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16 and Balenciaga S.A.

17 THE UNITED STATES DISTRICT COURT

18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19 GUCCI AMERICA, INC., a New York )

20 corporation, BOTTEGA VENETA )

21 INTERNATIONAL, S.A.R.L., a foreign )

22 business entity, BALENCIAGA S.A., a )

23 foreign business entity, )

24 Plaintiffs, )

25 v. )

26 WANG HUIQING a/k/a HUBERT )

27 WANG and DOES 1-10, )

28 Defendants. )

Case No. 3:09-cv-05969-JCS

**EX PARTE APPLICATION FOR ORDER  
AUTHORIZING ALTERNATE  
SERVICE OF PROCESS ON  
DEFENDANT PURSUANT TO  
FEDERAL RULE OF CIVIL  
PROCEDURE 4(f)(3); MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[Filed concurrently with the  
Declarations of Stephen M. Gaffigan,  
Huang Yu Ting, and Robert Holmes, and  
the [Proposed] Order]

**EX PARTE APPLICATION**

1  
2 Plaintiffs, Gucci America, Inc., a New York corporation, Bottega Veneta International,  
3 S.A.R.L., a foreign business entity and Balenciaga S.A., a foreign business entity (“Plaintiffs”) seek  
4 an order authorizing service of the Summons, the First Amended Complaint, and all subsequent  
5 motions and pleadings in this matter upon the Defendant Wang Huoqing a/k/a Hubert Wang (the  
6 “Defendant”) via electronic mail (“email”), pursuant to Federal Rule of Civil Procedure 4(f)(3).

7 Such application is made upon the ground that Plaintiffs have not been able to locate the  
8 Defendant despite reasonable diligence, because the Defendant is purposefully concealing his  
9 location, and thus Plaintiffs have been unable to serve him in any other manner as allowed under the  
10 Federal Rules and/or the California Code of Civil Procedure. As shown by the First Amended  
11 Complaint on file herein (e-docket 8), and accompanying Declarations, filed concurrently herewith,  
12 a cause of action for damages exists against the Defendant.

13 Such application is based upon this Application, the Memorandum of Points and Authorities  
14 hereto, the Declarations of Stephen M. Gaffigan, Huang Yu Ting, and Robert Holmes, and exhibits  
15 thereto, filed concurrently herewith, and the complete files and records of this action, and such other  
16 matters as we may call to the Court’s attention at or before the time of the hearing

17  
18 Dated: March 8, 2010

Krieg, Keller, Sloan, Reilley & Roman LLP

19  
20 By: \_\_\_\_\_/S/\_\_\_\_\_

21 Anne E. Kearns  
22 Plaintiffs Gucci America, Inc.,  
23 Bottega Veneta International, S.A.R.L.,  
24 and Balenciaga S.A.

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. NOTICE**

As explained in detail below and in the accompanying Declaration of Stephen M. Gaffigan, counsel for Plaintiffs, Gucci America, Inc., a New York corporation (“Gucci”); Bottega Veneta International, S.A.R.L., a foreign business entity (“Bottega”), and Balenciaga S.A., a foreign business entity (“Balenciaga”) (together, “Plaintiffs”), and the Declarations of Huang Yu Ting and Robert Holmes, Plaintiffs are unable to locate the Defendant who is the subject of this *Ex Parte* Application. Civil Local Rule 7-10 allows an *ex parte* application as long as the application is permitted by another statute or rule. Here, California Rules of Court Rule 3.1204(b) permits an application for an *ex parte* order to proceed without notice upon a showing that the applicant in good faith attempted to inform the opposing party but was unable to do so. Because Plaintiffs have not been able to locate the Defendant, Plaintiffs have resorted to filing this *Ex Parte* Application for an order authorizing service of the Summons, First Amended Complaint, and all subsequent pleadings and motions in this matter upon the Defendant via email.

Notwithstanding Plaintiffs’ inability to locate the Defendant, Plaintiffs will, in good faith, be emailing a filed copy of this *Ex Parte* Application and supporting papers via the email addresses Defendant: (1) listed on his websites; (2) listed as part of the contact information for his domain name registrations; and (3) used in communications with the Plaintiffs’ investigator, all of which email addresses are valid.

