

David J. Byer

Senior Of Counsel

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OVERVIEW

David Byer is a partner in the Intellectual Property practice group, focusing on trademark, trade dress, copyright, advertising, marketing, distribution, social media, internet, and publicity issues. He manages large, global trademark portfolios and assists clients to create and develop robust intellectual property assets. David also prosecutes and defends trademark, trade dress, copyright, trade secret, unfair competition, and licensing litigations in federal and state courts, and enforces and defends his client's rights in opposition and cancellation actions in the relevant administrative bodies, including the Trademark Trial and Appeal Board of the United States Patent and Trademark Office. His clients are active participants in a wide-range of industries, including online gaming and esports, high technology, online retail, marketing, travel and hospitality, publishing, finance, manufacturing, medical devices, pharmaceuticals, entertainment and electronics, as well as in the world of national and global non-profits. David represents both licensors and licensees of world-famous brands and content across this range of industries, and he counsels those clients on advertising, promotion, and marketing issues. David also advises clients on the complex issues of copyright and internet-based law, including questions concerning content, search, domain names, and fair use, and he counsels investors, underwriters and companies on enforcement and infringement risks.

PROFESSIONAL BACKGROUND

Prior to joining the firm, David was a partner in the patent and intellectual property practice group of a Boston law firm. Between 1993 and 2006, he was an adjunct faculty member at Boston University School of Law, where he taught Trademark and Unfair Competition Law.

ACHIEVEMENTS

- Recognized by *The Legal 500 United States* as a Recommended Lawyer for Trademarks: Non-Contentious (Including Prosecution, Portfolio Management and Licensing), 2020-2025
- Listed in the World's Leading Trademark Professionals by *World Trademark Review 1000*, 2019-2024
- Listed in *The Best Lawyers in America*® in Boston, 2012-2022

- Listed as an "IP Star" in *Managing IP*, 2020-2021
- Selected to Massachusetts Super Lawyers list, 2006-2018

PROFESSIONAL / CIVIC ACTIVITIES

- International Trademark Association
- American Bar Association

SPEAKING ENGAGEMENTS

- “But It's My Name: Personal Names and the UDRP (Uniform Dispute Resolution Policy)” Table Talk Moderator, International Trademark Association, Seattle, WA,, May 2018
- “What You See: Trademark Protection for Publicly Viewable Buildings and Structures.” Table Talk Moderator, International Trademark Association, Barcelona, Spain, May 2017
- “Irreparable Harm After the Herb Reed (9th Cir.) and Ferring Pharmaceuticals (3d Cir.) Decisions,” Table Talk Moderator, International Trademark Association, Orlando, Florida, May 2016
- “The Pom Wonderful Decision and its Ramifications,” Table Talk Moderator, International Trademark Association, San Diego, California, May 2015
- "Interactive Game and Gamification Summit 2012," Legal Moderator, Seattle, Washington, November 2012
- “Intellectual Property Year in Review 2011—Internet Law,” Boston Bar Association, Boston, Massachusetts, January 2012
- “Creating and Protecting Global IP Assets,” European Venture Capital Association, Brussels, Belgium, October 2011
- “User Generated Content and Contributory Liability for Infringement on the Internet,” Table Talk Moderator, International Trademark Association, San Francisco, California, May 2011
- "Intellectual Property Year in Review 2010—Internet Law," Boston Bar Association, Boston, Massachusetts, January 2011
- "Creating and Evaluating IP Assets," European Venture Capital Association, Kiev, Ukraine, November 2010
- "Selling and Buying Keywords: Is It Infringement?" Boston Bar Association, Boston, Massachusetts, September 2010
- "Creating and Evaluating IP Assets," European Venture Capital Association, Brussels, Belgium, June 2010
- “Initial Interest Confusion,” Table Talk Moderator, International Trademark Association, Boston, Massachusetts, May 2010
- "Who owns the Data?" MITX (Massachusetts Innovation & Technology Exchange), Boston, MA, April 2009

