

**Mark P. McKenna**  
Notre Dame Law School  
3120 Eck Hall of Law  
Notre Dame, IN 46556  
(574) 631-9258  
[markmckenna@nd.edu](mailto:markmckenna@nd.edu)

## **CURRENT APPOINTMENTS**

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### **Notre Dame Law School, Notre Dame, IN**

*Notre Dame Presidential Fellow* (2012–present); *Professor of Law* (2011-present); *Associate Professor* (with tenure) (2008-11); *Visiting Associate Professor* (Spring 2008)

*Fellow*, Notre Dame Research Program on Law and Market Behavior  
*Fellow*, John J. Reilly Center for Science, Technology, and Values

**Courses:** Advanced Topics in Trademark Law (Seminar); Copyright Law; Design Law; Information Privacy Law; Intellectual Property Survey; Patent Law; Torts; Trademarks and Unfair Competition

**Law School Administration and Other Service:** Director of Program of Study in Intellectual Property and Technology Law (2012-present); Faculty Advisor to the Intellectual Property Law Society (2009-present); Ad Hoc Search Committee for Director of California Innovation Intensive (Chair 2017-18); Associate Dean for Faculty Development (2013-17); Curriculum Committee (2011-12, Chair 2017-18); Promotions and Tenure Committee (2012-13); Appointments Committee (2009-10, 2010-11, 2011-12); Colloquium Speakers Committee (2008-09; 2012-13; Chair 2013-17); Faculty Development Committee (2008-09; Chair 2013-17); Ad Hoc Search Committee for Director of Intellectual Property and Entrepreneurship Clinic (Chair) (2011)

**University Service:** Provost's Fellow (2016-18); Academic Articles Decennial Review Committee (Vice Chair) (2017-18); University Committee on Women Faculty and Students (2017-18); Faculty Digital Strategy Committee (2013-present); Curriculum Planning Leadership Group and Data Ethics Strategy Group, Master of Science in Data Science Program (2016-present); Strategic Research Committee (2013-17); Faculty Research Support Program Committee (2013-17); Limited Submissions Committee (2013-17); Search Committee for VP and Associate Provost for Innovation (Fall 2016); Catholic Mission Focus Group, Core Curriculum Review Committee (2015); Notre Dame Press Director Search Committee (2014-15); Notre Dame IDEA Center, Governance Working Group

(2014-15); University Committee to Review the Physical Education Department  
(2012); University Intellectual Property Committee (2008-11)

**Chicago-Kent College of Law Center for Design, Law & Technology,**  
Chicago, IL

*Research Affiliate* (2017-present)

## **PREVIOUS APPOINTMENTS AND PRACTICE EXPERIENCE**

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**Turin University-WIPO Master of Laws in Intellectual Property Program,**  
Torino, Italy

*Visiting Lecturer*, November 2017

- Lectures on Trademark and Unfair Competition Protection for Design

**Munich Intellectual Property Law Center,** Max Planck Institut für Immaterial  
Güter- und Wettbewerbsrecht, Munich, Germany

*Visiting Professor*, George Washington University Law School Summer IP  
Program (Summer 2013)

- Course: Trademarks and Geographical Indications

**University of Toronto Faculty of Law,** Toronto, ON (Canada)

*Distinguished Visiting Faculty* (Spring 2012)

- Short course: Trademark Theory Seminar

**Stanford Law School,** Stanford, CA

*Edwin A. Heafy Jr. Visiting Professor of Law* (Fall 2010)

- Courses: Advanced Topics in Unfair Competition; IP: Trademarks

**Saint Louis University School of Law,** St. Louis, MO

*Assistant Professor* (2003-2008)

**Pattishall, McAuliffe, Newbury, Hilliard & Geraldson,** Chicago, IL

*Associate in intellectual property practice* (2000-2003)

## **OTHER EXPERIENCE AND PROFESSIONAL SERVICE**

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*International Trademark Association Academic Committee (2016-18)*

*Advisory Board Member, Public Record Media, St. Paul, MN (2014-present)*

*Advisory Board Member, Intellectual Property Center, University of Richmond T.C. Williams School of Law, Richmond, VA (2005-present)*

*Editorial Advisory Board Member, The IP Law Book Review, Golden Gate University School of Law, San Francisco, CA (2010-present)*

*Participant in NDLead, Notre Dame's Leadership Training Program (2015-16)*

*Advisory Committee Member, Indiana Conference for Legal Education Opportunity (2013-15)*

*Planning Committee Member, 2012 AALS Mid-Year Meeting on Intellectual Property*

*Chair, Intellectual Property Section, Association of American Law Schools (2011);  
Chair-Elect (2010)*

*Intellectual Property Advisory Committee Member, Obama for America 2008*

*Member of Board of Directors, Kane, McKenna and Associates, Inc., Chicago, IL (2002-10)*

*Member of Legal Advisory Council, La Leche League International, Schaumburg, IL (2004-2010)*

*Member of Board of Directors, St. Louis Volunteer Lawyers and Accountants for the Arts, St. Louis, MO (2005-2008)*

*President and Founding Board Member, Adams Lacrosse, Inc. (2013-15)*

*President and Founding Board Member, MRH Youth Sports, Maplewood, MO (2007-2008)*

## EDUCATION

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**University of Virginia School of Law**, Charlottesville, Virginia  
*Juris Doctor*, May 2000

**University of Notre Dame**, Notre Dame, Indiana  
*Bachelor of Arts*, Economics, May 1997 (*Magna Cum Laude*)

## PUBLICATIONS

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### Books

THE LAW OF DESIGN: DESIGN PATENT, TRADEMARK, & COPYRIGHT (West 2017) (with Edward Lee and David L. Schwartz)

THE LAW OF INTELLECTUAL PROPERTY (Aspen Law & Business, Fifth Edition 2017) (with Craig Nard & Michael Madison)

