

Q&A With Knobbe's Lynda Zadra-Symes

Law360, New York (May 29, 2013, 1:57 PM ET) -- Lynda Zadra-Symes is a litigation partner in the Orange County, Calif., office of Knobbe Martens Olson & Bear LLP. She represents clients through all stages of U.S. litigation, from presuits through trial and appeal, in federal courts throughout the country and before the Trademark Trial and Appeal Board. Her practice involves all types of intellectual property, including patents, trade secrets, trademarks, copyrights, false advertising, unfair competition and rights of publicity. She also advises on customs and anti-counterfeiting issues, international trademark and copyright matters, advertising and competition issues. She is a domain name dispute panelist arbitrator for the World Intellectual Property Organization in Geneva, Switzerland, and has arbitrated numerous domain name disputes.

Q: What is the most challenging case you have worked on and what made it challenging?

A: A trademark case involving an infringer that falsely claimed it had prior use of our client's mark.

The case was challenging because the defendant made false statements and fabricated evidence. The defendant then declared bankruptcy on the eve of trial to prevent our client's claims moving forward. The litigation system is founded on the basis that parties and witnesses tell the truth and do not fabricate evidence. With an unscrupulous defendant that is willing to make false statements and fabricate evidence, the case becomes very challenging. The falsity of the evidence needs to be specifically proven, significantly adding to the litigation effort and expense for the party with the legitimate claims.

Q: What aspects of your practice area are in need of reform and why?

A: It would be helpful to have a general procedural rule requiring costs/fees to be awarded to the prevailing party in trademark cases (as it already exists in copyright cases), in order to deter frivolous claims.

It would also be helpful to have a procedure in state trademark offices to allow legitimate trademark owners to file oppositions or cancelations against fraudulently filed trademarks without the need to pursue expensive litigation through the courts.

Q: What is an important issue or case relevant to your practice area and why?

A: In the trademark litigation area, the U.S. Supreme Court decision in *Already v. Nike* (Jan. 9, 2013) is probably the most important recent decision. The court held that Nike's broad covenant not to sue language rendered the defendant's invalidity claims moot and deprived the federal courts of jurisdiction to decide those claims. This decision provides a basis for a plaintiff to gracefully exit from a lawsuit where infringement claims have been resolved or dismissed, but the defendant elects to proceed with counterclaims for invalidity of the asserted trademarks.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: One of the advantages of being a member of the IP litigation bar is that we generally have very professional relationships with opposing counsel. I have a lot of respect for Pamela Banner Krupka, of Krupka Law Group, who is well known in the IP field and is a former chairman of the American Bar Association IP Section. Pam is a very smart IP litigator and a great role model for female IP lawyers.

Q: What is a mistake you made early in your career and what did you learn from it?

A: In my first trial over 15 years ago, a copyright case, I had submitted a piece of evidence that was not properly authenticated. The judge referenced the lack of authentication but, fortunately, did not need to rely on it to render a judgment in favor of our client. Since that experience, I have learned to pay particular attention to evidentiary procedure and details.

The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

All Content © 2003-2013, Portfolio Media, Inc.