- "Trademark Trial and Appeal Board," Boston Patent Law Association, Boston, MA, October 2008
- "Venture Capital Securing and Defending IP Rights," European Private Equity and Venture Capital Association, Budapest, Hungary, October 2008
- "Negotiating Software Licenses," National Association of Public Pension Attorneys (NAPPA), Boston, MA, June 2008
- "Developing and Protecting Intellectual Property Rights," European Venture Capital Association Institute, Amsterdam, The Netherlands, April 2007
- "Analysis of a Technology Licensing Agreement," Practising Law Institute (PLI), New York City, New York, March, 2007
- "Developing and Protecting Intellectual Property Rights," European Venture Capital Association Institute, Budapest, Hungary, October 2006
- "Analysis of a Technology Licensing Agreement," Practising Law Institute (PLI), New York City, New York, March, 2006
- "What You Need to Know About Your Intellectual Property Rights," Benefit Advisors Network (BAN) Conference, West Palm Beach, FL, February 2006
- "The Changing World of Intellectual Property Law," Financial Technology Forum (a division of Institutional Investor, Inc.), Boston, MA, November 2005
- "Intellectual Property Law for the Business Owner--Who Owns it? How Can It be Protected?" MITX (Massachusetts Innovation & Technology Exchange), Boston, MA, November 2005
- "Developing and Protecting Intellectual Property Rights," European Venture Capital Association Institute, Budapest, Hungary, October 2005
- "Developing and Protecting Intellectual Property Rights," European Venture Capital Association Institute, Barcelona, Spain, April 2005
- "Linux versus Windows versus UNIX: Comparing the Enterprise TCO and ROI," sponsored by The Yankee Group, Boston, Massachusetts, December 2004
- "Hot Topics in Trademark Law 2004," Boston Patent Law Association, Boston, Massachusetts, November 2004
- "Developing and Protecting Intellectual Property Rights," European Venture Capital Association Institute, Amsterdam, The Netherlands, November 2004
- "Open Source Issues in M&A," sponsored by Globespan Capital Partners, Boston, Massachusetts, October 2004

EDUCATION

- J.D., Stanford Law School
- M.A., Cornell University, *(Phi Kappa Phi)*
- B.A., The Johns Hopkins University, *(Phi Beta Kappa)*

ADMISSIONS

- Bar of Massachusetts
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the First Circuit
- United States District Court for the District of Massachusetts

THOUGHT LEADERSHIP *POWERED BY HUB*

- October 2025, September and October 2025 Accolades
- 3 July 2023, Supreme Court Limits Foreign Reach of US Trademark Law
- 9 June 2023, US Supreme Court Vacates Dog Toy Company's Win in Jack Daniel's Parody Trademark Dispute
- 10 March 2021, When Is an Office Chair Design Famous? U.S. Supreme Court Won't Hear Herman Miller's Trade Dress Appeal Regarding the Eames Chair
- 22 January 2021, "Lettuce Turnip the Beet" Pun on T-Shirts Not Trademark Use, Ninth Circuit Affirms
- 28 December 2020, U.S. Spending Bill Includes Sweeping New Copyright and Trademark Measures
- 7 July 2020, U.S. Supreme Court Allows Booking.com to Register Its Domain Name as a Trademark
- 29 April 2020, COVID-19: USPTO Further Extends Certain Filing and Payment Deadlines to June 1, 2020 for those Affected by COVID-19 Outbreak
- 28 April 2020, U.S. Supreme Court Rules Georgia's Official Annotated Code Outside the Scope of Copyright Protection Under "Government Edicts" Doctrine
- 1 April 2020, COVID-19: USPTO Offers 30-Day Extension of Filing and Payment Deadlines to Those Affected by COVID-19 Outbreak
- 25 March 2020, U.S. Supreme Court Holds Copyright Remedy Classification Act of 1990 Does Not Abrogate State Sovereign Immunity for Copyright Infringement: Allen v. Cooper
- 18 March 2020, U.S. Court of Appeals Affirms Copyright Sublicenses Can Be Implied by Conduct: Photographic Illustrators Corp. v. Orgill, Inc

- 12 August 2019, A Case of Classic Fair Use for “Sports Fuel” in the 7th Circuit
- 27 June 2019, U.S. Supreme Court Strikes Down Ban on "Immoral" or "Scandalous" Trademark Registrations
- 25 June 2019, U.S. Supreme Court strikes down ban on “immoral” or “scandalous” trademark registrations
- 12 April 2019, Webpage specimens not automatically use in commerce
- 30 March 2017, Sis-Boom-Bah: U.S. Supreme Court Rules That Cheerleader Uniform Design Elements May Be Eligible for Copyright Protection
- 23 March 2017, U.S. Supreme Court Rules that Cheerleader Uniform Elements May Be Eligible for Copyright Protection
- 10 January 2017, Software as a Service (Saas): Is it a Good or Service?

