

Richard C. Darwin

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Richard (“Rick”) Darwin is a Shareholder and Co-Chair of the Firm’s Litigation Practice Group. He is also a member of the Firm’s Intellectual Property Practice Group. Mr. Darwin has developed a complex civil litigation practice with an emphasis upon trade secret misappropriation, corporate raiding, unfair competition, employee mobility, copyright infringement, and license disputes.

An experienced litigator and trial lawyer, Mr. Darwin has successfully prosecuted and defended trade secret misappropriation actions in state and federal court for clients in the biotechnology, software development, environmental consulting, commercial banking, life insurance, title insurance, and wealth management industries. He has a deep knowledge of the issues that arise when senior-level managers and employees leave one company to start or join a competitor, and has litigated and tried multiple cases of alleged corporate raiding. Rick is a frequent speaker and writer on topics related to trade secrets, non-compete agreements, and the protection of confidential information.

Representative Matters

- Represented plaintiff, a national title and escrow company, in an action against a start-up competitor formed by more than 30 of the client’s former officers and employees, for trade secret misappropriation, unfair competition, and breach of fiduciary duty. Obtained a \$3.1 million dollar verdict in favor of client following a lengthy jury trial. Also obtained temporary restraining order and preliminary injunction against all defendants prohibiting them from using customer lists and other stolen materials to solicit client’s customers.
- Represented defendants in federal action for trade secret misappropriation, breach of fiduciary duty, and enforcement of a non-solicitation agreement against a national life insurance company. Obtained summary adjudication invalidating the non-solicitation agreement before the case was settled on favorable terms.
- Represented an international environmental consulting firm, and six individual employees, who were sued by a competitor for trade secret misappropriation, breach of fiduciary duty, unfair competition, and violation of the Computer Fraud and Abuse Act. Negotiated global settlement six months before lengthy jury trial.
- Represented defendant, the founder and chief operating officer of a well-known search engine marketing company, in an action brought against him by his former employer for misappropriation of trade secrets and enforcement of a non-compete agreement. Obtained summary adjudication invalidating the non-compete agreement before the case was settled on favorable terms.
- Represented California-based investment bank in multiple engagements against departing executives and sales personnel accused of misappropriating trade secrets and breaching confidentiality agreements.
- Represented a French cardiac surgeon and research scientist, in a federal trade secret misappropriation and breach of contract action brought against him by his former employer relating to artificial heart valve designs.
- Represented plaintiff, a national stock brokerage and investment services company, in an action for trade secret misappropriation, unfair competition, and interference with prospective economic advantage against start-up competitor formed by client’s former employees.

- Represented a regional bank in an action for trade secret misappropriation, unfair competition, and breach of fiduciary duty against a commercial lending team of six corporate officers and employees who simultaneously resigned to join a direct competitor.
- Represented individual defendant in an action for declaratory relief and breach of patent assignment and commercialization agreements. Successfully defended against plaintiff's motions for temporary restraining order and preliminary injunction, and obtained dismissal of all claims, with prejudice, within ten weeks after complaint was served.
- Represented defendant, a wholesale lighting company, in an action brought against it by a competitor for infringement of alleged trade dress and design patents. Obtained summary judgment for client on all claims.
- Represented plaintiff, a publicly-traded software and database company, in copyright infringement action against defendant, an electronic medical records software developer, for unauthorized use and distribution of client's database software.
- Represented a publicly-traded CPU design company in multiple commercial and licensing disputes in California.

In addition to his trade secret practice, Mr. Darwin counsels and represents banks, trustees and corporate fiduciaries in complex litigation and regulatory enforcement proceedings. His practice also includes the representation of commercial and retail clients accused of unfair business practices. He has lectured on the topic of state privacy laws, and has testified before the California Legislature regarding federal preemption of consumer-protection legislation.

Recent Publications and Presentations

- Contributing Author: "Trade Secrets Case Law Report," *The ABA Section of Intellectual Property Law, Trade Secrets and Interferences with Contracts Committee Annual Trade Secret Law Report 2014/2015*
- "Breaking News! You Can Poach Employees From Your Competitors," *Buchalter Nemer Blog*, May 4, 2015
- "Four Tips for Trade Secret Pleading in California," *Buchalter Nemer Blog*, December 5, 2014
- "Whose Book (of Business) Is It Anyway? What to do Before a Competitor Hires Your Employees - Or You Hire Theirs," CBA Annual Convention of Bank Officers and Directors and Bank Counsel Seminar, Huntington Beach, CA, May 2-4, 2013
- "Trade Secrets and Non-Compete Clauses," The American Land Title Association Conference, October 20, 2012, Colorado Springs, CO
- "Stranger Danger," *Intellectual Property Magazine*, December 2011/January 2012
- "Protecting Your Business From Trade Secret Theft," *Intellectual Property Magazine*, April 2011
- "Enforcing Non-Competes in LLC Agreements," *Business Law News of the State Bar of California*, Issue 3, 2010
- "Beware the Kitchen Sink: The Use and Abuse of Confidentiality Agreements," *TNLT.com*, September 1, 2010
- "When Trade Secrets Meet Facebook," *Computerworld*, May 22, 2010
- "Your Employee has Joined a Competitor: Now What?" *Points & Authorities*, Winter 2010
- "The Sneaky Trade Secret," Business Law Section of the Bar Association of San Francisco, October 8, 2009
- "Trade Dress and Product Design," *Andrews Litigation Reporter*, Vol. 14, Issue 6, July 2007
- "When Employees Take the Company Jewels: A To-Do List For Employers," *Workforce Management Online*, July 2006

- Testimony on behalf of California Bankers Association before joint session of California State Assembly and California State Senate Banking and Commerce Committees, regarding the doctrine of federal preemption and its impact upon state and local privacy and consumer protection initiatives, May 21, 2003
- “Overview of Federal Preemption and its Application to Financial Institutions,” San Francisco Bank Attorneys Association, April 7, 2003

Mr. Darwin is a member of the San Francisco Bar Association, the San Francisco Bank Attorneys Association, and the Standing Committee on Trade Secrets of the California State Bar Association. He is a past member of the Executive Committee of the Federal Bar Association, Northern District of California, and is a Master of the Bench in the Edward J. McFetridge Inn of Court. Mr. Darwin is AV Preeminent rated by Martindale Hubbell and recognized as a 2013 and 2014 Top Rated Lawyer in the areas of Bank & Finance and Commercial Litigation by American Lawyer Media in conjunction with Martindale Hubbell. He also was selected as a Northern California Super Lawyer in 2014 and 2015.

Mr. Darwin is an active volunteer at Larkin Street Youth Services, which provides a comprehensive program of housing, education, employment and health services to homeless and at-risk teenagers and young adults in San Francisco. He is also a Senior Member of The Guardsmen, a non-profit organization that raises money to send disadvantaged and at-risk Bay Area children to school and summer camp.

Mr. Darwin earned his J.D. at the University of California, Hastings College of the Law. He received his B.A. in Political Science at the University of California, Los Angeles.

Areas of Practice

Litigation
 Intellectual Property Litigation
 Unfair Competition
 Copyright
 Trademark

Bar Admissions

California

Court Admissions

U.S. District Court for the Northern District of California
 U.S. District Court for the Eastern District of California
 U.S. District Court for the Central District of California
 U.S. District Court for the Southern District of California
 U.S. Court of Appeals for the Ninth Circuit