

SUSAN J. KOHLMANN, Managing Partner, New York

Susan J. Kohlmann is an experienced litigator in our Content, Media & Entertainment Practice, chair of the Trademark, Advertising and Unfair Competition Practice and managing partner of the firm's New York Office. Clients seek her counsel on a wide variety of complex matters, including copyright, trademark and trade secret disputes. She has also represented companies in various class action and other complex commercial matters. In addition to her extensive experience in jury and bench trials and arbitration proceedings, Ms. Kohlmann has extensive experience briefing and arguing appeals in the New York appellate courts and several federal circuit courts.

Ms. Kohlmann is consistently recognized by *Legal 500* for her leadership in copyright law, and in 2019, was named one of only nine “Leading Lawyers” in the nationwide category. She has also been recognized by *Legal 500* for appellate and Supreme Court litigation as well as media and entertainment law. *Chambers USA* has consistently recognized Ms. Kohlmann in its Intellectual Property: Trade Mark & Copyright (New York) practice area.

She was named *American Lawyer’s* “Litigator of the Week” in 2017 for leading a Jenner & Block team to a \$13.15 million verdict for the Estate of Elaine Steinbeck, the late third wife of author John Steinbeck, in a trial over the rights to the writer’s works. She was also named a 2018 *National Law Journal* “Intellectual Property Trailblazer” for the victory. The trial win also earned the firm a spot as a “Legal Lion” on *Law360’s* weekly “Legal Lions and Lambs” report.

Managing Intellectual Property consistently names her an “IP Star” and has named her among the “Top 250 Women in IP.”

In 2019, *New York Law Journal* recognized Ms. Kohlmann as a “Distinguished Leader.”

A member of Jenner & Block’s Policy Committee, Ms. Kohlmann serves as chair of the firm’s Diversity Committee and on the New York office’s Pro Bono Committee. She is also chair of Legal Services NYC.

- *Viacom v. YouTube* Represented Viacom in settling a “landmark legal battle” (*Financial Times*) and a case that was largely viewed as one of the most significant copyright cases of our time, debating the use of copyrighted videos on Google’s YouTube service without permission. Earlier in this legal battle, the firm won an important victory for Viacom and the content industry when the U.S. Court of Appeals for the Second Circuit reversed the trial court’s grant of summary judgment in favor of defendants, and remanded the case for further proceedings. The settlement, as described by *Reuters*, “ends seven years of litigation that drew wide attention from Hollywood, the music industry and Internet companies, and which tested the reach of a federal law designed to thwart piracy while letting people find entertainment online.”
- *Waverly Scott Kaffaga v. Thomas Steinbeck et. al.* Led a Jenner & Block team that won a federal jury verdict of \$13.15 million in damages for the



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PRACTICE GROUPS

Antitrust and Competition Law

Consumer Law

Content, Media and Entertainment

Intellectual Property

Japan Practice

Litigation

Professional Responsibility

Trade Secrets and Restrictive Covenants

Trademark, Advertising and Unfair

Competition Practice

EDUCATION

Columbia University School of Law, J.D., 1982; Jane Marks Murphy Prize; Casenote and Comment Editor, *Journal of Transnational Law*

