

## LITIGATION

Mitchell Silberberg & Knupp LLP, established in 1908, is a premier mid-sized law firm. Our 125 attorneys practice in most areas of business law, including:

- Bankruptcy and Creditors' Rights
- Corporate and Business Transactions
- Economic Recovery
- Employee Benefits and Executive Compensation
- Entertainment and New Media
- Environmental Law
- Homeland Security & Regulation
- Immigration
- Intellectual Property and Technology
- International Trade
- Labor and Employment
- **Litigation**
- Real Estate
- Tax
- Trusts and Estates / Probate

The firm prides itself on accommodating business needs by providing pragmatic legal solutions, earning MS&K a well-deserved reputation for delivering cost-effective, high quality legal services.

Mitchell Silberberg's clients range from *Fortune* 100 companies to individual entrepreneurs. Based in Los Angeles, the firm also has offices in New York City and Washington, D.C., and represents clients from all over the world.

## LITIGATION

MS&K's Litigation Practice is comprised of over sixty attorneys who offer skillful representation to clients in a wide range of businesses and industries. We frequently try cases, both to judges and juries, and regularly handle administrative trials and hearings before federal, state, and local agencies. We are experienced in handling arbitrations, mediations, and other forms of alternative dispute resolution and actively provide litigation-avoidance counseling to our clients.

## REPRESENTATIVE MATTERS

### *Antitrust and Unfair Competition*

- Defended a Harcourt Brace subsidiary that provided BAR/BRI Bar review courses against Sherman Act § 2, Clayton Act and Robinson-Putman Act claims through trial and appeal.
- Represented a major automaker in a suit alleging antitrust and California Business & Professions Code § 17200 claims. The case was settled favorably for our client after a successful summary adjudication motion defeating several of the plaintiff's key claims.

### *Bankruptcy*

- In 2005, secured landmark bankruptcy ruling of vital importance to copyright owners nationwide. The decision *In re Chan* confirmed, for the first time since the pivotal 1998 Supreme Court ruling *Kawauhau v. Geiger*, that copyright infringement can rise to the level of a "willful and malicious injury," which cannot be discharged and evaded in bankruptcy. This decision protects from discharge

## MITCHELL SILBERBERG & KNUPP LLP

the largest copyright verdict in U.S. history, a \$136 million judgment secured by MS&K in 2003 and upheld by the 9th Circuit in 2004.

- Represented the City of Irvine in regard to its claims against Orange County in the Orange County Bankruptcy.

### ***Class Action***

- Currently represent a large product manufacturer in nationwide class action seeking more than \$2 billion in damages on behalf of more than 500,000 class members.
- Recently represented one of the world's largest beer manufacturers, Anheuser-Busch, in a wage and hour class action.
- Currently represent 10 major motion picture studios and TV networks in a class action alleging that hundreds of thousands of workers were not timely paid wages. Includes claims for waiting time penalties and claims under California Business & Professions Code § 17200.

### ***Employment***

- Successfully represented Warner Bros. Television Production, an independent production company and several individual writers in a high-profile, wrongful termination and harassment suit brought by a former writer's assistant for the hit TV show "Friends." After obtaining summary judgment and an award of \$415,000 in attorneys' fees for our clients, argued the case of *Lyle v. Warner Bros. Television Production* before the California Supreme Court, resulting in a landmark, unanimous decision in favor of our clients.
- Currently represent major studios and television networks in age discrimination claims brought by writers asserting that industry hiring practices

violate the California Fair Employment Housing Act.

- Currently represent international maritime industry employer in complex wage and hour class action litigation.

### ***Entertainment***

- Represented Recording Industry Association of America's (RIAA's) member companies in Internet copyright enforcement actions against P2P file sharing systems Napster, Aimster, and Grokster.
- Represented the Motion Picture Association of America (MPAA) members in DMCA litigation against 321 Studios. Secured summary judgment and injunction against 321 Studios blocking further distribution of infringing software.
- Obtained summary judgment for a music publishing company in a copyright and breach of contract action, establishing the principle that the statute of limitations on a claim for failure to pay royalties accrues upon the first nonpayment.

