

KENNETH B. GERMAIN

Of Counsel

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Ken Germain has more than 45 years of varied experience in the trademark/unfair competition field and is a former full-time law professor. He focuses his practice on expert witness work, consulting and litigation, including Early Neutral Evaluation. Ken often has been retained as an Expert Witness on issues relating to trademarks and unfair competition, working on cases involving some of the nation's largest companies in high-stakes, cutting-edge cases. He has testified in court over 15 times.

Ken has been an active speaker on trademark and unfair competition, lecturing at national, regional and local conferences over 300 times. In addition, in 1990 Ken founded, and until 2014 chaired, the All Ohio Annual Institute On Intellectual Property seminar. This seminar is in its 30th year, provides two-city programming (Cincinnati, Cleveland) covering all aspects of IP, and is the largest (over 300 attendees per city), oldest, full-day IP CLE program in and around Ohio.

Ken served as an Adjunct Professor at the University of Cincinnati College of Law for many years, teaching trademark/unfair competition courses. Later, Ken served as the Distinguished Professorial Practitioner in the University of Dayton Law School's Program in Law and Technology. Ken served as the Distinguished Senior Fellow in connection with the Law + Informatics program of the NKU Chase School of Law.

Areas of Practice

- Litigation/Dispute Resolution
- Trademarks/Unfair Competition
- Trade Dress

Bar Admissions

- Ohio, 1989
- California, 1970 (inactive)



Education

- **New York University School of Law**, New York, New York
 - J.D. – 1969
 - Law Review: N.Y.U. Law Review, Associate Editor
- **Rutgers**, New Brunswick, New Jersey
 - A.B. magna cum laude – 1966
 - Honors: Elected to Membership in Phi Beta Kappa

Published Works

- Over 25 publications.
- Lawyers Who Need Lawyers: When to Retain a Legal Expert in a Trademark/Unfair Competition Case, CorporateIntelligence.com.
- The Brave New World of Possibly Preclusive TTAB Proceedings: How Expert Testimony Can Strengthen Your Case, 90 Patent, Trademark & Copyright Journal 2104, May 22, 2015.
- Liability Theories Based on Trademark Ownership and Licensing, ch. 3(VI) in *Ridesharing Law and Liability* (ABA 2020, Z. Pyers and K. Steele, eds.), coauthored by S. Owens.

Classes/Seminars

- Precedential Supreme Court And Appellate Court Cases On Trademarks and Unfair Competition: 2019-2020 In Review, 30th All Ohio Annual Institute On Intellectual Property [AOAIPIP] sponsored by the Cincinnati Bar Association and the Cleveland Intellectual Property Law Association, virtual presentation October 8, 2020.
- Using Virtual Early Neutral Evaluation To Speed Up And Reduce Costs In Resolving Trademark/Trade Dress Disputes In The COVID-19 Era”, Practising Law Institute Webinar entitled “Intellectual Property Law: Trademark and Copyright Review 2020”, September 15, 2020.
- The Unconstitutionality of Overlapping Trade Dress and Design Patent Protection, Intellectual Property & Technology Law Lecture Series, Notre Dame Law School, South Bend, IN, October 28, 2019.
- Current Caselaw on “Traditional” Product Design Trade Dress: Focusing on Distinctiveness and Functionally, but Touching on Possible Preemption, Intellectual Property Law Institute sponsored by the Philadelphia Bar Institute, Philadelphia, PA, April 16, 2019.
- Precedential Circuit Court Cases On Trademarks and Unfair Competition: 2016-2017 Viewed From The Porch, 43rd Annual Intellectual Property Law Institute, Mackinac Island, MI, July 21, 2017.
- Is Friday the 13th an Unlucky Day for Uber and airbnb? Tort Liability for Trademark Licensors in the Sharing Economy, Dayton Intellectual Property Law Association, Dayton, OH, May 13, 2016.
- 2014-2015 Supreme Court and Circuit Court Cases on Trademarks and Unfair Competition, 2015 Midwest Intellectual Property Institute, Overland Park, KS, May 15, 2015.

Honors and Awards

- Who’s Who Legal, The International Who’s Who of Trademark Lawyers, 2001 – Present



- Chambers USA, America's Leading Lawyers for Business, 2004 - Present
- The Best Lawyers in America®, 1991 - 2017
- The Best Lawyers in America® "Lawyer of the Year" Litigation – Intellectual Property and Trademark Law, Cincinnati, 2016
- The Best Lawyers in America® "Lawyer of the Year" Litigation – Intellectual Property and Trademark Law, Cincinnati, 2015
- The Best Lawyers in America® "Lawyer of the Year" Litigation – Intellectual Property and Trademark Law, Cincinnati, 2014
- The Best Lawyers in America® "Lawyer of the Year" Trademark Law, Cincinnati, 2012
- The Best Lawyers in America® "Lawyer of the Year" Intellectual Property Law, Cincinnati, 2011
- Ohio Super Lawyers®, 2004 - 2013, 2017
- Board of Advisors, Restatement (Third) of Unfair Competition, 1987 - 1992

Fraternities/Sororities

- Phi Beta Kappa