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## *Is IP Theft an Emergency During a Global Pandemic? Maybe Not, According to One Court*

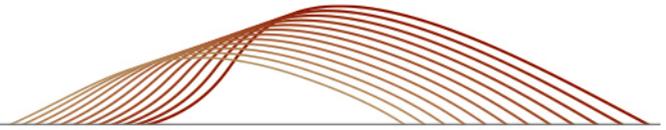
By [Jennifer Baldocchi](#), [Jessica Mendelson](#) & [Emily Stover](#)

Emergency! Someone stole your idea—it's time to rush into court to seek a temporary restraining order. In trade secret and data theft cases, plaintiffs frequently rely on emergency relief to protect their valuable intellectual property. But in the midst of a global pandemic, when many courts are hearing civil motion practice only on an emergency basis, does IP theft really constitute an emergency?

While most employers would categorically say 'yes,' at least one court has said 'no'. The Northern District of Illinois recently held that an immediate hearing on a temporary restraining order to prevent misappropriation would not qualify as an emergency during the global coronavirus pandemic.<sup>1</sup> In the case of *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A hereto*, the plaintiff sued the defendant for trademark infringement, claiming the defendant had infringed on its unicorn and elf designs.<sup>2</sup> The plaintiff moved for a temporary restraining order, and the court, which had previously issued an order temporarily holding all civil litigation in abeyance, scheduled the hearing for a few weeks later "to protect the health and safety of our community."<sup>3</sup> The court rejected plaintiff's request for an earlier hearing date, stating: "**Plaintiff recognizes that the community is in the midst of a 'coronavirus pandemic.' But Plaintiff argues that it will suffer an 'irreparable injury' if this Court does not hold a hearing this week and immediately put a stop to the infringing unicorns and the knock-off elves. . . The world is facing a real emergency. Plaintiff is not.**"<sup>4</sup> Further elaborating on its decision, the court noted that "a hearing -- even a telephonic one -- would take time and consume valuable court resources," which are "stretched [thin] and time is at a premium."<sup>5</sup>

At least one other court has suggested that a "routine" discovery dispute does not qualify as an emergency under similar circumstances. In *C.W. v. NCL (Bahamas) Ltd.*, No. 1:19-cv-24441-CMA (S.D. Fla. March 21, 2020), the defendant filed "an **emergency** motion for a protective order . . . concerning a routine snafu over the date of a corporate representative deposition."<sup>6</sup> Much like the Northern District of Illinois, the Southern District of Florida concluded that in the midst of a pandemic, a "corporate representative deposition is hardly critical. It is, in fact, routine." "If all the issues we are currently facing were to be organized on a ladder of importance, this deposition-scheduling dispute would not even reach the bottom rung of a 10-rung ladder."<sup>7</sup>

Notwithstanding the orders in *Art Ask Agency* and *C.W.*, multiple courts have specifically enumerated procedures for hearing temporary restraining orders during the pandemic. For example, the Los



Angeles County Superior Court and the Supreme Courts in Washington and Colorado have all issued orders expressly enumerating temporary restraining orders as “emergency motions”, and each is permitting modified versions of these proceedings to continue during the pandemic.<sup>8</sup> Connecticut courts have similarly continued to hear *ex parte* motions.<sup>9</sup>

Given today’s climate, parties should consider whether the emergency motion that they intend to bring is really an emergency. As Judge Elizabeth Stong of the federal Bankruptcy Court in the Eastern District of New York recently said: “Truly urgent matters can and will be addressed. But you have to understand that not everything that feels urgent is. Pause before you file that letter or make that phone call. Be sure it’s urgent.”<sup>10</sup>



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<sup>1</sup> *Art Ask Agency v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A hereto*, C.A. No. 20-cv-1666 (N.D. Ill., March 18, 2020), slip op., available: [https://www.courtlistener.com/recap/gov.uscourts.ilnd.374383/gov.uscourts.ilnd.374383.27.0\\_1.pdf](https://www.courtlistener.com/recap/gov.uscourts.ilnd.374383/gov.uscourts.ilnd.374383.27.0_1.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *C.W. v. NCL (Bahamas) Ltd.*, No. 1:19-cv-24441-CMA (S.D. Fla. March 21, 2020), slip op., available: <https://www.law360.com/articles/1257629/judge-blasts-attys-for-bickering-in-midst-of-a-pandemic->.

<sup>7</sup> *Id.*

<sup>8</sup> See Superior Court of Los Angeles County: COVID-19 Emergency Order ([http://www.lacourt.org/pdf/COVID-19EMERGENCYORDER-ESSENTIALPROCEEDINGS\\_32620.pdf](http://www.lacourt.org/pdf/COVID-19EMERGENCYORDER-ESSENTIALPROCEEDINGS_32620.pdf)); Supreme Court of Washington April 13, 2020 Revised and Extended Order Regarding Court Operations. (<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700B615%20Revised%20and%20Extended%20Order%20Regarding%20Court%20Operations.pdf>); Colorado Supreme Court March 16, 2020 Order Regarding COVID-19 and Operation of Colorado State Courts ([https://www.courts.state.co.us/userfiles/file/Media/Opinion\\_Docs/COVID-19%20Order%2016Mar2020\(1\).pdf](https://www.courts.state.co.us/userfiles/file/Media/Opinion_Docs/COVID-19%20Order%2016Mar2020(1).pdf)).

<sup>9</sup> COVID-19 Information From the Connecticut Judicial Branch (<https://jud.ct.gov/COVID19.htm>).

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<sup>10</sup> Aebrá Coe, "Judges Warn It's Not 'Business As Usual' Amid Pandemic", *Law360*, available at: [https://www.law360.com/articles/1256415/judges-warn-it-s-not-business-as-usual-amid-pandemic?nl\\_pk=0416b9cc-c6bb-474e-a0ac-642f3e161a3c&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=special](https://www.law360.com/articles/1256415/judges-warn-it-s-not-business-as-usual-amid-pandemic?nl_pk=0416b9cc-c6bb-474e-a0ac-642f3e161a3c&utm_source=newsletter&utm_medium=email&utm_campaign=special).