Yale University, B.A., 1979

ADMISSIONS

New York, 1983

COURT ADMISSIONS

U.S. Supreme Court, 2004

U.S. Court of Appeals, Second Circuit, 1984

U.S. Court of Appeals, Fourth Circuit, 2000

U.S. Court of Appeals, Fifth Circuit, 2016

U.S. Court of Appeals, Ninth Circuit, 2015

U.S. District Court, Southern District of New York, 1983

U.S. District Court, Eastern District of New York, 1983

Estate of Elaine Steinbeck, the late third wife of author John Steinbeck, in a weeklong trial over the rights to the writer's works. In 2014, estate executor Waverly Scott Kaffaga sued Thom and Gail Steinbeck, John's son and daughter-in-law, as well as their company Palladin, for wrongly claiming control over the copyrights, harming the catalogue as a whole, and, in particular, interfering with movie deals for *East of Eden* and *The Grapes of Wrath*. By claiming to control the rights, defendants caused Universal and Imagine Entertainment to walk away from a movie deal for *East of Eden* involving Gary Ross and Jennifer Lawrence and interfered with negotiations with DreamWorks for a movie deal involving *The Grapes of Wrath*, depriving the estate of millions of dollars in potential revenue. In November 2016, US District Court Judge Terry Hatter granted Ms. Kaffaga's motion for summary judgment on claims for breach of contract and slander of title, leaving the jury to decide potential damages for those claims and whether Thom (now deceased), Gail and their company wrongfully interfered with the *East of Eden* and *The Grapes of Wrath* projects. Ms. Kohlmann also led the firm team that argued that motion. Following the trial, the seven-member jury sided with Ms. Kaffaga on all claims. The September 2017 verdict, which included \$7.9 million in punitive damages and \$5.25 million in compensatory, clears up much of the confusion about who actually owns the rights to the author's works and allows long-stalled film and television projects to potentially move forward.

- *Penguin Group (USA) v. Steinbeck*: Won victories in the US Court of Appeals for the Second Circuit for the Estate of Elaine Steinbeck, widow of author John Steinbeck, in a decades-long litigation over copyright termination rights and the right to control the exploitation of his works. In one of the first cases to consider termination rights, the Second Circuit held that the publishing agreement for the early works was not subject to termination, and held that the Estate of Elaine Steinbeck lawfully controlled the Steinbeck works.
- *The S. Hekemian Group v. The Related Companies, L.P.*: Represented defendant, a real estate developer, in a suit over use of the phrase "The Next Great Neighborhood," defeating a motion for preliminary injunction on the grounds of fair use and failure to show likelihood of confusion resulting in voluntary dismissal of the lawsuit.
- *Meredith Corp. v. SESAC*: Represented SESAC in a high stakes antitrust class action brought by a putative class of independent television stations. SESAC is a performance rights organization that licenses musical compositions on behalf of affiliated composers and music publishers. The plaintiffs alleged that SESAC violated antitrust laws in the way it licenses musical works for television programming. After granting in part and denying in part SESAC's summary judgment motion, the parties have reached a settlement, subject to court approval.
- *AOL Advertising.com v. Advertise.com*: Represented AOL in a case involving claims for trademark infringement and unfair competition regarding use of AOL's ADVERTISING.COM and AD.COM marks for an online display advertising network. The case involved cutting-edge issues regarding the scope of trademark protection for domain names.
- *Radio Music License Committee, Inc. v. SESAC, Inc., SESAC, LLC, and SESAC Holdings, Inc.*: The Radio Music License Committee ("RMLC") sued SESAC in late 2012, purporting to represent the entire commercial radio industry, and alleging that the way in which SESAC licenses musical works gives rise to antitrust claims for "price-fixing" and a "group boycott." As the matter currently stands, the court has dismissed the first two counts of the Complaint (price fixing and group boycott/refusal to deal under Section 1 of the Sherman Act), and the case will proceed on the remaining claim.
- *Mattocks v. Black Entertainment Television LLC*: Won a victory for client Viacom when a Florida federal judge granted summary judgment in connection with the issue of the ownership of Facebook "likes." At issue was a dispute between the Viacom-owned BET cable network and the creator of a Facebook fan page for the BET series *The Game over* who should control the Facebook page. The page creator demoted BET's access to the page when negotiations between her and the network to hire her as a social media "freelancer" fell apart. BET then asked Facebook to "migrate" the page to a BET-created official Series Page, which it did; Facebook then shut down the original page and its creator sued BET. During litigation, the page creator argued that she owned the 6.2 million Facebook "likes" the page had accrued and that they were worth several million dollars.

Awards

- *The Best Lawyers in America*
Media Law - 2020
- *Chambers USA*
Intellectual Property: Trade Mark & Copyright (New York) - 2015-2019
- *Legal 500*
Intellectual Property: Copyright - 2011, 2013, 2018
(Leading Lawyer)
Litigation: Supreme Court and Appellate - 2011
Media, Technology and Telecoms - Media and Entertainment - 2018
- Legal Services NYC
Top Pro Bono Advocate, 2015
- *Managing Intellectual Property*
IP Star - 2014-2020
Top 250 Women in IP - 2014
- *National Law Journal*
Intellectual Property Trailblazer - 2018
- New York County Lawyers Association
Outstanding Women of the Bar - 2004
- *New York Law Journal*
Distinguished Leader- 2019
- *New York Metro Super Lawyers*
Intellectual Property Litigation - 2006-2017
Civil Litigation: Defense - 2015
Entertainment & Sports - 2015, 2018, 2019
General Litigation - 2010, 2013
Class Action/Mass Torts - 2010, 2013

