

CIS BRAND BRIEFING NO. 5

Why Will Attorneys and Intelligence Vendors Work on Contingency?

Because in a counterfeit case against marketplace sellers, a court can freeze the sellers' money before the case is decided, and recovery comes from that money.

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THE SHORT ANSWER

Because in a counterfeit case against marketplace sellers, the money that pays for the case belongs to the accused sellers. A federal court can freeze their marketplace and payment balances at the start, before they are told. The law also sets high statutory damages for willful counterfeiting, and most sellers settle or default. That is what lets an attorney take the case for a share of what is recovered, and it is what lets CIS work the same way.

Lawyers call these “Schedule A” cases, after the court exhibit that lists the sellers being sued. This paper walks through one step by step, from filing to payout, with the statute or rule behind each step. It then sets out why some of these cases have drawn pushback from courts, and what a case that holds up looks like.

WHERE THE MONEY COMES FROM

A Schedule A case is a federal trademark suit against many sellers at once. In 75 public cases we studied, the court filings listed 14,053 defendant entries, close to 190 a case.¹ Four things happen in order.

The court freezes the money first. The brand asks the judge for a temporary restraining order before any seller is warned. Federal trademark law and the court's equitable powers make that possible. A brand likely to win is entitled to “a rebuttable presumption of irreparable harm” when it asks for a restraining order.²

The federal rules allow such an order “without written or oral notice” under conditions the rule sets. The brand must also post “security in an amount that the court considers proper.”³ Who pays that, and the other costs of the case, is set in the written agreements. The order goes to the platforms, not the sellers. A defense-side law firm describes it this way: “A typical Schedule A TRO directs marketplaces such as Amazon, eBay, Etsy, Walmart, Temu, and AliExpress, and processors such as PayPal and Stripe, to freeze the seller’s account and hold the funds in place.”⁴

The seller finds out late. The same firm writes that “sellers usually learn about the case only after the money is already frozen.”⁴ An order issued without notice lasts no more than 14 days unless the court extends it for good cause.³ A later hearing decides whether the freeze holds while the case runs.

Most sellers settle or default. A law professor who criticizes these cases studied 2,688 of them that listed a resolution through 2022. He found that 70% ended in default judgments and 28% in voluntary or joint dismissals, which is how settlements are often recorded.⁵ A defense lawyer told MIT Technology Review that a proposed settlement “is often about 60% of the frozen account’s balance.”⁶

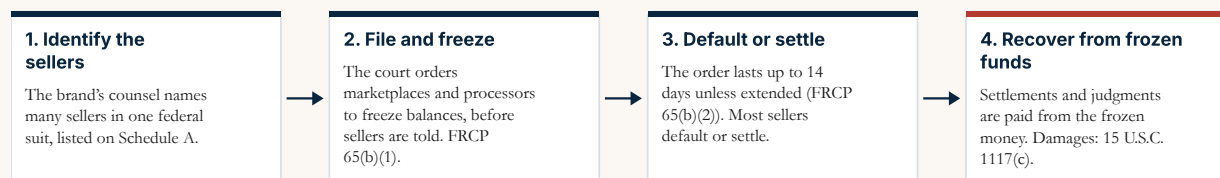
The damages give the case its weight. For a counterfeit mark, the brand may ask for statutory damages of \$1,000 to \$200,000 per mark per type of goods. If the court finds the counterfeiting willful, the ceiling is \$2,000,000.⁷ A seller weighing that number against a frozen balance has a strong reason to settle.

Figure 1. How a Schedule A case turns frozen balances into a recovery

Sources: notes 1 to 7. The 70% default and 28% dismissal shares come from cases resolved through 2022. Timing varies by court and judge.

A SCHEDULE A CASE, FILING TO PAYOUT

Each step and the law or record behind it



The money that pays for the case is located and frozen at step 2, long before the case ends.

1 Cyber Investigation Services, count of defendant entries in 75 Schedule A trademark cases whose seller lists were free and unsealed on CourtListener, a public archive of federal court records, as of September 28, 2026. A seller named in two cases counts twice. The cases were chosen because they named Amazon sellers and their seller lists were public, so they lean toward the Northern District of Illinois and smaller plaintiffs.

