

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MAXELL, LTD.,

Plaintiff,

v.

APPLE INC.,

Defendant.

§
§
§
§
§
§
§

§ Case No. 5:19-CV-00036-RWS

**OPPOSITION BY DLA PIPER LLP (US) TO MAXELL, LTD'S
MOTION TO DISQUALIFY DLA PIPER LLP (US)**

TABLE OF CONTENTS

INTRODUCTION..... - 1 -

FACTUAL BACKGROUND - 2 -

A. DLA Implemented An Ethical Screen Before It Was Retained In This Case..... - 2 -

B. DLA Later Learned That Mayer Brown Included Seven Maxell-Related Emails In The Files Of A Different Client Who Followed Mr. Park To DLA As Part Of An Electronic Transfer To DLA Via The Cloud..... - 4 -

C. Apple Retained DLA To Serve As Its Lead Trial Counsel In This Case..... - 5 -

LEGAL STANDARD - 6 -

ARGUMENT..... - 7 -

I. Absolutely No Confidences Have Been Disclosed, DLA At All Times Has Acted Appropriately And In Good Faith, And Maxell Has Failed To Prove Otherwise..... - 7 -

A. The Uncontroverted Evidence Confirms That No Maxell Confidences Have Been Shared With Any Lawyer Representing Apple. - 8 -

B. DLA Reasonably Screened Mr. Park From The Apple Team, Which Alternatively Rebutts Any Presumption Of Shared Confidences..... - 10 -

C. DLA Provided To Maxell Adequate Notice of Its Representation of Apple. - 12 -

D. DLA Certified, And Is Willing To Certify, Its Ongoing Compliance. - 13 -

II. Disqualifying DLA Would Be Inequitable And Highly Prejudicial To Apple..... - 13 -

CONCLUSION..... - 15 -

TABLE OF AUTHORITIES

Cases	<u>Page(s)</u>
<i>Abney v. Wal-Mart</i> , 984 F. Supp. 526 (E.D. Tex. 1997).....	7
<i>Am. Int’l Grp., Inc. v. Bank of Am. Corp.</i> , 827 F. Supp. 2d 341 (S.D.N.Y. 2011).....	10
<i>Arista Records LLC v. Lime Grp. LLC</i> , No. 06 CV 5936 KMW, 2011 WL 672254 (S.D.N.Y. Feb. 22, 2011).....	12, 15
<i>Biote Med., LLC v. Jacobsen</i> , No. 4:18-CV-866, 2020 WL 2813201 (E.D. Tex. May 29, 2020).....	7
<i>BMO Harris Bank N.A. v. Novak Druce Connolly Bove & Quigg LLP</i> , No. CV H-17-1616, 2018 WL 7253967 (S.D. Tex. Feb. 22, 2018).....	6
<i>Carbo Ceramics, Inc. v. Norton-Alcoa Proppants</i> , 144 F.R.D. 158 (N.D. Tex. 1994).....	15
<i>In re Del-Val Fin. Corp. Sec. Litig.</i> , 158 F.R.D. 270 (S.D.N.Y. 1994).....	12
<i>F.D.I.C. v. U.S. Fire Ins. Co.</i> , 50 F.3d 1304 (5th Cir. 1995).....	6, 14
<i>Galderma Labs., L.P. v. Actavis Mid Atl. LLC</i> , 927 F. Supp. 2d 390 (N.D. Tex. 2013).....	7
<i>Gen. Elec. Co. v. Mitsubishi Heavy Indus., Ltd.</i> , No. 3:10-CV-276-F, 2011 WL 13201855 (N.D. Tex. Sept. 12, 2011).....	6, 13, 14, 15
<i>Lemaire v. Texaco, Inc.</i> , 496 F. Supp. 1308 (E.D. Tex. 1980).....	9
<i>Levin v. Raynor</i> , No. 03cv4697 (GBD), 2004 WL 2937831 (S.D.N.Y. Dec. 17, 2004).....	10
<i>Manning v. Waring, Cox, James, Sklar & Allen</i> , 849 F.2d 222 (6th Cir. 1988).....	10
<i>In re Meador</i> , 968 S.W.2d 346 (Tex. 1998).....	9

