Service Interrupted: The Hague Convention Trumps Federal Rule 4(f)(3) on Email Service

Can a plaintiff serve a Chinese defendant by email under Federal Rule of Civil Procedure 4(f)(3)? According to the Second Circuit, the answer is "No." In a matter of first impression with potentially significant impact on intellectual property and e-commerce litigation involving foreign sellers, the court held that service on Chinese defendants was governed by the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (the "Hague Convention"), the Hague Convention prohibits service by email, and the Hague Convention trumps Federal Rule of Civil Procedure 4(f)(3), which allows email service in certain circumstances.

The Case: *Smart Study Co. v. Shenzhenshixindajixieyouxiangongsi,* No. 24-313 (2d Cir. Dec. 18, 2025)

In 2021, Smart Study, a global entertainment company and the owner of the intellectual property behind the popular children's creation "Baby Shark," commenced an action in district court against 58 China-based online sellers, alleging trafficking in counterfeit Baby Shark products in violation of federal trademark, copyright, and unfair competition laws, as well as New York's unfair competition law. The plaintiff sought and received authorization from the district court to serve the defendants via email pursuant to Federal Rule of Civil Procedure 4(f)(3), which authorizes service by other means not prohibited by international agreement. Smart Study received the email addresses from Amazon to effectuate service in July of 2021. When no defendant responded, the court entered a preliminary injunction precluding the defendants from manufacturing or selling counterfeit Baby Shark products.

Several defendants later moved to dissolve the injunction, arguing that the district court lacked personal jurisdiction because service by email violated the Hague Convention, to which both China and the United States are signatories. China has objected to the alternative methods of service identified in Article 10 of the treaty and generally requires service through its central authority. The district court ultimately dismissed claims against two defendants (Shenzhenshixindajixieyouxiangongsi and Changgesshangmaoyouxiangongsi) for improper service, giving rise to the appeal.

On appeal by Smart Study, the Second Circuit affirmed the dismissal, holding as a matter of first impression in the circuit that the Hague Convention did not permit email service on China-based defendants. The court explained that Rule 4(f)(3) authorizes alternative methods of service only when those methods are not prohibited by international agreement. Because the Hague Convention governed service on the Chinese defendants and China had objected to alternative methods of service, the

convention's procedures controlled. As a result, service by email was not permissible.

In so holding, the court rejected arguments that the Hague Convention's silence on email places this method outside of its scope and thus within Rule 4(f)(3)'s procedures control. Instead, the court emphasized that allowing email service under the rule would undermine both the Hague Convention's purpose and a signatory nation's authority to regulate service within its borders.

The Takeaway

Smart Study significantly alters the landscape for litigators in the Second Circuit pursuing claims against defendants located in China. Plaintiffs can no longer assume that Rule 4(f)(3) provides a shortcut around the Hague Convention.

Prior to *Smart Study*, many federal courts routinely authorized email service on Chinese defendants in intellectual property and anti-counterfeiting cases, citing the practical difficulties serving foreign merchants. As a result, plaintiffs frequently relied on Rule 4(f)(3) to obtain expedited relief against online sellers without having to navigate the often lengthy Hague Convention process. That option is no longer available.

Service through China's central authority can take months, increasing litigation costs and the time required to obtain relief. Unfortunately, this can be particularly significant in trademark and anti-counterfeiting actions, which depend upon obtaining emergent injunctive relief against foreign online sellers before assets can be moved or storefronts closed.

For practitioners, the lesson is straightforward: do not assume that email service remains available simply because a defendant conducts business online. Before seeking alternative service under Rule 4(f)(3), counsel must determine whether the destination country has objected to that method of service. Failing to do so may result in dismissal before the court ever reaches the merits of the case.