

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

PFIZER INC., PFIZER IRELAND	:	
PHARMACEUTICALS, and WARNER-	:	
LAMBERT COMPANY, LLC,	:	CIVIL ACTION NO.
Plaintiffs,	:	3:04cv741 (SRU)
	:	
v.	:	
	:	
DOMAINS BY PROXY,	:	
JOHN DOE, d/b/a GENERICLIPITORS.COM,	:	
and ECONO SERVICES (INDIA) PVT., LTD.,	:	
d/b/a/ ECONOPETCARE.COM,	:	
Defendants.	:	

**RULING**

Pfizer Inc., Pfizer Ireland Pharmaceuticals, and Warner-Lambert Company, LLC (collectively “Pfizer”) have sued persons alleged to be behind the genericlipitors.com and econopetcare.com internet sites. Pfizer has filed a complaint but has, as yet, not served two of the defendants – John Doe and Econo Services (India) Pvt., Ltd.<sup>1</sup> Pfizer now asks the court, pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure, for permission to serve these defendants by e-mail.

Rule 4(f)(3) allows for service of process to be made on an individual in a foreign country “by [ ] means not prohibited by international agreement as may be directed by the court.” These means must, of course, comport with constitutional notions of due process, namely, they 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 (1950).

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<sup>1</sup> Domains By Proxy, Inc. has been served.

The Ninth Circuit has previously approved a district court's choice of e-mail as the means of effecting service on a foreign company. Rio Properties, Inc. v. Rio International Interlink, 284 F.3d 1007 (9th Cir. 2002). That case does not, however, stand for the proposition that e-mail service should always be permitted by a district court. In fact, the Ninth Circuit noted that a district court must "balance the limitations of email service against its benefits in any particular case." Id. at 1018.

In Rio the Ninth Circuit concluded that email service was appropriate because, after diligent investigation by the plaintiffs, it appeared that e-mail was the only method of contacting the defendant and because the Court concluded that email was reasonably calculated to apprise the defendant of the pending suit. Id. Notably, the plaintiff in Rio first attempted to serve the defendant in the United States via the address used to register the defendant's domain and through the defendant's lawyer. Id. at 1013. When that failed, the plaintiff made a diligent search for the defendant in the defendant's native country. Id. It was only after all these efforts failed that the plaintiff asked the district court to allow email service.

In this case, I am unconvinced – at least on the current showing – that e-mail is reasonably calculated to apprise defendants of the pending action or that it is the only means available to Pfizer.

Pfizer is not entirely clear about where it intends to send its email service. In its motion papers Pfizer lists six possible email addresses – three under the econopetcare.com domain and three under the genericlipitors.com domain. In Pfizer's suggested order, it proposes to use the e-mail address provided in the "Registrant Contact" information for the website.<sup>2</sup> I am concerned that none of these

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<sup>2</sup> Such information is stored in so-called "whois" databases, easily accessible on the internet, including through various websites. See, e.g., <http://registrar.verisign-grs.com/whois>.

addresses is reasonably likely to reach the defendants. As of the date of this opinion, and from a computer in this courthouse, neither of the defendants' domains calls up a website when the domain is entered in a web browser. The econopetcare.com domain resolves to a blank page, and the genericlipitors.com domain does not resolve. As for Registrant Contact information, although the econopetcare.com domain does list an email address, there does not appear to be any Registrant Contact information at all for genericlipitors.com. Accordingly, without more information from Pfizer, I do not feel confident that emails to any of the proposed email addresses are likely to reach the defendants.<sup>3</sup>

Moreover, I am not convinced that email is the only possible method of serving the defendants. Pfizer does not appear to have done any investigation into the possibility of other means of serving the defendants. It does not mention any attempts made to determine the identities and locations of the principals of these companies or to determine whether these companies have agents in the United States authorized to receive service. It is not even clear from the papers how Pfizer knows John Doe is an individual in a foreign country. The internet is not, by and large, anonymous; activity in cyberspace almost always leaves digital crumbs trailing back to the point of physical initiation. At the very least a person establishing a website must have an internet service provider or hosting company, must register a domain name, and must acquire domain name servicing. No doubt the clever malefactor can still mask his identity, but, absent a minimal investigation, I think it inappropriate to conclude that, simply because an entity's primary presence is on the internet, traditional means of service are automatically

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<sup>3</sup> By contrast, this court has on at least one occasion allowed service by e-mail when, among other things, there was verified e-mail correspondence between the plaintiff and the defendant.

obsolete.

Because I am neither confident that e-mail is likely to reach the defendants nor sure that conventional, more certain, service is impossible, Pfizer's motion (doc. # 4) is DENIED without prejudice to its renewal on a more developed record.

It is so ordered.

Dated at Bridgeport, Connecticut, this 13<sup>th</sup> day of July 2004.

/s/ Stefan R. Underhill

Stefan R. Underhill

United States District Judge