

Daily Journal

AUGUST 17, 2016

TOP INTELLECTUAL PROPERTY ATTORNEYS in California for 2016

When we're listening to pre-1972 music on rotation in our smartphones or reaching for a ketchup bottle at lunch, intellectual property doesn't come to mind. But these are just a few examples of the work behind the California attorneys we chose on our list for their efforts protecting the intellectual property belonging to companies of all sizes across the country and around the world.

As technology makes vast improvements year after year across the industry spectrum, intellectual property attorneys — litigators and patent prosecutors — are rolling up their sleeves to stay ahead of the game. In California, established Silicon Valley and booming Silicon Beach have created global hubs for such innovation to take place in on-demand services, social media, health care, consumer technology and other various fields. But the fight to protect patents, copyrights and trademarks can start on a local court level and move to the appellate courts, while also heading to the U.S. Patent and Trademark Office, the U.S. International Trade Commission and the U.S. Supreme Court.

Intellectual property attorneys face many hurdles as they try to protect the branding of companies for consumers and a range of venues for those who want to protect their innovations. The attorneys in this issue took those challenges head-on and pushed technological progress forward.

—The Editors

Kelli L. Sager

FIRM

Davis Wright Tremaine LLP

CITY

Los Angeles

SPECIALTY

IP litigation



Sager has been active as an advocate for image licensers defending themselves from litigious photographers and their subjects, particularly when it comes to lawsuits filed by athletes claiming misappropriation.

She recently represented T3Media Inc., the licensing arm of the NCAA, in a class

action brought by a group of former college athletes for misappropriation, among other claims, arising from the licensing of NCAA's copyrighted works.

A SLAPP motion filed by the company dismissing the entire case was granted by U.S. District Judge Andre Birotte Jr. of the Central District of California last year. *Maloney v. T3Media Inc.*, 14-CV5048 (C.D. Cal. March 6, 2015)

She has also played a role in a recent string of high-profile lawsuits filed against Electronic Arts Inc. for alleged misappropriation of the likeness of current and former NCAA players in video games.

Sager represented the company in two of the cases and supported a fellow Davis Wright Tremaine attorney in the third. Two have settled, while a third remains pending.

She said that for as long as she's been practicing, the law's been pretty clear on the rights to use someone's name or likeness.

While one can't use a person's name or likeness to promote a product, for example, it can be used if it's a part of a work protected by the First Amendment, like a newspaper article or motion picture.

But video games haven't always enjoyed the same protection.

"They treated them more like products, even though they're protected as a First Amendment work," she said. "It's different than movies, but the Supreme Court has said it's not different. It creates confusion in the law."

But thanks to a February ruling in *Sarver v. Chartier*, 2016 DJDAR 1555, in which Sager served as lead counsel for the Motion Picture Association of America as amici, claims of misappropriation despite First Amendment protections could be less likely in the future.

The case was filed by a marine who said the protagonist of the film "The Hurt Locker" lifted heavily from his life story.

The 9th Circuit rejected the lawsuit, adopting much of the reasoning put forward in Sager's amici brief. She believes that the ruling will be helpful to anyone in the "content" or "expressive works" side of these fair use lawsuits, be they movie makers, novelists or video game makers.

"The decision made clear that right-of-publicity claims involving expressive works must be subjected to the highest level of constitutional scrutiny — strict scrutiny — which is not something the 9th Circuit had directly addressed in prior cases," Sager said.

— Steven Crighton