



# David B. Sunshine

## Member

## New York

[dsunshine@cozen.com](mailto:dsunshine@cozen.com) | (212) 883-4911

David counsels clients in all aspects of intellectual property law. He focuses his practice on patent, trademark, and copyright litigation, anti-counterfeiting enforcement, proceedings before the Trademark Trial and Appeal Board, domain name disputes, U.S. and international trademark prosecution, and copyright registration and practice.

David also regularly counsels hedge funds and other institutional investors who have a stake or are considering acquiring a stake in companies involved in IP and other technology litigation. Specifically, he monitors and analyzes litigation on behalf of hedge fund clients and provides advice on potential risk and likely outcomes. As a result of his experience advising hedge funds, David is regularly quoted in the press. In addition, David represents companies in the NFT and cryptocurrency space.

David also represents a formidable list of domestic and multinational clients in a variety of industries, including apparel, luxury consumer and designer goods, jewelry, food and beverage, consumer products, consumer electronics, publishing and media, health care, e-commerce, telecommunications, publishing, and sports, among others. On behalf of several major luxury brands, David develops and implements comprehensive worldwide anti-counterfeiting enforcement strategies. As a result of those strategies, he has succeeded in shutting down scores of counterfeit operations around the world. He also has transactional experience relating to intellectual property issues in the context of mergers and acquisitions and venture capital. He has been involved in drafting and negotiating license agreements as well as other agreements involving intellectual property interests.

He earned his undergraduate degree from Washington University in St. Louis and his law degree from the Benjamin N. Cardozo School of Law, where he served as the acquisitions editor of the *Cardozo Arts & Entertainment Law Journal*.

## Experience

Represented Utz Quality Foods, LLC (NYSE: UTZ) and certain of its affiliates in the \$167.5 million sale of certain assets and brands to Our Home™, an operating company of Better-for-You brands that includes Real Food From the Ground Up®, Popchips®, and Food Should Taste Good® (Our Home). Under the agreement, affiliates of Our Home purchased the Good Health® and R.W. Garcia® brands (including the entities that owned such brands); the Lincolnton, NC, and Lititz, Pa., manufacturing facilities; and certain related assets. This transaction drew on the experience of the firm's corporate, real estate, tax, intellectual property, labor and employment, employee benefits and executive compensation, environmental, commercial litigation, and technology, privacy and data security attorneys.

Represented LGC Genomics, LLC, a global provider of life science tools, in its \$1 million purchase of substantially all of the assets of PolyDesign LLC, a manufacturer, developer, distributor, marketer, and seller of products used in synthetic oligonucleotide production.

Represented the shareholders of Sparks Marketing LLC, an experiential marketing agency, in connection with the company's sale to Freeman, a global events company.

Represented Investindustrial, a private equity firm based in London, in its acquisition of a majority stake

### Practice Areas

- Intellectual Property
- Trademark & Brand
- Copyright & Content
- Entertainment Law

### Industry Sectors

- Cryptocurrency and Blockchain Technology
- Hospitality

### Education

- Benjamin N. Cardozo School of Law, Yeshiva University, J.D., 2000
- Washington University in St. Louis, B.A., 1997

### Bar Admissions

- New Jersey
- New York

### Court Admissions

- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court -- Eastern District of New York
- U.S. District Court -- New Jersey
- U.S. District Court -- Southern District of New York

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in Eataly S.p.A., the global chain of upscale Italian marketplaces. This transaction drew on the experience of the firm's Corporate, Real Estate, Employee Benefits & Executive Compensation, Intellectual Property, and Technology, Privacy, & Data Security attorneys.

Represented private equity firm Argosy Capital in its sale of Component Sourcing International, LLC, a manufacturer of custom components in a variety of product categories, to private equity firm CPC, LLC. This transaction drew on the experience of the firm's corporate; tax; antitrust; labor and employment; employee benefits and executive compensation; technology, privacy, and data security, intellectual property, real estate, and environmental attorneys.

Represented the shareholders of Aries Global Logistics, Inc., an international air and ocean freight forwarder, in its \$105 million sale to NTG Air & Ocean USA, Inc., a subsidiary of NTG Nordic Transport Group A/S, a publicly traded Danish transportation company. This transaction drew on the experience of the firm's corporate; tax; real estate; labor and employment; employee benefits and executive compensation; antitrust; technology, privacy, and data security; transportation and trade; and intellectual property attorneys.

