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Service of Process through Social Media

In the matter of *Federal Trade Commission v. PCCare247 Inc.*, Case No. 12 Civ. 7189 (PAE), 2013 WL 841037 (S.D.N.Y. March 7, 2013) (*PCCare247*), the United States District Court for the Southern District of New York sanctioned using social media as a means of circumventing the Hague Service Convention’s standard method of facilitating service among signatory states through designated Central Authorities. Granting the FTC’s motion for leave to effect service of documents by alternative means on defendants located in India, Judge Paul A. Engelmayer’s ruling appears to represent the first time a U.S. court has permitted service of process via Facebook.

In *PCCare247*, Indian defendants allegedly operated a scheme to convince American consumers that they should spend money to fix non-existent problems with their computers. After the Indian Central Authority was unable to formally serve the Indian defendants pursuant to the Hague Convention, the court granted the FTC’s request to serve process on the defendants by both email and through a Facebook account.

The FTC’s proposed service using Facebook presented the court with a novel issue. Last year, another court in the Southern District of New York denied a motion to permit a party to effect service using Facebook because the plaintiff had not sufficiently established the credibility of the defendant’s Facebook account. *Fortunato v. Chase Bank USA, N.A.*, Case No. 11 Civ. 6608 (JFK), 2012 WL 2086950 (S.D.N.Y. June 7, 2012)(*Fortunato*). *Fortunato* involved a domestic defendant accused of committing credit card fraud. After several failed attempts at personal service, the court rejected the third-party plaintiff’s “unorthodox” proposal to serve process, including by Facebook, citing concerns about the lack of certainty and authenticity of the defendant’s purported Facebook profile. The court questioned whether the Facebook profile was in fact operational and accessed by the party to be served, noting that the location listed on the profile was inconsistent with four potential addresses a private investigator had identified. The court opted instead for service by publication pursuant to New York rules.

Distinguishing *PCCare247* from *Fortunato*, Judge Engelmayer articulated several considerations supporting his confidence in “service by Facebook.” The court observed that under Rule 4(f)(3) of the Federal Rules of Civil Procedure, a court remains free to order alternative means of service on an individual in a foreign country so long as the means of service are not prohibited by international agreement and comport with due process. The court acknowledged that although service by email and Facebook is not enumerated in Article 10 of the Hague Service Convention, India has not specifically objected to them. Therefore, under Rule 4(f)(3) the court found that it was free to authorize process by these means provided that doing so would satisfy due process.

Recognizing that the reasonableness inquiry is intended to “unshackle[] the federal courts from anachronistic methods of service and permit[] them entry into the technological renaissance,” quoting *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002), the court concluded that Facebook was “reasonably calculated to provide defendants with notice of future filings” in the case. In support of its conclusion, the court explained that the defendants ran an Internet-based business and that the email addresses specified for the defendants were those used for various aspects of the alleged scheme. For two of the Indian defendants in *PCCAre247*, their Facebook accounts were registered to the same email addresses to be served. Moreover, the court had “independent confirmation” that one of the email addresses identified was genuine and operated by a defendant, because it had been used to communicate with the court on several occasions. Additional evidence that the Facebook profiles were authentic included that some of the defendants listed their job titles at the defendant companies and that the defendants were Facebook “friends” with each other. Additional considerations the court noted were: the FTC had made several good faith efforts to serve the defendants by other means; and defendants had already demonstrated knowledge of the lawsuit. Accordingly, the FTC’s proposal to serve process by both email and Facebook was a combination that satisfied due process as a means of alternative service and was highly likely to be an effective means of reaching and communicating with the defendants.

This decision suggests that under the right circumstances, where a party establishes a reasonable foundation for the authenticity of the accounts, service via email and social media may be an economical and effective option for serving process on foreign parties, or even domestic parties that are otherwise difficult to track down by traditional means.¹

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¹ A proposed bill in Texas, H.B. 1989, would allow substituted process through social media websites.

* *Not admitted to the practice of law.*

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