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Judicial Scrutiny Of Counterfeit Suits Forces Brands To Adapt

By **Ivan Moreno**

Law360 (April 2, 2026, 11:27 PM EDT) -- Federal judges are placing new restrictions on so-called Schedule A lawsuits that brand owners initiate to sue dozens and sometimes hundreds of online sellers allegedly peddling counterfeit products at once, demanding more than shopping-cart screenshots to establish jurisdiction and pressing plaintiffs to justify mass joinder and damages claims.

Instead of retreating, plaintiffs are adapting by narrowing the number of defendants, steering away from judges they view as unfavorable and filing in jurisdictions outside Chicago, where judges are beginning to turn away from **the model that has thrived** for more than a decade, attorneys and law professors tell Law360.

The Seventh Circuit on March 9 rejected jurisdiction in a Schedule A case based on website screenshots. In a separate case, a Chicago federal judge on March 13 raised questions about awarding defaulting defendants' profits. In addition, an academic paper posted March 27 reviewed how plaintiffs reshuffle cases after drawing skeptical judges. All point to the same dynamic: Courts are questioning the assumptions that have powered the Schedule A model, even as filings targeting alleged online counterfeiters persist.

The Seventh Circuit's three-judge panel initially designated the three-page opinion as nonprecedential but reissued it as precedential Tuesday, adding three more pages explaining the Schedule A litigation model and reinforcing limits the appellate court previously placed on jurisdiction theories based on website screenshots showing a seller is willing to ship products to Illinois without proof of actual sales.

"The walls are closing in on the plaintiffs," said Christopher Keleher, a Chicago attorney who is among the busiest Schedule A defense lawyers.

Keleher said the pressure is building not because one sweeping appellate decision has dismantled the model, but because judges in multiple courts are tightening the rules that have allowed it to flourish.

A group of Schedule A plaintiff attorneys **formed last year**, the Strategic Alliance for Fair Ecommerce, or SAFE, said the Seventh Circuit's decision "did not fundamentally raise the bar on personal jurisdiction" but simply enforced existing standards.

"That said, the practical impact on plaintiffs at the [temporary restraining order] and default judgment stage is real, and SAFE is watching carefully to see how district courts apply it going forward," Yanling Jiang, the group's treasurer, said in a statement to Law360. Her Chicago firm, JiangIP LLC, files hundreds of Schedule A cases each year.

Keleher said that although the Seventh Circuit ruling did not change existing law, it will have a practical effect because he has seen plaintiffs pursue cases without proof of a sale.

"From a plaintiff's perspective, you're in the best position, obviously, when you have the item delivered. But unfortunately we would challenge those cases where it wasn't delivered and still didn't get anywhere, didn't get any traction" with some judges, he said.

Courts Scrutinize the Model

These types of cases have been around for at least 15 years and have flooded into the Northern District of Illinois, where plaintiffs have mostly dealt with judges who have repeatedly allowed hundreds of defendants to be joined in one case, frequently in sealed filings attached to complaints that broadly allege counterfeiting against defendants who are said to be overseas and nearly impossible to serve.

U.S. District Judge Steven C. Seeger of the Northern District of Illinois is among the most vocal skeptics of the litigation model on the Chicago bench, describing filings he's seen with generalized allegations as a "mass assembly operation that would make Henry Ford himself feel proud."

"By and large, the Schedule A bar uses the same template in each case, treating the filings like a factory mold," Judge Seeger wrote in a December 2023 opinion involving the owners of the "Zorro" trademarks, who sought a temporary restraining order against dozens of defendants.

Judge Seeger ruled against the plaintiffs in that case, and since then brand owners appear to be moving away from him. He confronted attorneys who represent Dyson Technology Ltd. in a brief docket entry on March 13, asking them to explain why joinder is appropriate in a case where the company is seeking profits from a group of defaulting defendants.

"This law firm drops every defendant except one in every case assigned to this court," Judge Seeger said, asking attorneys from Greer Burns & Crain Ltd. to answer several questions regarding damages sought and whether the claims against the defendants were sufficiently connected to proceed in a single case.