**II. INTRODUCTION**

Plaintiffs are suing Defendant Wang Huoqing a/k/a Hubert Wang (the “Defendant”) for federal trademark infringement and counterfeiting and false designation of origin. As alleged in Plaintiffs’ First Amended Complaint, the Defendant and various associates are promoting, selling, offering for sale and distributing counterfeit and infringing Gucci, Balenciaga, and Bottega branded products within this Judicial District through at least the fully interactive commercial Internet websites operating under the domain names: b2do.com, bag2do.cn, bag2do.com, bagdo.com, bagdo.net, bagdo2.com, bagdo2.net, bagpo.com, bagxo.com, bagxp.com, ebagdo.com, ibagdo.com,

1 ibagto.com, my4shop.com, my4shop.net, my5shop.com, my5shop.net, myashop.cn, myashop.com,  
2 myashop.net, myhshop.com, mynshop.com, myokshop.com, myrshop.com (the “Subject Domain  
3 Names”).

4 Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiffs request an order allowing  
5 service of process on Defendant Huoqing via electronic mail (“email”). Email service is appropriate  
6 and necessary in this case, because the Defendant: (1) operates anonymously via the Internet using  
7 false physical address information in his Subject Domain Name registrations in order to conceal his  
8 location and avoid liability for his unlawful conduct and (2) relies solely on electronic  
9 communications to operate his business. Notwithstanding the Defendant’s concealment of his  
10 physical location, Plaintiffs still have the ability to contact the Defendant directly and provide notice  
11 of Plaintiffs’ claims against him. Specifically, the email addresses listed by the Defendant in the  
12 Whois records for the Subject Domain Names (“huoqing@gmail.com,” dongshi007@gmail.com,”  
13 and “cnreg@hichina.com”) and on the Defendant’s associated Internet websites operating under the  
14 Subject Domain Names (“bagdo.com@gmail.com,” “myashop@gmail.com,”  
15 “bagpo.com@gmail.com,” and “my4shop@gmail.com”) have been determined to be current and  
16 reliable means by which the Defendant may be apprised of the pendency of this action. Plaintiffs  
17 further determined the email address, “julia3318@gmail.com” (which Plaintiffs’ investigator used to  
18 directly communicate with the Defendant’s representative) to be a reliable means by which the  
19 Defendant may be apprised of the pendency of this action. Plaintiffs respectfully submit that an  
20 order allowing service of process via email in this case will benefit all parties and the Court by  
21 ensuring the Defendant receives immediate notice of the pendency of this action and allowing this  
22 action to move forward expeditiously. Absent the ability to serve the Defendant by email, Plaintiffs  
23 will almost certainly be left without the ability to pursue a remedy.

24 //

25 //

1 **III. STATEMENT OF FACTS**

2 **A. Defendant Is Engaged in Illegal Activities Within This District.**

3 The Defendant controls and operates the Internet websites existing under the Subject Domain  
4 Names. Through his websites, the Defendant is offering for sale and selling counterfeit and  
5 infringing products, including, at least, footwear, belts, sunglasses, handbags, wallets, hats, jewelry,  
6 including, at least, necklaces and bracelets, scarves, ties, umbrellas bearing trademarks which are  
7 exact copies of the Gucci trademarks, handbags bearing trademarks which are exact copies of the  
8 Balenciaga Marks, and handbags bearing trademarks which are exact copies of the Bottega Marks  
9 (the “Counterfeit Goods”). (See First Amended Complaint ¶¶ 13, 15, and 17; see also true and  
10 correct copies of the relevant web pages from the Defendant’s Internet websites operating under the  
11 Subject Domain Names (“Defendant’s Websites”) attached as Exhibits “2” through “25” to the  
12 Declaration of Stephen M. Gaffigan in Support of Plaintiffs’ Order Authorizing Alternate Service of  
13 Process on the Defendant (“Gaffigan Decl.”)).

