

Olivia A. Harris

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Services

Anti-Counterfeiting & Gray Markets

Copyright Litigation & Counseling

Intellectual Property

Online & Digital Enforcement

Trademark Litigation

Trademark, Copyright &
Advertising

Industries

Apparel, Accessories & Luxury

Goods

Consumer Goods

Electronics & Computer

Technology

Media & Entertainment

Olivia Harris focuses her practice on trademark and copyright litigation, with particular experience helping luxury goods and consumer electronics clients enforce their trademarks online, as well as helping to develop and implement programs to combat the sales of counterfeit and gray market goods. In addition, Olivia has handled a number of UDRP proceedings to recover domain names misusing clients' trademarks.

During law school, Ms. Harris was on the editorial board of the *Cardozo Arts and Entertainment Law Journal*, and she worked as a judicial intern for Judge Ralph Fabrizio, Acting New York Supreme Court Justice, Bronx County, Criminal Division.

Ms. Harris was recognized in 2018 and each of the five years immediately preceding as a New York "Rising Star" for Intellectual Property Litigation by *Super Lawyers* magazine.

Experience

Represented Victorinox Swiss Army in action for trademark infringement, trade dress infringement, unfair competition, false and deceptive advertising, trademark dilution, and copyright infringement against three sellers of counterfeit Swiss Army knives. The devices at issue were shoddy imitations of Victorinox's popular SwissFlash Multitool, and defendants were advertising these counterfeit products using Swiss Army trademarks and images without authorization. The firm obtained consent judgments from two defendants including injunctive and monetary relief. The firm proceeded to obtain a default judgment against a third defendant, and



was awarded injunctive relief and substantial statutory monetary relief against the defaulting defendant, including attorneys' fees and costs. *Victorinox AG v. U.S. Flash & Tech. LLC, B&B Mega Serv. LLC a/k/a XYZ Enter., and Mesmerized Prod. Inc. d/b/a LOGOpremiums.com*, 09-09266 (S.D.N.Y. filed Nov. 6, 2009).

Represented bar/restaurant owner in connection with numerous trademark and right of publicity issues, along with copyright analysis with regard to publicity and promotion.

Defended online database services provider against CFAA, SCA and trade secrets claims in the EDNY, obtaining successful settlement.

Represented Hynix Semiconductor Inc. in the Chapter 15 bankruptcy proceeding for Qimonda AG. Qimonda sought recognition of its German insolvency proceedings and the application of German insolvency laws. The U.S. District Court for the Eastern District of Virginia remanded the case to the bankruptcy court for a determination of whether the ruling went against public policy. Discovery and a trial in the bankruptcy court ensued. The bankruptcy judge denied Qimonda's motion and found that the Bankruptcy Code's section 365(n) protections applied to the licenses under Qimonda's U.S. patents, contrary to the likely result if German law were applied. The ruling only applies to the U.S. patents; however, it is important globally because of the size of the patent market in the U.S. and the importance of licenses under U.S. patents. Qimonda has appealed the matter. *In re Qimonda AG*, No. 09-14766 (Bankr. E.D. Va. filed June 15, 2009).

The firm defeated a motion for a preliminary injunction brought by True Fit against our client True & Co., an e-commerce lingerie retailer that offers bra-fitting services to its customers. On the basis of its alleged family of TRUE marks, including TRUE FIT, TRUE TO YOU, and TRUING UP, True Fit, which offers e-commerce fitting services, sought an injunction barring True & Co. from using any marks containing the word "true." The Court denied preliminary injunctive relief and accepted our argument that, "in the Twenty-First Century . . . [t]hat the goods or services of the parties are both found on the Internet proves little, if anything, about the likelihood that consumers will confuse similar marks used on such goods or services," diverging from many decisions holding the opposite. Following the preliminary injunction ruling, the case recently settled without further litigation on terms favorable to True & Co. *True Fit Corp. v. True & Co.*, No. 12-cv-11006 (D. Mass. March 4, 2013).

