defendants, including some of the verified defendants, changed after plaintiff performed its investigation. To this extent, the moving defendants' declarations attesting to the genuineness of the addresses that presently appear on their user accounts cannot retroactively dispel the concerns that plaintiff had over the many addresses it located that were clearly fake or incomplete.

1  
2 All of that said, plaintiff does not represent  
3 that it inspected every one of the moving defendants'  
4 addresses as it claims only that it's reviewed the addresses  
5 of many, emphasizing the term many, of the moving defendants  
6 displayed on their merchant storefronts ostensibly revealed  
7 the unreliability of the details reflected thereon.

8 Considering Amazon's verification procedures, the  
9 Court cannot rule out the possibility that at least some of  
10 the verified defendants had legitimate addresses affiliated  
11 with their user accounts at the time of plaintiff's  
12 investigation. And just thinking ahead, as these  
13 verification procedures improve, the Court will expect a  
14 move detailed or a more granular approach to reviewing the  
15 addresses of the putative defendants in further IP cases  
16 brought by plaintiff's counsel. But with that said, and in  
17 the circumstances of this case, the Court believes that  
18 plaintiff did exercise reasonable diligence in attempting to  
19 locate the physical addresses of the moving defendants.

20 With regard to the 12 non-verified defendants, the  
21 Court fully credits plaintiff's concerns regarding the  
22 voracity of these listed addresses, the information  
23 reflected on these user accounts were not verified or was  
24 not verified, excuse me, and there was no mechanism in place  
25 for plaintiff to corroborate these addresses during its



1 investigation. Plaintiff harbored valid doubts concerning  
2 the forthrightness of the information furnished by these  
3 third party merchants on Amazon, its concerns so prominent  
4 that it seems to have motivated Amazon to implement these  
5 verification procedures in the first instance. The Court  
6 does not believe that the law compels plaintiff to attempt  
7 to effectuate service under the Hague Convention using  
8 address information that it has a reasoned basis to believe  
9 it's faulty.  
10

11           So with respect to the remaining 18 or 19 -- no,  
12 18 verified defendants, the Court does not believe that  
13 Amazon's verification procedures fully address plaintiff's  
14 concerns about the validity of the information posted on  
15 these user accounts. For instance, at the time of  
16 plaintiff's investigation, at least two of the verified  
17 defendants posted US addresses that were demonstrably false,  
18 and six of the verified defendants attest to receiving their  
19 verification postcards from Amazon after the filing of this  
20 suit, which means that their addresses could not have been  
21 verified at the time plaintiff undertook its investigation.

22           The Court additionally notes that 11 of the  
23 verified defendants received their verification postcards in  
24 May of 2021, just one month prior to plaintiffs filing this  
25 lawsuit, and assuming that at least some portion of

1  
2 plaintiff's investigation of the over 90 defendants sued in  
3 this case, which number is multiplied when you consider the  
4 6 related actions, but considering that some portion of the  
5 investigation took place more than a month prior to filing  
6 suit, these addresses very well may not have been verified  
7 at the time of the investigation.

8           So in the circumstances of this case which include  
9 a suit against a voluminous number of defendants operating  
10 online storefronts, a significant portion of whom posted  
11 demonstrably incurred address information in a space where  
12 false information is known to abound, the Court concludes  
13 that plaintiff exercised reasonable diligence in attempting  
14 to locate the moving defendants' addresses.

15           A second argument from the defense is that  
16 plaintiff's motion was premature because it did not first  
17 attempt service under the Hague Convention, but the  
18 Court concludes that plaintiff was not required to  
19 attempt to serve the moving defendants by another means  
20 prior to moving for alternative service under Rule 4(f)(3).  
21 As mentioned above, Federal Rules of Civil Procedure 4(f)  
22 enumerates three possible ways to effect service abroad,  
23 only two of which are relevant here, and that would be Rule  
24 4(f)(1) which is the methods authorized under the Hague  
25 Convention, and 4(f)(3) which permits service by other means

not prohibited by international agreement as the Court orders.