THE LAW OF INTELLECTUAL PROPERTY (Aspen Law & Business, Fourth Edition 2013) (with Craig Nard & Michael Madison)

THE LAW OF INTELLECTUAL PROPERTY (Aspen Law & Business, Third Edition 2011) (with Craig Nard, Michael Madison, and David Barnes)

### Law Review Articles

*Claiming Design*, 167 UNIVERSITY OF PENNSYLVANIA LAW REVIEW \_\_ (forthcoming 2018) (with Jeanne Fromer)

*What's In, and What's Out: How IP's Boundary Rules Shape Innovation*, 30 HARVARD JOURNAL OF LAW & TECHNOLOGY 491 (2017) (with Christopher Sprigman) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2735073](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735073)

*Scope*, 57 WILLIAM & MARY LAW REVIEW 2197 (2016) (with Mark A. Lemley) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2660951](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2660951)

*Confusion Isn't Everything*, 89 NOTRE DAME LAW REVIEW 253 (2013) (with William McGeeveran) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2366967](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2366967)

- Selected as one of the best law review articles on intellectual property law published in 2013; republished in the INTELLECTUAL PROPERTY LAW REVIEW (West 2014)

*Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, 100 GEORGETOWN LAW JOURNAL 2055 (2012) (with Mark A. Lemley) (100th Anniversary Volume) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2038039](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038039)

- Reviewed on Jotwell at <http://ip.jotwell.com/marks-on-markets-and-competition/>

*A Consumer Decision-Making Theory of Trademark Law*, 98 VIRGINIA LAW REVIEW 67 (2012) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988521](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988521)

*Owning Mark(et)s*, 109 MICHIGAN LAW REVIEW 137 (2010) (with Mark A. Lemley) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1604845](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1604845)

- Reviewed on Jotwell at <http://ip.jotwell.com/marks-on-marks/>

*Irrelevant Confusion*, 62 STANFORD LAW REVIEW 413 (2010) (with Mark A. Lemley) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1407793](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1407793)

*Testing Modern Trademark Law's Theory of Harm*, 95 IOWA LAW REVIEW 63 (2009) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1348746](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1348746)

- Selected as one of the best law review articles on intellectual property law published in 2009 and republished in the INTELLECTUAL PROPERTY LAW REVIEW (West 2010)

*Trademark Use and the Problem of Source*, 2009 UNIVERSITY OF ILLINOIS LAW REVIEW 773 (2009) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1088479](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1088479)

- Reviewed on Jotwell at <http://ip.jotwell.com/trademark-use-on-the-loose/>

*The Normative Foundations of Trademark Law*, 82 NOTRE DAME LAW REVIEW 1839 (2007) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=889162](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=889162)

- Reprinted at 97 TRADEMARK REPORTER 1126 (2007)
- Winner of 2007 Ladas Memorial Award for writing excellence on the subject of trademarks and related matters (International Trademark Association)

*The Right of Publicity and Autonomous Self-Definition*, 67 UNIVERSITY OF PITTSBURGH LAW REVIEW 225 (2005)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=794844](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=794844)

## **Book Chapters, Symposium Contributions, and Responses**

*The Case Against Product Configuration Trade Dress*, in TRADEMARK LAW AND THEORY: REFORM OF TRADEMARK LAW, Graeme Dinwoodie & Mark Janis, eds. (forthcoming 2018)

*Trademarks and Digital Goods: A Comparative Perspective*, in RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY AND DIGITAL TECHNOLOGIES, Tanya Aplin, ed. (forthcoming 2018) (with Lucas Osborn)

*Criminal Trademark Law and the Problem of Inevitable Creep*, \_ AKRON LAW REVIEW \_ (forthcoming 2018) (Oldham Lecture)

*Remarks on the Problem of Scope in IP*, \_ WASHINGTON JOURNAL OF LAW, TECHNOLOGY & ARTS \_ (forthcoming 2018) (keynote talk, The Art & Science of the IP Deal, University of Washington School of Law)

*Knowing Separability When We See It*, 166 UNIVERSITY OF PENNSYLVANIA LAW REVIEW ONLINE 127 (2017) (invited contribution to symposium on *Star Athletica v. Varsity Brands*) <https://ssrn.com/abstract=3050787>

*Trademarks and Digital Goods*, 92 NOTRE DAME LAW REVIEW 1425 (2017) (with Lucas Osborn) (contribution to symposium on Negotiating IP's Boundaries in an Evolving World) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2929589](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2929589)

- Selected as one of the best law review articles on intellectual property law published in 2017 and republished in the INTELLECTUAL PROPERTY LAW REVIEW (West, forthcoming 2018)

*2016 Trademark Year in Review*, 92 NOTRE DAME LAW REVIEW ONLINE (2017) (with Shelby Niemann) <http://ndlawreview.org/2017/05/2016-trademark-year-in-review/>

*Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, in THE CAMBRIDGE HANDBOOK OF ANTITRUST, INTELLECTUAL PROPERTY, AND HIGH TECH, Roger D. Blair and D. Daniel Sokol, eds. (Cambridge University Press 2017) (invited contribution)

*What's Wrong with Copying? Nothing. Review of Abraham Drassinower, What's Wrong with Copying*, 29.1 INTELLECTUAL PROPERTY JOURNAL 27 (2016)

*Systems of Human and Intellectual Capital*, 93 TEXAS LAW REVIEW SEE ALSO 231 (2015) (with Brett M. Frischmann) (Response to Orly Lobel, *The New Cognitive Property: Human Capital Law and the Reach of Intellectual Property*, 93 TEX. L. REV. 789 (2015) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2652441](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652441)

