



## ZACHARY C. HOWENSTINE

### PARTNER

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A member of the firm's Intellectual Property Litigation practice, Zach Howenstine has more than a decade of experience focusing on complex, high-stakes intellectual property matters in federal and state trial and appellate courts across the country. His practice encompasses many areas of intellectual property litigation including infringement of copyrights, patents, and trademarks; misappropriation of trade secrets; antitrust issues; and contract matters with IP elements. Zach also advises clients on IP policies and best practices, including Digital Millennium Copyright Act (DMCA) compliance issues.

Zach has litigated cases in federal and state courts around the country, including top IP venues, and has represented clients in federal jury trials in the Northern District of California and Eastern District of Texas, appeals to the U.S. Court of Appeals for the Federal Circuit and Eighth Circuit, and binding arbitrations.

*\*Admission to practice law in New York is pending.*

### EDUCATION

- University of Missouri School of Law (J.D., 2009)
  - Order of the Coif
- Macalester College (B.A., *cum laude*, 2002)
  - German Studies

### BACKGROUND

Prior to joining the firm, Zach was a law clerk for U.S. District Judge E. Richard Webber.

## EXPERIENCE

### Beat Force Majeure Claims and Secured \$3 Million in Damages in Pandemic-Driven Dispute

Represented WideOpenWest, a cable TV, internet and phone provider, before a panel of arbitrators on dueling breach of contract claims after WideOpenWest terminated its agreement with ad partner Viamedia in the midst of the COVID-19 pandemic. In the arbitration, Viamedia contended that the pandemic, as a *force majeure* event, excused its failure to pay WideOpenWest. The panel found Viamedia liable for breach of contract and awarded WideOpenWest nearly \$3 million in damages, plus attorneys' fees and

### SERVICES AND INDUSTRIES

Intellectual Property Litigation

Intellectual Property

Litigation

Appellate

Complex Commercial  
Litigation

Noncompete and Trade  
Secrets

Trademark

Copyright

Technology

Antitrust and Trade Practices

Securities Regulation and  
Litigation

### ADMISSIONS

Missouri

U.S. Court of Appeals, Federal  
Circuit

U.S. Court of Appeals, First  
Circuit

U.S. Court of Appeals, Fifth  
Circuit

U.S. Court of Appeals, Eighth  
Circuit

U.S. District Court, Eastern  
District of Missouri

costs.

#### **Favorable Result in DMCA Copyright Case**

Obtained an order dismissing claims for secondary copyright infringement against an internet service provider (ISP) and its management company. The plaintiffs sought to hold the clients liable for copyright infringement allegedly committed by the ISP's subscribers through peer-to-peer file-sharing. The U.S. District Court for the Western District of Texas dismissed the plaintiffs' vicarious infringement claims against the ISP with prejudice, and ordered that all claims against the management company be dismissed with prejudice.

#### **Dismissal of Patent Claims with Prejudice for Telecom Company**

Successfully defended client against patent infringement claims brought by non-practicing entity, resulting in the plaintiff voluntarily dismissing its claims with prejudice.

#### **Successfully Defended Augmented Identity Company Against Patent Infringement Claims**

Successfully defended our client, a technology company focusing on augmented identity, against patent infringement claims brought by a non-practicing entity, resulting in the plaintiff voluntarily dismissing its claims with prejudice.

#### **\$12 Million Jury Verdict in Patent Infringement Case**

Obtained jury verdict and award of \$12 million in past damages against a client's subsidiary for infringement of computer software patent. Additionally, obtained jury verdict of noninfringement on patent infringement counterclaims.

#### **Dismissal in Patent Infringement Action**

Obtained order denying plaintiffs request for jurisdictional discovery in a patent infringement action. This resulted in the plaintiff voluntarily dismissing the case against the client.

#### **Successfully Defended Snack Chip Manufacturer Against Infringement, Other Claims**

Successfully defended client against claims of patent infringement, trademark infringement, trade secret misappropriation and unfair competition brought by leading manufacturer of snack chips. Secured a defense verdict on all claims.