

**L'Oreal Nederland B.V. v FragranceX.com, Inc.**

2025 NY Slip Op 35419(U)

January 8, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 615865/2023

Judge: Frank A. Tinari

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SHORT FORM ORDER

INDEX No. 615865/2023

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 50 - SUFFOLK COUNTY

**PRESENT:**

Hon. FRANK A. TINARI  
Justice of the Supreme Court

MOTION DATE 8/2/23 (001)  
X MOTION DATE 9/12/23 (002)  
ADJ. DATE 7/30/24  
Mot. Seq. # 001 - MG  
XMot. Seq. # 002 - MD; CASE DISP

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L'OREAL NEDERLAND B.V.,		ELLIS GEORGE CIPOLLONE O'BRIEN
		ANNAGUEY, LLP
	Plaintiff,	Attorneys for Plaintiff
		Carnegie Hall Tower
	- against -	152 West 57 <sup>th</sup> Street, 28 <sup>th</sup> Floor
		New York, New York 10019
FRAGRANCEX.COM, INC.,		WILK AUSLANDER, LLP
	Defendant.	Attorneys for Defendant
		825 Eighth Avenue, Suite 2900
		New York, New York 10019
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Upon the following papers read on this e-filed motion for summary judgment in lieu of complaint: Notice of Motion/Order to Show Cause and supporting papers by plaintiff, filed on June 27, 2023; Notice of Cross Motion and supporting papers by defendant, filed August 18, 2023; Answering Affidavits and supporting papers by plaintiff, filed on September 1, 2023; Replying Affidavits and supporting papers by defendant, filed on September 18, 2023; Other oral argument on December 20, 2023; it is

**ORDERED** that the plaintiff's motion for summary judgment in lieu of complaint, seeking an order directing recognition and enforcement of a foreign judgment in favor of L'Oreal Nederland is granted; and it is further

**ORDERED** that the cross motion for dismissal by defendant FragranceX.com is denied.

This action was commenced by plaintiff L'Oreal Nederland B.V. (L'Oreal) to obtain

L'Oreal v FragranceX.com

Index No. 615865/2023

Page 2

recognition and enforcement in New York of a Dutch civil money judgment (the “Dutch Judgment”) in the amount of €2,000,000.00 rendered in favor of plaintiff against defendant on February 22, 2023 by the District Court of the Hague, Commercial Division based on the infringement of plaintiff’s intellectual property rights by defendant FragranceX.com (FragranceX).

Plaintiff moves for summary judgment in lieu of complaint, alleging that on February 22, 2023, the District Court of the Hague, Commercial Division, awarded L’Oreal a judgment of €2,000,000.00 against FragranceX. The Dutch Judgment arose out of L’Oreal’s attempt to protect its intellectual property and stop FragranceX from infringing on its mark or selling “decoded” perfume products to retailers in the Netherlands. Plaintiff argues, among other things, that the Dutch Judgment is final, conclusive and enforceable, is not a “penalty” such that enforcement should be barred, that there are no mandatory or discretionary grounds for non-recognition, and that Dutch Judgment should be enforced under the Doctrine of Comity. In support of its application, plaintiff submits, among other things, a certified copy of the February 22, 2023 Dutch Judgment with translation and the affirmation of Paul Tjiam.

Defendant cross-moves to dismiss plaintiff’s action, arguing, among other things, that the Dutch Judgment is not enforceable in New York because the Dutch Court’s exercise of personal jurisdiction does not comport with New York’s jurisdictional reach. Defendant alleges that the Dutch Court hinged personal jurisdiction over the defendant based upon a global website and “manufactured sales” which have been rejected by New York as a basis for long-arm jurisdiction. In support of its cross-motion, defendant submits, among other things, the affidavit of Ron Yakuel.

