

# Intellectual Property Litigation

The nationally recognized attorneys in Skadden's Intellectual Property Litigation Group successfully represent clients in all stages of disputes and provide strategic business advice concerning all manner of intellectual property issues, including trade secrets, trademarks and trade dress, patents, license agreements and disputes, copyrights and misappropriation, advertising and consumer claims, and rights of publicity. Whether it is winning high-profile multimillion-dollar jury verdicts, obtaining swift dismissals at the pleading stage, providing practical advice about reducing legal risk in everyday operations or bringing our knowledge to bear in connection with corporate consulting and deal support, we emphasize a holistic, business-driven approach that considers our clients' needs both inside and outside the courtroom.

As legislatures and courts around the world adapt to a constant stream of emerging technologies, and businesses face unprecedented challenges posed by global events, our group draws on its deep IP prowess and experience to empower clients with a complete understanding of the legal issues presented by potential disputes and deals.

Hallmarks of our practice include:

- **Experience Across Industries:** We routinely handle matters in a variety of fields such as consumer products and services, biotech, e-commerce, artificial intelligence, cybersecurity, pharmaceuticals, sports, media and entertainment, gaming and gambling, communications, computer technology, video games, food and beverage, financial services, social media, semiconductors, medical devices and life sciences.
- **Creative and Cost-Effective Solutions:** Favorable jury verdicts and judicial opinions are not the only measures of success. We work with clients to find practical and business-centered resolutions to disputes, as well as provide strategic advice to anticipate and preempt disputes before they occur. When our clients are faced with unwanted litigation, we regularly dispose of matters quickly and efficiently, and frequently prior to any costly discovery being conducted.
- **Multidisciplinary Approach:** To ensure the best and most forward-looking outcomes, we work with clients to tailor our approach to each matter. We also collaborate with our colleagues from a wide range of practices as needed, such as mass torts, anti-trust, regulatory compliance, tax and corporate.
- **Global Reach and Resources:** Our ability to leverage Skadden's vast network and operations around the world ensures that we have the capacity to handle the largest, most complicated and highest-profile matters.
- **Thought Leadership:** We stay on the cutting edge of IP and related issues and keep our clients informed through alerts, articles and customized presentations and seminars. We also host a quarterly CLE-credit webinar summarizing the biggest legal developments across all areas of IP law, and providing practical advice to businesses for managing and protecting their IP. Recent focuses of our practice have included the opportunities and challenges presented by artificial intelligence, cybersecurity and privacy issues, recent Supreme Court and appellate court decisions altering the IP landscapes, cryptocurrency and NFTs, and the metaverse.

# Intellectual Property Litigation

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## Recognition

We repeatedly have been recognized for our intellectual property litigation capabilities:

- Ranked as a nationwide Tier 1 firm for intellectual property litigation by *Best Lawyers Best Law Firms* and named to *The National Law Journal's* Intellectual Property Hot List for multiple years.
- Named *New York Law Journal's* 2021 Litigation Department of the Year. We were also named a finalist in the general litigation category of the *New York Law Journal's* 2023 and 2022 Litigation Department of the Year competitions and in *The American Lawyer's* 2021 Litigation Department of the Year competition.
- Recognized as a leading firm by *World IP Review* in the Contentious category for trademark work.
- By BTI Consulting Group:
  - Named to its Fearsome Opponents list and recognized repeatedly among its Fearsome Foursome — the elite law firm litigation practices that general counsel would “least want to face across the table in litigation.”
  - Among the top firms for delivering the best client service in BTI's Client Service A-Team survey.
- Named a leading firm in the trademark field by *World Trademark Review*.

Our IP litigation attorneys have been individually ranked by *Chambers USA*, *Best Lawyers in America*, *Lawdragon*, *Managing Intellectual Property*, *World Trademark Review*, *SportsBusiness Journal*, *World Intellectual Property Review* and *Intellectual Asset Management*.

