WILENTZ
—ATTORNEYS AT LAW—
WILENTZ, GOLDMAN & SPITZER, P.A.

IP & Trade Secret Litigation

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Intellectual property is at the heart of many businesses and, therefore, quite often becomes the source of unavoidable controversy. Inherent in this intangible product of the human intellect are certain indispensable rights that need protection in order for the owner to obtain the maximum benefit from this valuable creation. The Intellectual Property Litigation team of Wilentz, Goldman & Spitzer, P.A. carefully considers each case on its merits along with the probability of success, but also decisively scrutinizes how any proposed resolution will affect the client's standing in the marketplace.

Whether encountering willful violation of your intellectual property rights, or becoming the target of questionable litigation claims, our attorneys will bring a focused resolve to navigating your case and develop proactive litigation strategies, directed towards cost-effective, and creative business resolutions. Although it may often be desirable to settle a claim than run the potential risks of increased cost or adverse publicity that could result from taking the matter to trial, experience may dictate that the better course is to vigorously defend a claim to avoid setting an undesirable precedent or inviting additional claims. Our approach considers all factors of the matter at hand as well as the short and long-term objectives for each client.

Trademark, Trade Dress, and Counterfeiting Litigation

Trademarks, service marks, and trade dress all embody the goodwill of the business, brand, and associated products, goods, and services. Rivals are allowed to compete fairly in the market, so knowing when rights have been violated, and the appropriate actions to take when such competition is not legally sanctioned, can preserve valuable goodwill. When infringement occurs, diligent enforcement of owners' rights is demanded.

Handling cases that encompass a myriad of industries and involving all types of trademark and trade dress rights, our attorneys focus on a singular goal—protecting the goodwill and brand value that our clients have worked to develop through their trademarks, service marks, and trade dress. This goal remains the same whether rights have been affirmatively violated through infringement, or whether defending against claims where there has been no infringement. Working alongside our clients, we work hard to achieve just, workable solutions on behalf of our clients that enable them to freely operate within their markets, avoiding litigation whenever feasible and advisable.

In appropriate circumstances, early motion practice, such as an application for a preliminary injunction or temporary restraining order, is necessary to protect the client from continued irreparable harm. The successful prosecution or defense of preliminary equitable motions can often result in effectively bringing about an early resolution to the litigation in favor of our clients. Knowing when and under what circumstances to seek such equitable relief is highly fact-dependent and requires an understanding of the client's business and the resulting harms by the infringing activities.

Trade Secret / Software Code Misappropriation Litigation

Trade secrets are a critical form of intellectual property that are used and relied upon by many businesses and protecting them from disclosure is an important business consideration. As such, a trade secret confers economic value on its owner by virtue of its secrecy. Unlike other forms of protectable intellectual property,

trade secrets are not registered or obtained through any government office or agency, as that would destroy their secrecy.

Once a trade secret is subject to public disclosure - and the secrecy lost - it is nearly impossible to recover as a trade secret. Expediency is therefore of the highest order. Critical to pursuing any claim of trade secret misappropriation is the ability of legal counsel to move quickly to halt further dissemination of the trade secret and prevent further irreparable harm to the trade secret owner.

Importantly, the federal Defense of Trade Secrets Act of 2016 (the "DTSA") now provides a uniform statutory mechanism for pursuing trade secret claims in federal court and also allows for an *ex parte* seizure order. Thus, a trade secret plaintiff would be able to take proactive steps to have the government seize and hold its trade secrets prior to giving any notice of the lawsuit to the defendant.

At Wilentz, we understand the immense value that trade secrets represent to our clients. When there has been a misappropriation, our litigation attorneys have the experience to seek the necessary relief to prevent any or further harm through public disclosure, and thereby protect your valuable trade secrets, the viability of which your business may depend.

Copyright Infringement Litigation

As our society continues to evolve digitally, enforcing copyright protections becomes increasingly important. We assist clients in enforcing copyright claims and defending claims of infringement in a wide variety of areas, including computer software, as well as literary, musical, pictorial, audiovisual, sound recording, and other works.

With digital works - whether software code, music, videos/movies and other audiovisual works, web content, or other related works - copyright is the primary means of protection. With easy electronic access to many digital works, however, a valuable copyright may be readily infringed. Through routine copying, or by way of sophisticated reverse engineering, the theft of copyright-based works continues to steadily increase.

Fortunately, U.S. copyright law entitles content owners victimized by copyright infringement to recover actual or statutory damages. Attorney's fees are also available in many instances. The availability of such legal remedies, however, may depend on whether a work has been properly registered with the U.S. Copyright Office. In addition, injunctive relief in the form of temporary restraining orders and preliminary injunctions are also frequently available to prevent continued infringement where there is irreparable harm. Our attorneys understand the appropriate circumstances in which to pursue potential legal and equitable remedies for copyright infringement and we work closely with our clients to prosecute and defend violations of copyright interests.

False Advertising, Unfair Competition, and Lanham Act Litigation

If your competitor's advertising is false or misleading, your business may have a federal claim under Section 43(a) of the Lanham Act. Although the Lanham Act is often known as the trademark statute, it also protects businesses against the unfair competition of misleading advertising or labeling.

While the Federal Trade Commission is the government agency charged with pursuing deceptive, false, and misleading advertising claims, the FTC is primarily concerned with protecting consumers. As such, when a business is faced with false or deceptively misleading comparative advertising claims, fake endorsements or testimonials, false labeling, phony offers of "free" products, or other false, misleading, or unfair advertising practices by a competitor, the business's recourse is to initiate a private cause of action against the competitor under the Lanham Act.

Knowing when specific actions rise to the level of false advertising or unfair competition requires knowledgeable, experienced counsel. Our attorneys understand the complex intricacies of Lanham Act.