



Contact

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Jeff Warshafsky is a senior counsel in the Litigation Department. Jeff is a versatile commercial litigator with a particular emphasis on sports litigation and false advertising, trademark and counterfeiting disputes.

Jeff regularly represents clients in consumer class actions, Lanham Act cases, and advertising self-regulation disputes before the National Advertising Division and the National Advertising Review Board. Jeff frequently counsels clients on advertising substantiation issues, anti-counterfeiting strategies, and cybersquatting prevention. He also regularly advises major sports leagues in connection with arbitrations and other confidential matters.

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

False Advertising:

- *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.
- *MCS Healthcare v. MMM Healthcare* (D.P.R. 2019). Represented defendant MMM Healthcare in opposition to two successive preliminary injunction motions 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 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 of the challenged claims. On Charter’s appeal, the National Advertising Review Board likewise sided with T-Mobile and recommended that Charter’s advertising claims be discontinued.
- *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.
- *AT&T v. NFL Enterprises* (NAD 2019). Represented the NFL in 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.

- *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
- *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.

Intellectual Property:

- *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.

Sports:

- Regularly advise and represent major sports leagues in connection with arbitrations and other confidential matters.
- *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.

Practices

Litigation, False Advertising & Trademark, Product Liability & Consumer Litigation

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

The Legal 500 United States: Media, Technology and Telecommunications:

Advertising & Marketing: Litigation: Rising Star 2020-2021

New York Super Lawyers "Rising Stars" 2015-2021