Under Rule 4(f)(3), a Court may fashion means of service on an individual in a foreign country so long as the ordered means of service is not prohibited by international agreement and comports with constitutional notions of due process. I quote here from my colleague Kimba Woods' decision in *SEC v. Anticevic*, 2009 WL 361739 (S.D.N.Y. 2009), "And in that regard it is well established that there is no hierarchy among the subsections in Rule 4(f). Rule 4(f) is neither a last resort nor extraordinary relief, it is merely one means among several which enables services of process on an international defendant."

I'm quoting here from *Advanced Aerofoil Technologies, AG v. Todaro*, a decision from Judge Carter of this district in 2012, contained at 2012 WL 299959. "The decision of whether to order service of process under Rule 4(f)(3) is committed to the sound discretion of the District Court."

This was noted in *United States v. Lebanese Canadian Bank*, 285 F.R.D. 262 (S.D.N.Y. 2012). "And so under Rule 4(f)(3) a plaintiff is not required to attempt service through the other provisions of Rule 4(f) before it may order service pursuant to Rule 4(f)(3). That being said, in

1  
2 evaluating whether alternative service is necessitated,  
3 Courts in this circuit have generally required a showing  
4 that the plaintiff has reasonably attempted to effectuate  
5 service on the defendants, and showing that the  
6 circumstances are such that the Court's intervention is  
7 necessary." And I am quoting here from the *Lebanese*  
8 *Canadian Bank* decision I just mentioned.

9           That said, these considerations guide the exercise  
10 of discretion and they are not akin to an exhaustion  
11 requirement. Here the Court concludes that alternative  
12 service was necessary on the circumstances of this case.  
13 Although plaintiff did not attempt to serve the moving  
14 defendants before seeking alternative service, the Court has  
15 already explained that plaintiff harbored reasonable doubts  
16 about the veracity of the addresses affiliated with their  
17 Amazon user accounts. The Court, therefore, does not believe  
18 it appropriate to institute a requirement that plaintiff  
19 attempt service under the Hague Convention using  
20 information that it had reason to believe was  
21 erroneous.

22           Beyond the questionable authenticity of these  
23 addresses, there were also the exigencies of the case,  
24 which counsel, in favor of alternative service,  
25 plaintiff initiated this suit on an emergency posture

1  
2 picking an ex parte TRO in the hopes of immediately  
3 thwarting the sale of allegedly counterfeit goods on  
4 online marketplaces. Any other strategy for  
5 instituting this action would have afforded the  
6 alleged counterfeiters an opportunity to evade  
7 enforcement of the trademark laws, thus obviating the  
8 release sought by plaintiff before the Court and  
9 before this Court had considered, a chance, excuse me,  
10 to consider the merits of the claims.

11           Going to this point, the Court is persuaded by  
12 the several cases in this district that have  
13 considered the length of time required for service  
14 under the Hague Convention as weighing in favor of  
15 permitting alternative service. And these include *OC Global*  
16 *Partners, LLC, v. Adaime*, from Judge Liman, reported or  
17 contained at 2022 WL 769328, and *In re: GOG*, contained at  
18 287 F.R.D. and I have a pinpoint cite at page 266.

19           In addition, this Court finds that the means of  
20 alternative service authorized by the Court did not violate  
21 any international agreement or offend due process  
22 principles. As noted, the Court permitted service by  
23 delivery of a PDF copy of the TRO, together with the summons  
24 and complaint, or a link to a secured file sharing website  
25 to defendants' email addresses as identified by Amazon.

This means of service on a Chinese defendants is not prohibited by any international agreement. China has objected to service by postal channels under Article 10 of the Hague Convention, but Courts within this district have held that this objection does not encompass service by email and, further, that service by email is not prohibited by any international agreement.

As one case for that proposition I cite to Judge Preska's decision in *Mattel, Inc. v. AnimeFun Store*, 2020 WL 2097624. "Second, for method of service to satisfy the strictures of due process, it must provide notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections."

I quote here from the Second Circuit's 2006 decision in *Luessenhop v. Clinton County*, 466 F.3d 259. "In service by email alone comports with due process where a plaintiff demonstrates that the email is likely to reach the defendant."