## Experience

### Recent Highlights

Some of our recent accomplishments on behalf of clients include:

- Successfully defending Universal Alloy Corporation in a federal jury trial by securing a verdict rejecting trade secret misappropriation claims concerning high-strength aluminum alloy aircraft components.
- Litigating and securing favorable settlements and relief for the National Hockey League in federal litigations concerning (i) the marketing and sale of shirts featuring trademarks of the Seattle Kraken hockey club that the seller argued were protected by the First Amendment, and (ii) Stanley Cup trophy-shaped beer steins and the seller's challenges to the league's ownership of rights in connection with the trophy.

- Securing the dismissal of a putative class action against Matthew Bender & Company asserting consumer deception, fraud and breach of warranty concerning the company's *Tanbook* publication, and obtaining affirmance of that dismissal on appeal, including victories on the merits in both the Appellate Division and the New York Court of Appeals.
- Successfully defending Fortinet Inc. against multiple Section 101 motions seeking to invalidate five unrelated patents.
- Litigating and securing favorable settlements on behalf of Peet's Coffee in connection with a federal lawsuit and Trademark Trial and Appeal Board proceeding concerning Nespresso's alleged trade dress rights in the product design of single-serve espresso capsules.
- Securing a \$500 million jury verdict — the sixth-largest ever awarded for copyright, trademark and/or trade secret claims and the 12th-largest intellectual property verdict overall — on behalf of ZeniMax Media Inc. and its subsidiary Id Software against Oculus VR Inc. and Facebook concerning the theft of proprietary information to develop the Rift virtual reality headset.
- Securing a favorable *Markman* ruling in an International Trade Commission (ITC) action for a major roofing retailer, resulting in the withdrawal of the ITC complaint.

### Advertising and Consumer Claims

Our IP Litigation Group regularly counsels clients regarding truth-in-advertising and claim-substantiation matters, both in the context of disputes and when companies are preparing their own marketing campaigns, including for nationally known businesses offering consumer products and services. We have decades of experience prosecuting and defending false/misleading advertising claims brought under Section 43(a) of the Lanham Act and related state laws; defending against Federal Trade Commission, Food and Drug Administration and other regulatory investigations; arguing matters before the National Advertising Division; defending consumer class actions and arbitrations regarding allegations of deceptive marketing and practices, data privacy and related issues; and working in the field of consumer and marketing research. Recent representations have included:

- Matthew Bender & Company in securing the dismissal of a putative consumer class action asserting consumer deception, fraud and breach of warranty concerning the company's *Tanbook* publication, and obtaining unanimous affirmance of that dismissal on appeal, including a victory on the merits in the New York Court of Appeals.
- Fresh Del Monte Produce, Inc. in obtaining a multimillion-dollar jury verdict and injunctive relief in connection with willful false advertising of processed fruit products by Del Monte Corporation.