Educational

- Riverdale Country School
Trustee, 1996-2004

Service To The Bar

- Legal Services NYC
Chair, Board of Directors
- New York Lawyers for the Public Interest
Member, Board of Directors
Chair for Litigation and Program
- City Bar Justice Center
Member, Board of Directors

- New York City Bar
Former Member, Executive Committee
Former Member, Nominating Committee
Past Chair, Committee to Enhance Diversity

Publications

- Co-Author, Copyright 2018, *Getting the Deal Through*, August 2018
- Co-Author, Copyright 2017, *Getting the Deal Through*, August 2017
- Co-Author, Copyright 2016, *Getting the Deal Through*, August 2016
- Co-Author, U.S. Analysis and Global Overview, *Copyright* (Getting the Deal Through), August 4, 2015
- Co-Author, U.S. Analysis and Global Overview, *Copyright* (Getting the Deal Through), July 25, 2014
- Co-Author, U.S. Analysis and Global Overview, *Copyright* (Getting the Deal Through), September 9, 2013

Speaking Engagements

- “Ethics for Commercial Litigators 2019,” Practising Law Institute, February 21, 2019
- Panelist, “Integrating the Legal Department into the Commercial Business: Strategies to Guide Senior Executives through Complex Litigation,” National Association of Women Lawyers' Fourteenth General Counsel Institute, November 08, 2018
- “In-House Tool Kit,” Association of Corporate Counsel's New York City Chapter, June 20, 2018
- “Ethical Traps for the Unwary,” Bloomberg BNA, August 11, 2015
- “Ethics for Commercial Litigators 2015,” Practising Law Institute, April 15, 2015
- “Elevating Your Professional Profile,” New York State Bar Association, March 04, 2015
- “Class Action Litigation 2013,” Practising Law Institute, New York, NY, July 10, 2013
- “Ethics for Commercial Litigators,” Practising Law Institute, New York, NY, June 26, 2013
- Speaker, “Los Angeles County Bar Association's Entertainment Law and Intellectual Property Section,” Los Angeles County Bar Association, Los Angeles, CA, May 26, 2011
- Speaker, “Rainmaking for Junior Women Associates: Now is the Time to Start!,” New York City Bar, New York, NY, November 03, 2010
- Speaker, “Adding Value: How to Stand Out and Hit the Ground Running,” New York City Bar - Boot Camp 2009: Basic Training for Lawyers, New York, NY, October 13, 2009 to October 14, 2009
- Panelist, “Clicking Refresh: A New Look at Fair Use in the Digital Age,” New York City Bar, New York, NY, October 07, 2009
- “Is Race a Moot Issue in the Era of Obama?,” Columbia Law School, Fifteenth Annual Paul Robeson Conference, New York, NY, April 03, 2009
- Moderator, “Taking the Idea from Brain to Bank: How to Stay Focused as an Entrepreneur,” Swedish-American Chamber of Commerce - Swedish-American Executive Women's Conference 2008, New York, NY, November 06, 2008

- Moderator, New York City Bar's 2006 and 2007 Diversity Champion Awardees Best Practices Series, New York, NY, April 29, 2008
- Speaker, "Answers to the Attrition and Retention Problem," The Hildebrandt Institute Fourth Annual Forum - Retaining Women in the Legal Profession: Advancing the Dialogue Between Law Firm Management and Corporate General Counsel, New York, NY, March 05, 2008
- Speaker, Yale University Women's Leadership Initiative's Women in Leadership Conference, Yale Law School, New Haven, CT, November 03, 2007
- Panelist, "By The Numbers: What's the Bottom Line Impact of the Failure to Develop and Retain Women Leaders - The Business Case for Retention," The Hildebrandt Institute's 3rd Annual Forum for Law Firm Management: Best Practices for Developing and Retaining Women Leaders in the Legal Profession, New York, NY, June 12, 2007
- Speaker, "Demystifying Partnership," Association of the Bar of the City of New York Committee on Women in the Profession, New York, NY, May 24, 2007