

The IP Legal Browser



The Newsletter of the FBA's Intellectual Property Law Section

Spring 2019

Message From the Chair

By Michael Zussman



In this edition of the Intellectual Property Law Section's newsletter, readers may treat themselves to some chocolate. But just a piece, written by Miami attorney and IPLS Secretary Ira Cohen, Esq., on the distinctive, and not as distinctive, shapes of chocolate bars and candy, and how the United States and the European Union have digested and afforded trademark registration for

several confections.

A second article explores the intersection between a photographer's exclusive right to exploit his or her photographs under copyright law, and a celebrity's right to exploit her own right of publicity by posting the image in which she appears on social media. Anna Radke, Esq. and Agnieszka Witonska-Pakulska, Esq. discuss the competing rights at issue in the United States and the European Union, as disputes are becoming increasingly frequent between rights owners and social media personalities, who each have a need and desire, and legal arguments, to curate and exploit their online presence and brand for the elusive follower.

The IPLS hosted an event on April 24 in Boston, MA, co-sponsored by the Federal Bar Association's Massachusetts Chapter, called "Bright Thoughts for IP Law Careers." Law students from across the Boston Metropolitan area joined IPLS board members at Olde Union Oyster House, America's oldest restaurant, for drinks, food and, of course, lively discussions on intellectual property law. As always if you would like to publish an article in The IP Legal Browser, please contact our editor Wendy Stein at wstein@gibbonslaw.com.

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COMPARATIVE PERSPECTIVE: TENSION BETWEEN THE RIGHT OF PUBLICITY AND COPYRIGHT LAW IN THE UNITED STATES AND IN THE EUROPEAN UNION

By Anna Radke and Agnieszka Witonska-Pakulska

Introduction

With the increased popularity of the Internet, social media and influencer marketing, it is becoming more lucrative to be compensated for sharing one's own image. However, the posting by a celebrity of his or her own image to social media can lead to lawsuits where someone other than the celebrity owns a copyright in that image. One recent example is the complaint filed by Xclusive-Lee, Inc. ("Xclusive") against Jelena Noura "Gigi" Hadid ("Gigi Hadid"), a famous American model with over 44 million Instagram followers.¹ According to the complaint, Hadid copied and uploaded Xclusive's copyrighted photograph in which Hadid appeared to her Instagram account without license or permission from Xclusive, and allegedly violated Xclusive's exclusive rights of reproduction and distribution.² Hadid was named as a defendant in a similar case in 2017, which settled prior to the discovery stage of litigation.³ The trend of such litigation is only growing. Ariana Grande is the latest celebrity who was sued for posting two copyrighted photographs of herself without permission or consent from the copyright holder.⁴

This article presents a comparative analysis of the law involving the right of publicity and copyright in the United States and European Union, and illustrates the growing tension between the right of publicity and copyright law when it comes to posting photographs on social media.

The Tension Between Right of Publicity and Copyright Law

The United States

As a person's number of followers has become a form of social media currency, lawsuits involving celebrities with millions of followers reposting photographs of themselves in which they lack copyright ownership are common. The copyright holders—often photographers or agencies—are aware that such photographs can generate substantial remuneration. The tension between the protection granted to parties with publicity-rights and those granted to owners of copyrights in photographs of others is becoming increasingly prevalent in today's digital age.

The right of publicity is a state-created intellectual property right that generally protects against the unauthorized use of an individual's image by others.⁶ Its origins derive from the right of privacy⁵ and personal rights. In 1890, Samuel Warren and Louis Brandeis referred to the right "to be let alone."⁷ Today, while the right of publicity is applied differently depending on jurisdiction, its main purpose is to prohibit the commercial use of an individual's name, portrait, picture, likeness, or voice without the individual's permission. Section 43 of the Lanham Act related to False Designations of Origin, False Descriptions, and Dilution Forbidden provides remedies to a person whose

depiction constituted an unauthorized use in connection with goods or services.⁸ Nonetheless, not all uses of a person's likeness infringe upon the person's right of publicity, and application of the law thus depends on the particular facts of the case.⁹ In addition, even though the United States Constitution indicates some fundamental liberty interests related to privacy, the right of publicity is not explicitly one of them.¹⁰

