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Experience

Mr. Ballon's Practice

Ian has successfully represented numerous defendants in cybersecurity, data privacy, AdTech and TCPA putative classaction suits throughout the United States.

He has also successfully represented defendants and plaintiffs in copyright, trademark, right of publicity, trade secret, AI/data portability/screen scraping, domain name and other IP lawsuits, including content moderation claims raising the DMCA, CDA, innocent printer and other defenses under state and federal law, the First Amendment, and the dormant Commerce Clause.

Selected Representative Matters

U.S. Supreme Court

- Lead counsel to The McClatchy Company (formerly to Knight-Ridder, before its acquisition by The McClatchy Company) in *Reed-Elstvier, Inc. v. Muchnick*, 559 U.S. 154 (2010). The case involved putative copyright class action suits brought by freelance authors against database companies and newspaper publishers over the digitization of works in electronic databases, which continued in litigation before the Second Circuit and Southern District of New York through 2019.

U.S. Circuit Courts

- Lead counsel to AJ Press, Inc., the publisher of *Punchbowl News*, in successfully winning judgment on the merits in a trademark infringement suit, based on the First Amendment, in *Punchbowl, Inc. v. AJ Press, Inc.*, 52 F.4th 1091 (9th Cir. 2022), *aff'g*, 549 F. Supp. 3d 1061 (C.D. Cal. 2021). Ballon and his team previously were successful in obtaining dismissal of an earlier lawsuit that was filed in Virginia. *See Punchbowl, Inc. v. AJ Press, Inc.*, Case No. 1:21-cv-00136, 2021 WL 1178070 (E.D. Va. 2021) (dismissing plaintiff's suit for improper venue and forum shopping).
- Lead counsel in obtaining summary judgment for Yahoo and excluding plaintiff's four expert reports in a ruling affirmed on appeal in *Dominguez v. Yahoo! Inc.*, 894 F.3d 116 (3d Cir. 2018). *Dominguez* was the first Circuit Court opinion to hold that a putative data privacy class action suit under the TCPA is only actionable if an ATDS has the capacity to generate numbers randomly or sequentially – a position ultimately adopted by the U.S. Supreme Court in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021).

- Lead counsel to Yahoo, eNom, and Neustar in obtaining dismissal with prejudice before the trial court and prevailing on appeal in the Third Circuit in *Obado v. Magedson*, 612 F. App'x 90 (3d Cir. 2015), *aff'g*, Civil No. 13-2382 (JAP), 2014 WL 3778261 (D.N.J. July 31, 2014) (granting judgment under 47 U.S.C. § 230(c)(1) on multiple tort and privacy claims arising out of the publication and distribution of, and links to, various blog posts).
- Represented the prevailing defendant in *Thomas v. Taco Bell Corp.*, 582 F. App'x. 678 (9th Cir. 2014), the appeal of a putative data privacy TCPA class action case alleging both direct and vicarious liability for the transmission of text messages.
- Lead counsel to the prevailing defendant in *Obodai v. Cracked Entertainment Inc.*, 522 Fed. App'x 41 (2d Cir. 2013) (affirming summary judgment based on the defendant's entitlement to the DMCA safe harbor for material stored at the direction of a user).
- Represented eNom, Inc. in submitting an amicus brief in support of the prevailing party in *Petroliam Nasional Berhad v. GoDaddy.com, Inc.*, 787 F.3d 546 (9th Cir. 2013) (holding that the Anti-Cybersquatting Consumer Protection Act does not allow claims for contributory liability).

