



Litigation

Litigators focused on achieving the right result every time

Masuda Funai represents business clients from diverse industries and specialized market segments from around the globe faced with domestic commercial disputes and litigation. We have successfully resolved high-stakes claims in courts and tribunals throughout the country involving single, multi-plaintiff and class action litigation. We utilize our experience to aggressively - but efficiently - assist our clients assert or defend business disputes, regardless of claim size.

In addition to our proven advocacy ability, we offer demonstrable skill in explaining the complexities of domestic litigation and the American court systems, which can be complicated for international businesses unfamiliar with U.S. law and procedure. Our in-depth understanding of a wide range of cultures and fluency in a multitude of languages has allowed us to successfully advise foreign-owned business clients with limited English ability or whose documents are in their native language. We have also developed expertise in helping our clients coordinate and manage the complexities of cross-border litigation.

Our litigators are proven negotiators with extensive courtroom experience involved in a wide variety of business disputes, ranging from complex commercial and patent litigation to contract, real estate/construction, employment and partnership disputes; to cargo/shipping claims, antitrust matters, insurance coverage and product liability. Our national and international industry experience is equally broad and includes high tech, electronics and semi-conductors, automotive, heavy manufacturing, transportation and distribution, shipping and trade, import and export, telecommunications, life sciences, healthcare, retail and hospitality, among others. We also work diligently with clients on litigation prevention and risk management techniques designed to reduce the exposure to, and the cost of, litigation.

Whether a dispute involves federal, state or appellate court, arbitration or private negotiation designed to eliminate conflict behind the scenes, we are committed to a strategic approach to problem-solving and bring the right mix of lawyers to match the specific needs of each client. This means we listen to what our clients tell us they want to achieve and we articulate and discuss, in clear and simple terms, the optimal approach to dispute resolution, risk management and cost-containment. We make a point of preparing our clients for the rigors of litigation with a single purpose — *to win*.

Range of Services

Commercial Disputes

Masuda Funai is involved in business litigation and the resolution of commercial disputes in state and federal courts and before administrative agencies throughout the country. Our lawyers are knowledgeable in a wide variety of business sectors and experienced in resolving serious, “big ticket” disputes pertaining to contracts and the sale of goods, trade secrets, fraud, deceptive trade practices, antitrust claims, equipment leasing, breach of warranty, accounting, secured transactions, collections, repossession, product recalls and Uniform Commercial Code disputes, among others. We efficiently assert our clients’ claims and defenses, from large cases to more modest disputes.

Businesses today are often faced with a climate of conflict that can create problems between customers and vendors, management and shareholders, or various competitors. In the event a problem becomes unavoidable and the court system is the only viable path to resolution, we vigorously advocate our client’s position through trial and on appeal when necessary. We also guide clients through any available ADR options, as circumstances warrant.

In many situations, the time that passes from the beginning of a case to resolution can be long, disruptive and expensive. Our firm is known not only for balancing the time and cost associated with commercial litigation, but also for expediting the process in the event it benefits our client. Under appropriate circumstances, we also use injunctions, writs and other prejudgment remedies to gain immediate relief and create a tactical advantage for our client.

On many occasions, our clients have to deal with collections and other unpaid obligations that are critical to their business operations, cash flow management and continued profitability. We know how to use quick-strike litigation strategies aimed at achieving immediate results and preserving potential sources of recovery. Our litigators are proven advocates and accomplished negotiators who understand how business considerations impact a commercial dispute. Regardless of the size or complexity of the claim at hand, our objective is to protect client interests at every stage of the dispute resolution process.

Arbitration & Mediation

In the world of litigation, a “win” often occurs outside of the courtroom. At Masuda Funai, we know that alternative dispute resolution (ADR) may provide an opportunity for a quick and cost-effective conclusion of business disputes. In addition to persistence and creativity, finding a non-litigated solution requires the ability to listen, analyze and navigate through and beyond even the most difficult problems and conflicts. Our attorneys draw upon all forms of ADR to benefit our clients. We know how to use arbitration and mediation as an effectual and economical means to resolve disputed issues, often quicker and with less expense than in the traditional litigation process.

