



## Kristen McCallion

Principal  
New York  
o: 212-641-2261  
mccallion@fr.com

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### Overview

Kristen McCallion is chair of Fish & Richardson's copyright group. She represents businesses in the consumer products, internet, media, and interactive entertainment industries in copyright, trademark, false advertising, trade dress, and unfair competition litigation in U.S. district and appellate courts and in state courts.

Kristen advises clients on proper trademark adoption and use to increase brand awareness and maximize the value of trademark portfolios. With her clients, she develops both domestic and foreign trademark filing programs, thereby securing registration protection on a global scale, fortifying brand strength, and reducing costs associated with foreign trademark disputes. She also represents trademark owners in trademark opposition and cancellation proceedings in the U.S. Trademark Trial and Appeal Board.

Kristen regularly counsels clients on a broad spectrum of copyright matters, including infringement, registration, and fair use issues. Working in collaboration with her clients, she implements filing strategies to develop comprehensive copyright registration portfolios. Kristen applies her highly specialized knowledge of copyright registration practices and procedures to formulate defensive strategies in copyright disputes and litigation. She also actively enforces her clients' copyrights against infringers.

She has been named an "IP Star" and one of the "Top 250 Women in Law" by *Managing Intellectual Property* and ranked in the top tier of trademark attorneys at the state and national level by *World Trademark Review's* WTR 1000. In the 2018 edition of WTR 1000, Kristen is described as an attorney who "wields superb judgement and is extremely strategic" and who is "intelligent, formidable and a pleasure to deal with; there's no time wasting with her, so you're able to get to a resolution more quickly." Kristen has also been selected by Super Lawyers New York, recommended by *The Legal 500* for trademark and copyright work, named to *Profiles in Diversity Journal's* "Women Worth Watching," featured in *The New York Times Magazine*, and named "Empire State Counsel" by the New York State Bar Association.

Prior to law school, Kristen served as a media, public relations, and corporate communications executive in the entertainment industry.

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### Experience

*Full Circle United, LLC v. Skee-Ball, Inc.* – Represented Full Circle United, LLC in a trademark dispute involving the term "skee-ball." The suit involves allegations of trademark infringement against Full Circle by Skee-Ball, Inc. ("SBI"), a manufacturer of skee-ball machines, and the owner of the federal trademark registration of "skee-ball," which has subsisted since 1929. FCU sought cancellation in court of the "skee-ball" trademark registration on grounds of genericness and also filed a petition to cancel SBI's trademark registration in the Trademark Trial and Appeal Board. The case was settled favorably. Read Fish's press release [here](#). This case has earned national media coverage, including in the [New York Post](#), [Corporate Counsel](#) and [New York Law Journal](#). Ms.

McCallion was also interviewed by NPR, which can be heard [here](#).

*Kenny Kramer et al. v. Skyhorse Publishing, Inc. et al.* – Represented Skyhorse Publishing in a defamation suit filed by Kenny Kramer — the real life inspiration for “Cosmo Kramer” on the *Seinfeld* television show, and owner of Kramer’s Reality Tours, Inc., which operates a bus tour in New York City. Kramer sued Skyhorse Publishing, claiming his reputation was damaged after Skyhorse published a memoir written by a former *Seinfeld* writer, in which the author recounted his experiences on the Kramer’s Reality Tour bus tour. Fish moved to dismiss the case on the ground that defamation had not been pled. In July 2014, the Supreme Court of the State of New York granted Fish’s motion, and dismissed the lawsuit in its entirety.

*Luv N’ Care Ltd., et al. v. Regent Baby Products Corp.* – Fish represents the defendant, Regent Baby Products, in this trade dress litigation pending in New York in which plaintiffs claimed infringement of more than a dozen different baby feeding products. Fish was successful in dismissing the plaintiff’s federal and trademark dilution claims on a 12(b)(6) motion, staying a design patent claim, and negotiating a dismissal with prejudice of all claims against the client concerning nine of the original products at issue. Then, in December 2013, Regent Baby prevailed on its motion for partial summary judgment when the court found that two of the remaining products at issue are generic, “common shapes frequently used in the sippy cup industry” that do not warrant trade dress protection under the Lanham Act. The Court also dismissed Luv N’ Care’s tortious interference claim. Read Fish’s press release [here](#).

