

Santa Clara University

The “SAD” Scheme

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Eric Goldman, *A SAD New Category of Abusive Intellectual Property Litigation*, COLUM. L. REV. FORUM (2023),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4381824

“Schedule A Defendants” = “SAD” Scheme

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

EMOJI COMPANY GmbH,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

Case No. 21-cv-1739

Judge



COMPLAINT

Plaintiff, EMOJI COMPANY GmbH, by undersigned counsel, hereby complains of the

Attributes of the SAD Scheme

- IP lawsuit
- Sealed list of defendants enumerated on a “Schedule A”
- Rightsowner obtains ex parte temporary restraining order (TRO)
- Online marketplace freezes account/assets in response to TRO

SAD Scheme Example

2/17/2021 Amazon.com: This Is Going To Make Me Poop Coffee Mug 2020 | Quarantine Funny Hilarious Gag Gift Novelty Tea Cup | Gifts For Her, Gifts For Him, Cute Mug | Emoji Gifts Birthday Present: Kitchen & ...



Deliver to
Bensenville 60106

Home & Kitchen ▾

🔍

🇺🇸 Hello, Sign in
Account ▾

Returns
& Orders

🛒 0

All Best Sellers Prime ▾ Today's Deals Customer Service New Releases Books Find a Gift Fashion Kindle Books Gift Cards Toys & Games Support Black entrepreneurship

Amazon Home Shop by Room Discover Shop by Style Home Décor Furniture Kitchen & Dining Bed & Bath Garden & Outdoor Home Improvement

Shop the Kids' Store by age 0-24 months 2-4 years 5-7 years 8-12+ years Shop now +

Home & Kitchen › Kitchen & Dining › Dining & Entertaining › Novelty › Drinkware › Coffee Mugs



Roll over image to zoom in



This Is Going To Make Me Poop Coffee Mug 2020 | Quarantine Funny Hilarious Gag Gift Novelty Tea Cup | Gifts For Her, Gifts For Him, Cute Mug | **Emoji** Gifts Birthday Present

Brand: Coffee Mug

Price: **\$12.99** + \$6.99 shipping

Get \$50 off instantly: Pay \$0.00 ~~\$42.99~~ upon approval for the Amazon Rewards Visa Card. No annual fee.

Material	Ceramic
Color	Black
Brand	Coffee Mug
Capacity	10.88 Ounces

About this item

- ✔ This mug features printing on both sides and it is home and restaurant use, dishwasher and microwave safe. 100% pure white ceramic with

\$12.99
+ \$6.99 shipping

Arrives: Feb 24 - March 2
Fastest delivery: Feb 22 - 25

In Stock.

Qty: 30 ▾

 **Add to Cart**

 **Buy Now**

 **Secure transaction**

Ships from **1 Million**
Sold by **1 Million**

 **Deliver to Bensenville 60106**

Add to List

Add to Wedding Registry

Have one to sell?
...

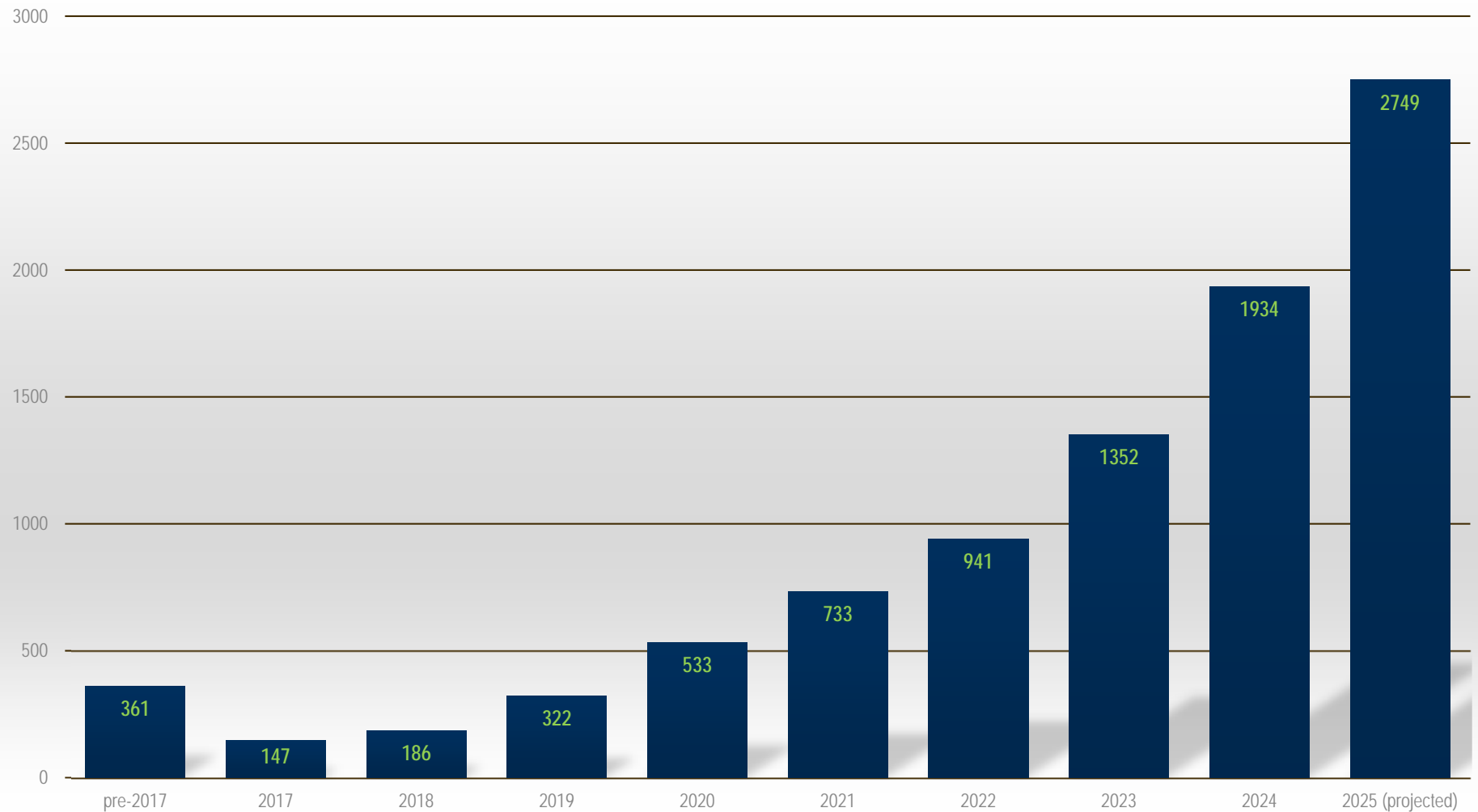
SAD Scheme By the Numbers (Estimates)

