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Q&A With Loeb & Loeb's David Grace

Law360, New York (June 11, 2013, 3:16 PM ET) -- David W. Grace is a partner in Loeb & Loeb LLP's Los Angeles office and co-chairman of the firm's intellectual property protection group. His primary area of practice is the protection, acquisition, and licensing of trademarks, copyrights, publicity rights and entertainment rights. He litigates trademark, unfair competition, copyright, right of publicity, Internet domain name, entertainment, advertising and patent disputes. He represents clients in negotiating significant trademark, copyright, endorsement and entertainment agreements and counsels clients with respect to Internet and advertising issues. He is a contributing author to the Loeb & Loeb Advanced Media and Technology Law blog.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The biggest challenge has not been a particular case but rather a particular class of people — uncooperative clients. Trying to keep a powerful executive under control on the witness stand in a high-stakes breach of contract and trade secret case proved to be an insurmountable challenge in one case. We had long sessions discussing the importance of following the proper procedures. We spent days going over the questions and answers again and again. Nonetheless, at the first opportunity, the witness launched into a speech that he had not shared. I was stunned. Although the substance of his speech should have been helpful to the case and although he was an honest person, his style and choice of words unnecessarily undermined his credibility and our case. Since that time, though, I am fortunate to have a good example to help keep other clients in check.

Q: What aspects of your practice area are in need of reform and why?

A: A part of my practice is acting as a mediator and as a volunteer attorney settlement officer for the local district court. My impression is that the litigation process could be made more efficient for most litigants if there were more robust formally required settlement procedures. Most litigants want to settle. The overwhelming percentage of cases settle. But only a small fraction of the litigation costs of a typical case, at least in federal court, are devoted to formal settlement procedures. Settlement procedures should require meaningful client participation, start early, and, if not successful early on, be repeated. When clients are directly involved, settlement procedures are very effective because they force the participants to focus on the case and the issues, and they provide structure in which settlement is expected and thus more palatable and likely.

Q: What is an important issue or case relevant to your practice area and why?

A: One of my primary areas of focus is in helping clients build and protect their brands. Although not conceptually a new issue, one of the continuing challenges is protecting brands on a global basis. With about 200 countries, most with “first to file” trademark laws, trying to protect brands on a global basis can become expensive. Protecting a brand in the local marketplace of distant countries is only half the battle. With the ever-increasing importance of the Internet and online markets, protecting brands from the people in those distant countries is just as important. Although located on the other side of the world, through the miracle of the Internet, those people now have easy access to and the ability to inflict damage in marketplaces all around the world.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I am happy to report that I have been very impressed by most of the attorneys that practice full-time in the trademark and copyright fields. With a few exceptions (we all know who you are), the attorneys that specialize in the trademark and copyright fields are professional, accommodating and focused on problem solving. Perhaps it is because so many of us spend so much time attending events such as the International Trademark Association meetings. Or, perhaps it is because we deal with clients that tend to be outgoing marketing types. Whatever the reason, civility and professionalism seem to go with the turf.

If I have to single out one person for praise, then this is to give a shout-out to a departed friend, Charles Whitebread, who was a law professor at the University of Virginia and later the University of Southern California. A brilliant educator and the host of a long chain of law student Halloween parties, Charlie promoted civility, good will and cheer among all he encountered. Charlie had a lasting positive impact on the lives of many people that I know.

Q: What is a mistake you made early in your career and what did you learn from it?

A: From a career development point of view, I spent far too much time being the diligent soldier working too hard on cases and not enough time on professional development and networking activities. As the private practice has evolved, young attorneys can no longer assume that working hard is the path to success. To be successful, working hard on cases and billable hours is only the foundation. Young attorneys need to get out and start networking, speaking and writing as soon as possible. Like so many other things in life, finding the right balance is the key.

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