I'm quoting here from Judge Engelmayer's decision in *FTC v. Pecon Software Ltd.*, 2013 WL 4016272. "And these standards are met here, as the moving defendants engaged in online business and regularly communicated with customers by email, indeed there is no

question that service by email was effective in this case.” After transmitting the summons, complaint, TRO and other relevant documents to the moving defendants via email plaintiff received registered receipts confirming that the service emails and documents annexed thereto were sent to, delivered to, and received by all of the moving defendants. The Court, therefore, has no doubt that service by email sufficed to apprise the moving defendants of the initiation of this litigation and provided them with an opportunity to participate and, as a result, alternative service using the moving defendants’ email addresses comports with due process.

For these reasons, the moving defendants’ moving to dismiss for improper service is denied, and the Court turns now to the motion of defendants, ACBERY and ANZIR under Rule 12(b)(2) to dismiss the claims against them for lack of personal jurisdiction.

And so turning to that, on a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing that the Court has jurisdiction over the defendant. I’m quoting here from the Second Circuit’s decision in *MetLife Insurance Co. v. Robinson-Ceco Corp.*, 84 F.3d 560, “And if, as here, a Court does not conduct an evidentiary hearing on the issue of personal

jurisdiction, the plaintiff need only make a prima facie showing that the Court possesses personal jurisdiction over the defendant."

I'm quoting here from *DiStefano v. Carozzi North America Inc.*, 286 F.3d 81 (2d Cir. 2001), "When a plaintiff makes that showing through an averment of facts that if credited by the alternate trier of fact would suffice to establish personal jurisdiction over the defendant, plaintiff's jurisdictional allegations are construed in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor."

I quote here from this Court's decision in *Elsevier v. Grossman*, 77 F.Supp.3d 331 (2015), "And where a Court does not hold an evidentiary hearing on the jurisdictional question, it may, nevertheless, consider matters outside the pleadings." And here the Court considers the declarations of Wen Juan Shih (phonetic), a representative of ACBERY, Xia Wang (phonetic), a representative of ANZIR, as well as the Futterman declaration which provides additional information concerning these defendants' contacts with the foreign state.

And so turning to those contacts, to determine whether the exercise of personal jurisdiction is proper, this Court conducts a two-part inquiry. It first looks at



whether there is a basis for personal jurisdiction under the laws of the foreign state in (inaudible) New York, and that process is outlined in the case of *Licci ex rel. Licci v. Lebanese Canadian Bank*, 732 F.3d 161 (2d Cir. 2013). "Plaintiff exerts jurisdiction under two provisions of New York's Long Arm Statute, Sections 302(a)(1) and 302(a)(3) and the New York Civil Practice Law and Rules, as well as the Federal Long Arm Statute which is Federal Rule of Civil Procedure 4(d)(2).

So turning first to New York's Long Arm Statute, 3(a)(1), 302(a)(1), excuse me, provides that a Court may exercise personal jurisdiction over any non-domiciliary through a person or through an agent transacts any business within the state so long as the cause of action arises from that transaction. And so under this provision a Court may exercise personal jurisdiction over a non-domiciliary if two conditions are met. First, the non-domiciliary must transact business within the state; second, the claims against the non-domiciliary must arise out of that business activity.

And Section 302(a)(1) is a single act statute. By that I mean that proof of one transaction in New York is sufficient to invoke jurisdiction even though the defendant never enters New York, so long as the defendant's activities

were purposeful and there is a substantial relationship between the transaction and the claim asserted.

I'm quoting her from the New York Court of Appeals decision in *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460 (1988), "And pursuant to Section 301(a)(3) of New York's Long Arm Statute, a Court may exercise jurisdiction over a non-domiciliary who commits a tortious act without the state causing injury to a person or to property within the state. This provision applies only to a defendant that either regularly does or solicits business or engages in other persistent course of conduct or derives substantial revenue from goods used or consumed for services rendered in the state or, number two, expects or should reasonably expect that the acts of consequences in the state and derives substantial revenue from interstate of international commerce."

