

Larry W. McFarland

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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
Electronics & Computer
Technology
Media & Entertainment
Technology

Larry McFarland focuses his practice on litigation and counseling in all areas of intellectual property law, including copyright, trademark, rights of publicity and privacy, and unfair competition. Mr. McFarland is the Managing Partner of the firm's Los Angeles office.

Mr. McFarland has successfully represented start-up to *Fortune* 500 companies across a broad spectrum of industries. He specializes in litigating cases, both on behalf of plaintiffs and defendants, involving reverse confusion, idea submission, cybersquatting, licensing disputes, commercial disputes, trade libel, business torts, trade secrets, work for hire agreements and product piracy.

Mr. McFarland has extensive experience counseling global clients with respect to the maintenance and protection of their intellectual property assets, including advice regarding trademark registration programs, anti-counterfeiting programs, work for hire agreements, license agreements and e-commerce.

Prior to joining Kilpatrick Townsend, Mr. McFarland was a founding partner of Keats McFarland & Wilson LLP in Beverly Hills, California, a boutique intellectual property law firm with extensive involvement in the development, protection, and enforcement of famous brands as they relate to consumer products, entertainment and the

Internet.

Mr. McFarland was recommended by *Legal 500 US* for Trademarks: Litigation in 2013, 2014 and 2020 and for Copyright and Trademarks: Litigation in 2015, 2016, 2017 and 2018. He is listed in the 2020 and the six immediately preceding editions of *World Trademark Review 1000 – The World's Leading Trademark Professionals*. Mr. McFarland was named a Southern California "Super Lawyer" for Intellectual Property Litigation in 2020 and the five immediately preceding years by *Super Lawyers* magazine. He is listed in the 2017 edition of *Chambers USA: America's Leading Lawyers for Business* in the area of Media and Entertainment. Mr. McFarland was among a select group of influential attorneys when recognized as a "2017 *Los Angeles Business Journal* Leaders in Law Nominee."

Experience

Represented Yahoo! against the plaintiff's claim that she had common law trademark rights in her personal name. Plaintiff asserted that the use of her name as a Pay-Per-Click keyword and in search results she did not authorize infringed her rights. We defended the case for three years through several amended complaints and successfully opposed the plaintiff's attempts to add misappropriation of identity claims to the case. We successfully educated the judge about common law trademark rights and obtained summary judgment for Yahoo!.

The Santee Alley district in Los Angeles and the Canal Street district in New York were notorious centers for the retail sale of counterfeit merchandise. Because of the itinerant nature of businesses in these districts, and because of these businesses' cooperative efforts to thwart efforts of police or U.S. Marshals, traditional methods of enforcement did not deter their illicit activities. Under these circumstances, we sought joint renewable seizure orders. The district court issued the requested orders which were executed by the U.S. Marshals against 20 defendants located in and around the Santee Alley District, resulting in the seizure of thousands of units of counterfeit merchandise, along with artwork, silkscreens and machinery used with the manufacture of counterfeit apparel. Later, after demonstrating to the Court that Santee Alley retailers were again engaged in the sale of counterfeit goods, the court renewed the seizure orders. Pursuant to the issuance of this unique form of relief, U.S. Marshals again seized thousands of additional items of counterfeit merchandise from over 20 vendors and retailers during these supplemental actions.

Represented Warner Bros. to remove counterfeit Looney Tunes products from retail sales areas around the country to support the holiday sales performance of Warner Bros.' licensees and retailers. In this case, we sought and obtained a multidistrict temporary restraining order and seizure and impoundment order, which was executed under our attorneys' supervision by U.S. Marshals and local law enforcement agencies in California, Colorado, Florida, Illinois, Maryland, New Jersey, New York, Pennsylvania, Texas, and Washington D.C. This was



an unprecedented seizure order allowing simultaneous and repetitive seizures across multi districts (precedent cases dealt with successive seizures around venues during a single artists concert tour).

Defended Zynga against trademark infringement claims alleging that Zynga's "Oregon Trail" element of its FrontierVille game violated The Learning Company's rights in its Oregon Trail educational computer game. We defeated the plaintiff's motions for TRO and preliminary injunction based on evidence of historical references to pioneers and the Oregon Trail, and the case settled favorably and cost-effectively thereafter because of our push for early mediation.

