

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**AVUS HOLDINGS, LLC, et al.,  
Plaintiffs,**

v.

**IRON LAB,  
Defendant.**

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**CASE NO. 6:22-CV-00134-ADA-JCM**

**ORDER**

Before the Court is Plaintiffs Avus Holdings, LLC and Avus Design, Inc.’s Motion for Service by Alternative Means Pursuant to Fed. R. Civ. P. 4(f)(3) (ECF No. 10). For the following reasons, the Court **ORDERS** that Plaintiffs’ Motion be **GRANTED**.

Plaintiffs move to effect alternative service on Defendant Iron Lab by email. Pls.’ Mot. at 1. Defendant runs an Amazon storefront under the name Iron Lab and lists a business address located in Kiev, Ukraine. *Id.* at 2. An individual named Oleksandr Maksimov has applied for the trademark IRON LAB with the United States Patent and Trademark Office, listing a Ukrainian address nearly identical to the address listed on the Amazon storefront. *Id.* To date, Plaintiffs have discovered multiple email addresses related to Defendant: trademarks@wfpclaw.com and b4b.tmdesk@gmail.com (listed as counsel of record on Defendant’s trademark application); borcomo.company@gmail.com (a personal email address for Defendant); and firm@patentlawny.com (the email address of Defendant’s counsel being retained for this case). *Id.* at 2–3. Due to the ongoing war in Ukraine, Plaintiffs allege the exact physical location of Defendant outside of the United States is unknown. *Id.* at 6.

Defendants located outside the United States may be served in several different ways:

- (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
- (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
  - (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
  - (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
  - (C) unless prohibited by the foreign country's law, by:
    - (i) delivering a copy of the summons and of the complaint to the individual personally; or
    - (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
- (3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

Rule 4(f)(3) permits service on an individual in a foreign country “by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). Rule 4(h) permits service of a foreign entity “at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual.” Fed. R. Civ. P. 4(h).

“[S]o long as the method of service is not *prohibited* by international agreement the Court has considerable discretion to authorize an alternative means of service.” *Affinity Labs of Texas, LLC v. Nissan North America, Inc.*, No. WA:13–CV–369, 2014 WL 11342502, at \*1 (W.D. Tex. July 2, 2014). Ukraine is a signatory to the Hague Convention and does prohibit service via email. Status Table, HCCH, <https://www.hcch.net/en/instruments/conventions/status-table/print/?cid=17> (last visited April 13, 2022); *see also Birmingham v. Doe*, No. 21-CV-23472-SCOLA/GOODMAN, 2022 WL 871910, at \*5–6 (S.D. Fla. Mar. 24, 2022).

The Court may order an alternative method of service of process only if it complies with Texas’s long-arm statute. *UNM Rainforest Innovations v. D-Link Corp.*, No. 6-20-CV-00143-ADA, 2020 WL 3965015, at \*2 (W.D. Tex. July 13, 2020). The Texas long-arm statute reaches

“as far as the federal constitutional requirements of due process will allow.” *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). To comport with due process, service must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

“A district court, in exercising the discretionary power permitted by Rule 4(f)(3), may require the plaintiff to show that they have reasonably attempted to effectuate service on defendant and that the circumstances are such that the district court’s intervention is necessary to obviate the need to undertake methods of service that are unduly burdensome or that are untried but likely futile.” *FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 534 (E.D. Va. 2005) (citations omitted). While courts permit service by email under Rule 4(f)(3), this method is often reserved for instances where a physical address for the defendant is unknown or incorrect after the plaintiff attempts service or investigates possible addresses. *See, e.g., Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1017–18 (9th Cir. 2002) (affirming service by email after plaintiff’s attempts to find defendant’s physical address failed).

Here, the Court finds service by email is an appropriate alternative method. Russia invaded Ukraine on February 24, 2022 and continue a violent assault throughout the country. *Timeline: The events leading up to Russia’s invasion of Ukraine*, Reuters (March 1, 2022), <https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/>. As of April 13, 2022, more than 1,900 civilians have been killed and more than 10 million civilians have fled their homes. *Ukraine: civilian casualty update 13 April 2022*, Office of the High Commissioner for Human Rights (April 13, 2022), <https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-13-april-2022>; *War in*

*Ukraine live updates: More than 10 million Ukrainians have fled their homes in safety*, NPR (April 12, 2022), <https://www.npr.org/live-updates/ukraine-russia-civilian-deaths-04-12-2022#the-u-n-says-more-than-1-800-civilians-have-died-in-the-ukraine-war>. War-time chaos indeed renders traditional methods of service impracticable and likely futile in this case.

Further, Plaintiffs provided confirmation the email addresses are likely to apprise Defendant of this lawsuit. Plaintiffs attached recent correspondence between Defendant at the address borcomo.company@gmail.com and a third-party referencing the present suit. Pls.' Mot., Ex. 4 at 2–4. Counsel for Plaintiffs further declared that they spoke with attorney Lawrence Fridman, who advised that Defendant was aware of the lawsuit and that he was in the process of being retained by Defendant. Pls.' Mot., Ex. 5, 6. Due to the ongoing crisis in Ukraine, service via email is reasonably calculated to apprise Defendant of this lawsuit and avoids the impracticability of traditional service methods during a time of war.

**IT IS ORDERED** that Plaintiffs' Motion for Service (ECF No. 10) is **GRANTED**. Plaintiffs can serve Defendant Iron Lab by email to: (1) Defendant's known email address from which it has recently been corresponding at borcomo.company@gmail.com; (2) Defendant's counsel which reached out to counsel for Plaintiffs regarding this lawsuit at firm@patentlawny.com; and (3) Defendant's counsel of record with the USPTO at trademarks@wfpclaw.com and b4b.tmdesk@gmail.com.

**SIGNED this 25th day of April, 2022.**

  
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JEFFREY C. MANSKE  
UNITED STATES MAGISTRATE JUDGE