

FROM THE PODIUM

KATRINA G. HULL

Cheers to IP

This is a lightly edited version of remarks delivered by Katrina Hull, Midwest Managing Attorney at Markery Law and adjunct professor at Marquette Law School, on March 29, 2025, at the annual banquet for the *Marquette Intellectual Property and Innovation Law Review*.

I am glad for this opportunity to draw on some of my experiences as I offer you both congratulations and counsel. I've been privileged to teach a trademarks class at Marquette Law School during the past nine years. And I have also been practicing law for nearly 20 years, with a focus on trademark prosecution.

At the midpoint of my career, my advice to upcoming intellectual property attorneys is simple. Whenever you can: Have fun. Be kind. Give back.

Starting with “have fun,” I have one intellectual property joke. The four types of IP—patent, copyright, trademark, and trade secret—were invited to the end-of-year banquet for the *Marquette Intellectual Property and Innovation Law Review*. But they didn't make it. On the way, they stopped at a bar on Water Street and got into an argument.

Patent started the fight. Lifting his drink, he said, “Cheers to me. I'm the best type of IP. I'm the smartest. I protect innovation and technology. Cheers to Patent!”

Copyright responded and said, “Hold on there, Patent. I'm the best type of IP. You may be smart. But I am the most beautiful and interesting. I protect works of art, music, and film. Cheers to Copyright!”

Trademark then said, “Excuse me, Patent and Copyright. I'm the best type of IP because I'm the most popular. Everyone knows my name. Without me, no one can identify your inventions, Patent, or your artistic works, Copyright. Cheers to Trademark!”

Finally, Trade Secret, stepping out of the shadows, said, “Enough. Cheers to Trade Secret! I'm the best type of IP. You all know it. And I can never tell you why.”

Admittedly, that joke may be amusing only to those who study intellectual property. There are limits on having fun. For clients, IP issues can be personal.

The first time I recall encountering an intellectual property issue was personal. It happened in high school and involved the theft of my intellectual property. To set the scene, it was the mid-1990s. We didn't have TikTok or Instagram to mindlessly scroll to encounter a variety of content. We did have David Letterman—a



The building décor of goats on a grass roof of Al Johnson's Restaurant in Door County, Wis., is registered as a trade dress the restaurant has used since 1973. Katrina Hull defended the restaurant in several legal challenges to the trade dress registration.

late-night TV variety show host, perhaps I should explain. The *Late Show with David Letterman* featured comedic monologues, celebrity guests, live music, Stupid Pet Tricks, and Top Ten lists. The Top Ten lists were irreverent and humorous. Examples include the “Top Ten Things You Don't Want to Hear from a Guy Dressed Like a Cowboy” and the “Top Ten Numbers Between 1 and 10.”

In January 1996, inspired by David Letterman, I wrote a “Top Ten Super Bowl Disasters” list for my high school newspaper. The list was published two days before Super Bowl XXX, when the Dallas Cowboys defeated the Pittsburgh Steelers. I was proud of my attempt at a comedic Top Ten list, although my No. 1 Super Bowl Disaster was “Cowboys win.”

We exchanged newspapers with other local high schools. A year later, a school from a neighboring town published a “Top Ten Super Bowl Disasters” list nearly identical to the one I wrote in 1996, with a few details changed to account for differing teams because in January 1997 the Green Bay Packers were playing the New England Patriots in Super Bowl XXXI. My hard work—my copyright, although I didn't know it was called *copyright* at the time—had been stolen. It was personal.

Interestingly enough, David Letterman was involved in an IP dispute in 1993 when he moved networks, from a show at NBC, called *Late Night with David Letterman*, to a program at CBS, called the *Late Show with David Letterman*. NBC threatened

to sue CBS and David Letterman because NBC claimed it owned the intellectual property rights to the format of Letterman's show, including the show's most popular features, such as Stupid Pet Tricks and the Top Ten lists.