# Intellectual Property Litigation

Continued

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- Intuitive Surgical, Inc. in pursuing and resolving counterclaims in multiple federal lawsuits in connection with false advertising and unfair competition claims by companies that market so-called “repair” services for the company’s robotic surgical instruments.
  - A major insurance company in an arbitration against another large insurance company concerning claims and counterclaims for false advertising, unfair competition and violation of rights of publicity.
  - MCS Advantage, Inc. and MCS Healthcare Holdings LLC in litigating claims and counterclaims arising out of a competitor’s advertising regarding eligibility for new supplemental benefits available through Medicare.
  - Red Bull North America, Inc. and its corporate parent in defending and favorably settling multiple putative nationwide consumer class actions alleging consumer deception about the effectiveness of the company’s beverages.
  - A major international pharmaceuticals company in providing legal and strategic advice concerning competitors’ marketing and promotional claims for pharmaceutical products.
  - Estee Lauder Inc. and related entities in multiple consumer class action lawsuits involving advertising for skincare and cosmetic products.
  - Anheuser-Busch, Inc. in several National Advertising Division investigations involving MillerCoors.
  - Sirius XM in successfully defending state and federal putative consumer class actions pertaining to the company’s auto-renewal policy.
  - A major medical device manufacturer in pre-litigation counseling concerning allegations of false advertising.
  - Jackson Hewitt Tax Service as plaintiff in a false advertising lawsuit against H&R Block that was favorably settled on the eve of trial.
  - Pfizer, Inc. in National Advertising Division challenges to promotional claims made by Bayer Corp. for nutritional supplements.
  - The International Trademark Association in numerous *amicus* briefs to the U.S. Supreme Court and U.S. Circuit Courts of Appeals.
  - Numerous companies, including a major music label, a global social media platform and professional sports organizations, in connection with copyright risk analyses, and content protection strategies, regarding generative and nongenerative artificial intelligence models.
  - ZeniMax Media Inc. and its subsidiary Id Software in securing a \$500 million jury verdict against Oculus VR Inc. and Facebook following a three-week trial. The case involved claims of copyright infringement, trademark infringement, trade secret misappropriation and theft of proprietary information (hardware and source code) by Oculus in order to develop its Rift virtual reality headset.
  - Aboitiz Equity Ventures in securing quick resolution of copyright infringement claims asserted against the company.
  - A major technology company in connection with copyright, trademark and trade dress analysis of virtual reality graphical user interfaces.
  - Dell Inc. and EMC Corporation in a copyright infringement and breach of software license case in the District of Massachusetts.
  - Youku Tudou Inc. in securing the dismissal of copyright infringement claims based on works uploaded to Youku’s server, and affirmance of that dismissal on appeal.
  - The National Football League in numerous copyright enforcement matters, as well as in resolving a federal litigation brought by professional photographers alleging copyright infringement and antitrust violations.
  - Major League Soccer, the National Hockey League and other professional sports organizations and teams in a variety of copyright enforcement matters.
  - Extreme Networks, Inc. in defending against a federal lawsuit concerning alleged source code infringement.
  - Several video game developers in connection with strategic advice concerning foreign and domestic copyright and trademark issues.
  - MGA Entertainment in victories in federal district and appeals courts defending against copyright infringement and related claims involving the company’s “Bratz” dolls.
  - The National Football League, the PGA Tour and the Office of the Commissioner of Baseball as *amici* in copyright infringement cases in multiple Circuit Courts of Appeals concerning the unauthorized retransmission of copyrighted content over the internet in violation of the public performance right under the Copyright Act.
  - The Walt Disney Company, Netflix and Embracer Group in providing copyright analysis and advice in connection with major acquisitions of literary properties.

## Copyrights and Misappropriation

Copyright law is changing rapidly and dramatically, particularly in connection with the use of works on the internet and the rapid rise of artificial intelligence. We stay on top of new developments in the field and apply that knowledge not only to all phases of copyright disputes and litigations, but also when advising and representing our clients in connection with the creation, acquisition, enforcement and licensing of copyrighted materials, and use of generative and nongenerative AI models. Recent representations have included:

# Intellectual Property Litigation

Continued

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## Patents

Skadden's IP attorneys possess the legal experience, technical training and academic credentials critical to developing creative, forceful strategies for companies embroiled in patent disputes. Recent representations have included:

