

BakerHostetler Adds Ed Poplawski, Olivia Kim, and Erik Carlson in West Coast Push



Intellectual Property (IP) trial lawyers Ed Poplawski, Olivia Kim, and Erik Carlson, formerly of Wilson Sonsini, joined BakerHostetler in Los Angeles. Olivia will lead the firm's Los Angeles IP practice group. This move solidifies BakerHostetler's full-service IP practice on the West Coast — and nationally. The firm has hired more than 100 attorneys on the West Coast, including 40 attorneys in Los Angeles, since 2019. The firm plans to add another 75-100 lawyers on the West Coast.

Paris Fashion House Hermès International Wins in Trademark Case Involving NFTs

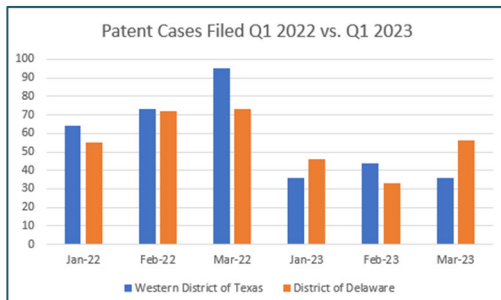
On Feb. 8, Hermès won in a trademark infringement trial against designer Mason Rothschild over the production and sale of MetaBirkins' non-fungible tokens (NFTs). The jury in the Southern District of New York deliberated for three days before delivering a verdict of liability for trademark infringement, trademark dilution, and for unlawfully cybersquatting on the MetaBirkins.com domain name. The jury also found that the First Amendment did not insulate the defendant from liability for his conduct.

The Wall Street Journal described the trial as "... one of the first to reckon with how NFTs intersect with intellectual-property law and free-speech protections for art." It called the verdict "... a boost for companies seeking to protect their trademarks in the digital realm." BakerHostetler obtained the victory for Hermès.

Source: <https://www.bakerlaw.com/BakerHostetler-Secures-Victory-for-Hermes-International>

Patent Litigation Trends

There was a lower number of new patent cases filed in the first quarter of this year as compared to the first quarter of last year in both the Western District of Texas and the District of Delaware.



Source: Research from Docket Navigator

Notable Court Decisions

Google Sanctioned for Failure to Adequately Preserve Internal Communications Using Its Chat Message System

In re Google Play Store Antitrust Litigation, No. 21-md-0291, 2023 WL 2673109 (N.D. Cal. Mar. 28, 2023) (Donato, J.)

Google was sanctioned under FED. R. CIV. P. 37 for not adequately preserving Google Chat messages. Google did not suspend the 24-hour auto-deletion of Google Chats even after the litigation was filed. Instead, Google instructed its employee custodians to make their own personal choices about preserving relevant Chats, but they were unable or unwilling to follow the preservation instructions. Google also failed to audit or monitor whether the instructions were being followed. During litigation, Google never flagged this preservation method or air any concerns about potential burden and costs. Rather, Google only revealed its Chat practices many months after the plaintiffs first inquired about them. The plaintiffs were awarded reasonable attorneys' fees and costs for bringing the motion. Although the court declined to issue terminating sanctions against Google, the court indicated it will determine appropriate non-monetary sanctions after fact discovery.

Even in the Absence of Damages Expert Testimony, the Court May Not Award Zero Damages When There is a Factual Dispute

Acceleration Bay LLC v. Activision Blizzard Inc., No. 16-cv-453, Dkt. 767 (D. Del. Mar. 22, 2023) (Bryson, J.)

Although plaintiff's damages theories were excluded on multiple occasions, the defendant's request to dismiss the case for lack of any admissible damages theory was denied. The court found that the plaintiff neither conceded that it lacks an alternative case for damages nor expressly waived any damages theory in response to a challenge from the defendant. It was noted that the absence of an expert opinion regarding a reasonable royalty amount is not itself a sufficient basis to award no damages. Although it is difficult to predict what level of apportionment might be established by the evidence that the plaintiff seeks to introduce at trial, such lack of clarity was insufficient to justify no damages. In the event the jury awards damages not supported by the record evidence, the court indicated that it could resolve that issue after the close of evidence or after the verdict.