On the other hand, photographs in which a celebrity appears but which are taken by a third party are subject to copyright law protection. The Copyright Act protects original works of authorship fixed in any tangible medium of expression from unauthorized copying. In a nutshell, the owner of a copyright has, with some limitations, the exclusive right to do and to authorize others to: display the work publicly; distribute copies of the work to the public; reproduce the work; perform the work publicly; and prepare derivative works.¹¹ The law provides a fair use limitation on these exclusive rights; however, application of the fair use doctrine requires a court to balance the following factors: (i) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (ii) the nature of the copyrighted work; (iii) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (iv) the effect of the use upon the potential market for or value of the copyrighted work¹² and is construed rather narrowly. Accordingly, reposting a copyrighted image to a social media platform likely infringes upon one of the exclusive rights of the copyright owner, likely does not fall under the fair use defense, and likely exposes a person who reposted the image to a potential claim for copyright infringement.

Some may argue that reposting a copyrighted photograph by a person who is the publicity-right holder may raise a "legitimate speech interest that warrant[s] protection," but it does not look like courts are willing to accede to a First Amendment defense, as the constitutional protection of speech is not absolute and "courts tend to view copyright piracy as misappropriation rather than a form of self-expression."¹³ Nonetheless, Professor Jennifer Rothman presents an identity-based substantive due process rights theory, arguing that "when an individual forms or perceives a deep connection to a copyrighted work, the law should recognize the individual's right to 'inhabit' the work free from infringement liability[.]"¹⁴ Her analysis arguably applies to a celebrity who uploads a copyrighted image of himself or herself to social media channels without permission from the copyright holder.¹⁵

Therefore, resharing content to social media platforms involves a duality of image rights—right of publicity and copyright, which may be antagonistic in nature. With the growing popularity of social media and various forms of remuneration it offers, lawsuits similar to those involving Gigi Hadid are on the rise. Nonetheless,

the earlier dispute in which the famous model was named a defendant¹⁶ settled prior to discovery, while the most recent one remains pending in the Eastern District of New York. Lawsuit against Ariana Grande was just filed a few days ago. Thus, we will need to await judicial decisions in cases implicating such a dichotomy to see whether courts create exceptions to copyright infringement liability for right of publicity holders based on their speech, autonomy and property interests in their copyrighted depiction, even though they may have some economic incentives in using images protected by copyright. Again, defendants' attorneys may attempt to apply the fair use doctrine defense, but it is up to courts to decide how effective such an argument is, given the generally commercial nature of celebrities' social media accounts.

The European Union

The same tension between right of publicity and copyright appears in the EU. The right of publicity is one of the personal rights and within Europe the countries that became part of the Council of Europe and ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention"), are obliged to protect certain rights and freedoms of its citizens.

For example, Article 8 of the Convention confers strong protection for an individual's right to privacy, stating that "*Everyone has the right to respect for his private and family life, his home and his correspondence*" and "[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Article 13 of the Convention further provides that "[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." Due to the above provisions, each country must provide its citizens with an actual remedy before a national authority by implementing relevant regulations in their countries' legal systems that will ensure the protection of its citizens' individual rights in case of a breach of the articles. How and by which legal means this is done and the extent to which such rights have to be protected is not specified in the Convention. In case of doubt whether a particular country has provided sufficient legal mechanisms for the protection of individual rights, an individual complaint may be brought to the European Court of Human Rights in Strasbourg.

