

Standing Order Re: “Schedule A”
Counterfeit Product Cases

Plaintiffs seeking to file “Schedule A” cases (*i.e.*, cases in which a plaintiff seeks *ex parte* injunctive relief against defendant(s) that have allegedly infringed plaintiff’s copyright, trademark, or patent) are put on notice of the following standing orders:

I. Joinder.

Under Federal Rule of Civil Procedure 19, which addresses compulsory joinder of parties, a defendant must be joined if (A) in that defendant’s absence, the court cannot accord complete relief among existing parties; or (B) that party claims an interest relating to the subject of the action and is so situated that disposing of the action in that defendant’s absence may (i) as a practical matter impair or impede that defendant’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest. *See* Fed. R. Civ. P. 19(1)(A)–(B).

Under Rule 20(a)(2), which addresses permissive joinder of parties, defendants may be joined in a single action if two requirements are satisfied: (1) the right to relief against them is asserted “with respect to or arising out of the *same transaction, occurrence, or series of transactions or occurrences*,” and (2) a “question of law or fact common to all defendants” will arise in the action. Fed. R. Civ. P. 20(a)(2)(A)–(B) (emphasis added); *see also* *Estee Lauder Cosms. Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule A*, 334 F.R.D. 182 (N.D. Ill. 2020) (Chang, J.) (analyzing the propriety of joinder in Schedule A cases). Plaintiffs in Schedule A cases should be prepared to show why joinder of numerous and/or unconnected defendants, particularly those selling multiple different types of infringing products on multiple e-commerce websites, comports with Rule 20(a)(2). The Court will not entertain speculative allegations unsupported by statements based in fact.

If a plaintiff cannot or will not be able to show that such joinder is proper, plaintiff—without needing to seek leave of court—should amend the Schedule A to reflect only defendants it can demonstrate are properly joined.

II. Bond.

If a plaintiff has proposed a bond or security amount, that plaintiff must include in its briefing an explanation as to why the amount is proper based on the costs and damages that may be sustained by any party found to have been wrongfully enjoined or restrained. Fed. R. Civ. P. 62(c).

III. Notice to Third Parties Before Issuance of a Preliminary Injunction.

Any motion for a preliminary injunction must be filed at least 14 days after service on the defendants of the complaint, Temporary Restraining Order, motion for a temporary restraining order, and other relevant and applicable documents.

IV. Motion for Entry of Default Judgment.

Before or in conjunction with moving for entry of default, a plaintiff in a “Schedule A” case must file an affidavit, declaration, or other document (*e.g.*, spreadsheet, chart) describing with specificity the following for *each* defendant and *each* allegedly infringing product:

1. The allegedly infringing product that Plaintiff alleges the defendant is selling or has sold;
2. The number of units of the allegedly infringing product the defendant has sold;
3. The date the defendant’s sale of the product began and the date of the latest known sale;
4. The online marketplace(s) over which the defendant sold the product at issue;
5. The defendant’s sales volume on each online marketplace;
6. The price at which Plaintiff sells the allegedly infringing product;
7. How, if at all, the price at which Plaintiff has sold the product has changed during the time period of defendants’ sales of the allegedly infringing product;
8. The price(s) at which the defendant sells and has sold the allegedly infringing product;
9. The difference between the Plaintiff’s price of the product and the defendant’s price of the allegedly infringing product;
10. The total sales volume (in U.S. dollars) of the allegedly infringing product on each online marketplace;
11. The amount of assets in defendant’s restrained and enjoined financial account; and
12. For each of defendant’s restrained and enjoined financial accounts, the portion of assets in such account that is derived from sales of the allegedly infringing product.

If a plaintiff cannot provide a response to any of the listed questions, the plaintiff must provide in written form a reason for not providing a response.