



Heather J. Kliebenstein

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Heather Kliebenstein practices in the field of intellectual property litigation, including patent, trademark and copyright litigation and enforcement. Heather has been involved in elements of civil litigation and Trademark Trial and Appeal Board proceedings, including appellate work in several circuits.

Heather's technical training in college was in environmental science, which involved a significant chemistry and biology component, including organic chemistry. In practice, she has used her technical background to assist in prosecuting patents relating to chemical compounds for cleaning and sanitation. Heather's patent litigation work has involved technologies such as database software, air filter technology, paper towel dispensers, footwear and other apparel, cable modems, business methods and a number of other areas.

Heather also specializes in trademark infringement and counterfeiting matters and has published several articles regarding anti-counterfeiting strategies and remedies trademark owners can obtain against counterfeiters. She routinely represents clients involved in domestic and foreign trademark opposition and cancellation proceedings. Heather is also experienced in prosecuting copyright applications for clients, including a broad range of visual arts, literary works and software.

Heather was an instructor for the University of Minnesota Moot Court and Legal Writing course for 2007-2008 and a coach for the University of Minnesota Giles Rich Moot Court Competition team from 2007-2008 and 2008-2009

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New York

Seattle

Washington DC

Heather J. Kliebenstein (continued)

Education

Iowa State University
B.S., Environmental Sciences, magna cum laude, 2000
Phi Beta Kappa

University of Texas School of Law
J.D., cum laude, 2004

Bar Admissions

Minnesota State Bar, 2004
U.S. District Court, District of Minnesota, 2004
11th Circuit, 2007
Wisconsin State Bar, 2008
8th Circuit, 2008

Publications

Hosted International Trademark Association Roundtable, *Anticounterfeiting Issues* (February 2010)

Co-author of update to *Intellectual Property Counseling and Litigation, Ch. 59, Copyright Causes of Action*, Matthew Bender (2009)

Prioritizing resources and organization for Intellectual Property Act of 2008, by Chris Schulte and Heather Kliebenstein, 361 ITMA Review 22 (December 2008)

Beyond the Blue Box: Landlord, Franchisor, and Manufacturer Post-Tiffany Liability for Contributory Trademark Infringement, Intellectual Property Today (November 2008)

Post-Tiffany Liability For Contributory Infringement, IP Law360 (August 15, 2008)

Fighting Counterfeiting and Piracy, IP Law360 (July 23, 2007)

Counterfeiting and Piracy: Federal Statutory, Criminal and Regulatory Tools, The M&G Edge (June 2007)

MedImmune: More Leverage, Law Week Colorado (May 14, 2007)

Does Phillips v. AWH Mean the Life is Out of the "Life and Meaning" Test for Whether Claim Preambles are Limitations?, American Intellectual Property Law Association (summer 2007)

Recent Federal Circuit SanDisk Decision Affirms MedImmune, Giving Licensees More Leverage, Merchant & Gould White Paper (2007)

What's in the Toolbox, Protecting and Collecting: Advising Business Clients Victimized by Pirates and Counterfeiters, Washington State Bar Association (2007)

Supreme Court Decision Gives Licensees Leverage, IP LAW 260 (2007)

Parody Brand Leaves Louis Vuitton Licking its Wounds, The Journal of the Institute of Trade Mark Attorneys (2007)

Transacting the Information Marketplace: Infringement is Easy, and Easily Avoided, Minnesota Bench & Bar (2005)

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Heather J. Kliebenstein (continued)

Notable Cases

Odom's Tennessee Pride Sausage Company v. FF Acquisition, LLC, 600 F.3d 1343 (Fed. Cir. 2010) – Successfully defended appeal of TTAB Order before the Court of Appeals for the Federal Circuit.

Champagne Louis Roederer v. J. Garcia Carrion, S.A. and Friend Wine Marketing, Inc., d/b/a CIV USA, 569 F.3d 855 (8th Cir. 2009) – Represented plaintiff relating to CRISTAL champagne mark in successful appeal.

CHS Inc. v. AgPro Industries, LLC (N.D. Ga. 2009) – Prosecuted trademark, unfair competition and cyber-squatting action relating to AGPRO mark.

Odom's Tennessee Pride Sausage Company v. FF Acquisition, LLC, 2009 TTAB LEXIS 261 (TTAB April 17, 2009) – Defended trademark opposition and prevailed on summary judgment that there was no likelihood of confusion between the design marks at issue.

Rudolph Technology and August Technologies Inc. v. Camtek Inc., 05-cv-01396 (D. Minn. 2009) – Briefed, argued and won pretrial motions including bifurcation of inequitable conduct claim.

SemBioSys Genetics, Inc. v. Mars, Inc., Opposition No. 91178273 (TTAB 2009) – Prosecuted trademark opposition involving the mark SEMBIOSCIENCE and defeated summary judgment motion regarding likelihood of confusion.

Gander Mountain Company v. ELM Development, LLC, Cancellation No. 92046965 (TTAB 2008) – Defended trademark cancellation involving the mark GANDERGUNMEN for hunting videos and defeated summary judgment motion.

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CHS Inc. v. Sun Country Seeds (D. Minn. 2008) – Prosecuted trademark and unfair competition action in the U.S. and Canada relating to FEATHERED FRIENDS mark.

Atlanta

Armentrout, Roebuck, Matheny Consulting Group., P.C. v. Jackson County Water and Sewage Authority, No. 07-12222 (11th Cir. Dec. 19, 2007) – Briefed, argued and won appeal in copyright case regarding implied license to use architectural designs.

Denver

BioScan, Inc. v. Biolight Patent Holding AB, Cancellation No. 92027044 (TTAB April 25, 2007) – Prosecuted trademark cancellation action involving the mark BIOLIGHT for light therapy products as used on live-stock.

Knoxville

Kohler Co. v. Baldwin Hardware Corp., 82 U.S.P.Q.2d (BNA) 1100 (TTAB 2007) – Prosecuted trademark cancellation action against decorative hardware manufacturer using the trademark DEVONSHIRE on door hardware, based on Kohler's prior common law rights in the same mark for toilets and lavatories.

Madison

Featherlite v. Sundowner Trailers, Inc. (D. Iowa 2007) – Prosecuted trademark infringement action in federal court involving SUPERSTOCK trademark. Resulted in settlement whereby defendant phased out use and paid plaintiff's attorney fees.

Minneapolis

Waymouth Farms, Inc. v. Jill Frechtman (TTAB March 19, 2007) – Prosecuted trademark opposition; prevailed on summary judgment and defended appeal to the Court of Appeals for the Federal Circuit.

New York

Advantus Capital Management et al. v. Aetna, Inc., 06-cv-02855 (D. Minn. 2006) – Represented plaintiff owner of ADVANTUS trademark for investment-related services. Secured immediate and complete preliminary injunction in August 2006.

Seattle