14 To verify the counterfeit nature of the Defendant’s products, Plaintiffs’ investigator, Robert  
15 Holmes (“Holmes”), purchased a Gucci branded wallet from the Internet website operating under the  
16 Subject Domain Name bag2do.cn and instructed the Defendant to ship the wallet to his address in  
17 San Jose, California. (See Declaration of Robert Holmes in Support of Plaintiffs’ Order Authorizing  
18 Alternate Service of Process on the Defendant (“Holmes Decl.”) ¶¶ 11, 12 and Exhibits “1” and “2”  
19 attached thereto). Holmes provided printouts of the Gucci branded wallet he purchased from the  
20 Defendant via bag2do.cn to Gucci’s representative who examined the printouts and determined the  
21 wallet to be non-genuine Gucci branded product. (See Holmes Decl. ¶ 13 and Exhibit “3” attached  
22 thereto). The Defendant’s websites are visibly advertising and offering for sale his Counterfeit  
23 Goods within all Judicial Districts, including the Northern District of California. (See true and  
24 correct copies of the relevant web pages from the Defendant’s Websites attached as Exhibits “2”  
25 through “25” to Gaffigan Decl.) The Registry responsible for many of the top level domain names at  
26 issue in this action is VeriSign, Inc., 487 East Middlefield Road, Mountain View, California 94043.



1           **B. Defendant Has Purposefully Falsified His Public Physical Address Data But Has**  
2           **Provided Valid Email Addresses.**

3           According to regulations established by the Internet Corporation for Assigned Names and  
4 Numbers (“ICANN”), an individual or entity which registers a domain name is required to provide  
5 accurate contact information for the domain name. (See ICANN Uniform Domain Name Dispute  
6 Resolution Policy ¶ 2 attached as Exhibit “27” to Gaffigan Decl.”). As demonstrated below, the  
7 Defendant has ignored the applicable ICANN regulations and provided false physical address  
8 information to his domain name registrars in order to avoid liability for his criminal conduct.  
9 However, the Defendant has provided accurate email address contact information to his domain  
10 name registrars for the Subject Domain Names. As a practical matter, a website owner/operator  
11 generally must maintain an accurate email address where its registrars may communicate with it  
12 regarding issues related to the purchase, transfer, and maintenance of its account. Moreover, it is  
13 necessary for a merchant, such as the Defendant, who operates entirely online, to provide customers  
14 with accurate email addresses by which the customer can contact the merchant to ask questions  
15 about the merchant’s products, place orders from the merchant’s Internet websites, and receive from  
16 the merchant regarding the shipment of an order.

17           Plaintiffs’ counsel conducted Whois searches regarding the Subject Domain Names  
18 identifying the addresses the Defendant provided his registrars. (See Gaffigan Decl. ¶ 3 and true and  
19 correct copies of the Whois search regarding the Subject Domain Names attached thereto as  
20 Composite Exhibit “1”). The Whois records for the Subject Domain Names listed the registrant, his  
21 purported physical addresses, and other contact information as follows:

22 ///

23 ///

24 ///

25 ///

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28

Domain Name	Whois Contact Information	Whois Contact Email Address
bag2do.com	Dongshi, Shi Dong, Shanghai, Shanghai Shanghai, 518000, CN	dongshi007@gmail.com
b2do.com bagdo2.net bagpo.com ebagdo.com ibagdo.com ibagto.com my4shop.net my5shop.net myhshop.com mynshop.com myokshop.com myrshop.com	Wang Huoqing Huoqing Wang Guangdong, Shenzhen, Shenzhen, Guangdong, 518000, CN	huoqing@gmail.com
bagdo.com bagdo.net bagdo2.com bagxo.com bagxp.com my4shop.com my5shop.com myashop.com	Dongshi (Shi Dong) Shi Dong, Guangdong, Shenzhen, Shenzhen Guangdong, 518000, CN	dongshi007@gmail.com
myashop.net	Shi Dong, 3½ <sup>1</sup> Ń, Shenzhen Guangdong, Guangzhou, Guangdong, 510180, CN	dongshi007@gmail.com
bag2do.cn	Registrant Organization: chenxi Registrant Name: yangtao	Administrative Email: cnreg@hichina.com

Plaintiffs' counsel also accessed and downloaded printouts showing the Defendant's contact information from the Internet websites operating under each of the Subject Domain Names. (See Gaffigan Decl. ¶ 4 and true and correct copies of printouts from the Defendant's websites showing his contact information attached thereto as Composite Exhibit "26"). The Defendant's Internet websites operating under the Subject Domain Names list the Defendant's Contact Information as follows:

