

Primer on Schedule A Litigation

University of Texas Advanced
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BAKER BOTTS
PARTNER TO THE INNOVATORS

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Overview

- **Background**
- **Evolution of “Schedule A” Litigations**
- **“Schedule A” Litigations by the Numbers**
- **Potential Pitfalls of “Schedule A” Litigations**

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Background

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“Schedule A” Litigations Generally

Temporary Restraining Order

- “Schedule A” litigations are generally characterized as district court litigations that seek TROs against large numbers of hard-to-identify infringers in the same venue.



IP Infringement

- “Schedule A” litigations can cover all types of IP infringement, including patent (design and utility), copyright, and trademark infringement.



Defendant Identities Hidden

- “Schedule A” litigations are so named because information regarding the defendants’ identities is typically filed under seal in a “Schedule A” attached to the complaint.

CHANEL, INC.,
a New York corporation,

Plaintiff,

v.

DOES 1-172 d/b/a the aliases identified on Schedule “A” and DOES 173-500,

Defendants.

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Freezing Infringers' Accounts

- TROs are typically directed not only to the infringers, but also to the entities processing online payments for their products, which often results in the freezing of the infringers' accounts:

(11) Upon receipt of notice of this Order, PayPal and Amazon and their related companies and affiliates shall, to the extent not already done, immediately restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into PayPal and Amazon accounts linked to, associated with, or that transmit funds into Defendant's identified bank account,⁸ including but not limited to:

Bank Accounts
Industrial and Commercial Bank of China
Account Name: Zhou Xiaomiao
Account Number: *****4683

and any other related accounts of the same customers;

- Chanel, Inc. v. 4fashionistas.net et al., Case No. 0:15-cv-60010, ECF No. 27 at 16-17 (S.D. Fla. 2015).

- Although temporary restraining orders only last for 14 days, online marketplaces have been known to continue freezing defendants' accounts well past the expiration of TROs, even if a PRO is not issued or even sought.

- Eric Goldman, A SAD Scheme of Abusive Intellectual Property Litigation, 123 Colum. L. Rev. 183 at 190-191 (Nov. 20, 2023); Marko R. Zoretic and Jack Hendershott, "Schedule A" Cases: A Powerful Tool for Enforcing Design Patents, N.Y.L.J. at 3 (May 15, 2023).

Success Rates

Temporary Restraining Orders

Preliminary Injunctions

Permanent Injunctions

~100%

~99%

~100%

- Success rates are extremely high due to the *ex parte* nature of the proceedings, but they only last 14 days.

- Success rates are the lowest because of the heightened standard for what is considered to be "extraordinary relief."

- Success rates are likely here because of the high number of default and consent judgements (~75%).

- Easlick et al. v. CJ Emerald et al., Case No. 2:23-cv-02000, ECF Nos. 1 & 22 (W.D. Pa. 2023).

NOTE: The above statistics are for design patent cases in the Northern District of Illinois—the busiest district for "Schedule A" litigations.

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