Selected Federal and State Trial Court Cases

- Represented the defendant in obtaining dismissal of plaintiff's copyright infringement suit brought over alleged user infringement on the popular app Likee, in *BMG Rights Management (U.S.), LLC v. JOYY Inc.*, ___ F. Supp. 3d ___, 2022 WL 17578247 (C.D. Cal. Dec. 22, 2022).
- Lead counsel to the defendant in obtaining dismissal of a putative cybersecurity breach class action suit in *Stamat v. Grandizio Wilkins Little & Matthews, LLP*, Civil Case No.: SAG-22-00747, 2022 WL 3919685 (D. Md. Aug. 31, 2022).
- Lead counsel to Decibel in obtaining dismissal of a putative data privacy class action suit in *Massie v. General Motors LLC*, Civil Action No. 21-787-RGA, 2022 WL 534468 (D. Del. Feb. 7, 2022). Ballon previously was lead counsel in obtaining transfer of the case from the Eastern District of California to the District of Delaware. *See Massie v. General Motors Co.*, Case No. 1:20-cv-01560-JLT, 2021 WL 2142728 (E.D. Cal. May 26, 2021).
- Lead counsel to Minted in *Atkinson v. Minted, Inc.*, Case No.: 3:20-cv-03869-VC, 2021 WL 6028374 (N.D. Cal. Dec. 17, 2021). The lawsuit was the first CCPA putative class action suit where a federal court approved a class action settlement. *See also Atkinson v. Minted, Inc.*, Case No.: 3:20-cv-03869-VC, 2021 WL 2411041 (N.D. Cal. May 14, 2021) (preliminarily approving the class settlement).
- Lead counsel to defendants in defeating plaintiffs' motion for MDL certification in 6 putative cybersecurity breach class action suits brought under the CCPA and the laws of various states in federal courts in Dallas and California. *In re Dickey's Barbecue Restaurants, Inc., Customer Data Security Breach Litigation*, 521 F. Supp. 3d 1355 (MDL 2021) (denying plaintiffs motion to consolidate cases in California).
- Lead counsel to digital music services SoundCloud and Deezer in obtaining dismissal of novel copyright infringement claims premised on pre-1972 sound recordings. The case had been brought as a putative copyright class action suit. *Ponderosa Twins Plus One v. iHeart Media, Inc.*, Case No. 3:16-cv-5648-VC, 2020 WL 3481737 (N.D. Cal. June 26, 2020).
- Successfully defended eBay in *Blazer v. eBay, Inc.*, Case No. 1:15-CV-01059-KOB, 2017 WL 1047572 (N.D. Ala. Mar. 20, 2017) (granting summary judgment for eBay on claims of direct and contributory patent infringement).

- Successfully defended a mobile phone manufacturer in *In re Carrier IQ, Inc., Consumer Privacy Litigation*, 856 F. Supp. 2d 1332 (J.P.M.D.L. 2012), a multidistrict putative security breach and data privacy class action suit brought against mobile smartphone manufacturers and a software company involving data allegedly collected by diagnostic software on consumer smartphones. *See also In re Carrier IQ, Inc. Consumer Privacy Litigation*, 78 F. Supp. 3d 1051 (N.D. Cal. 2015) (granting in part defendants' motion to dismiss ECPA and other claims).
- Lead counsel in defeating class certification in *Sherman v. Yahoo! Inc.*, No. 13cv0041–GPC–WVG, 2015 WL 5604400 (S.D. Cal. Sept. 23, 2015).
- Represented Google before the trial court in *Oracle America Corp. v. Google, Inc.* (holding that Google's use of application programming interface (API) packages in connection with original code for the Android operating system did not infringe Oracle's copyrights in Java).
- Lead counsel in successfully representing defendants in TCPA putative class action suits brought over confirmatory text messages, including *Ibey v. Taco Bell Corp.*, 2012 WL 2401972 (S.D. Cal. 2012), *appeal dismissed*, No. 12-56482 (9th Cir. 2012).
- Lead counsel for eBay, Inc. in *Inman v. Technicolor USA, Inc.*, Civil Action No. 11–666, 2011 WL 5829024 (W.D. Pa. Nov. 18, 2011), in obtaining judgment in a toxic tort and product liability case brought in the Western District of Pennsylvania based on federal preemption under the Communications Decency Act (CDA).
- Successfully represented the advertiser defendants (CBS, Mazda, McDonald's and Microsoft) in *Bose v. interclick, Inc.*, No. 10 Civ. 9183(DAB), 2011 WL 4343517 (S.D.N.Y. Aug. 17, 2011) in obtaining dismissal with prejudice of a putative privacy and behavioral advertising class action suit involving alleged use of flash cookies and browser sniffing.
- Lead counsel in representing MySpace in defense of a data privacy putative class action suit alleging that personal information was transferred to third party advertisers. *See Leong v. Myspace, Inc.*, No. CV 10–8366 AHM (Ex), 2011 WL 7808208 (C.D. Cal. Mar. 11, 2011) (transferring the case to New York, where the action ultimately was dismissed).
- Lead counsel in obtaining judgment for Yahoo! in *Brendan N. Fleming, LLC v. Duncan*, Case No. 2010CV0966 (Columbia Cty., Ga. Sup. Ct. 2010), a defamation case brought in state court in Georgia, based on federal preemption under the CDA.
- Represented Yahoo! and Microsoft in defense of a copyright infringement suit involving digital music which settled on confidential terms after two favorable rulings: *MCS Music America Inc. v. Yahoo! Inc.*, No. 3:09-cv-00597, 2010 WL 500430 (M.D. Tenn. Feb. 10, 2010) (limiting the number of copyrighted works at issue); *MCS Music America Inc. v. Yahoo! Inc.*, No. 3:09-cv-00597, 2009 WL 4348593 (M.D. Tenn. Nov. 24, 2009) (dismissing MCS America's copyright infringement claims against Yahoo! and Microsoft with prejudice).
- Represented eNom, Inc., the world's largest domain name wholesaler, as lead counsel in successfully defending claims arising out of the transfer of domain names pursuant to a court order.
- Lead counsel to MySpace, Inc. in *MySpace, Inc. v. Wallace*, 498 F. Supp. 2d 1293 (C.D. Cal. 2007) (enjoining a defendant under the CAN-SPAM Act and resulting in 2008 in a judgment of over \$230,000,000).
- Represented Sony Pictures Entertainment, Inc. in a copyright infringement suit involving user generated content.
- Lead counsel in obtaining a \$6 million judgment for an Internet company following a one week arbitration trial in a case involving Lanham Act and federal and state anti-spamming and breach of TOU claims.
- Lead counsel to eBay, Inc. in copyright infringement, DMCA, and Lanham Act cases in the Central District of California.
- Represented Cafe Press in defense of a privacy and right of publicity case involving the issue of federal preemption of secondary liability claims, in *Curran v. Amazon.com, Inc.*, 86 U.S.P.Q.2d 1784 (S.D.W. Va. 2008).