*Society of the Holy Transfiguration Monastery Inc. v. Archbishop Gregory of Denver, Colorado* – Represented The Holy Transfiguration Monastery (“HTM”) located in Brookline, MA, in a copyright infringement suit alleging infringement of HTM’s copyrighted translations of ancient religious Greek texts. Presented oral argument in the U.S. Court of Appeals for the First Circuit before a three-judge panel that included retired U.S. Supreme Court Justice Souter, sitting by designation. The First Circuit affirmed HTM’s prior victories, concluding that the defendant was liable for copyright infringement and reaffirming, in a significant opinion, that translations are copyrightable works and that the art of translation is a creative process that involves artistic choices. This decision earned national media coverage, including in the [National Law Journal](#).

*McLaren v. Chico’s FAS, Inc.* – Successfully defended Chico’s in a copyright infringement litigation in the Southern District of New York brought by artist McLaren, who alleged infringement of drawings of mannequins by three-dimensional mannequins displayed by Chico’s retail outlets. Fish successfully dismissed this case with prejudice at the pleading stage, avoiding costly discovery, on the invalidity of plaintiff’s copyright registration — an issue of first impression in New York.

*Therapy Products Inc. d/b/a Erchonia Medical v. Bissoon, et al.* (Southern District of New York) – Successfully defended four defendants in a trademark infringement, false advertising, and unfair competition litigation involving both federal and New York state law claims in the federal district court of the Southern District of New York, which granted Fish’s motion for summary judgment to all defendants on all claims. In a subsequent decision, the Court ordered plaintiff to pay all defendants their attorney’s fees and costs.

*Therapy Products Inc. d/b/a Erchonia Medical v. Bissoon, et al. (Second Circuit Court of Appeals)* – Successfully defended all defendants in the Second Circuit Court of Appeals. The appeals court granted Fish’s motion to dismiss plaintiff’s appeal of the district court’s award of attorney’s fees for lack of jurisdiction. Later, the appeals court affirmed the award of summary judgment to the defendants on all claims and ordered the plaintiff to pay additional costs to the defendants.

*Chico’s FAS, Inc. et al. v. Cache, Inc. et al.* – Represented Chico’s in a trade secret litigation commenced in New York state court that alleged theft of trade secrets related to clothing designs and other business information. Fish was successful in defeating Cache’s attempt to remove the case to federal court where, Cache argued, the trade secret claims as they related to clothing designs were preempted by copyright law. The case was settled favorably for the client.

*Inference Data LLC v. Catalyst Repository Systems Inc., et al.* – Instituted an Article 75 Petition to Stay an Arbitration in the Supreme Court of the State of New York on behalf of client Inference Data, LLC. Negotiated favorable settlement for the client of federal and state law claims involving copyright infringement, trademark infringement and unfair competition.

*Aedes De Venustas, Inc. v. Venustas International, Inc.* – Represented defendant in a trademark infringement and unfair competition litigation involving both federal and New York state law claims in the U.S. District Court for the Southern District of New York. Negotiated a favorable settlement for client.

*Outer Aisle Gourmet, LLC v. Bimbo Bakeries USA, Inc* – Represented Bimbo Bakeries, a global bread, cake, and cookie manufacturer, and its affiliate Arnold in trademark enforcement, protest, TTAB, and litigation matters. The litigation involved Fish's clients' longstanding and incontestable trademark rights in the SANDWICH THINS trademark. The litigation settled in 2022.

*Atari Interactive, Inc. v. skinnyCorp, LLC*, No. 1:20-cv-10379-JPO (S.D.N.Y.) – Represented defendant Threadless in a case filed by Atari alleging direct and vicarious trademark infringement and counterfeiting, trademark dilution, trade dress infringement, and unfair competition. Fish filed a partial motion to dismiss after which the plaintiff amended its complaint. The parties settled the case during the pleadings stage.

*Bisous Bisous LLC v. The Cle Group, LLC* – Represented Bisous Bisous, an award-winning bakery in Dallas, Texas, in a trademark infringement case asserted against The Cle Group, LLC. Fish won a preliminary injunction motion, and the parties later settled.

