

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

INFOGATION CORPORATION,

Plaintiff,

v.

TOMTOM INTERNATIONAL BV,

Defendant.

Civil Action No. 2:24-cv-01022

DEFENDANT TOMTOM INTERNATIONAL B.V.'S
MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(2) AND 12(b)(5)

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I. INTRODUCTION

Defendant Tomtom International BV (“TT Int’l” or “Defendant”) respectfully moves the Court to dismiss Plaintiff Infogation Corporation’s (“Infogation” or “Plaintiff”) Complaint for Patent Infringement (the “Complaint”) (ECF 1) with prejudice pursuant to Fed. R. Civ. P. 12(b)(5) for insufficient service of process and under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

II. FACTUAL BACKGROUND

A. Infogation’s Insufficient Service of Process

Infogation’s pleadings correctly identify TT Int’l as a Netherlands corporation with a principal place of business in Amsterdam, The Netherlands. (Compl. ¶ 2). The original summons was issued on January 21, 2025, and was addressed to TT Int’l “c/o” TomTom North America, Inc. (“TT NA”) further “c/o” National Registered Agents, Inc. (“NRAI”), and incorrectly identified the service address as 330 N. Brand Blvd., Glendale, California 91203. (ECF No. 4 at 1). This is instead the address for the California branch of the service agent for TT NA. (de Beurs Decl. ¶ 6). TT NA is not a party to this litigation. Neither TT NA nor its service agent, National Registered Agents, Inc. (NRAI), is authorized to accept service on behalf of TT Int’l. *Id.* The Service of Process Summary Transmittal Form provided to TT NA by NRAI explicitly states that the “Entity Served” was TT NA. (Exhibit A, pp. 2-3).

TT Int’l is an independent legal entity with its own management team and operations that are separate and distinct from TT NA. (de Beurs Decl. ¶¶ 7-9). TT Int’l does not directly own stock in TT NA. (de Beurs Decl. ¶ 7). TT Int’l and TT NA are separated from one another by multiple intermediary entities, with no direct line of ownership between them. *Id.* TT Int’l is owned by TomTom, N.V. (“TT NV”), while TT NA is owned by TomTom Global Content, B.V.

(“TT GCBV”) which in turn is owned by TT NV. *Id.* There is no overlap in management between the two entities. (de Beurs Decl. ¶ 8). TT Int’l does not file taxes on behalf of TT NA. *Id.* The corporate relationship is indirect and the two entities operate independently. (de Beurs Decl. ¶¶ 7-9).

III. STATEMENT OF THE ISSUES PRESENTED

Whether the Court should dismiss with prejudice Infogation’s Complaint for insufficient service of process pursuant to Fed. R. Civ. P. 12(b)(5) and for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2).

IV. LEGAL STANDARDS

A. Insufficient Service of Process and Lack of Personal Jurisdiction

Valid service of process is required before a defendant is subject to the jurisdiction of a federal court. *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). Where a defendant is not properly served, the remedy is dismissal of the action for insufficient service of process and for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2) and 12(b)(5). “[O]nce the validity of service of process has been contested, the plaintiff bears the burden of establishing its validity.” *Carimi v. Royal Caribbean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992). Service on a foreign corporation is governed by Rule 4(f). *See* Fed. R. Civ. P. 4(h)(2).

V. THE COURT SHOULD GRANT DISMISSAL BECAUSE INFOGATION FAILED TO EFFECT SERVICE OF PROCESS

The Court should dismiss Infogation’s Complaint for insufficient service of process under Fed. R. Civ. P. 12(b)(5) and for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). Infogation has not effected valid service of process on TT Int’l for at least two reasons.

First, TT Int’l is a Netherlands corporation that has no authorized agent to accept service in the State of Texas. (de Beurs Decl. ¶¶ 5-6). As a foreign corporation, TT Int’l must be served

in accordance with the requirements of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (“Hague Convention”). Fed. R. Civ. P. 4(f)(1). It should come as no surprise that The Netherlands is a signatory to the Hague Convention, which is so named after the capital city of the South Holland province of The Netherlands where signatories met in 1899 and 1907. A Netherlands corporation cannot be served directly by mail under the Hague Convention, and instead, service must be made through the designated central authority. Infogation has failed to do so.

