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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUPERCCELL OY,

Plaintiff

v.

WWW.CLASHOFCLANSMERCH.COM,

Defendant

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 DEFENDANT'S
WEBSITE AND DEFENDANT'S
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

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

DECLARATION OF MELISSA J. LEVINE¹

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 42nd Street, Suite 1250, New York, New York 10165 and represent Supercell Oy 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 Defendant's Website 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 Defendant in light of Defendant's 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 upon my research, manufacturers and sellers of counterfeit products, like Defendant, conduct business over the Internet through websites that they utilize to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or ship their products directly to consumers worldwide and specifically to consumers residing in the U.S., including New York.
4. Given our experience in policing against counterfeiters, sellers of counterfeit products, like Defendant, often use evasive tactics, such as aliases, false addresses and other incomplete identification information to conceal their identities and avoid detection. These tactics,

¹ 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 Application.

including disappearing or claiming ignorance of their responsibilities while simultaneously destroying any evidence of their counterfeiting actions and draining their financial accounts, are commonly used to attempt to circumvent restraining orders and other remedies issued with prior notice.

5. Through visual inspection of Defendant's Website, Epstein Drangel confirmed that the products Defendant offers for sale using virtually identical copies of the Supercell IP are, in fact, Counterfeit Products.
6. Further, through visual inspection of Defendant's Website, which prominently features the Supercell IP, including in the Infringing Domain Name, Epstein Drangel also confirmed that Defendant accept payment in U.S. dollars, via PayPal, debit card or credit card and ships to the U.S.
7. Epstein Drangel purchased Counterfeit Products from Defendant's Website ("Test Purchases"). True and correct copies of Epstein Drangel's order confirmations and receipts for the Test Purchases are attached as **Exhibit A**.
8. The confirmation email Epstein Drangel received from the Test Purchases made via Defendant's Website were sent from the following email address: heworld38@gmail.com. Moreover, the PayPal receipts indicate that payment for the Test Purchases was sent to the following email address: payment.info@onesanfordpoe24.com. Additionally, the email address listed on Defendant's Website is contact@clashofclansmerch.com.
9. The WhoIs information lists NameCheap, Inc. as the registrar for Defendant's Website and lists Cloudflare, Inc. as the host for Defendant's Website.
10. Further, Defendant's Website lists two (2) addresses for Defendant's warehouse: U.S. Warehouse: 2455 S. Carr St. Littleton, Colorado 80128 and U.S. Warehouse: 3405 S. Carr St.

Littleton, Colorado 80128.

11. However, based on my research, these addresses are associated with additional websites² that appear to sell counterfeit and infringing products from other brands and contain nearly identical design features as Defendant's Website.
12. Based on my research, these addresses appear to be fake with no connection to the Defendant and/or the Defendant's Website. Further, according to Google Maps, these specific addresses do not exist, and the closest related address is within a suburban neighborhood, which shows no indication of a warehouse whatsoever.³
13. Additionally, upon information and belief, Defendant is located in China, as indicated by its "Shipping & Delivery Policies"⁴ that warned of shipping delays due to the Chinese New Year, as well as its Infringing Listings that advertise Counterfeit Products using Chinese characters.⁵
14. No other contact information has been provided for Defendant's Website and/or it has been intentionally concealed.
15. For the reasons discussed herein, Defendant's true identity, location(s) and contact information, as well as the location(s) of the Counterfeit Products that Defendant is offering for sale and/or selling, is unclear and it is virtually impossible for Plaintiff to obtain such information independently at this time.
16. While it was impossible for Epstein Drangel to locate a true and correct physical address for

² Additional websites include but are not limited to: <https://onepunchman-merch.com/>; <https://teamfortress2merch.com/>; and <https://vanossgamingshop.com/>.

³ GOOGLE MAPS, https://www.google.com/maps/place/S+Carr+St,+Ken+Caryl,+CO+80128/@39.5705768,-105.0946464,15.92z/data=!4m6!3m5!1s0x876b7e9ac48bdab7:0x1454251bf0954c8d!8m2!3d39.5713002!4d-105.0915421!16s%2Fg%2F1v_nc_bh?entry=ttu&g_ep=EgoyMDI1MDMyMy4wIKXMDS0JLDEwMjExNjQwSAFQAw%3D%3D (last visited Mar. 25, 2025).