2 15 U.S.C. § 1116(a): “A plaintiff seeking any such injunction shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction or upon a finding of likelihood of success on the merits for a violation identified in this subsection in the case of a motion for a preliminary injunction or temporary restraining order.”
<https://www.law.cornell.edu/uscode/text/15/1116>

3 Fed. R. Civ. P. 65(b)(1): “The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if” the conditions the rule lists are met. Rule 65(b)(2): such an order “expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension.” The dashes are the rule’s own. Rule 65(c): “The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.”
https://www.law.cornell.edu/rules/frcp/rule_65

4 Traverse Legal, a law firm that represents sellers, “Your Amazon or PayPal Account Was Frozen by a Trademark Lawsuit: A Seller’s Guide to Schedule A Cases,” accessed October 6, 2026. <https://www.traverselegal.com/blog/your-amazon-or-paypal-account-was-frozen-by-a-trademark-lawsuit-a-sellers-guide-to-schedule-a-cases/>

⁵ Eric Goldman, “A SAD Scheme of Abusive Intellectual Property Litigation,” *Columbia Law Review Forum*, vol. 123, November 20, 2023, pp. 195 to 196, from a dataset of 3,217 cases through December 28, 2022: “Of the cases that listed a resolution (2,688 cases), 70% were categorized as ‘default judgments,’ 28% were categorized as ‘voluntary/joint dismissal.’” Goldman is a critic of the practice. The article is cited for its data. <https://columbialawreview.org/wp-content/uploads/2023/11/November-2023-Forum-Goldman-final.pdf>

⁶ Zeyi Yang, “The counterfeit lawsuits that scoop up hundreds of Chinese Amazon sellers at once,” MIT Technology Review, June 20, 2023. Press. <https://www.technologyreview.com/2023/06/20/1075088/chinese-amazon-seller-counterfeit-lawsuit/>

⁷ 15 U.S.C. § 1117(c): statutory damages of “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just,” or, if the use was willful, “not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed.” <https://www.law.cornell.edu/uscode/text/15/1117>

WHY THAT LETS AN ATTORNEY TAKE THE RISK

An attorney who works on contingency is paid only if money is recovered. Once the brand’s claim is sound, the next question is whether there is money a U.S. court can reach. A judgment is worth what can be collected. A balance frozen inside a U.S. marketplace or payment account is already held under the court’s order.

The seller’s side of the math points the same way. MIT Technology Review followed one seller in Shenzhen. Her own attorney told her that defending herself and countersuing “could cost her as much as \$60,000—almost the entire amount frozen in the Amazon account.”⁶ For a seller in that position, settling is often the cheaper choice.

One suit also covers many sellers, so the attorney’s work is spread across many possible recoveries. The fee terms are fixed before the work begins. Most of these cases have been filed in the Northern District of Illinois, over 88% of the dataset (trademark, copyright and patent cases) through 2022.⁵ Illinois requires a contingent fee agreement to “be in a writing signed by the client” that states how the fee is figured.⁸

⁸ Illinois Rule of Professional Conduct 1.5(d)(2), as amended effective July 1, 2023: “A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (c) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal...” The 88% figure in the text is from the Goldman article in note 5: “Of the 3,217 dataset cases, 2,846 cases (over 88%) were filed in the Northern District of Illinois.” <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/ce9cba94-4700-49ed-9183-a43cfd0c3a5/RULE%201.5.pdf>

WHY IT LETS CIS WORK THE SAME WAY

A Schedule A case is only as good as the sellers it names. The attorney needs sellers who are selling fakes, who are still active, and who hold money a court can freeze. Picking them well is intelligence work, and that is what CIS brings. We identify which sellers are worth pursuing and supply that intelligence to the brand’s attorney.

Timing matters. In the 75 cases we studied, about one Amazon seller in five could be confirmed still selling on Amazon in September 2026. Among sellers named in 2026 cases, 45.5% were.⁹ A seller that has left often holds little to freeze. Even a good case recovers only what is in the accounts, and not every case recovers money. Contingency puts that risk on the attorney, and separately on us, which is why we care which sellers are named.