Second, Infogation’s attempt to effect indirect service through TT NA is also improper. Neither TT NA nor its agent is authorized to accept service for TT Int’l. (de Beurs Decl. ¶ 6). Further, TT NA is not an alter ego of TT Int’l such that indirect service would be proper. The two companies operate as separate, distinct, and independent entities. (de Beurs Decl. ¶ 8). Dismissal is thus warranted on this record.

A. Infogation Has Failed to Effect Service Under the Hague Convention

TT Int’l is the only defendant in this case. (Compl. ¶ 2). Infogation’s Complaint correctly alleges that TT Int’l is a Netherlands corporation with a principal place of business in Amsterdam, The Netherlands. *Id.* TT Int’l does not have offices in the State of Texas or elsewhere in the United States. (de Beurs Decl. ¶ 10).

As a foreign corporation, TT Int’l must be served abroad. *See* Fed. R. Civ. P. 4(f)(1). The Netherlands and the United States are both signatories to the Hague Convention. The Supreme Court has long held that “compliance with the [Hague] Convention is mandatory in all cases” which require the transmittal of documents abroad “as a necessary part of service.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705-707 (1988). Infogation’s action against TT Int’l is such a case.

Courts in this Circuit have repeatedly confirmed Texas’s long-arm statute requires transmittal of documents abroad to serve foreign corporate defendants. *Bayoil Supply & Trading of Bahamas v. Jorgen Jahre Shipping AS*, 54 F.Supp.2d 691, 693 (S.D. Tex. 1999). “[S]ervice of process on foreign defendants under § 17.043 triggers the requirements of the Hague Convention.” *Brewer v. Suzuki Motor of Am., Inc.*, No. 4:15-cv-197, 2015 U.S. Dist. LEXIS 93038, at *3 (S.D. Tex. July 17, 2015). Because TT Int’l “is a foreign resident, notice must be mailed abroad, triggering the requirements of the Hague Convention.” *Bayoil Supply*, 54 F.Supp.2d at 693; *Sang Young Kim v. Frank Mohn A/S*, 909 F.Supp. 474, 479 (S.D. Tex. 1995) (“Because the Defendant in this case could be properly served under Texas law only by transmitting judicial documents to the Defendant abroad, the Hague Convention is applicable.”).

Infogation appears to have attempted to avoid this requirement by not requesting the Texas Secretary of State effect service on TT Int’l in The Netherlands by mail, perhaps learning from their failures in related litigation in the Eastern District of Texas. However, this was not the correct lesson to learn, as courts have “read[] the Texas service statutes to require the Secretary of State to mail the service to the foreign entity ... implicating the Hague Service Convention.” *ACQIS Ltd. Liab. Co. v. Lenovo Grp. Ltd.*, 572 F.Supp.3d 291, 301 (W.D. Tex. 2021). The Netherlands is a signatory to the Hague Convention and does not object to Article 10(c) of the Hague Convention, which permits personal service to be effected by “judicial officers, officials or other competent persons.” See Response of the Netherlands to Questionnaire of July 2008 relating to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, available at <http://www.hcch.net/upload/wop/2008netherlands14.pdf>. “In the Netherlands, personal service in civil matters is effected by bailiffs; the Netherlands has interpreted the category of ‘judicial

officers, officials or other competent persons’ in Article 10 as referring to bailiffs.” *Id.* at 5 (“In civil procedures the servicing of documents is done by a bailiff”); *id.* at 28 (defining “judicial officers, officials or other competent persons” as “bailiffs”). As Infogation has not served TT Int’l under the Hague Convention, service of process is insufficient and the Court lacks personal jurisdiction over TT Int’l.

B. Infogation’s Service Attempt Through TT NA Is Also Improper

Infogation’s deficient attempt to effect service on TT Int’l is not saved by the attempt to effect service on or through TT NA. The Fifth Circuit has consistently held “that ‘the individual sought to be served must have actually authorized another to accept service of process.’” *Lisson v. ING GROEP N.V.*, 262 F.App’x 567, 569 (5th Cir. 2007). Neither TT NA, nor NRAI, is authorized to accept service on behalf of TT Int’l. (de Beurs Decl. ¶ 6). For this reason alone, Infogation’s service of process is insufficient.