///

///

Domain Name	Website Contact Email Addresses
1 b2do.com 2 bag2do.cn 3 bag2do.com 4 bagdo.com 5 bagdo.net 6 bagdo.net 7 bagdo2.com 8 bagdo2.net 9 ebagdo.com 10 ibagdo.com	bagdo.com@gmail.com
11 bagpo.com 12 my4shop.com 13 my4shop.net 14 my5shop.com 15 my5shop.net 16 myashop.cn 17 myashop.com 18 myashop.net 19 myhshop.com 20 mynshop.com 21 myokshop.com 22 myrshop.com	myashop@gmail.com
23 ibagto.com	bagpo.com@gmail.com

15 Plaintiffs retained Holmes and Huang Yu Ting (“Ting”), a researcher in China, to verify the  
 16 accuracy of the physical contact addresses provided by the Defendant to his domain name registrars  
 17 and to research alternative addresses for the Defendant. Ting determined the physical contact  
 18 addresses listed above provided by the Defendant to his registrars for the Subject Domain Names to  
 19 be false and incomplete. Specifically, Ting determined each of these addresses is invalid and  
 20 incomplete because valid addresses in Shenzhen City, Shanghai City, and Guangzhou City must  
 21 have a street name and a building number. (See Declaration of Huang Yu Ting (“Ting Decl.”) ¶ 4;  
 22 see also Gaffigan Decl. ¶ 3 and Composite Exhibit “1” attached thereto). Ting also attempted to  
 23 contact the Defendant using the telephone numbers and facsimile numbers the Defendant provided  
 24 to his domain name registrars (86.94349540; 86.7555613993; 86.94349540 13743454;  
 25 86.2088366540; 86.94349540 434540; 86.138283456; 86.2088364587; 86.2039877199;  
 26 86.13533639540; 86.2088364587; 94349540; and 86.13533639540.) Ting determined each of these  
 27

1 telephone and facsimile numbers is either invalid or transfers calls straight to a voicemail system.  
2 (See id. at ¶ 5; see also Whois searches attached as Composite Exhibit “1” to Gaffigan Decl.  
3 showing aforementioned telephone and facsimile numbers). Holmes and Ting both attempted to  
4 ascertain a valid physical address for service of process on the Defendant, but were unable to do so.  
5 (See Holmes Decl. ¶ 14; Ting Decl. ¶ 6). Thus, based on the Defendant’s provision of invalid postal  
6 addresses and Plaintiffs’ inability to find another physical address for him, Plaintiffs cannot serve the  
7 Defendant by traditional means.

8         The Defendant has, however, provided accurate email address information to his domain  
9 name registrars for the Subject Domain Names and also provided accurate email address information  
10 on his Internet websites operating under the Subject Domain Names. (See Holmes Decl. ¶¶ 4-10).  
11 Additionally, Holmes was able to communicate with the Defendant via email address used by the  
12 Defendant to send emails to Holmes regarding Holmes’ purchase of a counterfeit Gucci branded  
13 product from bag2do.cn. (See Holmes Decl. ¶¶ 11, 12 and Exhibits “1” and “2” attached thereto; see  
14 also Gaffigan Decl. ¶ 3 and Composite Exhibit “26” attached thereto). Specifically, on January 26,  
15 2010, Holmes sent pretextual emails to the Defendant via the electronic mail addresses  
16 “huoqing@gmail.com,” “dongshi007@gmail.com,” “cnreg@hichina.com,”  
17 “bagdo.com@gmail.com,” “myashop@gmail.com,” “bagpo.com@gmail.com,” and  
18 “my4shop@gmail.com.” (See Holmes Decl. ¶¶ 4-10). Holmes received a verified “Return Receipt”  
19 for the emails sent to the Defendant via “huoqing@gmail.com,” “dongshi007@gmail.com,”  
20 “cnreg@hichina.com,” “bagdo.com@gmail.com,” “myashop@gmail.com,”  
21 “bagpo.com@gmail.com,” and “my4shop@gmail.com,” thereby conclusively demonstrating the  
22 emails were delivered to the recipient and verifying the reliability of the email addresses. (See id.)  
23 Further, Holmes was also able to communicate with the Defendant via the email addresses,  
24 “julia3318@gmail.com” regarding his undercover purchase from bag2do.cn. (See id. at ¶¶ 11, 12  
25 and Exhibits “1” and “2” attached thereto). Holmes received an email from “julia3318@gmail.com”  
26 in response to his initial pretextual email to the Defendant’s email address  
27 “bagdo.com@gmail.com,” as well as additional emails from “julia3318@gmail.com” in response to

