

MVP: Goodwin Procter's Brett Schuman

By Collin Krabbe

Law360 (October 6, 2023, 1:08 PM EDT) -- Last year, Goodwin Procter LLP's Brett Schuman drew national press when he co-lead advised the entity housing Sean "Diddy" Combs' business assets on an acquisition deal involving Cresco Labs — which fell through — just a few months after successfully defending a cannabis concentrate brand in a federal trademark infringement case brought by the company behind RAW rolling papers, earning him a place among Law360's 2023 Cannabis MVPs.

His biggest accomplishment from the past year:

For Lanham Act cases like the one involving BBK Tobacco & Foods LLP — which has brands including RAW, Rolling Supreme and Skunk — a bid for summary judgment was a tough hill to climb. And yet, "we got it," Schuman said.

Generally, he said the cannabis industry has a number of trademark infringement cases filed against industry members from those non-cannabis sector trademark holders, which he called a substantial risk to the industry. And so the fact that his team won summary judgment, at least for now, is potentially significant for the entire industry, he said.

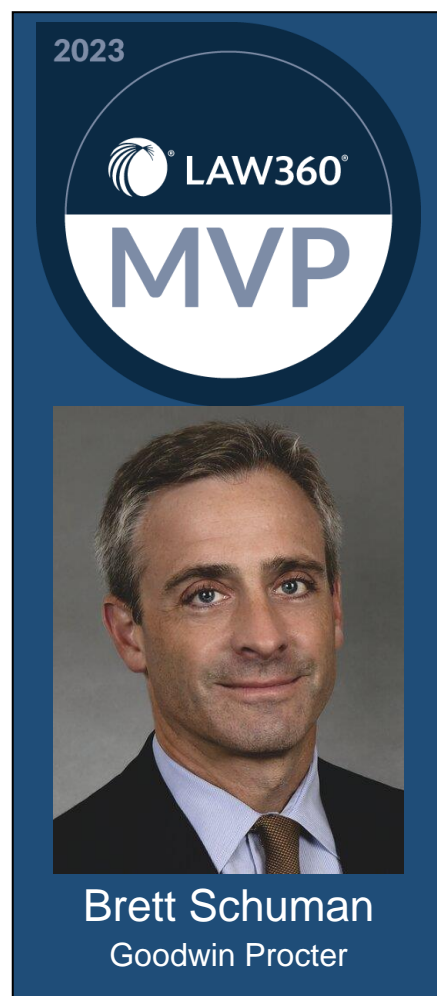
"To be able to handle one of the first major trademark infringement cases against a cannabis industry company is significant," according to Schuman. BBK sued a company going by Raw Garden, trying to "extract significant money" with an injunction to switch the name.

As it relates to summary judgment, Schuman said the district court judge saw that the eight-factor test for infringement was not in dispute and tilted in favor of Raw Garden.

His biggest challenge from the past year:

For various reasons, Schuman said the cannabis market has been "sort of in the doldrums" during the June 2022 to June 2023 time period, with less deal flow and fewer financings and M&A deals.

"That's the primary challenge," he said, adding that some of the roadblocks are federal illegality and lack of open access to banking services, particularly Section 280E in the tax code preventing cannabis businesses from deducting ordinary business expenses from taxable gross income.



The ongoing illegal market is another issue. Schuman pointed to New York City and a "robust" illegal market, with investors and companies very reluctant to spend what it takes to get a license, do compliance and pay taxes when competing with under-the-table operators.

"The competition from that illegal market ... is a real challenge for the clients that we represent," according to Schuman.

On why he is an IP/cannabis attorney:

Schuman said he loves being an intellectual property litigator, but that the space is pretty mature without a ton of novel issues. So around 2015, he said he thought beginning a cannabis practice at Goodwin would be an "outstanding practice for us."

"I thought that we should have this as a practice from a business perspective. And also the IP issues in this space ... are fascinating," he said, adding that there haven't been many patent infringement lawsuits in the space. In short, cannabis is "uncharted waters," he said.

Schuman, who spurred the cannabis arm of Goodwin alongside partner David Apfel, said he's in the business of applying the well-developed body of IP law to an industry where that law hasn't really been applied to date.

What advice do you have for junior attorneys:

Schuman says junior attorneys should practice investing in themselves.

To explain, he applied his own experience in cannabis.

"I read stuff that I didn't get to bill any clients for. I spent hours and hours on the internet researching, learning the industry, learning what the issues are. I read regulations. I read drafts of legislation," he said, counseling people to not just "show up and say, 'Hey, I want to do cannabis because I think it's cool.'"

--As told to Collin Krabbe

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