

Daily Journal

AUGUST 16, 2017

TOP INTELLECTUAL PROPERTY LAWYERS 2017

Perry J. Viscounty

FIRM

Latham & Watkins LLP

CITY

Costa Mesa and San Francisco

SPECIALTY

Litigation

Viscounty is a senior trial and litigation partner at Latham, representing clients such as Allianz SE, Apple Inc. Allergan PLC, American Airlines Inc., Craigslist Inc., Ford Motor Co., General Electric Corp., Masco Corp., Safeway Inc. and Vizio Inc.

For Craigslist, Viscounty filed a trademark and breach of contract suit against DealerCMO Inc. after the U.S. Patent and Trademark Office found that the defendant's Craigsmax and Craigsmax2 trademarks would cause confusion with Craigslist's senior rights.

The binding nature of the PTO ruling may allow for the application of a 2015 Supreme Court opinion, *B&B Hardware v. Hargis*, in a new context and test the boundaries of deference afforded to the PTO by district courts. *Craigslist Inc. v. Dealer CMO Inc.*, 16-CV01451 (N.D. Cal., filed March 23, 2016).

Earlier for Craigslist, he attained a landmark copyright infringement win in a case that involved the Computer Fraud and Abuse Act and the defendants' breaches of Craigslist's term of use. Defendants 3taps Inc. and PadMapper Inc. partnered to build an alternative user interface from browsing Craigslist's housing ads; defendant Lovely, an arm of Discover Home Network, used similar techniques to repost Craigslist material.

The purloined content amounted to millions of Craigslist user posts daily.

After Viscounty filed a complaint for his client in the Northern District, Senior U.S. District Judge Charles R. Breyer of San Francisco held that sending a cease and desist letter and enacting an internet protocol address block is sufficient notice of online trespassing. Following that ruling, the defendants settled. Breyer approved a \$2.1 million judgment and permanent injunction against Lovely, barring it from scraping and displaying Craigslist content. The judge also approved a \$1 million judgment and injunction against 3taps and PadMapper. *Craigslist Inc. v. 3taps Inc.*, 12-CV03816 (N.D. Cal., filed July 20, 2012).

"These cases send a very strong message that if you unlawfully use data, technology companies can come after you and get damage awards and injunctions," Viscounty said. "It was a hard fought case, with Skadden on the other side."

In a joint post-settlement statement with Latham co-counsel Jennifer L. Barry, Viscounty said, "The main challenge was the great lengths defendants were willing to go to avoid detection and evade jurisdiction. Engineers at Craigslist were instrumental in keeping the pressure on, until Latham brought a copyright



strategy to bear, forcing defendants to capitulate."

Viscounty said the issue of illicit scraping of his client's site was personal to him. "It drives me crazy to get spam, and hackers and scammers and scrapers get numbers that way," he said. "My four entrepreneurial kids sell their used clothing and toys and things they no longer need on Craigslist, and I've had to teach them how to avoid scrapers, too."

— John Roemer