1 his pretextual communications, thereby conclusively demonstrating Holmes' emails were opened  
2 and displayed on the recipient's computer and verifying the reliability of the email address,  
3 "julia3318@gmail.com." (See *id.*)

4 **C. Defendant Relies Solely on Electronic Communications.**

5 The Defendant has structured his websites so that the sole means for customers to purchase  
6 the Counterfeit Goods at issue is by placing an order over the Internet. Holmes made an undercover  
7 purchase from the Defendant's Internet website operating under the Subject Domain Name  
8 bag2do.cn and every step of the purchase was entirely electronic, including placing the order,  
9 payment, and communication with the Defendant following the order. (See *id.* at ¶¶ 11, 12 and  
10 Exhibits "1" through "3" attached thereto). Further, the Contact Information listed on the websites  
11 operating under the Subject Domain Names lists only email addresses. (See Defendant's Websites  
12 attached as Exhibits "2" through "26" to Gaffigan Decl.) The Defendant instructs customers to  
13 contact him via various customer service email addresses with any questions or concerns. However,  
14 the Defendant does not provide any valid physical address on his websites where customers can  
15 contact him or locate his business. (*Id.*)

16 **IV. ARGUMENT**

17 **A. The Court may Authorize Service via Electronic Mail Pursuant to Federal Rule**  
18 **of Civil Procedure 4(f)(3).**

19 Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by  
20 any means not prohibited by international agreement as the Court directs. Rio Props. Inc., v. Rio  
21 Int'l Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002). The plain language of Rule 4(f)(3) reflects that  
22 the decision to issue an order allowing an alternate means of service lies within the sole discretion of  
23 the District Court. *Id.* at 1116. Rule 4 does not require that a party attempt service of process by  
24 those methods enumerated in Rule 4(f)(2), including by diplomatic channels and letters rogatory,  
25 before petitioning the court for alternative relief under Rule 4(f)(3). *Id.* at 1114-15. Indeed,  
26 alternative service under 4(f)(3) is available "without first attempting service by other means." *Id.* at  
27 1115. As the Ninth Circuit explained in Rio Properties.:

1 By all indications, court-directed service under Rule 4(f)(3) is as favored as  
 2 service available under Rule 4(f)(1) or Rule 4(f)(2). Indeed, Rule 4(f)(3) is one of  
 3 three separately numbered subsections in Rule 4(f), and each subsection is  
 4 separated from the one previous merely by the simple conjunction “or.” Rule  
 5 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other  
 subsections; it stands independently, on equal footing. Moreover, no language in  
 Rules 4(f)(1) or 4(f)(2) indicates his primacy, and certainly Rule 4(f)(3) includes  
 no qualifiers or limitations which indicate its availability only after attempting  
 service of process by other means.

\* \* \*

6 Thus, examining the language and structure of Rule 4(f) and the accompanying  
 7 advisory committee notes, we are left with the inevitable conclusion that service  
 8 of process under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief.” It  
 is merely one means among several which enables service of process on an  
 international defendant.

9 Rio Props. 284 F.3d at 1114.

10 Additionally, the method of service of process “must also comport with constitutional  
 11 notions of due process.” Id. at 1016. “To meet this requirement, the method of service crafted by  
 12 the district court must be ‘reasonably calculated, under all the circumstances, to apprise interested  
 13 parties of the pendency of the action and afford them an opportunity to present his objections.’” Id.  
 14 (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). The Ninth Circuit  
 15 in Rio Properties held, “without hesitation,” that email service of an online business defendant “was  
 16 constitutionally acceptable.” Rio Props., 284 F.3d at 1017. The Court concluded “not only that  
 17 service of process by email was proper—that is, reasonably calculated to apprise [the defendant] of  
 18 the pendency of the action and afford it an opportunity to respond—but in this case, it was the  
 19 method of service most likely to reach [the defendant].” Id. The Court reached this conclusion in  
 20 part because the defendant conducted its business over the Internet, used email regularly in its  
 21 business, and encouraged parties to contact it via email.

