

Power to the IP Holder:

**Using “Schedule A” Litigation
and Other Enforcement Tools to
Stop Foreign Infringers**

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Knobbe Martens and ACC Southern
California Doubleheader

Santa Monica, California

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THE ISSUE – FOREIGN INFRINGERS ON ONLINE MARKETPLACES

- Your client has a popular brand(s) and/or product(s).
- Online marketplaces (e.g., Amazon.com, Alibaba.com, made-in-china.com) operated by foreign sellers sell counterfeit/infringing products to U.S. customers.
 - Listings/products infringe trademarks, trade dress, design patents, utility patents, and/or copyrights.
- Don't know who the sellers really are—sellers use seller aliases.
 - Have no known U.S. physical presence.
- What do you do?
 - Enforce in foreign jurisdiction?
 - ITC?
 - Takedown requests?

Enforcement Tools – Takedown Requests

- Online retail platforms, domain registrars, and social media sites have takedown procedures for infringement complaints.
 - Different forms/links for different types of infringement (i.e., trademark or copyright).
- Some platforms require accounts and pre-registration with the submission of registration certificates.
- Relatively quick and inexpensive method to stop trademark and copyright infringement.
- Good option when you cannot identify infringer.
- Easy to track metrics to show decrease in infringing products on sites.
- May lead to a whack-a-mole scenario.

Amazon “Report Infringement”



Report Infringement Notice Retraction Form

English



Help | Your Account

Report Infringement

Sign in Required

To submit a report of infringement, or retract a previously submitted report, please sign in.

Sign in

New to Amazon? [Create an Account](#)

About Amazon's Report Infringement Form

Amazon's Report Infringement form is intended for use by intellectual property rights owners and their agents to notify Amazon of alleged intellectual property infringements such as copyright and trademark concerns. If you are not an intellectual property rights owner or their agent, Amazon will not be able to process complaints submitted through this form. Please report your concerns to Amazon through the appropriate venue:

- Sellers may use this [contact us form](#) to report inappropriate listings, other sellers, policy violations, etc.
- Buyers may use this [contact us form](#) to report problems with orders, seller policy violations, etc.

We Do Not Enforce

Product detail page ownership and image restrictions: When a product detail page is created, it becomes a permanent catalog page on Amazon that will remain even if the creator's inventory sells out. Additionally, when you add your copyrighted image to a product detail page, you grant Amazon and its affiliates a non-exclusive, worldwide, royalty-free, perpetual, irrevocable right to exercise all rights of publicity over the material.

Other sellers can list their items for sale against pages or copyrighted images that you have used. However, we do require sellers to list only against product detail pages that exactly match their items. If you believe sellers are listing against product detail pages that do not exactly match their items, we ask that you report the violation directly by using the [contact us form](#).

If your copyrighted image has been added to our catalog without your consent, please start a report.

Exclusive or selective distribution: Amazon respects a manufacturer's right to enter into exclusive distribution agreements for its products. However, violations of such agreements do not constitute intellectual property rights infringement. As the enforcement of these agreements is a matter between the manufacturer and the retailers, it would not be appropriate for Amazon to assist in enforcement activities.

Please review the [Intellectual Property for Rights Owners](#) to learn more about different infringement types.




Protect your brand with Brand Registry


If you have a pending or registered trademark, enroll your brand in [Brand Registry](#) to enable proactive protections for your listings. Report a Violation and Impact Dashboard will help easily detect and report potential Intellectual Property (IP) infringements, and give insights into how Amazon is protecting your brand.

Learn more about [Amazon Brand Registry](#) and start the enrollment process.

<https://www.amazon.com/report/infringement/signin>

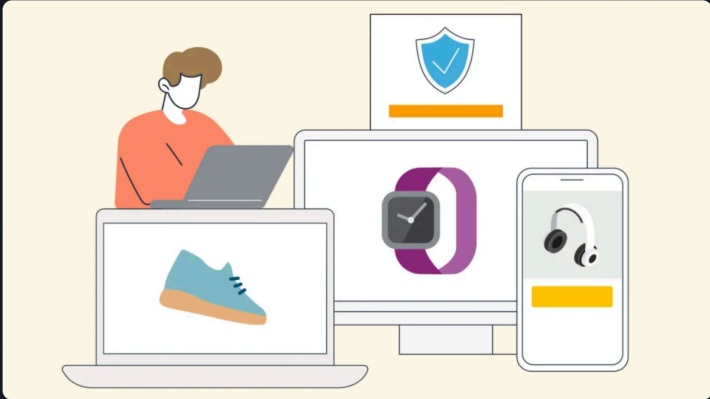
Amazon Counterfeit Crimes Unit




Approach ▾ Focus Areas ▾ Impact Latest Updates Resources  English (US) ▾

Amazon Counterfeit Crimes Unit (CCU)

Amazon Counterfeit Crimes Unit (CCU) works with brands, law enforcement, and customers across the globe to stop bad actors and hold them accountable.



