

IP Firm Merchant & Gould Launches ITC Practice

By **Adrian Cruz**

Law360 (December 6, 2021, 4:36 PM EST) -- Intellectual property firm Merchant & Gould PC has launched a U.S. International Trade Commission practice group with a specialty in Section 337 investigations, the firm said Monday.

Merchant & Gould's ITC practice will be led by partner Joshua Hartman, who joined the firm in September. Hartman told Law360 on Monday that the ITC group will consist of 12 attorneys in cities that include New York, Minneapolis and Atlanta led by a core group of Section 337 specialists including himself in the Washington, D.C., area.

"This group was definitely part of the plan when I first started here, and it's great to see it come to fruition," he said. "It's something that we talked about and have put a lot of work into, and it's extremely exciting to be at this firm. Everybody's been very supportive, and we have a strong, well-rounded team that combines 337 experience, technical expertise and lots of tactical experience with the types of problems that come up with 337 investigations."

Hartman said the ITC group will do a variety of work, representing both ITC complainants asserting their IP rights and looking to prevent unfair competition along with respondents defending themselves from complaints.

"Based on the way the firm is structured and the diversity of our practice groups, we do expect to be able to handle a wide range of technologies including consumer products, electronics, life science products and brand name goods. We'll also see some sector-specific work in spaces such as automotive, and a key part is that we're really well situated for the rise in nonpatent investigations, which is a trend we've seen over the last few years."

According to a report released by California-based intellectual property firm Patexia in February, more companies than ever have been requesting ITC investigations since the start of the COVID-19 pandemic. The report said the number of investigations filed went from 54 to 62 in 2020, a 15% increase from 2019.

Hartman said a number of other firms have been launching similar practices lately, and in an update from the report's results, he said demand for 337 work has become even heavier this year, with 82 new complaints being filed in 2021 to go along with over 100 active investigations. Both numbers are all-time highs, he said.

"It's a great time for Merchant & Gould to add this offering," he said. "Many of our clients have problems that Section 337 can address, including competition from imported products that can unfairly compete or infringe IP and the need to secure access to the U.S. market."

One of the main reasons Hartman said the demand for Section 337 work has skyrocketed is because of the pandemic-driven increase in online commerce. With consumer access to more options than found in a traditional brick and mortar store, he said, many foreign producers have been able to obtain new access to American markets.

Hartman said the proportion of Chinese manufacturers selling on Amazon went from 20% to 60% in a short period of time and that while a majority of the items fall under fair trade regulations, a number had raised infringement and unfair competition claims now being addressed at the ITC.

"The increasing importance of online shopping has been a big part of the story," he said. "Due to the pandemic, Amazon became the first shopping option for a lot of people, and that's given U.S. consumers more options, including foreign producers. The number of Amazon sellers based abroad has gone up exponentially, and what this means is that there's far more competition from foreign products and a subset of those raise IP infringement and unfair competition concerns."

The creation of the new practice is the latest move in a busy 2021 for the Minnesota-based Merchant & Gould, which also made a number of leadership changes in June. Partner Andrew Jagenow was appointed head of the firm's Denver office and partners Loretta L. Freeman and Ryan C. Smith were named co-heads of the patent design and trade dress group.

Merchant & Gould has around 100 attorneys and staff in its seven offices in Atlanta; New York; Alexandria, Virginia; Denver; Minneapolis; Los Angeles and Knoxville, Tennessee, according to the firm's website.

--Additional reporting by Tiffany Hu. Editing by Peter Rozovsky.