

# Barry G. Felder

## Partner

[bgfelder@foley.com](mailto:bgfelder@foley.com)

New York

212.338.3540

Los Angeles



Having extensive experience in the real estate workout and foreclosure arena, Barry Felder has foreclosed on hundreds of multifamily, hotel, shopping center, and office building properties for leading financial institutions throughout the country in both federal and state courts. He is a partner in Commercial Litigation, IP Litigation, and Privacy, Security & Information Management Practices.

In his more than 40 years of practice, Barry has successfully worked on a diverse range of matters ranging from his role as co-trial counsel in *People v. Sihpol*, the first “late-trading” case brought to trial by Eliot Spitzer’s office (after a six-week trial, the jury acquitted Mr. Sihpol of 29 felony counts) to representing Playboy Enterprises in cutting edge litigation challenging as trademark infringement and dilution the sale of the term “playboy” as a keyword by an Internet search engine.

### Representative Experience

#### Reported Decisions

- *Playboy Enterprises, Inc. v. Netscape Communications Corp.*, 354 F.3d 1020, 69 U.S.P.Q. 2d 1417 (9th Cir. 2004) (in reversing the District Court’s grant of summary judgment the Ninth Circuit became the first Circuit Court to hold that use of trademarks in buried code for purposes of prompting contextual advertisements constitutes “trademark use”).
- *MAG Portfolio Consultant, GMBH v. Merlin Biomed Group LLC*, 268 F.3d 58 (2d Cir. 2001) (vacating order compelling arbitration; the Circuit changed its position as a result of the oral argument).
- *MT Property, Inc. v. IRA Weinstein and Larry Weinstein, LLC*, 50 A.D.3d 751, 855 N.Y.S.2d 627 (2d Dep’t 2008) (Appellate Division reversed the lower court and granted summary judgment dismissing plaintiffs’ unjust enrichment claim based on an alleged implied agreement where a written agreement between the parties expressly covered the subject matter).
- *Robert Plan Corp. v. Perot Systems Corp.*, 278 A.D.2d 119, 718 N.Y.S.2d 50 (1st Dep’t 2000) (upholding lower court’s dismissal of punitive damages claims and all claims against Ross Perot

individually).

- *Wells Fargo Bank Minnesota, N.A. v. Mark F. Cohn*, 4 A.D.3d 189, 771 N.Y.S.2d 649 (1st Dep't 2004) (New York's one action rule does not apply where property securing the loan is out of New York State).

## **Real Estate Litigations, Workouts, and Foreclosures**

- Represented a major real estate owner in a three week trial over the proceeds of escrow monies from a \$1.9 billion portfolio sale and obtained a complete victory, including the award of the over \$25 million in escrow plus attorney's fees.
- Represented major financial institutions, including real estate special servicers, in federal and state court in successfully foreclosing on hundreds of multifamily and commercial properties and obtaining orders appointing receivers for those properties.

## **Reverse Terrorism Litigation**

- Representing lead defendant in federal court action seeking \$1 billion in damages based on allegations of a vast, 50 year conspiracy to expel non-Jews from the West Bank.

## **Indenture Trustee Litigation**

- Co-lead litigation counsel representing indenture trustee for senior and subordinated notes in an aggregate of over \$1.5 billion. Travelport sued the trustee seeking a declaratory judgment that certain investments and restructuring transactions by Travelport in September/October 2011 did not violate the indentures. The trustee defended and brought counterclaims asserting breaches of the indentures and at least \$345-\$500 million of fraudulent conveyances leading to exchange offer/redemption of senior notes in May/June 2013.
- Co-lead litigation counsel in adversary proceeding on behalf of a trustee for certain notes issued in an aggregate of over \$1.5 billion involving whether "make-whole premiums" would be due under applicable bankruptcy and state laws.

## **Trademarks and Unfair Competition**

- Lead counsel to a well-known publishing and entertainment company in cutting-edge litigation challenging as trademark infringement and dilution the sale of the term "playboy" as a keyword by an Internet search engine.
- Represented manufacturer of bio-medical devices, including vascular pumps, in its trade dress claim against competitor and obtained a preliminary injunction.
- Prosecuted, on behalf of a sportswear manufacturer and distributor, one of the first ICANN domain name arbitrations.
- Represented a national automobile rental company against its major competitor in an action involving Lanham Act claims arising from certain advertising claims made by the client's competitor.

