

Robert J. Bernstein

I practice in the fields of copyright and trademark litigation and counseling, including allied areas of unfair competition, right of publicity, entertainment law, licensing, contracts and domain names. My practice includes mediation as both participant and mediator, and I am a member of the Panel of Trademark Mediators of the International Trademark Association.

After clerking for U.S.D.J. Richard P. Matsch (D. Colo.) and immersion in tender offer litigation at Fried, Frank, Harris, Shriver & Jacobson, I changed direction in 1980, simultaneously joining Cowan Liebowitz & Latman (becoming a partner in 1982) and the Copyright Society of the U.S.A. In 2004, I established The Law Office of Robert J. Bernstein, where I continue to ply my trade.

At my first Copyright Society Annual Meeting in Montauk, I learned (upon being warmly welcomed into the beach volleyball game by Marybeth Peters and Jon Baumgarten) that my new colleagues were both erudite and arguably athletic. Since then, I have been privileged to serve the Society in many capacities, including as Chair of the New York Chapter, the Brace Lecture Committee and the Annual Meeting Committee; as Vice President and President (2000-02); and, currently, as an Honorary Trustee and member of the Executive Committee.

This year's Annual Meeting arrives 30 years after Bob Osterberg and I crossed swords at the 1985 Annual Meeting in a mock infringement trial (presided over by Hon. Miriam Cedarbaum) involving some of the same music copyright issues now arising in the "Blurred Lines" litigation. I am pleased to have the opportunity at this year's Annual Meeting to provide my perspective on the current controversy over the impact of the "Blurred Lines" verdict on the progress of musical authorship.

I am a life-long amateur musician (alto sax), including in jazz groups at Princeton, the University of Michigan Law School, and ongoing jam sessions with colleagues Clarida and Kjellberg. My most successful "moot court" argument in Ann Arbor was convincing the registrar to grant law school credit for Music 460 (a/k/a the University of Michigan Jazz Band) due to its relevance to copyright law.

I have been co-author of the *New York Law Journal* Copyright Law Column for 30 years, first with David Goldberg and now with Robert W. Clarida, publishing over 130 columns (and counting) covering a wide range of issues arising in copyright litigation.

I have lectured and appeared on panels on copyright law and litigation before diverse professional associations, corporate law departments, law schools and other venues, including the American Intellectual Property Law Association (serving as Copyright Committee Chair, a Board member, and as moderator of a mock music copyright infringement trial presided over by Hon. Richard Owen); the Practicing Law Institute; the New York City Bar Association (serving on the Copyright & Literary Property Committee and the Entertainment Law Committee); the Section of Intellectual Property Law of the American Bar Association; the Entertainment, Arts & Sports Law Section of the New York State Bar Association; the New Music Seminar; Court TV; the University of Michigan Law School; Fordham Law School; Fordham's International

Intellectual Property Law & Policy Conference; the Association of American Publishers; and the Copyright Society of the U.S.A.

I have been privileged to participate in a number of precedent-setting cases, starting in 1986 with the trial of *The Nation* case (as an associate of lead counsel Roger L. Zissu), and continuing, most recently, as co-counsel to the National Federation of the Blind in *Authors Guild v. HathiTrust*, 902 F.Supp.2d 445 (S.D.N.Y. 2012), *aff'd*, 755 F.3d 87 (2d Cir. 2014) (establishing fair use by blind students and scholars of the digitized collections of several major university libraries).

Other reported cases include: *Niss v. Columbia Pictures Industries, Inc.*, 57 U.S.P.Q. 2d 1346 (S.D.N.Y. 2000), *aff'd per curiam* (2d Cir. 2001) (screenplay determined to be work-for-hire); *Clinique Laboratories, Inc. v. DEP Corporation*, 945 F. Supp. 547 (S.D.N.Y. 1996) (trademark and trade dress infringement and dilution caused by confusingly similar cosmetic packaging); *Kurt S. Adler, Inc. v. World Bazaars, Inc.*, 897 F. Supp. 92 (S.D.N.Y. 1995) (infringement of copyright and trade dress in sculpture and appearance the “Bubbling Blowing Santa”); *Hilton International Co., Inc. v. Hilton Hotels Corp.*, 888 F. Supp. 520 (S.D.N.Y. 1995) (enforcement of foreign rights in HILTON trademark against “CONRAD by Hilton” hotels); *Levine v. McDonald’s Corporation*, 735 F. Supp. 92 (S.D.N.Y. 1990) (claimed infringement of “Life is A Rock” by “McDonald’s Menu Song”); *Horgan v. MacMillan*, 789 F.2d 157 (2d Cir. 1986) (claimed infringement of Balanchine choreography by a book of photographs of *The Nutcracker Ballet*); and *Warner Bros., Inc. v. Gay Toys, Inc.*, 598 F. Supp. 424 (S.D.N.Y. 1984) (Lanham Act-based contempt proceeding against infringing versions of the “General Lee” car from “The Dukes of Hazard” television series).

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