

## THREE QUESTIONS ON HERRICK'S REPRESENTATION OF ULTRA ENTERPRISES, INC. IN A FEDERAL TRADEMARK INFRINGEMENT AND BREACH OF CONTRACT TRIAL

In July and August 2012, Herrick, Feinstein LLP successfully represented Ultra Enterprises, Inc. in its federal trademark infringement and breach of contract trial against the world's largest independent electronic dance music record label, ultimately obtaining a favorable settlement that protects its trademarks and expands its global music festival opportunities.

The action was taken to trial in U.S. District Court for the Southern District of New York on behalf of Ultra Enterprises, which is the owner of the trademark for the *Ultra Music Festival*, the award-winning Miami electronic dance music festival. The litigation team from Herrick tried the infringement case before an eight person jury for two weeks.

Ultra Enterprises has used the *Ultra Music Festival* trademark and logo in commerce since 2002.



In 2009, Ultra Records, Inc., adopted a new name and logo, and began going by the brand name *Ultra Music*. Herrick argued that Ultra Records' new logo, seen here below, was confusingly similar to the *Ultra Music Festival* mark, above, used by our client for years.



### **Q. HOW DID HERRICK'S TEAM BEAT THE COMPETITION IN GETTING SELECTED?**

Located in Florida, Ultra Enterprises initially retained local trademark counsel to draft its complaint against Ultra Records and engage in discovery. Following the close of discovery, Ultra Enterprises decided it needed tough trial counsel with experience litigating complex cases in S.D.N.Y., and experience with intellectual property and entertainment matters. Herrick was chosen over other interviewed counsel because we had that experience and demonstrated our tenacity for achieving the best possible results for our client. Once engaged, we conveyed to Ultra Records that absent a fair settlement on our client's terms, we were taking the case to trial.

### **Q. WHAT WAS KEY TO OBTAINING THE CLIENT'S GOALS?**

A key to our victory was continuous communication with our client to identify its true objective. We determined early on that the client desired a business agreement with Ultra Records that would allow both companies to leverage the other's prominence in their respective market. We recognized that we could not reach that kind of agreement without first showing our prowess and strength at trial. Another key component in our success was our ability to discredit Ultra Records during trial. We successfully attacked the credibility of its CEO and made its expert witness a non-factor through cross-examination. Then, using the leverage of a likely verdict of trademark infringement against Ultra Records, we were able to bring them to the negotiation table and reach a settlement that exceeded our client's goals.

### **Q. HOW DID HERRICK MAXIMIZE ITS ATTORNEYS' TALENTS?**

Herrick leveraged the various team members' strengths in order to benefit the client. Darren Traub – who has extensive trademark and entertainment expertise and successful trial experience – prepared the expert witnesses for their direct testimony and cross-examined the opposing party's experts. Darren was able to draw on his expertise of negotiating entertainment industry agreements to obtain and prepare the business deal that our client desired.

Steven Feldman, using his trial experience gained as a federal prosecutor, put on our client's fact witnesses and cross-examined Ultra Records' CEO.

Kimberly Linkletter, a litigation associate, viewed and evaluated the proceedings from the perspective of a juror. Kimberly researched and drafted important trial submissions, provided pertinent feedback concerning the reactions of the judge and jury to critical arguments in the case, and ensured that the trial team's use of the sophisticated courtroom technology complimented, rather than detracted from, the trial presentation.

Working together, we were able to surpass the client's expectations.