And then, finally, the Federal Long Arm Statute, Rule 4(k)(2), allows Federal Courts to exercise personal jurisdiction, if plaintiff's cause of action arises under the Federal Law the defendant is not subject to the jurisdiction of the Courts of general jurisdiction of any one state and the defendant's total contacts with the United States, as a

whole, are sufficient to confer the Court with personal jurisdiction without offending due process.

And I quote here from a Southern District decision of 2020, *Astor Chocolate Corp. v. Elite Gold Ltd.*, 510 F.Supp.3d 108. "In this circuit to meet that second requirement, the plaintiffs need to certify that to their knowledge the foreign defendant is not subject to jurisdiction in any other state. Once plaintiff establishes a statutory basis for jurisdiction, the plaintiff must demonstrate that the exercise of that jurisdiction comports with due process." This is recognized by the Second Circuit in the case of *Charles Schwab Corp. v. Bank of America Corp.*, a 2018 decision contained at 883 F.3d 68.

And the constitutional analysis under the Due Process Clause consists of two separate components, the minimum contacts inquiry and the reasonableness inquiry. They are discussed in the *Licci* case that I mentioned earlier, the minimum contacts inquiry examines whether the defendant has sufficient contacts with the foreign state to justify the Court's exercise of personal jurisdiction, the reasonableness inquiry examines whether the assertion of personal jurisdiction comports with traditional notions of fair play and substantial justice, and that is whether it is

reasonable to exercise personal jurisdiction under the circumstances of the particular case.

As part of that second inquiry, the Court considers first the burden that the exercise of jurisdiction will impose on the defendant; second, the interest of the foreign state in adjudicating the case; third, the plaintiff's interest in obtaining convenient and effective relief; fourth, the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and, fifth, the shared interests of the states in furthering substantive social policies. These factors are set forth and discussed in the Second Circuit's 2000 decision of *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158. "And while due process is distinct from a statutory basis for personal jurisdiction, the Second Circuit noted that it would be the rare case where personal jurisdiction was proper under New York's Long Arm Statute but not under a due process analysis." That discussion is contained in the Circuit's 2015 decision, *Eades, E-A-D-E-S, versus Kennedy, PC, Law Offices*, 799 4.3d 161.

Now, turning first to defendant, ACBERY, and apologies if I've mangled that name, the ST represents that it completed only one sale of the allegedly infringing product at issue in this case in New York, and that one sale

1 was to plaintiff's investigator. ANZIR, on the other hand,  
2 represents that it has sold no such products in New York.  
3 And so turning first to defendant, ACBERY, this Court finds  
4 that Section 302(a)(1) of New York's Long Arm Statute  
5 authorizes personal jurisdiction because ACBERY transacted  
6 business within New York and plaintiff's causes of action  
7 arise from this business.  
8

9           With respect to the transacting business prong,  
10 ACBERY operates an Amazon merchant storefront through which  
11 consumers in New York can purchase ACBERY's products, and as  
12 reflected by the checkout page that plaintiff included in  
13 its TRO application, ACBERY used its Amazon merchant  
14 storefront to communicate with consumers, to accept orders  
15 and to advertise, sell and ship allegedly counterfeit  
16 products to New York. These features render ACBERY's  
17 storefront on Amazon a highly interactive website which type  
18 of platform Courts have repeatedly found to satisfy the  
19 transacting business prong of Section 302(a)(1). And one  
20 example in which this is discussed is my colleague Judge  
21 Ramos' decision in *Poof-Slinky, LLC v. A.S. Plastic Toys*  
22 *Co.*, 2020 WL 5350537.

23           The Court additional finds that there exists a  
24 direct nexus between ACBERY's sale of allegedly counterfeit  
25 merchandise on its Amazon storefront and plaintiff's causes

of action. Indeed, ACBERY admits that it sold an allegedly infringing produce in New York which satisfies Section 302(a)(1)'s requirement that the defendant engage in a single act of selling counterfeit goods in New York.