Nat'l Oilwell Varco, L.P. v. Omron Oilfield & Marine, Inc.,
60 F. Supp. 3d 751 (W.D. Tex. 2014)7, 15

In re ProEducation Int'l, Inc.,
587 F.3d 296 (5th Cir. 2009)..... 6, 7, 14

Reilly v. Computer Assocs. Long-Term Disability Plan,
423 F. Supp. 2d 5 (E.D.N.Y. 2006) 12

Sailsbery v. Vill. of Sank Vill.,
No. 15 C 10564, 2017 WL 5885323 (N.D. Ill. Nov. 28, 2017) 12

Cromley v. Bd. of Educ. of Lockport Twp. High Sch. Dist. 205,
17 F.3d 1059 (7th Cir. 1994)..... 12

Silicon Graphics Inc. v. ATI Techs., Inc.,
741 F. Supp. 2d 970 (W.D. Wis. 2010) 7

Simmons v. Houston Cty., Texas,
No. 9:05-CV-82, 2006 WL 8440543 (E.D. Tex. Feb. 2, 2006).....6, 8

Soverain Software LLC v. CDW Corp.,
No. 6:07 CV 511, 2010 WL 1038731 (E.D. Tex. Mar. 18, 2010) 6

Other Authorities

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 442 (2006)..... 9

ABA Standing Committee on Ethics & Professional Responsibility, Report to the
House of Delegates (Feb. 2009)..... 7

Rules

Comment 10 to Model Rule 1.0(k)..... 10

Fed. R. Civ. P. 26(b)(5)(B) 9

Local Rule AT-2..... 6

Model R. Prof. Cond. 1.0(k)..... 10

INTRODUCTION

It is uncontroverted that nobody on DLA's Apple team ever received or even solicited any of Maxell's privileged or confidential information from Justin Park. Maxell's carefully-crafted hearsay insinuation that Mr. Park stole Maxell's documents is demonstrably false. Nevertheless, Maxell tries to disqualify DLA, Apple's lead trial counsel, just days before trial. Maxell has failed to meet its burden of proof for disqualification.

Faced with these insurmountable hurdles, Maxell says instead that Mr. Park—the former Mayer Brown partner who joined DLA's Washington, DC office in January 2020 and never discussed anything about Maxell with any lawyer or paralegal representing Apple—should have realized sooner that *Mayer Brown* mistakenly had included a handful of Maxell documents in *other* client files that *Mayer Brown* sent via the cloud to Mr. Park when those clients moved to DLA.

On July 30, 2020, Peter Lindau, from DLA's Office of General Counsel ("OGC"), communicated with Mr. Park, who understood that he could not speak with anyone at DLA about Maxell or any of Mayer Brown's other clients who did not join him at DLA. That communication was on the same day that Jamie Beaber, Maxell's lead counsel and Mr. Park's friend, initially contacted Mr. Park to ask about an ethical wall in an ITC matter for which Apple had just retained DLA. Also on that same day, Mr. Lindau initiated a screening process at DLA, which was completed well before August 28, 2020, when Apple first retained DLA in this case. Mr. Park and Mr. Lindau have confirmed all of the foregoing under oath.

Maxell's final argument about its supposed lack of notice rings hollow. DLA advised Mayer Brown of its retention by Apple in the ITC matter within two days, and a month before DLA was retained in this case. Mayer Brown also plainly knew of Mr. Park's work with Maxell while at Mayer Brown, and it was told about the measures DLA had put in place to ensure that DLA's Apple team (in Texas and California) did not discuss Maxell, and certainly not any of its confidences, with Mr.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.