- Char-Griller in defending against patent infringement and trademark infringement claims brought by North Atlantic Imports, LLC concerning outdoor griddle products.
- Hyundai in securing an early, favorable resolution of patent litigation in the Eastern District of Texas before Honorable Chief Judge Rodney Gilstrap.
- Unified Patents in several *ex parte* reexamination requests filed in the U.S. Patent and Trademark Office to challenge the validity of certain patents.
- Alkar-RapidPak, Inc. in multiple patent matters, including recently securing summary dismissal of patent notification and unfair competition claims in Wisconsin state court.
- Combustion Emissions Reduction Technologies and Alistar Enterprises in a District of Delaware patent infringement suit relating to reduced emissions coal refining processes.
- Fortinet, Inc. in securing the dismissal of a patent infringement lawsuit brought by Realtime Data, LLC on the grounds that the asserted patents were directed to patent-ineligible subject matter, and affirmance of that dismissal on appeal.
- Tower Semiconductor Ltd. in defense of trade secret misappropriation, patent inventorship and unfair competition claims, and in pursuit of anti-SLAAP claims in the Central District of California and the U.S. Court of Appeals for the Federal Circuit.
- FTC Solar, Inc. in securing the transfer of patent infringement claims from the Western District of Texas to the Southern District of New York, and the dismissal of companion breach of license agreement claims.
- Endurance Specialty Holdings, Ltd. in securing the dismissal of a federal patent infringement lawsuit brought by SnowCast Solutions LLC alleging infringement of two of its patents and claims for deceptive trade practices.
- JPMorgan Chase in multiple litigations, including securing summary judgment dismissal of a patent infringement action brought by Pi-Net International, and securing affirmance of that decision at the Federal Circuit.
- Hexcel in a patent infringement suit in the District of Delaware concerning composite fiber material used in the manufacture of power generation windmill blades.
- FHE USA LLC as national trial counsel in a multidistrict patent enforcement campaign against competitors in the oil well pressure control equipment market.
- Inside Secure Corp. in defense of patent infringement claims by Pace Anti-Piracy, Inc. concerning its anti-piracy and security software.

## Trademarks and Trade Dress

We routinely are engaged by clients to enforce and provide counsel in connection with brands and source identifiers, including word marks, design marks and trade dress protection for product design and packaging. Our attorneys have extensive experience not only in connection with infringement and related litigation, but also day-to-day trademark enforcement matters, opposition and cancellation proceedings in the Trademark Trial and Appeal Board, consumer survey research, counterfeiting, and domain name and other internet-related disputes. Among several other industry representations, our team has secured successful enforcement results for a variety of sports industry clients, including professional sports leagues. We've also done extensive work on appellate matters and on behalf of the International Trademark Association. Recent representations have included:

- Peet's Coffee, Inc. in litigating and settling disputes in federal court and the Trademark Trial and Appeal Board against Nespresso USA, Inc. and Société des Produits Nestlé S.A. concerning trademark rights including alleged trade dress rights in the product design of single-serve espresso capsules.
- Metacapital Management, L.P. in a federal lawsuit filed against Meta Platforms Inc. (Facebook) arising out of Meta Platforms' adoption of "Meta" trademarks in connection with financial services.
- Numerous companies, including a major music label and a global social media platform, in connection with trademark and publicity rights risk analyses, and content protection strategies, regarding generative and nongenerative artificial intelligence models.
- A worldwide cryptocurrency payment infrastructure company in connection with both enforcing and defending the company's U.S. trademark rights in the blockchain industry.
- The National Hockey League in litigating and securing favorable outcomes in federal litigations enforcing trademarks and trade dress rights against the sale of (i) shirts featuring trademarks of the Seattle Kraken hockey club and (ii) beer steins replicating the design of the Stanley Cup trophy.