CIS’s share is set in its own written agreement with the brand, separate from the brand’s agreement with its attorney. It is paid from the brand’s recovery. No law firm pays CIS.

⁹ Cyber Investigation Services, count of 5,075 Amazon sellers named in the 75 cases of note 1, checked against Amazon listing data on September 28, 2026: 991 (19.5%) had a listing live in the previous 30 days, rising from 7.5% of sellers in 2023 cases to 45.5% in 2026 cases. A third of the named sellers could not be checked, so the share is a floor. Live means any listing seen, not that the seller still sells the counterfeit goods.

WHEN CASES GO WRONG, AND WHEN THEY WORK

Schedule A cases built on real evidence can survive appeal. NBA Properties sued an Amazon seller of counterfeit basketball shorts. An investigator's affidavit said the seller offered 205 infringing products, and an order was shipped to Illinois. The trial court restrained the seller's account. In 2022 the federal appeals court in Chicago upheld the court's jurisdiction and the judgment. The Supreme Court declined to hear the seller's appeal (which sets no precedent).¹⁰

The pushback came as filings surged. By our count of CourtListener search results, Schedule A dockets in the Northern District of Illinois grew from 261 in 2019 to 2,519 in 2025.¹¹ My view is that the rush brought in many thin cases, and the judges' words are consistent with that. In August 2025 Judge Matthew Kness of the Northern District of Illinois, who questions the ex parte model itself, wrote: "Judges in this District have routinely granted plaintiffs' initial requests in Schedule A cases. But as time has passed, and as Schedule A cases have inundated judges' dockets in this District, the validity of the present approach has become less convincing." He found the complaints "drafted at a high level of generality (bordering on boilerplate)" and said such restraining order motions "should fail at the outset." He also wrote: "Although the scourge of intellectual property theft and abuse is real, persistent, and highly damaging, the remedy for that problem must be sought by other means."¹²

Other courts have narrowed the practice. In one Florida case, a restraining order froze \$21 million across 64 sellers whose sales of the accused items, by the sellers' own evidence, came to \$42,000. The court reduced the freeze.¹³ The federal court in New Jersey, citing "an uptick in Schedule A cases," now requires a separate complaint for each seller or group with the same operator. It is "unlikely to grant any TRO motion to freeze online accounts" without evidence the seller is moving assets and a showing that ties the amount frozen to the amount at stake.¹⁴ In one 2025 Chicago case, a brand asked for \$100,000 per seller without evidence of harm and was awarded \$1,000.¹⁵

These rulings point to what courts want to see. Each named seller has real evidence against it showing it sells counterfeits of the brand's marks. Critics' central concern is sellers named without evidence. Seller-by-seller proof answers it. The sellers are still active and hold money in accounts a U.S. court can reach. In New Jersey, each operator gets its own complaint, and a freeze needs evidence the seller is moving assets. The freeze is sized to the profits from the accused sales, and the damages request rests on evidence.

¹⁰ *NBA Properties, Inc. v. HANWJH*, 46 F.4th 614 (7th Cir. Aug. 16, 2022), No. 21-2909: the brand "filed an affidavit from its investigator asserting that HANWJH sold 205 infringing products, available for purchase in Illinois, on its Amazon site," and "sought and received a temporary restraining order and preliminary injunction, including a temporary asset restraint on HANWJH's bank account." "We affirm the judgment of the district court." <https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D08-16/C:21-2909;J:Ripple:aut:T:fnOp:N:2918848:S:0> Petition for certiorari denied January 9, 2023, U.S. Supreme Court No. 22-467. <https://www.supremecourt.gov/docket/docketfiles/html/public/22-467.html>

¹¹ Cyber Investigation Services, count of CourtListener search results for Northern District of Illinois dockets matching "Partnerships and Unincorporated Associations" and "Schedule A," by year filed: 2019: 261, 2020: 483, 2021: 620, 2022: 793, 2023: 1,130, 2024: 1,691, 2025: 2,519. Queried October 6, 2026. This is a search count, not a court statistic. <https://www.courtlistener.com/>