Another European act that protects data of individuals is the General Data Protection Regulation ("GDPR"). However, the GDPR does not include rules concerning the publication of one's image. Accordingly, the protection of individual rights, including those related to images of individuals, varies in each European country. For instance, in Poland two regulations refer to the right of publicity. The first, the general rule in Article 23 of the Polish Civil Code, states that: "*The personal interests of a human being, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence,*

inviolability of home, and scientific, artistic, inventive or improvement achievements are protected by civil law, independently of protection under other regulations." The second is the Act on Copyright and Related Rights ("Copyright Act"), which refers to the rules on how the image of a person may be used. The general principle laid down in Article 81 of the Copyright Act is that "*The dissemination of an image shall require the permission of the person presented in it. Unless there is a clear reservation, such permission shall not be required if such person has received the agreed price for posing.*" However, permission is not required in two situations—in the case of the dissemination: (i) of an image of a commonly known person, if such image has been made in connection with his/her performance of public functions and, in particular, political, social or professional functions, or (ii) of a person constituting only a detail of a whole, such as a meeting, a landscape, or a public event.

Given Article 81 of the Copyright Act and its exemption from the general rule that the image of a person can be published only if such person gives his/her consent, in Gigi Hadid's case, the consent of Gigi Hadid to publish her image was likely not needed because she is a commonly known person and the photos at issue were most likely made in connection with her performance of a social or professional function.¹⁷ The other question is whether the law allows for a picture to be used with or without the consent of the author of the photograph. The general rule of European copyright law is that each use requires the author's consent. It must be noted, however, that the first legal issue that needs to be addressed is whether the specific photograph meets the requirements stipulated in each countries' copyright act as capable of protection by copyright. In other words, to merit copyright protection it must be a manifestation of creative activity of individual nature in any form, irrespective of its value, purpose or form of expression.

If so another legal analysis that should be undertaken is determining whether the specific use of the photo falls into any permissible use of the protected works. For example, under the Polish Copyright Act, use is permitted for informative purposes, to broadcast through the press, radio and television the photographs taken by reporters that have already been broadcasted. Nonetheless, this exception to the general rule that each use of a protected work requires the author's consent should be interpreted narrowly with each case examined separately based on its own facts.

Practical Tips

Undoubtedly, there will be more and more cases like the ones involving Gigi Hadid or Ariana Grande in the future as the popularity of social media channels only continues to grow. Due to many uncertainties in both United States and EU law, it is crucial for relevant parties to develop social media clearance plans and draft contracts that include provisions outlining each party's rights to a particular image to avoid any potential legal issues that may arise. In some cases, consent might be needed. Possibly, with the law in this area being so fluid, there may be some other protections available in the near future not only to copyright holders, but also to individuals whose rights of publicity are at stake.



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Endnotes:

¹See *Xclusive-Lee, Inc. v. Jelena Noura “Gigi” Hadid*, 1:19-cv-00520, Docket Entry 1 (E.D.N.Y. 2019).

²See *id.* at ¶ 21.

³See *Model Misbehavior? Gigi Hadid Faces Copyright Suit Over Instagram Post*, available at <https://www.adlawbyrequest.com/2019/03/articles/in-the-courts/model-misbehavior-gigi-hadid-faces-copyright-suit-over-instagram-post> (Mar. 6, 2019), referring to *Peter Cepeda v. Jelena Noura “Gigi” Hadid and IMG*

Worldwide, Inc., 1:17-cv-00989 LMB-MSN (E.D. Va.).

⁴See *Robert Barbera v. Ariana Grande and Grandari, Inc.*, 1:19-cv-04349 (S.D.N.Y. 2019).

⁵McCarthy, 1 Rights of Publicity and Privacy §1:7 (2d Ed. 2011); see also Jonathan S. Jennings, *Right of Publicity Law Meets Social Media*, available at <https://www.pattishall.com/pdf/JSJ-ABA%20Right%20of%20Publicity%20Law%20Meets%20Social%20Media.pdf> (Aug. 5, 2012).

⁶*Fitch v. Voit*, 624 So.2d 542, 543 (Ala. 1993); see also Jennings, *supra* note 4.

⁷Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

⁸Lanham Act § 43(a), 15 U.S.C. § 1125(a).

⁹Joseph (Casey) R. Mangan Jr., Alex S. Fonoroff & Sabina A. Vayner, *Copyright and Right of Publicity Risks When Using Social Media*, available at <https://www.acc.com/resource-library/minimizing-copyright-and-right-publicity-risks-when-using-social-media> (Nov. 1, 2012).

