

Jim Neale
Representative Experience
(as of April 2018)

Representing major international software company on briefing and argument of appeal in US Court of Appeals for the Second Circuit arising from district court's denial of leave to withdraw voluntary dismissal motion after court imposed contested conditions on dismissal.

Representing Rockland County municipality in multi-million dollar contract dispute with developer of riverside condominium and rental apartment project.

Represented national governing body of Olympic sport in arbitration arising from suspension of member for alleged sexual misconduct with athlete. Obtained summary judgment in March 2018 upholding suspension, dismissing claims against client.

Represented private-equity firm principal in mid-six-figure dispute with interior design firm regarding renovation of client's \$20MM apartment on upper Fifth Avenue. Case settled favorably to client prior to commencement of arbitration.

Represented individual sued in NY Supreme Court, Commercial Division, in prior employer's action, alleging breach of non-compete and confidentiality provisions of employment agreement, misappropriation of trade secrets; counterclaimed and obtained court order permitting service of certain initial discovery demands, negotiated voluntary dismissal of action thereafter, without payment or other relief to employer.

Represented individual co-defendant in action filed in US District Court for District of New Jersey, alleging breach of non-compete and confidentiality provisions of employment agreement, misappropriation of trade secrets, and seeking TRO and Preliminary Injunction; working with counsel for other co-defendants and non-defendant current employer, negotiated interim TRO and expedited discovery order, engaged in expedited discovery including e-discovery; case settled favorably prior to briefing, argument and decision on motion for Preliminary Injunction.

Represented US regional air carrier in state-court litigation of \$100MM claim for alleged breach of capacity purchase agreement; removed case to federal district court on fraudulent joinder theory, litigated remand motion, advised client regarding potential settlement; case settled favorably thereafter, before remand motion argued or decided.

Represented international aviation company, as subcontractor, in its US District Court action against US aviation company, as prime contractor, in relation to US DoD contract for provision of aircraft and related services abroad. Obtained Temporary Restraining Order and Preliminary Injunction against pretextual termination of subcontract by defendant. Case settled favorably thereafter. *See Starlite Aviation Operations Ltd. v. Erickson Inc.*, 2015 US Dist. LEXIS 64542 (D. Or. Apr. 30, 2015).

Represented automotive parts manufacturer, distributor and retailer in New York Commercial Division action by predecessor's unsecured lenders, alleging violation of Delaware Fraudulent Transfer Act and other claims relating to foreclosure by predecessor's senior lenders upon predecessor's assets. Plaintiffs sought damages exceeding \$100MM. Obtained decision dismissing derivative claims, dismissing claims for unjust enrichment, and limiting claims under DFTA. Obtained decision denying plaintiffs' motion for summary judgment on their common-law successor liability claim. Case settled favorably thereafter. See *TAP Holdings, LLC v. Irving Place Capital Partners II, LP*, 2014 N.Y. Misc. LEXIS 4848; 2014 NY Slip Op 51611(U) (Sup. Ct. N.Y. Co. Nov. 7, 2014).

Represented chemical manufacturer in action by local water authority alleging contamination of groundwater by improper discharges of dry-cleaning fluid (perchloroethylene) in Suffolk County, New York. Briefed and argued appeal, obtaining summary judgment dismissing plaintiff's claims as to 151 of 159 water wells, on grounds claims were barred by applicable statute of limitations. See *Suffolk County Water Authority v. Dow Chemical Co.*, 121 AD2d 50, 991 NYS2d 613 (2d Dep't 2014).

Represented international cosmetics company in trademark infringement action against descendants of company's founder, who were using the founder's name in competition with the client. Obtained order granting summary judgment dismissing defendants' counterclaims and denying defendants' summary judgment motion to dismiss client's infringement and other claims. Case settled favorably thereafter. See *Borghese Trademarks Inc. v. Borghese*, 2013 WL 143807 (S.D.N.Y. 2013).

Represented plaintiff, a national consumer products manufacturer, in action alleging infringement of trademarks and trade dress on product packaging, false advertising by defendant. False advertising claims were sustained on summary judgment, and client prevailed on trade dress claims at trial.

Represented national-brand consumer products company in federal actions alleging trademark infringement and dilution, and unfair competition, arising from imitative packaging of defendants' store-brand products; assisted in defeating defendants' motions for summary judgment, after which case settled prior to trial.

Represented regional airline in AAA arbitration regarding capacity purchase agreement. Prevailed following three-day evidentiary hearing, obtained damages and declaratory relief worth approximately \$8 million.

Represented European financial advisor in litigation in Utah state courts; obtained dismissal of actions on grounds of *forum non conveniens* in favor of English courts, obtained affirmance on intermediate appeal. See *Energy Claims v. Catalyst*, 2012 UT App. 32 (2012).

Defended national advertising company in federal action by prominent manufacturer, which claimed deprivation of First Amendment and other constitutional and contractual

rights through alleged removal of controversial video game advertisements from certain municipal buses. Action settled favorably prior to discovery.

