

Contact

## Jeff H. Warshafsky

**Partner**

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Jeff Warshafsky is a partner in the Litigation Department and co-head of the False Advertising & Trademark practice. A versatile commercial litigator and strategic advisor, Jeff specializes in false advertising, consumer class actions, trademark infringement, and other intellectual property disputes, as well as other sports and entertainment litigation.

Jeff represents clients in competitor versus competitor advertising disputes, including in Lanham Act cases and advertising self-regulation disputes before the National Advertising Division and the National Advertising Review Board. Jeff represents companies both in bringing challenges to their competitors' advertising and in defense of challenges brought by competitors, including at the TRO and preliminary injunction stages.

Jeff also defends companies in connection with consumer class actions involving advertising and privacy issues. He has handled dozens of class actions around the country for multinational companies across diverse sectors including consumer product companies, retailers, sports leagues, and entertainers. Jeff also counsels clients to avoid being targeted in such actions, helps them respond to demand letters from plaintiffs' counsel, and negotiates resolutions.

Beyond litigation, Jeff regularly counsels companies on advertising substantiation issues, with an emphasis on complex scientific testing, such as clinical trials and sensory testing. Jeff also regularly advises major sports leagues, entertainers, and performance venues on complex business disputes.

Jeff maintains a robust pro bono immigration practice, assisting clients with asylum and U-Visa applications and in connection with removal proceedings. In addition to his active practice, Jeff is an editor of and contributor to the Firm's false advertising blog, *Watch This Space: Proskauer on Advertising Law*.

## Matters

### Representative Consumer Class Actions:

- *Madonna Concert Litigation* (2023–Present). Represent Madonna, Live Nation, and various concert venues in defense of consumer class actions and related litigation in numerous courts around the country. The plaintiffs alleged that defendants falsely advertised Madonna's concerts, including the start times and venue temperature. We succeeded in getting every case dismissed prior to discovery. Plaintiffs are appealing one of those dismissals to the Ninth Circuit and the appeal is pending.
- *La Rosa v. Church & Dwight* (2d Cir. 2024). Represented Church & Dwight Co. in a putative class action alleging defendants deceptively labeled ovulation test kits as "99% Accurate" at detecting ovulation. The District Court granted our motion to dismiss all of plaintiffs' claims with prejudice, and the Second Circuit affirmed.
- *Crosby v. Church & Dwight (N.D. Ill. 2023) and Pizzo v. Church & Dwight (E.D. Mo. 2023).* Represented Church & Dwight in defense of putative class actions alleging that laundry detergent labels mislead consumers as to the number of "loads" they deliver. Both plaintiffs voluntarily dismissed their complaints.
- *Oyler v. NFL Enterprises* (S.D.N.Y. 2022). Represented NFL Enterprises in defense of a putative class action alleging that subscribers to NFL+ were

deceived into recurring charges and prevented from canceling. After we filed our pre-motion letter articulating reasons for the complaint's dismissal, the plaintiff chose not to pursue the case and voluntarily dismissed it.

- *In Re: SoClean, Inc. Marketing, Sales Practices and Products Liability Litigation* (W.D. Pa. 2022). Represent SoClean in defense of more than 40 putative false advertising class actions consolidated in W.D. Pa. for pretrial proceedings.
- *Yamasaki v. Zicam* (N.D. Cal 2021). Represented the maker of Zicam cold remedy products in defense of a putative class action alleging its "clinically proven" to shorten colds claim is misleading. The Court granted Zicam's motion to dismiss in its entirety on the ground that plaintiff's allegations amounted to an improper lack-of-substantiation claim.
- *Maldonado v. NFL* (S.D.N.Y. 2022). Represented the NFL and all 32 clubs in a putative antitrust consumer class action. The court granted our motion to compel arbitration.
- *La Rosa v. Church & Dwight* (E.D.N.Y. 2022). Represent Church & Dwight Co. in a putative class action brought against the ovulation test kit industry. Plaintiffs allege it is false and misleading to market ovulation test kits with 99% accuracy claims.
- *Evans v. Church & Dwight* (N.D. Ill. 2022). Represented Church & Dwight in defense of a putative class action regarding Batiste dry shampoo. Case settled shortly after we moved to dismiss.
- *Vance v. Church & Dwight* (E.D. Cal. 2022). Represent Church & Dwight in defense of a putative class action challenging the efficacy of Zicam cold remedy products.
- *Fallenstein v. PVH* (S.D. Cal. 2021). Represented PVH in defense of putative class action suits alleging fraudulent discount price advertising at California Calvin Klein outlet stores. Case settled.
- *Yamasaki v. Zicam* (N.D. Cal. 2021). Represented the maker of Zicam cold remedy products in defense of a putative class action alleging its "clinically proven" to shorten colds claim is misleading. The Court granted Zicam's motion to dismiss in its entirety on the ground that plaintiff's allegations

