

Representative Copyright Litigation



The attorneys in Fenwick & West's Litigation Group have represented a wide variety of clients in numerous copyright cases. While not a complete list, the following matters are representative of actions for which we have provided counsel:

RESULTS AT TRIAL

Compuware v. IBM. Represented Compuware in copyright infringement, trade secret misappropriation and antitrust action against IBM for developing competing software tools that contained non-literal copies of Compuware source code. Obtained summary judgment against IBM's copyright infringement counterclaims. Obtained \$400 million settlement after 5 weeks of jury trial.

Berkla v. Corel Corporation. Represented Corel Corporation against copyright infringement and breach of confidence claims over use of digital images used in Corel software. After successfully dismissing most of Berkla's copyright infringement claims on summary judgment, *reported at* 66 F.Supp.2d 1129 (E.D. Cal. 1999), the case went to trial on claims of breach of a nondisclosure agreement and breach of confidence. After a two and one-half week trial, Corel received a defense verdict on damages. We later prevailed in Mr. Berkla's appeal from the judgment. *Reported at* 303 F.3d 909 (9th Cir. 2002).

PRELIMINARY INJUNCTION RESULTS

Research-In-Motion, Ltd. V. Good Technology, Inc. Represented defendant Good Technology in a total of five patent, copyright, trade secret and trademark actions filed by Research-In-Motion ("RIM," the distributor of the BlackBerry wireless email solution) in the Northern District of California, the District of Delaware, and a state court action filed in Orange County, California. Defeated RIM's motion for a temporary restraining order and preliminary injunction, which would have shut down most of the company's sales. The case settled favorably afterwards.

Nomai v. Iomega Corp. Represented Iomega in obtaining temporary restraining order requiring infringing zip-style disks to be removed from market (during COMDEX); changes were made by Nomai to its product that successfully avoided a preliminary injunction. Resulted in settlement and stipulated judgment, including stipulation of copyright infringement, and permanent injunction.

Dynamic Microprocessor Associates v. EKD Computer Sales and Supplies. Represented plaintiff in copyright and trademark infringement action against former software manufacturing licensee. Obtained ex parte temporary restraining order and order of seizure and impoundment, preliminary injunction, which was affirmed on appeal, and ultimate summary judgment.

Micrografx v. Corel Corporation. Represented defendant in copyright infringement action over consumer print software product. Defeated preliminary injunction motion of plaintiff after evidentiary hearing and settled thereafter.

Trio, Inc. v. Intuit Inc. Defended Intuit against software copyright infringement claim. After defeating plaintiff's motion for preliminary injunction, the case settled.

Teleflora LLC v. FTD, Inc. Obtained preliminary injunction against competitor based on copying and reprogramming of plaintiff's copyrighted desktop software in a manner that redirected customers to use defendant's services.

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RESULTS ON SUMMARY JUDGMENT & DISMISSAL

Netbula LLC v. BindView, Inc. et al. Obtained summary judgment on copyright, fraud and breach of contract claims based on inclusion of allegedly infringing code in clients' software products. *Reported at* 516 F.Supp.2d 1137 (N.D. Cal. 2007).

Bridgeman Art Library v. Corel Corporation. Represented defendant software publisher in copyright and trademark infringement action over use of images in CD-ROMs. Resolved after summary judgment for defendant. *Reported at* 25 F.Supp.2d 421 (S.D.N.Y. 1998) (granting summary judgment for defendant on copyright and trademark claims), *aff'd on reconsideration* 36 F.Supp.2d 191 (S.D.N.Y. 1999).

Capcom U.S.A., Inc. vs. Data East Corp. Successfully defended Data East, a manufacturer and distributor of videogame software, in this major action. Case settled after partial summary adjudication granted against copyright claims and during pendency of summary judgment on trade dress claims.

Vespremi v. Graphisoft. Successfully defended Graphisoft in infringement action by obtaining summary judgment finding that plaintiff did not jointly author Graphisoft's flagship product.

Gemisys Corp. v. Phoenix American, Inc. Successfully defended Phoenix American against copyright, trade secret misappropriation and unfair competition claims involving source code architecture. Secured dismissal of all claims. *Reported at* 50 USPQ 2d 1876 (N.D. Cal. 1999).

RESULTS ON APPEAL

Ashton-Tate v. Ross. Successfully defended Ashton-Tate against copyright infringement claim by individual programmer concerning "Full Impact" spreadsheet program. *Reported at* 728 F. Supp. 597 (N.D. Cal. 1989), *aff'd*, 916 F.2d 516 (9th Cir, 1990)

Brown Bag Software vs. Symantec Corporation. Successfully defended against claims of copyright and trade dress infringement regarding "look & feel" of outlining software screen displays. *Reported at* 960 F.2d 1465 (9th Cir. 1992).

EMERGING TECHNOLOGIES AND OTHER NOTABLE REPRESENTATIONS

A&M Records, et al. v. Napster, Inc. Represented defendant in multi-district litigation of numerous cases including preliminary injunction and appeals thereof.

Paramount Pictures, Inc., et al. v. ReplayTV, Inc. Represented manufacturer of digital video recorder in defense of copyright infringement action brought by 28 motion picture studios and television networks. Issues include scope of fair use right of consumers to make home recordings, scope of contributory and vicarious liability in the event fair use does not apply, and alleged copyright misuse and antitrust violations relating to joint ventures to distribute copyrighted audiovisual works.

Lotus Development Corporation v. Borland International, Inc. Defended developer Borland against copyright infringement claims by Lotus in spreadsheet software. Copied menu commands ultimately held to be non-copyrightable expression by First Circuit Court of Appeals.