

Ben L. Wagner

Partner

San Diego

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Ben helps clients across a wide range of sectors resolve their toughest disputes. His meticulous approach to litigation helps his clients accomplish their business goals — whether through early summary judgment, baseball-style arbitration, trial, full appeal, or other dispute-resolution tools.

OVERVIEW

Ben is a top-ranked intellectual property, advertising, and complex commercial litigator who has handled hundreds of disputes for clients ranging from startups to multinationals with globally recognized brands. He is a seasoned trial attorney with experience in a diverse range of industries, including the music industry, software, UX/UI, fintech, life sciences, medical devices, real estate development, apparel, consumer goods, and professional sports. Ben's clients span the U.S., Europe, and Asia.

Ben is a devoted advocate for both plaintiffs and defendants, tailoring litigation strategies that address the unique issues in each case, delivering over \$300 million in value in recent years. In just the past year this includes \$70 million recovered in judgments, settlements, and payments for rights holders, and another \$85 million in the decade before that. During this same time, he has defeated more than \$150 million in claims. He currently represents portfolios exceeding hundreds of millions of dollars in estimated value across a broad spectrum of rights holders.

Ben has pursued and defended claims in state and federal courts across the U.S., in international arbitration involving South America, Asia, the Middle East, and Western Europe, and in proceedings before the Trademark Trial and Appeal Board (TTAB).

REPRESENTATIVE MATTERS**Intellectual Property**

- Developed and successfully pursued licensing, enforcement, protection, and monetization strategies for numerous IP owners.

Patent Litigation + Counseling

- Served as lead counsel, managing a large team of partners and associates in defeating a Section § 271(e)(1)

defense in a billion-dollar patent dispute in *Allele Biotechnology Pharm., Inc. v. Pfizer, Inc.*, 20-cv-01958-H-AGS (S.D. Cal. May. 4, 2021), leading to successful resolution of the litigation.

- Obtained early summary judgment of noninfringement for a medical device company, and defended through appeal in *Michael Stern Digiflo v. Sequal Techs., Inc.*, 493 Fed. Appx. 99 (Fed. Cir. 2012).
- Enforce design and utility patents for consumer products companies.
- Defeated summary judgment on tort claims growing out of ongoing patent ownership dispute.
- Strategic counseling leading to successful protection and invalidity strategies, including for companies in energy, HR compliance software, land development, social media and real-time news tech, and agricultural tech.

Trademark, Copyright + False Advertising

- Developed and implemented a strategy for clearing out the federal trademark register of conflicting marks, as well as reclaiming trademark rights from underperforming international licensees, contributing to a sale of trademark rights for more than \$30 million and more than tripling the return on client's acquisition costs.
- Served as lead trial counsel in *Lontex Corp. v. Nike, Inc.* (E.D. Pa.) obtaining 2021 jury award for willful trademark infringement and punitive damages in two-week jury trial, following successful pretrial rulings including defeating summary judgment and *Daubert* motions.
- Represented Stephen Slesinger, Inc. in obtaining landmark summary judgment rejecting attempt of heirs to E.H. Shepard and Disney's attempt to invoke statutory termination of copyright agreement covering the use of original Winnie the Pooh artwork.
- Running copyright enforcement and licensing programs for multiple major digital music libraries.
- Managed the international trademark registration and protection strategy for popular video-game developer.
- Defended various false advertising claims spanning multiple industries, including home improvement retailer, communications carrier, food and beverage, and consumer goods.
- Obtained favorable non-monetary settlement defending against a false advertising class action filed against footwear company.
- Defended false advertising claims against Five Hour Energy beverages, defeating preliminary injunction based on false health claim theory leading to favorable resolution.
- Obtained TRO, preliminary injunction, permanent injunction, treble damages, and attorneys' fees against cybersquatter preventing fraud on public in connection with client's initial coin offering in *Orchid Labs, Inc.*, 2:18-cv-00582 (D. Az.).
- Obtained preliminary injunction in *Crossfit, Inc. v. Maximum Human Performance, LLC*, 2013 U.S. Dist. LEXIS 53676 (S.D. Cal. Apr. 12, 2013) prohibiting specified uses of "X-Fit" by MHP based on claims of trademark infringement and dilution of a famous mark.
- Obtained judgment for maximum statutory damages award in *Internet Matrix v. Veterinary Website Designers*, 12CV2746-CAB (S.D. Cal.) for cybersquatting, trademark infringement, and unfair competition.
- Represented Angles BeautyCare Group, Inc. in jury trial concerning trademark infringement and unfair competition, obtaining favorable settlement.
- Represented New Name, Inc. against Disney Enterprises, Inc., regarding trademark and copyright infringement, obtaining a favorable settlement.
- Represented Yahoo, Inc. in a trademark infringement and breach of contract dispute with a former licensee, obtaining a favorable settlement.
- Represented BBTv, the owner of largest television station in Thailand, in connection with a successful appeal of large U.S. copyright and trademark infringement judgment against ex-licensee and its executives.
- Sued an ex-distributor and movie studio for copyright infringement for Busted Tranny related to unauthorized distribution of cult-classic movie.
- Obtained pre-discovery summary judgment ending case in favor of restaurant owner and rejecting cable piracy