# Intellectual Property Litigation

Continued

- Char-Griller in defending against trademark infringement and patent infringement claims brought by North Atlantic Imports, LLC concerning outdoor griddle products.
- A major technology company in connection with copyright, trademark and trade dress analysis of virtual reality graphical user interfaces.
- Telegram Messenger, Inc. in obtaining a preliminary injunction against use of the company's trademark by another party in connection with proposed cryptocurrency, and securing affirmance of that injunction on appeal.
- Pinduoduo Inc. and its affiliates in securing the dismissal of claims for contributory trademark infringement based on alleged unauthorized sales of products on its China-based e-commerce platform, and winning an award of nearly \$400,000 in attorneys' fees.
- Halewood Artisanal Spirits in securing the denial of a preliminary injunction in a case asserting trademark infringement, false advertising and unfair competition claims under the Lanham Act and California state law.
- The National Football League and Major League Soccer in numerous trademark and trade dress enforcement matters, including in regard to the use of club names and color combinations on websites and social media, and in connection with counterfeit and/or derivative products by retailers.
- Citigroup Inc. in numerous federal lawsuits and opposition proceedings concerning protection and enforcement of the "Citi" family of marks.
- The PGA Tour in securing a complete dismissal of Lanham Act and right of publicity claims brought on behalf of a putative class of Tour caddies.
- The International Trademark Association in numerous *amicus* briefs to the U.S. Supreme Court and U.S. Circuit Courts of Appeals.

## Trade Secrets

With increasing employee mobility and the proliferation of available methods for viewing, sharing and storing data, trade secret disputes are on the rise. We combine our technical know-how and broad experience to assist clients in protecting their trade secrets and defending against misappropriation claims. Recent representations have included:

- Universal Alloy Corporation in securing a defense verdict rejecting trade secret misappropriation claims concerning high-strength aluminum alloy aircraft components following a jury trial in the Northern District of Georgia.
- Accutar Biotechnology Inc. and its chief discovery officer in the District of Connecticut in defense of trade secret, contract and unfair competition claims relating to cancer treatments, and in

counterclaims alleging unclean hands and wrongful manipulation of inventorship.

- Aspen Technology in securing a favorable verdict, including substantial actual and punitive damages for trade secret misappropriation and copyright infringement, following a three-week jury trial against M3 Technology.
- Fujian Jinhua Integrated Circuit in a federal criminal trade secret case alleging economic espionage and the theft of trade secrets relating to technology involving the design and manufacture of DRAM.
- International Flavors and Fragrances Inc. in defeating a motion for a preliminary injunction and favorably settling claims for trade secret misappropriation and breach of contract related to a spray-drying technology.
- Tower Semiconductor Ltd. in defense of trade secret misappropriation, patent inventorship and unfair competition claims, and in pursuit of anti-SLAAP claims in the Central District of California and the U.S. Court of Appeals for the Federal Circuit.
- Valeant Pharmaceuticals International in an arbitration with Anacor Pharmaceuticals concerning trade secret and contract claims related to a treatment for onychomycosis.
- Walmart, Inc. against a multibillion-dollar claim by Zest Labs, Inc. for breach of contract and misappropriation of trade secrets relating to technology for forecasting produce spoilage and reducing fresh food waste.

## License Agreements and Disputes

We regularly counsel clients in resolving disputes specifically arising out of patent, copyright and trademark licenses; settlements; distribution agreements; development agreements; sponsorship/endorsement agreements; broadcasting agreements; nondisclosure agreements; and other technology-related documents. Adjudicated in federal and state courts, as well as in arbitrations, these disputes can require a deep understanding of the underlying technical subject matter and nature of the businesses at hand. Recent representations have included:

- Collectar Biosciences, Inc. in litigating and favorably resolving a federal lawsuit (also involving the Wisconsin Research Alumni Foundation) seeking relief for misappropriation of the company's biopharmaceutical intellectual property and putative assignment of that intellectual property by former Collectar personnel.
- JPMorgan Chase in securing a \$69 million judgment against DataTreasury for breach of contract involving a "most favored licensee" refund for a check-processing patent, and affirmance of that judgment on appeal.