22 Similarly, in cases factually similar to this case, a number of Courts have held that alternate  
 23 forms of service pursuant to Rule 4(f)(3), including email service, are appropriate and may be the  
 24 only means of effecting service of process “when faced with an international e-business scofflaw.”  
 25 Popular Enters. LLC v. Webcom Media Group, Inc., 225 F.R.D. 560, 563 (E.D. Tenn. 2004)  
 26 (allowing email service); see also Chanel, Inc. v. Dodd, Case No. C-09-3958-VRW (N.D. Cal.  
 27 September 15, 2009) (Order allowing email service); Chanel, Inc. v. Zhang, Case No. C-09-1977

1 MMC (N.D. Cal. August 27, 2009) (same); Chanel, Inc. v. Bosini, Case No. C-09-1972 MHP (N.D.  
 2 Cal. August 12, 2009) (same); Williams-Sonoma, Inc. v. Friend Finder, Inc., No. C 06-6572 JSW  
 3 (MEJ), 2007 WL 4973848, at \*4 (citing D.E. 36) (N.D. Cal. December 6, 2007) (allowing email  
 4 service); Chanel, Inc. v. Lan, Case 2:09-cv-02586-SHM-cgc (W.D. Tenn. November 23, 2009) (D.E.  
 5 13) (same); Chanel, Inc. v. Catton, Case No. 1:09-cv-20634-UU (S.D. Fla. August 21, 2009) (D.E.  
 6 44) (same); Philip Morris USA, Inc. v. Veles Ltd., No. 06 CV 2988(GBD), 2007 WL 725412, at \*1  
 7 (S.D.N.Y., Mar. 12, 2007) (same); Williams v. Advertising Sex LLC, 231 F.R.D. 483, 488 (N.D.  
 8 West Va. 2005) (same); Maclean-Fogg Co. v. Ningbo Fastlink Equip. Co., No. 08 CV 2593, 2008  
 9 WL 5100414, at \*2 (N.D. Ill. December 1, 2008) (holding email and facsimile service appropriate);  
 10 Mainstream Media, EC v. Peter Riven, Case No. 08-3623 PJH (N.D. Cal. December 12, 2007)  
 11 (finding email, international mail, and international courier effective service of process); MPS IP  
 12 Servs., Corp. v. Modis Commc'ns., Inc., Case No. 3:06-cv-270-J-20HTS (D.E. 11) (M.D. Fla. May  
 13 30, 2006) (allowing plaintiffs to effect service on Canadian citizen via email, facsimile and regular  
 14 mail). Plaintiffs submit that allowing email service in the present case is appropriate and comports  
 15 with constitutional notions of due process, particularly given the Defendant's decision to conduct his  
 16 illegal Internet based business anonymously.

17 **B. Email Service Is Not Prohibited by International Agreement.**

18 As noted in the Declarations of Holmes and Ting, prior to filing this Motion, Plaintiffs  
 19 diligently attempted to ascertain a valid physical address for the Defendant, without success. (See  
 20 Holmes Decl. ¶ 14, Ting Decl. ¶ 6). Thus, as a result of the Defendant's own efforts to conceal his  
 21 location, Plaintiffs are unable to determine his physical whereabouts. (See id.) However, Plaintiffs  
 22 have good cause to suspect the Defendant is a resident of China. (See Holmes Decl. ¶¶ 11, 12 and  
 23 Composite Exhibit "1" attached thereto (showing payment via Western Union to Guangzhou, China  
 24 for the Gucci branded wallet Holmes purchased from the Defendant).

25 The United States and the People's Republic of China are both signatories to the Hague  
 26 Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and  
 27 Commercial Matters (the "Convention"). (See Gaffigan Decl. ¶ 6 and Exhibit "27" attached