To the extent Infogation seeks to rely on a corporate relationship between TT Int’l and TT NA, TT NA is not a subsidiary or parent of TT Int’l. (de Beurs Decl. ¶ 7). Even if the relationship were closer, service on a subsidiary is not imputed to a parent corporation absent actual authorization. *Paradigm Ent., Inc. v. Video Sys. Co.*, No. CIV. A. 3:99-CV2004P, 2000 U.S. Dist. LEXIS 2667, at *7-8 (N.D. Tex. Mar. 3, 2000) (“Service upon a subsidiary does not usually constitute service on the parent corporation.”). That is particularly true where, as here, the parent and subsidiary maintain separate and distinct corporate identities. *See, e.g., U.S. ex rel. Wilkins v. N. Am. Const. Corp.*, 173 F.Supp.2d 601, 642 (S.D. Tex. 2001) (“[S]ervice of process on a wholly-owned subsidiary does not constitute service of process on a parent corporation where separate corporate identities are maintained.”). The record demonstrates that TT Int’l is an independent legal entity with its own management team and operations that are separate and distinct from TT

NA, and that this separation has existed since the founding of the respective entities. (de Beurs Decl. ¶¶ 7-9).

Similarly, the “alter ego” exception also does not apply in this case. The Fifth Circuit has held that, under narrow circumstances, “even if a domestic subsidiary is not explicitly authorized by its foreign parent corporation as an agent for service, the subsidiary might still be capable of receiving such service” where the foreign parent corporation exercises such a degree of control over the domestic subsidiary that the two are essentially one. *Lisson*, 262 F. App’x at 570. Infogation bears a heavy burden of proof in order to utilize this exception. *See Adm’rs of Tulane Educ. Fund v. Ipsen, S.A.*, 450 Fed. App’x 326, 331 (5th Cir. 2011) (“Where a parent and subsidiary observe corporate formalities, the plaintiff has a heavy burden to establish a degree of control sufficient to impute the subsidiary’s jurisdictional contacts to the parent.”). Infogation has not even attempted to meet this burden, nor could it because (i) the separation between TT Int’l and TT NA is clear and indisputable, and (ii) TT NA is a California corporation with a headquarters in New Hampshire which may not be sued for patent infringement in Texas under 28 U.S.C. § 1400(b).

TT NA is not a direct subsidiary of TT Int’l. (de Beurs Decl. ¶ 7). The daily operations of TT Int’l and TT NA are separate, with each entity having its own management team. (de Beurs Decl. ¶ 8). TT Int’l’s business is managed by a separate board, none of whom are officers or directors of TT NA. *Id.* TT Int’l does not file tax returns on behalf of TT NA. *Id.*

It is plain that TT Int’l and TT NA are independent entities with their own management team and operations such that neither entity is an alter ego for the other. Infogation’s improper attempt to serve TT NA cannot be imputed to TT Int’l. *See Blue Spike, LLC v. ASUS Computer Int’l, Inc.*, No. 6:16-CV-1384-RWS-KNM, 2018 U.S. Dist. 48349, at *5-6 (E.D. Tex. Feb. 20,

2018) (holding service on U.S. subsidiary was insufficient under alter ego analysis even though foreign parent owned 100% of the U.S. subsidiary's stock); *UNM Rainforest Innovations v. D-Link Corp.*, No. 6-20-CV-00143-ADA, 2020 U.S. Dist. LEXIS 122328, at *9 (W.D. Tex. July 13, 2020) (finding indirect service on foreign company through its domestic subsidiary that is not an alter ego would violate "due process protections afforded by the United States Constitution").

Infogation was required to serve TT Int'l pursuant to the Hague Convention, which it failed to do and therefore failed to effect service of process under Fed. R. Civ. P. 12(b)(5). Dismissal is thus warranted for insufficient service and lack of personal jurisdiction. *J.O. Alvarez, Inc. v. Rainbow Textiles, Inc.*, 168 F.R.D. 201, 203 (S.D. Tex. 1996) ("[A] district court cannot exercise jurisdiction over a defendant which has not been served properly.").

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant this motion and award any additional relief that the Court deems just and proper.

Respectfully submitted,

/s/Mark D. Siegmund

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that in accordance with the Federal Rules of Civil Procedure, a true and correct copy of the foregoing document was served on all counsel of record via the court's CM/ECF System on this 17th day of March 2025.

/s/Mark D. Siegmund

Mark D. Siegmund