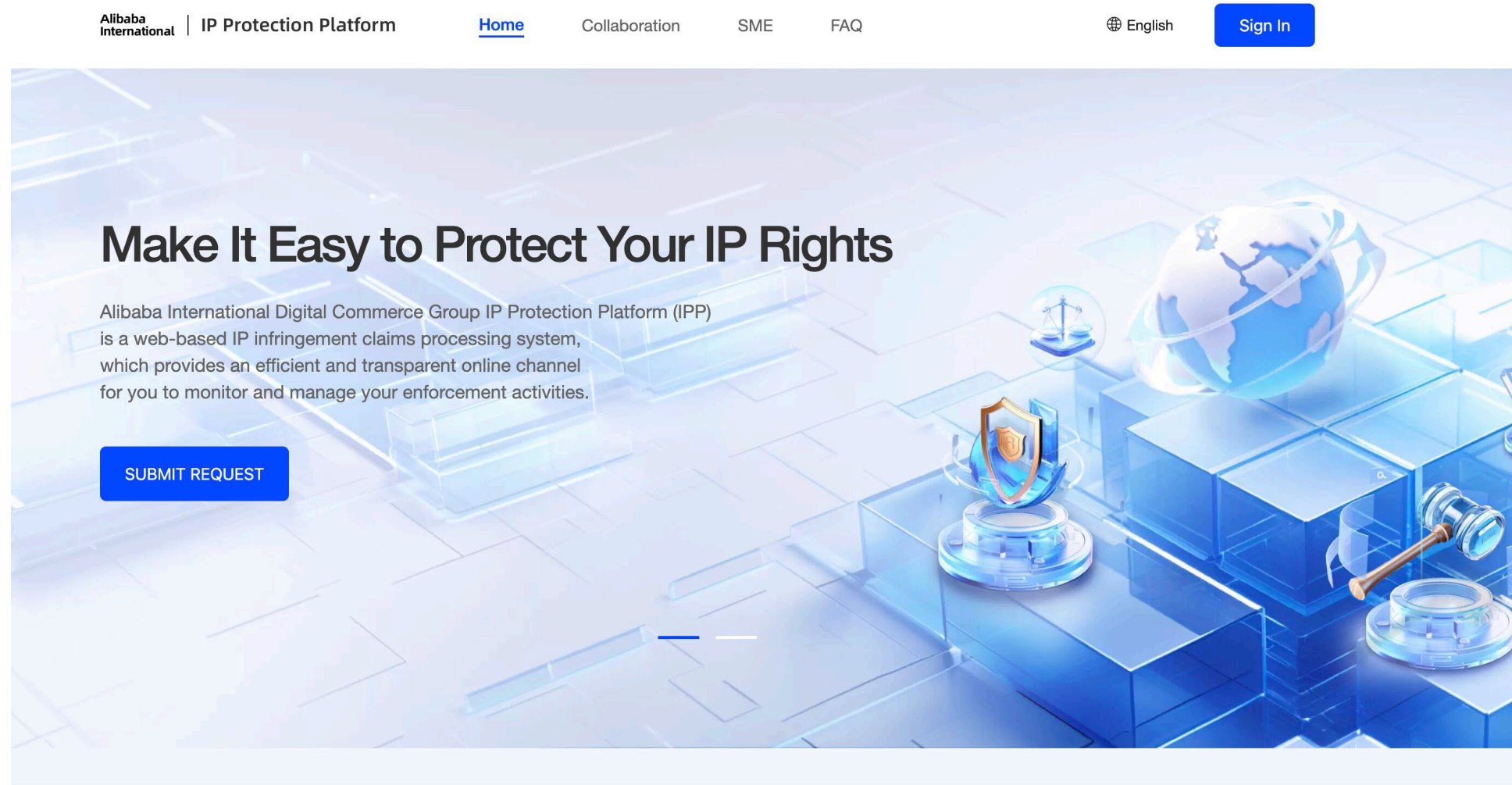


Working Together to Stop Bad Actors

We want to stop counterfeiters, no matter where they are - both online and offline. We created CCU to pursue these criminals and defend the rights of brand owners and protect customers and consumers from counterfeit products.

<https://trustworthyshopping.aboutamazon.com/counterfeitcrimesunit>

Alibaba “IP Protection Program”



https://ipp.aidcgroup.net/index.htm?language=en_US#/ippHome

A SOLUTION - “SCHEDULE A” LITIGATION – N.D. ILLINOIS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHUBBY GORILLA, INC.

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

Case No. 24-cv-13000

DEMAND FOR JURY TRIAL

COMPLAINT

SAMPLE “SCHEDULE A”

Schedule A

No.	Defendant Name/Alias
1	Henan Huaxin Import & Export Trade Co., Ltd.
3	Yuyao Yapoly Plastic Industry Co., Ltd.

No.	Defendant Name/Alias
2	Guangzhou Huangjia Package Production Co., Ltd.