To be clear, ACBERY notes that the sole sale was instigated by plaintiff's investigator and argues from this fact that personal jurisdiction cannot be based on a forum contact manufactured by plaintiff. This Court acknowledges that there is not uniformity on this issue and that the Second Circuit has expressly left open the question of whether a sale of the counterfeit items to plaintiff's investigator or agent by itself constitutes an act of trademark infringement, and that was something that was left open in the *Chloe* case I mentioned earlier.

But in light of this disagreement, this Court has considered both sides of the issue, and it is persuaded by the decisions in this District that have found purchases made to an agent of a plaintiff to suffice for jurisdictional purposes under Section 302(a)(1). The *Poof-Slinky* case which I mentioned earlier found that point, other cases finding that include *Cartier v. Seah*, 598 F.Supp.2d 422, and *Mattel v. Adventure Apparel*, 2001 WL 286728.

As I noted earlier, the Second Circuit has made

1  
2 clear that Section 302(a)(1) is a single act statute and  
3 proof of one transaction in New York is sufficient to invoke  
4 jurisdiction so long as the activities here were purposeful  
5 and there is a substantial relationship between the  
6 transaction and the claim asserted, and the Court finds  
7 those to be satisfied.

8           The Court finds, in particular, that plaintiff has  
9 adequately alleged personal jurisdiction with respect to  
10 ACBERY and because it has found Section 302(a)(1) to confer  
11 statutory basis for personal jurisdiction, it does not  
12 consider the alternative bases for personal jurisdiction  
13 that are argued by plaintiff.

14           Turning next to the constitutional analysis, the  
15 Court first finds that plaintiff has asserted sufficient  
16 minimum contacts on the part of ACBERY to satisfy the tenets  
17 of due process and the existence of these minimum contacts  
18 exist for substantially the same reasons ACBERY meets the  
19 requirements of New York's Long Arm Statute, namely, the  
20 operation of a highly interactive Amazon storefront through  
21 which it communicates with and sells products to New York  
22 consumers and, in fact, has done so.

23           "And the Second Circuit has observed that when a  
24 plaintiff has made a threshold showing of a defendant's  
25 minimum contact, the exercise of jurisdiction is favored

1 unless the defendant presents a compelling case that the  
2 presence of some other considerations would render  
3 jurisdiction unreasonable." I'm quoting here from the  
4 *Robinson-Ceco* case I quoted earlier, but here this Court  
5 finds that it is reasonable to exercise personal  
6 jurisdiction over ACBERY because plaintiff has made  
7 convincing showings on three of the relevant factors.  
8 In particular, plaintiff has a strong interest in  
9 obtaining relief for the alleged trademark  
10 infringement; number two, this suit which has  
11 proceeded against 90 defendants or more and relates to  
12 several other actions involving identical conduct by scores  
13 of additional entities poses the most sufficient path for  
14 resolving the dispute; and, three, the substantive policies  
15 embodied in Federal Trademark Law all weigh in favor of the  
16 Court's exercise of personal jurisdiction in this case.

17  
18 In contrast, however, the Court finds that it does  
19 not possess personal jurisdiction over defendant ANZIR. It  
20 is differently situated in at least one critical respect, it  
21 has not sold a single infringing product in New York. And so  
22 the Court will discuss each of plaintiff's proffered bases  
23 for jurisdiction in turn.

24 First, plaintiff asserts personal jurisdiction  
25 under 302(a)(1) of the Long Arm Statute which the Court has



1  
2 already discussed with respect to defendant ACBERY, but  
3 although ANZIR operates a fully interactive Amazon  
4 storefront that operates identically to ACBERY, ANZIR has  
5 not sold a single infringing product in New York. And this  
6 lack of sales (inaudible) plaintiff's showing that ANZIR has  
7 purposely engages in business in New York and that there is  
8 a substantial relationship between the transaction and the  
9 claim asserted. There is no single transaction that can  
10 serve as the jurisdictional hook.

11 Separately and second, plaintiff asserts  
12 personal jurisdiction under 302(a)(3) of New York's Long  
13 Arm Statute, and under this provision New York Court may  
14 exercise jurisdiction over nonresidents that commit  
15 tortious acts outside of New York but cause injury inside  
16 the state. But here plaintiff has failed to establish that  
17 ANZIR's alleged trademark infringement caused injury in  
18 New York for purposes of this provision.