Paul Tjiam, a partner at the law firm Simmons & Simmons LLP, counsel to plaintiff L’Oreal in the Netherlands, submits an affirmation in support of the plaintiff. Tjiam affirms that L’Oreal holds a power of attorney from various entities that permits it to initiate proceedings to protect EU and international registered trademarks for several famous luxury perfumes. Tjiam affirms that in 2021 L’Oreal learned that FragranceX was selling perfume products through an interactive website that offered products for sale in the Netherlands. Tjiam further affirms that to determine whether FragranceX was infringing on L’Oreal trademarks, it engaged an anti-piracy organization (REACT) to determine whether FragranceX was selling perfume products bearing all of the L’Oreal trademarks within the European Economic Area, and whether FragranceX was selling “decoded” perfumes.<sup>1</sup> Tjiam states that REACT commissioned test purchases from the defendant and that defendant was in fact selling perfumes bearing L’Oreal trademarks and that defendant was selling “decoded” perfume products. After multiple demands made by plaintiff to defendant to cease in the trade of decoded perfume products were not responded to, on November 4, 2021, L’Oreal issued a Writ of Summons for preliminary relief proceedings which was served on defendant in accordance with the

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<sup>1</sup>Per Tjiam, decoding is the “act of physically defacing product packaging to enable piracy, infringement, and impermissible cross-border selling” by “removing product codes from perfume packaging and bottles”.

L'Oreal v FragranceX.com

Index No. 615865/2023

Page 3

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965 (the "Hague Convention"). FragranceX did not respond nor appear at the hearing on plaintiff's request for preliminary relief.

Tjiam further affirms that on March 4, 2022, the Dutch Court granted L'Oreal's request for preliminary relief and issued an Order enjoining defendant from selling infringing products in Europe. Thereafter, to confirm whether defendant was complying with the preliminary order, L'Oreal commissioned further test purchases from defendant's website and asked a Dutch bailiff to perform a test purchase from the Netherlands. The matter proceeded in the Dutch court which ultimately granted a default judgment against FragranceX, whom did not appear in the proceedings.

Ron Yakuel, chief executive officer of FragranceX submits an affidavit in opposition to plaintiff's motion in which he states that FragranceX is a U.S. company incorporated in New York State, is an online reseller of fragrances, operates a website which is available worldwide, and accepts payment in 31 different currencies. He further states the FragranceX does not physically operate in the Netherlands and has no presence in, or contact with, the Netherlands beyond its website. Yakuel acknowledges that FragranceX ships products worldwide and that they do not specifically target the Netherlands.

"New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts," and, in accordance with that tradition, the States adopted the Uniform Foreign Country Money-Judgments Recognition Act as CPLR article 53" (*John Galliano, S.A. v Stallion, Inc.*, 15 NY3d 75, 80, 904 NYS2d 683 [2010], quoting *CIBC Mellon Trust Co. v Mora Hotel Corp.*, 100 NY2d 215, 221, 762 NYS2d 5 [2003]). "Article 53 'applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal' (CPLR § 5302), and 'a foreign country judgment is considered conclusive between the parties to the extent that it grants or denies recovery of a sum of money'" (*John Galliano, S.A. v Stallion, Inc.*, 15 NY3d 75, 80, 904 NYS2d 683, quoting *CIBC Mellon Trust Co. v Mora Hotel Corp.*, 100 NY2d 215, 221, 762 NYS2d 5; CPLR § 5303). The party seeking recognition of a foreign money judgment must ask for no "new relief against the judgment debtor, but instead merely ask [ ] the court to perform its ministerial function of recognizing the foreign country judgment and converting it into a New York judgment" (*CIBC Mellon Trust Co. v Mora Hotel Corp.*, 100 NY2d 215, 222, 762 NYS2d 5, quoting *Lenchyshyn v Pelko Elec.*, 281 AD2d 42, 49, 723 NYS2d 285 [4<sup>th</sup> Dept 2001]).

"Historically, New York courts have accorded 'recognition to the judgments rendered in a foreign country under the doctrine of comity . . . [a]bsent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State' (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 82, 817 NYS2d 600 [2006], quoting *Greschler v Greschler*, 51 NY2d 368, 376, 434 NYS2d 194 [1980] [internal citation omitted]). "The public policy inquiry rarely results in refusal to enforce a judgment unless it is

L'Oreal v FragranceX.com

Index No. 615865/2023

Page 4

‘inherently vicious, wicked or immoral, and shocking to the prevailing moral sense’ (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 82, 817 NYS2d 600, quoting *Intercontinental Hotels Corp. (Puerto Rico) v Golden*, 15 NY2d 9, 13, 254 NYS2d 527 [1964]).