Our lawyers are involved in non-binding procedures designed to achieve a consensual settlement and/or reconciliation between parties in dispute, as well as binding adversarial proceedings where a neutral party decides the dispute at hand. We have achieved successful outcomes in arbitration proceedings, mediations,

and mini and mock trials. We understand the rules, policies and procedures and know many of the professionals associated with the host of ADR options, including the American Arbitration Association, JAMS Endispute, the International Chamber of Commerce and UCITRAL, Center for Public Resources, independent retired judges and ADR professionals, among others.

Some disputes call for aggressive action while others require careful diplomacy and measured compromise. We take the time to explain the advantages and disadvantages associated with various ADR forums, and ably guide clients in selecting the best possible option given the unique characteristics, nuances or peculiarities of a specific dispute. Our experience in ADR includes complex business disputes, class actions, contract claims, business torts, antitrust claims, employment claims, real estate, construction and partnership disputes, to name a few.

We also advise on the complete array of ADR clauses, believing that preventative action is a critical component of mitigating the likelihood and risks of traditional court litigation. When beneficial for our clients, we frequently draft ADR clauses for a diverse range of transactions such as purchase/sale agreements, finance and loan agreements, distribution and franchise arrangements, employment and management contracts, and mergers, acquisitions and joint ventures. We negotiate and document ADR agreements both before and after a dispute arises. In situations where our client has been sued but would prefer to resolve the dispute outside of court, we negotiate the use of ADR with adversarial parties whose original intent was to file a lawsuit, thus potentially conserving considerable time and resources for our client.

Collateral Recovery & Creditors' Rights

Whether the result of a fluctuating economy, credit concerns or default, problematic financial scenarios can develop from a wide variety of circumstances. At Masuda Funai, we represent creditors in bankruptcy courts and in all types of insolvency proceedings and assist with debt work-out agreements and the recovery of collateral. Our clients include a wide range of creditors faced with account receivable collection, distressed investments and bankruptcy claims, including secured and unsecured lenders, lessors and other claim holders in all areas of collateral recovery and insolvency.

We advise on the full scope of bankruptcy and creditors' rights cases, ranging from complex to more routine matters — from start to finish. We know collections, collateral recovery and bankruptcy law and procedure inside and out, and work diligently and quickly with each client to recover their money and/or other assets. In the event of a bankruptcy, we guide creditors through Chapter 11 reorganizations, liquidations and Section 363 sales, as well as defend their rights in Chapters 7 and 13 bankruptcy cases.

We have vast experience in efficiently assisting clients in adversary proceedings in bankruptcy, including preference litigation and fraudulent transfers, discharge avoidance and complex business disputes. We offer proven skill in bankruptcy, insolvency and preference litigation, as well as in resolving workouts, foreclosures, bankruptcies, receiverships and collection matters on both a regional and national scale. We also advise lenders on the enforcement of loans involving real and personal property in both state and bankruptcy court.

Our lawyers understand the critical and time sensitive nature of asset recovery and financial distress. Our in-depth experience in commercial law and litigation, bankruptcy, lending and real estate aid us in effectively representing creditors, and our legal ability and business perspective have proven successful in safeguarding their rights.

Distribution Disputes

Making products and/or services available for the businesses or consumers that use them can be accomplished directly by the producer or service provider, or through indirect channels with intermediaries. These relationships and the agreements that define them are a major tool for businesses of all sizes and in every market segment. Many distribution contracts represent critical elements of doing business and remaining competitive. Unfortunately, problems with distribution relationships often arise after the contract is signed. When a distribution relationship goes sour, identifying and untangling each party's rights and interests can be complicated and result in litigation.

At Masuda Funai, a significant portion of our practice is focused on defending the rights of business clients involved in distribution-related disputes on a regional and national, and even international scale. Our decades-honed competency and success in navigating clients through and beyond contentious disputes involving sales, distribution, dealer, franchise, sales representative, license, vendor, OEM, security, lease, consignment, warehouse and bailment agreements is a major reason why clients retain us again and again. In addition, we also defend clients faced with wrongful termination claims by former distributors, dealers, franchisees and sales representatives.

