



Lindsay Korotkin

ASSOCIATE

Lindsay serves as an advisor to companies and individuals in the fashion & retail; art, media & entertainment; and technology spaces. As a member of the firm's Intellectual Property department, she helps artists and brands protect and monetize their most valuable assets.



Industries

Consumer Products
Fashion & Retail Law
Media & Entertainment
Nonprofits & Associations
Sports

Practices

Advertising & Promotions
Complex Litigation
Copyright
Corporate & Securities
Trademark

Education

Benjamin N. Cardozo School of Law JD, cum laude;
Head de novo Editor, Cardozo Law Review, 2013
Barnard College BA, magna cum laude; department
honors; Nancy Hoffman Award; Aileen Mejia Pratt
Arts Grant, 2006

Offices

New York

Phone

212.457.5548

Email

lindsay.korotkin@arentfox.com

Lindsay's practice focuses on trademark, trade dress, copyright, right of publicity, and art market litigation, prosecution, and transactions. She represents and counsels clients ranging from Fortune 10 companies to individuals and family businesses across a wide array of industries, including: fashion, beauty & retail; art, media, publishing, music & entertainment; food, alcoholic beverage & health; architecture, interior design & real estate; and technology, among others.

Lindsay is a relentless advocate for her clients and particularly excels at crafting and executing novel strategies and creative solutions in both litigation and litigation-avoidance alike. While she is effective at resolving disputes early, she is also a go-to lawyer for bet-the-company high-stakes litigations. In connection with those cases, Lindsay routinely leans on her prosecution and transactional skills to develop game-changing litigation strategies and defenses that litigators without those experiences often do not see.

Prior to law, she worked in the contemporary art world managing high-value collections and advising artists, galleries, and nonprofit organizations. With deep roots in the arts, Lindsay brings first-hand industry knowledge to art market transactions and disputes.

Litigation

In the litigation space, Lindsay handles all stages of litigation and administrative actions in federal and state court and before the Trademark Trial and Appeal Board and Copyright Office Review Board. She also works closely with foreign counsel to oversee her client's foreign disputes and to coordinate claims and defenses when those disputes span around the world. Lindsay also has expertise in the growing intersection of fraud, unfair competition, big data, and intellectual property and has successfully shut down numerous fraudulent internet and telephone scams that were harming clients' IP and goodwill.

Prosecution and Counseling

In the prosecution space, Lindsay assists clients in procuring trademark and copyright registrations and manages worldwide IP portfolios in an array of fields, including for one of the largest companies in the world. She also provides day-to-day counseling and advice on issues including trademark, copyright, moral rights, and right of publicity protection and enforceability.

Transactions

In the transactional space, Lindsay has extensive experience drafting and negotiating a wide array of agreements across industries, including IP licenses, joint venture agreements, gallery representation and consignment agreements, advertising services agreements, book publishing agreements, releases, production agreements, and settlement and co-existence agreements.

Client Work

Fashion, Beauty & Retail:

- Key team member in the four-year long defense of athleisure brand RBX Active in a bet-the-company litigation brought by two well-known global athletic brands. Achieved numerous discovery victories, including: successfully piercing privilege under the crime-fraud exception based on a finding of trademark fraud on the U.S. Patent and Trademark Office, *adidas America, Inc. v. TRB Acquisitions LLC*, No. 3:15-CV-2113-SI, 2018 WL 4600291 (D. Or. Sept. 25, 2018); and obtaining court orders waiving attorney client privilege and work product under Federal Rule of Evidence 612 due to 30(b)(6) witnesses' review of privileged documents to prepare for depositions, *adidas America, Inc. v. TRB Acquisitions LLC*, 324 F.R.D. 389 (D. Or. 2017). These evidentiary opinions are now cited in trademark treatises in connection with teaching best practices.
- Successfully asserted trademark infringement claims on behalf of renowned fashion college against competing school that was infringing on its federally registered and incontestable name; case settled favorably and infringing school rebranded.
- Defended international fashion houses against various copyright infringement claims, including in connection with social media posts and fabric patterns.
- Obtained a favorable settlement for a defendant in the footwear space after asserting vigorous defenses against the plaintiff's novel trade dress claims. The Second Circuit later affirmed a finding that the plaintiff's trade dress was invalid for the same reasons.
- Assisted global sportswear brand in successfully terminating a license agreement on favorable terms without costly litigation.
- Advised clothing manufacturer and retailer on intellectual property risks and available defenses associated with use of slogans and images of celebrities and politicians on apparel and accessories.
- Develop, manage, and protect global IP portfolios for fashion, retail, and beauty brands, including one of the largest e-commerce companies in the world.

Art

- Advised artist on legal issues related to site-specific performance art and sculptural works and drafted non-disclosure agreement for consulting scientists and fabricators.
- Advised artists, creative professionals, and real estate developers on the applicability of and compliance with the Visual Artists Rights Act ("VARA"), 17 U.S.C. § 106(a).
- Guided company in expansion of brand identity artwork previously created by an independent contractor.
- Advised retail store on intellectual property risks associated with display of and creation of merchandise from graffiti artist's appropriation artwork and the applicability of a fair use defense if challenged.
- Represented artists in connection with drafting and negotiating gallery consignment and representation agreements.
- Drafted and negotiated artwork licenses for apparel and merchandise uses.
- Drafted and negotiated agreement between experiential marketing company and graffiti artist in connection with a joint project for a leading global hotel chain.

