



Sean P. Flynn

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RELATED SERVICES

- Commercial Litigation
- Class Action Defense
- Consumer Financial Services
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OVERVIEW

Sean Flynn is a Partner and a member of the firm's Commercial Litigation, Class Action, and Intellectual Property groups. Sean has extensive experience representing clients in complex/class action litigation, arbitration and mediation proceedings nationwide. Prior to private practice, Sean was a Research Attorney in the Los Angeles County Superior Court, Complex Litigation Division. During his time working with the Trial Court Judges Sean worked primarily on consumer Class Action and product liability Mass Tort litigation.

Sean's Financial Services experience ranges from consumer disputes regarding credit and debt disputes to partnership disputes concerning multimillion dollar financing disputes. In connection with this broad

spectrum of litigation, Sean has represented clients ranging from multi-national corporations to small regional operations, and even individual clients.

Sean's areas of Intellectual Property experience include: automotive, digital art (creation and distribution), film, fashion, and music (publishing and recording). Within these creative fields, Sean has handled corporate and transactional work for individuals and corporations, as well as litigating multi-million dollar claims regarding copyright, patent and/or trademark infringement, false advertising, and/or unfair business practices. Sean's litigation experience has involved both regional and international sales and distribution of goods and services on behalf of plaintiffs and defendants.

Sean's tort and product liability experience includes injury and wrongful death cases arising from product liability related to automotive devices, medical devices, and nutraceuticals.

REPRESENTATIVE EXPERIENCE

Arbitration:

- Obtained dismissal with prejudice on behalf of our client, a debt collection company. Plaintiff contended that the initial debt collection validation letter he received was confusing and in violation of the Fair Debt Collection Practices Act because it purportedly misrepresented to the original creditor was for the underlying debt. The trial court granted our client's motion to compel arbitration and dismissed the matter. Plaintiff did not pursue arbitration.

Business Contract:

- Represented a video game producer in a breach of contract arbitration brought by the manufacturer of a popular line of dolls. The doll maker entered into a contract with our client to develop and market a line of games based on the dolls. A dispute developed over the sufficiency of our client's efforts. The doll maker terminated the license agreement and demanded arbitration, claiming that our client owed it damages. At arbitration, it was established that the doll manufacturer pretextually terminated the contract so that it could obtain a better deal elsewhere, and it was the client, not the doll maker, that was entitled to its lost profits. The arbitrator awarded our client over \$14 million in damages and attorneys fees.
- Successfully settled a case where Plaintiff, a manufacturer of commercial fitness equipment, brought suit alleging that the client breached its warranty obligations relative to some alleged defective product. Our client counter claimed for \$3.6 million in overdue receivables. Before trial, Plaintiff stipulated to owing our client \$3.55 million. After pre-trial motions and a ruling during the first day of trial, Plaintiff's \$35 million claim was reduced to less than \$2.3 million. The case settled in light of the stipulated claim.

Class Actions:

- Three named plaintiffs asserted violations of the Telephone Consumer Protection Act in a putative class action contending that our client improperly contacted them using an Automatic Telephone Dialing System in the attempt to collect debts that were not disputed to have been owed to various credit originators. After the completion of class discovery, plaintiffs filed a motion seeking class certification. Our client was able to demonstrate as to each of the 3 named plaintiffs that they had provided their cellular telephone numbers in connection with the underlying debts. Therefore, under the Telephone Consumer Protection Act, and the case authority interpreting this statute, each of the plaintiffs were deemed to have provided consent to being called by a debt collection company using an Automatic Telephone Dialing System. As such, the district court denied class certification on these grounds.
- Plaintiff asserted violations of the Telephone Consumer Protection Act the putative class action contending that our client improperly contacted him using an ATDS in the attempt to collect a debt that was not disputed to have been owed to his creditor. Our client filed a motion to compel arbitration. In light of the original creditor's contract with plaintiff. Prior to the hearing on this motion, the matter was resolved amicably on an individual basis.
- Lead counsel for COO of dietary supplement corporation involved in a nationwide class action, with 30 related individual personal injury actions concerning allegations of contamination.

Copyright:

- A copyright holder sent a letter to our client, a large Internet retailer, alleging that infringing copies of his film were likely to be offered in the future by third parties using the client's site. After a third party later offered the work on the client's site, the plaintiff filed suit. We obtained summary judgment in our client's favor based on the defenses for Internet service providers contained in the Digital Millennium Copyright Act. The court held that a DMCA notice is effective only if the work is actually listed on the Web site on the day that the notice was received. In other words, a copyright holder cannot send a prophylactic notice covering expected future acts of infringement. This would have the effect of improperly shifting the burden of policing the content to the service provider. Decision at 298 F. Supp. 2d 914.

