

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FUMA INTERNATIONAL LLC,)
)
 Plaintiff,)
)
 v. 1:19-CV-260
)
R.J. REYNOLDS VAPOR CO.)
)
 Defendant.)

ORDER

This matter is before the Court on RJR’s motion for leave to take the testimony of Shanhong Wang via deposition in Hong Kong. Doc. 152. Good cause having been shown, the motion will be granted.

Mr. Wang is and has been willing to come to the United States to testify, both during the discovery period and for trial. Fuma never sought to take the deposition of Mr. Wang, and the Court previously denied RJR’s request to take a trial deposition of Mr. Wang as premature. Doc. 115. But circumstances arising from the global COVID-19 pandemic continue to make it highly unlikely that Mr. Wang will be able to travel here for the November 2021 trial, despite his willingness to do so.

Mr. Wang, a citizen of China, is apparently prohibited by Chinese law from offering testimony in mainland China,¹ but he is willing to travel to Hong Kong, where

¹ See *Judicial Assistance Country Information: China*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html> (last visited July 27, 2021) (“China does **not** permit attorneys to take depositions in China for use in foreign courts.”) (emphasis in original).

his testimony can be given. RJR expects that Mr. Wang will be able to travel to Hong Kong in September for this purpose. Use of videoconference technology for the taking of depositions has become commonplace during the pandemic, and it works well and generally smoothly.

Federal Rule of Civil Procedure 28(b) allows depositions to be taken in a foreign country in multiple ways. Fed. R. Civ. P. 28(b). As is relevant here, Mr. Wang's deposition can go forward on notice before a person authorized to administer oaths under Hong Kong law or before a person commissioned by the Court to administer the oath. Fed. R. Civ. P. 28(b)(1)(C)–(D). While either is practical and both are appropriate, it seems simplest for the court reporter taking his testimony to administer the oath.


Fuma cites no authority in support of its argument that the Hague Convention is the only avenue for depositions to be taken abroad, and the Court concludes that a deposition pursuant to Rule 28(b) is appropriate. Fuma's argument that RJR has been dilatory is belied by the record and Fuma's other arguments are better raised after the deposition, if its fears materialize. If there are reasons any particular testimony or all of Mr. Wang's testimony should be excluded, that is better evaluated in the context of the witness's actual answers, not hypothetically. RJR is reminded of its continuing duty to timely supplement discovery responses. *See* Doc. 166 at 10 n.4.

For good cause shown, it is **ORDERED** that:

1. The motion, Doc. 152, is **GRANTED**.
2. RJR may take the deposition of Shanhong Wang in September via videoconference technology, with the witness appearing from Hong Kong,

subject to an oath or affirmation administered by a United States court reporter,
and counsel for the parties appearing remotely from their respective locations
in the United States.

This the 28th day of July, 2021.



UNITED STATES DISTRICT JUDGE