



Contact

**Alexander Kaplan**

**Partner**

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Alexander (Alex) Kaplan is a litigation partner, highly experienced in copyright, trademark, advertising, right of publicity, and trade secrets law. A seasoned courtroom lawyer, Alex has nearly two decades of experience litigating high-stakes cases in all of these disciplines, and in other complex commercial disputes. Clients turn to Alex for his unique blend of litigation skills and comprehensive knowledge of IP law. Outside of the courtroom, Alex provides daily counsel to his clients on legal questions that affect key business decisions. He is as adept in counseling clients on copyright law as he is advising on substantiation for advertising claims or the ins and outs of trademark protection. Alex's comprehensive IP expertise allows him to effectively and efficiently bring value to his clients as the first and only call they need to make on rights-related legal and business issues.

### **Copyright, Media and Entertainment**

Alex has represented many music, sports and entertainment clients in a wide variety of matters touching on all forms of copyrightable subject matter. He also represents media and publishing companies, both pursuing web-based piracy claims and defending against allegations of infringement. Alex has won multiple high profile cases on summary judgment, prevailing on the factually intensive issue of lack of substantial similarity. On behalf of Madonna, Warner/Chappell and Warner Music, he convinced the Ninth Circuit Court of Appeals to reject the Sixth Circuit's

controversial *Bridgeport* decision governing liability for music sampling. Alex has also successfully represented the following high-profile clients in copyright matters: Lady Gaga, U2, SONY Music, Universal Music Group, the NFL, the National Academy of Recording Arts and Sciences, Elsevier, and Lexis/Nexis. Alex speaks and publishes frequently on noteworthy issues in copyright law and has been featured in a [Planet Money podcast](#) discussing the knotty issue of fair use.

### **Trademark and False Advertising**

Alex represents and advises a range of consumer product, fashion, food & beverage, pharmaceutical and medical device companies before the federal courts, TTAB and NAD. He has represented both plaintiffs and defendants in numerous Lanham Act matters in courts across the country, including in multiple preliminary injunction hearings and jury trials. Beyond litigation, Alex frequently counsels clients concerning advertising and marketing claim substantiation and review, and regularly appears before NAD. He is an editor of and contributor to Proskauer's advertising law blog, [Watch This Space: Proskauer on Advertising Law](#), and is a frequent speaker at advertising law conferences and courses. Alex's trademark and advertising clients have included Church & Dwight, the NFL, S.C. Johnson & Son, Colgate Palmolive, Diageo, Ascena Retail Group, Henry Schein, NxStage Medical and Fresenius Kabi.

### **Trade Secrets and Business Disputes**

Alex also litigates trade secret misappropriation and restrictive covenant cases and has served as an adjunct professor of law at Brooklyn Law School teaching trade secrets law and supervising the student-run Brooklyn Law School Trade Secrets Institute.

Beyond intellectual property matters, Alex has represented clients in many commercial litigation matters, covering a range of industries, including professional sports, software, information technology, cellular communications, healthcare, and finance.

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### Copyright Experience

- Obtained summary judgment for leading publishing company, Elsevier, dismissing hundreds of claims of copyright infringement over alleged copying of medical animations. The court found no substantial similarity and that Elsevier had post-license contractual rights to use other of the allegedly infringing animations. Also prevailed on breach of contract and trade secrets misappropriation claims. *Archie MD, Inc. v. Elsevier, Inc.*, No. 16-cv-6614 (JSR), 2017 U.S. Dist. LEXIS 37141 (S.D.N.Y. Mar. 14, 2017)
- Argued and won Ninth Circuit appeal affirming summary judgment decision dismissing copyright claim against Madonna, Warner/Chappell and Warner Music brought by VMG Salsoul, owner of the 1970s track, Love Break. On summary judgment, the district court dismissed VMG's claim, finding the music allegedly copied was not sufficiently original to merit copyright protection and the alleged copying to be de minimis, in any event. The Ninth Circuit affirmed the district court's decision finding the alleged copying de minimis and rejected the Sixth Circuit's controversial decision in *Bridgeport Music v. Dimension Films*. *VMG Salsoul v. Madonna Louise Ciccone*, 824 F.3d 871 (9th Cir. 2016), affirming 2013 U.S. Dist. LEXIS 184127 (BRO) (C.D. Cal Nov. 18, 2013)
- Obtained summary judgment for Lady Gaga against a singer-songwriter who alleged that the recording star copied portions of her song into the hit single Judas. The court held that the two works were not substantially similar and dismissed the claim, finding no copyright infringement. *Francescatti v. Germanotta*, 2014 U.S. Dist. LEXIS 81794 (N.D. Ill. June 17, 2014)
- Defended Live Nation Entertainment in a copyright infringement suit brought by an Egyptian composer over Jay Z's performances of a hit single on concert tour. The court dismissed the claim for direct infringement and stayed the remaining claims against Live Nation pending the outcome of the direct infringement claim against Jay-Z, which was later dismissed. (*Fahmy v. Live Nation Entertainment*)

