

PRACTICE AREAS

Intellectual Property



Overview

New technologies, new challenges

At a time when intellectual property often constitutes the very heart and soul of an enterprise, the need to protect and optimize the value of IP assets has understandably intensified.

The forces driving this need are both wide-ranging and formidable. Globalization has created enormous challenges in building, enforcing, protecting and managing brands and intellectual property rights across multiple markets and borders. New technologies—and the business models based on them—have proliferated far faster than the legal system’s ability to keep up. Online assets and processes have been integrated into virtually every type of business, adding new layers of legal complexity.

IP in a broader context

Our team handles the gamut of challenges facing IP owners. With mounting pressure to maximize the ROI from your IP assets—while minimizing the risks—we understand the critical importance of your assets and develop creative, practical and cost-effective

solutions.

To us, IP doesn't exist in a vacuum. It is surrounded by other legal issues—transactional, regulatory, cross-border, social media, data collection, and privacy—which have deep legal ramifications.

We work closely with colleagues from many different practices involved in the integration of new technologies into new fields. We see how laws may lag behind innovative and new products and services, particularly online. And we know how to defend your brands, trademarks, copyrights and patents internationally and in the digital space.

We work with you to inventory your IP assets, and develop plans for exploiting those assets through a variety of strategic affiliations, strategic distribution, enforcement programs, and licensing deals. We help you defend bet-the-company patent infringement suits seeking millions of dollars in royalties. And, whether you are buying or selling, we perform IP-oriented due diligence and risk assessment, especially when IP assets are at the heart of the transaction.

Who we work with

The need for sophisticated IP services spans virtually every industry sector, especially those that have long played to Manatt strengths: healthcare, financial services, consumer electronics and accessories, entertainment, media, advertising, energy, and environment.

What we do

Our team provides transactional, litigation and dispute resolution representation to companies on matters relating to intellectual property, including:

- Copyright, trademark, patent and trade secret litigation before federal, state and administrative tribunals
- Representation in arbitrations, mediations and other alternative dispute resolution
- Contested patent proceedings
- IP counselling and strategic advice
- IP prosecution/procurement
- IP portfolio management
- IP risk assessment and enforcement

Entertainment and Media Litigation

As the entertainment and media industries continue to undergo fundamental changes in their business models, legal disputes have taken on new complexity. The traditional sources of industry litigation—intellectual property and contractual disputes—have been rapidly transformed by a proliferation of new players, financing sources and disruptive technologies.

With the funding of entertainment ventures coming increasingly from outside the industry, both the financial instruments and the entities that control them (e.g., private equity, venture capital, angel investors) have added layers of contractual and technological complexity to every sort of deal. Disputes over the disposition of the proceeds or tax credits may take place across multiple geographies, legal systems and business cultures. At the same time, the lines between sectors—advertising, entertainment, gaming and social media—have become blurred, giving rise to new types of high-stakes IP disputes.

As the laws and the legal industry adapt to these changes, Manatt's industry-specific experience has grown in importance.

Entertainment and media companies of all kinds—motion pictures, television, music, digital media—turn to Manatt attorneys for strong advocacy, coupled with a keen appreciation of the underlying business challenges these companies face.

Roots in the Industry

At Manatt, entertainment and media are firmly rooted in our culture. For over three decades we have been closely linked with the industry, and our deep understanding of the issues confronting our clients is informed by a rich historical perspective.

This perspective can make a substantive difference in any litigation situation. We know the entertainment community and its players. We have long partnered with them and thoroughly understand their businesses. They trust us to anticipate litigation and take steps to avoid it.

When litigation is threatened, our attorneys are adept at resolving matters with efficiency and dispatch. Their proven abilities at trial give clients great leverage in negotiation, which is why most of our cases are either won on the pleadings or settled out of court.

Between our courtroom successes and our proven ability to resolve disputes without litigation, our clients count on us for outcomes that are at all times consistent with their overriding business imperatives.

