

Case Study— Litigation Services

Herrick, Feinstein LLP Relies on LexisNexis® Sanction® to Present Evidence to Jurors in High-Stakes Trademark Trial.

Overview

Firm: Herrick, Feinstein LLP

Location: New York (with offices in Newark, N.J. and Princeton, N.J.)

Industry: Legal services

Customer Profile: Founded in 1928, Herrick, Feinstein LLP is one of the nation's most prominent midsize law firms, providing a full range of legal services to businesses and individuals around the world.

Business Situation: Herrick was retained by the producer of a premier electronic dance music event in a federal trademark infringement and breach of contract lawsuit against an electronic dance music record label. The case eventually went to trial in U.S. District Court in New York, and the Herrick litigators knew it would be important to visually illustrate their trademark infringement claims to jurors in a clear and persuasive manner.

Solution: The Herrick team relied on LexisNexis® Sanction® litigation presentation software to manage and present evidence throughout the trial. The litigators used Sanction to show the jurors compelling images that provided dramatic visual examples of how customers were confused by the defendant who allegedly traded off of the brand name and logo owned by Herrick's client.

Result: After a two-week jury trial—on the eve of the case going to the jury for deliberations—the defendant agreed to the terms of a settlement with Herrick's client. The favorable settlement protects the festival organizer's trademarks and expands its global music festival opportunities.

Product Summary:

Litigation Services

- Sanction
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Herrick, Feinstein LLP was founded in 1928 by Abraham Herrick and Abraham Feinstein—two young lawyers guided by entrepreneurial spirit and a steadfast commitment to the rule of law. Today, Herrick is a prominent 170-lawyer firm headquartered in New York City with two offices in New Jersey, providing a full range of legal services, including art law, bankruptcy and business reorganization, commercial litigation, corporate law, employment law, government relations, insurance, intellectual property, real estate, sports law, white collar criminal defense, and tax and personal planning.

Herrick's size provides the firm with the breadth and flexibility to assemble client service teams across practice areas and locations, without the layering and other inefficiencies common to bigger firms. From the receptionists who greet clients each morning, to the hundreds of staff members who work behind the scenes, to the skilled team of legal professionals, Herrick is committed to providing top-tier legal service to its clients.

Situation

A company that produces a premier electronic dance music festival was disturbed by, among other things, a development in 2009 when an electronic dance music record label adopted a new and similar name and logo.

The festival organizer retained local trademark counsel to draft a complaint against the record label for federal trademark infringement and breach of contract. Following the close of discovery in the lawsuit, the festival company decided it needed tough trial counsel with experience litigating complex cases in the Southern District of New York, as well as experience litigating intellectual property disputes in the entertainment industry. The company retained Herrick to try the case for them in front of a jury in U.S. District Court in Manhattan.

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—Steven Feldman, partner
Herrick, Feinstein LLP

“In consultations with our client, we determined early on that the best outcome would be a business agreement allowing both companies to leverage the other’s prominence in their respective markets, but we recognized that we could not reach that kind of agreement without first showing the strength of our case at trial,” said Steven Feldman, partner at Herrick, Feinstein LLP and the lead attorney in the case. “We focused on developing an aggressive trial strategy that would enable us to make a convincing case to the jury that the record label’s new logo was confusingly similar to the festival logo our client had been using for years.”

Relying on his experience gained as a federal prosecutor in the U.S. Attorney’s Office in Manhattan, Feldman knew it would be important to visually illustrate their trademark infringement claims to jurors in a clear and persuasive manner.

“Trademark infringement cases can be very complex and technical, so we needed jurors to be able to see the strength of our basic arguments in living color,” said Feldman. “We needed to put trial presentation technology to use in order to make the best case for our client.”

Solution

Feldman was familiar with a specific litigation presentation software product from his previous work in the U.S. Attorney’s Office.

“As a young lawyer, I grew up using Sanction®,” he said. “In fact, I think I used Sanction in every case I tried as a federal prosecutor and found it to be an effective weapon in front of juries.”

LexisNexis® Sanction® litigation presentation software provides litigators with a single resource to quickly assemble documents, exhibits, transcripts, questions, visuals and video that will be used to manage and present evidence throughout litigation. The software allows trial teams to categorize these items and then create clear, polished and compelling presentation materials necessary for building a case.

“This was a federal trademark case and we needed to prove to the jury that the defendant had intentionally changed their name and logo in order to take advantage of our client’s fame in the industry. By using Sanction, we were able to show the jury compelling images that clearly showed how the defendant’s logo, posters and events were eerily reminiscent of our client’s own logo, posters and events.”

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“Fortunately for those of us who practice in New York, the Manhattan courtrooms are already pre-equipped for high-tech trial presentations, so it really behooves litigators to take advantage of visual presentation technologies in order to make their cases as persuasive to jurors as possible,” said Feldman.

The Herrick team relied on Sanction to show the jurors compelling images that provided dramatic visual examples of how the defendant had confused customers by trading off of the festival producer’s name and logo. There were four primary uses of Sanction in the trial:

- To present basic case arguments in full-color, rather than simply by spoken narrative
- To highlight specific communications from executives at both companies, especially to impeach defense witnesses during cross-examination
- To show videotape of the festival, illustrating brand identification and logo usage at the event
- To display color versions of posters and Internet advertisements to show how the logos and names were used in a manner that caused public confusion

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Result

The litigation team from Herrick tried the infringement case before an eight-person jury for two weeks.

“This was a federal trademark case and we needed to prove to the jury that the defendant had intentionally changed their name and logo in order to take advantage of our client’s fame in the industry,” said Feldman. “By using Sanction, we were able to show the jury compelling images that clearly showed how the defendant’s logo, posters and events were eerily reminiscent of our client’s own logo, posters and events.”

The Herrick team agreed that Sanction was indispensable to them in making their presentation to the jury, providing dramatic graphic examples of what they argued were intentional efforts made by the defendant to confuse customers by trading off of their client's name.

"We especially benefitted from the contributions of the Sanction consultants, who put in long hours working with our team members to prepare for trial and supported our efforts at trial with exceptional ability," said Feldman. "Trial can be an overwhelming endeavor and the Sanction consulting team worked long days and long nights, as well as weekend time, to assist us and did so with a fantastic attitude and without complaint."

On the eve of the case going to the jury for deliberations, the record label agreed to the terms of a settlement with Herrick's client. The favorable settlement protects the festival producer's trademarks and expands its global music festival opportunities, which was the original business objective laid out when the trial team initially discussed legal strategy with the client.

"For complex litigation, I think it's essential that litigators use trial presentation technologies such as Sanction," said Feldman. "The ability to tell a story to jurors with visual messages and images is critical to persuading them on your arguments, especially when the legal issues involved can be difficult for average citizens to sort out on their own."

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