

Of Counsel, New York

Intellectual Property Litigation



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Education

J.D., Harvard Law School, 1969
(*cum laude*)

B.A., Harvard College, 1966
(*cum laude*)

Bar Admissions

New York

Government Service

Captain, Legal Officer, United States
Air Force (1970-1974)

Experience

Law Clerk, Hon. John F. Dooling, Jr.,
U.S. District Court for the Eastern
District of New York (1969-1970)

Academic Experience

Adjunct Professor, Fordham Law
School (2003-2013)

Kenneth A. Plevan has practiced in the area for more than 30 years. His principal areas of concentration include counseling and litigation involving advertising substantiation, consumer class action lawsuits, trademark infringement, dilution, copyright infringement and intellectual property licensing.

Mr. Plevan has tried more than 40 cases, including 20 intellectual property cases and 11 jury trials. He frequently represents advertisers before the National Advertising Division of the Council of Better Business Bureaus. Representative trials, appeals, and consumer class action representations include the following:

Trials

- *GlaxoSmithKline Consumer Healthcare v. Merix Pharmaceutical Corp.*, No. 05 CV 898 (D.N.J. June, 2005). Five day preliminary injunction hearing in a false advertising case. On September 13, 2005, the Court issued a 21-page opinion granting the preliminary injunction, and the Third Circuit affirmed. 2006 WL 1792856 (3d Cir. June 29, 2006).
- *Shalor Designs, Inc. v. NBA Properties, Inc.*, 96 Civ. 603043 (Supreme Court, N.Y. Cty.) Skadden, Arps represented the defendants in a breach of contract claim involving a sublicense of NBA logo apparel. After a three-week trial, the jury awarded plaintiff damages in the amount of \$1.5 million, but the verdict was set aside and the claim dismissed when the trial court granted defendants' motion for judgment as a matter of law. Subsequently, the defense verdict was affirmed on appeal (1st Dep't., May 27, 1999).
- *Del Monte Corporation v. Del Monte Fresh Produce Co.*, 98 Civ. 4060 (JSR) (March 1999). Skadden represented the defendant in this case, which involved the plaintiff's assertion of breach of a trademark license agreement for use of the "Del Monte" mark on fresh fruit. Following a four-day bench trial in March 1999, the court ruled in defendant's favor on all issues.
- *The CIT Group, Inc. v. Citicorp*, 20 F. Supp. 2d 775 (D.N.J. 1998). Mr. Plevan served as co-counsel in a four-day bench trial of a trademark infringement action. The court upheld defendant's right to use the "Citigroup" mark for the merger of Citicorp and Travelers Group.
- *Cerruti 1881 SA v. Hartmarx Corporation, et. al.*, 97 CA-0192 (A(H)) (W.D. N.Y. 1997). Skadden represented the defendant in this matter, which involved the plaintiff's application for a preliminary injunction in a dispute alleging breach of a trademark license agreement for men's designer suits. After a four-day bench trial, the court rendered a 56-page decision in our client's favor on all issues.
- *Harlem Wizards Entertainment, Inc. v. NBA Properties, Inc.*, 952 F. Supp. 1084 (D.N.J. 1997). Skadden, Arps represented the defendants in a trademark infringement case challenging the mark "Washington Wizards" for a professional basketball team. After a five-day bench trial, the defendants prevailed.
- *CB Fleet Co. v. SmithKline Beecham Consumer Healthcare*, 95-0048-L (W.D. Va.) (June 1996), *aff'd*, 131 F.3d 430 (4th Cir. 1997). Skadden represented SmithKline Beecham in a two-day preliminary injunction hearing in Roanoke, Virginia, in a false advertising lawsuit.

Kenneth A. Plevan

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In June 1996, there was a three-day trial with an advisory jury on the same issues. On the post-trial motions, the court ruled on all issues in favor of our client and the Fourth Circuit affirmed.

Appeals

- *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 U.S.P.Q.2d 1645 (T.T.A.B. 2010).
- *Citigroup Inc. v. Citiair, LLC*, 2014 WL 1649328 (T.T.A.B. 2014).
- *DiMuro v. Clinique Laboratories, LLC*, 572 Fed. Appx. 27 (2d Cir. July 10, 2014) (affirming dismissal of consumer class action lawsuit with prejudice).

Consumer Class Actions

- *Careathers v. Red Bull GmBh, et al*, Case. No. 1:13-cv-00369 (S.D.N.Y. Compl. filed 1/16/13).
- *Greifenstein v. Origins Natural Resources, Inc., et al.*, 2013 U.S. Dist. LEXES 104659 (N.D. Ill.; granting motion to dismiss consumer class action complaint).
- *Tomasino v. The Estee Lauder Companies, Inc.*, 434 F. Supp. 3d 251 (E.D.N.Y. August 26, 2014). See 2015 WL 1470177 (E.D.N.Y. March 31, 2015); 2015 WL 4715017 (E.D.N.Y. August 7, 2015).
- *Hernandez v. Hampton Creek, Inc.*, Case No. C-15-01571 (Contra Costa County, Calif. Complaint filed August 28, 2015).
- *Duran v. Hampton Creek, Inc.*, 3:15-cv-05497-LB (N.D. Cal. Compl. Filed 12/1/15).

Mr. Plevan repeatedly has been selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* and *The Best Lawyers in America*. He also was named *Best Lawyers'* 2017 New York City Trademark Law Lawyer of the Year and its 2012 New York City Advertising Law Lawyer of the Year.

Associations

Fellow, American College of Trial Lawyers

Chairman of the Board of Trustees, Gateway School of New York (1987-2000)

Member, Federal Bar Council (1983-Present)

Publications

Co-Author, *Advertising Compliance Handbook*, Practising Law Institute, 2nd Edition (1991)

"Recent Trends In the Use of Surveys in Advertising and Consumer Deception Disputes," *Journal of Intellectual Property*, 15 Chi.-Kent J. Intell. Prop. 49. (Fall 2015)

"The Second Circuit and The Development of Intellectual Property Law; The First 125 Years," *Fordham Law Review*, Fall 2016 (pending publication).