

## Representative Legal Matters

Nicholas O. Kennedy

### International Disputes

- Represented Russian investor in investment treaty arbitration against the Republic of Belarus relating to complex construction project. The case was administered by the Permanent Court of Arbitration under the UNCITRAL Rules. Participated as third chair in merits hearing at the Hague, including primary responsibility for presentation of damages arguments at the hearing.
- Represented Cypriot investor in judgment enforcement case against high-profile former business partner in the United States. Developed unique strategy to target assets in foreign jurisdictions that the debtor previously believed to be unavailable to satisfy the US judgment. After uncovering those assets at debtor exams and moving for a turnover order, the judgment debtor paid our client on the eve of the hearing on the turnover order motion.
- Represented US and Luxembourg investors in investment treaty claims against the Republic of Georgia related to mining operations in arbitration to be administered by the Stockholm Chamber of Commerce. The case was resolved upon the filing of a request for emergency interim measures.
- Represented Singapore-based publicly traded company in multi-jurisdictional dispute with former shareholder. Developed strategy and presented argument for anti-suit injunction in US federal court seeking to halt litigation in India about the same issues that were being litigated in a parallel Singapore arbitration.
- Represented Kazakh investor in investment treaty arbitration against the Republic of Georgia related to a natural gas distribution network. The case was administered by the Permanent Court of Arbitration under the UNCITRAL Rules . The case settled favorably just days before the final merits hearing.
- Represented Hong Kong-based apparel distributor in ICC arbitration against global apparel manufacturer asserting claims under California law for unfair trade practices, fraud, and breach of contract based on failure to enter into a license agreement on commercially reasonable terms. Coordinated with co-counsel in Hong Kong regarding parallel proceedings in Hong Kong courts.
- Represented Turkish energy company in USD 1.5 billion ICSID arbitration against Pakistan relating to unfair measures taken by the government. Advocated at 14-day merits hearing and coordinated with co-counsel in the US, the UK, and Pakistan.
- Represented Russian national in series of coordinated proceedings enforcing under NY Convention a USD 75 million LCIA arbitration award issued in the UK against Russian national living in the US. Confirmed award in C.D. California as part of global enforcement strategy across five jurisdictions. Obtained multiple asset freezes and litigated in District Court, the Ninth Circuit, Bankruptcy Court and California State Court as well as in London, Russia, Lichtenstein and Cyprus.



- Represented Mexican manufacturing conglomerate in post M&A dispute relating to alleged accounting, environmental, and other irregularities related to sale of our client's US subsidiary. After complex accounting arbitration, successfully settled the remaining claims for a fraction of the amount demanded.
- Represented Canadian manufacturer of groundwater cleanup equipment in ICC arbitration brought by purchaser asserting claims of breach of contract, breach of warranty, and fraud and applying the UN CISG. Responded with a multi-million dollar counterclaim and secured a net recovery from our client.
- Represented Hong Kong-based real estate investor in multi-million dollar AAA arbitration asserting fraud, breach of contract, and breach of fiduciary duties against investment organizers. Coordinated with co-counsel in Hong Kong and California.
- Defended multinational bank headquartered in the UK in N.D. Texas action alleging breach of contract and conversion based on alleged actions of client's subsidiary in Africa. Prevailed on a motion to dismiss by demonstrating that the foreign subsidiary was a separate and distinct legal entity and was an indispensable party that could not be joined.
- Represented international aircraft lessor in S.D. Florida as part of coordinated global actions to recover aircraft sublet by US aircraft broker to foreign airline operating in Asia. Obtained permanent injunction requiring return of aircraft and millions in damages. Coordinated with co-counsel in Thailand and Singapore.
- Represented global entrepreneur in W.D. Texas case invalidating USD 125 million foreign judgment in US federal court on the basis that the judgment was obtained through unfair practices in foreign country. Coordinated with co-counsel in the US, France, the United Arab Emirates, and Morocco.

#### Class Actions and Unfair Trade Practices

- Provide ongoing antitrust compliance advice to leading licensor of standard essential patents related to cellular communications on a wide variety of emerging issues at the intersection of antitrust law and intellectual property law. This has included in depth analysis of key case law, guidance from government enforcement authorities, and industry sources.
- Defeated antitrust claims against publicly traded medical company at the motion to dismiss stage based on the statute of limitations. In addition to avoiding tens of millions of dollars in potential liability, we also successfully avoided any discovery in the matter.
- Defended one of the five largest US banks in putative nationwide class action in the S.D. California alleging violations of California unfair competition law based on allegedly unfair trade practices and breach of contract related to use of check-imaging and processing software. After extensive factual investigation and negotiation with opposing counsel, case dismissed with prejudice before client was required to answer the complaint.
- Represented restaurant chain in investigation by state Attorney General of alleged violation of state and federal unfair trade practices laws. Established there was no violation of laws and resolved investigation prior to filing of complaint or any other formal action by Attorney General without any payment or other corrective action by client.