19 So the Court's determining whether there is  
20 injury in New York sufficient to warrant 302(a)(3)  
21 jurisdiction must generally applied a situs of injury test  
22 that asks them to locate the original event which caused  
23 the injury. This test is discussed in the *DiStefano* case I  
24 mentioned earlier. And the Second Circuit has held that  
25 where the original event, for purposes of Section

302(a)(3) -- has held, excuse me, let me say that again, it has held that the original event for purposes of this provision occurs where the first effects of the torts that ultimately produced the final economic injury is located. And in trademark cases, the first effects are typically felt where the trademark owner resides and conducts business. That's discussed in the case of *Panacea Solutions, Inc. v. Roll*, a 2006 decision contained at 2006 WL 3096022, and cases for this proposition are also collected in Judge Oetken's decision in *Alibaba Group Holding Ltd. v. Alibabacoin Foundation*, 2018 WL 2022626.

So on this logic, the Court concludes that the situs of injury for purposes of Section 302(a)(3) is plaintiff's place of incorporation which is in Canada and not in New York. And so plaintiff has not demonstrated the existence of an injury in New York sufficient to confer jurisdiction under Section 302(a)(3).

Plaintiff cites two cases for the idea that the injury requirement can be satisfied by threatened harm resulting from actual or potential confusion and deception of internet users in New York State, and those cases are discussed at page 13 of plaintiff's opposition. But both of those cases involve plaintiffs who were incorporated in New York, and thus entailed a different situs of injury

1 analysis.

2  
3 One of the cases, the *Energy Brands* case,  
4 expressly affirmed the principle just stated, that in  
5 trademark cases the tort occurs where the passing off  
6 occurs, that is where the customer purchases the  
7 defendant's goods in the mistaken belief that they are the  
8 trademark owner's product. But here ANZIR has not sold any  
9 infringing product in New York and that is in stark contrast  
10 to the defendant in *Energy Brands* who made several sales of  
11 allegedly infringing goods in New York, and the defendant in  
12 *American Network*, which signed up six New York subscribers  
13 after displaying allegedly infringing advertising. So  
14 neither of the cases cited by plaintiff alters the Court's  
15 conclusion that ANZIR's tortious conduct did not cause an  
16 injury in New York for purposes of Section 302(a)(3).

17 Finally, plaintiff relies on the Federal Long Arm  
18 Statute for case two as a basis for exercising jurisdiction  
19 over ANZIR and the Court rejects this argument to trigger  
20 that provision a defendant must not be subject to  
21 jurisdiction in any state's courts of general jurisdiction.  
22 But even if ANZIR is not subject to jurisdiction in New  
23 York, plaintiff has not provided evidence that ANZIR is  
24 similarly not subject to jurisdiction in each of the other  
25 49 states and, therefore, plaintiff has not demonstrated a

1  
2 statutory basis for this Court's exercise of personal  
3 jurisdiction over ANZIR and the defendant's motion to  
4 dismiss as it pertains to defendant ANZIR is granted.

5           And so with my deepest thanks for having you sit  
6 through all this, let me recapitulate and note that for the  
7 reasons I've just outlined the moving defendants' motion to  
8 dismiss is denied except insofar as it relates to ANZIR's  
9 motion to dismiss for lack of personal jurisdiction and that  
10 motion is granted.

11           For next steps in this matter, I am directing the  
12 moving defendants who remain in the case to file an answer  
13 to the complaint within two weeks of the date of this oral  
14 decision and I would ask the parties to prepare and file a  
15 joint status letter and a case management plan within three  
16 weeks, three weeks of the date of this oral decision.

17           With that, that's all I have to cover, so I do  
18 thank you, again, for listening to this oral decision, we  
19 are adjourned. Thank you very much.

20                   (Whereupon the matter is adjourned.)  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Foxmind Canada Enterprises Ltd. versus ABCTEC, et al., Docket #21cv5146, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: July 25, 2022