

Rising Star: King & Spalding's Marisa Maleck

By Andrew Karpan

Law360 (July 7, 2021, 3:02 PM EDT) -- King & Spalding LLP partner Marisa Maleck was on the team that helped Allergan make a landmark case against compounding pharmacies and has been litigating on the front lines of the cannabis industry since the very start of her career, earning her a spot among the top life sciences attorneys under age 40 honored as Law360 Rising Stars.

HER BIGGEST CASE:

In 2017, Allergan PLC decided that it wanted to go after compounding pharmacies, which allegedly made a business of selling copycat versions of Allergan drugs. It has been a sore spot for the drugmaking giant, and Maleck was part of its legal team tasked with finding a way to sue those companies.

"There is no private cause of action under the [Food, Drug and Cosmetic Act], and the normal idea is that it's something that is the FDA's jurisdiction and that you really can't do anything about it. And that just didn't sit well," Maleck said.

The two lawsuits that Allergan ended up filing were among the first in which a major pharmaceutical company had used the Lanham Act to target compounding pharmacies. Both were eventually resolved in Allergan's favor, with one ending in a notable \$48,500 jury verdict and the other wrapping with an agreement from the compounder to tell customers that its products aren't approved by the U.S. Food and Drug Administration.

Maleck calls it one of the "coolest cases" she's been a part of because there "was a lot of room for creativity."

WHY SHE'S ALSO INTERESTED IN CANNABIS LAW:

Between a stint as an associate at Gibson Dunn & Crutcher LLP and her position at King & Spalding, Maleck had the opportunity to clerk for U.S. Supreme Court Justice Clarence Thomas. And like Justice Thomas, Maleck has been keeping an eye on the growing cannabis industry.



Marisa Maleck
King & Spalding

Age: 35
 Home base: Washington, D.C.
 Position: Partner
 Law school: University of Chicago Law School
 First job after law school: Clerk for Eleventh Circuit Judge William Pryor Jr.

Currently, Maleck is part of a team at King & Spalding that's representing a locally licensed medical marijuana grower in its push to get the Drug Enforcement Agency to process its application for a license to grow cannabis for research, which she says is part of the larger effort to break through the gridlock keeping scientists from researching marijuana cultivated from new sources.

But it's only part of her longstanding interest in the industry.

"My first client ever was a cannabis company in California, when I was a senior associate," Maleck said. "I actually went to a bunch of cannabis dispensaries and just handed out my business card."

The case ended up being one of her first legal successes too, she added. She convinced the dispensary to start handing out art prints with its cannabis sales in order to get out of an unlawful detainer premised on the company not being the art space that it had promised its landlord.

WHAT MOTIVATES HER:

Maleck developed an eye for legal creativity from working with Justice Thomas, she said.

"I really think he's a pioneer, and that was what strikes me about him and that's something I have tried to take into my own practice — that sort of spirit of pioneering," she said.

She described her approach to the law as finding ways to "dig deep" and be "open to making arguments that haven't been made before."

"It might not ultimately prevail, but when it does, it oftentimes results in great results for the client, and it's really fun to kind of come up with the arguments," she added.

HOW SHE THINKS HER PRACTICE WILL CHANGE IN THE NEXT 10 YEARS:

In addition to the budding marijuana industry, Maleck has worked in a number of related, cutting-edge industries. A few years after starting at King & Spalding, she left briefly to work in-house at Juul Labs, a job that was front and center in the larger policy debates about how drugs are marketed.

"It's already becoming a fairly hot topic, but there's not a lot of guidance on it," she said.

"[Companies] obviously push for great sales, and they tend to be creative when they do that, and I think that it's going to be the more creative ways that are going to be subject to some scrutiny."

— *As told to Andrew Karpan*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2021 Rising Stars winners after reviewing more than 1,400 submissions. Attorneys had to be under 40 as of April 30, 2021, to be eligible for this year's award. This interview has been edited and condensed.