

MEDIA & FIRST AMENDMENT

Hodgson Russ's media and first amendment lawyers are committed to ensuring their clients' constitutional rights are protected. Our lawyers represent traditional media, online publishers, corporations, and individuals on matters such as defamation, commercial disparagement, invasion of privacy, false advertising, right of access to information, licensing, vendor relationships, copyright, pre-publication/pre-broadcast review, free speech, censorship, social media, and freedom of religion.

Media

Traditional media, publishing clients, and social media outlets turn to Hodgson Russ for pre-publication/pre-broadcast reviews, counseling clients regarding the parameters of acceptable reporting and broadcasting and mitigating their potential liability exposure. We counsel those same clients when they receive retraction or correction requests, or subpoenas relating to their reporting and invoking issues surrounding protection of sources, shield laws, and anonymous speech. Hodgson Russ is proud to be a member of the Buffalo Broadcasters Association.

We also represent media clients across different platforms involving the sale of their companies, non-competition agreements, compliance with the Digital Millennium Copyright Act, Communications Decency Act, and other federal and state laws, as well as on talent and staff contracts and union labor issues, website domains, advertising and other contractual disputes, and other aspects of the media business.

Public Records

Drawing from its experience representing municipal entities, school districts, developers, and private citizens, Hodgson Russ is well versed in open meetings law matters, privacy rights including HIPAA and the New York Civil Rights Law, Freedom of Information Law (FOIL) and Freedom of Information Act (FOIA) requests, and related public records issues. We advise on protection of proprietary information submitted to public agencies, and the proper use of personnel information, as well as the proper use of executive sessions and application of attorney-client privilege to public records. To learn more about our experience representing clients in these industries, please visit our Education and Municipal Practice pages.

Corporate Counseling and Protecting Your Intellectual Property

Our corporate, employment, and intellectual property lawyers work hand-in-hand to protect and enforce our client's intellectual property rights. We understand that our clients commit significant resources to developing their intellectual property and marketing their businesses. Whether it is protecting those rights during a business

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transaction, ensuring that employees understand their obligations, engaging in litigation to protect your investment, or helping clients respond to public relations issues, Hodgson Russ's Media and First Amendment Practice offers the legal solutions your business needs.

Hodgson Russ has significant experience negotiating licensing agreements, royalty agreements, preparing and litigating trademark, copyright, and patent disputes, protecting client's trade secrets, and litigating unfair competition claims. The firm regularly represents inventors, authors, artists, and entrepreneurs to protect their work. Please visit our Intellectual Property & Technology Practice to learn more about all our services in this area.

Reputation Protection and Rescue

A client's reputation is often its most valuable asset. Hodgson Russ routinely litigates defamation matters, whether they are prosecuting claims on behalf of individuals and corporations, or defending clients against such claims. Having been on both sides of these matters, Hodgson Russ understands the strengths and weaknesses of each case.

In addition, the firm regularly counsels clients regarding how to respond to a crisis. That advice includes responding to the press, partnering with public relations firms to manage the ongoing crisis, interfacing with insurers and other professionals necessary to address the event, and helping the client rebuild their reputation after the initial crisis has passed.

First Amendment Issues

The First Amendment presents a broad spectrum of issues involving freedom of speech, freedom of religion, and the right to petition the government, as set forth in the First Amendment to the U.S. Constitution, similar provisions found in state constitutions, and various statutes. Our First Amendment litigators are highly experienced in disputes involving First Amendment Civil Rights claims, rights of privacy and publicity, the rights of reporters under Shield Laws, and authors' rights under statute and contract, counseling media outlets, defense against misappropriation and right of publicity claims. Related actions include litigating copyright and trademark cases.

Free speech challenges involve government action that intrudes upon free-speech rights such as restraints on publication, defamation, pre-publication and pre-broadcast review, invasion of privacy, and other torts such as infliction of emotional distress, fraud and misrepresentation, and tortious interference. These issues arise with respect to individuals and businesses, including the press. Our work includes advising school districts on the unique situations posed by student and employee free speech rights at school, in school newspapers, and on social media.

First Amendment litigation involving freedom of religion encompasses issues ranging from the Religious Land Use and Institutionalized Persons Act, and separation of church and state issues arising from religious symbols on public property. We regularly advise clients on the intersection of religious rights with workplace mandates, and other aspects of the free exercise of religion. These include the right to religious speech in various public forums, from traditional public forums (e.g., sidewalks) to public institutions (e.g., educational facilities).

An emerging aspect of First Amendment practice are the digital technologies transforming the information landscape. First Amendment attorneys have experience in legal issues involving data protection and cybercrimes, responding to anonymous posters, and counseling on obligations under the Communications Decency Act, the Digital Millennium Copyright Act, website user agreements (where we advise on terms of use and privacy policies), all forms of social media, compliance with

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international privacy protection laws, endorsement issues, content licensing, and cybersquatting.