## **Copyright**

- Represented well-known manufacturing company in litigation against software vendor seeking to enjoin extraction of client data based on novel theory of database protection.
- Represented a well-known entertainment company in litigation relating to the licensing in Europe of a classic film library.
- Represented a software company in a copyright infringement suit in obtaining injunctive relief against the maker of devices that enabled the unauthorized reproduction of copyrighted software.

## Privacy

- Represented a leading Internet privacy services provider in a federal litigation in which the plaintiff claimed that the client had an obligation and failed to resolve certain privacy issues between plaintiff and Microsoft and Comcast, among other defendants. Arguing that the plaintiff lacked standing to bring claims against our client, Barry obtained a complete dismissal for the client from litigation.

## Trade Secrets

- Represented medical laboratory in defense of trade secret misappropriation claim.
- Representing various executives in the financial and consulting areas in defense of unfair competition/theft of trade secrets allegations.
- Represented Internet start-up venture and its founder-president in litigation involving claims of trade secret misappropriation and novel question as to whether a B2B multi-vendor website for distributors of medical and dental supplies competes with a leading healthcare products distributor.

## Technology

- Represented one of the nation's largest companies in a dispute against a former provider of computer maintenance and related services.
- Represented that company in a lawsuit brought against its major software licensor to ensure the continued operation of enterprise essential software.

## Awards and Recognition

- Recognized, *The Best Lawyers in America*® – Commercial Litigation (2024)
- Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system
- Selected for *New York Super Lawyers*® lists (2006-2019)
- Senior fellow of the Litigation Counsel of America, a national trial lawyer honor society and a fellow of the American Bar Foundation

## Presentations and Publications

- Barry has co-authored a book entitled "Information Technology Litigation: Law and Analysis," published by *ALM/Law Journal Press*
- Panelist, National Conference of Jewish Lawyers & Jurists, Chicago, "From Terror to Litigation," September 12, 2017

- Speaker, ACC-GNY CLE Program, "Litigation Tactics Boot Camp: Beyond the Fundamentals," April 27, 2011
- Panelist and Presenter, Foley Bankruptcy and Real Estate presentation with FTI Consulting, New York, "Capitalizing on Real-Estate Driven Workouts and Liquidations," February 9, 2011
- International Trademark Association, 128th Annual Meeting, Toronto, "MAXXXIMUM EXPOSURE — Moonshine, Major League, and Preliminary Injunction Madness," represented the "defendant" in a moot court preliminary injunction argument, May 9, 2006
- Speaker, PLI 25th Annual Institute on Computer & Internet Law, "Search Engines Spawning Trademark Litigation," March 10, 2005
- Participant, Search Engines Strategies Conference, San Jose, CA, "The Main Event — Moot Court: Trademark Protection on Trial — Trademark v. Search," August 27, 2004
- Speaker, Search Engine Strategies NYC Brand Summit, "Life After Geico-Google," March 2, 2005
- Panelist, NYSBA Intellectual Property Law Section Fall Meeting at Lake George, 2004 & 2006
- Speaker, AIPLA Trademark Committees Meeting, Dallas, "Playboy v. Excite: Trademarks and On-line Advertising," May 14, 2004

## Media Articles Quoting Barry

- *Israel Hayom*, "\$1 Billion Palestinian Lawsuit against US Supporters of Israel Dismissed," August 31, 2017
- *WSJ.com*, "Sihpol Headed Back to Court," July 7, 2005
- *ZDNet.10.UK*, "Case Threatens Search Engines' Use of Trademarks," Jan. 16, 2004
- *Business Week* (online edition), "John, Paul, George, Ringo ... and Steve?," Sept. 30, 2004 (re trademark issues between Apple Computer and the Beatles' Apple mark)
- *CNN Money.com*, "Ebbers gets 25 Years," Sept. 23, 2005
- *Managing Intellectual Property*, "MAXXXIMUM Victory," May 10, 2006 (re above-referenced INTA moot court argument)

## Sectors

- [Cannabis](#)
- [Innovative Technology](#)

## Practice Areas

- [Commercial Litigation](#)
- [IP Litigation](#)
- [Litigation](#)
- [Patent Litigation](#)
- [Privacy, Security & Information Management](#)
- [Trade Secret Noncompete Litigation](#)
- [Trademark, Copyright & Advertising Litigation](#)

## Education

- Fordham Law School (J.D., cum laude, 1977)
  - Commentary editor of the *Fordham Law Review*
- Hofstra University (B.A., magna cum laude, 1974)
  - Phi Beta Kappa

## Admissions

- California
- District of Columbia
- New Jersey
- New York
- Supreme Court of the United States
- U.S. Court of Appeals for the Second and Ninth Circuits
- Various Federal District Courts