- Lead Counsel to MySpace, Inc. in *MySpace, Inc. v. TheGlobe.com, Inc.*, 2007 WL 1686966 (C.D. Cal. 2007) (granting summary judgment under the CAN-SPAM Act, California's anti-spamming statute and for breach of MySpace's Terms of Use, including its \$50 per email liquidated damages clause).
- Lead Counsel to clients in sponsored link cases brought under the Lanham Act in federal courts in California and Virginia.
- Lead counsel to the prevailing plaintiff in *Garden of Life, Inc. v. Letzer*, 318 F. Supp. 2d 946 (C.D. Cal.2004), one of the only cases where domain names were transferred to a plaintiff on motion for preliminary injunction, rather than following trial or summary judgment.
- Lead IP Trial Counsel to Hewlett Packard Co. in *FoodMarketPlace.com, Inc. v. Hewlett Packard Co.*, a case brought in the Central District of California in which the plaintiff sought \$100 million for the alleged copyright infringement of the source code for a web-based business, among other claims. The case eventually settled.
- Lead Counsel to the prevailing party in *MCSi, Inc. v. Woods*, 290 F. Supp. 2d 1030 (N.D. Cal. 2003), which for many years was the only reported decision in California in which a company prevailed in the defense of an anti-SLAPP motion brought by a DOE defendant in a case involving anonymous Internet misconduct.
- Represented Fox Group and Vivendi Universal Entertainment LLLP (and briefly Metro-Goldwyn-Mayer Studios Inc. and Columbia Tri-Star Film Distributors Int'l, Inc.) in the defense and settlement of *Not the Enemy Media v. Universal Studios Consumer Products, Inc.* in federal court in San Francisco.
- Amicus counsel to a group of organizations of copyright owners in *MGM Studios, Inc. v. Grokster, Ltd.*, 380 F.3d 1154 (9th Cir. 2004), vacated, 545 U.S. 913 (2005).
- Litigated disputes involving anonymous and pseudonymous Internet tortfeasors and infringers, phishing, Internet and computer privacy rights, the First Amendment and deleted e-mail communications and other electronic evidence.
- Represented GTE Service Corp. (now Verizon) in defeating a nationwide injunction in a copyright infringement suit alleging infringement of hundreds of alleged works.
- Lead Counsel in litigating novel, Internet-related claims in *Visto Corp. v. Benchmark Print Supply* (pernicious spoofing and spamming) and *San Jose Mercury News, Inc. v. Royal* (wrongful diversion of Internet traffic).
- Lead Counsel for GTE Government Systems in *GTE Government Systems v. Patrick* (Santa Clara County Superior Court, 1998) in obtaining one of the only temporary restraining orders ever entered in California based on the inevitable disclosure doctrine.
- Represented clients in numerous computer software copyright and trade secret cases, database/screen scraping suits, and in the defense of copyright and internet-related putative class action suits.