Obtained a \$500,000 consent judgment and permanent injunction against C Lenu, Inc. and its principals. C Lenu operated a decoding facility that used tools, chemicals and other methods to remove codes and other quality-control and anti-counterfeiting measures from DAVIDOFF, CALVIN KLEIN and other Coty fragrance products. Under the injunction, C Lenu, as well as its customers and suppliers, are prohibited from trafficking in infringing Coty fragrances of any kind, including decoded Coty fragrances. *Coty Inc., et al. v. C Lenu, Inc., et al.*, No.

10-21812 (S.D. Fla. filed June 3, 2010).

Obtained a \$6 million dollar default judgment and permanent injunction against online counterfeiters. Defendants operated a ring of at least 32 websites, many of which prominently featured counterfeits of the federally registered GED® marks, through which they offered sham diplomas from fictitious high schools to consumers throughout the U.S. The defendants' scam was highly sophisticated and included a bogus Wikipedia entry, promotional YouTube videos, Facebook community pages, and a fraudulent entity that purported to accredit their services.

The Court awarded plaintiffs \$6 million dollars in damages arising out of defendants' willful acts of trademark infringement, trademark counterfeiting, and unfair competition and, among other things, ordered that all of the domain names at issue be permanently transferred to plaintiffs, regardless of whether they included the GED® marks. This result was made possible by the extraordinary ex parte injunctive relief plaintiffs' obtained at the outset, in which the Court allowed plaintiffs to obtain information about defendants' true identities and to freeze defendants' financial assets, even prior to serving plaintiffs' complaint. *GED Testing Service LLC et al. v. Amjad Pervaiz et al.*, 12 Civ. 1157 (JPO) (S.D.N.Y.).

Retained to defend independent software developer on a pro bono basis against former law firm employer that alleged copyright infringement, fraud, breach of fiduciary duty and trade secret theft. Negotiated a favorable settlement for the software developer that resulted in a dismissal of all claims, as well as permitting the software developer to sell the accused software product. *Esbin & Alter, LLP v. Zappier et al.*, No. 1:08-cv-00313 (S.D.N.Y. filed Jan. 14, 2008).

Successfully represented Deluxe Holding, the owner of the POINTER mark for footwear and apparel, in a priority and trademark dispute against BYM, the owner of the POYNTER mark for footwear.

Defeated motion for temporary restraining order and forced plaintiff to withdraw preliminary injunction motion and pay our clients' associated attorneys' fees in case claiming copyright, trademark and design patent infringement in connection with plaintiffs PED EGG foot file.

We then succeeded in obtaining a ruling dismissing four of the six counts of the amended complaint. The case settled on favorable terms in late 2011. *Telebrands Corp. v. Del Labs. Inc.*, 814 F. Supp. 2d 286 (S.D.N.Y. 2011).

Served as lead defense counsel for publisher, Pearson Education, Inc. in a trademark dispute in which defendant claimed that the title of one of Pearson's textbooks infringed defendant's trademark rights. Negotiated the



settlement agreement which resolved the case.

Pearson Education, Inc. v Triumph Learning, LLC, 11-2290 (S.D.N.Y. April 4, 2011).

Served as IP counsel in a case in the Delaware Chancery Court. Represented fashion design house, Tory Burch, LLC which brought claims against a former director alleging that its former director competed unfairly against the company by launching a knockoff version of the “Tory Burch” brand created with the company’s confidential information and in violation of his fiduciary duties and contractual obligations. Negotiated the settlement agreement which resolved the case.

Education

Benjamin N. Cardozo School of Law, J.D. (2009)

Admissions

New York (2010)

Professional & Community Activities

Junior Board of Education Through Music, Member

National Association of Women Lawyers (NAWL), Member

Insights

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Twenty Kilpatrick Townsend Attorneys Named 2018 New York Super Lawyers
September 28, 2018

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Kilpatrick Townsend Attorneys Named 2017 New York Super Lawyers
September 27, 2017

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Kilpatrick Townsend Attorneys Named 2017 New York Super Lawyers
September 27, 2017

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Kilpatrick Townsend Attorneys Named 2016 New York Super Lawyers
October 5, 2016



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Kilpatrick Townsend Attorneys Named 2015 New York Super Lawyers

September 30, 2015