¹⁰Reid Kress Weisbord, *A Copyright Right of Publicity*, 84 FORDHAM L. REV. 2803, 2811 (2016).

¹¹17 U.S.C. § 106.

¹²17 U.S.C. § 107.

¹³Weisbord, *supra* note 9, at 2831.

¹⁴*Id.* at 2833.

¹⁵*Id.* at 2832-33.

¹⁶*Peter Cepeda v. Jelena Noura “Gigi” Hadid and IMG Worldwide, Inc.*, 1:17-cv-00989 LMB-MSN (E.D. Va.).

¹⁷For example, in the initial Virginia complaint against Hadid, the subject photograph appears to have been taken while Hadid was preparing for a photo shoot. See Complaint in 1:17-cv-00989 LMB-MSN (E.D. Va.) at ¶ 12.

EUROPEAN COURT'S BITE INTO KIT KAT® LEAVES NESTLÉ WITH A SOUR TASTE

By Ira Cohen Esq., B.A., J.D., L.L.M.

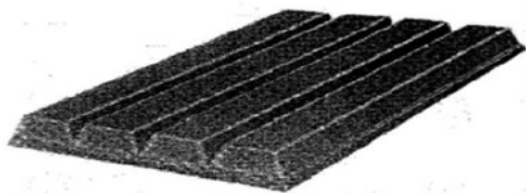
"We have not journeyed across the centuries, across the oceans, across the mountains, across the prairies, because we are made of sugar candy."¹

People of all ages have been greedily gobbling candy since ancient times. Traced from its dulcified roots in the form of Egyptian fruit, nut, and honey treats dating back to around 1,500 B.C., and the early Greeks' candied fruits and flowers, the modern candy market has become a caramelized industry. Indeed, analysts expect U.S. retail sales to reach a value of \$19.6 billion by 2025.² Yet, quite apart from the sweet and syrupy sides of candy, serious businesses do gel and grow. Such business enterprises are often weighed down by, or mired in, sticky legal issues.

Chocolate bars, for their part, are a much more recent confectionary concoction, with many accounts attributing their dulcet debut to England's Joseph Fry around 1847.³ As for the humble beginnings of the famous KIT KAT® bar, that chocolate-covered wafer bar confection dates back to around 1911, made by Rowntree's of York in the U.K. The 4-fingered KIT KAT® bar dates back to 1935 when the treat was called Rowntree's Chocolate Crisps.⁴ Later, in 1937, the candy bar was renamed Kit Kat Chocolate Crisps.⁵ Today, KIT KAT® rights are owned by Nestlé (worldwide) and The Hershey Co. (U.S.)⁶

Nestlé's Attempt to Secure Trademark for Shape in the EU

In 2002, Nestlé endeavored to trademark the shape of the KIT KAT® bar (shown below) in the European Union ("EU").⁷



In 2006, Nestlé obtained the EU trademark in connection with sweets, bakery products, pastries, biscuits, cakes and waffles.⁸ However, in 2007, Cadbury Schweppes plc (subsequently Cadbury Holdings, now Mondelez), a competitor which owns among other companies, Cadbury®, and makes, among other things, a Norwegian candy clone of the KIT KAT® bar called the "Kvikk Lunsj" ("Quick Lunch") bar, filed an application with the EU's Intellectual Property Office ("EUIPO") to declare Nestlé's registration invalid.⁹ In 2012, the EUIPO rejected Mondelez's application and ruled that Nestlé's mark had acquired distinctiveness through use in the EU.¹⁰ Mondelez then sued to annul the EUIPO's decision in the General Court.¹¹

On December 15, 2016, the General Court annulled the EUIPO's decision. To be sure, in a matter of seemingly Everlasting Gobstopper® duration, the Nestlé case has been baking in the courts for well over a decade.