It has generally been held that foreign money judgments should be recognized in New York pursuant to article 53 unless a ground for nonrecognition is applicable pursuant to CPLR § 5304 (*John Galliano, S.A. v Stallion, Inc.*, 15 NY3d 75, 80, 904 NYS2d 683; CPLR § 5304). A lack of personal jurisdiction over the defendant is a mandatory ground (CPLR § 5304 [a] [2]). Defendant noted at oral argument, that it is not contesting the matter based upon due process grounds (such as that found in CPLR § 5304 [a][1]), and as such, the Court turns its attention to the issue of jurisdiction over the defendant, specifically personal jurisdiction. CPLR § 5305, entitled “Personal jurisdiction” enumerates six bases for jurisdiction as well as a catch- all phrase providing that “[t]he courts of this state may recognize other bases of jurisdiction” (CPLR § 5305 [b]). “Thus, the inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York’s concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law. If the above criteria are met, and enforcement of the foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles without microscopic analysis of the underlying proceeding” (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 83, 904 NYS2d 683). As personal jurisdiction has not been established under CPLR § 5305 (a), the Court looks “to the framework of CPLR 302, New York’s long-arm statute, using it as a parallel to assess the propriety of the foreign court’s exercise of jurisdiction over a judgment debtor” (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 83, 904 NYS2d 683).

CPLR § 302 [a][1] provides that “[a]s to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent transacts any business within the state or contracts anywhere to supply goods or services in the state.” “Proof of one transaction in New York is sufficient to confer jurisdiction as long as the activities of the defendant in question were purposeful and there is a substantial relationship between the transaction and the claim asserted” (*Staten Is. Hosp. v Alliance Brokerage Corp.*, 166 AD2d 574, 576, 560 NYS2d 859 [2d Dept 1990]).

Plaintiff concedes that the jurisdictional analysis is different in the Netherlands than it is in the State of New York. However, plaintiff submits that in applying CPLR § 302 [a][1], transaction of business via a worldwide, interactive website, along with delivery of goods into the forum state is sufficient to establish jurisdiction. Plaintiff also asserts that REACT was engaged to make purchases from defendant to determine whether defendant was infringing on any of the plaintiff’s trademarks and whether defendant was selling decoded perfumes. Defendant asserts that this Court can only consider the evidence established before the foreign court and argues that plaintiff’s only basis for personal jurisdiction in the Dutch Court were sales initiated by plaintiff, also referred to by

L'Oreal v FragranceX.com  
Index No. 615865/2023  
Page 5

defendant as “manufactured sales,” which cannot form the basis of personal jurisdiction under New York law. Defendant also argues that the Court should not consider proof of other sales by defendant in the Netherlands provided for the first time in reply, as those records were not considered by the Dutch Court when it conferred jurisdiction. Defendant claims that it was the act of the plaintiff that brought the infringing product into the forum, not the defendant’s promotion, advertising or activities. Thus, the question becomes whether the purchases made were “manufactured” for the specific purpose of bringing jurisdiction upon the defendant or whether such purchases were “test” purchases as affirmed by the plaintiff, conducted in the ordinary course of business to monitor and remedy decoded products in the name of public health and safety. Plaintiff, through its submissions made in the Dutch Court, has established personal jurisdiction over the defendant in accordance with the laws of the State of New York. Plaintiff has demonstrated that the cause of action sued upon substantially relates to the underlying transaction of business. In opposition, defendant does not deny that it sold such infringed and/or decoded products in the Netherlands.

Plaintiff has satisfied its burden for recognition under CPLR § 5302 in showing that the Dutch Judgment is final, conclusive and enforceable where rendered and that none of the mandatory or non-mandatory grounds for non-recognition under CPLR § 5304 apply.

Accordingly, it is hereby

**ORDERED**, that plaintiff’s motion for summary judgment in lieu of complaint is granted; and it is further

**ORDERED**, that the cross motion for dismissal by defendant FragranceX.com is denied.

The proposed order of plaintiff and judgment creditor L’Oreal Nederland B.V., as modified by the Court, has been signed simultaneously with this order.

DATED: January 8<sup>th</sup>, 2025

  
HON. FRANK A. TINARI, J.S.C.

X  FINAL DISPOSITION    \_\_\_ NON-FINAL DISPOSITION