Represented DC Comics, Disney, Nike, and Warner Bros. in a lawsuit against a swap meet owner and its vendors based on the sale of counterfeit and infringing merchandise on the swap meet's premises. Relying on the landmark *Fonovisia v. Cherry Auction* decision, the action against the swap meet owner was based on contributory and vicarious copyright infringement and contributory trademark infringement. We successfully resolved this matter with the swap meet owners adopting a three strikes policy wherein they agreed to evict any tenant who has sold or offered for sale infringing merchandise after the third such occasion. *Time Warner Entertainment, Co., L.P. v. B.C.P. Toys, Inc.*, 2000 U.S. App. LEXIS 4989 (9th Cir.).

Filed suit against the defendant for trademark infringement and unfair competition based on his unauthorized sale and distribution of apparel bearing Polo's trademarks. While litigating the action, we discovered that the defendant had received in excess of \$14 million from the sale of counterfeit shirts. The cases proceeded to trial. Several days into the trial, the defendant agreed to settle the case on terms favorable to our client. After the defendant failed to pay the required settlement amount, Polo discovered that the defendant had funneled assets to other sources. We obtained a TRO freezing his assets. The defendant violated the TRO and continued to funnel assets. We filed a motion for an order finding the defendant in contempt, and the Court sent the defendant to jail for civil contempt.

Represented the International Anticounterfeiting Coalition, Inc. in the Ninth Circuit and filed an Amicus Brief on behalf of numerous intellectual property owners seeking to overturn a lower court's decision that flea market owners could not be liable for the infringing acts of flea market vendors. The Ninth Circuit, relying on our brief, held that flea market owners can be found liable for contributory and vicarious copyright infringement resulting from the sale by its vendors of counterfeit merchandise. The Ninth Circuit further stated that a flea market owner "cannot disregard its vendors' blatant trademark infringements with impunity," and that a flea market owner can be held liable for contributory trademark infringement. *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996).

Obtained an *ex parte* temporary restraining order and seizure order and seized thousands of infringing shirts on



behalf of Marvel, the owners of the copyrights in the Spider-Man, Hulk, and characters, and Funimation Productions, the owner of the copyrights in the Dragon Ball Z property.

Represented Yahoo! in a national class action case for false advertising, breach of contract and unfair competition. The plaintiffs sought to certify a class of Yahoo! Pay-Per-Click advertisers asserting claims that they were paying for low quality traffic. We worked with a team of contract lawyers and eDiscovery experts to collect and review tens of gigabytes of data regarding Yahoo!'s advertising network. We were able to settle the case on favorable terms after filing an opposition to the class certification motion.

Represented Viacom, Inc. in trademark infringement action in which M2 Software alleged that Viacom's use of its M2: Music Television mark infringed M2 Software's rights in its M2 mark. The plaintiff sought a preliminary injunction to halt the launch of MTV's second broadcasting network, and over \$1 billion in damages. Although the judge found that the plaintiff was likely to succeed on the merits, we defeated the motion by showing that the plaintiff had unreasonably delayed in seeking an injunction. After extensive discovery, including depositions across the country, we moved for summary judgment on all of the plaintiff's claims. The court noted that it had altered its view on the merits based on our motion, and found in our favor on all counts. The case was reversed on appeal on one count, reverse confusion. On remand, after significant motion practice, we moved for summary adjudication on the basis that the plaintiff was not entitled to any damages. The district court granted our motion and the decision was upheld on appeal by the Ninth Circuit. *M2 Software, Inc. v. Viacom, Inc.*, 119 F.Supp.2d 1061, (C.D. Cal. 2000).

Represented Zynga Inc. in multinational lawsuits against Vostu. Zynga alleged that Vostu had launched on a Brazilian social networking site several online social games which closely emulated Zynga games and business model. Zynga alleged that Vostu had begun migrating these games to the U.S. via the Facebook platform. We filed the initial U.S. action, and directed the subsequent Brazilian action, in which we obtained a preliminary injunction against all of Vostu's online games in South America. We defeated the defendant's emergency request for an anti-suit injunction from the U.S. Court to stay the litigation in Brazil, and thereafter obtained a favorable settlement including money and drastic changes to all of Vostu's games. *Zynga, Inc., v. Vostu USA, Inc.*, 816 F. Supp. 2d 824 (N.D. Cal. 2011).