Advertising Law

An essential element in operating media today on any platform is understanding the complex regulatory structure governing advertisements, not only those set by governmental bodies, but also industry standards and platform specific (Facebook, Twitter, Google) requirements. Hodgson Russ can assist clients and their agencies on a diverse range of compliance issues, from state sweepstakes laws to the Dot Com Disclosure guidelines given by the Federal Trade Commission (FTC). We pursue false claims by competitors, respond to FTC and State Attorney General investigations, defend against cease and desist letters, and help limit delays and liability by reviewing advertising copy and supporting evidence prior to new product launches or updating on-going campaigns.

Experience

Hodgson Russ represented the defendants in an action venued in U. S. District Court for the Eastern District of Texas involving a chemical patent related to biocide formulations. While this lawsuit was pending, Hodgson Russ initiated an *inter partes* re-examination of the patent in suit. Hodgson Russ moved to stay the litigation. The court granted the stay motion over opposition from the plaintiff. Before the case was stayed, Hodgson Russ handled all aspects of defending the litigation, including the preparation and review of invalidity contentions, the preparation and review of proposed claim constructions, depositions of the inventor and plaintiff's expert, claim construction briefing, and document discovery. The re-examination resulted in office actions rejecting the relevant claims of the patent in suit, and the litigation was ultimately dismissed.

Hodgson Russ represented a leading Greek yogurt manufacturer in defense of breach of contract and Consumer Protection Act claims and in support of counterclaims for trade secret misappropriation. We obtained summary judgment for our client, dismissing the Consumer Protection Act claim, and we defeated the plaintiff's summary judgment motion seeking dismissal of trade secret claims.

Hodgson Russ successfully litigated the case *BellSouth Corp. v. White Directory Publishers*, 42 F. Supp. 2d 598. The court concluded that the "walking fingers" symbol is in the public domain and is therefore not a trademark, granting our client's motion for summary judgment.

A Developer commenced an Article 78 proceeding challenging, among other things, members of a village board of trustees' right to deliberate and vote on a project about which the members expressed personal opinions. The project was a controversial development project and prior to their election, board members had expressed their views on the project, both before and during their campaigns for office. Hodgson Russ represented the board of trustees and its members when the developer argued that the expression of opinions and signing a petition against a project were examples of bias requiring the board members to recuse themselves. Supreme Court, Monroe County agreed and annulled the determination, finding that the board members had a prohibited conflict of interest, and enjoined them from any deliberations or voting with respect to the project. The Fourth Department reversed, holding that mere expressions of opinion, absent more, are not enough to demonstrate bias. Elected, public officials should be free to express their views to their constituents, especially during their run for election. This is a seminal case that clarifies that the mere expression of opinion does not require disqualification of

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board members.

Hodgson Russ defended two banks from patent infringement allegations by non-practicing entities. Our attorneys analyzed the patents for invalidity and non-infringement. Based on this analysis, our clients negotiated favorable settlements.

Hodgson Russ attorneys defended an Internet marketing company against patent infringement allegations in the Eastern District of Texas (Marshall Division). The plaintiff was a patent assertion firm. The subject patent related to pop-up advertisements on the Internet. Hodgson Russ attorneys were able to persuade the plaintiff to discontinue the lawsuit.

Hodgson Russ attorneys are actively defending a pharmaceutical marketing company from claims of patent infringement. We initiated *inter partes* reexamination to invalidate the alleged patent. Based on our arguments, the U.S. Patent and Trademark Office held the alleged patent invalid. The USPTO decision is currently under appeal.

Hodgson Russ represented a developer and marketer of pharmaceutical co-pay offset programs as a defendant in patent infringement litigation in U.S. District Court for the District of New Jersey. Hodgson Russ placed the patent in re-examination before the U.S. Patent and Trademark Office and obtained rejections of all asserted claims.

Hodgson Russ has a full-service approach to handling problems for school district clients when public opinion is a particular concern. Over approximately a six-month period, the firm guided a school district client through disciplinary matters involving tenured teachers that garnered much public attention because of statements by an authority figure from a municipality. Not only did the firm give substantive advice on the disciplinary process for the employees, it also assisted the district in navigating the court of public opinion.

On behalf of a county ethics board, Hodgson Russ attorneys defeated Due Process and First Amendment claims along with a state statutory claim brought by a former county legislator. After the legislator was fined by the ethics board for submitting an inaccurate financial report, he sued, asserting the board's procedures failed to provide adequate notice or opportunity to be heard.

He also claimed that his First Amendment rights were violated by the alleged political motivation of the county and the board. First at the District Court level and again at the Second Circuit, Hodgson Russ obtained summary judgment for the county rejecting all constitutional claims and upholding the Board's action.

Hodgson Russ provided litigation support defending a client in a multiparty patent infringement litigation involving amusement park rides. Our attorneys worked directly with counsel for the co-defendants to formulate a patent claim construction and Markman hearing strategy. A favorable settlement was reached following the Markman order.

Hodgson Russ intellectual property and litigation attorneys defended a manufacturing client in a patent infringement lawsuit involving automated fabric-cutting machines. Our attorneys prepared strong non-infringement positions early in the litigation to help our client reach an early and favorable settlement.

