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Recent Decisions Clarifying Restrictions For Service of Process Under the Hague Convention

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In *Smart Study C. Ltd. v. Shenzhenshixindajixieyouxiangongsi*, 164 F. 4th 164 (2d Cir. 2025), the Second Circuit affirmed the dismissal of trademark infringement claims against China-based defendants, holding that service by email violated the Hague Service Convention and was therefore improper under Federal Rule of Civil Procedure 4 (f). There, the plaintiff moved *ex parte* for and was granted an order permitting it to serve the summons, complaint, the temporary restraining order (TRO) and order to show cause on all defendants by email. The 2d Circuit's principal holding was that the Hague Convention precludes service by electronic mail under Article 10 (a) of the Convention when directed into a country that has objected to service by "postal channels". China is one of those countries that has objected.

The District Court in Washington in *Lojek v. Henan Ocean Power Housewares Co. Ltd.*, 2026 WL 279964 (W.D. Wa. 2026), followed *Smart Study*, where the plaintiff brought patent infringement claims against Chinese defendants alleged to have actively conducted business with customers in the United States through Amazon and Alibaba and that business included direct offers to sell and ship infringing weight stack pin products. Plaintiffs sought to serve defendants by e-mail because service through the Hague Convention would cause substantial delay and expense and service by email, through Alibaba and Amazon messaging, was arguably reasonably calculated to provide actual notice. The Court found that Federal Rule of Civil Procedure 4 (f), absent an international agreement's applicability of prohibition, a court can determine that the particularities and necessities of a given case require alternative service of process. The Court ruled that the plaintiff had physical addresses and did not describe any attempt to evade service. The desire to avoid expenses and delay did not justify alternative service. Alternative service by email was denied.

On the other hand, in *Fox Corporation v. Media Deportes Mexico, S. de R.L. de C.V.*, 2026 WL 438878 (S.D. N.Y. 2026), a United States broadcaster brought an action against a Mexican broadcaster seeking injunctive relief related to breaches of a license agreement regarding use of the sportscaster's trademarks in Mexico. A TRO was issued and civil contempt was imposed for violation of the TRO. The court had authorized plaintiffs to serve documents related to the emergency proceedings and the court's orders by electronic service. This all took place before the decision in *Smart Study*. The court held that *Smart Study*'s holdings did not invalidate the Court's exercise of jurisdiction to grant the TRO and impose civil contempt. The Court reasoned that *Smart Study* concerned a district court's jurisdiction to enter final judgment where service had not been properly effectuated under the Hague Convention. The *Smart Study* court did not address the scope of a district court's jurisdiction to order "in a case of urgency, any provisional or protective measures" under Article 15 (3) of the

Hague Convention. The Court concluded that it had exercised jurisdiction only by entering a TRO and by sanctioning contumacious conduct. Article 15 (3) authorizes the court to do so as it authorizes special forms of service in cases of urgency if conventional methods will not permit service within the time required by the circumstances. Thus, email service under Article 15 (3) was permitted.

Smart Study instructs litigators that when dealing in countries such as China and Mexico that have declined to waive service under the Hague Convention by postal means, electronic service will not be permitted. Electronic service will only be allowed under the Hague Convention in cases of urgency, where provisional or protective measures are sought.

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