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Sheppard, Mullin,  
Richter & Hampton



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You successfully led the Sheppard, Mullin, Richter & Hampton team that secured a \$71.4 million jury trial verdict in September 2024 in the US District Court for the Central District of California for the creators of the pop group OMG Girlz, rapper Clifford “T.I.” Harris and his wife, singer-songwriter Tameka “Tiny” Harris. The Harrises claimed that the OMG Girlz’s name and likenesses were misappropriated by toy manufacturer MGA Entertainment Inc. for dolls they sold as L.O.L. Surprise! OMG fashion dolls. The court victory came after one mistrial and one trial win for MGA. (MGA has filed an appeal with the Ninth Circuit.) Can you tell us about your trial strategy?

Heading into the third trial, we took a different approach, narrowing the case (leaving behind significant potential damages) to focus on the instances of misappropriation and infringement for which we could show a 1-to-1 correlation and unmistakable resemblance of seven dolls to the OMG Girlz. Having been through one trial, we knew the OMG Girlz would be credible witnesses—we just had to prepare them for the defense’s strategy of demeaning them and their fans. We used an unconventional cross examination on MGA’s well-known expert’s survey approach and attacked his credibility primarily on prior cases rather than solely focusing on his “no likelihood of confusion” results. This undermined his standing enough that, by extension, his survey results became inconsequential. We also shot down MGA’s fact witness’ credibility, exposing the layers of their deception, including their claim that one MGA doll, named “Shimone Queen,” was not based on Michael Jackson despite its one white glove and other obvious similarities to the King of Pop. Trials are won and lost on credibility, and the jury saw the truth: MGA was not credible and had capitalized on the OMG Girlz’ image without giving credit or compensation.

**Can you describe a major hurdle that happened during the course of the three trials, how did you overcome it? This could be either in trial (preferred) or leading up to trial.**

After a mistrial, Sheppard Mullin was retained for the second trial. Coming into a case just before trial is challenging, because the team has a lot to absorb in a hurry. That is especially true after a mistrial, where the court may have some lingering impressions. But coming in late is sometimes where the client needs help most.

Many of the nuances of the case didn't become apparent until the second trial was underway. The biggest obstacle being the First Amendment defense to trade dress infringement, which tilted the scales heavily in favor of MGA on both claims.

Our client argued against this defense in the second trial, but MGA was allowed to present it to the jury over those objections. Shortly after the trial when it was rejected after the Supreme Court's decision in *Jack Daniel's Properties Inc. v. VIP Products*, the court granted the OMG Girlz's request for a third trial.

### **When did you first know you wanted to be a trial lawyer? What clicked for you?**

**Keville:** Throughout law school, I worked as a mechanical engineer and expected to go into patent law. But as a young associate, I went to trial in a trademark case. Standing before the jury and seeing them find your witnesses compelling, helping them grasp the real story, and cutting through the other side's credibility where appropriate, I knew that was my path.

**Westmoreland:** Almost immediately after starting at my first law firm, I had the opportunity to go to trial. I joke that I stepped into the "war room" on a Friday for what was supposed to be a quick task, and didn't leave for a month. Working with that team and observing the strategy, leadership, and ownership everyone took helped solidify my love of trial work.

### **What are the major keys to winning over a jury or a judge?**

**Keville:** Be far more prepared than your opponent, then focus that into themes that will resonate with and clarify matters for the judge or jury. While you need a plan, you also must be able to pivot.

**Westmoreland:** Authenticity is key. Your role is to clearly convey your client's story to a group of people who have no personal investment. Juries, like all humans, read inauthenticity or pandering quickly.

### **What's the best advice a mentor lawyer or judge gave you about trial prep?**

**Westmoreland:** "A judge I clerked for taught that once a judge loses trust in you, it is nearly impossible to regain and impedes your ability to represent your client. Your reputation is everything, and no 'win' is worth sacrificing your integrity."