# Intellectual Property Litigation

Continued

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- Fresh Del Monte Produce, Inc. in (i) securing a favorable jury verdict and substantial monetary damages against Del Monte Corporation concerning the scope of Fresh Del Monte's contractual rights to use the DEL MONTE trademark on fruit, vegetable and produce products; and (ii) successfully defending against claims in a separate arbitration concerning exclusive rights to use the DEL MONTE trademark in connection with retail operations in the Middle East.
  - Array Biopharma, Inc. in favorably resolving a New York state court action asserting that AstraZeneca breached a licensing agreement and underpaid Array in connection with AstraZeneca's sublicensing of intellectual property rights in compounds for treatment of neurofibromatosis.
  - The Ladies Professional Golf Association in commencing and successfully resolving a federal litigation and parallel international arbitration proceeding concerning a licensing dispute with its South Korean broadcasting partner.
  - The Pan American Health Organization — a regional office for the World Health Organization — in securing a favorable settlement of an arbitration brought against Uniting for Health Innovation asserting breach of an affiliation agreement between the parties.
  - Professional golfer Rory McIlroy in successfully defending against a federal lawsuit by Oakley, Inc. alleging breach of a product endorsement agreement.
  - Mount Sinai School of Medicine in securing the successful resolution of a state breach of contract action relating to the alleged unauthorized use and sale of influenza vaccines.
  - INSIDE Secure in obtaining the dismissal of a breach of contract claim stemming from a license for anti-piracy and security software brought by Pace Anti-Piracy, Inc. in both state and federal court.
  - The Walt Disney Company, Netflix and Embracer Group in providing copyright analysis and advice in connection with major acquisitions of literary properties.
  - Numerous companies — including a leading music label and a global social media platform — in connection with trademark and publicity rights risk analyses, content protection strategies and licensing practices regarding generative and nongenerative artificial intelligence models.
  - Numerous clients in patent freedom to operate and portfolio management, including in fields such as outdoor cooking products, renewable energy, pharmaceuticals, medical devices, construction equipment, agricultural products, telecommunications, and computer hardware and software.
  - Trade secret clean room procedures for various clients, including in personal care products, aircraft design and life sciences.
  - A major technology company in connection with copyright, trademark and trade dress analysis of virtual reality graphical user interfaces.
  - Sports leagues and teams in connection with a host of trademark, copyright and advertising issues, including acquisitions, licensing, risk analysis, enforcement considerations and strategies for addressing ambush marketing.
  - Patent and IP licensing for medical devices and pharmaceutical clients, including COVID-19 related licensing issues.

## Corporate Consulting and Deal Support

In addition to our litigation docket, our IP litigators regularly utilize their knowledge about complex issues to advise companies on best practices in emerging fields — such as artificial intelligence — and support IP aspects of complex transactions. For example, we regularly assess IP assets, provide risk assessments on anticipated business activities, study freedom to operate and manage diligence. Our IP litigators also regularly provide opinions and strategic advice on patent, copyright and trademark infringement; validity and enforceability issues; portfolio management strategies; trade secret protection programs; and licensing. Some recent representations have included:

## Thought Leadership

Our IP litigation attorneys are at the forefront of emerging trends and developments in IP law, as well as the intersection of IP and technology. We routinely provide quotations and insights for industry publications; present at industry- and client-focused seminars; lecture at law schools; and author articles, client mailers and other media in the field of intellectual property.

As leaders in the legal field, our attorneys have participated in and chaired numerous committees and professional organizations, including the PLI Patent Law Institute, the International Trademark Association, the American Intellectual Property Law Association, the New York Intellectual Property Law Association, and the New York City Bar Copyright and Literary Property Committee.

We also offer our clients opportunities to keep up with the changes in intellectual property law, as well as specific issues that are of the most practical importance to their businesses. For example, we frequently work with clients to develop and present CLE programs

# Intellectual Property Litigation

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that are specially tailored to address their business and legal needs, and regularly issue mailers and other publications concerning hot topics. We also present a unique, CLE-credit hour-long webinar every quarter that tracks significant developments in intellectual property law, with a recent emphasis on major judicial decisions reshaping the IP landscape, and the novel opportunities and challenges presented by artificial intelligence and cybersecurity issues.