Under the threat of an IP lawsuit, David Letterman approached the situation with his trademark humor, delivering an opening monologue that addressed the threatened IP suit from NBC. He started the monologue by joking, "My name is Dave, and I checked this now with the CBS attorneys, and legally I can continue to call myself Dave." A few minutes later, Tom Brokaw from the *NBC Nightly News* appeared on stage, grabbed two cue cards, and said, "Dave, I'm kind of disappointed. The fact is these last two jokes are the intellectual property of NBC." After Brokaw left the stage with the cue cards, David Letterman quipped, "Who would've thought you would ever hear the words *intellectual property* and *NBC* in the same sentence?"

David Letterman resolved the threatened lawsuit by changing some character names and calling his Top Ten list the "Late Show Top Ten," a good resolution as "Top Ten" is descriptive if not generic for Top Ten lists.

Whenever you can: Have fun. Be kind. Give back.

Although the advice to "be kind" sounds simple, I'm often surprised at the lack of kindness between attorneys. I'm going to share a personal story about an unkind attorney. I will refer to him only as Opposing Counsel.

Opposing Counsel took issue with the registered trade dress of Al Johnson's Swedish Restaurant & Butik in Sister Bay, Wisconsin, up in Door County. Al Johnson's owns a U.S. registration for restaurant décor consisting of goats on a grass roof—a trade dress registration the restaurant has used since 1973. If you visit Door County in the summer, seeing the goats on the roof is a memorable experience, and the Goats on the Roof trade dress uniquely identifies Al Johnson's Restaurant.

In 2011, Opposing Counsel petitioned to cancel the Goats on the Roof trade dress on behalf of a photographer. The petition, filed with the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB), alleged that the photographer was harmed because he was "unable to satisfy his desire to take photographs of goats on grass roofs."

On behalf of Al Johnson's, we filed a Rule 12(b)(6) motion to dismiss the cancellation action for a lack of standing and for failure to allege a plausible claim. We argued that the cancellation petition did not identify any type of harm that could be addressed under the federal trademark statute, known as the Lanham Act.

The TTAB agreed and granted Al Johnson's motion to dismiss but provided the photographer leave to amend. In 2012,



Katrina Hull

My hard work—my copyright, although I didn't know it was called *copyright* at the time—had been stolen. It was personal.

Opposing Counsel filed an amended petition, alleging that the photographer now desired to dine and shop in establishments with Goats on the Roof. The TTAB once again dismissed the cancellation petition, finding that the photographer did not have standing because such an interpretation of the Lanham Act would give standing to challenge a trademark registration to any consumer with the desire to purchase infringing goods.

All was quiet for six years. Then, in 2018, and not dissuaded by two previous dismissals for failure to allege standing, Opposing Counsel petitioned a third time to cancel the Goats on the Roof trade dress registration. This time, Opposing Counsel had no client. He represented himself and said he was harmed because the Goats on the Roof trade dress was allegedly demeaning to the goats.

Setting aside the fact that Opposing Counsel is not a goat, he filed the petition with the TTAB in 2018, *after* the U.S. Supreme Court ruled in *Matal v. Tam* (2017) that the disparagement clause of the Lanham Act was unconstitutional because it constituted viewpoint discrimination in violation of the First Amendment. If you'll recall, *Tam* involved the Asian American band, called *The Slants*, that wanted to register its own band name but was denied because the U.S. Patent and Trademark Office said the band name was disparaging to Asian Americans.

Back to the Al Johnson's case: We again filed a motion to dismiss with the TTAB, pointing out that Opposing Counsel had no standing and that he failed to plead a valid claim because the U.S. Supreme Court had recently struck down the disparagement clause of the Lanham Act.

The TTAB agreed and, for a third time, dismissed Opposing Counsel's petition to cancel the Goats on the Roof trade dress registration.

Did this dissuade Opposing Counsel? No, he appealed to the Federal Circuit.