claims. *G&G Closed Circuit Events, LLC v. Mike's BBQ, Inc.* 2021 U.S. Dist. LEXIS 178941, 2021 WL 4267409 (S.D. Cal. 2021).

Complex Commercial Litigation

- Defended ASICS and related parties in several lawsuits, including successfully defending against a request for emergency injunctive relief.
- Develops and manages client program for agency challenges to conflicting third party rights.
- Advising insureds and insurers on coverage disputes relating to D&O policies, CGL policies, and related public policy exclusions and grounds for denial of coverage, spanning policies governed by California, New York, and many other states.
- Successfully obtained full dismissal of false advertising claims prior to certification of consumer class.
- Defending against shareholder and share purchase claims against companies, officers, and directors asserting allegations of fraud, breach of fiduciary duties, and breaches of warranties and representations.
- Drafting panel recommendations and arbitrator opinions for claims resolved through consumer arbitration, including lemon law arbitrations.
- Served as lead attorney in case successfully dismissed on summary judgment in *DPR Constr. v. Shire Regenerative Med., Inc.*, 2016 U.S. Dist. LEXIS 133617 (S.D. Cal. Aug. 29, 2016), defeating claim to unpaid contractor fees on more than \$100 million in cancelled construction.
- Obtained \$20 million arbitration award for alter ego liability against CEO of Westinghouse Digital Enterprises, and successfully obtained finding of non-dischargeability in subsequent bankruptcy proceedings.
- Represented an international pet food ingredient supplier Feed.ing BV in a breach of contract suit, successfully obtaining a \$12 million early summary judgment for contract damages under the UCC.
- Served as lead attorney in successful arbitration award rejecting breach of fiduciary duty, contract, and fraud claims asserted against Bebe apparel supplier by former business partner.
- Obtained dismissal of client on motion to dismiss without leave to amend on first ruling of court, rejecting claims based on assertion that client was de facto manager of LLC.

AWARDS

- Top Intellectual Property Lawyer, *Daily Journal* (2023-2024)
- *Best Lawyers in America®*: Litigation – Intellectual Property (2023-2026), Commercial Litigation (2025-2026)
- *World Trademark Review*: WTR 1000 (2023-2025)
- *Managing Intellectual Property*: IP Star (2022)
- Leaders in Law – IP Winner, *San Diego Business Journal* (2021)
- California Super Lawyers “Rising Star” (2015-2021)
- 40 Under 40, *The San Diego Daily Transcript* (2020)
- Wiley W. Manuel Certificate for Pro Bono Legal Services (2008-2025); Pro Bono Public (2012)
- Pro Bono Publico / Attorney of the Year Award, San Diego Volunteer Lawyer Program (2013)

TOP AREAS OF FOCUS

- Business Litigation
- Domain Name Litigation + UDRPs
- Intellectual Property
- Marketing + Advertising
- Patent Litigation

- Trademark + Copyright

ALL AREAS OF FOCUS

- Business Litigation
- Domain Name Litigation + UDRPs
- Intellectual Property
- Litigation + Trial
- Marketing + Advertising
- Patent Litigation
- Trademark + Copyright

PROFESSIONAL/COMMUNITY INVOLVEMENT

- Fellow, American Bar Foundation (membership is limited to 1% of attorneys licensed to practice in each jurisdiction)
- Member, Forum UDRP and Domain Name Disputes Arbitration Panel
- Past president (three-year term) and Board member (two-year term) Point Loma Nazarene University (PLNU)
- Enright Inn of Court, 2012-2015
- Past director and Executive Committee, Federal Bar Association, San Diego Chapter, 2010-2015
- Past member, Federal Bar Association National Task Force on Law School Outreach