OTHER PUBLICATIONS

- “Dot Anything. Brand Owners Should Plan Now for ICANN's gLTD Expansion,” *Cyberspace Lawyer*, Volume 16, Issue 11, December 2011
- “The Second Remedy – Damages in Copyright and Trademark Cases,” *Pursuing Remedies in Intellectual Property Cases*, Massachusetts Continuing Legal Education, Inc., May 2002
- “Product Design Trade Dress,” *Protecting Product Designs, Massachusetts Continuing Legal Education*, Boston, MA, February 2002
- “The Protection of Product Designs Under §43A of the Lanham Act: Toward the Salutary Effect,” Advanced Copyright/Trademark Practice Seminar, American Intellectual Property Law Association, Boston, MA, June 2001
- “Non-traditional Trademarks,” Trademark Laws: *A Guide for the Experienced Practitioner*, Massachusetts Bar Association, Boston, MA, October 1999

NEWS & EVENTS

- 3 August 2026, K&L Gates' Global IP Practice and Lawyers Recognized in *Managing IP's* 2026 "IP Stars" Rankings
- 29 January 2026, *World Trademark Review 1000* Recognizes K&L Gates IP Lawyers as Trademark Leaders in 2026 Edition
- 3 October 2025, K&L Gates' Global IP Practice, Lawyers Earn Rankings in Managing IP's 2025 "IP Stars"
- 4 February 2025, *World Trademark Review 1000* Recognizes K&L Gates IP Lawyers as Trademark Leaders in 2025 Edition
- 7 October 2024, K&L Gates' Intellectual Property Practice, Lawyers Recognized in 2024 *Managing IP* Magazine's "IP Stars"

- 14 February 2024, *World Trademark Review 1000* Recognizes K&L Gates, Lawyers as IP and Trademark Leaders in 2024 Edition
- 23 October 2023, K&L Gates' Intellectual Property Practice, Lawyers Recognized in 2023 *Managing IP* Magazine's "IP Stars"
- 9 February 2023, K&L Gates, Lawyers Named as IP and Trademark Leaders in 2023 *World Trademark Review 1000* Rankings
- 6 October 2022, K&L Gates Recognized in 2022 *Managing IP* Magazine's 'IP Stars'
- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 15 March 2022, K&L Gates, Lawyers Named as IP and Trademark Leaders in 2022 *World Trademark Review 1000* Rankings
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch
- 3 June 2021, K&L Gates Lawyers Ranked as 2021 'IP Stars' by Managing IP Magazine
- 17 February 2021, K&L Gates, Lawyers Named as IP and Trademark Leaders in 2021 *World Trademark Review 1000* Rankings
- 23 July 2020, K&L Gates Intellectual Property Practice Ranked by The Legal 500 United States 2020 Guide with Six Lawyers Recommended
- 29 June 2020, K&L Gates, Lawyers Ranked as Trademark and Patent 'IP Stars' by *Managing IP Magazine*
- 18 February 2020, K&L Gates, Lawyers Named as IP and Trademark Leaders in 2020 *World Trademark Review 1000* Rankings
- 12 February 2019, K&L Gates, Lawyers Recognized as IP and Trademark Leaders in 2019 *World Trademark Review 1000* Rankings

AREAS OF FOCUS

- IP Procurement and Portfolio Management
- IP Litigation
- Technology Transactions and Sourcing

INDUSTRIES

- Consumer Goods and Services
- Luxury Products and Fashion

- Technology
- Video Games and Immersive Technology

EMERGING ISSUES

- Artificial Intelligence (AI)

REPRESENTATIVE EXPERIENCE

- Manage global trademark portfolio for several non-profit organizations in a number of fields, including gender equality, environmental investing, and poverty alleviation.
- (U.S. District Court, District of Massachusetts) Represent plaintiff automobile distributor in trademark infringement action.
- Manage global trademark portfolio for technical fabric manufacturer; manage numerous opposition and cancellation actions globally; advise on trademark, copyright, advertising, promotion issues; manage global licensing portfolio; assist in global clearances and new product rollouts.
- Manage global trademark portfolio for online review and travel site; advise on copyright, trademark, trade dress, and related issues.
- (U.S. District Court, District of Massachusetts) Represented plaintiff computer manufacturer in trademark infringement action.
- Manage global trademark portfolio for this fault tolerant computer manufacturer; manage numerous opposition and cancellation actions globally.
- (U.S. District Court, Southern District of Florida) Represented declaratory judgment plaintiff tire distributor and counterclaim defendant in a trademark infringement action.
- (U.S. District Court, Western District of North Carolina) Represented plaintiff tape maker in patent and trademark infringement action.
- Manage global trademark portfolio for online retailer; advise on distribution issues; assist in global clearances and new product rollouts.
- (U.S. District Court, Central District of California) Represented online travel entities in copyright infringement action.
- (U.S. District Court, Central District of California)Represented defendant national retailer in product design trade dress infringement action.
- Counsel on trademark, trade dress, copyright, designs, design patent, and distribution.

- Manage global trademark portfolio for online gaming and distribution company; manage numerous opposition and cancellation actions globally; advise on trademark and copyright issues; assist in global clearances and new product rollouts.