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## Recognitions & awards

WTR 1000

*World Trademark Review (WTR)* 2017-2024

IP Star

*Managing IP* 2013-2023

New York Metro Super Lawyer

*Super Lawyers* 2013-2023

Client Choice Award – Copyright – New York

*Lexology* 2019

Recommended for Trademark & Copyright

*Legal 500* 2011-2013, 2015

Women Worth Watching

*Profiles in Diversity Journal* 2014

Top Women Attorneys in Metro New York

*New York Times Magazine* 2014

Top 250 Women in IP

*Managing IP* 2013

Empire State Counsel

*New York State Bar Association* 2013

New York Metro Rising Star

*Super Lawyers* 2011-2012

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## Testimonials

"Kristen McCallion has impressed with her breadth of knowledge, ability to think outside of the box, and amazing energy." —2022  
*Chambers and Partners USA*

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## Professional associations

Copyright Society of U.S.A., New York Chapter  
New York Intellectual Property Law Association

IPO Copyright Law & Practice Committee (2010-present)

American Intellectual Property Law Association (AIPLA), Copyright Law Committee (2012-present)

International Association for the Protection of Intellectual Property (AIPPI)

International Trademark Association (INTA), Saul Lefkowitz Committee (2013-present)

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## Insights

Article | March 15, 2024

AI Copyright Issues Take Centre Stage in George Carlin Podcast Dispute

Webinar | January 24, 2024

Trademark & Copyright 2023 Year in Review

Blog | March 28, 2023

U.S. Copyright Office Cancels Registration for AI-Generated Art, Issues AI-Related Registration Guidance

Article | March 16, 2023

Could AI Require Platforms to Do More to Prevent Infringement?

Webinar | January 25, 2023

Trademark & Copyright 2022 Year in Review

Webinar | January 27, 2022

Trademark & Copyright | 2021 Year in Review

Webinar | August 12, 2021

Coordinating Trademark Strategies in the U.S. and EU

Blog | January 19, 2021

Legal Alert: Trademark, Copyright Legislation Passed as Part of COVID-19 Relief Bill

Webinar | January 7, 2021

Trademark & Copyright 2020 Year in Review

Webinar | December 10, 2020

Defeating Trademark Counterfeiting in the COVID-19 Era

Blog | July 6, 2020

Legal Alert: Supreme Court Finds BOOKING.COM Protectable; Rejects "Sweeping Rule" Denying Protection to "generic.com" Marks

IP Law Essentials | June 17, 2020

Visual Artists Rights Act Protects Even Transient Art in the Absence of an Explicit Waiver

IP Law Essentials | May 1, 2020

Can I Copyright My Logo?

Webinar | January 15, 2020

Trademark & Copyright 2019 Year in Review

Blog | June 27, 2019

First Amendment: 3, Lanham Act: 0 - SCOTUS Holds Lanham Act Prohibition on Immoral and Scandalous Marks is Unconstitutional Restriction on Free Speech

Blog | January 30, 2019

2018 Trademark and Copyright Year in Review

Blog | January 28, 2019

USPTO Announces Expedited Cancellation Pilot Program

Webinar | January 23, 2019

2018 Trademark & Copyright Year in Review

Blog | July 2, 2018

Supreme Court to Resolve Copyright Registration Circuit Split

Webinar | January 24, 2018

Trademark & Copyright 2017 Year in Review Webinar

Blog | December 6, 2017

Ensure Your Safe Harbor Protection — (Re)Designate Your DMCA Agent This Month

Blog | March 23, 2017

Hip Hip Hooray! Supreme Court Upholds Copyright Protection for Cheerleader Uniforms

Article | March 13, 2017

Fish's Kristen McCallion, Catherine Stockell and Cindy Walden Quoted in *World Trademark Review* article, "Brand creation and protection: a multifaceted..."

Blog | October 17, 2016

USPTO Publishes Amendments to Trademark Rules of Practice

Blog | August 19, 2016

Dancing Baby May Be Headed To Supreme Court

Blog | March 31, 2016

Ninth Circuit Issues Amended Opinion in "Dancing Baby" DMCA Notice-and-Takedown Case

Blog | March 17, 2016

Thwart Counterfeiters to Save Brands | A Metropolitan Corporate Counsel Interview

Article | February 17, 2016

Feeling The Burn

Blog | December 28, 2015

Disparaging Trademarks Afforded First Amendment Protection

Blog | October 29, 2015

DMCA Exceptions Announced By Librarian of Congress

Article | October 22, 2015

Strengthening Trademark Protection Through Copyright 2016/2017: A Global Guide

Blog | October 19, 2015

Second Circuit Holds That Google Book-Scanning Project Is Fair Use

Blog | August 10, 2015

The Second Circuit Avoids the "Registration" Question

Blog | April 28, 2015

Does the Bar on Registration of Disparaging Marks Violate the First Amendment?

Blog | February 25, 2015

Ninth Circuit Rules in Favor of Costco in Omega Copyright Dispute

Blog | February 17, 2015

Will Katy Perry's Copyright Claim in "Left Shark" Tank?

