

Court Upholds Service Of Process Via E-mail

April 1, 2009

Disputes with foreign-based entities over Internet domain names can be quite challenging from the start. Many times, the first hurdle is obtaining effective service of the court summons and complaint on the foreign defendant. A recent decision of the Ninth Circuit U.S. Court of Appeals may help domestic companies in overcoming that hurdle.

Plaintiff Rio Properties, a Las Vegas hotel and casino operator ("Rio"), sought to expand its Internet presence. Rio learned of Rio International Interlink, a Costa Rican based online sports gambling site ("RII") and RII's registration and use of the domain names www.riosports.com and www.betrio.com. After unsuccessfully demanding that RII cease and desist its use of these domain names, Rio filed a lawsuit against RII alleging trademark infringement in federal court in Nevada.

Finding that RII had no registered agent to accept service of process in the United States and unable to serve RII in Costa Rica, Rio sought and obtained permission from the court to serve RII by alternative means, including via email. RII appeared in the court action and filed a motion to strike the service as insufficient. The trial court denied the motion and, on appeal, the Ninth Circuit upheld the service of process via email.

In addition to the fact that the applicable federal rules allow for alternative service "by other means not prohibited by international agreement", the court reasoned that Rio's more traditional attempts at service (including registered international mail, return receipt requested) had failed and that Rio had established email as an effective means of communication with RII given that RII had communicated with Rio via email on two prior occasions.