On July 25, 2018, the highest court in the EU swallowed the arguments of Mondelez ruling that, while the KIT KAT® shape was viewed as distinctive in many EU nations, consumers in Belgium, Ireland, Greece, and Portugal did not recognize it.¹² The court, therefore, directed the EUIPO to reconsider its original 2006 grant of the three-dimensional mark of the KIT KAT® bar, thus, stretching out Nestlé's licorice length war over its allegedly exclusive rights to the famous chocolate bar's distinctive (4-fingered) shape. The tribunal's main issue was that acquired distinctiveness was not determined in certain EU countries.¹³ According to the ECJ, distinctiveness must be shown "throughout the Member States" of the EU.¹⁴

The case is Joined Cases C-84/17 P *Société des produits Nestlé SA v. Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd and EUIPO*, C-85/17 P *Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd v. EUIPO*, and C-95/17 P *EUIPO v. Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd*.

Third Party Efforts to Trademark Candy Shape

The Nestlé case is not the first challenged attempt to protect the shape of a chocolate product. For example, in 2012, Switzerland's Lindt & Sprüngli unsuccessfully attempted to protect the shape of its chocolate Easter rabbits (which were encased in a gold foil and decorated with a red ribbon).¹⁵ Registration there was refused because the three-dimensional design lacked distinctive character.

Under U.S. trademark law, of course, a mark that consists of product design is never inherently distinctive and is not registrable on the Principal Register unless the Applicant can establish that the mark has acquired distinctiveness (i.e., secondary meaning).¹⁶ Nevertheless, in the U.S., a number of trademarks have been granted for the shapes (a.k.a. product configurations) of candies. Some of the prime examples are Tootsie Rolls®,¹⁷ Hershey's Kisses®,¹⁸ Ring Pops®,¹⁹ M & M's®,²⁰ Pez®,²¹ and Toblerone®²² pyramidal-shaped chocolate bars. However, not all attempts to register a candy product's shape have been successful. For example, in the U.S. case of Jelly Belly's jelly beans, renowned jelly bean maker Jelly Belly Candy Company of Fairfield, California filed an application with the United States Patent and Trademark Office ("USPTO") in 2015 to register the shape of its jelly beans as a mark, for candy, in International Class 30.²³

The product's shape was described to the USPTO as "a candy with a rounded squat kidney-like shape, with one longer side being a continuous arc and the opposite side have a slight depression or dimple in its arc, the center diameter and height

of the candy being approximately half its length.”²⁴ However, the USPTO refused registration, primarily on the ground that the product design was non-distinctive.²⁵ Unable to secure registration, in 2017, the Jelly Belly Candy Company ultimately eschewed its efforts and abandoned the application.²⁶

Conclusion

Returning to the KIT KAT® (k)ase, Nestlé is not left without any remedy. For example, it could try to register the KIT KAT® candy’s shape as a trademark on a nation-by-nation basis. That will, to be sure, be costly. However, Nestlé knows the recipe for success as it already owns such marks in Canada, France, and Australia (though its application was, in fact, chewed to pieces in Britain). Nestlé, if it so desires, can binge on trademark applications in multiple jurisdictions and, in that manner, puff up its KIT KAT® intellectual property portfolio. As the legendary Jackie Gleason might say, “how sweet it is!”

Postscript

On the eve of publication, it appears that Hershey® history is being made. This summer, a limited run (only 25 million) of chocolate bars will feature 25 emojis crafted into the rectangular “pips” of the popular candy; this is the first alteration of the iconic Hershey® bar in its 119-year run.²⁷ Where will the candy craze stop? The next thing you know, they will have chocolate band-aids, chocolate cigars, chocolate coins, and chocolate crayons. Wait...they already do.²⁸ What’s in your candy jar?



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District of New York (1982-85). He is a proud Sustaining Member of the Federal Bar Association, as well as a Fellow of the Foundation of the Federal Bar Association.

Endnotes:

¹Sir Winston Churchill to the Canadian Parliament (Dec. 30, 1941).

²See “U.S. Candy Market Size Worth \$19.6 Billion by 2025,” www.grandviewresearch.com/press-release/us-candy-market-analysis (last visited July 31, 2018).