Blog | January 12, 2015

The First Amendment Again Protects Video Games as Expressive Works

Blog | November 14, 2014

Motion for Summary Judgment Denied in "Blurred Lines" Copyright Infringement Suit

Blog | October 28, 2014

Who Owns How? Chobani Hit with Trademark Lawsuit over "How Matters" Campaign

Blog | October 14, 2014

Website Owners May Allege Protectable Trade Dress in Their Website Design

Blog | September 25, 2014

Legal Rights for Illegal Art? Copyright Protection for Graffiti

Q&A | September 4, 2014

Q&A with Kristen McCallion: Women Worth Watching

Blog | September 3, 2014

In the Weeds: Trademark Protection for Medical Marijuana Products and Services

Blog | August 21, 2014

The Monkey Selfie: When A Monkey Is No Longer a Photographer's Prime Mate

Blog | July 22, 2014

U.S. Copyright Office Proposes Changes to Recordation Procedures

Blog | July 2, 2014

Supreme Court to Determine Level of Deference Given to TTAB Decisions

Blog | June 24, 2014

Supreme Court to decide if trademark "tacking" is properly determined by judge or jury

Blog | June 24, 2014

Supreme Court to decide if trademark "tacking" is properly determined by judge or jury

Blog | May 9, 2014

What's in a Name? Generic Words and the Dispute Over Skee-ball

Article | April 1, 2014

Protect A Distinctive Website With Trade Dress Law

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## News

February 6, 2024

Fish & Richardson's Trademark Practice Receives High Rankings From *World Trademark Review*

October 5, 2023

Fish & Richardson Ranked Highly by *Managing IP*; Attorneys Named IP Stars

March 7, 2023

Fish & Richardson's Trademark Practice Receives Top Rankings by *World Trademark Review*

June 2, 2022

Fish & Richardson Named a Top ITC and Life Sciences Firm by *Managing IP*; Attorneys Named IP Stars

April 6, 2022

Fish & Richardson Trademark Group Ranked Highly By *World Trademark Review* and *Managing IP*

September 30, 2021

Fish & Richardson Attorneys Named to 2021 New York Metro *Super Lawyers* List

February 26, 2021

Fish & Richardson's Trademark Practice Receives Top Rankings by *World Trademark Review*

August 4, 2020

32 Fish & Richardson Attorneys Named 2020 "IP Stars" by *Managing Intellectual Property* Magazine

March 3, 2020

Fish & Richardson Named Top Trademark Law Firm for 10th Straight Year by *World Trademark Review*

May 22, 2019

Fish & Richardson Announces 32 Attorneys Named "IP Stars" by *Managing Intellectual Property* Magazine

February 21, 2019

Fish Named Top Trademark Law Firm for Ninth Straight Year by *World Trademark Review*

February 14, 2019

Fish & Richardson Principal Kristen McCallion awarded the 2019 Client Choice Award by *Lexology*

May 21, 2018

Fish & Richardson Announces 39 Attorneys Named "IP Stars" by *Managing Intellectual Property* Magazine

March 7, 2018

Kristen McCallion Quoted in *World Trademark Review* Article, "USPTO Goes After the Fakers; Experts Praise Initiative to Combat Improper Specimens, Calls for..."

March 6, 2018

Fish & Richardson Announces Ranking as a Top National Trademark Practice by *Managing Intellectual Property*

February 2, 2018

Fish & Richardson Named Top Trademark Law Firm for Eighth Straight Year by *World Trademark Review*

November 14, 2017

"US trademark filings from China soar, but law firms struggle to capitalise amid warnings of suspicious activity," in *World Trademark Review*

July 13, 2017

Nine Fish & Richardson Women Named "IP Stars" by *Managing Intellectual Property* Magazine

June 23, 2017

Fish & Richardson Announces 36 Attorneys Named "IP Stars" by *Managing Intellectual Property* Magazine

June 29, 2016

Fish Receives Top Tier 1 National Rankings in Patent Prosecution and Patent Litigation from *The Legal 500*

June 2, 2016

Fish & Richardson Announces 36 Attorneys Named "IP Stars" by Managing Intellectual Property Magazine

May 13, 2016

Fish's Kristen McCallion Quoted in Corporate Counsel Article, "Is HBO Censoring the 'Game of Thrones' Spoiler?"