Services Across the Board

Manatt's Entertainment and Media Litigation practice is part of a full-service capability with formidable resources in the major industry centers of Los Angeles, New York, and San Francisco. We bring a multidisciplinary approach to every area of entertainment and media—television, radio, motion pictures, music, art and advertising—as well as to the rapidly proliferating digital aspects of each.

Because the very nature of the industry and its players makes high-profile disputes inevitable, we are always sensitive to the public relations aspects of our clients' cases. The more visible the matter, the more likely we are to be called upon, and our clients trust us to be as discreet—or as outgoing—as the situation merits.

We routinely handle disputes of every kind, including:

- ▶ Copyright infringement.
- ▶ Breach of contract
- ▶ Digital media litigation
- ▶ Right of publicity matters
- ▶ Idea theft
- ▶ Royalty accounting
- ▶ Profit participation
- ▶ Trademark claims

Capital Markets/Finance

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Transactions in the capital markets are known to be subject to long lead times and shifting market environments, conditions that can cost an inordinate amount of time and money, yet carry no guarantee of success. Accordingly, clients of all kinds prize the ability of a law firm to see deals through to a successful conclusion.

Our Capital Markets group has consistently demonstrated that ability. We have the deep market knowledge and broad experience to avoid the many pitfalls that can derail otherwise promising deals. We act in a wide range of registered and unregistered securities offerings across a wide array of industries, with a particular affinity for financial service companies of all kinds.

Known for smaller teams—and for a high level of partner involvement—we have the agility to assess and seize promising opportunities in the public markets, bringing uncommon creativity to the structuring of our deals, and a brisk efficiency to their execution.

Steeped in both industry knowledge and the particulars of our clients' business, we are adept at structuring the right transaction in the right way. We know the markets. We know the players. We understand the complex business implications of each transaction we undertake.

Most of all, we are intimately involved in the long-term business prospects of our clients. They trust us to provide savvy advice, even when that advice runs counter to conventional wisdom or to their own predispositions. If a deal feels wrong, we will not hesitate to say so.

We recently received the M&A Advisor middle-market financing “Law Firm of the Year” award, acknowledging our diverse and complex portfolio of financing deals. Chambers USA and Legal 500 have consistently recognized the firm as a leader in this space.

Our services include:

- Initial public offerings and secondary offerings
- Private placements, including institutional private placements

Funds Talk: February 2016

Funds Talk provides legal commentary on the news and events that matter most to alternative asset managers and funds.



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Financial Services

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As the financial world adjusts to the Dodd-Frank era, with both regulators and plaintiffs growing noticeably more aggressive, financial services companies of all kinds turn to us for savvy advice and deft representation in a wide range of investment-related matters. Our Financial Services group is highly regarded for its ability to address the complex issues and fiduciary obligations that face mutual funds, fund advisers, and independent directors of funds, providing them with practical counsel that protects them from legal repercussions.

Our lawyers are highly attuned to the nuances of the rapidly-changing laws of financial services, as well as to the specialized business needs of our clients. We regularly help clients develop and structure investment products that adhere closely to regulatory requirements without impeding their viability in the marketplace.

For our mutual fund clients, we write all appropriate disclosure documentation that defines their principal strategies and risks, and we create the policies and procedures that promote regulatory compliance. For fund advisers, we help define and clarify fiduciary obligations, develop compliance procedures, and ensure adequate disclosure to shareholders. We also provide practical guidance to advisers in mergers and acquisitions. For independent directors, we help establish the governance processes that support their fiduciary role as “independent watchdogs” charged with safeguarding shareholder interests.

Our practice is highly collaborative, and we draw freely on other disciplines within the firm. While our lawyers are extremely knowledgeable about the full range of investment vehicles being marketed by our clients, we often involve the skills and resources of the Tax, Derivatives, Banking, Securitization, and Litigation groups, among others.

Our areas of focus include:

- Regulatory and Compliance
- Investment Products

Public Alternative Funds Seminar

What Are the Distribution Opportunities for Private Fund Managers?