A multidisciplinary team of Hodgson Russ intellectual property and litigation attorneys worked together on behalf of a plaintiff to commence a patent infringement lawsuit involving automated fastening systems for aircraft assembly. Our attorneys attended mediation that resulted in a settlement agreement in which the defendant pledged to stop offering infringing systems.

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Hodgson Russ intellectual property and litigation attorneys defended a client in a patent infringement lawsuit involving package-tracking devices. Our team of attorneys formulated non-infringement positions and participated in settlement conference to help our client reach an early and favorable settlement.

Hodgson Russ represented a leading provider of DNA-based diagnostic services in two patent infringement lawsuits concerning patents used for testing canine DNA for genetic disorders. The first suit, against an offshore testing enterprise and a large research university, was settled favorably for our client. The second suit, against a Florida-based genetic testing company, was also resolved favorably.

Hodgson Russ represented an equestrian facility and its owner in prosecuting a defamation claim related to false statements made about our clients' treatment of the horses. The defendant ceased and desisted her conduct and issued a public apology to our clients.

In *Nulux, Inc. v. Litelab Corporation et al.*, Civ. No. 1:01-cv-03023 (E.D.N.Y. 2008), the court ruled in favor of our client, deciding against the plaintiff's claims of trade dress infringement with respect to high-end retail architectural lighting.

In *American Medical Rehabilitation Providers Association v. University at Buffalo Foundation Activities, Inc.*, 2008 TTAB Lexis 509, the U.S. Patent and Trademark Office Trademark Trial and Appeal Board (TTAB) determined favorably for our client that FIM and FIM SYSTEM are not generic and are therefore registrable by our client as trademarks.

In the News

Gary Schober Gives Insight to Wegmans' Discontinuation of SCAN App
WGRZ, September 15, 2022

Analysis-Sarah Palin Defamation Case a Long Shot for U.S. Supreme Court -Experts
Reuters, February 16, 2022

Conservative news outlets, accused of election falsehoods, air disclaimers
Reuters, March 26, 2021

New video shows moments before local judge was hit by train
WIVB, March 23, 2021

Thought Leaders - Current State of the Media
Buffalo Business First, September 25, 2020

Industry Roundtable: Social Media
Albany Business Review, March 17, 2020

High Court's Public TV Case Spotlights Social Media Free Speech
Bloomberg Law, February 25, 2019

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Buffalo Business First - Thought Leaders: First Amendment

Buffalo Business First, June 29, 2018

Publications

Supreme Court Provides Further Guidance on Public Officials First Amendment Rights on Social Media

Hodgson Russ Media & First Amendment and Municipal Alert, March 20, 2024

New York State Legislature Amends Open Meetings Law to Allow for Videoconferencing

Hodgson Russ Municipal and Education Alert, April 19, 2022

Recent Rulings and Legislative Changes Transforming the Landscape of New York's Freedom of Information Law

New York Law Journal, February 14, 2022

New York Appellate Court Stymies Upstate Axe Murderer's Efforts to Sue Cable Network over TV-Movie Based on His Crimes

Hodgson Russ Media & First Amendment Alert, July 22, 2021

Supreme Court Sides with Student in First Amendment Case

Hodgson Russ Education and Media & First Amendment Alert, June 23, 2021

New York Appellate Court Awards Attorneys' Fees in FOIL Case Involving High Profile Limo Crash

Hodgson Russ Media and First Amendment Alert, June 21, 2021

Appeals Court Ruling Affirms First Amendment Protection for Abhorrent, Racist Language in Certain Situations

Hodgson Russ Media and First Amendment Alert, May 14, 2021

New York Court Applies Anti-SLAPP Amendment Retroactively to Previously Filed Lawsuit

Hodgson Russ Media and First Amendment Alert, April 20, 2021

Court Rules that Reporting Sexual Assault Allegation to Police Alone Cannot Support a Defamation Claim

Hodgson Russ Media and First Amendment Alert, March 29, 2021

New York Court Dismisses Trump Campaign Defamation Lawsuit Against *New York Times*

Hodgson Russ Media and First Amendment Alert, March 22, 2021

Presentations & Events

2019 Supreme Court Roundup - What Municipalities Need to Know Now

December 6, 2019

Hodgson Russ Buffalo Broadcasters Association Annual Media Roundtable

The Offices of Hodgson Russ, 140 Pearl Street, Buffalo, NY 14202, October 23, 2019

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Zoning & Land Use Fundamentals for Municipal Officials
Millennium Hotel, 2040 Walden Avenue, Cheektowaga, NY, June 13, 2019

2019 Municipal Law Seminar
Millennium Hotel, 2040 Walden Avenue, Cheektowaga, NY 14225, May 16, 2019

Emerging Free Speech and Legal Issues for the Media Industry
May 14, 2019

Business Solutions Series: Media Law and First Amendment Seminar
Offices of Hodgson Russ, June 28, 2018