*Progress and Competition in Design*, 17 STANFORD TECHNOLOGY LAW REVIEW 1 (2014) (with Katherine J. Strandburg) (invited contribution to Stanford Law School symposium on Design Patents in the Modern World) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2355445](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2355445)

- Cited in *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S.Ct. 1002, 1034 (2017) (Breyer, J. dissenting)

*Fixing Copyright in Three Impossible Steps: Review of WILLIAM PATRY, HOW TO FIX COPYRIGHT*, 39 JOURNAL OF COLLEGE & UNIVERSITY LAW 715 (2013)

<http://ssrn.com/abstract=2320716>

*Trademark Law's Faux Federalism*, in INTELLECTUAL PROPERTY AND THE COMMON LAW, Shyamkrishna Balganesh, ed. (Cambridge University Press 2013) (invited contribution to University of Pennsylvania Law School symposium on *Intellectual Property and the Common Law*) <http://ssrn.com/abstract=2178432>

*Dastar's Next Stand*, 19 JOURNAL OF INTELLECTUAL PROPERTY LAW 357 (2012) (invited contribution to *The Future of Intellectual Property Law* symposium)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2141478](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2141478)

*(Dys)functionality*, 48 HOUSTON LAW REVIEW 823 (2012) (invited contribution to University of Houston Law Center Institute for Intellectual Property & Information Law Annual Conference, *Trademark: Today and Tomorrow*)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1965716](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1965716)

*Introduction: Creativity and the Law*, 86 NOTRE DAME LAW REVIEW 1819 (2011)

(introduction for symposium on Creativity and the Law) <http://ndlawreview.org/wp-content/uploads/2013/05/McKenna.pdf>

*Probabilistic Knowledge of Third-Party Trademark Infringement*, 2011 STANFORD TECHNOLOGY LAW REVIEW 10 (invited contribution to symposium on Secondary and Intermediary Liability on the Internet)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1906826](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1906826)

*Intergenerational Progress*, 2011 WISCONSIN LAW REVIEW 123 (with Brett Frischmann) (invited contribution to Wisconsin Law Review symposium on Intergenerational Equity and Intellectual Property)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1810943](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1810943)

*Back to the Future: Rediscovering Equitable Discretion in Trademark Cases*, 14 LEWIS & CLARK LAW REVIEW 537 (2010) (invited contribution to Business Law Forum on Intellectual Property Remedies)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1577914](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1577914)

*An Alternate Approach to Channeling?*, 51 WILLIAM & MARY LAW REVIEW 873 (2009) (invited contribution to conference on The Boundaries of Intellectual Property)

<https://ssrn.com/abstract=1503389>

*Teaching Trademark Theory Through the Lens of Distinctiveness*, 52 ST. LOUIS UNIVERSITY LAW JOURNAL 843 (2008) (invited contribution to annual teaching volume) <https://ssrn.com/abstract=1127836>

*What's the Frequency Kenneth? Channeling Doctrines in Trademark Law*, in INTELLECTUAL PROPERTY AND INFORMATION WEALTH (Peter Yu, ed., Praeger Press 2007) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1007074#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1007074#)

*Intellectual Property, Privatization and Democracy: A Response to Professor Rose*, 50 ST. LOUIS UNIVERSITY LAW JOURNAL 829 (2006) (invited contribution to annual Childress Lecture program)

*The Rehnquist Court and the Groundwork for Greater First Amendment Scrutiny of Intellectual Property*, 21 WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY 11 (2006) (invited contribution to conference on The Rehnquist Court and the First Amendment) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=957420](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=957420)

## **Works-in-Progress**

*Investigating Design* (with Jessica Silbey)

*Mapping Confusion* (with Rebecca Tushnet)

*Unfair Disruption* (with Mark A. Lemley)

*Toward a Theory of Inventorship in Patent Law* (with Michael J. Burstein)

*Comparative Analysis of Failures and Institutions in Context* (with Brett Frischmann) (for the Yale Law School symposium on Innovation Law Beyond IP)

## **Amicus Briefs**

BRIEF OF AMICI CURIAE ON BEHALF OF INTELLECTUAL PROPERTY PROFESSORS IN SUPPORT OF APPELLANT AND IN SUPPORT OF REVERSAL, American Society for Testing and Materials v. Public.Resource.Org, Inc. (D.C. Cir. 2017) (with Rebecca Tushnet) <https://tushnet.files.wordpress.com/2017/09/astm-tm-as-filed.pdf>

BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS IN FAVOR OF JUDGMENT AS A MATTER OF LAW, *ZeniMax Media Inc. v. Oculus VR, LLC* (Northern District of Texas 2017) (with Rebecca Tushnet) <https://tushnet.files.wordpress.com/2017/06/proposed-amicus-brief.pdf>

BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS, *Star Athletica L.L.C. v. Varsity Brands, Inc.* (United States Supreme Court 2016) (with Mark A.



Lemley, Christopher Jon Sprigman, and Rebecca Tushnet)

<https://tushnet.files.wordpress.com/2016/07/15-866-tsac-intellectual-property-professors.pdf>

- Cited at 137 S.Ct. 1002, 1032 (2017) (Breyer, J. dissenting)

BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS, *Tobinick v. Novella* (11th Cir. 2016) (Rebecca Tushnet, Lead Author)

<https://tushnet.files.wordpress.com/2016/05/amicus-in-tobinick-v-novella-with-motion.pdf>

Lead Author, BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS IN SUPPORT OF APPELLEES, *Phoenix Entertainment Partners v. Dannette Rumsey and Basket Case Pub* (7th Cir. 2015) <https://tushnet.files.wordpress.com/2015/12/basket-case-amicus-brief-nov-30-final.pdf>

Brief of Amici Curiae Law Professors in Support of Defendant-Appellee National Football League, *Dryer v. National Football League* (8th Cir. 2015) (with Rebecca Tushnet) <https://tushnet.files.wordpress.com/2015/03/dryer-post-proof-rt-march-17.pdf>