1 thereto), see also Hague Convention, November 15, 1965, 20 U.S.T. 361, available at  
2 [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=17](http://www.hcch.net/index_en.php?act=conventions.text&cid=17) (last visited February 25, 2010)  
3 see also [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17) (last visited February  
4 25, 2010) (listing signatory countries). “Compliance with the Convention is mandatory in all cases  
5 to which it applies.” Volkswagenwerk AG v. Schlunk, 486 U.S. 694, 705 (1988). However,  
6 according to Article 1 of the Convention, “[the] convention shall not apply where the address of the  
7 person to be served with the document is not known.” 20 U.S.T. 361 (U.S.T. 1969); see also BP  
8 Prods. of N. Am., Inc. v. Dagra, 236 F.R.D. 270, 271 (E.D. Va., 2006) (authorizing service by  
9 publication on Pakistani defendant, despite Pakistan's status as Hague Convention member, because  
10 "Hague Convention does not apply in cases where the address of the foreign party to be served is  
11 unknown"); Popular Enter., LLC, 225 F.R.D. at 562; Philip Morris USA, Inc. 2007 WL 725412, at  
12 \*1, n.2 (electronic mail service authorized and the Hague Convention did not apply because, despite  
13 physical "addresses" having been provided to Defendant's registrars, the actual addresses could not  
14 be confirmed as valid). As the address of the Defendant is unknown, Plaintiffs respectfully submit  
15 that the Convention does not apply in this case.

16 Moreover, though it does not expressly authorize email service, the Hague Convention does  
17 not preclude email service, and thus, is no bar to court-directed email service under Rule 4(f)(3). In  
18 fact, U.S. Courts have routinely authorized international mail and email service notwithstanding the  
19 applicability of the Hague Convention. See, e.g., Brockmeyer v. May, 383 F.3d 798, 800 (9th Cir.  
20 2004) (“We join the Second Circuit in concluding that the Convention ... does not prohibit service of  
21 process by international mail”); Nanya Tech. Corp. v. Fujitsu Ltd., No. CIV 06-00025, 2007 WL  
22 269087, at \*6 (D. Guam January 26, 2007), *distinguished on other grounds*, Agha v. Jacobs, No. C  
23 07-1800 RS, 2008 WL 2051061, at \*1 (N.D. Cal. May 13, 2008) (Hague Convention, to which  
24 Japan is a signatory, did not prohibit email service upon Japanese defendant); Popular Enters., 225  
25 F.R.D. at 562; MPS IP Servs. Corp., 2007 WL 723841, at \*2 (Hague Convention, which Canada is a  
26 signatory, did not prohibit email service upon Canadian defendants, Motion to Allow Service of  
27 Process by Alternative Means granted (D.E. 11)).



1           **C.      Email Service Is Not Prohibited by International Law.**

2           The Ninth Circuit has stated that "as long as court-directed and not prohibited by an  
3 international agreement, service of process ordered under Rule 4(f)(3) may be accomplished in  
4 contravention of the laws of the foreign country." Rio Props., 284 F.3d at 1014. In this case,  
5 however, the law of the People's Republic of China does not appear to prohibit the service of process  
6 by email and allows for alternate service means in certain circumstances. (See Gaffigan Decl. ¶ 7  
7 and Exhibit "28" attached thereto, "Civil Procedure Law of the People's Republic of China"  
8 downloaded by Plaintiffs' counsel from Chinacourt.org, a website sponsored by the Supreme  
9 People's Court of the PRC). For example, Article 80 of the law specifically provides that if direct  
10 service of a litigation document proves difficult, ... it may be served by post .... Additionally,  
11 Article 84 of the law provides that if the whereabouts of a recipient of the service is unknown, or if a  
12 document cannot be served by the other methods reflected in the law, a document shall be served by  
13 public announcement. (See id.) Hence, Plaintiffs submit that allowing service of process upon the  
14 Defendant in this case via email would be consistent with and not prohibited by the Civil Procedure  
15 Law of the PRC.

16           **V.      CONCLUSION**

17           For the foregoing reasons, Plaintiffs respectfully request this Court grant the present motion  
18 to serve the Summons, the First Amended Complaint, and all subsequent motions and pleadings  
19 upon the Defendant Huoqing by email at the electronic mail addresses huoqing@gmail.com,  
20 dongshi007@gmail.com, cnreg@hichina.com, bagdo.com@gmail.com, myashop@gmail.com,  
21 bagpo.com@gmail.com, my4shop@gmail.com, and julia3318@gmail.com.

22 Dated: March 8, 2010

Krieg, Keller, Sloan, Reilly & Roman LLP

23  
24  
25 By: \_\_\_\_\_/S/\_\_\_\_\_

26 Anne E. Kearns  
27 Plaintiffs Gucci America, Inc.,  
Bottega Veneta International, S.A.R.L., and  
Balenciaga S.A.

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