



## Partner

# Rob Litowitz



Clients and colleagues value Rob Litowitz as an outstanding litigator, strategist, persuasive writer, and advocate who distills complex facts and issues into winning themes and narratives. According to clients, Rob “gives you a wonderful sense of confidence when he’s in your corner . . . [he] goes above and beyond to get great results . . . aggressive, an excellent out-of-the-box thinker and an articulate and persuasive strategist.” Washingtonian Magazine has named Rob as one of Washington, D.C.’s top IP lawyers. Rob’s litigation experience includes not only trademark cases before the courts and TTAB, but also false advertising, unfair competition, design patent, copyright, and trade secret cases. In many of those cases, he has worked with leading experts to develop and present consumer surveys, linguistics testimony, and complex damages calculations. Rob has also litigated patent cases on products ranging from blockbuster prescription drugs to state-of-the-art jet engines. At both the trial and appellate level, Rob has secured wins for household brands and lifesaving medicines.

Rob also has extensive false advertising litigation and counseling experience. He successfully first-chaired a significant false advertising suit for a major consumer products company and has represented another consumer products company in a proceeding at the National Advertising Division for the Better Business Bureau. Rob has written about false advertising litigation and issues in the leading industry publication, *Advertising Age*.

Always eager to share his enthusiasm for IP law, Rob has been an adjunct professor of trademark law at both George Washington and American University Law Schools and founded the blog Softright, in which he explores the intersection between IP law, entertainment, and culture. Rob has counseled musicians including a member of the Rock and Roll Hall of Fame, as well as emerging artists. Giving back to the community has been a priority for Rob throughout his career. He uses his music connections to stage benefit events for a variety of awareness and fundraising causes. Music Connection honored Rob’s efforts by naming him along with major industry figures as one of the 50 Guiding Lights of the music business.

Before joining Kelly IP, Rob practiced all aspects of IP law for 26 years at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP in Washington, D.C., where he was a partner for 20 years and served on the firm’s management and compensation committees.

### → Contact Information

→ (202) 808-3572

→ [rob.litowitz@kelly-ip.com](mailto:rob.litowitz@kelly-ip.com)

### → Education

- George Washington University, National Law Center, J.D., with honors, 1981
- Dickinson College, B.A., magna cum laude, 1978

### → Bar and Court Admissions

- District of Columbia Bar (Section on Patent, Trademark and Copyright Law)

### → Professional Activities

- International Trademark Association
- ITC Trial Lawyers Association

## 01. Highlights

- *American University v. American University of Kuwait (TTAB)* - obtained ruling from the Trademark Trial and Appeal Board sustaining American University’s cancellation petition against American University of Kuwait. The TTAB affirmed that AMERICAN UNIVERSITY is a strong trademark.
- *American Eagle Outfitters v. Walmart* - represent AEO in a major trademark infringement lawsuit to protect AEO’s iconic back pocket stitch logo for women’s jeans

- *Simply Wireless, Inc. v. T-Mobile* - represent Simply Wireless in major trademark infringement lawsuit against T-Mobile over the trademark SIMPLY PREPAID.
- *Caribe Corp. v. Philips* (D.N.J.). First chaired bench trial resulting in finding no liability in Philips's favor on trademark infringement claims asserted by Caribe against Philips's corporate tagline, and earlier in the case obtained summary judgment that Caribe was not entitled to any form of monetary relief on its claims seeking billions of dollars of damages.
- *Recot, Inc v. MC Becton*, (Fed. Cir.). Argued precedent-setting trademark case establishing broad rights for famous brands (reversing finding of no likelihood of confusion between Frito-Lay and Fido Lay trademarks).
- *Roche v. HDI*, (S.D. Ind.). Lead courtroom litigator for Home Diagnostics, Inc. for trial resulting in opponent's patent being declared unenforceable due to inequitable conduct before the USPTO.
- Successfully represented plaintiff asserting three patents for a multibillion-dollar antidepressant against multiple challenges by generic drug manufacturers. Obtained multiple favorable claim construction rulings and summary judgment of direct, induced, and contributory infringement.
- Successfully defended the patent for the world's leading breast cancer treatment, tamoxifen, as an integral member of the trial team in a series of ANDA litigations for AstraZeneca.
- Served as a trial attorney for the ITC from where he represented the United States in matters ranging from high technology patent disputes involving multinational conglomerates to trademark and copyright cases involving popular toys, 1984-1986.
- Served as adjunct professor of trademark law at American University Washington College of Law and the George Washington University School of Law.
- Represents musicians and radio personality in various pro bono trademark matters.
- Creator and blogger of Softrights Blog ([www.thaworldtakes.com](http://www.thaworldtakes.com)), focusing on the intersection of IP law (especially trademarks and copyright), entertainment, and media.