- Total Number of SAD Scheme cases: 7,700 as of June 7, 2025
- Total Number of SAD Scheme defendants: 1.5M+
- 88% filed in the Chicago area
- SAD Scheme cases by IP Type

Type of IP	End of 2022	June 2025
TM	88%	70%
Copyright	6%	19%
Patent	6%	10%

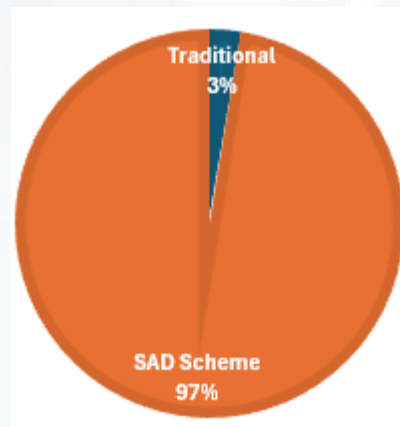
SAD Scheme by the Numbers

SAD Scheme Cases By Year



SAD Scheme by the Numbers

- Estimated defendants in “traditional” TM cases: 10,000 per year (?)
- Estimated TM defendants in SAD Scheme case in 2025: 378,000



Power of the SAD Scheme

- Ex parte = court only hears one side of the story
- TRO = changes status quo rather than preserving it
- Asset/account freeze = affects non-infringing behavior
- Combining defendants = economies of scale
- Marketplaces treat TRO like super-notice of infringement + rightsowners can get damages/settlements

SAD Scheme is Error-Prone

- **Joinder**

- Ordinarily, claims must arise out of “the same transaction, occurrence, or series of transactions or occurrences”
- For patents, claims must relate to “the same accused product or process”
- SAD misjoinder has cost the court system an estimated \$600M+

- **Jurisdiction**

- Roblox v. SAD: no test buy = no jurisdiction
- Xped v. SAD: False claims to have local office

- **Service of Process**

- **False claims that defendants are foreign (Xped v. SAD)**

- **Products aren't infringing**

- Dictionary words in product descriptions (Emoji, Smiley)
- TM in post-domain path (Modlily v. Funlingo)
- Defendants' items aren't covered by patent claims (Jiangsu Huari Webbing Leather)
- Plaintiff makes TM claims based on purported copyright infringement (Xped)

- **Excessive freezes**

- Powell v. SAD: \$155k asset freeze over \$33 of profit
- Betty's Best v. SAD: \$21M freeze reduced to \$2M when defendants showed up

A Lesson from SAD Scheme

Due process is expensive and slow, but skipping due process predictably leads to major, avoidable, and inexcusable mistakes

Can the SAD Scheme Be Stopped?

- Judicial education
- Changes in online marketplace behavior
- Stricter sanctions for plaintiff mistakes
- Attorney discipline
- Statutory reforms



Can the SAD Scheme Be Stopped?

MINUTE entry before the Honorable John F. Kness: On the Court's initiative, all pending motions are held in abeyance, and the case is stayed pending further order. This stay, which the Court is entering in other so-called "Schedule A" cases on its docket where requests for temporary restraining orders remain pending, is intended to permit the Court the opportunity to reassess its previous approach in Schedule A litigation involving Lanham Act, Copyright Act, and Patent Act claims typically brought on an ex parte basis against various online merchants. This reassessment will consider, among other things, whether: (1) ex parte proceedings are appropriate in these types of cases; (2) the routine sealing of parts or all of the docket is appropriate; (3) the routine granting of temporary restraining orders on an ex parte basis is a sound exercise of judicial discretion; (4) the routine granting of prejudgment asset restraints is a sound exercise of judicial discretion; and (5) the mass joinder of defendants is appropriate under the circumstances typically present in Schedule A cases. Plaintiff remains free, of course, to dismiss this action voluntarily if they wish to pursue their claims in another District, but no supplemental briefing on the pending motions may be filed absent advance leave of Court. Mailed notice. (exr,)

R. Corp v. Schedule A, No. 1 25 cv 6337 (N.D. Ill. June 9, 2025)

