

Rising Star: King & Spalding's Jessica Benvenisty

By Emily Johnson

Law360 (July 30, 2024, 2:02 PM EDT) -- Jessica Benvenisty of King & Spalding LLP led the trial team for the mobile gaming platform Skillz Inc. and won a \$42.9 million jury verdict in California in February against rival AviaGames for patent infringement related to fraud allegedly enabled by bots, earning her a spot among the trial attorneys under age 40 honored by Law360 as Rising Stars.

Her most interesting trial:

Benvenisty said that representing Skillz, which had developed a technology that allowed people to play one-on-one on mobile gaming apps and said a competitor had stolen its technology, was her most interesting trial.

Skillz won its case accusing AviaGames of ripping off technology covered in a 2015 Skillz patent related to programming a type of head-to-head game.

Benvenisty said King & Spalding took over representation for Skillz from previous counsel.

"We took over with four months to trial," Benvenisty said. "This was actually my first patent case, believe it or not."

Taking over a case with a looming trial as a deadline was a challenge, Benvenisty said, because she and her colleagues had to learn the case background while developing trial themes and strategies.

She said Skillz was suspicious that AviaGames had been clandestinely matching its paying customers with bots — using software stolen from Skillz.

Benvenisty said that although the defendant's summary judgment motion and King & Spalding's reply was filed in the dispute, Skillz found evidence that Avia was using bots. That led to successfully reopening

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Jessica Benvenisty
King & Spalding

Age: 36

Home base: New York City

Position: Partner

Law school: Columbia Law School

First job after law school:

Litigation associate at Gibson
Dunn & Crutcher

discovery, she said.

"The court understood the severity of the accusation and allowed us to serve updated discovery," she said.

Another challenge was that some relevant documents were in Mandarin Chinese, so they had to figure out a way to handle that "on a compressed timeline."

During jury selection, Benvenisty said, one of the firm's lawyers asked how many people had applied for or received a U.S. patent. Benvenisty said it seemed as if "a third of the hands went up in the room."

"It was an interesting jury pool," she said.

Benvenisty said damages in an infringement case involved calculating a hypothetical negotiation on what the infringer would have paid the patent holder to license the patent.

Benvenisty said Avia had told Skillz that it wanted to be partners, but at the same time it was secretly mining the company's algorithms.

"Trying to use the hypothetical negotiation framework for facts that were really outside of the box" was challenging, she said.

Benvenisty said they had to convince the jury in a complicated case.

"Trying to explain sophisticated economic concepts to the jury — despite the jury being sophisticated — there were still some calculations and many steps in the hypothetical negotiation to explain to the jury," she said. "I was really gratified that the jury awarded the damages number that we requested down to the dollar."

Her proudest moment:

Benvenisty said hearing the specific dollar amount requested at the Skillz verdict was her proudest moment as an attorney.

"It was so gratifying," she said.

Benvenisty said she enjoys representing plaintiffs because they feel aggrieved and wronged. The theme for the Skillz trial was fairness, she said.

"Skillz developed technology that allows people to play head-to-head competition on their phones for it to be fair," she said. "For Aviagames to hijack that technology and ultimately pair people with bots using that technology, it really offended Skillz's core mission, which is for games to be fun and fair. That was what motivated the story that we told to the jury."

Her biggest trial lately:

Benvenisty said representing small-scale landlords who challenged New York's residential eviction moratorium during the first year of the COVID-19 pandemic was the most interesting case she had worked on recently. The firm represented the landlords who were harmed by the eviction ban and held a hearing on a preliminary injunction. At that hearing, the ban was on trial, she said.

"That case was a good example of how trials can be a microcosm of issues affecting life," she said.

Benvenisty said the eviction moratorium was passed as the government was trying to protect the public and address economic fallout during the pandemic.

"That seems like a good policy to keep the public safe, but then the interests of the landlords came in and we discovered that small landlords were being harmed, too," she said. "Small landlords were in some cases facing homelessness themselves as a result of the policy."

The U.S. Supreme Court in August 2021 granted an injunction blocking enforcement of a New York anti-eviction law, finding that a key provision allowing tenants to attest to their pandemic-related hardship in order to prevent eviction violates landlords' due process.

State legislators then amended the statute, giving landlords an opportunity to challenge hardship claims and eventually prompting the plaintiffs to file an amended complaint. A New York federal judge denied the bid by the landlords to challenge the eviction moratorium later in 2021.

What motivates her as an attorney:

Benvenisty said she enjoyed working in a profession where she can be competitive, and "there's nothing more rewarding to me than winning cases for clients."

She said her clients put time, resources and energy into litigating, "which in many cases takes away from the energy, time and resources they have to operate their business."

"That feeling is even more compounded when I'm on the plaintiff's side," she said. "Because the plaintiff is the party that chose to bring the case, which is not a decision that I, as an attorney, or, of course, our clients take lightly."

Benvenisty said she is also motivated by her two children, ages 6 and 4, who are learning new things constantly.

"I'm so motivated by the aspect of my job that allows me to learn new things," she said. "In most cases, there's an opportunity to learn a new business or new industry. There's usually an opportunity to work with an expert in a new technical or scientific field. There's opportunities to learn new areas of the law. I love that my job is creative in the sense that I never know when a past experience will inform a present one."

She said she enjoys explaining her trial work to her children.

"They know way more than that I'm a lawyer," she said. "They could tell you in somewhat pretty good detail about the Skillz trial."

"The funniest thing, though, is that my son doesn't understand that I don't get \$43 million," she added. "That's a bridge too far. Like no, it's for the client."

Other notable moments in her career:

She said she represented Randy Slifka, who received an arbitration award of more than \$16 million over a dispute involving the split of sales proceeds from a Midtown Manhattan office building. Slifka accused a relative of incorrectly allocating the sale proceeds and undercompensating him, she said.

Benvenisty said she handled the cross-examination of a witness, a business adviser who gave advice to the defendant. She said she solicited testimony that the allocation was irregular and wrong.

Why she is a trial attorney:

Benvenisty said she's drawn to the high stakes of trials. For her, high pressure can lead to big results.

"I never take for granted what an honor and a privilege it is to represent clients when they're facing their hardest problems," Benvenisty said. "That's the case at trial. It's a high-stakes moment. It's when the issues are going to be decided. Of course, theoretically a case could settle, but even the settlement is informed by how the case was litigated."

--As told to Emily Johnson. Editing by Karin Roberts.

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2024 Rising Stars winners after reviewing nearly 1,200 submissions. Attorneys had to be under 40 as of April 30, 2024, to be eligible for this year's award. This interview has been edited and condensed.