- Represented licensor of Blu-ray encryption technology in addressing illegal circumvention software sold over the Internet designed to defeat the content protection system for Blu-ray discs. Successfully worked with foreign government to prosecute manufacturer of unlawful circumvention tools.
- Defended legendary rock band U2 in the successful resolution of a copyright infringement action in the Central District of California over the song Vertigo brought by a musician claiming copying of his musical composition. (Lester v. U2)
- Successfully defended BMG and RCA Music in suit by music producer concerning right to Elvis Presley recordings. Plaintiff ultimately withdrew his lawsuit. (Moman v. Bertelsmann Music Group, Inc.)
- Successfully defended Universal Music Group against claims of copyright infringement and declaratory judgment claim seeking ownership over certain hip hop recordings. (Clyde Otis Music Group v. Universal Music Group)
- Won summary judgment for Zomba Music finding MP3.com had committed mass copyright infringement of Zomba's recordings by copying and making them available over the internet through a personal music locker service. (Zomba Music Group v. MP3.com)

### Trademark/False Advertising Experience

- Represented Triangl, a top-selling bikini brand, in a trade dress and copyright infringement action in the Southern District of New York against a Chinese manufacturer of infringing swimwear. Obtained broad injunctive relief shutting down sales by Lingzhi of infringing swimsuits over various websites. (Triangle Group Ltd. v. Lingzhi Garment Co.)
- Represented Justice, the leading brand of tween-age girls' clothing, in the successful resolution of a sharply contested trademark, copyright, and false advertising suit in the Southern District of Ohio against Bluestar, owner of the Limited Too brand of girls' apparel. (Tween Brands v. Bluestar Alliance)
- Represented pharmaceutical manufacturer Fresenius Kabi in the successful defense of a Lanham Act false advertising action in the Northern District of

Illinois in which Par accused Fresenius Kabi of falsely marketing a generic drug. (Par Sterile Products v. Fresenius Kabi USA)

- Represented NxStage, a medical device manufacturer, in the successful resolution of a Lanham Act false advertising litigation brought by competitor Gambro in the District of Massachusetts. The matter involved the marketing of continuous renal replacement therapy devices used in hospital intensive care units for patients suffering from catastrophic kidney failure. (Gambro Renal Products v. NxStage Medical)
- Represented Diageo, a leading global producer and distributor of alcoholic beverages, in the successful resolution of a trademark infringement and dilution action in which Jackson Family Wines alleged that Diageo's Crème De Lys wine label infringed and diluted Jackson's La Crema wine brand. (Jackson Wines v. Diageo)
- Successfully defended a trademark infringement action brought by Stark Wine LLC in the Northern District of California in which a nationwide injunction was sought to prevent Diageo from selling its new Stark Raving brand of table wine. (Stark v. Diageo)
- Obtained preliminary injunction in the Southern District of New York enjoining comparative television advertising for Clorox's Fresh Step cat litter product denigrating the performance of Church & Dwight's Arm & Hammer cat litter. (Church & Dwight Co. v. Clorox Co.)
- Represented Radiancy, maker of a hair removal device, in the successful resolution of false advertising claims concerning the respective performance of the parties' products brought in the Northern District of California. (Tria Beauty, Inc. v. Radiancy, Inc.)
- Successfully represented Major League Baseball against The Upper Deck Company in a trademark infringement action in the Southern District of New York obtaining an injunction prohibiting Upper Deck's unauthorized use of MLB team logos in a baseball card series. (MLB Properties v. Upper Deck)

## Trade Secrets and Restrictive Covenants

- Obtained preliminary injunction and multimillion dollar jury verdict for trade secret misappropriation in Virginia state court where former employees attempted to obtain government contracts using prior employer's trade secrets. (Perot Systems v. 20th Century Systems Inc.)
- Defeated motion for preliminary injunction in New York state court seeking to prevent television network from enforcing restrictive covenant preventing television personality from joining competing network. (Eric Bolling v. CNBC Inc.)
- Represented defendant and counterclaim plaintiff in obtaining successful settlement in a trade secrets action concerning technology behind heart monitors in Northern District of Illinois. (Cardionet, Inc. v. LifeWatch Corp.)

#### Practices

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Copyright, Product Liability & Consumer Litigation, False Advertising & Trademark, Intellectual Property, Non-Compete & Trade Secrets

#### Industries

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Entertainment, Technology, Media & Telecommunications

#### Education

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Brooklyn Law School, J.D., 2000

magna cum laude Editor-In-Chief, *Journal of Law and Policy*, 1999-2000

State University of New York at Albany, B.A., 1994

*magna cum laude*

#### Admissions & Qualifications

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New York

#### Court Admissions

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U.S. Court of Appeals, Federal Circuit

U.S. Court of Appeals, Second Circuit

U.S. Court of Appeals, Third Circuit  
U.S. Court of Appeals, Seventh Circuit  
U.S. Court of Appeals, Ninth Circuit  
U.S. District Court, New York, Eastern District  
U.S. District Court, New York, Southern District

#### Memberships

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The Copyright Society of the USA  
Board of Directors, Brooklyn Bar Association Volunteer Lawyers Project

#### Awards & Recognition

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The Legal 500 United States: Intellectual Property: Copyright 2016-2019  
The Legal 500 United States: Media, Technology, and Telecoms: Marketing & Advertising 2017-2019  
The Legal 500 United States: Media & Entertainment 2018-2019  
The Legal 500 United States: Trademarks: Litigation 2019  
The Legal 500 United States: Media, Technology, and Telecoms: Media & Entertainment: Litigation 2019  
Brooklyn Law School Intellectual Property Law Association, Distinguished Alumni Award 2016