The Federal Circuit found in Al Johnson's favor and upheld the TTAB decision that Opposing Counsel did not have standing and failed to plead a plausible cause of action. The Federal Circuit also sanctioned Opposing Counsel for filing a frivolous appeal.

Opposing Counsel petitioned for certiorari to the Supreme Court. And, not much of a surprise here, the Supreme Court denied cert.

This is where the unkindness comes in: When Opposing Counsel could not win in court, he put up a website. The website

heading appearing in the Google search for my name states “Attorney Katrina Hull successfully lies in defending ridiculous goat . . .” and the “article” on the website is titled, “Milwaukee Lawyer Protects Restaurant’s Ridiculous Trademark by Lying to United States Patent and Trademark Office and to Federal Appeals Court.”

To be honest, this website hurts. (My kids, though, have had “fun” with this website. They love to Google my name at school, and brag to their friends that their mom is a “successful liar.”) I encourage all of you, though, to be kind and not to be like Opposing Counsel.

Whenever you can: Have fun. Be kind. Give back.

Perhaps the most important advice I can offer is to give back. You have impressive intelligence, and I encourage you to find a way to share that with the community where you practice law. If you practice in Milwaukee, you can volunteer as an attorney at the Marquette Volunteer Legal Clinic (MVLIC). Many of you may have already volunteered as law students, and I thank you for that service.

For almost as long as I’ve been practicing law in Milwaukee, I’ve been volunteering at the House of Peace location for the MVLIC. I may be an “IP attorney,” but the MVLIC provides an opportunity to encounter other areas of law—those you’ve been studying the past two or three years—and to connect with the local legal community while giving back.

I would not be here tonight if I had not been volunteering as a lawyer at the House of Peace a decade ago. I was paired one evening with an excellent Marquette law student, Xheneta Ademi. At the end of our shift, I asked her what area of law she wanted to practice, and she said intellectual property. Xheneta introduced me to Professor Kali Murray, and Professor Murray invited me to guest lecture on trademark prosecution for her trademarks course. The next year, at Professor Murray’s encouragement, the Law School invited me to teach the trademarks course. Teaching is a true honor. I have learned more from the students over the years than I have taught them, and I’m truly grateful for the experience of being an adjunct professor.

Whenever you can: Have fun. Be kind. Give back.

In closing, I am giving back to you a David Letterman-inspired Top Five list. So, from the home office in Milwaukee, Wisconsin, here are the “Top Five Things I Wish I Had Known as a Brand-New IP Attorney.”

5. Pat Pend is not a person.
 4. Copyright does not mean “I can copy—right?”
 3. The *TM* next to a word stands for “Trademark” and not “The Man.”
 2. The fact that the Green Bay Packers own the Chicago Bears does not mean that the Green Bay Packers own the Bears’ trademarks.
 1. It’s a trade secret. I will never tell you.
- Thank you. Cheers to IP! ■



HON. JAMES A. WYNN

Judging in a Polarized World

The Hon. James A. Wynn, L’79, is a judge of the U.S. Court of Appeals for the Fourth Circuit. Judge Wynn delivered the following remarks at a dinner of the Federal Bar Association in Charlotte, N.C., on June 4, 2025.

Good evening. It is an honor and privilege to address this distinguished gathering of the Federal Bar Association.

This year marks my 35th year as an appellate judge—20 years on the state courts and now 15 years on the federal bench. That journey has been one of change and learning. The legal world in which I began my judicial career is not the same one that we practice in today. And neither are we the same judges. To paraphrase a saying of my mentor, former North Carolina Chief Justice Henry Frye, “The world has turned many times over the past 35 years, and we have turned with it.”

I was first elected to the North Carolina Court of Appeals in 1990, a time when the judicial selection process—and the judiciary itself—operated quite differently. Back then, judicial elections in states such as North Carolina were partisan and, in various other states, nonpartisan. Today, while the method