Lead Author, BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS IN SUPPORT OF APPELLEES CANTON PHOENIX, INC. AND BING PAN ZHU, *Slep-Tone Entertainment Corp. v. Canton Phoenix Inc.* (9th Cir. 2015)

<https://tushnet.files.wordpress.com/2015/06/slep-tone-amicus-final-as-filed.pdf>

Lead Author, BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS IN SUPPORT OF APPELLANT LUBECORE INTERNATIONAL, INC. AND REVERSAL, *Groeneveld Transport Efficiency, Inc. v. Lubecore International, Inc.* (6th Cir. 2012)

Lead Author, BRIEF OF AMICI CURIAE INTELLECTUAL PROPERTY LAW PROFESSORS IN SUPPORT OF APPELLANT, *Board of Trustees of the University of Alabama v. New Life Art, et al.* (11th Cir. 2010) <http://www.newlifeart.com/images/amicusbrief2.pdf>

## **Other Professional Writing**

*Designing Design Patent Subject Matter*, JOTWELL (March 22, 2018) (reviewing Sarah Burstein, *The Article of Manufacture in 1877*, 32 BERKELEY TECHNOLOGY LAW REVIEW 1 (2017) <https://ip.jotwell.com/designing-design-patent-subject-matter/>

*Registration and its Discontents*, JOTWELL (November 16, 2016) (reviewing Rebecca Tushnet, *Registering Disagreement: Registration in Modern American Trademark Law*, 130 HARVARD LAW REVIEW 867 (2017) <http://ip.jotwell.com/registration-and-its-discontents/>

*Trademark Year in Review* <http://ssrn.com/abstract=2645863>

*Designing Architectural Copyright*, JOTWELL (November 4, 2015) (reviewing Kevin E. Collins, *Economically Defeasible Rights to Facilitate Information Disclosure: The Hidden Wisdom of Pre-AWCPA Copyright*) <http://ip.jotwell.com/designing-architectural-copyright/>

*Measuring Serendipity*, JOTWELL (January 20, 2015) (reviewing Bhaven N. Sampat, *Serendipity*) <http://ip.jotwell.com/measuring-serendipity/>

*The Limits of the Supreme Court's Technological Analogies*, Slate (June 26, 2014) [http://www.slate.com/articles/technology/future\\_tense/2014/06/abc\\_v\\_aereo\\_ruling\\_the\\_supreme\\_court\\_s\\_terrible\\_technological\\_analogies.html](http://www.slate.com/articles/technology/future_tense/2014/06/abc_v_aereo_ruling_the_supreme_court_s_terrible_technological_analogies.html)

*The Implications of Blackhorse v. Pro-Football, Inc.*, Guest Post on PatentlyO Blog (June 19, 2014) <http://patentlyo.com/patent/2014/06/implications-blackhorse-football.html>

*Super-Sizing IP Values*, Reviewing MADHAVI SUNDER, FROM GOODS TO A GOOD LIFE, Concurring Opinions blog (September 12, 2012) <http://www.concurringopinions.com/archives/2012/09/super-sizing-ip-values.html>

*Don't Stop at SOPA. SOPA and PIPA are (almost) dead. Now can we talk about the law that already exists?* Slate (January 20, 2012) [http://www.slate.com/articles/news\\_and\\_politics/politics/2012/01/sopa\\_and\\_pipa\\_are\\_almost\\_dead\\_now\\_can\\_we\\_talk\\_about\\_the\\_law\\_that\\_already\\_exists.html](http://www.slate.com/articles/news_and_politics/politics/2012/01/sopa_and_pipa_are_almost_dead_now_can_we_talk_about_the_law_that_already_exists.html)

## **EXPERT REPORTS AND TESTIMONY**

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*Belmora, LLC v. Bayer Consumer Care AG*, Case No. 1:14-CV-00847-GBL-JFA (E.D. Va.)

- Expert Report for Belmora, LLC (September 12, 2017)

*GOT I, LLC v. XRT, Inc.*, Civ. Action No. 1:16-CV-00038-WSD (N.D. Ga.)

- Expert report for GOT I, LLC and KIDS II, LLC (October 13, 2016)

*Karen Denise Millen v. Karen Millen Fashions Ltd.*, HC-2014-000808 (High Court of Justice, Chancery Division)

- Expert report for Karen Denise Millen (May 13, 2016)

*U.S. v. Manzo* (E.D. Wash. 2012)

- Expert declaration filed on behalf of defendant, Reyna Manzo (July 13, 2012)

*Gucci America, Inc. v. Guess, Inc.*, Civ. Action No. 09cv4373 (S.D.N.Y.)

- Expert report for Guess?, Inc. (June 27, 2011)
- Expert witness trial testimony on behalf of Guess?, Inc. (April 2012)

*U.S. v. Lam et al* (E.D. Va. 2010)

- Expert witness trial testimony on behalf of defendants

## **CONFERENCES & PROGRAMS ORGANIZED**

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Roundtable on WOODROW HARTZOG, PRIVACY'S BLUEPRINT, Notre Dame Law School (April 27, 2018)

Trademark Scholars Roundtable, Notre Dame Chicago (April 13-14, 2018)

Director, Notre Dame Summer IP Intensive Programme, London Global Gateway (Summer 2017)

*Roundtable on the Scope of IP Rights* (March 31, 2017)

*Notre Dame Conference on Data Security* (February 24, 2017)

*Negotiating Intellectual Property's Boundaries in an Evolving World*, Notre Dame Law Review Symposium (November 2016)

Director, Notre Dame Summer IP Intensive Programme, London Global Gateway (Summer 2016)

*Deception and the Law*, Notre Dame Chicago (May 20, 2016) (co-organized with Woodrow Hartzog)