May 24, 2016

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Tax

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As the tax laws grow increasingly complex, and as tax controversies proliferate in response to revenue challenges at all levels of government, clients of all kinds turn to our Tax group for practical, easily understood advice that is fully in keeping with the underlying business issues they face. While the tax departments of most corporate law firms generally function as service arms of their corporate practices, ours has a remarkable track record of attracting clients on its own merits. Often enough, our success in tax matters serves as a client's introduction to other Kramer Levin practices.

Our practice is rooted, not just in a thorough knowledge of the ever-changing tax laws, but also in the practical application of those laws to a client's strategic goals. In a wide variety of corporate and real estate transactions, our clients rely on us to clearly communicate the tax implications, and to deal with those implications in a manner entirely consistent with business objectives.

While we routinely handle the tax issues inherent in virtually every type of transaction, we are particularly known for groundbreaking work in several areas.

Middle-market M&A is a particular strength, and we regularly represent both sellers and acquirers in the creation of tax-efficient transaction structures.

We also represent creditors, creditors committees and debtors in the tax aspects of many of the largest and complex recent bankruptcy restructurings.

Capital assets planning is another strong area where we quite literally wrote the book—a definitive treatise on capital gains.

We are especially valued for our widely acknowledged expertise in state and local taxation. Our long experience mastering the tax complexities of both New York State and New York City—the city is itself the fourth largest tax jurisdiction in the nation—has made us the “go-to” firm for tax controversies in this area. Many of these matters come to us as referrals from other law firms whose clients face state or local tax issues requiring special knowledge.

IRS Reverses Itself on Treatment of 'Bad Boy Guarantees'



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Funds Talk: April 2016

Funds Talk provides legal commentary on the news and events that matter most to alternative asset managers and funds.



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BUSINESS LITIGATION

Litigation isn't for the faint of heart. You have to be able to jump in with both feet. If it doesn't make sense, I'd rather talk the client out of it. — *David C. Berg*

Our team represents corporate and individual clients in virtually every sort of commercial dispute, ranging from complex, high-stakes litigation to more routine breach-of-contract matters, but always in the context of fulfilling real business objectives. Even with our lean staffing and reasonable rates, litigation is still an expensive undertaking, which is why we insist from the outset that clients only enter into it with eyes wide open.

So, before we move forward with any litigation, we make sure our clients fully understand the potential risks and consequences from both the legal and business standpoints. Our decades of experience in litigating significant disputes gives us the ability to accurately gauge each matter's likelihood of success, and we advise our clients accordingly. We provide them with an objective reading as to whether the case is worthwhile — both substantively and from a business perspective — and, in so doing, we lay out the risks in no uncertain terms.

Having our clients make an informed decision is crucial because, once we move ahead, we are known for pursuing each dispute aggressively and with their specific goals in mind. While our track record of successful outcomes speaks for itself, we measure those outcomes not solely in terms of money won or lost, but in terms of business problems solved.

Experience

W H I T E | C O N T A C T | L I T I G A T I O N | C O M P L I A N C E | M E D I A | A B O U T | F O R M S

We have prosecuted and defended a broad range of civil claims in New York state and federal courts — as well as in a variety of alternative dispute resolution (ADR) forums, including the American Arbitration Association and JAMS — and have tried cases in a multitude of court venues nationwide. In addition, we are frequently retained by national and international law firms requiring local counsel for New York-based litigation.