Represented private equity firm PennSpring Capital, LLC in its acquisition of Burch Supplies Company, Inc., an equipment and supplies distributor for the mining, industrial, and mineral processing industries, with a related real estate acquisition funded in part by a loan and in part by rollover equity. This transaction drew on the experience of the firm's corporate; tax; real estate; intellectual property; and technology, privacy & data security attorneys.

Represented The Burgiss Group, LLC, a provider of systems and data on private capital, in its acquisition of Caissa LLC, a developer of an investment analytics software platform. This transaction drew on the experience of the firm's corporate; tax; employee benefits and executive compensation; labor and employment; intellectual property; and technology, privacy, and data security attorneys.

Represented a private equity firm in its acquisition of a majority stake in a mass text alert platform for businesses. This transaction drew on the experience of the firm's corporate; tax; intellectual property; technology, privacy, and data security; labor and employment; and employee benefits and executive compensation attorneys.

Represented private equity firm PennSpring Capital, LLC in its sale of Securus Contact Systems LLC, a virtual receptionist and live web chat services provider for businesses, to Signpost Inc., a technology company that develops marketing automation software for local businesses to build customer relationships. This transaction drew on the experience of the firm's corporate; tax; employee benefits and executive compensation; labor and employment; intellectual property; and technology, privacy, and data security attorneys.

Represented a marketing platform for digital out of home signage, and its subsidiaries, in the acquisition of substantially all of the assets of another prominent company in its industry, including entities based in Australia, Canada, Germany, and the United Kingdom.

Represented Acreage Holdings in a groundbreaking, \$3.4 billion transaction to be acquired by Canadian cannabis giant Canopy Growth Corporation once cannabis has been federally legalized in the United States, with Acreage continuing to operate as a stand-alone business in the meantime. This first-of-its-kind transaction involved crafting a unique deal structure and navigating the challenges presented by the illegality of cannabis under U.S. federal law. The transaction drew on the experience of the firm's corporate, tax, employee benefits, antitrust, and intellectual property attorneys.

Handled a successful appeal before the U.S. Court of Appeals for the Second Circuit in connection with a trademark infringement action.

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Won on summary judgment on behalf of a major French jewelry retailer in a trademark infringement lawsuit.

Prevailed on a motion to dismiss on behalf of a major sweetener manufacturer in a class action false advertising case.

Won a judgment of noninfringement on behalf of the manufacturer of high speed data connectors in a patent infringement case.

Prevailed on a motion to dismiss on behalf of a theater in a copyright infringement case relating to the performance of a cat circus.

Represented the defendant in a patent infringement case relating to software for storing and displaying intra-oral radiographs.

Represented the plaintiff in a certification mark infringement case relating to motorcycle helmets.

Represented a well-known basketball player in a right of publicity case against a major U.S. apparel retailer.

Represented the defendant in a trademark infringement case in connection with an allegation of trademark infringement relating to Google AdWords and sponsored links.

Closed down numerous retailers and wholesalers selling counterfeit goods on behalf of the manufacturer of a major international luxury brand.

Represented the New York Observer in a protracted trademark dispute. Over the course of a five-year proceeding before the Trademark Trial and Appeal Board (TTAB), we overcame vigorous opposition to our trademark application, with the TTAB ultimately dismissing the objection to the mark in a detailed decision. We also secured dismissal of a parallel lawsuit filed in federal court against six individuals, including the New York Observer's high-profile publisher, by the individual who objected to our trademark application.

Secured a hard-fought victory for a large costume jewelry retailer based in Paris, with stores worldwide, in a consolidated Trademark Trial and Appeal Board proceeding involving seven applications and registrations. During the course of discovery, the individual whose trademark our client opposed sued for infringement in federal court in New York, resulting in the suspension of the TTAB case. After we successfully moved for summary judgment in the infringement case (with the win being affirmed by the U.S. Court of Appeals for the Second Circuit), the TTAB proceedings resumed. We first won judgment on the pleadings with respect to a cancellation counterclaim the other side had filed, and we then secured victory for the client on its own claims in almost all respects.

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