*Patent Litigation 2016: The Courts and the Patent Trial and Appeal Board*, Federal Circuit Bar Association Bench & Bar Conference (April 28, 2016) (co-organized with the Federal Circuit Bar Association, DePaul University College of Law, and the John Marshall Law School)

*Junior Patent Roundtable*, Notre Dame Law School (April 1, 2016)

Roundtable on ABRAHAM DRASSINOWER, WHAT'S WRONG WITH COPYING?, Notre Dame Law School (October 2, 2015)

Director, Notre Dame Summer IP Intensive Programme, London Global Gateway (Summer 2015)

Roundtable on JESSICA SILBEY, THE EUREKA MYTH: CREATORS, INNOVATORS, AND EVERYDAY INTELLECTUAL PROPERTY, Notre Dame Law School (November 7, 2014)

*Notre Dame and NYU Working Group on the Future of Trademark Law*, Notre Dame Chicago (June 27, 2014) (co-organized with Barton Beebe, NYU)

*2014 Law & Market Behavior Distinguished Lecture* (Lecture by Mark A. Lemley, with panel discussion by Brett Frischmann, Jeanne Fromer, Jonathan Masur, and Christopher Yoo) (April 11, 2014)

Roundtable on NIVA ELKIN-KOREN & ELI SALZBERGER, THE LAW AND ECONOMICS OF INTELLECTUAL PROPERTY IN THE DIGITAL AGE: THE LIMITS OF ANALYSIS, Notre Dame London (December 9, 2013) (co-organized with Avishalom Tor)

*Trademark and Marketing Roundtable*, Notre Dame Law School (February 22, 2013)

Roundtable on KAL RAUSTIALA & CHRISTOPHER SPRIGMAN, THE KNOCKOFF ECONOMY: HOW IMITATION SPARKS INNOVATION, Notre Dame Law School (January 18, 2013)

*When Technology Disrupts Law: How Can Intellectual Property, Internet, and Biotech Adapt?*, 2012 AALS Mid-Year Meeting (June 8-12, 2012) (*Planning Committee Member*)

Roundtable on ROBERT P. MERGES, JUSTIFYING INTELLECTUAL PROPERTY, Notre Dame Law School (April 27, 2012)

*Creativity and the Law*, Notre Dame Law Review Symposium (November 19, 2010)

## SELECTED PRESENTATIONS AND SPEAKING ENGAGEMENTS

### 2017-18

- *Claiming Design*, Villanova University Charles Widger School of Law faculty workshop (March 28, 2018)
- *Claiming Design*, University of Toronto Centre for Innovation Law & Policy Workshop (February 28, 2018)
- *Claiming Design*, UCLA faculty workshop (February 9, 2018)
- Data Security Panel Participant, ND Data Science January Immersion, Palo Alto, California (January 19, 2018)
- Panel Participant, *Running on Empty?: The Risk of Trademark Depletion and Possible Solutions*, University of Pennsylvania Law School (January 9, 2018)

- Panel Participant, *Interpreting and Applying The Court's Copyright Jurisprudence After Star Athletica*, University of Pennsylvania Law Review Symposium (December 7, 2017)
- *Criminal Trademark Law and the Problem of Inevitable Creep*, Oldham Lecture Series featured speaker, University of Akron School of Law (October 19, 2017)
- *Claiming Design*, Boston University School of Law (October 13, 2017)
- *Mapping Confusion*, Seventeenth Annual Intellectual Property Scholars Conference, Cardozo Law School (August 10, 2017) (with Rebecca Tushnet)

2016-17

- Panel Participant, *The Problem of Remedies in Design Protection Law*, 2017 Patent and Intellectual Property Summer Institute, University of Washington School of Law (July 11, 2017)
- *Trademark Protection for Design*, 2017 Patent and Intellectual Property Summer Institute, University of Washington School of Law (July 11, 2017)
- *The U.S. Approach to Comparative Advertising*, 5<sup>th</sup> Unfair Commercial Practices Conference, Pázmány Péter Catholic University, Budapest, Hungary (June 21, 2017) (keynote talk)
- *The U.S. Approach to Functionality*, Exploring the Boundaries of Functionality: Aesthetic and Acquired Functionality in the United States and Europe Panel, International Trademark Association Annual Meeting, Barcelona, Spain (May 22, 2017)
- *Qualitative Investigations of Design*, ETH/NYU Design2 Conference Paper Slam, NYU School of Law (May 11, 2017) (with Jessica Silbey)
- *Claiming Design*, ETH/NYU Design2 Conference, NYU School of Law (May 11, 2017) (with Jeanne Fromer)
- *The Problem of Scope in IP*, The Art & Science of the IP Deal, University of Washington School of Law (April 7, 2017) (keynote talk)
- *Claiming Design*, Notre Dame Roundtable on Scope in IP (March 31, 2017) (with Jeanne Fromer)
- *Investigating Design*, Works-in-Progress Intellectual Property Law Colloquium, Boston University School of Law, February 11, 2017) (with Jessica Silbey)
- *Trademarks and Digital Goods*, Boston College Law School (January 20, 2017)
- *Trademarks and Digital Goods*, 2016 Notre Dame Law Review Symposium, Negotiating IP's Boundaries in an Evolving World (November 12, 2016) (with Lucas Osborn)
- 2016 Trademark Year in Review, Houston Institute on Intellectual Property Law (October 8, 2016)
- *Claiming Design*, Sixteenth Annual Intellectual Property Scholars Conference, Stanford Law School (August 12, 2016) (with Jeanne Fromer)
- *What's In, and What's Out: How IP's Boundary Rules Shape Innovation*, Plenary Session, Sixteenth Annual Intellectual Property Scholars Conference, Stanford Law School (August 11, 2016) (with Christopher Jon Sprigman)