Our experience in civil, corporate, business and other litigation — includes both prosecuting and defending:

- Breach of contract disputes

- Fraud and statutory actions

- Theft of trade secret disputes

- Licensing disputes

- Disputes between owners of closely held businesses (“business divorces”)

- Securities fraud claims

- Breaches of loyalty and fiduciary duty (or duties) by corporate officers, directors, and employees

- Securities broker-dealer claims in customer arbitrations

- Actions to pierce corporate veils

- Employment-related claims including discrimination (gender, age, etc.), sexual harassment, wage and hour violations (including FLSA violations), wrongful discharge, emotional distress, and other serious workplace issues

- Lease and guarantee disputes between commercial landlords and tenants

- Other business disputes involving business torts, complex commercial contract and UCC disputes, director and officer liability claims, partnership and joint venture disputes, shareholder disputes, and other sophisticated commercial and corporate litigation

Our insurance defense work has included a range of clients such as:

- Major pharmaceutical companies in multi-party federal and state court product liability actions

- Landlords in cases involving exposure to lead paint

- Property owners and contractors in strict liability actions

- Directors and officers in actions brought under corporate D&O liability policies

Global Payments

The global payments space is exploding in every direction. As new technologies take hold, as online and mobile payment applications proliferate, as exotic new crypto-currencies step into the limelight and as nonbanking players assume a prominent—or even dominant—role, the global financial system is being forced to adjust to a panoply of wrenching changes, often on the fly.

With these changes come abuses. The same technologies that facilitate payment fluidity also present unprecedented opportunities for bad actors to engage in money laundering and data theft, moving issues of privacy and data security to the top of boardroom agendas all over the world.

Inevitably, the rules are being rewritten, with regulators frantically working to keep up with the shifting financial landscape. If your business model—if your very relationship with your customer base—depends on a well-functioning payments system, then your ability to adjust to new technologies, new security threats, and new regulatory requirements is sure to be a core strategic issue well into the future.

Staying in the Forefront

Manatt has long served leading companies in the industries most affected by these new realities and increasing use of alternative payments methods—retailers and e-commerce companies, healthcare organizations, financial services firms, emerging payments companies, money services businesses, payment networks and card associations, card issuers, merchant acquirers and payments processors, technology and gaming companies, advertisers, and insurance companies. Our experience in these industries is long and deep, with institutional knowledge that is invaluable for navigating the changing terrain.

The Services Most Needed

Manatt's Global Payments practice covers the entire scope of the payments space. We provide guidance to our clients on a variety of payments products and services, including:

- ▶ Mobile wallets and e-wallets

- ▶ ACH transactions

- ▶ Prepaid, credit and debit cards, and other stored value products

- ▶ Money transmissions

- ▶ Bill-payment services

- ▶ Digital currencies

- ▶ Mobile banking and payments

- ▶ Third-party payment processing

We also advise clients on the myriad laws and regulations affecting the alternative payments methods, including:

- ▶ FinCEN rules and regulations

- ▶ Anti-money laundering and customer identification programs

- ▶ Money services business registration and compliance

- ▶ State money transmitter licensing and regulatory requirements

- ▶ The Electronic Funds Transfer Act, Regulation E and the CARD Act
- ▶ Dodd-Frank Wall Street Reform and Consumer Protection Act
- ▶ Durbin Amendment
- ▶ The Truth in Lending and Truth in Savings Acts
- ▶ National Automated Clearing House Association rules

The Resources to Seize Opportunities

We have the resources you need, not just to avoid the risks, but to seize the opportunities that continue to present themselves.

Taking a multidisciplinary approach, we can provide everything from regulatory advice to compliance programs to deal making to representation in enforcement actions and litigations. Our services are regularly sought by every type of banking—and nonbanking—player, including issuers, program managers, and payment processors.

Our attorneys are thoroughly engaged in the evolution of the payments business. Our advice is sought by regulatory and enforcement agencies at the federal and state levels. We write about the industry's most pressing concerns, speak at its most authoritative forums, and testify before commissions and legislative committees seeking to make sense of issues as they emerge. One of our lawyers has Certified Anti-Money Laundering Specialist (CAMS) certification—the most important professional designation in the AML compliance area.

We are also at the forefront of nascent industries—online gaming, payday lending, legalized marijuana—whose business models are not yet fully legal, or whose practices are deemed problematic by the federal government. We help our payments clients navigate this legal netherworld in which today's accepted practice could easily become tomorrow's crime, or vice versa.