amounted to an improper lack-of-substantiation claim.

- *DiCicco v. PVH* (S.D.N.Y. Sept. 2020) and *Robey v. PVH* (S.D.N.Y. Oct. 2020). Represented PVH in defense of class action suits alleging fraudulent discount price advertising at Van Heusen and Tommy Hilfiger outlet stores. Our motions to dismiss were granted.
- *Pridgen v. Church & Dwight* (S.D. Cal. 2019). Represented Church & Dwight, the maker of OxiClean stain remover products, in defense of a putative class action alleging that the products' labeling misrepresented the number of "loads" contained in a package. The court granted Church & Dwight's motion to dismiss on the ground that no reasonable consumer viewing the product label in its entirety would be deceived.
- *Jessani v. Monini North America* (S.D.N.Y. 2017; 2d Cir. 2018). Represented Monini, the U.S. subsidiary of a large Italian olive oil manufacturer, in obtaining complete dismissal of a class action false advertising lawsuit brought by two consumers who alleged that the labeling of Monini's White Truffle Flavored Extra Virgin Olive Oil misled them into believing that the product contains actual white truffle, when in fact there is no white truffle in the product. The district court agreed with Monini that no reasonable consumer would understand the label to communicate that the product contained actual truffle, because the label simply represented that the product tasted like truffle and truffles were not on the label's ingredient list. Argued before the U.S. Court of Appeals for the Second Circuit on appeal that the district court properly dismissed the complaint as a matter of law. The Second Circuit affirmed the complaint's dismissal.

## Representative False Advertising Litigation Matters:

- *Williams-Sonoma v. Quince* (N.D. Cal. 2025–Present). Represent Quince in ongoing false advertising litigation with Williams Sonoma.
- *Procter & Gamble v. Church & Dwight* (NAD 2025). Represented Church & Dwight in defense of advertising for its TheraBreath mouthwash. NAD agreed that the statement "It's a better mouthwash. I guarantee it" by the product's

inventor constitutes puffery and does not require substantiation.

- *NFL v. DIRECTV* (NAD 2023). Represented the National Football League in a challenge to DIRECTV's ad campaign featuring Travis Kelce that claimed DIRECTV gives fans access to every NFL game. The National Advertising Division found the challenged claims were unsupported because a DIRECTV itself subscription does not allow fans to watch every NFL game. NAD thus recommended that DIRECTV discontinue its claims or modify them to avoid conveying this message.
- *S. C. Johnson & Son v. PurposeBuilt Brands* (NAD 2023). Represented S. C. Johnson before the National Advertising Division in a challenge to advertising for Weiman cleaning products. In response to the challenge, the advertiser voluntarily discontinued all the challenged claims.
- *SoClean v. Koninklijke Philips* (W.D. Pa. 2022). Represented SoClean in a Lanham Act false advertising and defamation suit against Philips involving Philips' statements blaming SoClean's ozone cleaner products for a massive recall of Philips' CPAP machines.
- *S. C. Johnson & Son v. PurposeBuilt Brands* (NAD 2022). Represented S. C. Johnson before the National Advertising Division in a broad challenge to advertising for Green Gobbler. NAD recommended that the advertiser discontinue 20+ challenged claims.
- *Church & Dwight v. Goli Nutrition* (NAD 2022). Represented Church & Dwight before the National Advertising Division in a challenge to advertising by Goli, a manufacturer of dietary supplements. NAD agreed with our arguments that each of the eleven clinical studies Goli relied on were methodologically flawed and thus found that none of Goli's claims about its supplements that Church & Dwight challenged were supported.
- *Alcon v. Bausch & Lomb* (NAD 2021 and NARB 2022). Represented the advertiser before the National Advertising Division and the National Advertising Review Board. As a result of our defense before NAD, and appeal of some claims to NARB, we preserved key advertising claims that the client makes to eye care professionals.

