

### Quick Contact

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## INTELLECTUAL PROPERTY

Among the many services we provide to clients, Rogers & Hardin handles the prosecution and defense of intellectual property rights, including disputes relating to trademarks, copyrights, patents, theft of trade secrets, and enforcement of the terms of many kinds of software and technology license agreements. We handle cases involving data security, computer fraud and abuse claims, and we counsel website and content providers regarding a variety of legal issues. Rogers & Hardin has extensive experience in prosecuting trademarks before the U.S. Patent and Trademark Office and protecting clients' trademark rights from infringement on the internet. Our experience includes the successful arbitration of numerous claims under the Uniform Domain Name Dispute Protocol (UDRP) and successful negotiated resolutions with infringers and their internet service providers. We have handled matters ranging from commercial infringement and "cyber-squatting" to online criticism of clients through the use of trademarks and other methods. We also represent both vendors and customers in disputes over the failed implementation of sophisticated back-office business software.

Well before legal disputes arise, legal advice in the intellectual property realm can be vitally important to the business client. Clients frequently seek our advice regarding the preservation and safeguarding of their intellectual property and the structuring of license agreements and other business relationships so as to preserve their rights and best avoid potential disputes. Rogers & Hardin also advises its business clients on intellectual property issues arising out of business and capital formation, mergers, acquisitions, and other corporate transactions, as well as handling the licensing and cross-licensing of intellectual property.

Intellectual property matters that Rogers & Hardin has handled for its business clients include:

- We regularly advise a leading natural gas supplier on trademark and branding issues and maintenance of the client's trademark portfolio.
- We advised a public banking company on trademark and strategic marketing issues as the company began to consolidate its individual community banks under one brand image, and, as the result of the branding position developed by the company in conjunction with our legal

advice, we thereafter were able to successfully defend and settle trademark infringement claims that were brought against our client.

- We successfully defended and settled litigation against a client who was alleged to have infringed trade secrets and intellectual property rights of a competing supplier of components of a pay-at-your-stall credit card swipe system (PAYS) utilized by the fast-food restaurant industry.
- We defended a national consumer goods company against trademark infringement and dilution claims brought by a regional competitor in an effort to halt or delay our client's introduction of a new national brand.
- We defended a leading manufacturer of lint removal products against claims of false advertising, trade dress infringement, and unfair competition alleged by our client's largest competitor, and we were successful in forcing a settlement on favorable terms.
- We regularly represent a privately-held technology company in connection with its product data management and internet marketing licensing and related services agreements.
- We represented a NASDAQ-listed public company in connection with the proposed sale of its patent portfolio.

### **TECHNOLOGY INDUSTRY EXPERTISE**

Rogers & Hardin has substantial expertise in dealing with intellectual property issues that arise in the technology industry. The firm's clients who are involved in technology-related disputes and transactions receive knowledgeable advice and zealous representation from experienced lawyers. Our deep industry knowledge and broad legal experience allows us to manage and resolve disputes efficiently on behalf of suppliers and customers in the IT field. Our familiarity with the business and legal demands in the technology industry helps us identify critical areas of dispute between parties to technology agreements and permits us to resolve conflict efficiently through negotiation, mediation, or formal dispute resolution processes, as needed.

### **SOFTWARE AND HARDWARE PRODUCT LITIGATION**

Our team is deeply experienced in analyzing and litigating—on both the defense and plaintiff side—cases alleging software and/or hardware functionality or suitability issues in the technology and software industries. Legal disputes arising out of failed ERP implementations raise special challenges, both technical and legal. Emotions generally run high and

hundreds of millions of dollars and the customer's business can be at stake. These cases often include fact-intensive claims of fraud, unfair trade practices, negligence, and breach of contract and involve the interplay of the allocations of project risk both during contract negotiation and as it develops over the lifetime of the project. It is critical to have counsel already familiar with the development and testing cycles for sophisticated business software and with how such products are marketed and licensed. Counsel must be familiar with the differences between sound and unsound project management and implementation practices and should be able to quickly identify from a massive multi-year record the issues that led to project failure.

Some examples of matters Rogers & Hardin's technology lawyers have handled include:

- We defended a world-wide business software vendor against a customer claim related to an alleged failed ERP implementation, where the customer was seeking in excess of \$68 million in damages. We obtained dismissal of all claims on summary judgment, with the dismissals upheld in all respects on appeal.
- We successfully obtained dismissal of claims against a major business software vendor based on the novel interplay of choice of law and venue provisions in multiple agreements. The dismissals were affirmed on appeal.
- We defended a technology client in the travel industry against a seven-figure arbitration demand based on alleged breaches of the client's agreements with a customer. We obtained an award in the client's favor after an arbitration hearing.
- We reached a favorable settlement with a technology client's former customer where the customer refused to pay on a substantial account for products and services, claiming the products were not suitable for the customer's purposes.
- We successfully prosecuted claims for a technology company seeking to prevent wrongful termination of a client contract and thereby preserved for our client a seven-figure annual income stream.
- We obtained a seven-figure award on behalf of a technology client in the travel industry after an arbitration hearing on the merits.
- We successfully prosecuted seven-figure infringement and license compliance claims against a business software customer for non-



compliant use of ERP software, procuring a favorable settlement.

### **SOFTWARE AND DATA LICENSING DISPUTES**

Rogers & Hardin lawyers have substantial experience litigating disputes arising between licensors and their licensees regarding technology, software, and data products and services. The complex overlap between intellectual property rights and contract/licensing law can require a unique range of experience. We bring a pragmatic approach to analyzing the legal issues arising out of the current use of our client's intellectual property and help resolve such disputes by a wide variety of cost-effective techniques ranging from early business intervention and alternative dispute resolution to merits litigation. Our software and data licensing work has involved matters such as the following:

- We successfully prosecuted numerous infringement and license compliance claims against our client's business software customer for non-compliant use of business software.
- We advised a software client regarding the interplay of bankruptcy law and intellectual property rights and successfully negotiated a settlement after the client discovered the unlicensed use of its software product by an entity that claimed to have obtained rights to the software from a bankrupt licensee.
- We have successfully prosecuted lawsuits where businesses used our client's intellectual property after claiming to have received rights as the result of a prior corporate merger or change of ownership involving the client's licensee.