12 *Eicher Motors Ltd. v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A*, 2025 WL 2299593 (N.D. Ill. Aug. 8, 2025) (Kness, J.). Full sentences: “Schedule A complaints ordinarily are drafted at a high level of generality (bordering on boilerplate) and lack specifics as to each defendant or how the defendants relate to one another.” “Schedule A TRO motions, in this case and others, should fail at the outset because it is all but impossible for the Court to discern the likelihood of success from the one-sided evidence provided.” “Although the scourge of intellectual property theft and abuse is real, persistent, and highly damaging, the remedy for that problem must be sought by other means.” As quoted by Eric Goldman, Technology & Marketing Law Blog, August 2025. <https://blog.ericgoldman.org/archives/2025/08/judge-kness-the-sad-scheme-should-no-longer-be-perpetuated-in-its-present-form-eicher-motors-v-schedule-a-defendants.htm>

13 *Betty's Best, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule A*, 2023 WL 8310347 (S.D. Fla. Nov. 17, 2023), as reported by Eric Goldman, Technology & Marketing Law Blog, December 2023: “Among those 64 defendants, the ex parte TRO caused \$21M of their assets to be frozen.” “The 64 defendants introduced evidence that their total sales of the allegedly infringing items was \$42k.” <https://blog.ericgoldman.org/archives/2023/12/sad-scheme-cases-are-always-troubling-bettys-best-v-schedule-a-defendants-%F0%9F%98%A0.htm>

14 U.S. District Court for the District of New Jersey, Standing Order 2025-04, September 25, 2025: “this Court has observed an uptick in Schedule A cases filed in this District.” “each complaint shall consist of a single defendant or group of defendants acting under the same operator, and a separate filing fee shall be paid for each separate complaint.” The court “is also unlikely to grant any TRO motion to freeze online accounts absent some evidence that the defendant has transferred or is transferring assets to avoid judgment in the specific case, and also after a specific showing linking the amount of assets to the amount of disgorgement at issue.” The same order notes “a proliferation of online counterfeit sales is creating actual and substantial risks for companies possessing valuable, retail-based trademarks, copyrights, and patents.” <https://www.njd.uscourts.gov/sites/njd/files/StandingOrderreScheduleACases.pdf>

15 *NS, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule A*, No. 25 CV 00596 (N.D. Ill. Sept. 2, 2025) (Coleman, J.): \$100,000 requested per defendant, \$1,000 awarded, the request being “entirely, and unnecessarily, overbroad.” As reported by Chicago IP Litigation Blog, December 2025. <https://www.chicagoplitigation.com/2025/12/court-limits-statutory-damages-to-1000-per-defendant-in-schedule-a-trademark-case-without-evidence-of-harm/>

WHAT THIS MEANS FOR A BRAND

Attorneys and intelligence vendors work on contingency here for one reason. The case is built to reach the accused sellers’ money early, and the law gives sellers strong reasons to give it up. Done carelessly, the same case draws the court scrutiny described above. Done with the right sellers and real evidence, it is more likely to hold.

The question for a brand is not whether this kind of case exists. It is whether the sellers counterfeiting its products hold money a court can reach. That is what we look at first.

PUT YOUR BRAND ON OUR FREE WATCH LIST

If counterfeiters are selling under your brand, you should know it before your customers do. We always watch for free. When fakes put your customers at risk, we warn you and send you a CIS Consumer Safety Review: who is selling, where they ship from, and what it would take to stop them.

We package the intelligence to attract contingency attorneys to take your case. Our fee comes only from the recovery. Many counterfeiting problems can be resolved with no money out of your pocket: the attorney pays the upfront costs and takes them back from what is collected. Put your brand on our free Watch List at cyberinvestigationsservices.com/watch-list.

About the author. Chris Anderson, Ph.D., founded Cyber Investigation Services, a Florida limited liability company, in 2010 and leads it as CEO. CIS is an eCommerce consumer safety and national security intelligence firm. For 16 years Chris has built intelligence on the sellers behind counterfeit marketplace listings.