

Advertising Litigation

OUR APPROACH

Our approach centers on avoiding litigation whenever possible by proactively addressing issues and seeking early resolution. However, when litigation becomes necessary, we leverage our thorough understanding of our clients' business objectives and manage cases efficiently and effectively. Matters are staffed based on each case's needs and attorneys drawn from a deep bench of litigation talent. We also leverage the latest litigation support technology to reduce client costs and improve efficiency.

OUR EXPERIENCED TEAM

Our litigation team includes former prosecutors and trial attorneys with substantial experience handling a wide range of business disputes as both plaintiff and defense counsel. For decades we have achieved significant results and landmark victories for clients in complex commercial litigation involving advertising and marketing law. We also have an exceptional success rate in alternative dispute resolution proceedings, including before the AAA, JAMS and NAD.

ADVERTISING BUSINESS LITIGATION

Our business litigation and advertising lawyers regularly handle a wide array of business and contract disputes involving the advertising, digital and promotional marketing industries. We appear before federal and state courts, administrative agencies, self-regulatory organizations and in arbitrations throughout the U.S. and take many cases to trial each year. Clients rely on us to resolve charges of unfair business practices, deceptive trade practices, Lanham Act issues, trade secret misappropriation, employment law issues, IP infringement, licensing disputes, breach of contract claims and partnership conflicts.

COMPETITOR DISPUTES

"Clients draw attention to the group's fantastic track record in defending . . . false advertising challenges from competing businesses."
Chambers USA

Olshan's Advertising Litigation Group has significant experience prosecuting and defending unfair competition allegations, false or deceptive advertising claims under federal and analogous state unfair competition laws, and commercial disputes in court and before administrative and arbitral bodies. Our

PRACTICE CONTACT

Andrew B. Lustigman

RELATED PRACTICES

Advertising, Marketing & Promotions

Litigation

Regulatory Compliance, Investigations & Enforcement

lawyers excel at developing and executing effective litigation strategies under the tightest of time constraints.

Our litigators have secured federal and state court wins asserting and defending a wide array of IP copyright, trademark, design, trade secret and restrictive covenant breaches. We also represent clients before the National Advertising Division of the Better Business Bureau, the Electronic Retailing Self-Regulation Program, the Children's Advertising Review Unit and the National Advertising Review Board.

SINGLE PLAINTIFF AND CONSUMER CLASS ACTION DEFENSE

The firm defends clients in individual plaintiff and class action consumer fraud lawsuits in legal venues nationwide. These include actions relating to health, household and collectible products, as well as billing practices, buy-one-get-one-free (BOGO) issues, direct marketing and telecommunications services. With a defense strategy first focused on defeating class certification, we have delivered impressive outcomes in numerous class actions under the Telephone Consumer Protection Act (TCPA) and in telemarketing-related lawsuits and have secured many full dismissals of cases and trial and appellate victories.

REGULATORY INVESTIGATIONS AND LITIGATION

Our group routinely represents clients in regulatory inquiries and defends litigation brought by federal, state and local regulatory bodies. We have favorably resolved matters before the FTC, FDA, DOJ, FCC, USPS, CFIB, state attorneys general, state district attorneys and the New York City Department of Consumer Affairs. Our lawyers have prevailed for clients facing investigations for violations of Section 5 of the FTC Act, as well as rules enforced by the agency, and handle investigations, enforcement actions and litigation relating to the FTC's Testimonial and Endorsement Guides, CAN-SPAM, the Telemarketing Sales Rule and billing practices under Regulation E.

EXPERIENCE

- Secured full dismissal of a consumer fraud case, which included a successful defense on appeal, for an advertiser of hair regrowth products. The client was accused of violating New Jersey's Consumer Fraud Act, one of the most consumer-friendly statutes in the nation. The trial court win was affirmed by the New Jersey Superior Court, Appellate Division, and ultimately by the Supreme Court of New Jersey.
- Retained by a multinational investment company to advise and conduct due diligence concerning risks of an eight-figure financial transaction with a company faced with late-stage class-action litigation involving Telephone Consumer Protection Act (TCPA) claims. The pre-class certification settlement demand was \$120 million. Olshan efforts enabled the client to assess the risks and ultimately close a financing deal.
- Secured for a well-known shoe manufacturer pre-discovery dismissals of two separate class-action lawsuits under the Video Privacy Protection Act (VPPA) and TCPA, respectively.
- Achieved denial of a class certification motion in a potential \$20 million telemarketing suit for a text-messaging service named in a multimillion-dollar lawsuit as a result of a marketing campaign conducted by Domino's, a client of the messaging service. Olshan's winning strategy focused on the actions of the individual consumers rather than Domino's.
- Obtained full dismissal of two parallel lawsuits filed by Verizon seeking tens of millions of dollars under the Telephone Consumer Protection Act (TCPA) for allegedly illegal robocalls. Despite hundreds of millions of dollars in legal penalties at stake and the plaintiff having unlimited legal resources, Olshan convinced the court that Verizon was not

eligible to be a plaintiff under the TCPA because that statute was meant to protect consumers, not telephone service providers.

- Defended a generic drug company in connection with a competitive prescription drug cream. Successfully asserted a jury trial defense and prevailed on counterclaims, resulting in an attorneys' fees award under Lanham Act.
- Defended e-commerce sellers against claims that their websites do not comply with the Web Content Accessibility Guidelines (WCAG) under the Americans with Disabilities Act (ADA).

NEWS & INSIGHTS

NEWS

[08.17.2023 | Accolade](#)

Eight Olshan Lawyers Selected to The Best Lawyers in America 2024; Three Named as "Ones to Watch"

[07.13.2023 | Article](#)

Andrew Lustigman Publishes Article in Bloomberg Law on the Potential Risks Threads Poses to Brands

PUBLICATIONS

[04.24.2023 | Article | *Sports Litigation Alert*](#)

MLB's Apple TV+ Arrangement Highlights Subscription Legal Compliance Obligations