

Rising Star: Weil's Jessica L. Falk

By Tiffany Hu

Law360 (June 4, 2021, 2:38 PM EDT) -- Jessica L. Falk of Weil Gotshal & Manges LLP has faced off against IBM over its Watson supercomputer technology and represented Marvel in comic book cases, landing her a spot among the intellectual property law practitioners under age 40 honored by Law360 as Rising Stars.

HER PROUDEST MOMENT:

Nuance Communications Inc. sued IBM Corp. in 2016 over allegations that the tech giant breached a licensing agreement for software relating to IBM's Watson technology by withholding certain updates and modifications.

Representing Nuance, Falk said she was most proud of her win in a "huge discovery fight" with IBM, which involved persuading a magistrate judge that the Watson source code was needed from IBM to show that the code had advanced in a way that meant the upgrades and updates were in different products.

"I convinced her that we needed to get the source code and the metadata for the products, and that was really important in terms of discovery to show the connection," Falk said. "It's an abstract concept to explain, and I was proud to get the court on our side for that."

The trial began in February 2020 and its second week was slated for the following month until the COVID-19 pandemic hit the nation, Falk said. The trial picked up again in July, with in-person and Zoom hearings, and closing arguments were held in March.

It was "not only an interesting case, but an interesting way to get to the end," Falk said.

HER MOST INTERESTING CASES:

People often inquire about her work with Marvel, perhaps making cases involving the comic book publisher the most interesting, Falk said.



Jessica L. Falk
Weil Gotshal

Age: 37
 Home base: New York
 Position: Partner
 Law school: Boston University
 School of Law
 First job after law school:
 Associate at Weil

Marvel has been a recurring client of Weil's, even before the 2000s era of superhero films that established the Marvel Cinematic Universe, according to Falk. In the mid-90's, the firm handled Marvel's bankruptcy proceedings and helped with the due diligence on the corporate and litigation side when Disney was looking to acquire the publisher in 2009, she said.

After the acquisition became public, Falk said that "one of the things that we had anticipated was heirs to certain comic book artists and comic book writers would try to terminate the rights in the copyrights that Marvel had."

One such instance was when the heirs of late comic book artist Jack Kirby tried to reclaim the copyright for superheroes including the X-Men, Iron Man, Thor — "basically any movie that made money in the early 2000s," according to Falk.

Falk lodged a declaratory action on behalf of Disney and Marvel, asking a New York federal judge to find the termination notices invalid because Kirby's work for Marvel was done on a "work for hire" basis, meaning the termination right was not applicable.

After a trial court did so in 2011, the Second Circuit affirmed in 2013, finding that although Kirby had worked as a freelancer, he created his comics in close collaboration with Marvel and designed his drawings to fit into the company's universes. The parties in September 2014 agreed to end their U.S. Supreme Court fight.

"In addition to having tons of Marvel comics in my office — for work purposes, I swear — helping [to] prepare the deposition of Stan Lee, that was a really cool memory," Falk said.

WHY SHE'S A TRADEMARK ATTORNEY:

Falk's interest in intellectual property litigation came during her summer associate experience at Weil, where she rotated through a number of teams, "just trying to feel [her] way," she said. In her restructuring rotation, she was assigned a memo on intellectual property rights in bankruptcy.

"For the company entering bankruptcy, their most valuable IP right was their trademark," Falk said. "And this was just something that was completely unfamiliar to me, but I found it to be absolutely fascinating — I thought it was the most interesting assignment I had all summer."

Returning to her third year of law school, Falk said that she took courses in introduction to intellectual property, trademark, unfair competition, and virtually "anything I could get my hands on that was IP-related," she said.

A self-proclaimed Weil "lifer," Falk said her connection with the legal profession actually began some years before that. From her senior year of high school through her first year of law school, she worked at a small litigation boutique firm — even during her college winter breaks, she said.

"[It] was a really great experience because I saw the workings of a firm from basically a receptionist to senior partner," Falk said of her time there. "It gave me a very detailed view into litigation generally."

WHAT MOTIVATES HER:

Falk said that she loves being in the office every day, where she can find colleagues who "bring up interesting points on cases and challenge me to see things in a different way." She said she hasn't been

able to do that as much over the past year due to the pandemic and is excited for things to gradually reopen.

"That's what gets me up in the morning," Falk said. "I really like my job, I like the people I'm here with and every day is something new. I'd be working on an IP matter in the morning, and an antitrust matter in the afternoon."

— *As told to Tiffany Hu*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2021 Rising Stars winners after reviewing more than 1,400 submissions. Attorneys had to be under 40 as of April 30, 2021, to be eligible for this year's award. This interview has been edited and condensed.