## 2015-16

- *What's In, and What's Out: How IP's Boundary Rules Shape Innovation*, University of Pennsylvania Law School Center for Technology, Innovation and Competition Workshop (April 22, 2016)
- *Trademarks and Digital Goods*, Intellectual Property in All the New Places, Texas A&M University School of Law (April 15, 2016)
- *Claiming in Litigation*, Works-in-Progress Intellectual Property Law Colloquium 2016, University of Washington School of Law (February 19-20, 2016) (with Jeanne Fromer)
- *What's In vs. What's Out: How IP's Boundary Rules Shape Innovation*, Competition Policy, Innovation, and Procurement, The Institute for Advanced Study in Toulouse, Toulouse, France (December 16, 2015) (with Christopher Jon Sprigman)
- Conversation on the Purposes of Trademark Law (a discussion of the historical work of Mark McKenna and Robert Bone), Boston University School of Law (November 20, 2015)
- *What's In vs. What's Out: How IP's Boundary Rules Shape Innovation*, DePaul College of Law Faculty Workshop (November 12, 2015)
- *What's In vs. What's Out: How IP's Boundary Rules Shape Innovation*, University of Toronto Centre for Innovation Law and Policy Workshop (October 22, 2015)

## 2014-15

- Panel on Design Protections as “Substitute or Complement?”, ETH/NYU Conference on Transatlantic Innovation Scholarship, "Design Protection → Design Innovation?", Zurich, Switzerland (June 11, 2015)
- *Campbell's Unfortunate Legacy for the Right of Publicity*, Fair Use in the Digital Age: Understanding the Impact of Campbell v. Acuff-Rose's Transformative Use Test, University of Washington School of Law (April 17, 2015)
- Commentator, Creative Production Without IP, Innovation Law Beyond IP 2, Yale Law School (March 28, 2015)
- *Scope*, NYU School of Law Innovation Policy Colloquium (March 26, 2015)
- *Scope*, University of Illinois College of Law IP Colloquium (February 16, 2015)
- *Scope*, St. Louis University School of Law Faculty Workshop (February 12, 2015)
- *Trademark Year in Review*, Notre Dame Law School Chicago (February 6, 2015)
- *Scope*, Florida State University College of Law Faculty Workshop (January 29, 2015)
- *Qualitative Studies of Consumers Becoming Confused During Shopping*, NYU Empirical IP Research Conference (October 24, 2014)
- *The Future of Legal Education*, University of Georgia School of Law (October 22, 2014)

- *Trademark Year in Review*, Houston Institute on Intellectual Property Law (October 10, 2014)
- *Criminal Trademark Law and the Problem of Inevitable Creep*, Fourteenth Annual Intellectual Property Scholars Conference, UC Berkeley School of Law (August 8, 2014)

#### 2013-14

- Commentator, Vanderbilt Junior Scholars Roundtable (April 25, 2014)
- *Comparative Analysis of (Innovation) Failures and Institutions in Context*, Innovation Law Beyond IP, Yale Law School Information Society Project Conference (March 30, 2014) (with Brett Frischmann)
- *Convergence and Divergence in the Concept of Functionality in Trademark Law*, University of Toronto Distinguished Visiting Faculty Lecture (March 13, 2014)
- Trademark Scholars Roundtable, University of Texas School of Law (February 28 – March 1, 2014)
- *An Empirical Study of False Advertising Claims Under the Lanham Act*, 2014 Works-In-Progress Intellectual Property Law Conference, Santa Clara Law School (February 7-8, 2014)
- *An Empirical Study of False Advertising Claims Under the Lanham Act*, University of North Carolina School of Law Faculty Workshop (January 30, 2014)
- *Progress and Competition in Design*, Inaugural Dean's Colloquium Speaker, Indiana Tech Law School (November 20, 2013)
- Commentator, Michigan State College of Law Junior Scholars in IP Workshop (October 4-5, 2013)
- Panel on Historical Perspectives, Workshop on The Consumer in Trade Mark Law, University of Sydney, Sydney, Australia (August 19, 2013)
- *Progress and Competition in Design*, Thirteenth Annual Intellectual Property Law Scholars Conference, Cardozo Law School, New York, NY (August 8, 2013)
- *Progress and Competition in Design*, VU Centre for Law and Governance Intellectual Property Law – International Lecture Series, VU University, Amsterdam (August 1, 2013)

#### 2012-13

- Panel Participant, Trademark Boundaries: Conflict and Cooperation in Legal Doctrine, International Trademark Association Annual Meeting, Academic Day (May 6, 2013)
- Moderator, Google Search: Antitrust and IP Perspectives, Notre Dame Law School Research Program on Law and Market Behavior (April 15, 2013)
- Trademark Scholars Roundtable, Indiana University Bloomington Maurer School of Law (April 12-13, 2013)
- *Progress and Competition in Design*, Stanford Law School Design Patents in the Modern World symposium (April 6, 2013)