³See, e.g., “The Origins and History of Candy,” www.candyhistory.net/candy-origin (last visited July 31, 2018).

⁴See “Kit Kat,” www.nestle.com/investors/brand-focus/kitkat (last visited July 31, 2018).

⁵*Id.*

⁶See Wikipedia definition for Kit Kat, at https://en.wikipedia.org/wiki/Kit_Kat (last visited Aug. 3, 2018).

⁷See Judgment in Joined Cases C-84/17 P, C-85/17 P and C-95/17 P (July 25, 2018) (“2018 Judgment”) at p. 4, at <http://>

curia.europa.eu/juris/document/document_print.jst?doclang=EN&text=&pageIndex=0&mode=doc&docid=204401&occ=first&dir=&cid=326966 (last visited July 31, 2018) (EU registration sought on Mar. 21, 2002).

⁸2018 Judgment, at p. 4.

⁹2018 Judgment, at p. 4.

¹⁰See Court of Justice of the European Union, Press Release No. 116/18, “EUIPO must reconsider whether the three-dimensional shape of a ‘4 Finger KitKat’ can be retained as an EU trade mark,” at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180116en.pdf> (last visited Aug. 3, 2018).

¹¹See *id.*

¹²See *id.*

¹³2018 Judgment, at p. 13 (“the Board of Appeal found that the mark at issue had acquired distinctive character through use . . . without adjudicating on whether that mark had acquired such distinctive character in Belgium, Ireland, Greece and Portugal.”)

¹⁴2018 Judgment, at p. 12 (stating that a mark can be registered “only if it is proved that it has acquired distinctive character through use throughout the territory of the European Union . . . the evidence submitted must be capable of establishing such acquisition throughout the Member States of the European Union.”)

¹⁵See “Chocolatiers Lindt Loses Final Appeal to Trademark Golden Easter Bunnies,” at www.npr.org/sections/thetwo-way/2013/03/28/175595080/chocolatiers-lindt-loses-final-appeal-to-trademark-golden-easter-bunnies (last visited July 31, 2018).

¹⁶If the product design is not functional, the mark may be registered on the Supplemental Register, or, on the Principal Register if the applicant shows that the product design has acquired distinctiveness.

¹⁷U.S. Trademark Reg. No. 1516573.

¹⁸U.S. Trademark Reg. No. 3028381.

¹⁹U.S. Trademark Reg. No. 1846873.

²⁰U.S. Trademark Reg. No. 3352029.

²¹U.S. Trademark Reg. No. 4036685.

²²U.S. Trademark Reg. No. 2649833.

²³USPTO App. Serial No. 86/851526, filed Dec. 16, 2015 (abandoned Aug. 16, 2017).

²⁴See tsdr.uspto.gov, App. Serial No. 86/851526 filed Dec. 16, 2015.

²⁵See tsdr.uspto.gov, Office Action dated Feb. 15, 2017 (“Registration is refused because the applied-for mark . . . does not function as a trademark to indicate the source of applicant’s goods and to identify and distinguish them from others.”).

²⁶See tsdr.uspto.gov, Notice of Abandonment dated Sept. 14, 2017.

²⁷See “Hershey’s is changing the look of its candy bar for the first time in history,” Valinsky, Jordan, CNN Business, <https://www.cnn.com/2019/05/15/business/hersheys-chocolate-emoji-redesign/index.html>, retrieved May 15, 2019.

²⁸See website of Candy Concepts, Inc. of Pewaukee, WI, www.candyconceptsinc.com/Shaped-Candy_c_1794.html, retrieved May 15, 2019.

The Intellectual Property Law Section, F.B.A. & The Massachusetts Chapter, F.B.A. hosted a Special Event in April, 2019: “Bright Thoughts for I/P Law Careers”

The Event:

The setting was historic! The meeting was fantastic!

About 193 years after it opened for business on Union Street, the Olde Union Oyster House was the venue for this memorable Lawyer-Law Student event.



