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Leading COMMERCIAL LITIGATORS 2023



Joseph R. Saveri

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LITIGATION

Joseph R. Saveri has been a successful antitrust class action attorney for plaintiffs for many years. Just last month, for example, he received final approval of the last settlements wrapping up eight years of litigation over price-fixing in the market for some types of capacitors. Those and earlier settlements totaled nearly \$605

million. Saveri's firm was the sole lead counsel. *In Re Capacitors Antitrust Litigation*, 3:17-md-02801-JD (N.D. Cal., filed Dec. 5, 2017).

He is actively pursuing cases alleging antitrust violations involving competitive cheerleading, Juul e-cigarettes, and professional wrestling.

But over the last several months, he has brought class litigation to bear on the very different fields of artificial intelligence and machine learning.

A significant issue with the commercial use of AI is that it must be trained on data from various sources. Those sources were created by people who often have property, copyright, or contractual rights, he said. "And to the extent that these AI products are using that property or monetizing it or commercializing it without negotiating or paying [the creators] ... it's a significant issue."

In November, he and co-counsel Matthew C. Butterick sued Microsoft, alleging that its AI-powered software-development platform Copilot helps programmers create new programs by borrowing code stored in Microsoft subsidiary GitHub's vast repository of open-source programs. But it does so without acknowledging those programs' authors as their open-source licenses require. *J. Doe 1 v. Git-Hub Inc.*, 4:22-cv-06823 (N.D. Cal., Nov. 3, 2022).

"The problem is the product, in large measure, just suggests large copies of code that other people wrote," he

said. Despite its sophisticated statistical models and processing power, it is just "a search and cut-and-paste tool."

Early this month, Saveri and Butterick filed a very similar action against a company whose platform allows users to create images in the style of other artists based on works it previously downloaded — but again without paying or obtaining consent from those artists. *Andersen v. Stability AI Ltd.*, 3:23-cv-00201 (N.D. Cal., filed Jan. 13, 2023).

"We claim that these products are collage tools, kind of cut-and-paste tools," Saveri said. "The underlying data is basically art created by artists, and those artists have a variety of property rights in their works, including copyright."

The GitHub case isn't the only lawsuit Saveri brought against Microsoft recently. Along with the Alioto Law Firm, he sued the company to stop its announced \$68.7 billion acquisition of Activision Blizzard Inc. Microsoft has moved to stay the case, he said. *Demartini v. Microsoft Corp.*, 3:22-cv-08991 (N.D. Cal., filed Dec. 20, 2022).

Saveri recalled that he also litigated against Microsoft during what were called the browser wars in the 1990s. "In a lot of ways, there are things about this ... that are reminiscent of that."

— DON DEBENEDICTIS