- Stanford Law School Design Patents in the Modern World Symposium, Overlaps with Copyright and Trademark panel (April 5, 2013)
- *Criminal Trademark Law and the Problem of Inevitable Creep*, NYU Colloquium on Innovation Policy (April 4, 2013)
- *An Empirical Study of False Advertising Claims Under the Lanham Act*, Loyola Law School (LA) IP Theory Colloquium (March 25, 2013)
- *A Consumer Decision-Making Theory of Trademark Law*, Mendoza College of Business, Marketing Department faculty workshop (March 22, 2013)
- *A Consumer Decision-Making Theory of Trademark Law*, IPR University Center, Helsinki, Finland (March 14, 2013)
- Trademarks and Competition, Abo Akademi University, Turku, Finland (March 11, 2013)
- *An Empirical Study of False Advertising Claims Under the Lanham Act*, Cardozo IP and Information Law Colloquium (March 4, 2013)
- *Assessing Confusion in Trade Mark and Passing Off Cases*, Institute of Brand and Innovation Law, University College London (February 27, 2013)
- *Confusion Isn't Everything: Limiting Doctrines in Trademark Law*, Vanderbilt Law School Faculty Workshop (January 24, 2013)
- *An Empirical Study of Trademark Functionality*, Oxford Workshop on Empirical Studies of Trade Mark Data, Oxford University (December 8, 2012)
- *An Empirical Study of False Advertising Claims Under the Lanham Act*, Fordham Law School Center on Law & Information Society Faculty Workshop (November 30, 2012)
- *Confusion Isn't Everything: Limiting Doctrines in Trademark Law*, University of Minnesota Law School Faculty Colloquium (November 27, 2012)
- *Confusion Isn't Everything: Limiting Doctrines in Trademark Law*, UCLA Entertainment, Media & IP Colloquium (November 4, 2012)
- *Brand Mercantilism*, Brands, Competition & the Law, Loyola University College of Law, Chicago, IL (October 19, 2012)
- *The Failure (and Promise) of Limiting Doctrines in Trademark Law*, University of California at Berkeley IP Scholarship Seminar (October 15, 2012)
- *Dastar's Next Stand*, Twelfth Annual Intellectual Property Scholars Conference, Stanford Law School (August 10, 2012)
- *What Marketing Research Can Add to a Trademark Class*, 2012 Annual Conference of the Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), Chicago, IL (August 1, 2012)

#### 2011-12

- *(Dys)Functionality*, Keynote Address at University of Dayton School of Law Program in Law and Technology 2012 Scholarly Symposia Series (April 4, 2012)
- *Dastar's Next Stand*, University of Georgia Symposium on The Future of IP (March 2, 2012)
- *Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, Notre Dame Law School Faculty Workshop (February 28, 2012)



- *Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, Cornell Law School (February 17, 2012)
- *Trademark Law's Competition Norms*, Cleveland Intellectual Property Law Association Meeting (February 7, 2012)
- *A Consumer Decision-Making Theory of Trademark Law*, Case Western Reserve Law School (February 7, 2012)
- *Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP*, Georgetown Law Journal Volume 100 Symposium, Georgetown University Law Center (November 17, 2011) (with Mark A. Lemley)
- *(Dys)Functionality*, University of Washington School of Law Intellectual Property Colloquium (November 7, 2011)
- Boston IP Colloquium, Boston College Law School, *A Consumer Decision-Making Theory of Trademark Law* (October 19, 2011)
- University of Indiana, Bloomington Faculty Workshop, *A Consumer Decision-Making Theory of Trademark Law* (September 21, 2011)
- University of California Irvine Faculty Workshop, *A Consumer Decision-Making Theory of Trademark Law* (September 12, 2011)
- *Undefined Markets in IP Cases*, Eleventh Annual Intellectual Property Scholars Conference, DePaul University College of Law, Chicago, IL (August 12, 2011) (with Mark Lemley)
- *Trademark Defenses that Aren't*, Eleventh Annual Intellectual Property Scholars Conference, DePaul University College of Law, Chicago, IL (August 13, 2011) (with Bill McGeveran)

#### 2010-11

- *(Dys)Functionality*, University of Houston Law Center Institute for Intellectual Property & Information Law National Conference in Santa Fe, New Mexico, *Trademark Law: Today and Tomorrow* (June 3-5, 2011)
- *Intergenerational Progress*, Progressive Property Conference, McGill University (May 16-17, 2011)
- *Trademark Law's Faux Federalism*, University of Pennsylvania Law School, Center for Technology, Innovation, and Competition Symposium, *Intellectual Property and the Common Law* (May 6-7, 2011)
- University of Toronto Faculty of Law, *A Consumer Decision-Making Model of Trademark Law* (March 7, 2011)
- *Probabilistic Knowledge of Third-Party Trademark Infringement*, Stanford Technology Law Review Symposium, *Emerging Issues of Secondary Liability on the Internet* (March 4, 2011)
- University of Virginia School of Law Faculty Workshop, *A Consumer Decision-Making Model of Trademark Law* (February 25, 2011)
- Fordham Law School Intellectual Property Colloquium, *A Consumer Decision-Making Model of Trademark Law* (January 31, 2011)
- Organizer and Introductory Commentator, Notre Dame Law Review Symposium on Creativity and the Law (November 19, 2010)

- Stanford Law School Faculty Workshop, *A Consumer Decision-Making Model of Trademark Law*, (November 17, 2010)
- *Intergenerational Progress* (with Brett Frischmann), Wisconsin Law Review symposium on Intergenerational Equity and Intellectual Property (November 12-13, 2010)
- *The Placebo Effect in Intellectual Property* (with Christopher Sprigman), Tenth Annual Intellectual Property Scholars Conference, UC Berkeley School of Law (August 12-13, 2010)

#### 2009-10

- Panel Participant, Roundtable: How Brands Help Understand Information, Innovation, and Competition, 2010 Law & Society Annual Meeting (May 30, 2010)
- Primary Discussant, Second Trademark Scholars Roundtable, DePaul University College of Law (April 16, 2010)
- *Owning Mark(et)s*, University of North Carolina School of Law Faculty Workshop (April 8, 2010)
- *Owning Mark(et)s*, Notre Dame Law School Faculty Colloquium (February 2, 2010)
- Moderator, Vanderbilt Journal of Entertainment and Technology Law Symposium, *Drawing Lines in the Digital Age: Copyright, Fair Use, and Derivative Works* (October 23, 2009)
- *Back to the Future: Rediscovering Equitable Discretion in Trademark Cases*, Lewis & Clark Law School Business Law Forum on Intellectual Property Remedies (October 3, 2009)
- *Owning Markets? Trademark Law and Market Foreclosure* (with Mark A. Lemley), Ninth Annual Intellectual Property Scholars Conference, Cardozo Law School (August 7, 2009)
- Panelist, *Intellectual Property as Social Engineering*, Southeastern Association of Law Schools Annual Meeting, West Palm Beach, FL (August 4, 2009)
- *Irrelevant Confusion*, Workshop on Trademarks and Trademark Data, a European Policy for Intellectual Property conference sponsored by the Organization for Economic Co-operation and Development and INNO-tec, at the Organization for Economic Cooperation and Development, Paris (July 17, 2009)

