

TRADEMARK ENFORCEMENT LITIGATION ANSWERS TO COMMON QUERIES

JANUARY 2020



TRADEMARK ENFORCEMENT LITIGATION

ANSWERS TO COMMON QUERIES

Joinder:

Joinder means litigating against multiple defendants in one lawsuit is discretionary and needs to meet certain standards. Northern Illinois is a VERY joinder friendly state. In our other litigation we have had only 1 in 30 judges not immediately supportive of joinder. In the trademark cases, none of the judges ever severed. If and when a judge severs the defendants of a case, the impact is minimal – let's say out of 100 defendants we were left with only 1. Next step would be to refile the 99 defendants again and see whether there is another judge. Total loss \$400 USD filing fee.

Excessive Freeze:

Defendants in the past have claimed that they only sold a small number of items and therefore the amounts that were frozen (usually higher than the actual product price) should be reduced to the number of sold units multiplied by the retail price. Every judge so far has declined that argument. You can't go to Walmart and steal a number of items and pay only for those items if caught. That would have a huge impact on theft nationwide.

Lack of Jurisdiction:

In the past, defence attorneys have raised the issue that the litigation is brought in the United States and not in China where the infringer resides. All our infringements have proof of shipment or even the actual product into the United States, Northern Illinois. Non-issue.

Improper Service of Process:

Chinese defendants claim that electronic service is improper and they should have been served with a physical copy in their local language. The case law is clear here: If you run an online shop you are very likely to do business over Email. There were instances where the United States of America served defendants over Facebook.