

Litigation Powerhouse: Cooley LLP

By Allissa Wickham

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 -- Widely regarded as one of Silicon Valley's go-to law firms, Cooley LLP has been flexing its litigation muscles by representing Facebook in a cutting-edge privacy lawsuit and overturning a \$173 million verdict against Qualcomm, earning the firm a spot on Law360's list of Litigation Powerhouses.

A force to be reckoned with in the tech world, Cooley is known for its venture capital expertise and public offering prowess, having completed nearly 100 public offerings in 2015 alone. But not content to rest on its laurels, the firm has steadily assembled an impressive litigation practice, now boasting 370 attorneys in its litigation group, 122 of whom are partners.

"We have been on a real upward arc, and a real upward trajectory as a litigation department — for many years now, but it's particularly accelerated in the last five years, 10 years," said Mike Attanasio, chair of Cooley's litigation department.

Spurring that growth has been a wave of new Cooley offices in the last decade, with the firm opening outposts in Boston, New York, Seattle, Los Angeles and most recently London. Those additions have only increased Cooley's courtroom power, as the firm also employs litigators in its more established locations, like San Francisco and Palo Alto, California.

And notably, Cooley has been bringing heat in areas outside of tech, with partner Mike Rhodes pointing not just to the firm's white collar



Cooley

Litigation Attorneys: 370

Litigation Partners: 122

Big Wins:

ParkerVision Inc. v. Qualcomm – Representing Qualcomm in a patent dispute with ParkerVision, Cooley convinced the court to grant judgment as a matter of law, thereby nixing a \$173 million jury verdict against the company.

Fraleigh et al. v. Facebook – Cooley successfully represented Facebook Inc. in a battle over a \$20 million privacy settlement requiring the company to change policies for using members' photos in ads. The Ninth Circuit upheld an approval of the deal.

Procaps SA v. Patheon – Cooley clinched a win for client Patheon in an antitrust case launched by Procaps SA. The judge held that Procaps, which had agreed to work with Patheon on a capsule for pharmaceutical products, didn't muster any evidence to show that any negative effects to competition actually occurred due to Patheon's acquisition of another company.

Oculu LLC v. Oculus VR – The firm won a victory for Facebook Inc.'s Oculus VR when a federal judge chucked trademark claims filed against the company by a video-hosting service called Oculu LLC.

Rodriguez v. Sony Computer Entertainment America – Cooley nabbed a key win for two Sony units when the Ninth Circuit ruled that a plaintiff couldn't sue the two affiliates for violations of the Video Privacy Protection Act's data retention provision.

Trial Tip: "Don't try to be anything other than what you are because people will sniff that out. Authenticity and integrity, to me, are the keys to being a successful courtroom lawyer." — Mike Rhodes, partner

litigation, but also its reinsurance group, securities litigation unit and bankruptcy practice.

"I think the short answer is: Cooley is fast becoming one of the really important litigation departments in the country, not just for the bread-and-butter stuff that we've always been known for, which comes out of our very deep technology client base," said Rhodes, who is one of the firm's top litigators.

Still, many of Cooley's big wins in recent years have fallen inside the tech realm, as it has tackled various high-profile patent and privacy cases. For instance, the firm won a major victory in 2014 for its client Qualcomm Inc. in a patent dispute when a Florida federal judge threw out a \$173 million jury award for ParkerVision Inc. The U.S. Supreme Court subsequently declined to review an appellate decision upholding the verdict's toss.

"That sort of tenacious, never-say-die victory just proves, I think, [or] underscores how we approach cases, and the mettle of our ... litigators for companies like Qualcomm," Attanasio said.

Cooley has also been dominating cases in the privacy arena, representing two Sony units in a notable case involving the Video Privacy Protection Act. Last fall, the Ninth Circuit ruled that a plaintiff couldn't sue the two Sony affiliates for violations of the act's data retention provision, saying the law doesn't provide a private right of action to enforce its retention requirements for video service providers.

The firm is also well-versed in handling high-profile matters for Facebook, repping the social media giant in what could be one of the biggest "right of publicity" class action lawsuits ever, according to Cooley, in a case known as *Fraley et al. v. Facebook Inc.* In that case, the plaintiffs had hoped to bring claims for about 150 million Facebook users fighting the company's showing of usernames and pictures in so-called "sponsored stories," according to the firm.

The case settled and eventually landed in the Ninth Circuit, with the appeals court saying in February it would not rehear a panel decision upholding Facebook's \$20 million settlement with parents whose kids' pictures were used in the company's advertisements.

In a way, the *Fraley* case was something of a "second generation" piece of litigation to an earlier Facebook suit known as the "Beacon" case, according to Rhodes. The class action was over a since-discontinued "Beacon" feature that allowed the social networking behemoth to track users' online purchases and display them on users' Facebook pages, a feature the plaintiffs argued was a violation of their digital privacy rights.

"The reason, I think, those cases are sort of emblematic of our work is that, we were at the forefront of the intersection of these older privacy statutes, bumping up against new disruptive business models," Rhodes said.

The firm is no slouch on antitrust issues, either, having successfully represented pharma company Patheon Inc. in a suit from Procaps SA, which accused it of creating antitrust issues by purchasing one of Procaps' rivals for \$255 million. Last fall, a judge held that Procaps — which had agreed to collaborate with Patheon on development of a softgel capsule — didn't muster any evidence to show that any negative effects to competition occurred as a result of Patheon's acquisition of Banner Pharmacaps Europe BV.

And in the trademark realm, Cooley victoriously represented Facebook's Oculus VR in a legal dispute with a video-hosting service called Oculu LLC. In June 2015, a federal judge tossed Oculu's trademark

claims against Oculus, ruling that the goods and services offered by two firms were far too different for consumers to be confused by similar names.

Wins like these are a standard occurrence for Cooley's litigation group, which seems to have a taste for high-profile cases, including its representation of former Major League Baseball player Roger Clemens in federal prosecution accusing him of lying about steroid use, committing perjury and obstructing Congress. Clemens was found not guilty on all six counts in the case.

The firm is already filling its dockets for the future as well. Cooley has been brought on to represent The Honest Co., a personal care products company co-founded by actress Jessica Alba, in a proposed class action about its "natural" advertising. The firm has also been tapped to represent Google Inc. in a dispute involving more than 700 university students, faculty and staff, who are accusing the tech giant of scanning their emails for unlawful advertising purposes.

It may sound like a daunting task, but Cooley, with its seasoned attorneys and collaborative atmosphere, is likely well-equipped to handle the challenge.

"I think if you look at Cooley, it's not only the breadth of clients, it's the depth of our team ... which, I think it sets us apart," said Stephen Smith, a partner in the firm's litigation department.

--Additional reporting by Bill Donahue, Brian Amaral, Kurt Orzeck, Vin Gurrieri, Emily Field, Steven Trader, Brandon Lowrey, Alex Lawson, Andrew McIntyre and Kelly Knaub. Editing by Mark Lebetkin and Catherine Sum.