⁴ *Shipping & Delivery Policies*, CLASHOFCLANSMERCH, <https://clashofclansmerch.com/shipping-policy/> (last visited Mar. 25, 2025).

⁵ *Valkyrie COC Supercell-Clash of Clans Official Genuine CLASH Gelom Figure*, CLASHOFCLANSMERCH, <https://clashofclansmerch.com/product/valkyrie-coc-supercell-clash-of-clans-official-genuine-clash-gelom-figure/> (last visited Mar. 25, 2025).

Defendant, it is imperative for Defendant to maintain a current and operational email address(es) to operate Defendant's Website and conduct its business.

17. We have used RMail's online services and 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.
18. It is our experience that sellers of counterfeit and/or infringing products, such as Defendant, are in constant communication with each other and regularly participate in online chatroom discussions involving pending litigation and potential new lawsuits.
19. 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.⁶
20. 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.
21. A true and correct copy of the transcript from the July 14, 2022 hearing 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 B**.
22. Neither I, nor anyone else at Supercell, to the best of my knowledge, have publicized this Application or Plaintiff's intent to seek entry of a temporary restraining order against the Defendants to any third party.

⁶ 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>.

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 2nd day of April 2025 in New York, New York.

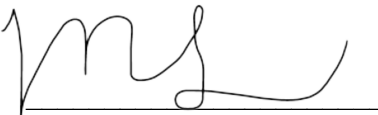
By: 
Melissa J. Levine

EXHIBIT A

DEFENDANT clashofclansmerch.com

Checkout Page for Counterfeit Products from Defendant

Express checkout

PayPal

Pay Later

Debit or Credit Card

Powered by PayPal

Information > Shipping > Payment

- OR -

Information

Email address
receipts@ipcounselors.com

Shipping address

First name
Ken

Last name
Springs

Street address
244 Madison Ave

Add a house number if you have one

Add Address Line 2 (optional)

Country / Region
United States (US)

ZIP Code
10016

State
New York

Town / City
New York City

Phone

 1
COC Cartoon Supercell Leon Spike Plush Toy - 25cm \$35.51

Enter Promo Code

Apply

Subtotal	\$35.51
Shipping	\$9.00
Total	\$44.51

Clash Of Clans Merch



Order 21147

Thank you Jason!



Processing
March 18, 2025

Order updates

You'll get shipping and delivery updates by email.

Information

Contact information

receipts@ipcounselors.com

Payment

Pay with PayPal

Shipping address

Jason Drangel
244 Madison Ave, Suite 411
New York, NY 10165

Billing address

Jason Drangel
244 Madison Ave, Suite 411
New York, NY 10165

Shipping

Standard + Insurance Shipping

Continue shopping



COC Cartoon Supercell Leon Spike
Plush Toy - 25cm

\$35.51

Subtotal: \$35.51

Shipping: \$9.00 via Standard + Insurance Shipping

Total: \$44.51

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★ Enjoy 10% off orders over \$100 with code: "HAPPY10"



Payment Terms

1. Pay with Credit/Debit Card

The available credit/debit card options are listed below.



This transaction is strongly secured and encrypted by Stripe.

Please note that **Clash Of Clans Merch** does not collect your credit/debit card number or personal information when you make a payment. For questions regarding your transactions on our site, please consult your card-issuing bank for information.

You also use Apple Pay if you are using Apple devices.

2. Pay with Paypal




When placing an order with PayPal, you will be redirected to the PayPal payment page where you can confirm your payment by logging in with your PayPal username and password.

You may still check out even without a PayPal account. To do so, please click "Pay with Debit/Credit Card" in the PayPal payment page and you will be redirected to a secure page where you can enter your credit card information or complete your payment safely via PayPal.

Order Confirmation for Counterfeit Products from Defendant

Clash Of Clans Merch

 **Order 21148**
Thank you Jason!

 Processing
March 18, 2025

Order updates

You'll get shipping and delivery updates by email.

Information

Contact information
buybuybuy212@gmail.com

Payment
Pay with PayPal

Shipping address
Jason Drangel
244 Madison Ave
411
New York, NY 10016-2817

Billing address
Jason Drangel
244 Madison Ave
411
New York, NY 10016-2817

Shipping
Standard Shipping (7-25 days)

 **1** Clash Of Clans Barbarian Man's Tank Top
Color: Black / Size: L \$24.95

Subtotal: \$24.95
Shipping: \$6.00 via Standard Shipping (7-25 days)

Total: \$30.95

Your Clash Of Clans Merch order has been received!