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- Represented Spanish manufacturer of luxury skin care products facing potential class action alleging deceptive and unfair trade practices under California unfair competition law. Prevented lawsuit through negotiation and written correspondence after receipt of demand letter but before filing of lawsuit.
- Defended one of the five largest US banks in nationwide class action in C.D. California asserting claims for fraud, violation of unfair competition laws of all fifty states, breach of contract, and violation of various federal statutes based on novel theory of liability related to federal reporting requirements. Settled after motions to dismiss.
- Defended manufacturer of water filtration products in California state court class action alleging claims for fraud and violation of consumer protection laws. After filing a demurrer establishing client had no liability for actions of the independent sellers who were utilizing the allegedly improper sales practices, plaintiffs voluntarily dismissed client from the case.
- Defended large national bank against putative nationwide class action for unfair competition, breach of contract, and conversion seeking more than USD 100 million in N.D. Georgia. After motions to dismiss and to strike class allegations, settled the lawsuit for a small percentage of the damages demanded.
- Defended software developer in class action in N.D. California. alleging unfair trade practices in violation of consumer protection statutes based on subscription renewal policies.
- Defended Asian-based global manufacturer and distributor of CRT screens in nationwide antitrust class action alleging improper fixing of prices by CRT suppliers. Case required coordination among a large joint defense team and extensive coordination across multiple foreign and domestic jurisdictions.

## Intellectual Property

- Provided ongoing counseling and compliance advice to major global consumer product company to ensure compliance with state and federal competition, taxation, safety, and distribution laws and regulations and protection of trademark rights. Served on cross-departmental task force that included representatives from sales, manufacturing, legal, and upper management to develop a coordinated strategy for compliance and brand protection, including monitoring of potential unfair trade practices by competitors. Interfaced with law enforcement and private investigators to provide support to government investigations into and prosecutions of criminal counterfeiting.
- Defended Chinese manufacturer against patent infringement claims brought by US competitor as part of complex international arbitration under the AAA Rules raising both intellectual property and contractual issues.
- Defended hotel and restaurant operator against claims in N.D. Texas for violation of federal statutes relating to the unauthorized broadcast of copyrighted material and demanding over USD 200,000 in statutory damages and attorney's fees. After winning a partial motion to dismiss, mediated with a federal judge and settled for less than USD 1,000.
- Defended office services company in precedent setting copyright infringement suit regarding the interpretation of a public license used by millions worldwide. After a successful motion to dismiss, we defended the win on appeal in the 2nd Circuit.



## Commercial and Employment Disputes

- Represented wholesale mortgage lender in series of disputes with competitors related to departures and hiring of former employees. This ongoing representation has included securing TROs on behalf of our clients and defeating multiple TROs sought by our opponents. After these early victories, we have reached several successful global settlements with multiple different competitors.
- Obtained preliminary injunction on behalf of medical staffing company against competitor and three former employees who stole our client's customer list to use on behalf of competitor. Our federal court preliminary injunction precluded any contact with the customers on the list and allowed our client to successfully rehabilitate its business after the departure of these employees.
- Represented publicly traded retailer in non-solicitation and trade secret case against departing former executive and competitor who hired him. After securing an ex parte TRO that was later converted to a preliminary injunction, our client received a very favorable settlement.
- Represented international medical device manufacturer in coordinated actions against former employees asserting claims for breach of non-compete agreements, misappropriation of trade secrets, and tortious interference under the laws of several states. After trial on bellwether case and a successful appeal to the Sixth Circuit, client was awarded nearly all damages and attorney's fees sought in the N.D. Ohio. Remaining cases settled favorably shortly thereafter.
- Defended French distributor of consumer products in US against direct and derivative claims for unfair competition, fraud, breach of fiduciary duty, and breach of contract brought by purported assignee of shareholder in US joint venture. Prevailed on motion to dismiss by demonstrating plaintiff lacked standing.

## Other Notable Matters

- Represented two-year-old child who was improperly denied federally guaranteed services for developmental delays in administrative trial against Texas Health and Human Services Commission. This trial was the first trial that the Texas HHSC has held regarding the services provided by this program in several years and is expected to set significant precedent for the future provision of these services. It resulted in two-year-old client receiving twice the amount of services she was receiving before the dispute began.