False Advertising:

- Plaintiff, a manufacturer of automotive supercharger systems, brought suit against its main competitor. Plaintiff alleged that our client engaged in false advertising with respect to performance claims. Our client brought counterclaims against the plaintiff, claiming similar violations in Plaintiff's advertising. After defeating plaintiff's motion for a preliminary injunction, and obtaining dismissal of Plaintiff's attempt to add new claims, and conducting expert-supervised testing of the parties' respective advertising claims, the case was resolved.

Product Liability:

- The lead defendant manufactured a variety of dietary supplements. The plaintiffs were consumers who alleged that they were injured by various adulterants in the supplements. The lead defendant argued that the supplements were not adulterated, and even if they were adulterated, any adulteration would have been done by the Chinese supplier of the constituent herbal compounds. Our client was a former officer of the company, and brother to one of its founders. After establishing that our client did not have knowledge of the formulas used, and was not directly involved in manufacturing, we obtained his dismissal from most of the cases. The lead defendant then settled the remaining cases.

Right of Publicity:

- Plaintiff, a manufacturer of ATV racing parts, sued a competitor for the use of a photograph of an ATV racer formerly sponsored by the competitor. After thwarting Plaintiff's efforts to drive up the costs of litigation with oppressive discovery, we resolved the case relatively early on confidential terms favorable to our client.

TCPA:

- Plaintiff claimed, among other things, that our client violated the TCPA by improperly attempting to collect a debt that plaintiff did not dispute owing by improperly using an ATDS without her consent. Our client filed a motion for summary adjudication as to the TCPA cause of action. Our client was able to demonstrate that its dialing equipment did not have a random or sequential number generator, which a plaintiff must prove in order to establish liability against any defendant pursuant to the TCPA. Our client obtained was believed to be the first summary adjudication order on this issue in California.

Trademark:

- Our client, the U.S. distributor for a famous fuel saving device, brought suit against the foreign manufacturer of the device. Our client had been marketing the devices in part using a series of infomercials. The foreign manufacturer and infomercial company terminated their contracts with our client, and began selling the products using the trademark that our client had registered years earlier. We obtained a verdict in our client's favor. After a two-week bench trial, the Court found that our client's trademark registration was incontestable, and rejected each of the grounds for cancellation of the registration advanced by the defendants. The court therefore found the defendants liable for willful trademark infringement and counterfeiting, and awarded substantial damages to our client. While post-trial motions were pending, the infomercial company settled. The Court awarded nearly \$3.5M in damages and attorney's fees in our clients' favor. The non-settling foreign manufacturer has appealed.
- Our client, a major online retailer, was sued for trademark infringement by a musician who claimed that another artist had stolen his name, and was using our client's site to sell his works. After minimal focused discovery into the extent of use by the plaintiff, we successfully moved for summary judgment on the basis that the plaintiff's sporadic and minimal use of the name constituted abandonment of his trademark rights.

Trade Secrets:

- Plaintiff custom millwork (architectural moldings) shop sued a former employee and his new company. Plaintiff alleged that the former employee misappropriated trade secrets and copied Plaintiff's products and catalogs. After we established that no trade secrets were used, that customers approached our client on their own, and that Plaintiff's works were either unprotectable or not copied, the case was then resolved on favorable terms.
- A German manufacturer of rotary forging machines (used to manufacture automotive wheels) brought suit against another manufacturer and its customer. The plaintiff alleged that the competing machine was made using plaintiff's trade secrets. Defendants denied that Plaintiff's machine contained any trade secrets, and argued that no trade secrets were used in the manufacture of Defendants' competing machine. After pre-trial motions were filed, the case was resolved on confidential terms.

PRESENTATIONS

- *Have We Spoken About Spokeo?* ACA Convention, July 2017
- *Documentation and Attorney Involvement: Breaking Plaintiff's Game*, ACA Convention, November 2016
- *Preparing a Corporate Witness Designee*, ACA Convention, November 2015
- *Taking a Case to Trial*, ACA Convention, Chicago, July 2014

CREDENTIALS

Admissions

- California
- Nevada
- U.S. District Court, Central, Southern, Eastern, and Northern Districts of California
- U.S. District Court, Nevada
- U.S. District Court, Northern District of Illinois
- U.S. District Court, Northern and Southern Districts of Indiana
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Eastern District of Missouri
- U.S. Court of Appeals for the Seventh and Ninth Circuits
- Supreme Court of the United States

Memberships

- Federal Bar Association
- ACA International

Education

- J.D., Pepperdine University, 2001
- M.B.A., Information Technology, Pepperdine University, 2000
- B.A., Business Administration, University of the Pacific 1997

Honors

- *Best Lawyers in America*® distinction in Consumer Protection Law (2018-2023)