Defended former coal mining equipment company and parent holding company in New York federal court action by buyer of clients' assets, seeking contractual indemnification for multimillion dollar warranty repairs and replacements allegedly made on continuous mining equipment sold to Chinese customers; following discovery, obtained summary judgment dismissing plaintiff's principal breach of contract claims. See *DBT GmbH v. J.L. Mining Co.*, 2008 U.S. Dist. LEXIS 28564 (S.D.N.Y. 2008). Case settled on favorable terms thereafter.

Represented private equity firm and its principal in multi-defendant action alleging fraud and breach of fiduciary duty in connection with failure of dot-com company and seeking \$300MM in damages. Acted as lead counsel in 4-week trial in Commercial Division, New York County. Obtained judgment dismissing all claims against all defendants.

Obtained dismissal in New York Commercial Division, for failure to state a cause of action, of consumer fraud claims alleged under New York Gen. Bus. L. Sec. 349, and of consumer class action allegations, in action against client telecommunications company, leading to favorable settlement of remaining claims. See *Baytree Capital Assocs. v. AT&T Corp.*, 10 Misc. 3d 1053A, 809 N.Y.S.2d 480 (Sup. Ct. N.Y. Co. 2005).

On behalf of major heating oil distributor, obtained judgment against New York State insurance commissioner in New York Commercial Division, declaring that client's service contracts providing for cleanup of certain oil releases were not contracts of insurance, and dismissing Department's claims. See *Petro, Inc. v. Serio*, 9 Misc. 3d 805, 804 N.Y.S.2d 598 (Sup. Ct. N.Y. Co. 2005).

Defended major U.S. equipment manufacturer in New York federal court action alleging trademark and trade dress infringement, and trademark dilution, based upon client's use of yellow and green color schemes on lawn and garden machines; obtained judgment on the pleadings dismissing state and federal dilution claims, and summary judgment dismissing infringement claims on grounds of laches and esthetic functionality. See *Deere & Co. v. MTD Holdings, Inc.*, 2002 U.S. Dist. LEXIS 14799 (S.D.N.Y. Aug. 12, 2002); 2004 U.S. Dist. LEXIS 2550 (S.D.N.Y. Feb. 19, 2004); 2004 U.S. Dist. LEXIS 11707 (S.D.N.Y. Jun. 24, 2004).

Represented major international consumer products manufacturer in prosecuting Lanham Act false advertising claims, and New York consumer fraud claims, and in defending against false advertising and consumer fraud counterclaims, in two federal actions concerning advertising for oral care products; obtained favorable verdict after six-week jury trial in first action and favorable settlement in second action; subsequently advised client on various advertising issues that did not lead to litigation. See *Braun, Inc. and The Gillette Company v. Optiva Corp.*, 2000 U.S. Dist. LEXIS 2195 (S.D.N.Y. Feb. 25, 2000).

Represented plaintiff music publishing company in suit to enforce music publishing agreements against members of a leading R&B group; obtained summary judgment dismissing five of defendants' six counterclaims and related defenses, leading to favorable pre-trial settlement. See *Art of War Music Publishing, Inc. v. Andrews*, 2000 U.S. Dist. LEXIS 2509 (S.D.N.Y. Mar. 2, 2000).

Represented the estate of Audrey Hepburn in federal court suit against author and publisher of a biography falsely advertised as based upon taped interviews, and defeated defendants' summary judgment motion, leading to favorable settlement. See *Ferrer v. Maychick*, 69 F. Supp. 2d 495 (S.D.N.Y. 1999).

Represented plaintiff account party in obtaining preliminary injunction and summary judgment enjoining payment of irrevocable commercial letter of credit.

Obtained summary judgment dismissing trustee's claim for film royalties under Hollywood Film Trust Agreement, obtained affirmance on appeal. See *Raine v. RKO General, Inc.*, 1996 US Dist LEXIS 3508 (SDNY Mar. 25, 1996), *aff'd*, 138 F2d 90 (1997).

Other reported decisions: *Estate of Hogarth v. Edgar Rice Burroughs, Inc.*, 2001 U.S. Dist. LEXIS 6294 (S.D.N.Y. May 16, 2001); *Unique Industries, Inc. v. Lisa Frank, Inc.*, 1994 U.S. Dist. LEXIS 13590 (S.D.N.Y. Sept. 23, 1994); *Bear Stearns & Co. v. Underwriters at Lloyd's*, 1991 U.S. Dist. LEXIS 6376 (S.D.N.Y. May 14, 1991); *Hikers Industries, Inc. v. William Stuart Industries (Far East) Ltd.*, 640 F. Supp. 175 (EDNY 1986); *Celentano v. Furer*, 602 F. Supp. 777 (S.D.N.Y. 1985); *PPX Enterprises, Inc. v. MCA Inc.*, 273 A.D.2d 106 (1st Dep't 2000); *Jehle v. Adams Hotel Assocs.*, 264 A.D.2d 354, 695 N.Y.S.2d 22 (1st Dep't 1999)