

Dale Cendali



Dale Cendali of Kirkland & Ellis LLP’s intellectual property practice won a precedent-setting trial on realistically depicting celebrities, preserved a soft drink giant’s branding and protected a defense contractor’s use of mission-critical software, earning her a spot as one of the 2024 Law360 Intellectual Property MVPs.

Her biggest accomplishment this year:

The victory for video game makers 2K Games Inc. and Take-Two Interactive Software Inc. at a jury trial in April, which was featured in Law360’s biggest copyright cases of 2024, was the veteran attorney’s most significant accomplishment this year, Cendali told Law360 in a recent interview. LeBron James’ tattoo artist claimed copyright infringement over portrayals of the basketball star’s tattoos in the video game series NBA 2K, but the jury for the first time found that a tattoo artist had granted an implied license to the client that allowed them to publicly show their tattoo, Cendali said.

“It’s an important case establishing what the rights are of tattooed people,” but it’s also a boon for the tattoo industry, according to Cendali.

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“I think it would be a real chill on getting a tattoo if you thought you had to run back to your tattooist every time you wanted to be seen with your tattoo.”

The IP maestro even had the chance to question James, playing a video of “gripping, candid” testimony during the trial wherein the Los Angeles Lakers’ power forward objected to the tattoo artist’s interference with decisions about who can depict his likeness, according to Cendali and court filings.

Why she’s an IP attorney:

Cendali recalled that, while on her way to a job interview for a summer associate position as a student, she read that 92% of lawyers are bored by their jobs, and she vowed to herself never to end up that way. During her undergraduate years, Cendali led the Yale Dramatic Association and her passion for creativity led her into IP law, where creators’ rights are tested.

A conscientious comic book lover, Cendali said her sense of justice runs deep.

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Her biggest challenge this year:

Aside from the aforementioned NBA 2K case, Cendali had two more particularly challenging suits to handle. She guided defense contractor Astronics Corp. to a win against a competitor, Teradyne Inc., which sued Astronics over its use of copyrighted code from Teradyne's software in the course of its contracting with the U.S. military.

Electronics in fighter jets and intercontinental ballistic missiles were tested using code developed by Teradyne for the military at first, and Astronics was then hired to adapt that code so it could be used to test other equipment,

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according to Cendali. Teradyne had stopped support on the original code, rendering it obsolete and presenting the military with a choice between starting over from scratch or reworking the salvageable portions, she said.

A California federal judge found that Astronics' use of Teradyne's code was fair use because of the potentially "catastrophic" errors that can occur in rewriting software aimed at testing lethal military hardware, according to the December 2023 decision.

"To me, that was a seminal point in the decision: The court noted that there could have been a catastrophic list at risk of failure if the systems were not compatible," Cendali said.

She also rose to the occasion in another case, coffee company Rise Brewing Co.'s suit against PepsiCo Inc. over the name of its "Mtn Dew Rise" beverage. A New York federal judge initially issued an injunction in 2021, but a Second Circuit panel lifted that order in 2022 and Cendali advised Pepsi when the case moved back to New York's Southern District.

Ultimately, the court found that Rise Brewing's trademark was weak, since people have strong, reasonable associations between the word "rise" and coffee in general. The case hinged in part on Rise Brewing's application for a

trademark, in which the company noted "that it was a crowded field, that many people were using the word 'rise' for coffee and that they could all coexist," Cendali said.

Cendali successfully argued that the company's position expressed to the trademark authorities should apply equally to its lawsuit against Pepsi.

Her proudest moment this year:

In a year of victories, Cendali said the camaraderie of her team is what makes her most proud. Witnessing "not just everybody's talent, but the friendliness" brings up a warm memory of her crew donning fake tattoos to celebrate when the jury turned in its verdict in the NBA 2K case.

"I'm just very proud to be working with such a really talented, close-knit team that you could enjoy being around at 3 in the morning," Cendali said. "When we do these cases or do these trials, it's 100% not just me."

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