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20 UNDER 40

The state of the legal business is dismal. Revenues are down. Clients are complaining about the bills. Firms want their lawyers to be better rainmakers. There's no time for pro bono work — not to mention a personal life!

Set aside those concerns for a moment, and consider this year's list of the Daily Journal's 20 top lawyers under 40. Suddenly, the future doesn't look so bleak.

So take a few minutes away from the billables and read on about these 20 fascinating lawyers. You'll find that times may be tough but the legal industry is still pretty spectacular. In what other profession can you do such intellectually stimulating work while changing a little (or even a big) part of the world — and, perhaps, make a little money while doing it.

— The Editors



RODGER R. COLE | 39

IP Litigation

Fenwick & West

MOUNTAIN VIEW

Rodger R. Cole, acquired his ability to argue early on — in high school, in fact, when he joined the West Bakersfield High School debate team. By the time he was an undergraduate, at the University of Redlands, he had garnered the skills to win, which he and his teammate did at the National Debate Tournament in 1991.

Their topic? “That the United States should substantially change its trade policy toward one or more of the following: China, Hong Kong, Japan, South Korea, Taiwan.”

Since then, Cole's debate topics have changed, but he maintains the Midas touch in his work as an intellectual property litigator at Silicon Valley-based Fenwick & West. In 2008, he scored three big wins for clients Intuit Inc., Virgin Mobile USA and Capcom Co.

One challenge came from MKR, the Los Angeles investor relations firm that holds the intellectual property rights to the famous zombie movie

“Dawn of the Dead.” MKR claimed that Capcom's videogame, “Dead Rising,” which features a journalist reporting on a zombie invasion of a shopping mall, infringed on its copyright and trademarks for the movie. Cole advised Capcom to file for declaratory relief against MKR's claims, and then he filed a motion to dismiss their ensuing counterclaims.

Cole argued that similar “expressions” aren't protected under copyright laws, and that trademark law doesn't protect idea association. After commending Cole's oral argument, the federal judge in San Jose dismissed all of MKR's claims in October.

In June, Virgin Mobile was about to roll out a new service. Through it, phone users could earn free cellular phone minutes by watching and answering questions about advertisements. Virgin had issued a request for proposals for the back-end administration of that service, and North Carolina-based BrandPort Inc. applied but was rejected. The company sued Virgin, alleging it had misappropriated 55 trade secrets during the RFP process.

Cole convinced the state court judge in New Jersey not only to strike down BrandPort's proposed temporary restraining order on the new service, but also to support his motion for summary judgment, which argued that BrandPort's alleged trade secrets weren't really trade secrets and, regardless, that Virgin wasn't using BrandPort's methods.

Cole also helped shape new law last year. When San Jose-based InterMark USA Inc. filed a class action against Palo Alto-based Intuit regarding its online contracts, Cole convinced a federal judge in San Francisco to dismiss the case with prejudice. The judge's order became the first reported decision allowing companies to disclaim implied warranties in click-wrap, end-user license agreements (contracts that require you to click “I agree” before you download a product) on a motion to dismiss.

“The two things I love most about my job are winning for my clients and building the team I'll be working with,” Cole says.

Marybeth Milionis, a mid-level associate who worked on the Capcom case, said Cole has mentored her since she was a summer associate. His open-door policy and open ears have attracted many an associate to his office, she said, where he offers a confidential forum and practical advice. He has a knack for remembering associates' interests and returning to them with relevant opportunities.

“Associates really want to do their best for him, because he always does his best for us,” Milionis said. For his efforts, Cole's colleagues named him “Best of Fenwick” for mentoring and training.

Cole is also well known for his sense of humor (dry wisecracks), his sociability (“he's always up for a celebratory shot of tequila,” Milionis says) and his devotion to his family (he and his wife Kathy have two young daughters: Abigail, 5, and Elizabeth, 9 months).

— JILL REDHAGE