

Jonathan P. Hersey

Partner

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OVERVIEW

Jon Hersey is a partner at the firm's Orange County office. He is a member of the Commercial Disputes practice group.

Jon focuses in complex commercial, business and intellectual property disputes, particularly those involving claims of breach of contract, unfair competition, misappropriation of trade secrets, merger and acquisition earn-outs, fraud, lender liability, protection of creditors' rights, and other business torts.

Jon has extensive experience representing computer industry, manufacturing and distribution businesses, and financial institutions in federal and state courts, and in private arbitrations and mediations. Jon has litigated and tried numerous cases to judgment or verdict in California, Delaware, New York, Arizona, and Texas, as well as internationally before the Singapore International Arbitration Centre and Hong Kong International Arbitration Centre.

PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Jon was a founding partner of a litigation firm, with offices in both southern and northern California, which Jon helped manage for more than 7 years. Prior to forming his own firm, Jon was a partner in the business trial practice group of an international law firm, and was co-chair of the firm's e-discovery team. After law school, Jon served as a law clerk for the Honorable David V. Kenyon, U.S. District Court Judge in the Central District of California.

Jon is also one of the founders of Education Unlimited, Inc., a California corporation offering academically-oriented summer camps and scholastic programs for high school and grammar school students, including college admissions preparation, acting and theater arts, computer usage and programming, Sally Ride Science Camps, public speaking and competitive speech and debate.

ACHIEVEMENTS

- Recognized BTI Consulting Client Service All-Star

PROFESSIONAL / CIVIC ACTIVITIES

- American Bar Association
- Orange County Bar Association
- Association of Business Trial Lawyers
- Litigation Section, State Bar of California
- Constitutional Rights Foundation-Orange County, Board of Directors 2010-2016
- Tustin AYSO, Board of Directors 2010-present, Regional Commissioner 2014-2017
- Friends of Cal Forensics, Board Member 2002-present

EDUCATION

- J.D., University of California, Los Angeles (UCLA) School of Law, 1996 *(Articles Editor, UCLA Law Review, Moot Court Honors Board)*
- B.A., University of California, Berkeley, 1993 *(High Honors and Distinction in General Scholarship)*

ADMISSIONS

- Bar of California
- United States Bankruptcy Court for the Central District of California
- United States Bankruptcy Court for the Eastern District of California
- United States Bankruptcy Court for the Northern District of California
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

NEWS & EVENTS

- 23 September 2019, K&L Gates Grows Orange County Office with Addition of Commercial Litigation Partner

AREAS OF FOCUS

- Commercial Disputes

INDUSTRIES

- Healthcare

REPRESENTATIVE EXPERIENCE

Complex Commercial and Business Litigation Matters

- Defended a flavor development and manufacturing company against accusations of theft of drink formula, breach of commission agreement, and interference with contract.
- Represented Ingram Micro in multi-district securities, fraud and bankruptcy proceedings from 2005 to 2015 arising from collapse of Refco, Inc, including handling responses to numerous subpoenas and witness interviews by FBI, SEC, CFTC and court-appointed bankruptcy examiner. Obtained complete dismissal of all private party claims by motions to dismiss, which was affirmed by the Second Circuit Court of Appeals.
- Represented a national office technology and imaging channel business MWAi in a 5-day trial in Delaware Chancery Court against a former business partner and its affiliates; the court issued a final judgment in the client's favor that the former partner had breached a non-compete agreement and tortiously interfered with the business, resulting in a favorable settlement after trial without appeal.
- Litigated and obtained order denying certification of nationwide class of more than 100,000 borrowers seeking $150 million of damages and rescission of loans from clients LendingTree and LendingTree Loans; decision affirmed on appeal and case favorable settled.
- Implemented multi-state litigation strategy resulting in payment of 100% of $15.6 million of outstanding invoices owed to client following sudden closure and threatened bankruptcy of CompUSA.
- Mediated the favorable settlement of a class action complaint against Chase Bank accused of consumer privacy violations and unfair business practices.
- Obtained directed verdict after federal court trial for client DBI Distributing in case concerning issues of first impression of the transfer of beer distributorship rights under California's Brand Transfer Law, Business & Professions Code section 25000.2.
- Prevailed in accounting arbitration of $10 million purchase price adjustment arising from client Ingram Micro's $96 million acquisition of target company.
- After a two-week jury trial in Los Angeles County Superior Court, obtained a complete verdict in favor of client Bay Boat Rentals, Inc. against two former managers who defrauded and stole from the business. The jury awarded Bay Boat Rentals approximately quarter-million dollars of damages, costs and punitive damages, and rejected the former managers' demand for $1.4 million for alleged wrongful termination, slander and denial of stock ownership.

- Represented national media company, Viamedia, in 3-day trial in Los Angeles County Superior Court resulting in complete defense of claims against client for fraud and unfair business practices, and obtained judgment in client's favor on a cross-claim against the plaintiff for breach of contract.
- Favorably settled class action and individual claims of alleged Truth In Lending Act violations for client Pacific Mercantile Bank.
- Successfully defended claims of fraud and breach of fiduciary duty brought against client TransAsia Infrastructure in U.S. federal court and Singapore International Arbitration Centre resulting in $75 million investment in client's ownership of India's largest tollway bridge project.
- Represented global technology distributor, Ingram Micro, in insurance coverage action for business interruption caused by damage to computer network and obtained precedent-setting ruling that loss of computer programming is physical damage covered by the all-risk insurance policy.
- Represented KPMG in litigation seeking damages in excess of $60 million allegedly resulting from illegal off-shore tax shelter advice.