Inbox x



Clash Of Clans Merch <heworld38@gmail.com>
to me ▾

12:17 PM (3 hours ago)



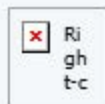
Thank you for your order

Hi Jason,

Just to let you know — we've received your order #21148, and it is now being processed:

[Order #21148] (March 18, 2025)

Product	Quantity	Price
Clash Of Clans Barbarian Man's Tank Top	1	\$24.95



Hello, Jason Drangel

You paid \$44.51 USD to CONG TY TNHH THOI TR...

Transaction ID

31E64230DA951493G

Transaction date

Mar 18, 2025

Merchant

CONG TY TNHH THOI TR...

Shipping address

Ken Springs

244 Madison Ave, Sui...

New York, NY 10165

United States

Invoice ID

WGLEN.BE.CHCB-21147

Track Package





CONG TY TNHH THOI TRANG GIA HUY VN

Mar 18 . Payment

-\$44.51



Split
Payment

Paid with

Business Platinum
Card®
(AMEX Credit Card x-
6000)
You'll see "PAYPAL
*CONGTYTNHHT" on
your card statement.

\$44.51

Ship to

Ken Springs
244 Madison Ave, Suite 411
New York, NY 10165
United States

Transaction ID

31E64230DA951493G

Seller info

CONG TY TNHH THOI TRANG GIA HUY VN
payment.info@onesanfordpoe24.com

Invoice ID

WGLEN.BE.CHCB-21147

Purchase details

Order #21147 CXOUK
Toy
Product ID: 1

\$35.51

Shipping \$9.00

Total \$44.51

[Print details](#)

How can we help?



[Request Cancellation](#)



[Get Answers](#)



[Report a problem](#)



[Contact CONG TY TNHH THOI TRANG GIA HUY VN](#)

If CONG TY TNHH THOI TRANG GIA HUY VN is unable to help, you can file a case in our Resolution

EXHIBIT B

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:

For Plaintiff: EPSTEIN DRANGEL LLP
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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
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 10th 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 16th 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 8th 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 9th of 2021, the Court entered a preliminary injunction

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

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

So beginning first with the motion to dismiss for improper service of process, under Federal Rule of Civil Procedure 12(b)(5) the Court observes that the moving 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 this motion publicly available articles about Amazon's
2 process for verifying sellers' addresses.

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

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

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

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

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.

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

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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

1 question that service by email was effective in this case."
2 After transmitting the summons, complaint, TRO and other
3 relevant documents to the moving defendants via email
4 plaintiff received registered receipts confirming that
5 the service emails and documents annexed thereto were
6 sent to, delivered to, and received by all of the
7 moving defendants. The Court, therefore, has no doubt that
8 service by email sufficed to apprise the moving defendants
9 of the initiation of this litigation and provided them with
10 an opportunity to participate and, as a result,
11 alternative service using the moving defendants' email
12 addresses comports with due process.
13

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

19 And so turning to that, on a Rule 12(b)(2) motion
20 to dismiss for lack of personal jurisdiction, the plaintiff
21 bears the burden of showing that the Court has jurisdiction
22 over the defendant. I'm quoting here from the Second
23 Circuit's decision in *MetLife Insurance Co. v. Robinson-Ceco*
24 *Corp.*, 84 F.3d 560, "And if, as here, a Court does not
25 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.

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

1
2 302(a)(3) -- has held, excuse me, let me say that again,
3 it has held that the original event for purposes of this
4 provision occurs where the first effects of the torts that
5 ultimately produced the final economic injury is located.
6 And in trademark cases, the first effects are typically
7 felt where the trademark owner resides and conducts
8 business. That's discussed in the case of *Panacea*
9 *Solutions, Inc. v. Roll*, a 2006 decision contained at 2006
10 WL 3096022, and cases for this proposition are also
11 collected in Judge Oetken's decision in *Alibaba Group*
12 *Holding Ltd. v. Alibabacoin Foundation*, 2018 WL 2022626.

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

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

1
2 analysis.

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.)
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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