Education

University of Houston, J.D. (1986) *University of Houston Law Review*, Member (1984-1986)

University of Texas at Austin, B.A. (1983)

Admissions

California (1987)



Court Admissions

U.S. District Court for the Central District of California
U.S. District Court for the Eastern District of California
U.S. District Court for the Northern District of California
U.S. District Court for the Southern District of California
U.S. District Court for the District of Colorado
U.S. Court of Appeals
U.S. Court of Appeals for the Ninth Circuit
U.S. Supreme Court

Professional & Community Activities

Beverly Hills Bar Association, Intellectual Property Section, Member
State Bar of California, Member
International Trademark Association, Member
International Anti-Counterfeiting Coalition, Member

Insights

[News Releases](#)

Kilpatrick Townsend Receives Top Rankings in 2020 *Legal 500 US*
June 23, 2020

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Kilpatrick Townsend Attorneys Recognized by 2020 Southern California Super Lawyers
March 6, 2020

[In The News](#)

Kilpatrick Townsend's Trademark Team Earns Top Ranking From World Trademark Review
February 20, 2020

[In The News](#)

Despite Progress, Firms Still Slow To Track LGBT Data
July 9, 2019



[Perspectives](#)

Video | Inaugural Honoree, Facebook's Law Firm Diversity Champion Award

June 28, 2019

[In The News](#)

Facebook Selects Kilpatrick for New Law Firm Diversity Award

June 25, 2019

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Facebook Selects Kilpatrick Townsend for Inaugural Law Firm Diversity Award

June 24, 2019

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Seven Kilpatrick Townsend Attorneys Recognized by Southern California Super Lawyers

June 10, 2019

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Kilpatrick Townsends Trademark Practice Receives Gold Level Recognition

February 5, 2019

[In The News](#)

California Powerhouse: Kilpatrick Townsend & Stockton

August 29, 2018

[News Releases](#)

Kilpatrick Townsend Receives Top Rankings from 2018 Legal 500 US

June 11, 2018

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Kilpatrick Townsends Trademark Practice Receives Gold Level Recognition in the 2018 World Trademark Review 1000

January 25, 2018

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Kilpatrick Townsend Recognized by Prestigious 2017 Legal 500 US

October 2, 2017



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Kilpatrick Townsend Achieves Recognition From Chambers USA 2017

May 30, 2017

[Events](#)

Views from the Corner Office: Tips from Managing Partners and Senior In-House Counsel

May 2, 2017

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Kilpatrick Townsends Trademark Practice Receives Gold Level Recognition in the 2017 World Trademark Review 1000

February 9, 2017

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Kilpatrick Townsend Recognized by Prestigious 2016 Legal 500 US

June 20, 2016

[In The News](#)

Kilpatrick Townsend's Media Report June 3-9, 2016

June 10, 2016

[In The News](#)

The National Law Journal's Intellectual Property Hot List 2016: Kilpatrick Townsend & Stockton

June 6, 2016

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Four Kilpatrick Townsend Attorneys Named 2016 Southern California Super Lawyers

February 25, 2016

[News Releases](#)

Kilpatrick Townsend Receives Top Recognition in 2016 World Trademark Review 1000

January 21, 2016

[In The News](#)

Kilpatrick Townsend's Media Report December 11-24, 2015

December 24, 2015



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Larry McFarland Quoted by Securities Lending Times

December 15, 2015

[In The News](#)

Kilpatrick Townsend's Media Report October 23-29, 2015

October 30, 2015

[In The News](#)

Kilpatrick Townsend's Media Report October 16-22, 2015

October 23, 2015

[In The News](#)

Kilpatrick Townsend's Media Report October 9-15, 2015

October 16, 2015

[In The News](#)

Kilpatrick Townsend's Media Report September 11-24, 2015

September 25, 2015

[In The News](#)

Kilpatrick Townsend's Media Report August 28-September 3, 2015

September 4, 2015

[In The News](#)

Kilpatrick Townsend's Media Report July 17-23, 2015

July 24, 2015

[In The News](#)

Kilpatrick Townsend's Media Report July 10-16, 2015

July 17, 2015

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Kilpatrick Townsend Recognized by Prestigious 2015 Legal 500 US

July 15, 2015



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Kilpatrick Townsend's Media Report June 12-18, 2015

June 19, 2015

[In The News](#)

Kilpatrick Townsend's Media Report May 1-7, 2015

May 8, 2015

[In The News](#)

Dennis Wilson and Larry McFarland Featured in IPPro the Internet re: "INTA15: Give the Brand a Hand."

May 6, 2015

[In The News](#)

Larry McFarland Quoted by Managing Intellectual Property re: "Trademarks in the New Mobile World."

May 5, 2015

[In The News](#)

Kilpatrick Townsend's Media Report February 6-12, 2015

February 13, 2015

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Kilpatrick Townsend Attorneys Named 2015 Southern California Super Lawyers

February 13, 2015