- *MCS Healthcare v. MMM Healthcare* (D.P.R. 2019). Represented defendant MMM Healthcare in opposition to two successive preliminary injunctionmotions by a competitor seeking to enjoin MMM's advertising regarding the parties' competing Medicare plans. Following an evidentiary hearing and several rounds of briefing, the court denied both of plaintiff's preliminary injunction motions, after which the matter settled.
- *T-Mobile v. Charter Communications* (NAD 2019 and NARB 2020). Represented T-Mobile before the National Advertising Division in a challenge to advertising by Charter for Spectrum Mobile. NAD recommended that Charter discontinue all the challenged claims. On Charter's appeal, the National Advertising Review Board likewise sided with T-Mobile and recommended that all of Charter's advertising claims be discontinued.
- *AT&T v. NFL Enterprises* (NAD 2019). Represented the NFL in a defense of a National Advertising Division challenge concerning advertising about AT&T's decision to discontinue carriage of NFL Network on DIRECTV. NAD found that the NFL's express advertising claims were substantiated and that the implied advertising claims challenged by AT&T were not reasonably conveyed by the challenged advertisements. Thus, the NFL prevailed completely and was not required to modify or discontinue any of the challenged advertisements.
- *Church & Dwight v. SPD Swiss Precision Diagnostics* (S.D.N.Y. 2014; 2d Cir. 2016). Counsel to plaintiff Church & Dwight in a Lanham Act false advertising action against competitor SPD Swiss Precision Diagnostics involving FDA-regulated home pregnancy tests. Following a two-week trial on the liability and injunction phase of this bifurcated case, the court found the defendant liable for false advertising, ruled that the false advertising was intentional and egregious, and granted our client's request for a permanent injunction, a nationwide package recall and corrective advertising. This decision was affirmed by the Second Circuit in 2016. In 2018, following a trial on damages, the district court adopted our calculation of lost profits and awarded our client almost $10 million.
- *Excel Dryer v. Dyson* (D. Mass. 2012). Counsel to Dyson in defense of Lanham Act false advertising suit concerning hand dryer advertisements. Defeated plaintiff's preliminary injunction motion. Case settled.

- *Dyson v. Bissell Homecare*(N.D. Illinois 2010). Counsel to Dyson, plaintiff in Lanham Act false advertising litigation challenging a competitor's vacuum cleaner advertising. Case settled following order granting summary judgment in favor of Dyson on liability.
- *TRIA Beauty v. Radiancy* (N.D. Cal. 2010). Represented Radiancy in Lanham Act false advertising suit concerning the efficacy of at-home hair removal devices and acne-removal devices. Case settled.

## Representative Intellectual Property Matters:

- *BT Telecommunications and BT Americas v. Palo Alto Networks* (D. Del. 2022). Represent the plaintiffs in a patent infringement action involving cybersecurity technology.
- *Alfa Corp. v. Alfa Financial* (N.D. Ga. 2020). Represented the defendant in a trademark infringement suit. The matter settled several months after Proskauer took over the defense of the case from prior counsel and filed a motion for judgment on the pleadings.
- *USPTO v. Booking.com* (U.S. Supreme Court 2020). Filed amicus brief on behalf of a group of academics who teach at leading colleges and universities throughout the United States and consultants who specialize in the analysis of consumer perceptions. Our amicus brief argued that the USPTO's proposed per se rule of treating generic.com domain names as necessarily generic was wrong because trademark law determines whether a combined mark is generic by assessing how consumers perceive the mark as a whole. The Supreme Court's decision tracked our argument, rejecting the USPTO's proposed per se rule and holding that whether any generic.com term is generic ultimately depends on whether consumers perceive it as a generic term or a brand name.
- *Global Brand Holdings v. Church & Dwight* (S.D.N.Y. 2017). Represented Church & Dwight in defense of claims that its Trojan XOXO condoms infringed the plaintiff's mark for fashion apparel. Case settled.