Online Marketplaces

No.	Online Marketplaces
1	https://www.alibaba.com/product-detail/10ml-15ml-30ml-50ml-60ml-70_1600939626501.html
3	https://www.alibaba.com/product-detail/Plastic-PET-bottle-transparent-oil-pot_1600462939164.html

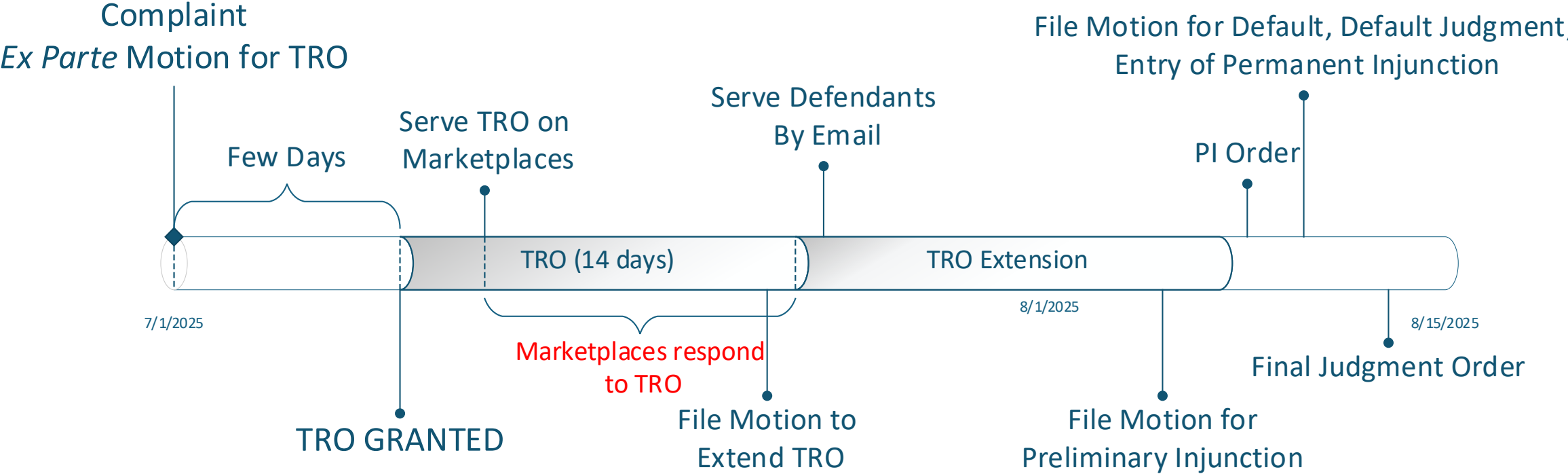
No.	Online Marketplaces
2	https://www.alibaba.com/product-detail/100ML-gorilla-pen-shaped-oil-bottle_1601018708589.html

SCHEDULE A LITIGATION – SHHHH, IT’S A SECRET.

- Schedule A is filed under seal.
- Complaint also filed under seal.
 - A public version with redactions is filed.
- Defendants are not initially aware that a lawsuit has been filed against them, which is the intention.
 - Defendants not publicly identified
 - IP rights not identified (maybe)



SAMPLE “SCHEDULE A” TIMELINE



EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

- File an *ex parte* motion for a Temporary Restraining Order (under seal).
 - A Court may issue an *ex parte* TRO where immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition. Fed. R. Civ. P. 65(b).
- Immediate and irreparable injury, loss, or damage: Defendant can and will likely register new domain names or online marketplace accounts under new aliases and move any assets to offshore bank accounts outside the jurisdiction of this Court.

RELIEF SOUGHT BY TRO

1. **Marketplace Listings Removed:** Immediately cease all sale, offer for sale of infringing products.
2. **Seller Accounts Frozen:** Prevent the transfer or disposal of any money or other of Defendant's assets in any of Defendant's financial accounts.
3. **Expedited Discovery:** Third parties required to provide expedited discovery to plaintiff (e.g., 7 days after notice of TRO) about defendants (e.g., identities, financial accounts, sales information, email addresses).
4. **Permission for Alternative Service:** Permits service of process, notice of TRO, notice of motions, etc. via email.

ISSUES TO CONSIDER

- Personal jurisdiction
 - Test buys are generally required
- How many and which defendants to include in a single action? JOINDER!
 - Two conditions must be satisfied:
 - (1) the claims against them must be asserted “with respect to or arising out of the same transaction, occurrence, or series of transactions and occurrences,” and
 - (2) there must be a “question of law or fact common to all defendants.”
 - Be able to assert that all defendants sell the same (or virtually identical) accused products
 - Be able to assert other similarities between defendants (e.g., same photos, similarities in product listings, etc.)
- Joinder dismissals are on the rise.
- Who is your Judge?

BENEFITS

- Can target multiple defendants at one time
- Obtain relief without notice to defendants
- Reasonably quick relief
- Possibility of some recovery
 - Seller balances may be small or nothing.
 - Made-in-china.com does not have seller balances.
 - Statutory damages for use of counterfeit mark (15 U.S.C. § 1117(c)(2))

Questions?