PROFESSIONAL EXPERIENCE

- Extern, Hon. Larry A. Burns, Southern District of California
- Extern, Hon. Linda Quinn, San Diego Superior Court

EDUCATION AND CERTIFICATIONS

EDUCATION

- University of San Diego School of Law, J.D., *magna cum laude*, *Order of the Coif*, 2005
- Point Loma Nazarene University, B.A., 2003

BAR ADMISSIONS

- California

COURT ADMISSIONS

- U.S. District Court, Southern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Northern District of California
- U.S. District Court, District of Colorado
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Federal Circuit

PUBLICATIONS

- Co-author, "[How to Protect Quantum Computing Innovations With IP Rights](#)," *Bloomberg Law*, August 13, 2021.
- Author, "[Supreme Court's Unanimous Decision in Romag Fasteners Resolves Split on Trademark Infringers' Profits, But Raises Questions](#)," *IPWatchdog.com*, April 23, 2020.
- Co-author, "[Case Will Address Split Over Trademark Infringement Remedies](#)," *Daily Journal*, October 3, 2019.

MEDIA COMMENTARY

- Quoted, "[Nike Still Owes Fees in 'Cool Compression' TM Case](#)," *Law360*, October 16, 2024.
- Mentioned, "[Nike Stole Company's Trademark, Then Tried to Bury It in Legal Bills, Court-Ordered Report Says](#)," *Forbes*, October 7, 2024.
- Quoted, "[Nike 'Threatened to Kill' Small Pa. Firm and Should Pay Millions, Says Court-Ordered Review](#)," *The Philadelphia Inquirer*, September 30, 2024.
- Quoted, "[Nike's Conduct in TM Battle Warrants Atty Fees, Report Says](#)," *Law360*, September 27, 2024.
- Mentioned, "[Dunkin', Beyond Meat Sued Over Stolen 'Plant-Based' Slogan](#)," *Law360*, April 28, 2022.
- Mentioned, "[Dunkin', Beyond Meat Sued for 'Great Taste, Plant-Based' Ads \(1\)](#)," *Bloomberg Law*, April 28, 2022.
- Mentioned, "[Allele, Pfizer Call Truce in Patent Dispute Over COVID-19 Vaccine](#)," *Bloomberg Law*, January 6, 2022.
- Mentioned, "[Pfizer, Allele Biotech End COVID Vax IP Fight](#)," *Law360*, January 5, 2022.
- Mentioned, "[Pro Athletes and Trainers Praise Landmark Judgement Against Nike From Norristown Apparel Owner](#)," *Montco.Today*, November 30, 2021.
- Interviewed, "[NBC 10 at Issue](#)," Small Business Owner Beats Nike, *WCAU (NBC) – Local*, November 28, 2021.
- Mentioned, "[This Norristown Sports Gear Maker Took a 'Just Do It!' Attitude and Whipped Nike in Court](#)," *The Philadelphia Inquirer*, November 24, 2021.
- Mentioned, "[Nike Infringed Lontex's 'Cool Compression' Mark, Jury Finds \(1\)](#)," *Bloomberg Law*, October 28, 2021.
- Mentioned, "[Nike Infringed 'Cool Compression' TM, Pa. Jury Says](#)," *Law360*, October 27, 2021.
- Mentioned, "[Lontex Wins Jury Verdict in Nike Cool Compression Suit](#)," *Sporting Goods Intelligence News*, October 2021.
- Mentioned, "[Nike Stole Rival's 'Cool Compression' Mark, Pa. Jury Told](#)," *Law360*, October 18, 2021.
- Mentioned, "[Pfizer Loses Bid to Toss COVID-19 Vaccine IP Case](#)," *Law360*, May 5, 2021.
- Mentioned, "[Nike Faces Trial in Trademark Suit Over 'Cool Compression'](#)," *Bloomberg Law*, February 25, 2021.
- Mentioned, "[Nike Can't Beat 'Cool Compression' Trademark Case](#)," *Law360*, February 24, 2021.
- Mentioned, "[Troutman Sanders Lures IP Litigator From Mintz](#)," *Law360*, June 14, 2019.