July 15, 2014

Skyhorse Publishing and Author Fred Stoller Win Seinfeld Related Defamation Lawsuit Brought by Real Life "Cosmo Kramer"

May 9, 2014

Fish's Kristen McCallion Quoted in Corporate Counsel, "Skee-Ball Rolls Into a Big Trademark Fight"

May 6, 2014

Skee-ball League Launches Crowdfunding Campaign, 'Skee the People,' to Defend Against Trademark Lawsuit Brought by Skee-Ball, Inc.

December 12, 2013

Regent Baby Wins Summary Judgment in "Sippy Cup" Trade Dress Case Brought by Luv n' Care

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## Events

April 5, 2022

Consero Brand Protection & Anti-Counterfeiting Forum

November 19, 2020

ACC National Capital Region Program

March 5, 2019

World Trademark Review (WTR): Brand Protection Online

October 17, 2017

World Trademark Review: Managing Trademark Assets

May 23, 2017

World Trademark Review: WTR Industry Awards 2017

March 24, 2017

Cardozo Arts & Entertainment Law Journal (AELJ): Comic Law Con!

January 27, 2017

INTA Roundtable: US Trademark Caselaw Review

October 6, 2016

Consero: Fall Brand Protection & Anti-Counterfeiting Executive Roundtable

November 12, 2013

2013 International Trademark Association (INTA) Leadership Meeting

October 22, 2013

ALM 6th Annual IP Trademark, Copyright & Licensing Counsel Forum

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## Additional insights

### Publications

- "Futureproofing Your Online Brand Protection Strategy," *World Trademark Review's* Brand Protection Online (March 2019)
- "The Impact of Freedom of Expression on Dilution Enforcement in the United States," *International Trademark Dilution* (2016)
- "Numerical Valuations: Copyrightable Expression Versus Discovered Fact," *New York Law Journal* (June 2013)
- "Are There Property Rights in U.S. Time-Sensitive Information?" *E-commerce Law & Policy* (June 2010)
- "This Season's Must Have IP Rights," *Managing Intellectual Property* (December 2007/January 2008)
- "War for Sale! Battlefield Contractors in Latin America & the 'Corporatization' of America's War on Drugs," *36 U. Miami Inter-Am. L. Rev.* 317 (2005)

## Speaking engagements

- “[E-Commerce and Enforcement: Addressing Overlapping Counterfeit on Legitimate Channels](#),” *Consero Brand Protection & Anti-Counterfeiting Forum* (April 5, 2022)
- “[Opening Remarks](#),” *Consero Brand Protection & Anti-Counterfeiting Forum* (April 5, 2022)
- “Exclusive Rights and Infringement,” *18th Annual BCLT/BTLJ Symposium: The Next Great Copyright Act* (April 2014)
- “Hard Issues in Soft IP — A Year in Review,” *NYIPLA 2014 Annual Meeting, CLE Workshop* (May 2014)
- “Social Media and Intellectual Property. Should You Be Doing More?” *ALM 6th Annual IP Trademark, Copyright & Licensing Counsel Forum* (October 2013)

## Media mentions

- “[A Copyright Case that Pits H&M Against a Pattern Company Goes Before the Supreme Court – The Fashion Law](#)” *The Fashion Law* (November 8, 2021)
  - “SCOTUS Hears Oral Arguments in *Unicolors v. H&M*– Intellectual Property Magazine,” *Intellectual Property Magazine* (November 9, 2021)
  - “[USPTO Goes After Fakers; Experts Praise Initiative to Combat Improper Specimens, Calls for Further Action](#)” *World Trademark Review* (March 2018)
  - “[Is HBO Censoring the ‘Game of Thrones’ Spoiler?](#)” *Corporate Counsel* (May 2016)
  - “[A Setback for Redskin Potatoes Won’t Hurt the Washington Redskins](#),” *TIME.com* (March 2014)
  - “[Women Worth Watching](#),” *Profiles in Diversity Journal* (September 2014)
  - “Court Rules Resale of Digital Files Violates Copyright Law,” *E-commerce Law & Policy* (April 2013)
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## Services

Trademark, Copyright & Media Litigation  
Trademark & Copyright Counseling & Prosecution  
TTAB Oppositions & Cancellations  
Digital Millennium Copyright Act  
Transactions & Agreements

## Admissions

New York (2006)  
U.S. Court of Appeals for the First Circuit  
U.S. Court of Appeals for the Second Circuit  
U.S. District Court for the Eastern District of New York  
U.S. District Court for the Southern District of New York

## Education

J.D. *cum laude*, University of Miami School of Law (2005) Staff Editor, *Inter-American Law Review*  
B.A., English, Art History, Tulane University (1996)

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