- Defended designer's expressive non-commercial use of a paparazzi photograph in a copyright infringement case that settled favorably.

Media, Entertainment, Music & Publishing

- Represented a media company in defense of copyright infringement and Digital Millennium Copyright Act ("DMCA") claims on appeal at the Second Circuit.
- Successfully settled music copyright infringement dispute for educational institution in a case involving student works posted on social media.
- Actively representing a foundation in an ownership dispute involving an acclaimed encyclopedia.
- Advised media company on strength of trademark infringement case against third party launching a channel with an identical name.
- Represented industry association in defense of copyright infringement claims asserted by news and publishing company.
- Drafted form book publishing agreements for text book publisher.
- Advised publisher on structuring of ghostwriter relationships and applicability of moral rights and IP laws around the world; drafted agreements.
- Represented client in connection with negotiating and revising releases and licenses for Netflix documentary series.

Technology

- Served as trademark TTAB co-counsel and successfully defended a web services company against reverse confusion trademark infringement claims in the telecommunications space.
- Successfully asserted trademark and copyright claims on behalf of a client in the SaaS industry against an infringing competitor.
- Develop, manage, and protect worldwide trademark portfolios for an international software brand, a fintech start-up, and a leading web services company.
- Performed high volume global trademark clearances for leading cloud computing service provider's product names.
- Advised clients on the applicability of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, to various software products and technological applications.

Food, Alcoholic Beverage & Health

- Actively representing a spirits company in defense of trade dress infringement and dilution claims regarding whiskey bottles.
- Successfully asserted trademark infringement claims on behalf of vitamin manufacturer against third party infringing on brand name; case settled favorably with a full cessation of use by the infringer.
- Advised nutritional supplements brand on availability of and IP protection for product names.
- Drafted and negotiated co-existence agreement for health brand to enable registration of house brand name as a trademark.

Architecture, Interior Design & Real Estate

- Advised architects and designers on trademark, trade dress, and copyright issues, including rights protection and infringement disputes.
- Drafted and negotiated IP provisions in professional services agreements, design services agreements, architect agreements, supplier agreements, and vendor agreements for architects and designers.
- Counseled developers and architects on the applicability of and compliance with VARA in connection with site-specific artwork; created contract-based solutions to address the various parties' interests and avoid future VARA and copyright disputes.

Previous Work

Before joining Arent Fox, Lindsay served as a Junior Law Clerk for the Hon. Jack B. Weinstein at the United States District Court for the Eastern District of New York.

Professional Activities

- Copyright Committee, New York Intellectual Property Association (NYIPLA)
- International Trademark Association (INTA), The Trademark Reporter Committee Member
- American Alliance of Museums
- Ladas Memorial Award, INTA, Judge
- American Mock Trial Association, Iona College Mock Trial Tournament, Judge
- ABA Committee 106 – Patent Litigation, *Ad Hoc* Subcommittee Member, 2013: prepared and submitted a report and recommendation to the United States House of Representatives on Section 3(a) of H.R. 3309 (a bill designed to, among other things, alter and elevate pleading requirements for patent litigation actions)

Publications and Presentations

Publications:

- *A Blow to Pop Art: Andy Warhol's Prince Series Not a 'Fair Use' of Lynn Goldsmith's Photograph*, JD Supra, April 15, 2021
- Ninth Circuit: Computer Fraud and Abuse Act Doesn't Block Public Profile Data Scraping, Arent Fox Perspectives, September 25, 2019
- *Supreme Court: Copyright Registration Required to Bring Suit*, Lexology, March 18, 2019
- *Finding Reality in the Right of Publicity*, ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK, (West 2014 ed.).
- *Introduction to China Re-Rising: Innovation and Collaboration for a Successful Twenty-First Century*, 2013 CARDOZO L. REV. DE NOVO 76.
- *Finding Reality in the Right of Publicity*, 2013 CARDOZO L. REV. DE NOVO 268.

Presentations:

- Panelist, "Beers and Careers!," Copyright Society of the USA (CSUSA), January 25, 2018 (New York, NY)
- Moderator, "Speaking the Language of Your Clients: The Advertising Industry," NYIPLA, March 23, 2017 (New York, NY)
- Moderator, "Speaking the Language of Your Clients: The Music Industry," NYIPLA, September 26, 2016 (New York, NY)

Life Beyond the Law

Outside of the office, Lindsay enjoys collecting art, hiking, growing food, and spending time with family.

Bar Admissions

New York
New Jersey

Court Admissions

US District Court, Southern District of New York
US District Court, Eastern District of New York
US District Court, District of New Jersey
US Court of Appeals, 2nd Circuit
US Court of Appeals, 9th Circuit