Distribution agreements are an essential tool in the creation of an alliance between the distributor and supplier, which is why many of our clients seek to preserve the relationship by resolving the disagreement and returning to "business as usual." Under such circumstances, we serve as careful problem-solvers and diplomatic negotiators focused on paving a path back to a productive and profitable association.

Intellectual Property Litigation

Intellectual property is an essential asset and component of practically every business today. In the event an IP dispute arises, companies of all sizes require effective solutions that not only protect IP assets, but also mitigate potential loss or maximize their recovery of resulting damages. Masuda Funai litigators understand the absolute need to safeguard IP and rigorously defend or assert each client's rights across the U.S. and beyond.

We are acutely focused on the distinct commercial objectives surrounding our clients' IP assets and portfolios. We are skilled in litigating IP disputes in state, federal and appellate courts, in alternative dispute resolution forums, and in advocating our clients' positions before the U.S. Patent and Trademark Office (PTO), Trademark Trial and Appeal Board (TTAB) and International Trade Commission (ITC).

Our attorneys represent clients in the enforcement of their rights and defense of claims of others, from the initial pre-suit investigations through to conclusion — whether by settlement, mediation or litigation. Our experience includes the resolution of disputes pertaining to patents, copyrights, trademarks, trade dress, trade secrets, domain names, counterfeiting, comparative advertising, technology transfers, licensing, franchising, false advertising, unfair competition, non-compete and non-solicitation clauses, as well as antitrust litigation with an IP component. We also provide pre-litigation counseling and opinions of counsel in support of litigation or anticipated litigation.

Our firm is experienced in asserting our clients' patent rights and defending our clients against the patent rights of others through all phases of patent disputes including preliminary injunction proceedings, Markman hearings, jury and nonjury trials and appeals. Our experience includes “bet-the-company” type patent litigation against competitors, defense against patent claims brought by non-practicing entities (“patent trolls”) and ITC actions, as well as representation before the PTO in post grant proceedings, including inter parte reviews. We also deliver a business-oriented perspective to complex trademark disputes, and understand all facets of the Lanham Act and related federal and state laws.

Our litigators defend each client's valuable trade secrets. We have successfully litigated claims pertaining to misappropriation, breach of nondisclosure, confidentiality and noncompetition agreements, as well as idea/invention theft, unfair competition claims and related insurance actions. We aggressively defend clients against competitors who have stolen, hijacked or pirated client domain names and IP on the internet by responding quickly to restore the misappropriated asset and rectify the wrongdoing. In addition, we advocate our client's rights in domain name disputes under ICANN's Uniform Domain Name Dispute Resolution Policy.

Partnership Disputes

Even with the best of intentions, business partnerships can fray and, unfortunately, completely unravel. Masuda Funai offers a track record of success in resolving even the most contentious partnership and closely-held corporate disputes and dissolutions. Because conflict from inside a company can be more debilitating than any external threat, even-handed negotiation in the face of often intense emotion is paramount to realizing the right result. Our attorneys know, from personal experience, that the way in which a partnership or shareholder dispute is handled will often make the difference between financial loss and the desired outcome.

Our firm provides the entire range of dispute resolution services, including the resolution of claims pertaining to partnership, limited liability company, shareholder and termination agreements. We work with our clients to mitigate dissonance and discordance before it can become tangled beyond reconciliation. In the event dissolution is the only viable path for our client, we design meaningful action plans that have the best possible chance of maximizing recovery. Should litigation ensue, we steadfastly champion our client's position and assess probable outcomes, including the analysis of risk, time and expense. We litigate the full array of claims pertaining to partnership disputes, a sampling of which includes breach of fiduciary duty, fraud, mismanagement and dissolution actions.

We counsel clients on all sides of a partnership dispute, including representation of the company/majority, 50 percent owners and minority stakeholders. Our tangible success includes defeating a takeover attempt and

forcing a share purchase and change in the control of the company. We advise both foreign and domestic companies, and have represented a Russian-based company, a Japanese company and an American company with a Belarussian and Ukrainian work force and base, to name a few. Our skill in business law is particularly useful in resolving these types of disputes, with or without litigation, in mediation or arbitration proceedings.