Intellectual Property and Trade Secret Disputes

- Reached very favorable settlement and complete dismissal for artificial intelligence software developer and consulting services provider, Axis Technical Group, in case alleging software copyright infringement and theft of trade secrets.
- Represented national plastic products manufacturer, Rehrig Pacific Company, in federal court against claims of trademark infringement, patent co-inventorship, fraud and unfair business practices by a plaintiff demanding in excess of $6 million of damages. Achieved complete dismissal of all claims prior to trial; dismissal affirmed on appeal to Federal Circuit Court of Appeals.
- In multidistrict litigation in Maryland, obtained complete dismissal of patent infringement claims brought by non-practicing entity (troll) against printing company Trend Offset Printing Services for alleged breach of a .pdf protocol patent; prevailed on motion to dismiss that the alleged invention was unpatentable under 35 U.S.C. § 101 (Alice motion) and that the plaintiff lacked standing.
- Reached extremely favorable settlement of Texas court patent infringement case against international medical services provider, MedAire, after claim construction hearing and discovery eviscerated plaintiff's claims.
- Obtained a complete defense verdict after a 3-week binding arbitration for a doctor/inventor accused of misappropriating trade secrets and patent infringement related to his development of a groundbreaking wearable artificial kidney dialysis device.
- Successfully represented world's largest technology distributor Ingram Micro in 4-day binding arbitration in New York brought by national speaker manufacturer demanding $30 million of damages for alleged breach of contract, trademark/trade dress infringement and copyright violations.

- Engaged after trial by California specialty wheel designer and distributor found liable for trademark infringement; drafted motion to set aside jury verdict and for new trial resulting in very favorable settlement and vacatur of judgment.
- Represented PayForward LLC with claims against Barclays Bank for infringement of “cashforward” mark resulting in extremely favorable settlement and assignment of mark.
- Defended national credit card processing company against breach of contract and trademark infringement claims brought by a worldwide credit card brand network, and pursued antitrust and other unfair competition claims on behalf of the processing company.
- Prosecuted numerous cases of trademark infringement and misappropriation of trade secrets on behalf of Kahala Brands (Cold Stone Creamery and Great Steak and Potato Factory marks).
- Defended web design and marketing firm against trademark infringement claims brought by ServPro Industries; defeated alleged damages claim resulting in very favorable and nominal settlement.
- Defended national credit card processing company against breach of contract and trademark infringement claims brought by a worldwide credit card brand network, and pursued antitrust and other unfair competition claims on behalf of the processing company.

Sample Class Action Experience

- Obtained appellate decision affirming denial of certification of nationwide class of more than 100,000 borrowers seeking $150,000,000 of damages and rescission of loans from clients LendingTree and LendingTree Loans.
- Favorably settled class action and individual claims of alleged Truth In Lending Act violations for client Pacific Mercantile Bank.
- Mediated the favorable settlement of a class action complaint against Chase Bank accused of unfair business practices and privacy violations.

Employer-Employee Non-Compete and Separation Matters

- Represented California partner of national tax audit and accounting firm who founded Orange County office of a rival national accounting firm Andersen Tax; defeated former firm's demand for temporary restraining order after evidentiary hearing in Iowa court, and prevailed on motion to dismiss demand for $4 million of damages for alleged violation of non-compete agreement and theft of trade secrets in Illinois arbitration and related California lawsuit.
- Successfully represented and resolved litigation against Ingram Micro and newly hired executive in lawsuit brought by Tech Data alleging breach of non-solicitation and non-compete agreement.
- Litigated and successfully mediated settlement of alleged California employee wage-and-hour class action by sales employees of a fashion and accessory design company.

- Prosecuted and favorably settled claims on behalf of mortgage broker client against former partner accused of stealing business leads, including defense of former partner's counter-claims for wrongful termination, harassment, discrimination, and labor code violations.
- Obtained complete defense verdict on behalf of Brinker International (Chili's Restaurants) after trial before California Labor Board of claims by employee alleging workers compensation discrimination.
- Negotiated and resolved dozens of executive-level employment separation and severance agreements.

Corporate Counseling & Risk Management Experience

- Prepared analysis of different state law employee non-compete laws; drafted state-specific employee non-compete, non-solicitation and confidentiality agreements for national employer.
- Negotiated and drafted intellectual property licensing, assignment and co-existence agreements.
- Worked with Fortune 100 company's worldwide IT Department and in-house legal team to develop systems-based electronic data retention and litigation e-discovery response matrix; updated company's broader document retention and destruction policy for evolving electronic data issues.
- Prepared comprehensive step-by-step guide for in-house legal department to respond to subpoenas, including exemplar initial response letters and pre-formatted objections and responses for various federal and multi-state lawsuits.
- Drafted and negotiated closely-held company stock and asset purchase agreements, and numerous C-level executive stock incentive and departure/severance agreements.
- Managed assignments for the benefit of creditors and court-approved distribution of assets and dissolutions; drafted and negotiated lender forbearance and debtor workout agreements.
- Drafted consumer product warranties, distribution and license agreements, and independent contractor and work-for-hire agreements.