### ***Environmental***

- Defended a number of manufacturers and property owners in connection with CERCLA/Superfund litigation involving deep aquifer and soil contamination.
- Defended a Southern California based industrial company against charges of violations of the Clean Water Act and Resource Conservation Recovery Act filed by the Army Corps of Engineers and the Environmental Protection Agency, ultimately resulting in dismissals with prejudice of the actions.

### *Insurance*

- Represented a biotechnology company in obtaining coverage for damages resulting from FDA-ordered recall of our client's products. The firm obtained an eight-figure settlement well in excess of the annual policy limits after the carrier denied the claim and sued for rescission of the policy.
- Represented a Fortune 100 technology company on insurance coverage issues arising from hostile takeover litigation. The firm successfully obtained reimbursement of \$6 million in defense costs from the insurer issuing directors and officers coverage. The firm was also able to implicate the client's liability insurer based upon certain defamation claims in the underlying litigation.

### *Intellectual Property & Technology*

- Represented Recording Industry Association of America's (RIAA's) member companies in Internet copyright enforcement actions against P2P file sharing systems Napster, Aimster, and Grokster.
- Brought and successfully litigated misappropriation and unfair competition claims on behalf of Pollstar, an Internet-based concert information provider, against its competitor Gigmania based on Gigmania's unauthorized use of Pollstar's uncopyrighted database.
- Obtained a temporary restraining order in a trade secret and unfair competition case against a labor union that misappropriated our client's customer list and sent union literature to client customers. We overcame the union's contention that the customer list was not a trade secret and that an injunction would violate the First Amendment and federal labor laws.

### *Labor*

- Regularly represent the entertainment industry collectively through the Alliance of Motion Picture and Television Producers (AMPTP) in high profile and high stakes arbitrations under the various Guild and union contracts.
- Represented Public Broadcasting Service, several public television stations, and producers in national labor negotiations with the American Federation of Television and Radio Artists, the Writers Guild of America, and the American Federation of Musicians.
- Successfully argued before the National Labor Relations Board (NLRB) to set aside a recent election at a major medical center due to a Union's election misconduct. In the face of anonymous phone threats to a medical center employee, we argued that anonymous threats were more menacing than if the callers could be identified. The NLRB, in a unanimous panel decision, agreed and in a rare occurrence set aside the election.

### *Probate*

- Represented the Estate of Armand Hammer in connection with litigation concerning the distribution of his estate among heirs, putative heirs and charitable institutions.
- Represented the Philippine administrator of the Estate of Ferdinand Marcos in U.S. litigation over the proper venue for administration of the Estate, rights to property and other matters.

### *Product Liability*

- Represented the distributor of an active aircraft insecticide ingredient in class action litigation by pilots and flight attendants claiming injury from exposure to the insecticides on international flights.

We were successful in defeating the claims through various pretrial motions.

- Represented a client who was sued in a series of individual and class action lawsuits arising out of its manufacture, over a period of some 20 years, of an allegedly defective product used in residential home construction. Negotiated a creative settlement of the entire liability case, which resulted in the insurers funding the settlement agreement and waiving all coverage claims against the client.

#### ***Real Estate***

- Represented Wherehouse, Inc. in its acquisition of an independent retail chain of approximately thirty music stores. We also represented Wherehouse in various lease disputes with landlords, including renewals, the appropriate manner to set and reset rents, and related issues.

- Represented Neiman Marcus Group, Inc. in a complicated lease dispute between NMG's Beverly Hills specialty retail store and the owner of the property on which the store is located. Also represented NMG in property tax reassessment negotiations and business license tax disputes.

#### ***Securities***

- Defended a computer peripherals manufacturer, its chairman, and its CEO against securities fraud class actions and shareholder derivative actions.
- Represented the Chairman and CEO of a major independent entertainment company in consolidated securities class action litigation arising out of an IPO.

For more information, please contact Larry Drapkin at (310) 312-3135 or at [lcd@msk.com](mailto:lcd@msk.com).