#### 2008-09

- *Testing Modern Trademark Law's Theory of Harm*, University of Toronto Innovation Law & Theory Workshop (March 11, 2009)
- Pedagogy Panel, 2009 Intellectual Property Scholars Roundtable, Drake University Law School (February 27, 2009)
- *An Alternate Approach to Channeling*, The Boundaries of Intellectual Property Law Symposium, William & Mary Law School (February 6-7, 2009)

- *Modern Trademark Law and the Right to Make Derivative Works*, George Mason University School of Law Faculty Workshop (September 16, 2008)
- *Modern Trademark Law and the Right to Make Derivative Works*, at the Eighth Annual Intellectual Property Scholars Conference, Stanford Law School (August 7-8, 2008)

#### 2007-08

- *Testing Modern Trademark Law's Theory of Harm*, Chicago Intellectual Property Colloquium (April 22, 2008) ([www.chicagoip.com](http://www.chicagoip.com))
- Trademark Scholars Roundtable, Primary Discussant, University of Iowa College of Law (April 11, 2008)
- Participant in the University of Richmond School of Law Intellectual Property Institute's Evil Twin Debate Series, debating Stacey Dogan regarding "trademark use" (April 4, 2008)
- *Trademark Use and the Problem of Source in Trademark Law*, University of Pennsylvania Law School, Center on Technology, Innovation, and Competition Policy Workshop Series (October 29, 2007)
- Moderator, *Trademark Dilution: Theoretical and Empirical Inquiries*, Santa Clara University School of Law (October 5, 2007)
- *Trademark Use and the Problem of Source in Trademark Law*, at the University of Minnesota Trademark Workshop (September 15, 2007)
- *Trademark Use and the Problem of Source in Trademark Law*, at the Seventh Annual Intellectual Property Scholars Conference, DePaul University College of Law (August 10, 2007) (selected for presentation at plenary session)

#### 2006-07

- *What if Trademark Law Really Focused on Consumer Decision-making?*, at "What Ifs and Other Alternative Intellectual Property and Cyberlaw Stories," Michigan State University College of Law (March 31, 2007) (with Dan Hunter)
- *The Normative Foundations of Trademark Law*, at the University of California at Berkeley IP Scholarship Seminar (December 5, 2006)
- *Trademarks and Contextual Meaning*, at Loyola University of Chicago School of Law Faculty Workshop Series (October 10, 2006)
- *Trademarks and Contextual Meaning*, at the 2006 Works-In-Progress Intellectual Property Colloquium, University of Pittsburgh (October 6, 2006)
- *The Normative Foundations of Trademark Law*, at the Sixth Annual Intellectual Property Scholars Conference, University of California at Berkeley (August 11, 2006)

#### 2005-06

- *The Narratives of Patent and Trademark Law* at Third Annual Intellectual Property and Communications Law and Policy Scholars Roundtable, Michigan State University College of Law (January 27-28, 2006)
- *The Rehnquist Court and the First Amendment*, Symposium sponsored by the Washington University Journal of Law and Policy (November 18, 2005)
- *The Normative Foundations of Trademark Law*, at the 2005 Works-In-Progress Intellectual Property Colloquium, Washington University in St. Louis (October 8, 2005)
- 2005 *Childress Memorial Lecture*, Member of Panel Commenting on Intellectual Property Components of lecture by Carol Rose (September 30, 2005)

#### 2004-05

- *The Normative Foundations of Trademark Law*, Saint Louis University faculty workshop series (September 21, 2005) and Seton Hall University School of Law faculty workshop series (April 22, 2005)
- W(h)ither the Middleman: The Role and Future of Intermediaries in the Information Age, Michigan State University College of Law (April 8-9, 2005) – Conference Fellow and Commentator
- Washington University Digital Expo (April 7, 2005) – panel participant discussing the role of intellectual property law in the digital age, with Jonathan Whitehead (Recording Industry Association of America), Jim Spertus (Motion Picture Association of America), and Rebecca Brown (Washington University General Counsel’s office)
- *Trademarks as Property: Back to the Future* (now re-titled “The Normative Foundations of Trademark Law”) at Second Annual Intellectual Property and Communications Law and Policy Scholars Roundtable, Michigan State University College of Law, February 18-19, 2005
- *Trademark Inefficiency: How Expanding Trademark Rights Distort Incentives And Encourage Waste*, at Boston University Works-In-Progress Intellectual Property Colloquium, September 2004

#### 2003-04

- *Identity and Autonomy: Towards a Rational Theory of Identity Appropriation* (re-titled “The Right of Publicity and Autonomous Self-Definition”)
  - Presented at First Annual Intellectual Property and Communications Law and Policy Scholars Roundtable at Michigan State University College of Law (February 18-19, 2004)
  - Presented at University of Kansas School of Law Faculty Workshop (February 10, 2004)
  - Presented at Saint Louis University School of Law Faculty Workshop (January 28, 2004)
- Panel participant regarding Peer-to-Peer filesharing at Tulane Works-In-Progress Intellectual Property Colloquium (September 2003)

- Appeared on World News Roundup Late Edition on KMOX (AM 1200), St. Louis, MO on July 21, 2003 to discuss potential liability for parents whose children download music over the Internet