- *Triangl v. Lingzhi* (S.D.N.Y. 2016). Represented the maker of Triangl bikinis in an IP infringement case against online sellers of knockoff bikinis. Obtained a judgment that Triangl's trademark, unregistered trade dress and various copyrights were protectable, and a broad permanent injunction prohibiting defendants from selling their infringing products, resulting in the removal of defendant's product listings from Amazon and other marketplaces.
- *Tween Brands Investment v. Bluestar Alliance* (S.D. Ohio 2015). Represented owners of Justice, the leading brand of tween-age girls' clothing, in the successful resolution of a sharply contested trademark, copyright, and false advertising suit in the Southern District of Ohio against Bluestar, owner of the Limited Too brand of girls' apparel. Case settled.
- *NFL v. Gong Sunmei* (S.D.N.Y. 2013), *NFL v. Lionk Zhu* (S.D.N.Y. 2013) and *NFL v. Li Ming* (S.D.N.Y. 2014). On behalf of the National Football League and NFL Properties, secured broad ex parte, preliminary and permanent injunctive relief against Internet sellers of counterfeit NFL jerseys, disabled and seized more than 5,000 rogue websites, and obtained nearly $2 billion in statutory damages.

## Other Sports Litigation and Counseling:

- *Fifth Degree Tours v. Live Nation Worldwide* (C.D. Cal. 2025–Present). Represent Live Nation in defense of lawsuit brought by a touring company that alleges breaches of a venue license agreement, and related violations of law. We prevailed on our motion to dismiss the entire complaint.
- *Bank v. NFL* (S.D.N.Y. 2024–Present): Represent the NFL in a declaratory judgment trademark infringement case. The plaintiff is challenging the validity of numerous league trademarks. We prevailed on our motion to dismiss and plaintiff's appeal to the Second Circuit is pending.
- *NFL Trading Card Antitrust Litigation* (2025–Present): Represent the NFL in putative antitrust class actions brought by consumers.
- *NFL Merchandise Antitrust Litigation* (2022–Present): Represent the NFL and all 32 clubs in putative antitrust class actions brought by consumers and retailers.

- *WTA Tour v. Super Slam Limited* (S.D.N.Y. 2018). Represented the Women's Tennis Association in petition to compel arbitration against Super Slam Limited, the operator of the Madrid Open tennis tournament. The court granted the WTA's motion to compel arbitration, enjoined a lawsuit filed by the respondent in Cyprus, and granted discovery regarding the WTA's motion to enjoin additional lawsuits filed by the respondent in other countries. Following the court's decision, the respondent dismissed all of its foreign lawsuits.
- Regularly advise and represent major sports leagues, prominent entertainers, and performance venues in connection with arbitrations and other confidential matters, including complex business disputes.

## Practices

Intellectual Property, Litigation, False Advertising & Trademark, Class & Collective Actions, Mass Torts & Product Liability, Restrictive Covenants, Trade Secrets & Unfair Competition

## Industries

Entertainment, Sports

## Education

Harvard Law School, J.D.
Queen's University, B.S.

## Admissions & Qualifications

New York

## Court Admissions

U.S. Court of Appeals, Second Circuit
U.S. District Court, New York, Eastern District
U.S. District Court, New York, Southern District

## Awards & Recognition

Best Lawyers: Ones to Watch in America 2026-2027
The Legal 500 United States: Advertising & Marketing: Litigation: (Rising Star 2020-

2023), (Next Generation Lawyer 2024-2025), (Next Generation Partner 2026)

Benchmark Litigation "40 and Under" 2024-2025

Chambers USA: Nationwide: Advertising: Litigation, Up and Coming 2024-2026

The Legal 500 United States: Trademarks: Litigation 2022

Managing Intellectual Property, Rising Stars 2022-2025

New York Super Lawyers "Rising Stars" 2015-2025