On Wednesday, April 24, 2019, the Intellectual Property Law Section (“IPLS”), F.B.A., along with the Massachusetts Chapter, F.B.A., hosted a special event in Boston, Massachusetts, “Bright Thoughts for I/P Law Careers” (a/k/a I/P Career Night). By all accounts, the venue, the food, the people, and the conversations were meaningful and memorable.

The general idea of the event was to pair law school students with intellectual property law practitioners...to break bread, build foundations, and foster networking.

No lectures; no panels; nothing formal. Just good, old-fashioned conversations where the decided focus was on the students, with I/P lawyers answering their questions, and advising as to the students’ academic and I/P legal employment issues and concerns. Several law schools were very well-represented at the event (e.g., Boston University School of Law, Boston College School of Law, New England Law School, and New Hampshire University School of Law). The students and the lawyers hit it off very well and the students gained many insights and a wealth of information.

At the event, on the theory that these young folks represent the future of the FBA, the law students also were provided with information regarding signing up for FBA, IPLS, and their local chapter membership. Application forms were given to them at the event, along with flyers about the FBA’s 2019 Annual Meeting this year in Tampa, Florida.

For the History Buffs: The Olde Union Oyster House, opened in 1826, is the oldest restaurant in the U.S. and, today, a U.S. Historic Landmark. The restaurant has far too many awards

to mention here, though issued by well-known organizations/publications such as Conde Nast, Lonely Planet, Forbes, and the National Restaurant Association. It has been featured on, among other networks, CBS, NBC, Food Network, and the Cooking Channel. How about U.S.A. Today’s pick for Best Clam Chowder in Boston for 2018? What more can one say? The event was held in a private area of this iconic dining establishment, called “Webster’s Den.” The area is named for early American lawyer and statesman...and Oyster House regular customer... Daniel Webster (1782-1852). Webster was a U.S. Congressman, U.S. Senator, and Secretary of State under 3 U.S. Presidents. He was also a prominent attorney during the period of the Marshall (U.S. Supreme) Court. And, if all that were not impressive enough, the building which houses the restaurant dates to a year earlier than 1742. Prior to the seafood restaurant opening its doors, the building was a fancy dress (dry goods) store called “Hopstill Capens.” During the Revolutionary War, the U.S. Army’s Quartermaster (Ebenezzer Hancock) made his H.Q. in the building and General Washington’s troops’ clothing was mended there by, among others, the Adams, Quincy, and Hancock wives; the structure also was an official pay-station for the troops. In 1796, the then-exiled, but future king of France, Louis Philippe, lived on the second floor, making a living by teaching French to Boston’s wealthy young ladies. (Louis later became King of France, 1830 to 1848). In 1826, under Messrs., Atwood and Bacon, the restaurant opened and began its long-chartered course. In the 20th century, the Kennedy Clan (particularly President John F. Kennedy) enjoyed eating here; JFK’s favorite booth (dedicated to him) still may be found in the second-floor dining room and you can dine in JFK’s booth by special request.

Acknowledgments:

The event was conceived and organized by IPLS Board Members Ira Cohen, Esq. (Miami, FL) and Benjamin M. Stern, Esq. (Boston, MA). The evening’s festivities were co-sponsored by the Mass. Chapter of the FBA. Indeed, the success of the event was assured by the kind and diligent assistance of Sharona Sternberg, Esq., President of the FBA’s Massachusetts Chapter, who was instrumental in rounding up many of the I/P lawyers for this special occasion. Many thanks to the local (Boston area) I/P attorneys who donated their time and effort to pitch in and join the team for the benefit of the students, to wit.: Lucy D. Lovrien, Esq., Hili Moore, Esq., Andre Adkins, Esq., Katherine Ann Rubino, Esq., Lena Cavallo, Esq., Chris Hoolehan, Esq., and Brandon McCool, Esq. With special thanks to Mass. resident (and M.I.T. Assistant Editor), Stephanie M. Cohen (Ira Cohen’s daughter), for donating her personal her time and effort as the event’s greeter/receptionist/notice-provider for the law students.



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