



2020 MVP

Dale Cendali

Dale Cendali, a partner at Kirkland & Ellis LLP, scored a rare 9-0 victory at the U.S. Supreme Court for Lucky Brand in a long-running trademark fight and successfully fought off infringement claims in the growing video game space, landing her a spot among Law360's 2020 Intellectual Property MVPs.

Her Biggest Accomplishment This Year:

Cendali, who chairs Kirkland's copyright, trademark, internet and advertising practice group, won a unanimous ruling at the Supreme Court in May on behalf of Lucky Brand, convincing all nine justices to overturn a Second Circuit decision barring the jean maker from raising certain new defenses during its trademark battle with Marcel Fashions Group.

Marcel Fashions, a small apparel maker that does business as

Get Lucky, had accused Lucky Brand of copying its trademarks, spurring two decades of litigation.

Cendali told Law360 that the Second Circuit's ruling, if allowed to stand, would have forced plaintiffs to bring all possible defenses during early phases of litigation, or else forgo the chance to raise that defense later on.

"Not only was it obviously a major win for our client, but we think it's an extremely important decision in terms of clarifying the law with regard to claim and issue preclusion," Cendali said. "Had we

lost, it would have had very bad implications for civil procedure, not just in IP but generally."

Her Biggest Challenge This Year:

Cendali waded into a budding area of IP law when she successfully helped Take-Two Interactive Software Inc. and Epic Games beat infringement claims over the companies' hit video games, NBA 2K and Fortnite, respectively.

In March, Cendali won summary judgment on behalf of Two-Take's

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subsidiary 2K Games, after a company called Solid Oak Sketches LLC claimed that the video game maker infringed copyrighted tattoos depicted on LeBron James and other NBA players.

In the first ruling to address the copyright implications behind tattoos, a New York federal judge found that the tattoo artists would have known that the players were likely to make public appearances when tattooing them, and that the video game maker's depiction of those tattoos constituted fair use.

And in May, Cendali helped convince a Maryland federal judge to throw out a lawsuit brought by two former University of Maryland basketball players accusing the Fortnite maker of ripping off their viral "Running Man" dance move in the game.

Cendali was tasked with applying established copyright and trademark law — traditionally used in claims over books and artwork — to the newer video game medium.

"Video games are a new art form, and there's not a tremendous amount of case law applying copyright and trademark principles to video games," she said. "We had

to explain how video games and that art form related to these existing bodies of law — and why when you did that, it suggested that our client should win."

She added that she enjoys working "on the cutting edge."

"These video game cases are also, personally, very satisfying as you feel like you're protecting an important new art form that people really love and enjoy," she said.

Why She's an IP Attorney:

The president of the Yale Dramatic Association while in school, Cendali knew when she entered law school that she wanted to use her law degree to protect the arts and creators.

Her passion for the arts has persisted throughout her 25-year career: She has seen every show on Broadway, including "Hamilton" four times, and she currently serves on the board of the American Theatre Wing.

"As time has passed, intellectual property has become — including copyright and trademark issues — increasingly important to society, culture and business, with the advent

of the internet and Silicon Valley, etc., and it's incredibly exciting and rewarding to get to do this," she said. "I don't consider it a job; I consider it a fun opportunity."

Her Advice for Junior Attorneys:

Cendali said she would encourage younger IP lawyers to "choose the field because you're genuinely interested in it," and to "leave your office and get out there in the real world."

"By that I mean, get involved in bar associations, write articles, give speeches, show that you have more to offer, that you really are an expert. If you do those public-facing things, more likely you will get the call, either from within your own law firm or external clients, to handle a matter," she said. "But you need both the expertise, and people have to know you have the expertise."

She has also imparted her expertise on lawyers-to-be for more than a decade as an adjunct lecturer at Harvard Law School, where she teaches copyright and trademark law.

"I do that because I'm so passionate about advancing copyright and trademark law and about trying to be a mentor and teaching younger lawyers, or wannabe lawyers, about the law and how to actually litigate the cases, the strategy, the art of litigation," she said. "It's like putting on a show."

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Other Notable Cases She's Worked on:

Cendali secured a favorable settlement in January on behalf of publishers that had accused Audible, Amazon.com Inc's audiobook platform, of infringing their copyrights with the platform's new captions feature, which would have converted the audiobook to text. As part of the confidential settlement, Audible agreed to a permanent injunction blocking the launch of the captions service.

In an important case for authors and the publishing industry, the

publishers had argued that while Audible had a license for the books' audio, the company did not have a license for the text.

"It helped to protect the incentives in the Constitution for copyright owners to be fairly compensated for their work so they're incentivized to create new work. Everybody benefits from the creation of new copyrighted works," Cendali said. "I'm proud of the fact that this case helps preserve those incentives."

Cendali is also currently representing Delta Air Lines in a trademark infringement lawsuit in Georgia

federal court against Marriott International over the hotel chain's brand of hotels known as Delta Hotels.

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