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## 02. Professional Recognition

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- Achieved "Silver" status for enforcement and litigation in the Washington, DC area by *World Trademark Review 1000*, (2014-2022).
- Recognized as an "IP Star" by *Managing Intellectual Property*, (2014-2022).
- Recommended trademark lawyer by *The Legal 500* (2014-2022).
- Among the top legal practitioners in trademark law in the United States by *Legal Media Group's Expert Guides: Guide to the World's Leading Trademark Lawyers* (2014, 2016, 2018, and 2020).
- Named by *Washingtonian Magazine* as one of Washington D.C.'s top IP lawyers. (2011-2013)
- Listed in *Music Connection's* "50 Innovators, Iconoclasts, Groundbreakers, and Guiding Lights of 2008."
- Phi Beta Kappa
- Omicron Delta Kappa

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### 03. Select Publications

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- "Brady TM Bunch," *kellyipblog.com* (April 13, 2020).
- "Masters of Its TM Domain," *kellyipblog.com* (April 13, 2020).
- "Color My World...Trademark?" *kellyipblog.com* (April 9, 2020).
- "A Dog Walks Into a Bar...," *kellyipblog.com* (April 6, 2020).
- "The Song Goes On Forever; Can the Copyright End?" *kellyipblog.com* (April 2, 2020).
- "Cooped Up Case for Cooped Up Times," *softrightsblog.com*; *kellyipblog.com* (April 1, 2020).
- "Slam Dunk Win for NBA Video Game Accused of Tattoo Copyright Infringement," *softrightsblog.com* (March 28, 2020); *kellyipblog.com* (March 30, 2020).
- "TM Suit by BRIZZY and VIZZY Lacks Sparkle, Court Rules in Denying P.I. Motion," *softrightsblog.com* (March 26, 2020); *kellyipblog.com* (March 27, 2020).
- "Music Is Love," *softrightsblog.com* (March 26, 2020); *kellyipblog.com* (March 27, 2020).
- "Fools Rush In To Cash In On Circle R," *softrightsblog.com*; *kellyipblog.com* (March 25, 2020).
- "Too Good To Be True: A Trade Dress Saga," *softrightsblog.com*; *kellyipblog.com* (March 24, 2020).
- "Blowin' In the Wind," *softrightsblog.com* (March 20, 2020); *kellyipblog.com* (March 23, 2020).
- "Does Endless Summer Have Two Rs?" *softrightsblog.com* (March 19, 2020); *kellyipblog.com* (March 20, 2020).
- "As We Circle the Wagons, Count On "Circle R,"" *softrightsblog.com*; *kellyipblog.com* (March 18, 2020).
- "Reverse Confusion: A Trademark Doctrine in Decline or on the Rise," *ABA Landslide*, Nov. 2019.
- Coauthor. "What High Court Free Speech Ruling Means for TM Applicants," *Law 360*, June 2019.
- "To Create and Own a Nontraditional Trademark Just Follow Tradition," *ABA Landslide*, Feb. 2018.
- "Sampling Safety: 10 Tips on Intellectual Property and the Pitfalls of Sampling," *Music Connection*, Feb. 2013.
- Coauthor. "2011 Patent Law Decisions of the Federal Circuit," *American University Law Review*, April 10, 2012.
- "Stop, Hey, What's that Sound?" *Intellectual Property Magazine*, Sept. 2011.
- Coauthor. "Government Seizures of Music Blogs," *MusicDish*, May 2, 2011.
- Coauthor. "Why You Should Consider Keeping Your Case Out of the Courtroom: A Cautionary Tale from Coppertone vs. Neutrogena," *Advertising Age*, March 6, 2011.
- "Season's Greetings," *BNA Patent, Trademark & Copyright Journal*, Dec. 24, 2010.
- "American Needle®: Any Damage to IP Licensors?" *LES Insights*, Nov. 1, 2010.
- Coauthor. "How to Use (and Attack) Consumer Surveys in Trademark Infringement and False Advertising Cases," *Trademark World*, March 1999.
- Coauthor. "Trademark Basics: The Rights of Publicity," *The IP Strategist*, May/June 1995.
- Coauthor. "The Song Remains the Same—But Not Necessarily the Name," *The American University Law Review*, Summer 1990.

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#### 04. Select Speeches

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- “Color Marks and Brand Strategy: Proving Distinctiveness, Demonstrating Mark is Not Functional,”  
Strafford Live Webinars (July 28, 2020)
- “Trademarks and Reverse, Forward, Post-Sale, and Initial Interest Confusion,” Strafford Live Webinars  
(February 19, 2020; May 17, 2012).
- “Trade Dress, Design Patent, and Copyright: Strategies to Maximize Protection, Challenge and Defeat  
Infringement,” Strafford Live Webinars (November 20, 2019; May 16, 2018).
- “Demonstrating Use in Commerce for Trademark Applications,” Strafford Live Webinars (October 2,  
2019; August 2, 2018).
- “Protecting Nontraditional Trademarks Under Trademark, Copyright and Design Patent Law,”  
Strafford Live Webinars (March 28, 2017; February 18, 2014)
- “Trade Dress and Design Patent: Leveraging Recent Court Decisions to Maximize Protection,”  
Strafford Live Webinars (May 18, 2016; September 19, 2013).
- “Trademark Confusion: Proving or Defending Against Infringement,” Strafford Live Webinars (March  
29, 2016; May 22, 2014; June 6, 2013).
- “Leveraging Fluid Trademarks,” Strafford Live Webinars (May 21, 2013).
- “Trade Dress and Design Patent Protection,” Strafford Live Webinars (August 22, 2012).