

Daily Journal

FEBRUARY 19, 2020

Top Verdicts

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TOP DEFENSE VERDICTS

Ironhawk Technologies Inc. v. Dropbox Inc.



CLARA J. SHIN



JEFFREY M. DAVIDSON

Covington & Burling LLP's Clara J. Shin and Jeffrey M. Davidson have long partnered to defend high value cases where their firm is retained not long before trial. "We've worked together for a decade, in particular in taking cases over pre-trial," Shin said. "We've come to operate as each other's left and right brains."

So when defense contractor Ironhawk Technologies Inc. sued Covington client Dropbox Inc. on allegations that Dropbox had infringed Ironhawk's trademark rights in the term "Smart Sync" by using those words to describe one of the features of Dropbox's service offering, Shin and Davidson went to work. Dropbox sought nearly \$100 million in damages, but the Covington team thought it could reorient its summary judgment strategy and avoid trial.

"After digging into the materials, we thought we had a chance, even though summary judgment is uncommon in trademark cases because they are so fact-intensive,"

Davidson said. *Ironhawk Technologies Inc. v. Dropbox Inc.*, 2:18-cv-01481 (C.D. Cal., filed Feb. 22, 2018).

Shin and Davidson saw that the facts presented a low risk of consumer confusion, because "Smart Sync"—as applied to Ironhawk's product allowing data transfer over challenged networks such as in theaters of war—was unlikely to be mistaken for the same phrase when Dropbox used it in the cloud computing context.

Shin argued the summary judgment motion; Davidson was in charge of Daubert motions to challenge the plaintiff's experts. "The summary judgment hearing came a month before the trial, so we prepared for both on separate tracks," Shin said. Added Davidson, "We decided to zero into the basic undisputed material. Smart Sync is pretty much a descriptive phrase that doesn't give a distinctive advantage in the marketplace." Also, they hammered home the argument that military grade data transfer software is different from

case INFO

Trademark infringement

Central District

U.S. District Judge Dean D. Pregerson

Defense lawyers: Covington & Burling LLP, Clara J. Shin, Jeffrey M. Davidson, Rebecca A. Jacobs, Isaac D. Chaput, Matthew Q. Verdin, Diane Ramirez, Laura Brookover

Plaintiff's lawyers: Browne George Ross LLP, Keith J. Wesley, Lori S. Brody, Matthew L. Venezia

a cloud computing storage product.

"Judge Pregerson recognized that not all software is the same, and not all software offerings compete in the same market," Davidson said. "They argued that 'software is software' across all fields, but in this case the judge held that a rose is not necessarily a rose," Shin said. They added that Pregerson's holding that Ironhawk's trademark right were weak and that there was not likelihood of consumer confusion will have consequences for other trademark cases in the technology sector.

Browne George Ross LLP lead lawyer Keith J. Wesley did not return a message seeking comment. The decision is on appeal.

— John Roemer