The pattern Judge Seeger described is not isolated, according to Sarah Fackrell, a professor at the Chicago-Kent College of Law who recently posted research that found plaintiffs sometimes engage in "defendant pinching." Fackrell coined the term to describe plaintiffs reducing the number of defendants to one after a case is assigned to a particular judge and then refiling the case against the dropped defendants in the hopes of drawing a different judge.

"We have seen, to some extent, forum shopping. There are firms in Chicago who I've seen filing cases in Indiana or going to Pennsylvania or other states," Fackrell told Law360. "But the other thing that we've seen is judge shopping."

A recent filing underscored those concerns. On Tuesday, days after Fackrell posted her paper on research platform SSRN, a defendant accused Deckers Outdoor Corp. and its Greer Burns counsel of using the pinching strategy Fackrell describes, repeatedly filing, trimming and refiling cases until they land before a preferred judge. The Greer Burns attorneys involved in that case declined to comment because the case is ongoing. The Chicago federal judge overseeing it set an April 10 hearing to discuss the pinching allegations.

SAFE's Jiang pushed back at the characterization that Schedule A plaintiffs are judge shopping.

"More broadly, SAFE is concerned that framing routine procedural responses to joinder rulings as sanctionable conduct — or as fodder for academic criticism — creates yet another obstacle for brand owners trying to enforce their rights against anonymous online infringers," she said.

Pressure Without Collapse

On Wednesday, the Greer Burns attorneys responded to Judge Seeger's questions in the Dyson dispute, arguing that joinder is not up for reconsideration because the Seventh Circuit remanded the case to calculate damages when it reversed the judge's earlier refusal to award infringing profits.

Regarding those profits, Dyson's attorneys said in a separate filing Wednesday that a trademark plaintiff must prove sales only, and then the burden shifts to defendants to show costs and other deductions. When a defendant fails to appear, as happened in this case, Dyson said the gross sales are treated as profits.

SAFE's Jiang said the group is more concerned with Judge Seeger's stance in the Dyson case than with the Seventh Circuit's decision about website screenshots.

"The chilling effect here cannot be overstated," Jiang's statement said. "If a company the size of Dyson — one that successfully appealed all the way to the Seventh Circuit — still faces this level of additional burden before collecting on a default judgment, one has to ask what realistic path smaller brand owners have to meaningful relief."

Judge Seeger is not alone in questioning the way Schedule A litigation works. Last year, U.S. District Judge John Kness, also of the Northern District of Illinois, paused his Schedule A docket to reevaluate the model, **eventually concluding** that it "should no longer be perpetuated in its present form."

Other circuits and district judges in other states are also adding to the scrutiny Schedule A plaintiffs are facing. New Jersey's chief district judge issued a standing order that **tightened rules** in such cases in September after noticing an "uptick." In December, the Second Circuit ruled that Chinese defendants in U.S. courts **cannot rely on email service** — a key part of Schedule A cases.

At the same time, the judicial scrutiny has not slowed down the filings. Fackrell said in her paper that at least 2,600 Schedule A cases were filed in the Northern District of Illinois in 2025, based on a docket-by-docket review of federal filings that used the procedural markers of Schedule A cases, including sealed defendant lists and early requests for asset freezes.

For context, about 5,800 Schedule A cases were filed nationally from 2020 through 2024, with more than 80% of those, or 4,846, in the Northern District of Illinois, according to Lex Machina data.

Even with the increased judicial scrutiny, the problem that gave rise to Schedule A cases is not disappearing because counterfeiting and infringement online remain pervasive, said Adam Urbanczyk of AU LLC, who represented the defendant in last month's Seventh Circuit precedential decision.

Schedule A litigation has continued in part because it offers what many plaintiffs see as the most efficient mechanism available for pursuing large groups of overseas sellers, he said.

"Absent some other mechanism that the district courts want to set up, it's probably the best thing to do for the moment — not that the cases can't be subject to abuse or there can be cases that have better or worse claims," he said.

Urbanczyk said he does not believe the Seventh Circuit's ruling will upend Schedule A litigation, but it could increase costs on plaintiffs who need to buy products to show a seller will ship to Illinois, potentially shrinking the size of some complaints as a result.

"That might clean up some of the litigation," he said.

--Editing by Brian Baresch and Michael Watanabe.

Clarification: This story has been updated to clarify Fackrell's description of "defendant pinching."
