

Amending Schedule A

Sarah Fackrell

Chicago-Kent College of Law - Illinois Institute of Technology

“Schedule A” cases continue to be filed at a rapid pace, including in the U.S. District Court for the Northern District of Illinois. But some Northern District judges are growing skeptical of this IP enforcement model. An increasing number of judges are requiring higher bonds to support asset-freezing TROs. Others are pushing back on the propriety of joinder, questioning—and sometimes explicitly rejecting—the mass joinder that is one of the hallmarks of this litigation model. At least some Schedule A plaintiffs’ firms appear to be reacting to these developments, in at least some cases, by engaging in judge-shopping.

Over two years ago, Judge Seeger explicitly called out one firm for “judicial rug-pulling” and “judge shopping” after they dismissed most of the defendants from a Schedule A case and then refiling against the dismissed defendants without telling Seeger or the new judge about it.¹ In that case, plaintiffs’ counsel admitted they did it because they thought Judge Seeger would require a larger bond than other judges would.² More recently, Judge Tharp has started requiring Schedule A plaintiffs to disclose whether they have sued any of the defendants before on the same IP claims. He has issued a number of orders dismissing cases before him (purportedly without prejudice) when it turns out the defendants have been sued before and admonishing the plaintiffs about “forum shopping.”³

In other cases, experienced Schedule A plaintiffs’ counsel has started amending their complaints (or their separate defendant lists) immediately after certain judges are assigned, dismissing all but one defendant from the case. It is not always clear from the public record what happens to the dismissed defendants, because the original defendant lists often remain under seal. And in at least one case, a defendant has accused plaintiffs’ counsel of doing the reverse: Filing a Schedule A case against an unusually small number of defendants and then amending to add more after they drew a “good” judge.

This Article investigates and analyzes these developments. It argues for new local rules that would increase transparency and discourage judge-shopping.

¹ Minute Order, *Blue Sphere, Inc. v. P’ships, & Unincorporated Ass’ns Identified on Schedule A Hereto*, No. 1:22-cv-05599 (N.D. Ill. Jan. 18, 2023), ECF 28. *See also* Hearing Transcript, ECF 35.

² Plaintiffs’ Statement Relating to the December 19, 2022 Minute Order at 2, *Blue Sphere, Inc. v. P’ships, & Unincorporated Ass’ns Identified on Schedule A Hereto*, No. 1:22-cv-05599 (N.D. Ill. Dec. 21, 2022), ECF 20.

³ E.g., Minute Order, *Fear of God, LLC v. P’ships & Unincorporated Ass’ns Identified on Schedule A*, No. 1:24-cv-12434 (N.D. Ill. Dec. 18, 2024), ECF 25. I say “purport” because of the FRCP 41 double-dismissal rule.